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Transnational Organized Crime Groups, Immigration, and Border Security:

Connections, Distinctions, and Proposals for Effective Policy

Before

U.S. Senate Judiciary Committee Subcommittee on Border Security and Immigration

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Chairman Cornyn, Ranking Member Durbin, and Members of the Subcommittee:

Thank you for the opportunity to testify before the Senate Subcommittee on Border Security and Immigration today. My name is Andrew Selee and I am the president of the Migration Policy Institute, a non-partisan, independent research institution focused on practical and effective policy options for managing immigration.

The links between transnational crime organizations (TCOs) and migration are deep but also complex. TCO activity has helped fuel broader violence in Central America and Mexico, which has in turn led to instability, violence, and the decision by hundreds of thousands of families to migrate north to Mexico and the United States. Not all acts of violence—or even most—are committed by the TCOs themselves, but gangs and smaller local crime groups generally maintain links to the larger TCOs, which help supply them with resources, weapons, and legitimacy.

Migrant smuggling organizations also maintain links to TCOs, although these are almost always separate networks. These relationships are utilitarian, situational, and different from place to place, but the control that TCOs in Mexico exert over key smuggling routes, including access to parts of the U.S.-Mexico border, has made the journey across Mexico even more precarious and life-threatening for Central American migrants.

The inauguration of a new government in Mexico has made it possible to restart a bilateral agenda around addressing the threat of TCOs, a topic covered by others on this panel, and in developing more strategic options for managing migration flows, which are addressed here. In particular, the U.S. government has an opportunity to support Mexico's nascent efforts to professionalize its immigration and border authorities, create employment-based visas for Central American workers, and significantly enhance its embryonic asylum system.

These efforts will only be effective, however, if the United States also substantially changes its asylum system to be far more efficient and expedient. Opportunities also exist for binational cooperation in addressing the abuses of migrants by human smugglers and imagining future approaches to asylum and refuge that help migrants avoid the dangerous journey north while taking pressure off the border itself.

The current moment lends itself to creative cooperation with the government of Mexico to tackle TCOs and address migration in new ways, but it will require finding common ground between the interests of each country, which are increasingly converging, though still not always the same. A strategic approach to partnership would allow a far better management of shared concerns at the border, both in dealing with Central American migration and in addressing organized crime.

1. Violence and Impunity Are Fueling Migration

As unauthorized migration from Mexico has dropped to historic lows not seen since the early 1970s, unauthorized migration from Central America increased dramatically. Although overall numbers remain relatively low compared to past flows of unauthorized immigrants from Mexico, the most dramatic shift has been that large numbers of Central Americans are requesting asylum in the United States, which has overburdened the asylum system.¹

Existing evidence suggests that violence, fueled by the transnational crime organizations, is at the root of a substantial percentage of this migration from Central America. While those who migrate are most likely to flee from predatory violence—extortion, kidnapping, and threats by local gangs and crime groups, rather than drug-related activity—these smaller local groups depend on their links to the TCOs for the resources, weapons, and legitimacy that allow them to control and prey on local communities.

The rise of heroin, fentanyl, and other opiates have reshuffled relationships among TCOs over the past few years and led to a significant increase in violence in parts of Mexico and in the Northern Triangle of Central America. While the Mexican government, with U.S. government support, helped decimate many of the large crime groups between 2010 and 2015, it never built the capacity in policing, prosecutors, and courts at a state and local level that would have helped contain the multiple smaller groups that have emerged as a result of this fragmentation. Mexico today is a patchwork of areas that have seen improved rule of law and others that have descended further into lawlessness, depending in large part on local responses.²

And as the Mexican government became more able to pursue visible crime groups, many of these moved even more of their operations to Central America, leading to rising control of parts of Guatemala, Honduras, and El Salvador either by the TCOs themselves or by gangs that are associated with them. These three countries—and specific municipalities within them—have some of the highest crime rates in the world. Even with recent drops in homicide rates in these countries, they remain among the world’s most violent.³

At the same time, law enforcement and judicial systems remain particularly weak and ineffective in many parts of these countries, with most crimes never investigated, much less

¹ On the contrast between low immigration numbers and increasing asylum applications, see Jo Craven McGinty, “Illegal Immigration Is Down, but Asylum Requests Are at an All-Time High,” *Wall Street Journal*, December 7, 2018, www.wsj.com/articles/illegal-immigration-is-down-but-asylum-requests-are-at-an-all-time-high-1544184001. For an analysis of the dropping number of apprehensions at the border, see Jessica Bolter and Doris Meissner, “Crisis at the Border? Not by the Numbers,” Migration Policy Institute commentary, June 2018, www.migrationpolicy.org/news/crisis-border-not-numbers.

² See Andrew Selee, *Vanishing Frontiers: The Forces Driving Mexico and the United States Together* (New York: PublicAffairs, 2018), chapters 6 and 7, www.publicaffairsbooks.com/titles/andrew-selee/vanishing-frontiers/9781610399029/.

³ Richard Ensor, “The Northern Triangle Is Becoming Less Murderous, but That Will Not Be Enough to Curb Emigration,” *The Economist*, December 8, 2018, https://amp.economist.com/the-americas/2018/12/08/the-northern-triangle-is-becoming-less-murderous?_twitter_impression=true.

solved. While there is no single study that has successfully explored the mix of reasons that Central Americans leave their homes to embark on a dangerous journey north, available evidence suggests that the rise in the number of Central American asylum-seekers is tied both to violence and impunity, in other words, the need to seek protection and the inability to obtain it within their own countries.⁴ For many unauthorized migrants from Central America, especially women and children, this is a primary motivator for leaving their countries.⁵ For others, including many single men, it is an aggravating factor in addition to economic motives.⁶

2. Migrant Smugglers and Drug Trafficking Organizations Interact but Are Usually Separate Networks with Different Border Crossing Strategies

It has become popular to refer to all organized crime activity as though it were a single phenomenon, but studies show that migrant smuggling organizations are generally separate networks from transnational crime organizations devoted to drug trafficking. The latter are far bigger and better resourced, and they have effective control over the key border crossing routes to get into the United States. Migrant smuggling networks almost always have to pay these larger TCOs for access to the border.

There have been specific cases of TCOs involved in drug trafficking taking part in migrant smuggling, as happened in the later stages of the Arellano Felix and Juarez Cartels, when they were under siege and needed new sources of income, and possibly some strands of the Zetas during their final years. But today there appears to be separation of business lines between these groups. As Guadalupe Correa-Cabrera, an associate professor at George Mason University who conducted an extensive on-the-ground study of migrant smuggling networks, notes:

The role played by TCOs in migrant smuggling and trafficking in persons in Mexico is opportunistic rather than structured or highly organized. We could not find evidence that TCOs manage human trafficking rings ... as is commonly believed. TCOs seem to restrict their interactions with human smugglers and traffickers to charging migrants a fee to transit through their territories unharmed as well as charging sex traffickers and sex workers a fee for the right to conduct commercial activities in TCO-controlled territory.⁷

⁴ See, for example, Rocio Cara Labrador and Danielle Renwick, “Central America’s Violent Northern Triangle: Backgrounder,” Council on Foreign Relations, June 28, 2018, www.cfr.org/backgrounder/central-americas-violent-northern-triangle.

⁵ Sarah Bermeo, “Violence Is Driving Immigration from Central America,” *Brookings Future Development* blog, June 28, 2018, www.brookings.edu/blog/future-development/2018/06/26/violence-drives-immigration-from-central-america/. Also, Michael Clemens, “Violence, Development, and Migration Waves: Evidence from Child Migrant Apprehensions,” Center for Global Development Working Paper No. 459, Washington, DC, July 27, 2017, www.cgdev.org/publication/violence-development-and-migration-waves-evidence-central-american-child-migrant.

⁶ Bryan Roberts et al., *Northern Triangle Migrant Flow Study: Final Report* (Los Angeles: CREATE and IDA, 2018), especially pages 56-88, https://create.usc.edu/sites/default/files/northern_triangle_migrant_report.pdf.

⁷ Quote from an email communication with this author by Dr. Guadalupe Correa-Cabrera, associate professor of political science at George Mason University, in reference to her 18-month study of migrant smuggling organizations. December 7, 2018.

Several other studies have reached similar conclusions, highlighting that TCOs and migrant smuggling rings are largely separate organizations.⁸

This does not mean that they do not interact, however. Not only do these smuggling rings pay the TCOs for the right to use border crossing areas, but there are undoubtedly many smaller gangs, local crime groups, and individuals, especially in Central America, that move between serving these large criminal networks in these two different fields. So while we should not conflate TCOs and migrant smuggling networks, we should be aware of the many interactions that certainly take place between these parallel business models.

While smugglers still primarily cross migrants between ports of entry (although there are a growing number who deliver migrants to ports of entry to apply for asylum, as well), TCOs primarily use ports of entry to cross illicit narcotics into the United States, seeking to hide these among the legitimate flows of people and goods across the border. U.S. Customs and Border Protection (CBP) seizure data show that most heroin, cocaine, fentanyl, and methamphetamines captured at the border are trafficked through ports of entry, not between them. The one notable exception is marijuana, a less valuable bulk product, which is usually trafficked between ports of entry.⁹ However, marijuana trafficking has always been a small part of the overall profits of the TCOs¹⁰ and its role appears to be dropping even further as domestic supply increases in the United States.¹¹

3. The New Government of Mexico Has Proposed Measures that Could, if Implemented Effectively, Take Pressure off the Border

The new government of Mexico, which took office on December 1, 2018, is redesigning its security strategy to address TCOs, which will include launching a new National Guard, restructuring the intelligence service, and addressing opportunities for youth in areas plagued by organized crime violence. All of these measures lend themselves to additional cooperation

⁸ See, for example, interview with Gabriella Sanchez, Professor, Migration Policy Centre, European University Institute, in *Mixed Migration Review 2018*, pp. 110-113, www.mixedmigration.org/wp-content/uploads/2018/11/Mixed-Migration-Review-2018.pdf; Simón Pedro Izcara Palacios, "Coyotaje and Drugs: Two Different Businesses," *Bulletin of Latin American Research* 34 (3): 324-339, www.red-redial.net/en/bibliographic-reference-74865.html.

⁹ In fiscal year (FY) 2018, through August 2018, 88 percent of cocaine, 90 percent of heroin, 87 percent of methamphetamines, and 80 percent of fentanyl seized at the Southwest border were secured by the Office of Field Operations, which oversees port security, while the remainder were seized by Border Patrol between ports of entry. (Fentanyl seizures only updated through July 2018.) In contrast, only 39 percent of marijuana was seized by the Office of Field Operations at ports of entry. See U.S. Customs and Border Protection, "CBP Enforcement Statistics FY2018," accessed December 11, 2018, www.cbp.gov/newsroom/stats/cbp-enforcement-statistics. These numbers are consistent with those reported in FY 2017 as well.

¹⁰ The most rigorous study, now several years old, found that marijuana constituted probably one-quarter of all revenues for Mexican TCOs, though it played an important role in cash flow for the cartels. See Beau Kilmer, Jonathan P. Caulkins, Brittany M. Bond, and Peter H. Reuter, *Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?* (Santa Monica, CA: Rand Corporation, 2010), www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP325.pdf.

¹¹ Marijuana seizures at the Southwest border dropped dramatically from FY 2017 to FY 2018, from 1,222,795 pounds to 722,615 pounds. The FY 2018 figure is through August only, so the drop may be slightly less, but it is still on the order of one-third in only one fiscal year. See CBP, "CBP Enforcement Statistics."

between the governments of Mexico and the United States, at a time when the new administration in Mexico appears to be recommitting itself to addressing organized crime, an effort that had flagged under the previous government.

The new government in Mexico has also suggested a series of measures that have the potential, if well implemented, to take pressure off the U.S.-Mexico border from unauthorized Central American migration and to deal with migrants in ways that are fairer to those seeking protection and safer for those who wish to seek economic opportunities abroad. None of these are a silver bullet that will automatically decrease Central American flows, but taken together with measures in the United States to reform the asylum system and employ a more strategic approach to border enforcement, they could play a role in significantly reducing the number of attempted border crossings in future years while responding better to the needs that different groups of migrants have for either protection or better economic opportunities.

The proposals fall into three categories. First, the new government has proposed an employment-based visa that would take advantage of areas in Mexico that have clear labor shortages. Currently most migrants who move to Mexico settle in the south of the country, but these visas would encourage people to work either in export-oriented agriculture or in industrial areas of the country in the north and center-north. Researchers have rightly pointed out that most migrants who settle in Mexico today see only modest economic gains.¹² But designing a program that specifically targets regions with labor shortages could lead to different outcomes. However, to date the exact plans around this visa remain unclear.

Second, the new government has indicated that it will substantially increase the resources and professional capacity of its asylum agency, Comar, so that it can handle many more applications for asylum in real time. The number of asylum applications in Mexico has jumped from 3,424 in 2015 to 8,788 in 2016 and 14,596 in 2017, and 2018 is projected to close with over 28,000 applications.¹³ Mexican law requires that applicants receive a response within 90 days, but decisions are now taking months, given the backlog of applications and the limited number of staff to process them. The UN High Commissioner for Refugees (UNHCR) is working closely with Comar to upgrade its capacity, and the new director of the agency is a former senior leader at UNHCR. But it will require funding and commitment to change the inertia around the Mexican asylum system.

Third, the new government has expressed a desire to modernize and professionalize the National Migration Institute (INM), Mexico's principal border and migration agency, to ensure that its agents act according to the law and the highest professional standards, and that procedures and technology meet the needs for border control while respecting the rights of migrants. The government has appointed a well-respected new commissioner, known for his commitment to fighting corruption and modernizing institutions, but success will depend on resources, commitment, and strategy. A modern border control strategy would both ensure that

¹² Roberts et al., *Northern Triangle Border Study*.

¹³ UNHCR, "Solicitantes de Reconocimiento de la Condición de Refugiado en México, 2013-2019," December 1, 2018, based on data from Comar.

entrants into the country pass through legal channels and deal with enforcement in ways that ensure due process, respectful treatment of migrants, and strict adherence to human rights guarantees.¹⁴

All of these proposals need to be fleshed out and implemented, but they offer opportunities for fruitful cooperation that could help address Central American migration flows in ways that are fairer, safer, and more effective and that take pressure off the U.S.-Mexico border. And all of these proposals offer opportunities for collaboration, which is discussed further below.

4. Recommendations:

The analysis above leads us to suggest four sets of recommendations that would reduce unauthorized Central American migration flows to the U.S.-Mexico border; limit TCO influence; and ensure a safer, fairer, and more efficient management of the border.

Recommendation #1: Partnering with Mexico Could Take Pressure Off the Border and Make Seeking Refuge Safer for Asylum Seekers

The new government of Mexico has indicated its desire to take three steps that are in the shared interest of the United States, and the U.S. government should seek to partner with Mexico to ensure that these three actions are successful, since all would take immigration pressure off the border.

The three actions are (1) creating an employment-based visa for Central Americans, (2) significantly upgrading the Mexican asylum system, and (3) modernizing and professionalizing the principal migration and border agency, INM. The U.S. government has an interest in Mexico succeeding in each of these efforts and could find ways of partnering with Mexico and supplying resources, either directly through bilateral aid accounts or through UNHCR and the International Organization for Migration (IOM), to support these efforts. There is no guarantee that the Mexican government, even if it follows through on its commitments, will meet success on all of these efforts, given chronic institutional challenges within some of the responsible agencies, but it is in the shared interest of both countries for them to succeed as much as possible.

The two countries might also explore ways of targeting particularly predatory migrant smuggling rings that engage in predatory behavior towards unauthorized migrants, including kidnapping, extortion, and rape. Both countries should be able to agree that the most egregious criminal organizations involved in smuggling should be a priority source of binational action in order to degrade and dismantle their operations.

¹⁴ See Rodrigo Dominguez-Villegas, *Strengthening Mexico's Protection of Central American Unaccompanied Minors in Transit* (Washington, DC: Migration Policy Institute, 2017), www.migrationpolicy.org/sites/default/files/publications/UACsMexico-FINAL.pdf; and Ximena Suárez, Andrés Díaz, José Knippen, and Maureen Meyer, *Access to Justice for Migrants in Mexico* (Washington, DC: Washington Office on Latin America, 2017), www.wola.org/wp-content/uploads/2017/07/Access-to-Justice-for-Migrants_July-2017.pdf.

Finally, both governments could explore together new approaches to asylum, including the resettlement of some Central Americans in Mexico to the United States through the U.S. refugee program, under UNHCR auspices. This would create incentives for Central Americans to seek asylum in Mexico before attempting a dangerous journey across the country with the possibility of resettlement to the United States later. The historically low refugee cap in FY 2019, with only 3,000 slots for the Western Hemisphere, is a significant impediment to this approach, but it argues for renewed efforts to invest in and expand the refugee resettlement program as an alternative to migrants seeking to reach the U.S. border to request asylum, arriving spontaneously and placing pressure on the U.S.-Mexico border.

In addition, the two countries could explore ways of approaching in-country processing in Central America for asylum applicants, building on the small program that was initiated a few years ago, the Central American Minors Program (CAM), but which has since been terminated by the Trump administration.¹⁵ In-country is worth exploring because of its potential benefit to asylum seekers themselves and its ability to substitute for large-scale irregular migration flows.

Recommendation #2: Asylum Reform Is Critical for a Better Border Policy

We need to make the U.S. asylum system work effectively again so that decisions are rendered quickly and fairly. This would both provide relief to those with legitimate asylum claims and serve as a deterrent to those without them, who would be returned quickly to their countries of origin. To do this, decisions need to be made within weeks, when feasible, not years.

Current efforts have focused on restricting asylum access, which undermines our legal and moral commitments to those fleeing violence and persecution. But we do not need to restrict asylum to deter applications by those who do not qualify for protection. Quick decisions would rapidly generate a deterrent to those without legitimate claims.

To do this, the U.S. government could use asylum officers to make asylum decisions at the border, especially those at ports of entry, as my colleague Doris Meissner has suggested.¹⁶ This only requires a rule change. The immigration courts, which are overburdened, could then be used to handle appeals on a last-in, first-out basis. It might be necessary to constitute specific border courts to handle the appeals.¹⁷

All efforts should be made to ensure that applicants can access legal counsel and have time to gather evidence for their cases. To ensure a fair processing of those seeking protection,

¹⁵ On the Central American Minors (CAM) program, see Faye Hipsman and Doris Meissner, *In-Country Processing in Central America: A Piece of the Puzzle* (Washington, DC: Migration Policy Institute, 2015), www.migrationpolicy.org/research/country-processing-central-america-piece-puzzle.

¹⁶ Doris Meissner, "Asylum Reform, Not Troops, Is the Solution to the Current Border Reality," Migration Policy Institute commentary, November 2018, www.migrationpolicy.org/news/asylum-reform-not-troops-solution-current-border-reality.

¹⁷ For a full analysis of ways to address the asylum system, see Doris Meissner, Faye Hipsman, and T. Alexander Aleinikoff, *The U.S. Asylum System in Crisis: Charting a Way Forward* (Washington, DC: Migration Policy Institute, 2018), www.migrationpolicy.org/research/us-asylum-system-crisis-charting-way-forward.

the Department of Justice needs to return to the standard of asylum built up through years of jurisprudence before recent decisions by former Attorney General Jeff Sessions acted to restrict the grounds for asylum.¹⁸

While this effort will require Congress to appropriate additional funding for asylum officers and immigration judges, it will save considerable costs in detention beds. This approach has the virtue of both being more fair to asylum seekers and ending incentives for those who do not have strong asylum claims to file them.

Recommendation #3: Key Border Investments Are Needed for Customs Officers, Additional Technology, and Asylum Officers at Ports of Entry

Additional fencing between ports of entry is unlikely to have a major effect on either the narcotics trade, which is concentrated at ports of entry, or unauthorized immigration, which is now largely a problem of an ineffective and inefficient asylum system. However, investments in technology, customs officials, and asylum officers at ports of entry can help address real needs that are straining border operations.

Asylum and CBP officers dedicated to asylum are particularly needed at a time when the number of asylum applications is on the rise and bottlenecks at the border, due to metering, create unsafe conditions for asylum-seekers inside Mexico.¹⁹ However, customs officers are also vital for detecting illicit shipments north and south.

Increased cooperation with the Mexican government to share intelligence and coordinate port operations, which is already quite significant at some ports of entry, can also provide additional benefits in identifying potential threats and addressing both TCOs and predatory migrant smuggling organizations.²⁰ Since drug flows move north, primarily through ports of entry, and illegal cash from drug sales in the United States move south, along with illegally obtained weapons, intelligence sharing and close coordination on flows in both direction are urgently needed.

Recommendation #4. Efforts to Invest in Rule of Law and Combat Violence in Central America and Mexico Are the Long-Term Solutions

The long-term solution to addressing the reach and impact of TCOs and the violence and instability they generate in Central America and Mexico is a series of concerted efforts to help these countries build rule of law and spur development locally. These are efforts that these

¹⁸ On this point, see Sarah Pierce, “Sessions: The Trump Administration’s Once Indispensable Man on Immigration,” *Migration Information Source*, November 8, 2018, www.migrationpolicy.org/article/sessions-trump-administrations-once-indispensable-man-immigration.

¹⁹ See Stephanie Leutert et al., *Asylum Processing and Waitlists at the Border* (Austin, TX: Strauss Center, University of Texas; Migration Policy Centre, European University Institute; Center for US-Mexico Studies, University of California, San Diego, 2018), www.strausscenter.org/images/MSI/AsylumReport_MSI.pdf.

²⁰ See Selee, *Vanishing Frontiers*, 2018, chapter 2, on this point.

countries need to undertake on their own, but in which US government support can prove vital because of resources, know-how, and accountability.

It is encouraging that the new administration in Mexico has indicated a desire to spur development by investing \$25 billion to \$30 billion in its southern regions and that it understands that this strategy needs to include the three countries of the Northern Triangle of Central America. This provides an opportunity for the U.S. government to partner with Mexico and other countries and international organizations in strengthening investments in Central America that can build weak judicial and police institutions, provide employment, and give youth opportunities for a better future.

The current U.S. budget request for foreign assistance to Central America in FY 2019 represents a 29 percent cut from FY 2018.²¹ The decision of the Mexican government to assume greater responsibility in the region suggests that the U.S. administration should rethink these cuts and Congress should find ways to appropriate considerably more funding that could respond to urgent needs in Central America and Mexico.

Conclusion

TCOs present a major challenge to security in Central America and Mexico, and to narcotics imports to the United States. They also drive the pervasive violence that has led hundreds of thousands of Central Americans to flee their homelands and seek refuge in Mexico and the United States, and they make the journey northward particularly dangerous for those attempting it.

The change of government in Mexico presents an ideal opportunity to reaffirm cooperation with the neighbor next door in addressing TCOs and to seize the moment for reforming the way both countries approach asylum and border control. With concerted action in both countries and between them, it would be possible to reduce violence, slow irregular migration from Central America, and provide protection to those who still need to seek protection outside their country.

A sensible border policy, which takes advantage of collaboration with Mexico but also looks at structural changes in the U.S. asylum system and border management, could produce results that are much fairer to asylum-seekers, create opportunities for some Central Americans seeking to work abroad, and at the same time reduce unauthorized migration flows. And investments in building rule of law and spurring development will remain the only long-term solutions to dealing both with the threat of TCOs and the violence they bring, which today lead so many to flee their country in search of safety.

²¹ Peter J. Meyer, *U.S. Strategy for Engagement in Central America: An Overview* (Washington, DC: Congressional Research Service, 2018), <https://fas.org/sgp/crs/row/IF10371.pdf>.