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Border Solutions from the Inside

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Border Solutions from the Inside

Raquel E. Aldana*

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In January 2020, a group of concerned experts convened in San Diego, California to discuss solutions to the humanitarian and migrant health crisis at the United States (U.S.)-Mexico border.¹ My co-authors and I were invited to contribute a white paper² in anticipation of the meeting, sharing our views about the solutions to forced migration from the Northern Triangle region of Central America. Each of us had spent decades weighing these questions as part of our work as environmental justice, labor rights, or human rights lawyers. When we met in the highlands of Guatemala in late 2019 to discuss our ideas, it quickly became evident that we could not disconnect the conversation about solutions to Central American forced migration from the long-term struggles for just nations in the region. In our introduction, we explained that we felt strongly that our frame for offering solutions had to embrace the complexity of forced migration's root causes, and at least try to take up the daunting task of contextualizing these in the century long projects in the region of building just nations post-colonization and post-conflict.³ At the same time, we also acknowledged that we would do so, despite the obvious: that "neither civil wars nor incredible ambitious peace processes [had] been terribly successful [in helping] these nations transition to strong and just democracies."⁴

At the time we wrote the white paper, we harbored little hope that the current political climate, both in the U.S. and in the region, would pay much heed to our proposed solutions. This liberated us from compromising our convictions and ideas to immediate political pragmatism. Instead, we focused on longer-term solutions, which we collectively believed could lead Hondurans, Guatemalans, and Salvadorans to experience their own nations as viable options to remain and lead dignified lives.⁵ Thus, we titled our paper *Connecting Past and Present: Central America's Forced Migration as an Unfinished Project of Building Just Nations Post-Conflict and Post-Colonization* and provided dozens of recommendations grounded in three principles: (1) insisting on transnational or international solutions that both take seriously the moral

¹ For information about the Border Humanitarian Health Initiative, see BORDER HUMANITARIAN HEALTH INITIATIVE, <https://www.borderhumanitarianhealth.org> (last visited Mar. 12, 2021).

² See *White Papers*, BORDER HUMANITARIAN HEALTH INITIATIVE, <https://www.borderhumanitarianhealth.org/white-papers> (last visited Feb. 2, 2021).

³ Raquel E. Aldana, Mario René Mancilla & Luis Mogollón, *Connecting Past and Present: Central America's Forced Migration as an Unfinished Project of Building Just Nations Post-Colonization and Post-Conflict*, UC DAVIS LEGAL STUDIES RESEARCH PAPER (Forthcoming).

⁴ *Id.* at 2.

⁵ *Id.* at 18.

responsibility of nations like the U.S. to provide real solutions to the region and acknowledge the interdependence of issues and solutions to many of the problems affecting the region; (2) capitalizing on the promise of local governments or indigenous communities to take up important state functions—distributional justice, protection of natural resources, and the delivery of justice—as well as the role of organized civil society such as cooperatives, churches, and other human rights groups to help promote sustainable development and systems of public accountability (a broader and deeper democracy); and (3) restructuring certain important solutions to seemingly intractable challenges in the region—such as land redistribution; threats to natural resources; or justice reforms—through the lens of human rights and not solely through a private property or tough-on-crime framework.⁶

A year later, the pandemic effects on the region, but also significant changes in the political climate, at least in the U.S., lead me to refocus our ideas in this essay toward a few more urgent and pragmatic solutions to the persistent forced migration challenges in Central America’s Northern Triangle that President Joe Biden could undertake in the first two years of his administration. This is far from an abandonment of the broader and more ambitious project we tried to envision in our white paper pre-pandemic. Rather, it is intended as a path forward to some of the recommendations already contained in the document. The focus will be on measures that the U.S. can undertake to help these nations avert the enormous humanitarian crisis brought about by the pandemic including starvation, a surge in violence, and a rise in extreme poverty—all of which are fueling an increase in forced migration from the region.⁷ In this essay, I focus specifically on two measures: (1) stabilizing the flow of remittances from the U.S. to the region; and (2) increasing and strategically reorienting aid to these nations to the most vulnerable communities affected by the pandemic.

A focus on U.S.-based solutions to problems in the Northern Triangle region requires at least some explanation. It is fair to push back on, or at least seek a justification for, why this essay should focus on U.S.-based solutions at a time when the U.S. is also facing a significant health, economic, political and racial justice crisis.⁸ Foremost, the proposed solutions in this essay do not replace the primary responsibility of these nations to take up the challenging work of solving their problems. While

⁶ *Id.* at 9.

⁷ *See infra* Part I.

⁸ *See* Andrew Hammond et al., *How the COVID-19 Pandemic Has and Should Reshape the American Safety Net*, 105 MINN. L. REV. 154 (2020); Adam Serwer, *The Next Reconstruction*, THE ATLANTIC (Oct. 2020), <https://www.theatlantic.com/magazine/archive/2020/10/the-next-reconstruction/615475/>.

insufficient, it is important to note that each of these nations has undertaken important pandemic measures that are responsive to these challenges.⁹ Nevertheless, the first principle guiding our proposed solutions in the white paper—a focus on transnational or international solutions—applies strongly to the proposed measures in this paper. Even leaving aside the U.S. moral responsibility to Northern Triangle nations,¹⁰ it makes a great deal of sense that the well-being of Northern Triangle nations is also good for the well-being of the U.S. There is always the oft-provided justification for helping Northern Triangle nations: that doing so will help us avert even more forced migrants seeking to make the U.S. their home.¹¹ But there are also less obvious or less commonly proffered justifications that promote U.S. interests. First, especially in the last forty years, large pockets of nationals from these Northern Triangle nations have made the U.S. their home, many themselves becoming U.S. citizens while many more have U.S.-born children.¹² Many have supplied the U.S. with needed labor that has included their role as front line workers during pandemic.¹³ We cannot simply dismiss our familial or communal connections to these nations as foreign issues that do not affect the well-being of our own. Second, we live in an interdependent global economy and these nations, while small, have been reliable trading partners doing

⁹ GOBIERNO DE GUATEMALA, MINISTERIO DE SALUD PÚBLICA Y ASISTENCIA SOCIAL, *Plan para la Prevención, Contención y Respuesta a Casos de Coronavirus (COVID-19) en Guatemala* [Plan for the prevention, containment and response to cases of Coronavirus in Guatemala] (Mar. 2020), <https://www.mspas.gob.gt/component/jdownloads/send/486-plan/3074-coronavirus-covid-19.html>; GOBIERNO DE LA REPÚBLICA DE HONDURAS, SECRETARIA DE SALUD, *Plan para la Contención y Respuesta a Casos de Coronavirus (COVID-19) en Honduras* [Plan for the containment and response to cases of Coronavirus in Guatemala] (Feb. 2020), <https://covid19honduras.org/?q=node/31>; REPUBLICA DE EL SALVADOR EN LA AM. CENT., DIARIO OFICIAL, DECRETO NO. 593.- *Estado de Emergencia Nacional de Pandemia por COVID-19* [National Pandemic State of Emergency for COVID-19] (Mar. 14, 2020), <https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/14-03-2020.pdf>.

¹⁰ For a discussion of the U.S. moral responsibility to Northern Triangle nations, see Christian Paz, *The Biden Doctrine Begins With Latin America*, THE ATLANTIC (Oct. 26, 2020), <https://www.theatlantic.com/international/archive/2020/10/joe-biden-foreign-policy-latin-america/616841/>; César Chelada, *Why the U.S. Owes Central America*, THE GLOBALIST (Aug. 2, 2019), <https://www.theglobalist.com/united-states-trump-central-america-immigration/>.

¹¹ Jonas Gamso & Farhod Yuldashev, *Targeted Foreign Aid and International Migration: Is Development-Promotion an Effective Immigration Policy?*, 62 INT'L STUD. Q. 809, 809–10 (2018); U.S. DEP'T OF STATE, CONGRESSIONAL BUDGET JUSTIFICATION: FISCAL YEAR 2016, at 4 (2016) (“In our own Hemisphere, the budget requests money to strengthen relationships between the United States and our regional neighbors, to address the root causes of illegal migration, especially unaccompanied minors from Central America, and to bolster Mexico’s enforcement capacity on its southern border”).

¹² See *infra* Part II.A.1.

¹³ *Id.*

business with the U.S.¹⁴ They are producers of many products and services we consume, but also consumers of many products we send to their homes.¹⁵ The economic well-being of these nations, thus, is also good for our own economic well-being.

In Part I of this essay, I document what we know about COVID-19's effects on Northern Triangle nations and their likely impact on the push factors that propel forced migration northward. In part II.A, I explore the role of remittances in the region and discuss the measures that President Biden can take up to ensure the sustainability of this important source of economic stability to the region. In Part II.B, I discuss the most recent history of U.S. foreign aid in the Northern Triangle, contrasting President Obama's policies with President Trump's policies to inform and also contextualize how President Biden might approach foreign aid in the region in a time of pandemic and hopefully post-pandemic.

I. WE ARE NOT ALL IN THE SAME BOAT

Barely two months into the first pandemic shut down, the phrase “[w]e are not all in the same boat, but we are in the same storm,” went viral on social media, apparently adopted from a much longer poem that highlighted how social inequities yielded vastly different experiences.¹⁶ Most certainly the resonance of this phrase had much to do with people's experiences that COVID-19's effect was markedly different among communities based on factors like race, class, and even geography.¹⁷ In

¹⁴ See, e.g., U.S. DEP'T OF AGRIC., U.S. AGRICULTURAL EXPORTS TO CENTRAL AMERICA'S NORTHERN TRIANGLE PROSPER UNDER CAFTA-DR (Feb. 2018), <https://www.fas.usda.gov/data/us-agricultural-exports-central-america-s-northern-triangle-prosper-under-cafta-dr>.

¹⁵ *Id.*

¹⁶ For a story of how this phrase went viral and the full length of the poem's text, see Pragadish Kirubakaran, *'We Are Not All In The Same Boat . . . ' Covid Poster & Poem Win Internet: Here's Their Story*, R.REPUBLICWORLD.COM (May 6, 2020), <https://www.republicworld.com/world-news/rest-of-the-world-news/we-are-not-all-in-the-same-boat-story-behind-viral-post-and-poem.html>.

¹⁷ Kaimipono David Wenger, *1200 Dollars and a Mule: COVID-19, the CARES Act, and Reparations for Slavery*, 68 UCLA L. REV. DISC. (LAW MEETS WORLD) 204, 206-09 (2020); Christianna Silva, *Why Latinx People Are Hospitalized From COVID-19 at 4 Times the Rate of Whites*, NPR (July 1, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/07/01/885923635/why-latinos-are-hospitalized-from-covid-19-four-times-the-rate-of-white-american>; Kim Parker et al., *Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest*, PEW RSCH. CTR. (Sept. 24, 2020), <https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>; Bradley Jones & Jocelyn Kiley, *The Changing Geography of COVID-19 in the U.S.*, PEW RSCH. CTR. (Dec. 8, 2020),

the U.S., at least in my own social media bubble, most of the focus on disparate suffering was on our domestic U.S. experience. But the phrase bears much relevance as well to describe how COVID-19 is impacting different nations.

A July 2020 United Nations (U.N.) report analyzing the pandemic's global economic impact highlighted both what it called a "synchronized global crisis," while at the same time emphasizing the disparate effects of this economic precipice on different economies with a focus on Latin American and Caribbean nations.¹⁸ The report noted, for instance, projections for differential shrinkage in economic growth, interestingly predicting a greater average percentage of 7% for developed nations in contrast to 1.6% for emerging economies.¹⁹ Despite this, when decoupling the financial dynamics from the drop in economic activities, the report makes evident that the resulting effects of unemployment, poverty and inequality, as well as the ability to transcend these, would vary significantly to disadvantage those living in emerging economies with pre-existing high levels of poverty, inequality, and poorly functioning democracies.²⁰ For the Latin America region as a whole, where most nations remain emerging economies, the International Monetary Fund (IMF) has predicted that the combination of a stalled informal economy, a drop in tourism, capital flights, and climate disruptions will cause the region's largest-ever economic contraction.²¹ Even more worrisome is the U.N. World Food Program's prediction that "severe food insecurity" in the region will quadruple, from 3.4 million to 13.7 million, during 2020.²²

Central America has been disproportionately impacted by COVID-19 both in terms of the rate of infections and also its economic impact. In August 2020, with a combined population of 49 million, Central America

<https://www.pewresearch.org/politics/2020/12/08/the-changing-geography-of-covid-19-in-the-u-s/>.

¹⁸ UN ECON. COMM'N FOR LATIN AM. AND THE CARIBBEAN (ECLAC), SPECIAL REPORT, COVID-19, NO. 5, at 1-4 (July 15, 2020), https://repositorio.cepal.org/bitstream/handle/11362/45784/4/S2000470_en.pdf [hereinafter ECLAC REPORT].

¹⁹ *Id.* at 2.

²⁰ *Id.* at 5-12.

²¹ Kristalina Georgieva, *A Joint Response for Latin America and the Caribbean to Counter the COVID-19 Crisis*, INT'L MONETARY FUND (June 24, 2020), <https://www.imf.org/en/News/Articles/2020/06/24/sp062420-a-joint-response-for-latin-america-and-the-caribbean-to-counter-the-covid-19-crisis>.

²² Austin Horn, *14 Million People in Latin America, Caribbean at Risk of Hunger*, U.N. Report Says, NPR (May 28, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/28/864076929/14-million-people-in-latinamerica-caribbean-at-risk-of-hunger-u-n-report-says>.

reported an average of 8,202 coronavirus cases per million residents as compared to a global average of 3,500.²³

In terms of economic impact for the Central American region, the July 2020 U.N. Report makes a few important observations. First, it notes that unlike other crises that largely affected trade in goods, this pandemic's disparate effect on services has hit the region hard, given its effect on tourism and the related service industries, which are a major driver of economic activity in the region.²⁴ It further highlights that the expected substantial drops in commodity prices, including for products such as coffee and sugar, which are large exports for Central America, will negatively affect the region in terms of net exports.²⁵ Additionally, the report highlights the large drops in remittances as the pandemic's economic woes linger in the U.S., which will especially impact economies like those of El Salvador and Honduras whose remittances represent about 20% of the GDP.²⁶

Overall, based on estimated effects of an ongoing pandemic, the report predicts that El Salvador, Honduras and Guatemala will experience drops of 9, 8.6 and 4.1 percent in GDP in 2020 respectively.²⁷ All of this, the report concludes, will set back most of the Latin American region a decade in terms of its economic gains, and the impacts of this will be felt in increased unemployment rates and the further deterioration of poverty and extreme poverty. For example, in El Salvador, extreme poverty is projected to increase from 7.4 to 11.9 percent from 2019 to 2020, whereas poverty will increase from 33.7 to 40.2 percent of the population. In Guatemala, extreme poverty will go up from 19.8 to 22.7 percent while poverty will increase from 48.6 to 51.6 percent of the population. In Honduras, where over half of the population already lives in poverty, the percentage will increase from 54.8 to 59 percent, whereas extreme poverty will rise from 18.7 to 22.2 percent.²⁸ At the same time, inequality will grow in the region and will be worse for El Salvador, the country in the Northern Triangle that has made the most gains in addressing inequality in recent

²³ María Eugenia Brizuela de Ávila et al., *Adrienne Arsht Latin America Center, Central America Economic Reactivation in a Covid-19 World: Finding Sustainable Opportunities in Uncertain Times*, ATLANTIC COUNCIL 2 (Sept. 2020), <https://www.atlanticcouncil.org/wp-content/uploads/2020/09/Central-America-Economic-Reactivation-in-a-COVID-19-World-Finding-Sustainable-Opportunities-in-Uncertain-Times-1.pdf>.

²⁴ ECLAC REPORT, *supra* note 18, at 3 (noting that tourism in Central America was down by 35% from the same time the previous year).

²⁵ *Id.* at 4.

²⁶ *Id.* at 5.

²⁷ *Id.* at 9.

²⁸ *Id.* at 11.

years.²⁹ According to the report, El Salvador's inequality index will go up by as high as 5.9 percentage points whereas Honduras will go up as high as 2.9 percentage points and Guatemala as high as 1.9 percentage points.³⁰

The human impact of all the above economic projections will be nothing short of terrible, especially for populations that were already vulnerable pre-pandemic. An example of the particular vulnerability of Northern Triangle nations is highlighted in a U.N. report which points to the countries' lack of sanitary infrastructure in most rural areas in addition to a dearth of access to hospitals and basic healthcare.³¹ A July 2020 Oxfam report of the region (and Venezuela) was titled in Spanish "*Aquí lo que hay es hambre: Hambre y Pandemia en Centroamérica y Venezuela*" (*What you Will Find Here is Hunger: Hunger and Pandemic in Central America and Venezuela*).³² According to this report, pre-pandemic, already about 4.5 million persons in what is known as the dry corridor in Central America were food insecure and these numbers are just getting worse as levels of extreme poverty rise in the region.³³ This region experienced as much as 20% drops to already meager levels of income due to pandemic restrictions and drops in remittances, at the same time that the cost of basic staples, such as beans and corn, began to rise.³⁴ A survey of forty-one communities in four countries in the dry corridor region found that 57% of reported experiencing food insecurity and moderate to severe malnutrition.³⁵ In households with women as the head, this figure rose to 63%.³⁶

²⁹ *The World Bank in El Salvador: Overview*, THE WORLD BANK, <https://www.worldbank.org/en/country/elsalvador/overview> (last updated Oct. 9, 2020) ("El Salvador also [recently] became a more equal country in recent years, with the second-highest level of equality in Latin America and the Caribbean, after Uruguay, on par with the world average. Inequality—measured by the Gini coefficient—declined from 0.51 in 2001 to 0.38 in 2018.").

³⁰ ECLAC REPORT, *supra* note 18, at 11.

³¹ UN OFF. FOR COORDINATION HUMANITARIAN AFFAIRS (UNOCHA), *Panorama de las Necesidades Humanitarias: El Salvador, Guatemala, y Honduras (Addendum: Impacto De La COVID-19)* 6 [Overview of Humanitarian Needs: El Salvador, Guatemala, and Honduras (Addendum: Impact of COVID-19)] (May 2020), https://reliefweb.int/sites/reliefweb.int/files/resources/20200616_HNO_CENTROAMERICA%20ADDENDUM.pdf.

³² OXFAM INTERNACIONAL, '*Aquí lo que hay es hambre*': *Hambre y Pandemia en Centroamérica y Venezuela* ['Here there is hunger': Hunger and Pandemic in Central America] (July 2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/Aqu%C3%ADlo%20que%20hay%20es%20hambre%20Oxfam%20Media%20Brief.pdf>.

³³ *Id.* at 8. The dry corridor runs parallel to the Pacific Coast through parts of Mexico, El Salvador, Honduras, Guatemala, and Nicaragua. *Id.*

³⁴ *Id.* at 9.

³⁵ *Id.*

³⁶ *Id.* at 10.

Another extremely worrying projection is the effect of COVID-19 on insecurity in the region. A November 2020 study titled *Virus-Proof Violence: Crime and COVID-19 in Mexico and the Northern Triangle* found that while the pandemic initially slowed down organized crime in the region, criminal groups, such as gangs and narcotraffickers, adapted quickly to tighten and even expand their control over people and territories.³⁷ After the outbreak, street gangs across the Northern Triangle advertised themselves as champions of communities under lockdown, handing out food baskets and forgiving protection payments.³⁸ Due to COVID-19 movement restrictions, violence fell briefly in Honduras and Guatemala, but it is now back to or above pre-pandemic levels, while extortion rackets in both countries appear set to intensify.³⁹ El Salvador is an outlier in that murder rates have stayed close to historical lows for reasons that remain disputed.⁴⁰ Among the most disturbing trends is the return to extortions as a primary means of generating revenue and the very likely reality of many more recruits who will not have a choice but to join gangs as they expand or solidify control over territories profoundly impacted by the pandemic.⁴¹

The governments in the Northern Triangle have taken important steps to ameliorate the humanitarian crisis generated by the pandemic.⁴² El Salvador, for example, was one of the fastest countries in Central America to adopt strong containment measures against the outbreak and also to limit its impact on households and businesses.⁴³ Some of the measures included cash transfer to approximately 60% of all households, food distribution for low-income households, and a grace period for loan repayments, among others.⁴⁴ These efforts have not been nearly enough, have not reached those most in need, or have been plagued by delays, non-transparency or corruption.⁴⁵ The Oxfam report describes, however, how El Salvador's measure to give \$300 to the most vulnerable resulted in

³⁷ INT'L CRISIS GRP., *Virus-Proof Violence: Crime and Covid-19 in Mexico and the Northern Triangle*, LATIN AMERICAN REPORT NO. 83, at i (Nov. 13, 2020), <https://d2071andvip0wj.cloudfront.net/083-virus-proof-violence.pdf>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* ("The government says its security plan has kept violent gangs at bay, while Crisis Group has suggested that gang and government leaders may have struck an informal agreement to scale back violence. But, if such a pact exists, neither side has acknowledged it in public")

⁴¹ *Id.* at 6, 14.

⁴² Brizuela de Ávila et al., *supra* note 23, at 2. In fact, the only country in Central America that did not adopt COVID-related measures was Nicaragua. *Id.*

⁴³ THE WORLD BANK, *supra* note 29.

⁴⁴ *Id.*

⁴⁵ *Id.*

month long delays due to distributional challenges. In Honduras, the approval of a substantial pandemic relief package has been criticized for corruption and lack of transparency in the implementation.⁴⁶

Given the above, COVID-19 will also affect migration trends and the needs of migrants. This already includes numerous cases of migrants stranded due to movement restrictions as well as effects on unemployment rates and income generation in both countries of origin and residence.⁴⁷ Early reports suggested that the pandemic significantly slowed down new waves of migration to the U.S.⁴⁸ However, these trends are likely to be temporary. In June 2020, the U.N. International Organization for Migration conducted a survey, *inter alia*, on people who had the intention of migrating from Central America prior to the pandemic.⁴⁹ Survey results reveal that the pandemic only delayed people's intention to migrate, but few abandoned their plan to do so in the future.⁵⁰ Unfortunately, the devastation from recent hurricanes in the region⁵¹ on top of the pandemic is already spurring new waves of desperate migration. According to data from Customs and Border Protection (CBP), the number of people apprehended along the U.S.-Mexico border has already climbed in six straight months, to more than 69,000 in October from 17,000 in April 2020.⁵² Sadly but predictably, at the beginning of 2021, a new precarious caravan of approximately 2,000 mostly Honduran nationals began their journey north and are already facing insurmountable challenges, including batons and tear gas from police forces in Guatemala.⁵³

⁴⁶ OXFAM INTERNACIONAL, *supra* note 32, at 10.

⁴⁷ UN INT'L OFF. FOR MIGRATION (IOM), *Effects of COVID-19 on Migrants* 6 (June 2020), https://displacement.iom.int/system/tdf/reports/surveyeffects_of_covid-19_june_2020_final.pdf?file=1&type=node&id=9720 [hereinafter IOM REPORT].

⁴⁸ See, e.g., José de Córdoba & Michelle Hackman, *Coronavirus Pandemic Slows Illegal Migration to U.S.*, WALL ST. J. (April 19, 2020), <https://www.wsj.com/articles/coronavirus-pandemic-slows-illegal-migration-to-u-s-11586481423>.

⁴⁹ IOM REPORT, *supra* note 47, at 6.

⁵⁰ The pandemic affected migration plans for 57% of those surveyed. Among the people with the intention of migrating, the highest percentage of people postponed travel due to the pandemic (47%). Additionally, only 10% of people changed their minds due to the pandemic declaration and no longer wished to migrate. *Id.* at 15.

⁵¹ See *infra* notes 149-55 and accompanying text.

⁵² Michael D. McDonald & Eric Martin, *Migrant Caravans Head to U.S. Border in Early Test for Biden*, BLOOMBERG (Dec. 9, 2020), <https://www.bloomberg.com/news/articles/2020-12-09/migrant-caravans-head-to-u-s-border-giving-biden-an-early-test>.

⁵³ Associated Press, *Guatemalan forces stall migrant caravan from Honduras with tear gas, batons*, L.A. TIMES (Jan. 18, 2021), <https://www.latimes.com/world-nation/story/2021-01-18/guatemala-forces-stall-migrant-caravan-tear-gas-batons>.

II. INTERNALIZING SOLUTIONS TO FORCED MIGRATION

A year ago, in the section of our white paper focused on the U.S.-based policy changes needed to address the root causes of the Northern Triangle's forced migration, our recommendations ranged from addressing climate change to drug liberalization and immigration and trade reforms.⁵⁴ In this essay, I focus instead on the most pressing and viable reforms under a Biden administration that can have the most immediate impact on the most urgent humanitarian needs in the region.

Section A specifically focuses on immigration reforms that a Biden administration can undertake without the need for legislation that both seek to end practices that are aggravating the health and humanitarian crisis and ones that promise to bring greater stability to the Northern Triangle region. Days into his confirmation as President, Joe Biden pledged to introduce comprehensive immigration reform (CIR) legislation within days of taking office that would create a path to legalization to the estimated 11 million unauthorized immigrants in the U.S.⁵⁵ With Democrats in control of both chambers of Congress, CIR legislation is now a viable political option. Still, this possibility whose outcome is not guaranteed and will take time should not deter the Biden administration from adopting important measures right away on its own that will not only provide urgent need to the Northern Triangle region but can also help to pave the way for CIR. For context, prior to the policy recommendations, this section provides a brief profile of migrants and recent migration patterns from the Northern Triangle region to the U.S. and an explanation of the stabilizing role of remittances sent home by these migrants to the region.

Section B then turns to recommendations to increase and shift priorities to the U.S. foreign aid that a Biden administration will likely send to the region. For context, this section first explains the priorities for foreign aid adopted in the second term of President Obama's administration and the changes to these during the Trump Presidency.

⁵⁴ Aldana et al., *supra* note 3, at 8-15.

⁵⁵ *FACT SHEET: President Biden Outlines Steps to Reform Our Immigration System by Keeping Families Together, Addressing the Root Causes of Irregular Migration, and Streamlining the Legal Immigration System*, WHITE HOUSE (Feb. 2, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/02/fact-sheet-president-biden-outlines-steps-to-reform-our-immigration-system-by-keeping-families-together-addressing-the-root-causes-of-irregular-migration-and-streamlining-the-legal-immigration-syst>; *Biden Will Introduce Immigration Bill Immediately*, BLOOMBERG (Jan. 8, 2020), <https://www.bloomberg.com/news/videos/2021-01-08/biden-will-introduce-immigration-bill-immediately-video>.

A. Why and How U.S. Immigration Reforms Can Aid Recovery in the Northern Triangle

1. A Profile of Northern Triangle Migrants and Immigrants in the United States and at the U.S.-Mexico Border

The Migration Policy Institute's most recent profile of Central American immigrants estimates there are a total of 3.5 million living in the U.S., most from the Northern Triangle region.⁵⁶ This is not a large share of the U.S. immigration population, comprising only around 8% of the 44.5 million immigrants in 2017.⁵⁷ However, for these Northern Triangle nations, the number of its nationals living abroad, nearly 90% in the U.S., as an overall share of their respective populations, the numbers are comparatively high. This is especially true for El Salvador which in 2019 had nearly a quarter of its nationals living abroad, followed by Honduras at over 8% and Guatemala at nearly 7%.⁵⁸

One notable characteristic of this population is that, comparatively speaking, many still remain in the U.S. in uncertain immigration status despite their length of stay and their deep ties to this country. 44% of Salvadorans,⁵⁹ 33% of Guatemalans,⁶⁰ and 29% of Hondurans,⁶¹ for example, have been in the U.S. for over twenty years. Overall, U.S. immigrants are in the country legally (77%) with nearly half (45%) being naturalized citizens.⁶² In contrast, only 33% of Salvadorans, 28% of Guatemalans and 24% of Hondurans in the U.S. are naturalized citizens⁶³ while they represent a growing share of U.S. unauthorized immigrants

⁵⁶ Allison O'Connor et al., *Central American Immigrants in the United States*, MIGRATION POL'Y INST. (Aug. 15, 2019), <https://www.migrationpolicy.org/article/central-american-immigrants-united-states-2017>.

⁵⁷ *Id.*

⁵⁸ See *Emigrantes Totales* [Immigrant Totals], EXPANSIÓN, <https://datosmacro.expansion.com/demografia/migracion/emigracion> (last visited Mar. 11, 2021). To bring some perspective, Mexico, which is still the largest sender of immigration to the United States (24%), has a share of 9.25% of its nationals living abroad. See *id.* See also Emma Israel & Jeanne Batalova, *Mexican Immigrants in the United States*, MIGRATION POL'Y INST. (Nov. 5, 2020), <https://www.migrationpolicy.org/article/mexican-immigrants-united-states-2019>.

⁵⁹ Luis Noe-Bustamante et al., *Facts on Hispanics of Salvadoran Origin in the United States, 2017*, PEW RSCH. CTR. (Sept. 16, 2019), <https://www.pewresearch.org/hispanic/fact-sheet/u-s-hispanics-facts-on-salvadoran-origin-latinos/>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Abby Budiman, *Key Findings about U.S. Immigrants*, PEW RSCH. CTR. (Aug. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/>.

⁶³ O'Connor et al., *supra* note 56.

(around 1.9 million in 2017), most of them from the Northern Triangle region.⁶⁴ They also remain top beneficiaries of programs like Temporary Protected Status (TPS) and Deferred Action for Early Childhood Arrivals (DACA).⁶⁵

Another notable characteristic is that Central Americans participate at higher rates in the labor force than both the overall foreign and U.S. born populations.⁶⁶ About 72% of Central American immigrants participate in the civilian labor force, compared to 66% of the total immigrant population and 62% of native-born individuals. Salvadorans and Guatemalans in particular had the highest labor force participation rates at 74% each.⁶⁷ Moreover, more than a third of all Salvadorans, Guatemalans and Hondurans work in service occupations⁶⁸ and comprise a growing proportion of U.S. farmworkers.⁶⁹ Many, alongside other immigrants, became essential workers during the pandemic. A recent study on the role of immigrants as essential workers during the COVID-19 pandemic found that generally immigrants are over-represented in “essential industries” (defined as including agriculture, food, distribution and health) while Mexican and Central Americans in particular are disproportionately so.⁷⁰ The largest over-representation is in agriculture: unauthorized immigrants comprise 22% of agriculture workers in the U.S. and 43% in California. Most of the manually intensive, risky jobs in agriculture are performed by Mexican and Central American immigrants, who are often undocumented and who have continued to keep the U.S. agriculture industry operating even in these months of the COVID-19 pandemic.⁷¹ Finally, Central Americans tend to have lower incomes than overall foreign (\$46,000) and

⁶⁴ Jens Manuel Krogstad et al., *5 Facts about Illegal Immigration in the U.S.*, PEW RSCH. CTR. (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/>.

⁶⁵ O’Connor et al., *supra* note 56.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Farm Labor*, USDA ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/farm-economy/farm-labor> (last updated Apr. 22, 2020).

⁷⁰ Giovanni Peri & Justin C. Wiltshire, *The Role of Immigrants as Essential Workers During the Covid-19 Pandemic*, UC DAVIS GLOB. MIGRATION CTR., <https://globalmigration.ucdavis.edu/role-immigrants-essential-workers-during-covid-19-pandemic> (last visited Mar. 12, 2020). *See also, e.g.*, Jose A. Del Real, *In an Immigrant Community Battling Coronavirus, ‘Essential, Means ‘Vulnerable,’* WASH. POST (May 9, 2020), https://www.washingtonpost.com/national/in-an-immigrant-community-battling-coronavirus-essential-means-vulnerable/2020/05/08/c25cdb4e-8e1e-11ea-a9c0-73b93422d691_story.html; Donald Kerwin & Robert Warren, *US Foreign-Born Workers in the Global Pandemic: Essential and Marginalized*, 8 J. ON MIGRATION AND HUM. SEC. 1, 1 (2020).

⁷¹ Peri & Wiltshire, *supra* note 70.

U.S. born individuals (\$60,800), with Guatemalans and Hondurans earning the lowest incomes at only \$43,000 and \$40,000 respectively according to 2017 data.⁷²

A third notable characteristic is the recent increase in the number of Central Americans, especially from the Northern Triangle region, who are seeking asylum in the U.S. or other types of humanitarian relief, such as those available to unaccompanied minors. For example, from the Northern Triangle region, more individuals affirmatively sought asylum in 2014-2016 than in the preceding seventeen years combined.⁷³ The number of affirmative asylum applications by migrants from Central America's Northern Triangle countries rose from 3,523 in 2012 to 31,066 in 2017, an almost 800% increase.⁷⁴ Unaccompanied children filed the majority of the affirmative asylum applications from the Northern Triangle countries, making up 66% of the applications in 2015 and 56% in both 2016 and 2017.⁷⁵ By 2018, the number of affirmative asylum applications from the Northern Triangle saw a sharp decrease of 19%, although unaccompanied minors still made up 60% of these applications.⁷⁶ By 2019, the last year for which published data is available, Salvadoran affirmative applications showed the greatest decrease by 35% from the previous year, while Guatemala and Honduras showed drops of 9% and 8.7% respectively.⁷⁷ Again, from these nations, the majority (52%) of filings for asylum came from unaccompanied minors.⁷⁸

The decrease in affirmative asylum applications in recent years does not necessarily mean that fewer Central Americans have been making the trek northward hoping to seek asylum or other protections in the U.S. In fact, U.S. CBP data shows that Southwest border apprehensions increased, substantially so, during the same period that affirmative asylum

⁷² O'Connor et al., *supra* note 56.

⁷³ Nadwa Mossaad & Ryan Baugh, *Annual Flow Report, Refugees and Asylees: 2016*, U.S. DEP'T OF HOMELAND SEC. at 7 (Jan. 2018), https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2016_0.pdf.

⁷⁴ Nadwa Mossaad, *Annual Flow Report, Refugees and Asylees: 2017*, U.S. DEP'T OF HOMELAND SEC. at 7 (Mar. 2019), https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2017.pdf.

⁷⁵ *Id.*

⁷⁶ Nadwa Mossaad, *Annual Flow Report, Refugees and Asylees: 2018*, U.S. DEP'T OF HOMELAND SEC. at 6 (Oct. 2019), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf.

⁷⁷ Ryan Baugh, *Annual Flow Report, Refugees and Asylees: 2019*, U.S. DEP'T OF HOMELAND SEC. at 7 (Sept. 2020), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/refugee_and_asylees_2019.pdf.

⁷⁸ *Id.*

applications decreased.⁷⁹ Instead, a more likely explanation for the drop in asylum applications from Northern Triangle nationals has to do with the significant changes in asylum policies and practices adopted during the Trump administration that barred many from applying.⁸⁰ Moreover, since President Trump enacted the Migrant Protection Protocols (also known as “Remain in Mexico”) Program, which forces asylum seekers to wait out their time to apply for asylum in Mexico, more than 66,000 applicants, many of whom remain in makeshift encampments in various parts of Mexico, were already part of the program by September 2020.⁸¹

2. The Important of Remittances to the Northern Triangle and Its Implications on U.S. Immigration Policy

Remittances or money that immigrants send back home have played a very important role in alleviating poverty, improving nutritional outcomes, reducing child labor, and increasing investments in education in middle to lower income countries across the globe.⁸² This is especially true in Northern Triangle nations where remittances represent a substantial share of these nations’ GDP. In 2019, remittances constituted greater than 20% of the GDP in El Salvador and Honduras, and greater than 10% of its GDP in Guatemala.⁸³ This represents billions of dollars, most of which flow

⁷⁹ In fiscal year (FY) 2017, for example, Southwest border apprehensions were 415,517. The first year that asylum applications went down, 2018, border apprehensions climbed to 521,090 and then substantially to 977,090 in 2019. It was only in 2020 that this number began to drop but was still higher than in 2017 at 458,088. *Southwest Land Border Encounters*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last updated Mar. 10, 2021).

⁸⁰ See Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 Fed. Reg. 55,934 (Nov. 9, 2018); Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019); Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36,264 (June 15, 2020); Security Bars and Processing, 85 Fed. Reg. 41,201 (July 9, 2020); Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 59,692 (Sept. 23, 2020); Procedures for Asylum and Bars to Asylum Eligibility, 85 Fed. Reg. 67,202 (Oct. 21, 2020); Asylum Eligibility and Procedural Modifications, 85 Fed. Reg. 82,260 (Dec. 17, 2020).

⁸¹ Jasmine Aguilera, *Migrants Stranded in Mexico Have 1 Year to File for Asylum. COVID-19 Is Making That Deadline Nearly Impossible*, TIME (Sept. 25, 2020), <https://time.com/5888791/covid-19-asylum-seekers-mexico/>.

⁸² *World Bank Predicts Sharpest Decline of Remittances in Recent History*, THE WORLD BANK (Apr. 22, 2020), <https://www.worldbank.org/en/news/press-release/2020/04/22/world-bank-predicts-sharpest-decline-of-remittances-in-recent-history>.

⁸³ Massimo Meccheri, *Migración y empleo frente al covid-19: insumos y propuestas para un plan de recuperación, reconstrucción social y resiliencia de la región centroamericana*, EUROSOCIAL [Migration and employment in the face of covid-19: inputs and proposals for recovery, social reconstruction and resilience plan for the Central

directly into the hands of family members. In 2016, for example, between 80–85% of the 1.2 million Salvadorans living in the U.S. sent money home to the tune of \$4.6 billion.⁸⁴ Between 80–90% of these monies are used to pay for basic necessities, such as housing, food, and health care.⁸⁵ Sadly, this means that a reduction in remittances will impact directly the livelihoods of families who stop receiving them. At a time of profound crisis in the region, the consequences of this will be dire.

For Latin American nations, 75% of all remittances originate from the U.S and around 3 million migrants are expected to lose their jobs as a result of the pandemic.⁸⁶ The World Bank had calculated that due to the effects of the pandemic to receiving nations of migration, remittances to the Latin American region as a whole will decrease by 19.3% in 2020, the largest decline in recent history.⁸⁷ Especially, in the first sixth months of the pandemic, drops in remittances were quite sharp, and especially so for El Salvador, which experienced an 8% change from the previous year.⁸⁸ The good news is that these numbers rebounded and did not yield the predicted losses by the end of 2020. Latin America overall had a 1% increase in remittances in 2020, while the amount sent to Africa and Asia dropped by 9% and 8% respectively.⁸⁹ For each of the Northern Triangle nations, surprisingly, remittances in 2020 even outperformed those sent in 2019 by even higher percentages. Guatemala received remittances of \$11.34 billion, an amount that is 8% higher than the \$10.58 billion recorded in 2019.⁹⁰ For El Salvador, remittances grew from 2019 by 0.08% to 5.27 for

American region] (Aug. 6, 2020), <https://eurosocial.eu/bitacora/migracion-y-empleo-frente-al-covid-19-insumos-y-propuestas-para-un-plan-de-recuperacion-reconstruccion-social-y-resiliencia-de-la-region-centroamericana>.

⁸⁴ Katherine Parks, *Remittances to El Salvador Keep Families Out of Poverty*, THE BORGAN PROJECT (Feb. 12, 2018), <https://borgenproject.org/remittances-to-el-salvador/>.

⁸⁵ See Meccheri, *supra* note 83.

⁸⁶ Mariellen Malloy Jewers & Manuel Orozco, *Migrants, Remittances, and COVID-19: Remittance Behavior and Economic and Health Vulnerabilities*, THE DIALOGUE 4 (Aug. 2020), https://www.thedialogue.org/wp-content/uploads/2020/08/FINAL-Migrants-Remittances-and-Covid-19_08.05.20.pdf.

⁸⁷ THE WORLD BANK, *supra* note 82.

⁸⁸ For Honduras, the drop was 4.2 percent, for Guatemala, 0.9 percent. Luis Noe-Bustamante, *Amid COVID-19, remittances to some Latin American nations fell sharply in April, then rebounded*, PEW RSCH. CTR. (Aug. 31, 2020), <https://www.pewresearch.org/fact-tank/2020/08/31/amid-covid-19-remittances-to-some-latin-american-nations-fell-sharply-in-april-then-rebounded/>.

⁸⁹ Teresa Welsh, *Anticipated remittance dive bucked by Latin America and the Caribbean*, DEVEX (Jan. 11, 2021), <https://www.devex.com/news/anticipated-remittance-dive-bucked-by-latin-america-and-the-caribbean-98880>.

⁹⁰ *Guatemala: Remittances Exceed \$11 Billion*, CENTRALAMERICADATA.COM (Jan. 7, 2021), https://www.centralamericadata.com/en/article/home/Guatemala_Remittances_Exceed_11_Billion.

a total of 5.27 million dollars.⁹¹ For Honduras, the growth from 2019 was 2.8% for a total of \$5.65 billion dollars.⁹²

According to experts, the resilience of U.S. migrants, their devotion to families left behind, and their continued employment during the pandemic in the front lines in jobs that are considered essential (at grave risks to themselves and their families) has meant that remittances have been ongoing, including to the Central American region.⁹³ However, the Trump administration's U.S. immigration policies and its terrible response to the pandemic, which has left the entire U.S. population vulnerable, threatens the ability of Northern Triangle migrants to sustain the enormous contributions they make through their monthly sacrifices of sending part of what they earn to family who remain. For this reason, the sustainability and growth of remittances to the Northern Triangle will both depend on the U.S.'s overall economic recovery from COVID-19—which will in turn depend on our ability to contain the virus' spread through mass immunization and other measures—and on reversing several immigration policies and practices that have affected migrants from the region especially during but also prior to the Trump administration.

The rest of this essay provides recommendations specifically oriented to safeguarding and protecting the well-being and security of migrants from the Northern Triangle region—not only those who are already here but also those who have a right to immigrate based on existing immigration laws, including those that recognize family unification and our obligations to protect asylum-seekers.

3. The Immigration Laws, Policies and Practices Affecting Northern Triangle Nations that Must Change Immediately

a. Immigration Detention and Deportation Practices that Are Spreading COVID-19 in the Region Must Stop Immediately Until the Virus is Controlled

President Biden has pledged to take up two important changes to interior immigration enforcement that, if implemented right, could stop the spread of COVID-19 infections to the region based on ongoing detention

⁹¹ Tomás Guevara, *Aumento de remesas dependerá de situación de empleo en los EE.UU.*, ELSALVADOR.COM [Increase in remittances will depend on employment situation in the U.S.] (Jan. 10, 2021), <https://www.elsalvador.com/eldiariodehoy/aumento-remesas-dependera-situacion-empleo-estados-unidos/794559/2021>.

⁹² Victor Estrada, *A Pesar de la Crisis for COVID-19, Remesas Incrementaron en Honduras*, TIEMPO DIGITAL [Despite the COVID-19 Crisis, Remittances Increased in Honduras] (Dec. 29, 2020), <https://tiempo.hn/remesas-2020-honduras-incrementaron>.

⁹³ Welsh, *supra* note 89. See also Guevara, *supra* note 91; Estrada, *supra* note 92.

and deportations of nationals to those countries: (1) end prolonged detention and reinvest in a case management program; and (2) restore sensible immigration priorities.⁹⁴

In July 2020, the New York Times, in collaboration with the Marshall Project, released an investigative report documenting how immigration detention and deportation practices were becoming spreaders of the coronavirus.⁹⁵ Then, the report highlighted how thousands of immigration detainees, many of whom were being transferred from one detention center to another, were sick with the virus.⁹⁶ The report also documented deportations, often in secret night flights, of sick detainees back to their countries, including nationals from the Northern Triangle.⁹⁷

Northern Triangle nations have tried to institute strict quarantine measures for those returned; however, those deported are being kept in detention centers that are not following health containment guidelines and are contributing to the virus's spread.⁹⁸ Upon release, deportees are significantly stigmatized as carriers of the virus and are generally excluded from the already taxed health services available.⁹⁹

The pandemic did substantially slow down the number of deportations generally and thus also deportations of Northern Triangle nationals. According to data from the International Organization on Migration, in 2019, the U.S. and Mexico together deported 251,778 Central American nationals but fewer than 50,000 during the first quarter in 2020.¹⁰⁰ But this is still insufficient. Especially until COVID-19 is contained, all immigration detention practices in the U.S. that are unsafe and unnecessary must end and be replaced with cheaper, safer and effective monitoring alternatives.¹⁰¹ The American Immigration Council recently made the case for ending all immigration detentions noting that during the pandemic, the death toll in ICE facilities has been higher than during the last fifteen years and also documenting the availability and effectiveness

⁹⁴ See *The Biden Plan for Securing Our Values as a Nation of Immigrants*, JOEBIDEN.COM, <https://joebiden.com/immigration> (last visited Mar. 12, 2021) (hereinafter *Biden Immigration Plan*).

⁹⁵ Emily Kassie & Barbara Marcolini, 'It Was Like a Time Bomb': How ICE Helped Spread the Coronavirus, N.Y. TIMES (July 10, 2020), <https://www.nytimes.com/2020/07/10/us/ice-coronavirus-deportation.html>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Int'l Det. Coal., *Room for Hope*, <https://idcoalition.org/covid-19/>

⁹⁹ *Id.*

¹⁰⁰ Meccheri, *supra* note 83.

¹⁰¹ See Am. Immigration Lawyers Ass'n et al., *The Real Alternatives to Detention* (June 2019), <https://justiceforimmigrants.org/wp-content/uploads/2019/06/The-Real-Alternatives-to-Detention-June-2019-FINAL-v.2.pdf>.

of alternatives to detention.¹⁰² The U.S. would not be alone in taking such measures. In response to COVID-19, at least ten nations across the world instituted alternatives to immigration detention.¹⁰³

Similarly, Biden should end all deportations to nations that are not equipped to contain the virus (and this includes the Northern Triangle) until those safeguards are in place. Beyond COVID-19, the Biden administration will need to reckon with whether deportation policies in place during the Obama administration, which included hundreds of thousands of Central Americans,¹⁰⁴ resulted in greater harm than good to U.S. interests. Significant research has documented the ways in which these practices only aggravated insecurity in the region and provoked further forced migration north.¹⁰⁵

b. COVID Relief Laws, Policies and Practices Must Protect All U.S. Residents Irrespective of Immigration Status

President Biden ran on a platform distinguishing himself on how his administration would prioritize a concerted response to the pandemic. It is no surprise that his plan to combat coronavirus is extensive and includes a number of important measures, some of which can be implemented immediately and some of which will require legislation.¹⁰⁶ The plan is largely silent on immigration status. The only explicit mention of immigration in his plan is when it mentions reversing the public charge rule.¹⁰⁷ Similarly, while President Biden's immigration plan explicitly mentions increasing labor protections for agricultural workers, it is silent on issues of health.¹⁰⁸

¹⁰² Katie Shepherd, *Making the Case for Ending Immigration Detention*, IMMIGR. IMPACT (Nov. 11, 2020), https://immigrationimpact.com/2020/11/11/end-immigration-detention/#.X_i7VDSSmUk.

¹⁰³ Int'l Det. Coal., *Room for Hope* 4-6 (Oct. 2020), <https://idcoalition.org/wp-content/uploads/2020/11/Covid-19-Briefing-Paper-2020-ENGLISH.pdf>.

¹⁰⁴ Rodrigo Dominguez-Villegas & Victoria Rietig, *Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile*, MIGRATION POL'Y INST. (Sept. 2015), <https://www.migrationpolicy.org/research/migrants-deported-united-states-and-mexico-northern-triangle-statistical-and-socioeconomic> (documenting that between 2010 and 2015, Mexico and the U.S. together deported more than one million persons to the Northern Triangle, including 40,000 children).

¹⁰⁵ See, e.g., David Leblang, *U.S. Immigration Policy, Deportations, and the Migration Boomerang*, DUKE CTR. FOR INT'L DEV. (May 10, 2019), <https://sites.duke.edu/northerntrianglepolicy/2019/05/10/us-immigration-policy-deportations-and-the-migration-boomerang/>.

¹⁰⁶ See *The Biden Plan to Combat Coronavirus (COVID-19) and Prepare for Future Global Health Threats*, JOEBIDEN.COM, <https://joebiden.com/covid-plan> (last visited Mar. 12, 2021) (hereinafter *The Biden COVID Plan*).

¹⁰⁷ *Id.*

¹⁰⁸ *Biden Immigration Plan*, *supra* note 94.

On January 14, 2021, President Biden also released the text of his \$1.9 trillion COVID-19 relief bill at the same time that it announced pursuing CIR legislation. The COVID-19 bill is extensive and contains three major targets: \$400 billion for containing spread of COVID-19 and increasing vaccine capabilities; over \$1 trillion to assist families needing direct financial support; and \$440 billion in emergency funds for cash-poor small businesses and communities.¹⁰⁹ Even if adopted, direct assistance to families¹¹⁰ is unlikely to be available to immigrants, except those who are lawful permanent residents under federal law's treatment of public benefits for immigrants.¹¹¹ As a result, unless both CIR are adopted, most provisions of the COVID-19 legislation will not directly benefit immigrants who lack lawful permanent status. Nevertheless, it is quite possible that the public health measures to address COVID-19 will (or should) have more universal application. As well, emergency funds to businesses and communities can free up states to redirect some of their own resources to immigrant families left out of federal financial assistance.

A guiding principle of the Biden COVID-19 Plan is to ensure that health professionals, and not politicians, make decisions that ensure the public health.¹¹² It is imperative that in making these choices, health officials are heard in terms of ensuring access to COVID-19 testing, vaccinations, and treatment, at a minimum, which the plan guarantees should be free and widely available to everyone,¹¹³ should also be available to migrants, irrespective of immigration status. Immigrants, particularly those from Mexico and Central America who lack permanent legal status, are uniquely vulnerable to the health impacts of the pandemic.¹¹⁴ Immigrants are also concentrated in occupations that are

¹⁰⁹ Bo Erickson et al., *Biden Unveils \$1.9 Trillion Covid Relief Bill*, CBS NEWS (Jan. 15, 2021), <https://www.cbsnews.com/news/biden-covid-relief-bill-stimulus-check/>.

¹¹⁰ Examples of direct financial support to families include a \$1400 stimulus check, increasing unemployment insurance from \$300 to \$400 a week and extending coverage to September, extending the federal moratorium on evictions until September, and other types of relief such as emergency paid leave and utility bill relief. See Jordan Weissmann, *Joe Biden's First COVID-Relief Bill Isn't Screwing Around*, SLATE (Jan. 14, 2021), <https://slate.com/business/2021/01/biden-covid-relief-bill.html>.

¹¹¹ See *Immigrants and the Affordable Care Act (ACA)*, NAT'L IMMIGRATION LAW CTR., <https://www.nilc.org/issues/health-care/immigrants/aca/> (last updated Jan. 2014); *Update on Access to Health Care for Immigrants and Their Families*, NAT'L IMMIGRATION LAW CTR., <https://www.nilc.org/issues/health-care/update-on-access-to-health-care-for-immigrants-and-their-families/> (last updated May 27, 2020); see generally Cori Alonso-Yoder, *Publicly Charged: A Critical Examination of Immigrant Public Benefit Restrictions*, 97 DENV. L. REV. 1 (2019).

¹¹² *The Biden COVID Plan*, supra note 106.

¹¹³ *Id.*

¹¹⁴ Meccheri, supra note 83.

suffering massive job losses due to shelter in place mandates or, if employed, are experiencing high exposure to COVID-19 when most lack the health coverage they need if infected with COVID-19.¹¹⁵ One estimate calculates that there are at least 6 million undocumented workers who are in frontlines as essential workers.¹¹⁶ Yet, reports on the ground from health experts suggest that they are being dangerously left out from basic access to COVID-19 testing, vaccination, and health care in ways that threaten not only migrants themselves but all U.S. residents.¹¹⁷

Federal COVID-19 economic relief, which is also urgent, so far has left out all migrants who are not lawful permanent residents, with dire consequences to themselves but also to the U.S. economy overall.¹¹⁸ In fact, the first relief, known as the CARES Act,¹¹⁹ even precluded citizens lawfully married to undocumented immigrants from collecting aid.¹²⁰ In response, a handful of states provided their own but limited sources of economic relief to migrants, while food pantries and other groups have supplied basic necessities.¹²¹ Most of the types of federal economic relief President Biden identifies in his plan are likely to require legislative action but not all (e.g., food relief). At a minimum, President Biden should ensure right away that distribution of basic emergency staples, COVID-19 staples, and vaccinations should be made available to all who need it irrespective of immigration status. Beyond this, future pandemic relief

¹¹⁵ *Id.* See also O'Connor et al., *supra* note 56.

¹¹⁶ Lissandra Villa, 'We're Ignored Completely.' *Amid the Pandemic, Undocumented Immigrants Are Essential But Exposed*, TIME (Apr. 17, 2020), <https://time.com/5823491/undocumented-immigrants-essential-coronavirus/>.

¹¹⁷ See *id.* See also Will Humble, *Undocumented immigrants' lack of access to COVID-19 testing threatens all of us*, AZCENTRAL (July 8, 2020), <https://www.azcentral.com/story/opinion/op-ed/2020/07/08/undocumented-immigrants-lack-access-coronavirus-testing-threatens-arizona/5392271002/>.

¹¹⁸ Villa, *supra* note 116. See also Raúl Hinojosa-Ojeda et al., *Undocumented During COVID-19: Essential for the Economy but Excluded from Relief*, UCLA LATINO POL'Y & POLS. INITIATIVES (Aug. 10, 2020), <https://latino.ucla.edu/research/undocumented-during-covid-19-essential-for-the-economy-but-excluded-from-relief/>.

¹¹⁹ Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136 (2020).

¹²⁰ *Rights Groups Urge Inclusion of Immigrant Families in Coronavirus Relief Bill*, HUM. RTS. WATCH (Mar. 20, 2020), <https://www.hrw.org/news/2020/03/20/rights-groups-urge-inclusion-immigrant-families-coronavirus-relief-bill>.

¹²¹ Roberto Suro & Hannah Findling, *State and Local Aid for Immigrants during the COVID-19 Pandemic: Innovating Inclusion*, CTR. FOR MIGRATION STUD. (July 8, 2020), <https://cmsny.org/publications/state-local-aid-immigrants-covid-19-pandemic-innovating-inclusion>; Brenda León, *Immigrant Woman Starts Food Pantry In Her Home To Help Undocumented Families*, NPR (Dec. 2, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/12/02/940555647/immigrant-woman-starts-food-pantry-in-her-home-to-help-undocumented-families>.

measures, which could be included as part of a CIR bill, should consider rectifying the exclusion of unauthorized immigrants from unemployment relief or access to health insurance.¹²² Such measures would help stabilize the U.S. economy faster and also help curb the spread of the virus.¹²³

c. DHS should Restore and Expand TPS for Salvadorans and Hondurans and Extend it to Guatemalans

President Biden's immigration plan calls for a review of TPS for vulnerable populations who cannot return safely to their countries based on violence or disaster.¹²⁴ There are compelling reasons why this review should lead the Department of Homeland Security (DHS) to immediately restore and expand TPS for Salvadorans and extend it to Guatemalans.

Qualifying nationals from El Salvador and Honduras have been the recipients of TPS since 2001 and 1999 respectively.¹²⁵ Since 1990, Congress authorized the immigration agencies, a power that today rests with the U.S. DHS, to offer temporary protection to nationals of a foreign country due to certain conditions which temporarily prevent the country's nationals from returning safely.¹²⁶ TPS designation lasts for an initial period of six to eighteen months, upon notice in the federal register.¹²⁷ Timely extensions are possible and require review and consultation with the appropriate agencies to ensure the conditions for such designation continue to be met.¹²⁸

Honduras, alongside Nicaragua, were originally granted TPS in 1999 based on Hurricane Mitch's devastation to the region in 1998, which also deeply damaged Guatemala.¹²⁹ El Salvador would receive TPS a few years

¹²² Muzaffar Chishti & Jessica Bolter, *Vulnerable to COVID-19 and in Frontline Jobs, Immigrants Are Mostly Shut Out of U.S. Relief*, MIGRATION POL'Y INST. (Apr. 4, 2020), <https://www.migrationpolicy.org/article/covid19-immigrants-shut-out-federal-relief>.

¹²³ See, e.g., Hinojosa-Ojeda, et al., *supra* note 118, at 14-16 (documenting the economic benefits of including undocumented workers in pandemic economic relief measures).

¹²⁴ *Biden Immigration Plan*, *supra* note 94.

¹²⁵ See *Temporary Protected Status Designated Country: El Salvador*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras> (last updated Dec. 7, 2020); *Temporary Protected Status Designated Country: Honduras*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador> (last updated Dec. 7, 2020).

¹²⁶ 8 U.S.C. § 1254a(b).

¹²⁷ *Id.* at § 1254a(b)(2).

¹²⁸ *Id.* at § 1254a(b)(3)(A).

¹²⁹ Sergio Morales Roda, *TPS: la larga historia de solicitudes fallidas que Guatemala ha hecho a EE. UU.*, PRENSA LIBRE [TPS: Guatemala's Long History of Failed Applications to the U.S.] (Nov. 11, 2020), <https://www.prensalibre.com/guatemala/migrantes/tps-la-larga-historia-de-solicitudes-fallidas-que-guatemala-ha-hecho-a-ee-uu>.

later in 2001 based on an earthquake that devastated the nation.¹³⁰ The designations offered protection only to certain eligible nationals from these countries¹³¹ who apply every time the benefit is offered and who are not disqualified based on inadmissibility grounds¹³² such as certain criminal convictions.¹³³ The largest group has been Salvadorans at nearly 250,000 recipients, followed by Honduras at 67,000 recipients.

Regrettably to many, especially Guatemalans, Guatemala's then President Álvaro Arzú refused to seek the benefit for its nationals when it was available.¹³⁴ Indeed, Guatemalan Presidents have attempted no fewer than five times, as have even members of the U.S. Congress, to seek TPS protections for Guatemalans, based on natural disasters that have justified the extension of the benefit to the other three Central American nations.¹³⁵ In contrast, until President Trump took office, Honduras, Nicaragua, and El Salvador had been successfully maintaining uninterrupted TPS status justified largely by the recognition of ongoing instability in the region based on new crises but also on how much TPS holders were contributing to stability in the region through remittances.¹³⁶ Then, in 2017, DHS

¹³⁰ Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14214,14215 (Mar. 9, 2001).

¹³¹ Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, 5 J. ON MIGRATION AND HUM. SEC. 577, 578–79 (2017) (explaining that to apply for TPS, Salvadorans must have arrived and been living continuously in the US prior to February 13, 2001 and Hondurans prior to December 30, 1998).

¹³² Section 212 of the INA specifies broad grounds on which foreign nationals are considered ineligible to receive visas and ineligible to be admitted to the United States. Immigration and Nationality Act (INA), 8 U.S.C. § 1182. Section 244(c)(2) in the TPS statute lists which of these grounds of inadmissibility may be waived and which may not be waived.

¹³³ According to the regulations, conviction of a felony or two or more misdemeanors committed in the United States will disqualify one from TPS. Jose Magaña-Salgado et al., *Comparison of Criminal and Inadmissibility Grounds for American Dream and Promise Act of 2019, DACA, and TPS*, IMMIGRANT LEGAL RES. CTR. 2, 4 (Sept. 2019), https://www.ilrc.org/sites/default/files/resources/2019-09_comparison_of_criminal_and_inadmissibility_grounds_for_american_dream_and_promise_act_of_2019_daca_and_tps_final.pdf.

¹³⁴ See Morales Roda *supra* note 129.

¹³⁵ See *id.*

¹³⁶ See *id.* Nicaragua's TPS status was renewed 13 times, mostly based on subsequent droughts and other natural disasters. See Extension of Designation of Nicaragua Under Temporary Protected Status Program, 65 Fed. Reg. 30,440 (May 11, 2000); Extension of the Designation of Nicaragua Under the Temporary Protected Status Program, 66 Fed. Reg. 23,271 (May 8, 2001); Extension of the Designation of Nicaragua Under the Temporary Protected Status Program, 67 Fed. Reg. 22,454 (May 3, 2002); Extension of the Designation of Nicaragua Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Nicaraguans, 68 Fed. Reg. 23,748 (May 5, 2003); Extension of the Designation of Temporary Protected Status for

Nicaragua; Automatic Extension of Employment Authorization Documentation for Nicaragua TPS Beneficiaries, 69 Fed. Reg. 64,088 (Nov. 3, 2004); Extension of the Designation of Temporary Protected Status for Nicaragua; Automatic Extension of Employment Authorization Documentation for Nicaragua TPS Beneficiaries, 71 Fed. Reg. 16,333 (Mar. 31, 2006); Extension of the Designation of Nicaragua for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Nicaraguan TPS Beneficiaries, 72 Fed. Reg. 29,534 (May 29, 2007); Extension of the Designation of Nicaragua for Temporary Protected Status, 73 Fed. Reg. 57,138 (Oct. 1, 2008); Extension of the Designation of Nicaragua for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Nicaraguan TPS Beneficiaries, 75 Fed. Reg. 24,737 (May 5, 2010); Extension of the Designation of Nicaragua for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Nicaraguan TPS Beneficiaries, 76 Fed. Reg. 68,493 (Nov. 4, 2011); Extension of the Designation of Nicaragua for Temporary Protected Status, 78 Fed. Reg. 20,128 (Apr. 3, 2013); Extension of the Designation of Nicaragua for Temporary Protected Status, 79 Fed. Reg. 62,176 (Oct. 16, 2014); Extension of the Designation of Nicaragua for Temporary Protected Status, 81 Fed. Reg. 30,325 (May 16, 2016). El Salvador's TPS status was renewed 11 times also based on new natural disasters. *See* Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans, 67 Fed. Reg. 46,000 (July 11, 2002); Extension of the Designation of El Salvador Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for El Salvador, 68 Fed. Reg. 42,071 (July 16, 2003); Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvador TPS Beneficiaries, 70 Fed. Reg. 1450 (Jan. 7, 2005); Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvadorian TPS Beneficiaries, 71 Fed. Reg. 34,637 (June 15, 2006); Extension of the Designation of El Salvador for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 72 Fed. Reg. 46,649 (Aug. 21, 2007); Extension of the Designation of El Salvador for Temporary Protected Status, 73 Fed. Reg. 57,128 (Oct. 1, 2008); Extension of the Designation of El Salvador for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 75 Fed. Reg. 39,556 (July 9, 2010); Extension of the Designation of El Salvador for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 77 Fed. Reg. 1710 (Jan. 11, 2012); Extension of the Designation of El Salvador for Temporary Protected Status, 78 Fed. Reg. 32,418 (May 30, 2013); Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893 (Jan. 7, 2015); Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg. 44,645 (July 8, 2016). Honduras's TPS status was renewed 14 times also based on new natural disasters. *See* Extension of Designation of Honduras Under Temporary Protected Status Program, 65 Fed. Reg. 30,438 (May 11, 2000); Extension of the Designation of Honduras Under the Temporary Protected Status Program, 66 Fed. Reg. 23,269 (May 8, 2001); Extension of the Designation of Honduras Under the Temporary Protected Status Program, 67 Fed. Reg. 22,451 (May 3, 2002); Extension of the Designation of Honduras Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Hondurans, 68 Fed. Reg. 23,744 (May 5, 2003); Extension of the Designation of Temporary Protected Status for Honduras; Automatic Extension of Employment Authorization Documentation for Honduras TPS Beneficiaries, 69 Fed. Reg. 64,084 (Nov. 3, 2004); Extension of the

sought to end TPS protections for Nicaraguans¹³⁷ and similarly for Hondurans¹³⁸ and Salvadorans in 2018.¹³⁹ In each instance, DHS focused solely on whether or not the circumstances that warranted the original designation were ongoing and not on the cumulative factors that led prior administrations to renew TPS for each of these nations over several years.¹⁴⁰ DHS also highlighted significant improvement in the overall economic and social and security conditions in these countries, even as it also acknowledged the few opportunities that TPS recipients would have if returned.¹⁴¹

Litigation ensued to prohibit DHS from terminating TPS for El Salvador, Haiti, Nicaragua, and Sudan, which is still pending but likely not for long in ways that favor the government. On September 14, 2020, a panel of the U.S. Court of Appeals for the Ninth Circuit vacated an injunction prohibiting DHS from terminating TPS for El Salvador, Haiti, Nicaragua, and Sudan.¹⁴² However, because the appellate court has not issued its directive to the district court to make that ruling effective, the injunction remains in place at this time.¹⁴³ For this reason, until the

Designation of Temporary Protected Status for Honduras; Automatic Extension of Employment Authorization Documentation for Honduras TPS Beneficiaries, 71 Fed. Reg. 16,328 (Mar. 31, 2006); Extension of the Designation of Honduras for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries, 72 Fed. Reg. 29,529 (May 29, 2007); Extension of the Designation of Honduras for Temporary Protected Status, 73 Fed. Reg. 57,133 (Oct. 1, 2008); Extension of the Designation of Honduras for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries, 75 Fed. Reg. 24,734 (May 5, 2010); Extension of the Designation of Honduras for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries, 76 Fed. Reg. 68,488 (Nov. 4, 2011); Extension of the Designation of Honduras for Temporary Protected Status, 78 Fed. Reg. 20,123 (Apr. 3, 2013); Extension of the Designation of Honduras for Temporary Protected Status, 79 Fed. Reg. 62,170 (Oct. 16, 2014); Extension of the Designation of Honduras for Temporary Protected Status, 81 Fed. Reg. 30,331 (May 16, 2016); Extension of the Designation of Honduras for Temporary Protected Status, 82 Fed. Reg. 59,630 (Dec. 15, 2017).

¹³⁷ Termination of the Designation of Nicaragua for Temporary Protected Status, 82 Fed. Reg. 59,636, 59,637 (Dec. 15, 2017).

¹³⁸ Termination of the Designation of Honduras for Temporary Protected Status, 83 Fed. Reg. 26,074 (June 5, 2018).

¹³⁹ Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 2654 (Jan. 18, 2018).

¹⁴⁰ See Termination of the Designation of Nicaragua for Temporary Protected Status, *supra* note 138; Termination of the Designation of Honduras for Temporary Protected Status, *supra* note 139; Termination of the Designation of El Salvador for Temporary Protected Status, *supra* note 140.

¹⁴¹ *Id.*

¹⁴² Ramos v. Wolf, 975 F.3d 872 (9th Cir. 2020).

¹⁴³ *Id.*

injunction is lifted permanently, DHS has temporarily continued to extend TPS protections to all countries whose status it sought to end, including Honduras, even though it was not named in the original litigation.¹⁴⁴ A large reason for its decision is that the TPS statute also provides that “[t]here is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.”¹⁴⁵ Thus, DHS under a new President and a new Secretary can undo DHS’s decision to end TPS for these nations.

There are several reasons why Biden’s DHS Secretary, Alejandro Mayorkas,¹⁴⁶ can and should consider not simply reversing the prior administration’s decisions to end TPS for Salvadorans and Hondurans but issue expanded TPS protections to Salvadorans, Hondurans, and Guatemalans. Legally, DHS has broad discretion to grant TPS based on factors that are easily satisfied by these nations. The levels of generalized violence these nations have experienced and continue to experience surpass the violence experienced in many countries to which the label civil war has been more easily applied.¹⁴⁷ However, it is probably legally and politically more viable to continue to focus on environmental disasters in the region that are substantial but temporary in nature and that can include floods, drought, and epidemics¹⁴⁸ or based on extraordinary and temporary conditions that prevent the safe return of its nationals to their country.

¹⁴⁴ See *Temporary Protected States*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated Mar. 11, 2021).

¹⁴⁵ 8 U.S.C. § 1254a(b)(5)(A).

¹⁴⁶ *Alejandro Mayorkas*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/person/alejandro-mayorkas> (last updated Feb. 11, 2021).

¹⁴⁷ Amelia Cheatham, *Central America’s Turbulent Northern Triangle*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/background/central-americas-turbulent-northern-triangle> (last updated Oct. 1, 2019). Scholars have called for a rethinking of the application of the armed conflict or civil war label narrowly given the nature of violence that plague today’s nation states. See, e.g., Megan Meyer & Simon Stacey, *Civil Society, Violence and War*, INT’L ENCYC. OF CIV. SOC’Y (Helmut K. Anheier & Stefan Toepler eds., 2009).

¹⁴⁸ The TPS statute authorizes the Secretary of Homeland Security to designate foreign countries for TPS “after consultation with appropriate agencies of the Government” and “only if” the Secretary finds one or more of the following criteria met: “(A) . . . that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety; (B) . . . that— (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected, (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and (iii) the foreign state officially has requested designation under this subparagraph; or (C) . . . that there exist extraordinary and temporary conditions

Part I of this essay provides documentation that strongly supports the renewal and extension of TPS status to all Northern Triangle nationals in the U.S. today based on COVID-19's cumulative and substantial impact on the region. In addition to this, while the U.S. was mostly focused on our Presidential elections, Category 4 Hurricane storms ETA and IOTA devastated the region even more with the hardest hit areas including El Salvador, Guatemala, Honduras, and Nicaragua.¹⁴⁹ According to the U.N. International Children's Fund (UNICEF), nearly 9.3 million people, including 3.5 million children, were affected by the storms and thousands of people remain in shelters, facing heightened risks to their health and safety.¹⁵⁰ Oxfam reports are even worse, estimating that so far 11 million people have been affected throughout the region, with 800,000 evacuated from their communities.¹⁵¹ The scale of the damage is drawing comparisons, in fact, to Hurricane Mitch in 1998, which became the basis for granting TPS protections to Hondurans and Nicaraguans originally.¹⁵² UNICEF and other donors have been trying to provide as much humanitarian aid as quickly as possible but they admit that it is nowhere near enough given the scale of the damage and the fact that floodwaters are expected to last another six months.¹⁵³ Damaged water systems and other critical infrastructure will need to be rehabilitated while hundreds of schools will have to be rebuilt.¹⁵⁴ This, on top of the enormous pandemic-related challenges these nations were already facing, have completely overwhelmed the ability of these nations to recover.¹⁵⁵

Beyond the ample legal and humanitarian grounds for renewing and expanding TPS to the entire Northern Triangle, the new DHS Secretary must weigh the costs of stripping TPS from the estimated 325,000 Central American TPS holders (including Nicaraguans) who have had the status

in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety . . . " 8 U.S.C. § 1254a(b).

¹⁴⁹ Maryanne Murray Buechner, *Long Road Ahead for Hurricane Recovery in Central America*, FORBES (Jan. 7, 2021), <https://www.forbes.com/sites/unicefusa/2021/01/07/long-road-ahead-for-hurricane-recovery-in-central-america>. See also Sylva Mathema & Tom Jawetz, *TPS Can Promote Stability and Recovery for Central American Countries Hit by Recent Hurricanes*, CTR. FOR AM. PROGRESS (Dec. 21, 2020), <https://cdn.americanprogress.org/content/uploads/2020/12/18101139/CentralAmericaTPS-brief.pdf>.

¹⁵⁰ UNICEF, CENTRAL AMERICA: HURRICANES ETA AND IOTA, HUMANITARIAN SITUATION REPORT No.6 (Dec. 21, 2020), [https://www.unicef.org/media/89736/file/UNICEF-Central-America-Humanitarian-Situation-Report-No.-6-\(-Hurricanes-Eta-and-Iota-\)-10-21-December-2020.pdf](https://www.unicef.org/media/89736/file/UNICEF-Central-America-Humanitarian-Situation-Report-No.-6-(-Hurricanes-Eta-and-Iota-)-10-21-December-2020.pdf).

¹⁵¹ Mathema & Jawetz, *supra* note 149.

¹⁵² *Id.*

¹⁵³ Buechner, *supra* note 149.

¹⁵⁴ *Id.*

¹⁵⁵ Mathema & Jawetz, *supra* note 149, at 4-7.

for at least two decades.¹⁵⁶ This population is well-established in the U.S. and is making significant contributions to our nation. 22% of TPS holders from these three nations arrived in the U.S. under the age of sixteen while an estimated 273,000 of them have U.S. born citizen children.¹⁵⁷ Their labor force participation, ranging from 81–88%, is well above the overall U.S. population (63%) and the foreign born population as whole (66%).¹⁵⁸ They work in jobs that are essential to the economic recovery of our nation during and post-pandemic.¹⁵⁹ Several recent studies calculate the losses that could result from ending TPS and removing its beneficiaries to the US economy in the billions of dollars.¹⁶⁰

Finally, TPS holders also make significant remittances contributions to their family members back home and contribute enormously to the stability of the region. A study of Salvadoran TPS holders and remittances found that between 80–85% among them still send money home, which amounts to about \$600 million annually.¹⁶¹ Of course, this figure could be greater if the U.S. extends TPS to all Salvadorans, Guatemalans and Hondurans residing in the U.S. as of November 2020, the dates of the most recent hurricanes. These numbers could be as high as 1.8 million persons.¹⁶² This is a population that is already likely employed and already sending remittances home.¹⁶³ However, several economic studies show

¹⁵⁶ Warren & Kerwin, *supra* note 131, at 577.

¹⁵⁷ *Id.* at 577-78.

¹⁵⁸ *Id.* at 577.

¹⁵⁹ The five leading industries in which TPS beneficiaries from these countries work are: construction (51,700), restaurants and other food services (32,400), landscaping services (15,800), child day care services (10,000), and grocery stores (9,200). *Id.* See also *Workers with Temporary Protected Status in Key Industries and States*, AM. IMMIGR. COUNCIL (Jan. 2019), https://www.americanimmigrationcouncil.org/sites/default/files/research/workers_with_temporary_protected_status_in_key_industries_and_states.pdf.

¹⁶⁰ See *id.* at 6-7.

¹⁶¹ Nurith Aizenman, *What You May Not Realize About the End of TPS Status for Salvadorans*, NPR (Jan. 9, 2018), <https://www.npr.org/sections/goatsandsoda/2018/01/09/576583550/what-you-may-not-realize-about-the-end-of-tps-status-for-salvadorans>.

¹⁶² See *Profile of the Unauthorized Population: United States*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US> (last visited Mar. 12, 2021) (estimating that there are 750,000 unauthorized Salvadorans, 588,000 unauthorized Guatemalans, and 402,000 unauthorized Hondurans in the United States).

¹⁶³ See generally *id.* See also Erica Williams et al., *Inclusive Approach to Immigrants Who are Undocumented Can Help Families and States Prosper*, CTR. ON BUDGET & POL'Y PRIORITIES (Dec. 19, 2019), <https://www.cbpp.org/research/state-budget-and-tax/inclusive-approach-to-immigrants-who-are-undocumented-can-help>.

that legalization measures, even temporary ones, result in higher earnings for the beneficiaries and more taxes (and remittances) for communities.¹⁶⁴

d. DACA's Extension Will Also Help Many Young Dreamers from Northern Triangle Nations

President Biden's immigration plan includes a strongly worded promise to dreamers to seek protections for them and their families more permanently while supporting their access to higher education.¹⁶⁵ President Biden is already poised to fulfill this promise with this newly introduced CIR.¹⁶⁶ Until CIR is adopted, however, President Biden can do a lot to improve the plight of DACA recipients. President Biden's plan also included a promise to restore DACA protections to new applicants while facilitating renewals, which had been slowed down or halted when President Trump moved to end the program,¹⁶⁷ a move the US Supreme Court blocked in June 2020.¹⁶⁸ In response, DHS issued a memorandum explaining that new applications for DACA would not be accepted and that renewals would be limited to one year instead of two amid an ongoing review.¹⁶⁹ However, in response to a December 2020 federal district court

¹⁶⁴ See, e.g., *The Economic Effects of Administrative Action on Immigration*, EXEC. OFF. OF THE PRESIDENT OF THE U.S. 2 (Nov. 2014), https://obamawhitehouse.archives.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf; *FACT SHEET: The Economic Benefits of Fixing our Broken Immigration System*, WHITE HOUSE (Nov. 21, 2014), www.whitehouse.gov/the-press-office/2014/11/21/fact-sheet-economic-benefits-fixing-our-broken-immigration-system; Patrick Oakford & Philip E. Wolgin, *The Economic and Fiscal Benefits of Deferred Action*, CTR. FOR AM. PROGRESS (Nov. 21, 2014), <https://www.americanprogress.org/issues/immigration/news/2014/11/21/102041/the-economic-and-fiscal-benefits-of-deferred-action>; Jack Strauss, *Allies, Not Enemies: How Latino Immigration Boosts African American Employment and Wages*, IMMIGR. POL'Y CTR. (June 2013), https://www.americanimmigrationcouncil.org/sites/default/files/research/allies_not_enemies.pdf.

¹⁶⁵ *Biden Immigration Plan*, *supra* note 94.

¹⁶⁶ See BLOOMBERG, *supra* note 55 and accompanying text.

¹⁶⁷ For an explanation of the litigation that ensued challenging President Trump's rescission of DACA, see *DACA Litigation Timeline*, NAT'L IMMIGR. L. CTR. (May 8, 2020), <https://www.nilc.org/issues/daca/daca-litigation-timeline>.

¹⁶⁸ *Dep't of Homeland Sec. v. Regents of Univ. of California*, 591 U.S. ___, 140 S. Ct. 1891 (2020).

¹⁶⁹ Memorandum from Chad F. Wolf to Mark Morgan et al. (July 28, 2020), in *Reconsideration of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,"* https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf

order,¹⁷⁰ DHS is already mandatorily fulfilling Biden's promise of allowing new DACA applicants and restoring renewals to a two year benefit.¹⁷¹

Since 2012, more than 825,000 persons brought to the U.S. as children have benefited from DACA and thousands more will do so now that new applications are open.¹⁷² Mexico is by far the top country of origin for active DACA recipients (around 80%), and it is followed by the three Northern Triangle nations who combined account for more than 60,000 recipients.¹⁷³ DACA's effect as a powerful engine of social mobility is well documented,¹⁷⁴ as are the significant economic contributions that DACA recipients make,¹⁷⁵ including as frontline health workers during the pandemic.¹⁷⁶

e. President Biden Must End the Trump Administration's Illegal Treatment of Asylum Seekers at the U.S.-Mexico Border and Redress the Health and Humanitarian Chaos Created by these Policies and Practices

President Biden's Immigration Plan pledges to end in his first 100 days in office both President Trump's detrimental asylum policies and the mismanagement of the asylum system that has created violence and chaos at the border.¹⁷⁷ Much has been written about the ways in which the Trump administration transformed immigration law, including by substantially

¹⁷⁰ *Batalla Vidal v. Wolf*, No. 16CV4756NGGVMS, 2020 WL 7121849 (E.D.N.Y. Dec. 4, 2020)

¹⁷¹ *Update: Deferred Action for Childhood Arrivals*, DEP'T OF HOMELAND SEC. (Dec. 7, 2020) <https://www.dhs.gov/news/2020/12/07/update-deferred-action-childhood-arrivals>.

¹⁷² Nicole Prchal Svajlenka & Philip E. Wolgin, *What We Know About the Demographic and Economic Impacts of DACA Recipients: Spring 2020 Edition*, CTR. FOR AM. PROGRESS (Apr. 6, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482676/know-demographic-economic-impacts-daca-recipients-spring-2020-edition/>.

¹⁷³ Gustavo López & Jens Manuel Krogstad, *Key Facts about Unauthorized Immigrants Enrolled in DACA*, PEW RSCH. CTR. (Sept. 25, 2017), <https://www.pewresearch.org/fact-tank/2017/09/25/key-facts-about-unauthorized-immigrants-enrolled-in-daca/>.

¹⁷⁴ Liz Mineo, *Rise in Social Mobility of DACA Recipients*, HARVARD GAZETTE (Nov. 12, 2019), <https://news.harvard.edu/gazette/story/2019/11/study-tracks-dacas-benefits-limitations-for-undocumented/>.

¹⁷⁵ Svajlenka & Wolgin, *supra* note 172.

¹⁷⁶ Nicole Prchal Svajlenka, *A Demographic Profile of DACA Recipients in the Frontline of the Coronavirus Response*, CTR. FOR AM. PROGRESS (Apr. 6, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482708/demographic-profile-daca-recipients-frontlines-coronavirus-response/>.

¹⁷⁷ *Biden Immigration Plan*, *supra* note 94.

restricting asylum protections.¹⁷⁸ To do so, the Trump administration relied on executive orders, agency decisions, bilateral agreements with other nations, and even formal rulemaking.¹⁷⁹ Combined, the efforts revealed a sophisticated and targeted strategy to create insurmountable immediate barriers to deny those arriving at the U.S.–Mexico border, most from Northern Triangle nations, the ability to successfully file for asylum. These measures included, for example, the so-called “Remain in Mexico program”,¹⁸⁰ the “Safe Third Country Agreements” with Central American nations,¹⁸¹ and the “metering” of asylum applications at the border.¹⁸² It was also, however, a sophisticated longer-term strategy to end asylum protections to most persons escaping the types of violence they experienced in Northern Triangle nations, including domestic or gang-related violence. This became particularly evident in the proposed June 15, 2020 asylum regulations.¹⁸³

Dozens of lawsuits in federal court challenged these policies,¹⁸⁴ including ones targeting the June 15 regulation.¹⁸⁵ A California federal district court, in fact, blocked the June 15 regulation three days before it was due to come into effect.¹⁸⁶ Nonetheless, Trump’s efforts have been extremely effective. In addition to data that shows a drop in asylum

¹⁷⁸ See, e.g., Sarah Pierce & Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalogue of Changes During the Trump Presidency*, MIGRATION POL’Y INST. (July 2020), <https://www.migrationpolicy.org/research/us-immigration-system-changes-trump-presidency>.

¹⁷⁹ *Id.* at 1.

¹⁸⁰ U.S.: ‘Remain in Mexico’ Harms Children, Families, HUM. RTS. WATCH (Jan. 6, 2021), <https://www.hrw.org/news/2021/01/06/us-remain-mexico-harms-children-families>.

¹⁸¹ Peniel Ibe, *The dangers of Trump’s “safe third country” agreements in Central America*, AM. FRIENDS SERV. COMM. (July 28, 2020), <https://www.afsc.org/blogs/news-and-commentary/dangers-trumps-safe-third-country-agreements-central-america>.

¹⁸² Hillel R. Smith, *The Department of Homeland Security’s Reported “Metering” Policy: Legal Issues*, CONG. RSCH. SERV. 1–2 (Aug. 13, 2019), <https://fas.org/spp/crs/homsec/LSB10295.pdf>.

¹⁸³ See, e.g., Raquel Aldana, *Guest Post: Undoing Asylum*, IMMIGRATIONPROF BLOG (July 15, 2020), <https://lawprofessors.typepad.com/immigration/2020/07/guest-post-undoing-asylum-by-raquel-aldana.html>; Raquel Aldana et al., *Public Comments to the June 15, 2020 Proposed Asylum Regulations* (n.d.), <https://lawprofessors.typepad.com/files/public-comment-on-asylum-rule-aldana-et-al-1.pdf>.

¹⁸⁴ A search of lawsuits challenging President Trump’s asylum policies yielded a total of 27 different lawsuits. List of the lawsuits on file with the author.

¹⁸⁵ See Complaint, *Pangea Legal Servs. v. U.S. Dep’t of Homeland Sec.*, No. 3:20-cv-07721 (N.D. Cal. Nov. 2, 2020); Complaint, *Hum. Rts. First v. Wolf*, No. 1:20-cv-03764 (D.D.C. Dec. 21, 2020).

¹⁸⁶ Order, *Pangea Legal Servs. v. U.S. Dep’t of Homeland Sec.*, No. 3:20-cv-09253-JD (N.D. Cal. Jan. 8, 2021).

applications from Northern Triangle applicants,¹⁸⁷ more than 20,000 asylum applicants still await their turn to apply for asylum at various Mexican border towns, some for as long as two years, despite horrific conditions and perilous circumstances.¹⁸⁸ A December 2020 Human Rights First Report further documented that thousands of asylum seekers, including unaccompanied minors, are being illegally expelled without the opportunity to apply for asylum.¹⁸⁹ President Biden recognizes that while reversal of the Trump asylum policies must be immediate, resolving the humanitarian crisis at the border and the chaos created to the asylum system will take time and resources. President Biden's plan, for example, calls for working with a network of organizations, such as faith-based shelters, non-governmental aid organizations, legal non-profits, and refugee assistance agencies who will need federal resources to solve the humanitarian crisis at the border.¹⁹⁰ This approach makes a great deal of sense and should remain a top priority for the Biden administration.

A significant challenge President Biden faces is how quickly and where to relocate the thousands of asylum seekers subjected to the remain in Mexico policy. Ideally, given length and inhumane conditions endured by this population in Mexico, the Biden Administration will move swiftly to adjudicate their asylum petitions safely from within the U.S. Ideally, asylum seekers can be tested for COVID-19 and quarantined to follow public health guidelines. Many asylum seekers have family members in the U.S. ready and willing to host them.¹⁹¹ For those who do not have sponsors, shelters or hotels could be used as temporary housing for asylum seekers.¹⁹² These alternatives are much better than the current status quo—crowded and largely abandoned encampments—which are sites of COVID-19 community transmission not only in Mexico but across the border into the U.S.¹⁹³

¹⁸⁷ See *supra* notes 76-78 and accompanying text.

¹⁸⁸ *Humanitarian Disgrace: U.S. Continues to Illegally Block, Expel Refugees to Danger*, HUM. RTS. FIRST 3, 5-6 (Dec. 2020), <https://www.humanrightsfirst.org/sites/default/files/HumanitarianDisgrace12.16.2020.pdf>.

¹⁸⁹ *Id.* at 1.

¹⁹⁰ *Biden Immigration Plan*, *supra* note 94.

¹⁹¹ Joanna Naples-Mitchell, *There is No Public Health Rationale for a Categorical Ban on Asylum Seekers*, JUST SECURITY (Apr. 17, 2020), <https://www.justsecurity.org/69747/there-is-no-public-health-rationale-for-a-categorical-ban-on-asylum-seekers> (citing to a 2019 study finding that over 90% of asylum seekers surveyed at the border had family in the US).

¹⁹² *Id.*

¹⁹³ *Id.*

f. Biden Must Review Immediately the Necessity and
Effectiveness of a Ban on all Lawful Permanent
Immigration to the United States as a COVID-19 Safeguard

In October 2020, the CATO Institute issued a report documenting the substantial decline in legal immigration to the U.S., particularly in the second half of 2020.¹⁹⁴ “Overall,” the report noted, “the second half of FY 2020 saw 92% fewer immigrants from abroad than the first half, which was larger than any annual decline in the history of the U.S.”¹⁹⁵ Much of the drop in numbers can be attributed directly to travel restrictions that President Trump imposed on all legal immigration starting in April 2020 in response to COVID-19,¹⁹⁶ restrictions that, based on a recent extension by President Trump, are scheduled to remain in effect until March 2021.¹⁹⁷ However, the decline in numbers began prior to the pandemic due to earlier policies directed at refugees and asylum seekers.¹⁹⁸ Another important fact is that, unlike permanent immigration, most other travel to the U.S., including for tourism, was reopened as of July 2020 based on economic concerns, despite the pandemic.¹⁹⁹ Thus, while travel by temporary immigrants, including for tourism, dropped by more than half from the previous year, the U.S. State Department still reports over 4 million admissions of temporary immigrants in 2020.²⁰⁰ In January 2020, the only travel restrictions for most temporary visitors applied only to a few nations, namely China, Iran, Ireland, Brazil, and those in the United Kingdom and in the European Schengen area.²⁰¹

¹⁹⁴ David J. Bier, *No Year Has Seen Legal Immigration Cut Like the Second Half of FY2020*, CATO INSTITUTE (Oct. 13, 2020), <https://www.cato.org/blog/no-year-has-seen-legal-immigration-cut-2nd-half-fy-2020>.

¹⁹⁵ *Id.*

¹⁹⁶ Jorge Loweree et al., *The Impact of COVID-19 on Noncitizens and Across the U.S. Immigration System*, AM. IMMGR. COUNCIL 4 (2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_impact_of_covid-19_on_noncitizens_and_across_the_us_immigration_system.pdf.

¹⁹⁷ Camilo Montoya-Galvez, *President Trump Extends Immigrant and Work Visa Limits Into Biden Presidency*, CBS NEWS (Jan. 1, 2021), <https://www.cbsnews.com/news/trump-immigrant-work-visa-limits-extended-biden-presidency/>.

¹⁹⁸ Zolan Kanno-Youngs, *As Trump Barricades the Border, Legal Immigration is Starting to Plunge*, N.Y. TIMES, (Feb. 24, 2020) <https://www.nytimes.com/2020/02/24/us/politics/trump-border-legal-immigration.html>.

¹⁹⁹ Loweree, et al., *supra* note 196, at 4.

²⁰⁰ Table XV(A) *Classes of Nonimmigrant Visas Issued*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport-TableXVA.pdf> (last visited Mar. 11, 2021).

²⁰¹ *Travelers Prohibited from Entry to the United States*, CENTERS FOR DISEASE CONTROL AND PREVENTION [CDC], <https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html> (last updated Feb. 19, 2021).

Travel restrictions are most certainly legitimate ways to curtail the spread of a global pandemic.²⁰² Indeed, most nations in the world have at some point adopted travel restrictions in response to COVID-19.²⁰³ U.S. travel restrictions adopted under the Trump administration as a response to COVID-19, however, raise legitimate questions of motivation, lack of consistency, necessity, and effectiveness.²⁰⁴ Moreover, travel restrictions, when imposed, should consider whether the health gains outweigh the profound impact on the U.S. economy, family reunification, and humanitarian concerns, to name a few. From the Northern Triangle region, for example, the majority of migration is based on family unification.²⁰⁵ Given the socio-economic impacts of banning permanent immigration, the U.S. should also consider whether alternative safety measures, such as requiring testing and quarantine, can work to ameliorate the impacts of travel bans.²⁰⁶ Other nations are doing this with promising results.²⁰⁷

²⁰² Chad R. Wells et al., *Impact of International Travel and Border Control Measures on the Global Spread of the Novel 2019 Coronavirus Outbreak*, 117 PROCEEDINGS OF THE NAT'L ACAD. OF SCIENCES, 7504-7509 (2020) ("Our results show that these [border control] measures likely slowed the rate of exportation from mainland China to other countries, but are insufficient to contain the global spread of COVID-19. With most cases arriving during the asymptomatic incubation period, our results suggest that rapid contact tracing is essential both within the epicenter and at importation sites to limit human-to-human transmission outside of mainland China").

²⁰³ Phillip Connor, *More than Nine-in-Ten People Worldwide Live in Countries with Travel Restrictions Amid COVID-19*, PEW RSCH. CTR. (Apr. 1, 2020), <https://www.pewresearch.org/fact-tank/2020/04/01/more-than-nine-in-ten-people-worldwide-live-in-countries-with-travel-restrictions-amid-covid-19/>.

²⁰⁴ Wells et al., *supra* note 202. See also Michele Heisler & Joanna Naples-Mitchell, *The United States is Using COVID-19 to Abandon Asylum Seekers at the Border*, PHYSICIANS FOR HUM. RTS. (Apr. 9, 2020), <https://phr.org/our-work/resources/the-united-states-is-using-covid-19-to-abandon-asylum-seekers-at-the-border/>; Natalie Banulescu-Bogdan et al., *Coronavirus Is Spreading Across Borders, But It Is Not a Migration Problem*, MIGRATION POL'Y INSTITUTE (Mar. 2020), <https://www.migrationpolicy.org/news/coronavirus-not-a-migration-problem>.

²⁰⁵ JILL H. WILSON, CONG. RSH. SERV., R45489, RECENT MIGRATION TO THE UNITED STATES FROM CENTRAL AMERICA: FREQUENTLY ASKED QUESTIONS (2019), <https://fas.org/sgp/crs/row/R45489.pdf>.

²⁰⁶ Mateo Chinazzi et al., *The Effect of Travel Restrictions on the Spread of the 2019 Novel Coronavirus (COVID-19) Outbreak*, 368 SCIENCE MAG. 395 (2020), <https://science.sciencemag.org/content/368/6489/395.full.pdf>.

²⁰⁷ See, e.g., Hillary Leung, *Asia is Slowly Beginning to Reopen Travel. Here's What the World Could Learn*, TIME (May 12, 2020, 6:53 AM), <https://time.com/5832022/asia-reopen-travel-coronavirus/>.

B. How U.S. Reforms to U.S. Foreign Aid Can Aid Recovery in the Northern Triangle

1. U.S. Foreign Aid to Northern Triangle Nations: From Obama to Trump

Especially in recent decades, as Central America became a major transit corridor of illicit drugs into the U.S. and also the biggest sender of forced migration, U.S. policy makers sought to increase aid to the region.²⁰⁸ While there is general agreement that aid should advance U.S. interests in stopping or reducing flows of illicit drugs and unauthorized migrations from the region, more divisions arise on how to achieve these aims through U.S. aid. Disagreements have ranged, for example, on whether funding should focus on tough law and order measures targeting illicit groups or migrants versus longer-term approaches that seek to strengthen the rule of law (i.e., anti-corruption or anti-impunity measures) or to address poverty through trade and other economic development policies or creating alternatives to incarceration as a way of reintegrating illicit groups into society.²⁰⁹ These differences were visible especially during the Obama and Trump administrations as described below.

In 2014, President Obama approved a new government strategy for engagement in Central America, viewing the increased investment and the new approach to be in the best interest of the U.S.²¹⁰ U.S. efforts over the past 20 years had generally emphasized a single objective, such as economic growth or crime reduction. In contrast, President Obama grounded his strategy on the premise that prosperity, security, and governance are “mutually reinforcing and of equal importance.”²¹¹

With congressional support, the Obama administration launched the U.S. Strategy for Engagement in Central America, which took a more comprehensive approach than previous U.S. initiatives in Central America, based on the premise that efforts to promote prosperity, improve security, and strengthen governance are mutually reinforcing and of equal importance. The new strategy, which was also deeply influenced by Congress, did not completely abandon security strategies aimed at disrupting networks of drug flows. These did, however, expand to include

²⁰⁸ PETER J. MEYER, CONG. RSH. SERV., R44812, U.S. STRATEGY FOR ENGAGEMENT IN CENTRAL AMERICA: POLICY ISSUES FOR CONGRESS 1 (2019), <https://crsreports.congress.gov/product/pdf/R/R44812>.

²⁰⁹ See generally *id.* at 4-5 (describing the U.S. foreign aid priorities in the region during the last twenty years).

²¹⁰ CONG. RSH. SERV., U.S. STRATEGY FOR ENGAGEMENT IN CENTRAL AMERICA: AN OVERVIEW, <https://fas.org/sgp/crs/row/IF10371.pdf> (last updated Feb. 16, 2021).

²¹¹ MEYER, *supra* note 208, at 5.

strengthening the capacity of domestic justice sector institutions to prosecute organized crime while also supporting community-based and violence prevention efforts in the region.²¹² The Obama administration's new strategy sought "the evolution of an economically integrated Central America that is fully democratic; [the provision of] economic opportunities to its people . . . more accountable, transparent, and effective institutions; and ensur[ing] a safe environment for its citizens."

Under President Obama, and with congressional support, aid to the region doubled.²¹³ Since 2016, Congress appropriated more than \$3.6 billion toward Obama's new strategy, allocating the money relatively evenly between programs focused on good governance, economic growth, and social welfare and Central America Regional Security Initiative (CARSI) programs intended to prevent violence, reform justice-sector institutions, and combat gangs and organized crime.²¹⁴ In addition, Congress imposed strict conditions on the aid to address a number of concerns, including border security, human rights, and corruption.²¹⁵ U.S. agencies allocated the vast majority of the aid to the Northern Triangle countries.²¹⁶

Initially, President Trump maintained President Obama's foreign aid strategy in the region. This all changed in March 2019, less than two years into the strategy's on-the-ground implementation due to President Trump's frustration over the continued flow of forced migration from the region to the U.S.²¹⁷ Over the course of 2019, the Trump administration repurposed \$396 million of aid away from the Northern Triangle and toward other foreign priorities, while at the same time negotiating the so-called safe third party country agreements with these nations.²¹⁸ The Trump administration also sought to scale back U.S. assistance to Central America. Congress rejected some of the Administration's proposed reductions, but annual appropriations for the region declined by nearly 30% since FY 2016.²¹⁹ The Trump administration's decision to cut off aid to the region undermined significant progress in the implementation of programs designed to alleviate poverty.²²⁰

²¹² *Id.* at 4-5.

²¹³ CONG. RSH. SERV., *supra* note 210.

²¹⁴ *Id.*

²¹⁵ MEYER, *supra* note 208, at summary.

²¹⁶ CONG. RSH. SERV., *supra* note 210.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ MEYER, *supra* note 208, at 2.

²²⁰ See e.g., Tim McConnell, *Trump Froze Aid to Guatemala. Now Programs are Shutting Down*, NPR (Sept. 17, 2019), <https://www.npr.org/sections/goatsandsoda/2019/09/17/761266169/trump-froze-aid-to-guatemala-now-programs-are-shutting-down>.

Then, in October 2019, after Northern Triangle nations signed the migration agreements, the Trump administration announced it would restore aid to the region.²²¹ In June 2020, the Trump administration communicated its intent to Congress to release more than \$705 million of new and previously suspended assistance, planning to focus on advancing U.S. national security interests, the implementation of the migration agreements, and addressing COVID-19 and other humanitarian needs in the region.²²² Trump's 2021 budget request also included a request of nearly \$337 million for all of Central America, conditioned for Northern Triangle nations based on compliance with their migration agreements.²²³ In December 2020, as part of the second COVID-19 stimulus package adopted by Congress during the Trump administration, Congress imposed new restrictions on military aid aimed to target corruption and concerns over authoritarianism in El Salvador.²²⁴

2. Assessing Effectiveness

There isn't consensus on how the effectiveness of foreign aid in the region should be measured, even by the U.S. government. To the Trump administration, the only metric that mattered for assessing success was the reduction in flows of forced migrants from the Central American region to the U.S.²²⁵ In contrast, other administrations or congressional entities have considered longer-term metrics that include efforts to end impunity (e.g., the number of prosecutions); anti-corruption efforts; drops in violence; and sustained economic growth.²²⁶ In this regard, although some early signs pointed to good progress flowing from the Obama administration's strategy for engaging in Central America,²²⁷ data is insufficient given the strategy's abrupt interruption by the Trump administration; its longer-term projections for measuring change; and, now, of course, the effects of the pandemic and hurricanes to any gains that may have been achieved in the region.²²⁸

²²¹ CONG. RSH. SERV., *supra* note 210.

²²² *Id.*

²²³ *Id.*

²²⁴ Joshua Goodman, *U.S. Cuts Military Aid to El Salvador Amid Intense Lobbying*, ABC NEWS (Dec. 28, 2020), <https://abcnews.go.com/International/wireStory/us-cuts-military-aid-el-salvador-amid-intense-74941395>.

²²⁵ MEYER, *supra* note 208, at 19.

²²⁶ *Id.* at 17 (describing USAID 39 performance indicators developed during the Obama administration to measure progress).

²²⁷ *Fact Sheet: Central America and U.S. Assistance*, U.S. GLOB. LEADERSHIP COAL. (July 2019), <https://www.usglc.org/media/2019/04/USGLC-Fact-Sheet-Central-America.pdf>

²²⁸ *See* MEYER, *supra* note 208, at 20.

Despite good measures of success, U.S. congressional studies began to document the ways in which the Obama Administration's new strategy had started to build an infrastructure that could, with sustained efforts and investments, bring more lasting change to the region. Some of these changes, for example, included efforts to improve trade in the region by, *inter alia*, strengthening the capacity of regional and local trade organizations to promote better trade policies and practices; improve customs and border management; diversify and reduce electricity production and costs; and promote new sources of green energy.²²⁹ Efforts also focused on reducing food insecurity and chronic malnutrition while supporting subsistence farmers diversify their crops and improve household income.²³⁰ They also included building the region's resilience to withstand shocks produced from climate change (e.g., droughts or floods) and improvement in the quality and access to education for these most vulnerable communities that had been historically left out.²³¹

In the area of governance, efforts in the region had started to focus on issues of fiscal accountability and transparency in the collection and distribution of public resources; supporting the judiciary's efforts to root-out corruption; depoliticizing and professionalizing the hiring of public officials; strengthening the quality and flow of public information by protecting the press and human rights defenders.²³² In the area of security, the focus remained on supporting the military in their fight against organized crime but programs also expanded to strengthen policing and implementing crime and violence prevention measures by, *inter alia*, providing programs to youth to redirect them and support their decision and ability to turn away from crime.²³³ At least in terms of priorities, these efforts mirrored more closely some of the recommendations we made in our white paper about the types of changes and reforms desperately needed in the region to have a longer-term impact in improving the lives of Central Americans.²³⁴

3. What is/Should be the Future of Foreign Aid in the Region

President Biden, who as Vice President and Senator, played a significant role in advancing the Obama administration's priorities in Central America, is well-positioned to improve on President Obama's vision to help the region address the root-causes of forced migration in the

²²⁹ *Id.* at 7.

²³⁰ *Id.* at 8.

²³¹ *Id.*

²³² *Id.* at 9-10.

²³³ *Id.* at 11.

²³⁴ *See generally* Aldana et al., *supra* note 3, at 11-17.

region in ways that also elevate their prospects to live happy and dignified lives home.²³⁵ It was President Biden, in fact, who helped secure consensus in Congress to secure President Obama's multi-year strategy to reduce forced migration from the region.²³⁶ Moreover, Biden's involvement in the region, characterized as tough but also fair and guided by a moral compass that the U.S. owes the region, lends him credibility to restore much of the distrust against the U.S. and the political polarization that has intensified in the region under the Trump administration.²³⁷ In fact, uncommonly so, President Biden not only included addressing the root causes of forced migration from the Northern Triangle as part of his plan on immigration,²³⁸ but also adopted an independent plan for the region as part of his campaign.²³⁹

The first notable characteristic of President Biden's Central American plan is its tone which treats these nations as partners and friends, not only based on regional proximity but on shared history and values.²⁴⁰ The plan is grounded in five pillars: (1) a \$4 billion, four-year regional strategy; (2) mobilizing private investment; (3) a focus on security and improving the rule of law; (4) addressing endemic corruption; and (5) prioritizing poverty reduction and economic development.²⁴¹ Much of what is in President Biden's plan is consistent with recommendations by experts who have studied the impact of good and bad U.S. foreign aid investments in the region.²⁴² The plan makes clear that a condition of investment will be on those nation's own verifiable investments and commitments to broader

²³⁵ See, e.g., Paz, *supra* note 10.

²³⁶ *The Biden Plan to Build Security and Prosperity in Partnership with the People of Central America*, JOEBIDEN.COM, <https://joebiden.com/centralamerica/> (last visited Mar. 11, 2021) [hereinafter *The Biden Central American Plan*].

²³⁷ *Id.*

²³⁸ *Biden Immigration Plan*, *supra* note 94.

²³⁹ *The Biden Central American Plan*, *supra* note 236.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² See, e.g., *Building a Better Future: A Blueprint for Central America's Northern Triangle*, ATLANTIC COUNCIL 1 (2017), https://www.atlanticcouncil.org/wp-content/uploads/2017/05/Building_a_Better_Future_web_0504.pdf (recommendations include building sustainable economic development through infrastructure, key sector and human development; strengthening the rule of law by fighting corruption and building judicial institutions and reforming public finance regimes; and improving security by reforming policing, adopting criminal justice and prison reforms and addressing gangs by improving social and educational programs.); see also *Recommendations for U.S. Engagement to Address Migration From and Displacement Within the Northern Triangle of Central America*, LATIN AMERICA WORKING GROUP (July 2019), <https://www.lawg.org/wp-content/uploads/All-logos-Recommendations-for-U.S.-Engagement-to-Address-Migration-from-and-Displacement-within-the-Northern-Triangle-of-Central-America.pdf>.

reforms to meet goals 3-5.²⁴³ Another welcomed aspect of the plan is a commitment to target investments primarily in civil society organizations that are on the frontlines of addressing root causes of forced migration, while recognizing the central role of women as powerful forces for development.²⁴⁴ This will be especially important in countries like Honduras and El Salvador, which, due to upcoming elections, if monies are funneled through central governments, could divert these resources for political gain.²⁴⁵ It is also a welcome policy change to return to an anti-corruption agenda, which had made significant progress, at least in Guatemala, until those efforts were stalled or even reversed during the Trump administration.²⁴⁶ Additionally, it is gratifying to see a commitment, based on evidenced-based practices worldwide,²⁴⁷ to engage in anti-violence efforts by supporting youth with alternative programs that can help them escape a dangerous life in criminal gangs and victims of domestic violence, not only with prosecutions, but with support to escape their abusers.²⁴⁸

Finally, the plan makes a commitment to poverty alleviation, such as through programs that address food insecurity and chronic malnutrition, especially alongside the dry corridor, but also through sustained economic development that prioritizes human development and addresses climate change. The plan also makes assertions to incentivize economic development through foreign investment, including by ensuring more favorable laws (i.e., labor laws) for investors. President Biden's optimism should be more cautious here and be more informed by the role of private foreign investment in the region. Liberalizing policies that have promoted deregulation of natural resources and environmental protections, while leaving workers largely unprotected, despite strong labor laws, have not been good for poverty alleviation or economic development in the region.²⁴⁹ This is not to say that foreign investment cannot be good for the

²⁴³ *The Biden Central American Plan*, *supra* note 236.

²⁴⁴ This is very consistent with the recommendations in our white paper that we label decentralization. *See* Aldana et al., *supra* note 3, at 12-14.

²⁴⁵ *Political Integrity Lacking in Latin America and the Caribbean, Especially Around Elections*, TRANSPARENCY INT'L (Sept. 23, 2019), <https://www.transparency.org/en/news/political-integrity-lacking-in-latin-america-and-the-caribbean-especially-a>.

²⁴⁶ *See, e.g.,* Adeline Hite & Álvaro Montenegro, *Guatemala's Corrupt are Threatening to Erase its Historic Anti-Corruption Legacy*, WASH. OFF. ON LATIN AMERICA (Jan. 8, 2020), <https://www.wola.org/analysis/guatemalas-corrupt-threaten-historic-anti-corruption-legacy/>.

²⁴⁷ *See generally* *Violence prevention: the evidence*, WORLD HEALTH ORGANIZATION (2010), https://www.who.int/violence_injury_prevention/violence/the-evidence/en/.

²⁴⁸ *The Biden Central American Plan*, *supra* note 236.

²⁴⁹ *See generally* Raquel Aldana & Steven W. Bender, *FROM EXTRACTION TO EMANCIPATION: DEVELOPMENT REIMAGINED* (Carolina Academic Press 2018).

region but as the plan reads currently only the voices of private industries are heard. Left out are the workers and vulnerable communities who have endured labor exploitation, extraction of their resources, a lack of antitrust protections, land displacements, and other affronts to their personal security based on bad investment practices with the acquiescence of local governments and the international community.²⁵⁰

III. CONCLUSION

The bleak COVID-19 and post-hurricane outlook for Northern Triangle nations requires an urgent and coordinated response to the most pressing human needs—such as hunger, housing, and health access. It also presents a meaningful opportunity to adopt policies and practices that can simultaneously bring longer-term gains to the region, including in terms of security. As an example, experts examining the adaptation of violence to pandemic in the region note that the provision of emergency funds into the most affected communities to help them survive the crisis will also strengthen their resolve and ability to turn away from the pressures of organized crime and also, potentially, from fleeing north.²⁵¹ At the same time, other experts urge the U.S. to view the region anew as a unique opportunity to advance toward greater regional economic integration by capturing the region's potential, based on a young labor force and the presence of Asian investors in the region, to play a prominent role in production in a reconfigured global supply chains.²⁵² This essay provided a few immediate actions the U.S. can take to help stabilize the region not only for its own sake but for our own.

²⁵⁰ See *id.*; see also e.g., Raquel Aldana & Randall S. Abate, *Banning Metal Mining in Guatemala*, 40 VT. L. REV. 597 (2016).

²⁵¹ INT'L CRISIS GRP, *supra* note 37, at 18.

²⁵² Brizuela de Ávila et al., *supra* note 23.