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U.S. should not gut legal protections for immigrant children

Expediting removal procedures will wrong minors legally entitled to remain

July 25, 2014 6:00AM ET

by **Lauren Carasik** @LCarasik

On Friday President Barack Obama will meet with leaders of Guatemala, El Salvador and Honduras at the White House to discuss ways to address the surge of unaccompanied minors from these nations arriving at the U.S.-Mexico border. Meanwhile, amid reports that the [flow may be receding](#), the administration is seeking greater flexibility to expedite the deportation process. Critics claim that accelerated deportation will not only endanger many of the children who are eligible to stay in the U.S. but also violate protections mandated by international law. In a meeting with Latino lawmakers earlier this week, Obama said his proposal would not undermine the children's right to seek asylum in the United States.

The Washington debate on just how to address the surge of migrant children has been deeply partisan. Republicans blame Obama for lax enforcement of immigration laws, failing to secure the border and enticing children to flee under the [mistaken assumption](#) that they would be entitled to relief in the U.S. Democrats fault Republican intransigence on immigration reform for preventing some children from uniting with their parents north of the border.

On July 9, Sens. John McCain and Jeff Flake, both R-Ariz., [proposed an amendment](#) to the 2008 William Wilberforce Trafficking Victims Protection and Reauthorization Act (TVPRA). The law provides meaningful screening of claims and humane treatment of migrant children from non-contiguous countries, and places them in ordinary removal proceedings. The proposed amendment, which calls for expedited deportation, scraps these protections. On July 14, Sen. John Cornyn, R-Texas, and Rep. Henry Cuellar, D-Texas, introduced yet another bill

know as the [HUMANE Act](#), which would also accelerate the processing of minors apprehended at the border. Proponents of the law argue it will ease the border crisis by expediting and easing deportations and deterring future migrants. But on July 15 Rep. Luis V. Gutiérrez, D-Ill., [blasted the bill](#) as a “deportation-only agenda dressed up in sheep’s clothing.”

Obama has [signaled his support](#) for changes to the TVPRA and for administrative measures that ease deportation. But the rollback proposals in Congress would circumvent protections for refugees, ignore the [unique vulnerabilities of child asylum seekers](#) and fail to ensure safe repatriation for the children. Given the long history of U.S. policies that have contributed to the instability in Central American countries, the U.S. should provide legally mandated relief to these children, not gut their protections.

State officials have also become involved. On July 21, Texas Gov. Rick Perry, who is also advocating accelerated deportation, announced plans to deploy 1,000 National Guard troops to the Rio Grande Valley citing the federal government’s failure to secure the border. But the [White House questioned Perry’s rationale](#), noting many of the children often turn themselves in to border agents, not evade them.

Risks of expedited procedures

Both sides of the debate agree that the poverty and pervasive violence that compelled these children to flee their countries must be ameliorated. The difference lies in whether to send the children back as quickly as possible or provide them with humanitarian care and a fair and full adjudication of their legal right to avoid repatriation. The United Nations says as many as 60 percent of the children, who are fleeing violence, [may qualify for international legal protection](#). On July 18, [Raices](#), a legal services organization in Texas, concluded that 63 percent of more than 900 children they screened were likely to be found eligible for relief from deportation by an immigration judge.

Border agents are in no position to summarily screen minors who arrive in the U.S. after a harrowing journey north. These children are often [disoriented, traumatized, mistrustful of authorities and uninformed](#) about the U.S. legal system. Language barriers and harried officials further impede full disclosure of the circumstances prompting the children to flee. And questioning children in close proximity to others who might overhear their claims of gang violence can elicit fears of retribution.

Both domestic and international law recognize that [children are uniquely vulnerable](#) and deserve heightened protection. Yet overwhelmed [border agents who are trained in law enforcement, not child welfare and screening](#), are being tasked with determining whether children are eligible for relief or should be immediately repatriated. Those who are not eligible for protection are offered voluntary repatriation — a suggestion the children often perceive as coercion.

In a [leaked report](#) recently obtained by Vox, the U.N. refugee agency said the flawed procedures for processing children at the border have failed to protect Mexican children. The study also found that border agents who were directed to presume minors were in danger typically assumed they were safe, shifting the burden of proof onto the minors to demonstrate they will be in danger if repatriated. Despite grave concerns for some of these children's life and safety, the report noted that, in a merely procedural attempt to obtain quick answers, some of the interviews were completed within 10 minutes.

The stakes of repatriation to countries with ubiquitous violence make competent legal advice critical. Research [shows](#) that legal representation enhances the children's chances of prevailing in immigration proceedings. Yet most unaccompanied minors are asked to navigate an intimidating and unfamiliar system on their own. On July 9, the American Civil Liberties Union and other rights groups [filed suit against the Obama administration](#) arguing that failure to provide children facing deportation with legal representation was unconstitutional.

To address the surge of child migrants, lawmakers should move forward on immigration reform and rethink the war on drugs and other foreign policies that have fueled poverty and drug, gang-related and state-sponsored violence in Central America.

Obama has requested \$45.4 million to hire a team of 40 additional immigration judges to clear a [backlog](#) of more than 366,000 immigration cases currently held up in the court system. But the proposal limits the pool to current or former administrative judges, who may not have experience with immigration proceedings, and Department of Justice employees. Judicial inexperience and the perception of overt or subliminal bias from DOJ employees whose role in the system has been to oppose relief for non-citizens will undermine the principles of impartiality and fairness.

Cooperation with Central American countries is key in resolving the crisis. In the short term, authorities on both sides of the border should take initiatives to educate minors and their families about the perils of the dangerous journey north, and the legal obstacles to obtaining relief in the U.S. before they leave home. They should also crack down on human traffickers. But a long-term, comprehensive solution must focus on removing the factors that are pushing children to flee their home countries — endemic corruption and impunity, lack of economic opportunities and pervasive insecurity across northern Central America. Equally important, any solution requires Washington to move forward on immigration reform and rethink the war on drugs and other foreign policies that have fueled poverty and drug, gang-related and state-sponsored violence in Central America.

In the interim, unfortunately, the children will keep coming. Since some of the children sent back will inevitably suffer violent deaths, and [none of the countries have effective programs to reintegrate the returning children safely](#), the U.S. should act with great caution and compassion, not politically motivated haste. This country of immigrants should treat the children with dignity, and

provide [humanitarian relief](#) and procedural guarantees designed to ensure refuge for those fleeing a well-founded fear of persecution.

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The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.