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ERODING THE LAW AND DIVERTING TAXPAYER RESOURCES: AN  
EXAMINATION OF THE ADMINISTRATION'S CENTRAL AMERICAN  
MINORS REFUGEE/PAROLE PROGRAM

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THURSDAY, APRIL 23, 2015

United States Senate,  
Committee on the Judiciary,  
Subcommittee on Immigration and the  
National Interest,  
Washington, DC

The Subcommittee met, pursuant to notice, at 2:31  
p.m., Room 226, Dirksen Senate Office Building, Hon. Jeff  
Sessions, Chairman of the Subcommittee, presiding.

Present: Senators Cornyn, Tillis, Klobuchar,  
Franken, and Blumenthal.

1 OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR  
2 FROM THE STATE OF ALABAMA, CHAIRMAN, SUBCOMMITTEE ON  
3 IMMIGRATION AND THE NATIONAL INTEREST, COMMITTEE ON THE  
4 JUDICIARY

5  
6 Chairman Sessions. Good afternoon. Thank you all  
7 for being here. I want everyone to be able to watch the  
8 hearing without obstruction. I hopeful that will occur  
9 and if someone stands up or blocks the view of the other  
10 or speaks out of turn, it is not fair or considerate to  
11 the others, so officers will remove those individuals.

12 Before we begin with opening statements, I want to  
13 explain how we will proceed. We have two panels today.

14 Senator Blumenthal, who is acting as the Ranking  
15 Member today, and I will give our opening statements. We  
16 will begin then with the first panel, with each witness  
17 having 5 minutes for an opening statement. Following  
18 their statements, we will begin with the first round of  
19 questions, which each Senator will have 5 minutes. After  
20 the first round, if any Senator wishes to continue with  
21 questions, we will go to another round.

22 We will then turn to the second panel and go through  
23 the same procedure.

24 So I will give my opening statement. As we go  
25 forward with this hearing, I hope we will learn some

1 things as we go forward.

2 This is the second hearing of the Senate Subcommittee  
3 on Immigration and the National Interest. This hearing  
4 will focus on programs created by this Administration,  
5 primarily the Central American Minors Refugee/Parole  
6 System, we think are outside the scope of current law.

7 We will hear from two panels of witnesses. On the  
8 first panel, we will have representatives from the U.S.  
9 Citizenship and Immigration Services and the Department  
10 of State. On the second panel, we will have five  
11 witnesses with subject matter expertise on these issues.

12 During the summer last year, 2014, precipitated by  
13 the President's executive amnesty program for younger  
14 illegal immigrants, the southern border experienced a  
15 massive wave of illegal immigration. It was really  
16 startling.

17 The surge began in 2012, continued in 2013, and  
18 reached record levels in 2014 and continues today, and  
19 may expect another large problem this summer. This has  
20 placed enormous burdens on the Federal law enforcement,  
21 on states and local communities around the country.

22 However, rather than use existing laws to take  
23 decisive action to combat this tide of illegal  
24 immigration and eliminate administratively created  
25 programs that act as magnets for illegal immigration, the

1 Administration created this new in-country processing  
2 program, which promises, I am afraid, to erode law  
3 enforcement further and impose even greater costs on  
4 state and local communities.

5 The result is that large numbers of illegal entrants  
6 have concluded that they can bring in more family members  
7 unlawfully, often being subjected -- those members coming  
8 in being subjected to danger across the country.

9 The goal of law enforcement is not to see how many  
10 arrests that can be made. The goal of law enforcement is  
11 to stop lawlessness from occurring, to create a climate  
12 where people realize this is not the way to enter the  
13 United States. And once that conclusion is widespread,  
14 we will see a dramatic reduction in the number of people  
15 attempting to enter unlawfully.

16 So, indeed, rather than stop the new illegal  
17 immigration wave, it appears that the results, if not the  
18 objective of this program, is to capitulate to the  
19 illegality. Moreover, this action rewards illegal  
20 behavior by allowing those with executive amnesty, who  
21 have been granted that by the President, improperly, in  
22 my view, who are in the United States to bring in their  
23 foreign relatives as refugees.

24 Once here with refugee status, these individuals will  
25 have largely unfettered access to Federal benefits and

1 the jobs market. Indeed, that includes Social Security  
2 numbers, Medicaid, food stamps, Medicare, and to be able  
3 to take any job in America.

4 Recent statistics from the Department of Health and  
5 Human Services' Office of Refugee Resettlement indicated  
6 that 75 percent of refugees receive food stamps, more  
7 than half receive medical assistance, approximately half  
8 receive cash assistance, and 25 percent receive public  
9 housing assistance.

10 Additionally refugee status provides a pathway to  
11 citizenship.

12 So even if these individuals do not qualify for  
13 refugee status under this program, it is not the end of  
14 the road for the entrant who has entered illegally or  
15 desires to, as the Administration will now consider  
16 paroling them into the United States. This program  
17 appears to represent an unprecedented distortion of the  
18 law relating to parole. And unlike refugee status, there  
19 is no limit whatsoever on the number of people who would  
20 be allowed to enter on parole status.

21 So while Congress has clearly provided for the  
22 admission of certain individuals as refugees, and we have  
23 always done that in this country, under Section 207 of  
24 the Immigration and Nationality Act, and has provided  
25 limited authority to parole certain individuals into the

1 United States under Sections 212(d)(5)(A) of the INA,  
2 this program, what we are hearing today, warps those  
3 authorities and undermines the integrity of the  
4 immigration system in these two critical areas of law.

5 It is troubling because this seems to be part of a  
6 continued process by this Administration, whose actions  
7 and interpretations of law are actually changing law and  
8 making the system less effective.

9 Finally, I would just note that it has been widely  
10 reported that the Administration is considering admitting  
11 dramatically higher numbers of Syrian refugees and I hope  
12 to find out more about this program and the mechanisms by  
13 which such refugees will be screened to ensure that  
14 individuals associated with terror organizations are not  
15 brought into communities across the United States.

16 So I thank our witnesses for being here.

17 [The prepared statement of Chairman Sessions appears  
18 in the appendix.]

19 Chairman Sessions. Senator Blumenthal, we would be  
20 glad to hear your opening statement at this time.

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1 OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S.  
2 SENATOR FROM THE STATE OF CONNECTICUT

3

4 Senator Blumenthal. Thank you, Senator Sessions.  
5 Mr. Chairman thanks for having this hearing.

6 I am hoping that this hearing will establish the need  
7 for in-country processing. The Administration has  
8 established that program in December of 2104 so as to  
9 uphold the rule of law, the rules that apply to young  
10 people coming to this country under established standards  
11 and criteria that have been followed and applied outside  
12 of the United States for young people coming to this  
13 country.

14 We can talk about the abstract principles and rules  
15 that are at stake here, but this issue has a human face.  
16 More than 1,000 children were murdered in Honduras in  
17 2014 alone. I spoke just this morning to a woman named  
18 Berta Caceres, who has fought valiantly for environmental  
19 protection in that country and faces threats and  
20 intimidation from a regime that she, understandably and  
21 rightly, regards as oppressive.

22 The conditions there are life-threatening not only to  
23 people who speak their minds and speak truth to power,  
24 but also children who are innocent victims of gang  
25 warfare and lack of protection that is beyond their

1 choice or control; 724 such children were murdered in El  
2 Salvador; 156 in Guatemala were murdered just in the  
3 first 3 months of this year.

4 These numbers are stark statistics, but they  
5 constitute some of the highest homicide rates in the  
6 world, and too often the governments in question fail to  
7 prevent this violence.

8 The Obama Administration's Central American migrant  
9 program may help a few hundred of these children. So far  
10 not a single child has even been processed, not to  
11 mention rescued, and here we are in this forum holding a  
12 hearing on whether the United States is doing too much to  
13 save these children -- whether we are doing too much when  
14 thousands are dying as a result of murder, oppression and  
15 brutality.

16 That is a shame. I submit to you that no country has  
17 ever felt ashamed for doing too much to save children.  
18 And there is a long list of nations, including our own,  
19 that have felt deep remorse for doing too little.

20 The Central American migrant program that we are  
21 discussing here unquestionably has its flaws, but there  
22 is no argument that it does too much to save children or  
23 helps too many people or rescues too many victims of  
24 oppression. That argument simply cannot be made. Or  
25 that it enables or has enabled people to come flowing

1 into this country without the rule of law, without  
2 principles.

3 The Central American minor program focuses on a  
4 relatively narrow group of children who have ties to the  
5 United States. Every one of these children eligible for  
6 the program has a parent living legally in the United  
7 States. Every one of them qualifies for protection under  
8 U.S. law. Every one of them will pass in-depth  
9 background checks, including a DNA test.

10 The lives saved by this program effectively commit no  
11 cost to the United States. The program does not raise  
12 Federal spending by \$1, not a single \$1. Every dime  
13 spent on it has already been appropriated. Nor does this  
14 program increase by a single person the number of  
15 refugees who will be allowed in the United States. It is  
16 just a question of where they are processed.

17 Every slot reserved for a Central American minor has  
18 already been approved through the process Congress  
19 created.

20 I know we are going to hear testimony today  
21 discussing the legal scope of refugee protections. That  
22 is a legitimate set of issues. Witnesses are going to  
23 debate what Congress intended in the somewhat opaque, one  
24 might say abstruse language of immigration law.

25 My personal view is that President Obama has been

1 true to the letter and the spirit of this law and I  
2 think, with all due respect, arguments saying he is  
3 violating the law are unfounded.

4 But behind all these legal arguments -- and I will  
5 just close on this note -- behind every one of the legal  
6 issues, there is a bigger question. Does the United  
7 States do everything it reasonably can to save children  
8 -- and I have seen them at the border -- children who  
9 cannot speak English, who are tall enough barely to  
10 answer questions from a border patrol inspector seated  
11 while he interrogates them, children who are literally  
12 escaping.

13 They are not coming here to take jobs. They are not  
14 coming here to fill jobs that some American would take.  
15 They are not coming here because they want food stamps or  
16 any other benefits, Medicare, Medicaid.

17 They are coming here to escape oppression, brutality,  
18 murder, rape, and they are seeking hope, security and  
19 they have a special tie to our country.

20 So that is the central question before us today and  
21 the answer is central to who we are as a people, who we  
22 are as an American people, whether we will afford that  
23 kind of safety to young people fleeing oppression and  
24 brutality, processed not here, but in those countries  
25 where they are actually experiencing.

1 I hope that this Nation gives the right answer.

2 Thank you, Mr. Chairman.

3 [The prepared statement of Senator Blumenthal appears  
4 in the appendix.]

5 Chairman Sessions. Thank you.

6 Would you please stand, our witnesses, and take this  
7 oath? Raise your right hand.

8 [Witnesses sworn.]

9 Chairman Sessions. Thank you. Take your seats.

10 As we go forward, I think it is so important that a  
11 great nation like the United States, which is the most  
12 generous nation in the world with regard to taking in  
13 immigrants, refugees, asylees, and we work at it in a  
14 very effective way.

15 We are very generous through the State Department,  
16 USAID and others, more than any other country in the  
17 world. We have got church people that go to Central and  
18 South American and the islands annually, helping people  
19 in need.

20 So I am proud of this country and what we do, but we  
21 have to have a lawful system that serves in our national  
22 interest, is consistent with what is feasible and  
23 realistic.

24 So let us talk about this definition of -- thank you.  
25 I am not a very good Chairman. This is my second time to

1 start off talking without letting our witnesses have  
2 their say.

3 Mr. Langlois, he is the Associate Director for  
4 Refugee, Asylum and International Operations Directorate  
5 for the U.S. Citizenship and Immigration Service. He has  
6 been with the U.S. Citizenship and Immigration Service  
7 and its predecessor, Immigration and Naturalization  
8 Service, since 1991, 35 years of experience working on  
9 asylum, refugee immigration issues in the Federal  
10 Government and in non-government organizations.

11 I know that during that time you have seen the warp  
12 and the woof of all the issues. So we would be delighted  
13 to hear from you at this time.

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1 TESTIMONY OF MR. JOSEPH E. LANGLOIS, ASSOCIATE DIRECTOR  
2 FOR REFUGEE, ASYLUM AND INTERNATIONAL OPERATIONS, U.S.  
3 CITIZENSHIP AND IMMIGRATION SERVICE, WASHINGTON, DC  
4

5 Mr. Langlois. Chairman Sessions and distinguished  
6 members of the Subcommittee, thank you for the  
7 opportunity to testify at today's hearing on the Central  
8 American Minors Refugee and Parole Program, otherwise  
9 known as CAM.

10 My name is Joseph Langlois and I am the Associate  
11 Director of the Refugee, Asylum and International  
12 Operations Directorate within United States Citizenship  
13 and Immigration Services, USCIS, at the Department of  
14 Homeland Security. I oversee the U.S. refugee program  
15 abroad and certain parole programs within USCIS.

16 USCIS has a strong and longstanding partnership with  
17 the Department of State in administering the U.S. Refugee  
18 Admissions Program. We work together around the world to  
19 offer resettlement opportunities to qualified refugees,  
20 while vigilantly protecting the overall integrity of the  
21 process.

22 While the CAM program is new, it is rooted in  
23 traditional U.S. humanitarian principles, including  
24 facilitating family unity and providing resettlement  
25 opportunities to individuals who face harm, but remain in

1 their country of origin.

2 Specifically, CAM is an in-country refugee and parole  
3 processing program in El Salvador, Honduras and Guatemala  
4 that provides certain minors from those countries a safe,  
5 legal and orderly alternative to the dangerous journey  
6 across the southwest border to reach the United States.

7 Only children with a lawfully present parent in the  
8 United States are qualified for resettlement  
9 consideration under this program. In addition, a parent  
10 living with the child, if married to the parent lawfully  
11 present in the United States, may also be eligible to  
12 access the resettlement program in order to maintain  
13 family unity.

14 Furthermore, USCIS is committed to ensuring the  
15 integrity of the CAM program and this approach is  
16 reflected in many aspects of its design and  
17 implementation. For example, DNA testing is required to  
18 verify biological relationship between parent and child  
19 before a case is ever scheduled for a USCIS interview.

20 In addition, USCIS places paramount importance on  
21 training of our adjudicators. All officers interviewing  
22 refugee applicants abroad receive specialized training  
23 that includes comprehensive instruction on refugee law,  
24 grounds of inadmissibility, fraud detection and  
25 prevention, security protocols, interview techniques,

1 credibility analysis, and country conditions.

2 Before deploying abroad, officers are also trained on  
3 the specific population they will be interviewing. For  
4 this program, officers also receive specialized training  
5 in interviewing children.

6 The refugee resettlement program has forged strong  
7 relationships with the law enforcement, national security  
8 and intelligence communities. As a result, refugee  
9 applicants are subject to robust screening protocols,  
10 including biometric and biographic checks to identify  
11 potential fraud, criminal or national security issues.

12 As with any refugee adjudication, CAM applicants must  
13 be found to meet the refugee definition and be otherwise  
14 admissible to the United States. No refugee applicant  
15 can be approved for resettlement until all security  
16 checks are completed.

17 CAM applicants who are found not to meet the  
18 definition of a refugee, but who nevertheless still face  
19 harm in their country of origin, will be considered on a  
20 case-by-case basis for a discretionary grant of parole.  
21 In this way, the CAM program parallels other refugee  
22 programs in the past that used parole to complement the  
23 refugee status determination process.

24 Like refugee applicants, all security checks must be  
25 completed prior to a grant of parole. USCIS will make

1 parole determinations based on all available evidence,  
2 including the information elicited at the refugee  
3 interview, to assess whether the child's case merits a  
4 favorable exercise of discretion.

5 To date, USCIS has not completed any applications for  
6 refugee or parole status through the CAM program because  
7 applications have only been recently filed and are  
8 awaiting DNA testing results. In the meantime, we have  
9 been working diligently on all aspects of the planning,  
10 logistics, and program implementation.

11 In fact, my staff is in the region this week to lay  
12 the groundwork for our first processing trip, likely to  
13 occur I late spring or early summer.

14 In conclusion, USCIS is committed to offering  
15 protection to qualified persons while remaining resolute  
16 in combating fraud, promoting public safety, safeguarding  
17 the national security.

18 Thank you for the opportunity to testify today and I  
19 would be more than happy to answer your questions.

20 [The prepared testimony of Mr. Langlois appears in  
21 the appendix.]

22 Chairman Sessions. Thank you.

23 We also welcome next Mr. Simon Henshaw. He is the  
24 Principal Deputy Assistant Secretary at the Department of  
25 State. He joined the State Department in 1985 -- you are

1 a 30-year person, too, I see -- and has served in a  
2 variety of capacities and various posts across the world.

3 And I will say it is good to have people with  
4 substantial experience. I think you can help us  
5 understand the law, how it is developed and the meaning  
6 that we have been utilizing and if changes are occurring.

7 So, Mr. Henshaw, we welcome you and thank you, both  
8 of you, for your service to the country.

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1 TESTIMONY OF MR. SIMON HENSHAW, PRINCIPAL DEPUTY  
2 ASSISTANT SECRETARY, THE BUREAU OF POPULATION, REFUGEES  
3 AND MIGRATION, U.S. DEPARTMENT OF STATE, WASHINGTON, DC  
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5 Mr. Henshaw. Thank you for those kind words.  
6 Chairman Sessions and distinguished members of the  
7 Subcommittee, the Department of State appreciates the  
8 opportunity to appear before the Subcommittee on  
9 Immigration and the National Interest, along with U.S.  
10 Citizenship and Immigration Services, to talk about the  
11 Administration's new in-country refugee/parole program  
12 for certain minors in Central America.

13 The U.S. Government is taking an integrated and  
14 comprehensive approach to address the underlying economic  
15 and security challenges facing Central American countries  
16 and the unlawful migration of unaccompanied minors across  
17 the U.S. border.

18 The Administration has launched the refugee/parole  
19 program as part of that effort. As previewed in the  
20 Administration's fiscal year 2015 report to Congress on  
21 proposed refugee admissions and in consultations with  
22 Congress last September, this in-country refugee and  
23 parole processing program allows certain parents who are  
24 lawfully present in the United States to request U.S.  
25 resettlement for their children currently still in El

1 Salvador, Guatemala and Honduras.

2 The Administration established the program to provide  
3 a safe, legal and orderly alternative to the dangerous  
4 journey that some children are currently undertaking to  
5 join their parents in the United States. Our goal is to  
6 extend protection to those children with legitimate  
7 humanitarian claims while providing an effective  
8 alternative to a regular migration driven by dangerous  
9 criminal smuggling networks.

10 Taken together with the efforts of Central American  
11 leaders and other U.S. Government efforts, we believe  
12 this measure will help keep people from sending children  
13 on this dangerous journey.

14 Addressing these issues requires cooperation and  
15 partnership, with Central American governments taking the  
16 lead and creating better economic, social, governance and  
17 security conditions, and with the private sector,  
18 development banks and international donors.

19 That is why the Obama Administration has asked  
20 Congress for \$1 billion in assistance for the region.  
21 This is critical, as is having a fairer, safer and more  
22 humane system for identifying children eligible for  
23 humanitarian protection.

24 To apply, an eligible parent in the United States  
25 must complete a form with the assistance of a State

1 Department-funded resettlement agency. There are nearly  
2 350 such agencies across the United States in 180  
3 communities. This list is available on our Web site,  
4 where we also have information in Spanish and English.

5 Once an application is submitted by a parent, a case  
6 worker from the International Organization for Migration,  
7 IOM, acting on the U.S. Government's behalf, will contact  
8 a child in one of the three countries to arrange an in-  
9 person pre-screening appointment. A parent of the child  
10 still living in the country of origin may be added to the  
11 child's case if that parent resides with the child and is  
12 currently married to the U.S.-based parent who filed the  
13 form.

14 After IOM conducts the initial pre-screening with  
15 each minor, the Department of Homeland Security will  
16 conduct interviews with the minor to determine whether he  
17 or she is eligible for refugee resettlement, including  
18 whether he or she meets the refugee definition in the  
19 Immigration and Naturalization Act and is otherwise  
20 admissible to the United States.

21 All applicants must complete all required security  
22 checks and obtain a medical clearance prior to travel to  
23 the United States. For approved refugees, the  
24 resettlement support center will arrange travel to the  
25 United States.

1           There is a required DNA testing component to this  
2 program to verify biological parent-child relationships  
3 claimed in the application. DNA testing is a mechanism  
4 to deter fraudulent relationship claims in order to gain  
5 access to the program, a measure we already employ  
6 successfully in our refugee family reunification program.

7           Once the U.S.-based parent is notified to initiate  
8 the DNA testing process, he or she arranges and covers  
9 the cost for a certified lab to ship a testing kit to the  
10 child's location. When the biological relationship is  
11 verified, the lab sends the results to both the parent  
12 initiating the process and to the Department of State,  
13 which coordinates further processing.

14           DHS then takes the lead in reviewing the case to  
15 verify which applicants will have access to the program.

16           Children admitted as refugees under this program will  
17 be assigned to a U.S.-based resettlement agency that will  
18 facilitate reunification with the parent and help the  
19 child after arrival with such things as enrolling in  
20 school.

21           Children found by USCIS to be at risk of harm, but  
22 not eligible for refugee resettlement will be considered  
23 on a case-by-case basis for parole, which is a  
24 discretionary mechanism under U.S. law to allow someone  
25 to come to the United States for urgent humanitarian

1 reasons.

2 We have received 565 applications to date, 439 from  
3 El Salvador, 114 for Honduras, and 12 for Guatemala.  
4 These applications are being processed and we hope to  
5 begin USCIS interviews later this spring or early summer  
6 for those who have submitted the required DNA evidence of  
7 the parent-child relationship.

8 If an applicant informs us that or she is facing  
9 imminent danger, we have the capacity to expedite  
10 processing and/or work with NGO and IO partners to  
11 identify safe shelter as appropriate.

12 The Department of State continues to monitor the  
13 protection environments for the children in each of the  
14 three countries to assess the needs of the minors during  
15 the application period.

16 The Department of State is in regular contact with  
17 NGOs operating in the region to assess the changing  
18 environment and provide further guidance and training on  
19 the program as necessary.

20 The Department of State and USCIS have conducted  
21 considerable outreach on this program and the results are  
22 beginning to show with increased applications in recent  
23 weeks. Overall, the Department of State has explained  
24 this program to almost 40 media outlets since December.  
25 We have conducted more than 20 interviews with Spanish

1 language media in the United States and the region.  
2 Additionally, we have provided information to the press  
3 via a dozen background interviews.

4 Finally, with the support of our embassies abroad, we  
5 continue to expand outreach efforts in all three  
6 countries.

7 Thank you for the opportunity to testify about this  
8 humanitarian program that is designed to provide a safe,  
9 legal and orderly alternative to the dangerous journey  
10 that some children are undertaking to reach the U.S. I  
11 would be happy to answer any questions.

12 [The prepared testimony of Mr. Henshaw appears in the  
13 appendix.]

14 Chairman Sessions. All right. The order of  
15 presence would be Sessions, Blumenthal, Tillis,  
16 Klobuchar, and Cornyn.

17 Well, under the program, as I see it, through the  
18 President's executive action, he is unable to give lawful  
19 status to people who have entered the country unlawfully.  
20 So he has issued an order essentially giving lawful  
21 presence.

22 So if a person is here in America, that has been here  
23 unlawfully, is given by the executive order, which I  
24 think is not sound and not justified, but they are given  
25 lawful presence.

1           They are then able to bring in their spouse and  
2 children under this program. Would that not be fair to  
3 say, Mr. Langlois?

4           Mr. Langlois. The eligibility of the program is  
5 basically the individual that is in the United States,  
6 the parent that is in the United States must be an LPR,  
7 legal permanent resident, a TPS, a temporary protected  
8 status recipient, deferred action, deferred action DACA,  
9 as well as deferred enforced departure, as well as  
10 withholding of removal.

11           These are the definitions of the lawfully present  
12 status. And I would also state that the vast majority of  
13 parents that we have seen so far apply, although it is a  
14 very limited that we have received so far, are temporary  
15 protected status coming from El Salvador and from  
16 Honduras.

17           Chairman Sessions. So my question was correct, was  
18 it not, that a person provided legal status in this  
19 country who came here illegally, in violation of our law,  
20 that received legal presence by order of the President is  
21 now able to bring in, under the President's order, his  
22 spouse and children or her spouse and children; is that  
23 correct?

24           Mr. Langlois. That is correct, yes. They would  
25 qualify to apply for their child and spouse. However,

1 the child and spouse would still need to meet the  
2 eligibility criteria for refugees, as well as --

3 Chairman Sessions. Meet the standards that you have  
4 set forth, I understand that. I just want to say  
5 Congress rejected this. Congress rejected this. So the  
6 President is executing it on his own.

7 We will have some more questions, but it is a new  
8 program and, in effect, establishes a new system of  
9 immigration to the United States.

10 With regard to cost of the program, it was mentioned  
11 earlier it would not have a cost. I see that there is a  
12 \$47 million cost over 2 years for a pilot program to  
13 bring in persons under this kind of system.

14 Are you familiar with that?

15 Mr. Henshaw. No, Senator, there is no \$47 million  
16 pilot program. The CAM program does not have a separate  
17 budget. It is funded out of existing fiscal year 2015  
18 PRM admissions, our admissions budget, and, more  
19 specifically, is included within our existing regional  
20 resettlement operations for Latin America.

21 Chairman Session. Well, it has a cost, does it not?

22 Mr. Henshaw. It does. At the beginning of fiscal  
23 year 2015, we included approximately \$7 million in the  
24 admissions budget for the in-country CAM program, but  
25 there was no increase in our overall admissions budget.

1 Chairman Session. Well, the *New York Times* reported  
2 with regard to a Honduran program that the proposal  
3 prepared by several Federal agencies said the pilot  
4 program under consideration would cost \$47 million over  
5 just 2 years.

6 Well, at any rate, it is not free.

7 Mr. Langlois, Section 101(a)(42) of the Immigration  
8 and Nationality Act defines a refugee generally as a  
9 person who has experienced past persecution or who has a  
10 well-founded fear of future persecution, quote, "on  
11 account of race, religion, nationality, membership in a  
12 particular social group, or political opinion, closed  
13 quote.

14 In enacting this law, Congress specifically rejected  
15 a definition of refugee that would have included  
16 displaced persons, individuals who flee widespread  
17 conditions of indiscriminate violence resulting from  
18 Civil War or military strife are not included in that  
19 status; is that correct?

20 Mr. Langlois. Yes. That is certainly correct.

21 Chairman Sessions. Can you cite any precedential  
22 case that stands for the proposition that any of the  
23 beneficiaries in this program would qualify as refugees  
24 as that term is defined under law? Is there any history  
25 of doing this?

1           Mr. Langlois.    The in-country processing program has  
2    been adopted in numerous countries in the past, and I  
3    also would point out that we have not begun interviewing  
4    these individuals.

5           So I do not want to speculate as far as what their  
6    cases could be nor influence the decision of my officers  
7    in the future by predicting if they would be successful  
8    or not.

9           Chairman Sessions.   Well, just to finish this up and  
10   I will go to Senator Blumenthal.

11          But the question is the standard by which they will  
12   be reviewed in-country and the standard you are talking  
13   about applying has not been utilized before and is more  
14   liberal in its definition of refugee than current law; is  
15   it not, or at least than you have currently interpreted  
16   the law?

17          Mr. Langlois.    No.  I would say that we are going to  
18   apply the same standard that we have applied worldwide  
19   for many years.  I have refugee officers that conduct  
20   refugee interviews in numerous places throughout the  
21   world.  They are very well trained and they will be  
22   applying the same standard that they do all places  
23   throughout the world.

24          The only difference is the country conditions is  
25   going to vary, of course, from country to country, which

1 is logical. So they will be taking the country  
2 conditions in account, but applying the same law  
3 rigorously in the same fashion that they have done in  
4 many countries throughout the world.

5 Chairman Session. Well, Mr. Langlois, are you  
6 familiar with this new briefing paper of April 15, 2015  
7 that tells how these individuals should be evaluated?

8 Mr. Langlois. Excuse me. I cannot really see that  
9 that well.

10 Chairman Sessions. Update on New and Novelty SGS.

11 Mr. Langlois. And who produced the document?

12 Chairman Sessions. USCIS. It changes the standard.  
13 It is breathtaking in its liberality with regard to what  
14 a refugee is and I believe it is quite contrary to any  
15 standard we have used before in any other situation.

16 Here are two recent formulations. Nationality, who  
17 reported a serious gang-related or core terror-related  
18 crime to law enforcement. So you now have refugee status  
19 if you claim you have reported a serious gang-related  
20 incident.

21 Number two, female heads of household, that is all it  
22 says. So a female head of household has some sort of  
23 preferential status as a refugee. Is that not a  
24 different standard? And just because you have reported a  
25 crime to law enforcement, you now have a right to be a

1 refugee and apply to the United States.

2 Mr. Langlois. Under the particular social group, it  
3 is an evolving area of law. However, there are tenets  
4 that must be strictly adhered to. The quality, the  
5 characteristic of the individual has to be immutable, it  
6 has to be socially distinct, it has to have  
7 particularity, and the case must be made on an individual  
8 basis.

9 Those are generalities for instructional purposes and  
10 I have not seen that document, so I apologize.

11 Chairman Sessions. Well, we just received it. And  
12 I will yield to others, but we need to follow-up on that  
13 because I think the pattern here is clear that they go  
14 further than we have before.

15 Senator Blumenthal?

16 Senator Blumenthal. Thanks, Mr. Chairman.

17 One of the supreme ironies today is that the United  
18 States has just passed an anti-trafficking bill, a  
19 measure of very modest scope despite all of the self-  
20 satisfaction expressed about it, and here we are debating  
21 the merits of a program that stops human trafficking,  
22 particularly child exploitation.

23 I submit to the witnesses that this program is  
24 directed against exploitation and trafficking of children  
25 by enabling processing decisions to be made before they

1 endure the susceptibility to those traffickers and  
2 criminals who would sell them into modern day slavery or  
3 otherwise exploit them. Am I right in that belief?

4 Mr. Henshaw? And you have served in Honduras, have  
5 you not?

6 Mr. Henshaw. I have, sir. I spent 3 years there  
7 and 3 years in the 1990s in El Salvador.

8 Yes, I think you are correct, Senator. The purpose  
9 of this program, as in past in-country programs is to  
10 stop people from taking a dangerous journey when they  
11 could otherwise apply in-country for refugee status.

12 Senator Blumenthal. Mr. Langlois, do you agree?

13 Mr. Langlois. Yes. This program is designed to  
14 provide hope to children who have had long separations  
15 from their lawfully present parent in the United States.  
16 With this provision of hope, we attempt to discourage  
17 them from utilizing a criminal network in order to enter  
18 the United States without authorization.

19 Senator Blumenthal. And the criminal network is one  
20 of the great omnipresent, oppressive, brutal threats to  
21 them; is it not?

22 Mr. Langlois. Yes. Gang violence is very present  
23 and smuggling networks are extremely dangerous, and this  
24 program is designed, as I stated, to discourage their  
25 involvement, to weaken their attraction in order for

1 these individuals who, again, have parents that are  
2 lawfully present to come into the United States and the  
3 family to be reunited.

4 Senator Blumenthal. These networks are traffickers.  
5 The criminal networks, the organized crime are the  
6 traffickers who sell them for prostitution, for slavery,  
7 for other truly horrific forms of oppression; is that  
8 correct?

9 Mr. Langlois. That is my understanding.

10 Senator Blumenthal. And so far as the parents in  
11 this country, my understanding also is that this measure  
12 in no way expands the eligibility of those parents for  
13 legal status. They are here legally. It in no way  
14 expands the children's eligibility to come here because  
15 those parents have to be qualified, and, therefore,  
16 simply applies in Honduras, El Salvador, the same  
17 standards that would be applied here after that  
18 torturous, extraordinarily dangerous journey.

19 Is that statement correct?

20 Mr. Langlois. The lawfully present parent is not  
21 created by this program.

22 Senator Blumenthal. I understand that. Maybe I  
23 could be misunderstood. That is exactly my point,  
24 exactly right. The status of that parent is not affected  
25 by this program. This program is about the place where

1 the processing occurs using the same rules and standards  
2 so as to avoid trafficking that is the evil that this  
3 body ostensibly is fighting through measures like the one  
4 we passed this week.

5 Mr. Langlois. Yes.

6 Senator Blumenthal. Thank you. I may have other  
7 questions, Mr. Chairman.

8 Chairman Sessions. Thank you.

9 Senator Tillis?

10 Senator Tillis. Thank you, Mr. Chair.

11 And while Senator Cornyn is here, I want to  
12 personally thank him for his tenacity in getting the  
13 human trafficking bill through. But I tend to agree with  
14 Senator Blumenthal, it is a modest effort. That is one  
15 of the reasons why I am amazed it took so long to get  
16 done, but thank you for doing it and I hope there is more  
17 to come.

18 Gentlemen, I want to shift the focus more toward the  
19 things that we are doing to protect American citizens  
20 from decisions you make about the safety and security of  
21 those that you may admit into the country.

22 It is my understanding that children under the age of  
23 21 and their parents, under certain conditions, are  
24 eligible for CAM. I know you go through a series of  
25 background checks and do the kinds of -- complete the due

1 diligence to make sure that you are not, in fact,  
2 admitting someone who may be dangerous or have some  
3 criminal background.

4 Can you give me some idea about the databases that  
5 you are using as a part of the background checks to  
6 assess the risk of admittance?

7 Mr. Langlois. Certainly. Thank you. First of all,  
8 the program is based on DNA, where we verify the  
9 relationship with biological children. Then we obtain  
10 fingerprints. Fingerprints are run through numerous data  
11 banks. The first data bank that we run the fingerprints  
12 to and then we enroll them into is IDENT, which is a  
13 system that is maintained, I think, by CBP. It is a DHS  
14 system. It has immigration records, it has criminal  
15 records.

16 We do have the FBI feeding into it, as well as State  
17 Department feeds into it.

18 Senator Tillis. Mr. Langlois, as you are going  
19 through that, do we have either agreements or a  
20 memorandum of understanding with countries like El  
21 Salvador and Honduras and Guatemala that allow us to get  
22 insights into criminal background history within the  
23 country?

24 Mr. Langlois. We are liaisoning. As we speak, I  
25 have a team that is in El Salvador and then going to

1 Honduras, liaising with ICE and the FBI, their criminal  
2 gang units, in both of these countries in order to  
3 discuss how they can better assist us in the detection of  
4 criminals, as well as gang members in these countries.

5 Senator Tillis. So does that mean that today we do  
6 not really have clear access into their criminal  
7 background information in-country on a consistent basis?

8 Mr. Henshaw. If I could cut in here. Senator,  
9 having served 3 years in Honduras and previously in El  
10 Salvador, we have longstanding relationships with the  
11 police and have access to that information. We have had  
12 a long history of having units embedded in police forces  
13 both for anti-gang, anti-criminal and anti-drug efforts.

14 And we have used this information in the past in  
15 other programs such as immigrant visas and non-immigrant  
16 visas. So we have a long history of screening people  
17 before they come to the United States.

18 Senator Tillis. Thank you. You may be aware that I  
19 am from North Carolina, the Charlotte area. We had the  
20 murder of three Americans by someone who was granted  
21 deferred status, who apparently had known gang  
22 affiliations. And I think since this has come to light,  
23 we have had people in USCIS acknowledge that somehow this  
24 was an oversight. There was some sort of breakdown in  
25 the system that allowed that to happen.

1           It is something that Chairman Grassley and I have  
2 followed-up on. So I am concerned with whether or not we  
3 have a repeatable process, particularly in the face of  
4 information that should have put the status of this  
5 person, who was admittedly from Mexico, but in a  
6 different status.

7           So I guess really, in my time remaining, I would like  
8 to get some assurance from you all that you can  
9 confidently and unequivocally say that your agency is not  
10 going to make the same errors when vetting people  
11 applying for refugee status under the CAM refugee/parole  
12 program. Can I get that assurance?

13           Mr. Henshaw. Senator, we are committed to giving  
14 the utmost review of every single refugee applicant to  
15 make sure that it is safe to bring them into the United  
16 States.

17           Senator Tillis. I guess the final question in my  
18 remaining time is since the CAM refugee/parole program  
19 was implemented, have any internal reviews been conducted  
20 to identify potential errors, internal, more or less,  
21 audits of the process and has the agency identified any  
22 people which were erroneously granted refugee or parole  
23 status in the program?

24           Mr. Langlois. We have yet to interview anyone in  
25 the process. So it is too early to begin an audit. We

1 are still waiting for DNA results, which are required  
2 prior to the interview. So the program is just being  
3 stood up and as I told you, we are reaching out.

4 Senator Tillis. Well, in just closing, Mr.  
5 Chairman, I know my time has expired, I actually share  
6 some of the concerns of Ranking Member Blumenthal in  
7 terms of legitimate problematic situations and we should  
8 do everything we can to be the humane nation that we are.  
9 But at the end of the day, I have to be absolutely  
10 convinced that we have processes that are protecting the  
11 safety and security of American citizens.

12 And in this one case, it obviously broke down. We  
13 have got to be absolutely certain that these decisions  
14 are in no way putting American citizens at risk and it is  
15 something that I will continue to follow-up on in light  
16 of a very impactful situation that happened down in  
17 Charlotte.

18 Thank you. And by the way, thank you very much for  
19 your longstanding service. You have transcended a lot of  
20 the folks that are up here and I appreciate your work. I  
21 am going to hold you to a high standard, though, when it  
22 comes to doing the right thing for American citizens.

23 Thank you, Mr. Chair.

24 Senator Blumenthal. Mr. Chairman, I would just like  
25 to join Senator Tillis in thanking Senator Cornyn for his

1 work on the anti-trafficking bill, along with Senator  
2 Klobuchar, who was here earlier. I was remiss in failing  
3 to express that gratitude earlier for his perseverance  
4 and his caring about this issue.

5 Thank you.

6 Chairman Session. It was a heroic effort and he  
7 gets an A for that, there is no doubt.

8 Senator Tillis, I would just note that the problem I  
9 think you referred to in North Carolina was using United  
10 States data and information.

11 What they are talking about is having to rely on data  
12 in Central America, which is far less accurate and  
13 extensive than we have. But thank you.

14 Senator Franken. Thank you, Mr. Chairman.

15 Mr. Langlois, in the testimony that you and Mr.  
16 Henshaw submitted for today's hearing, you both made  
17 clear that one of the CAM program's primary objective is  
18 stemming the flow of unaccompanied minors across our  
19 southwest border by providing a safe, legal alternative  
20 to parents already lawfully in the United States who are  
21 seeking to reunite their families.

22 This program is designed to reduce the number of  
23 children who instead make this harrowing trip alone.

24 Now, I understand that your work at the U.S.  
25 Citizenship and Immigration Services -- that your work is

1       there and not the Border Patrol, but can you tell me  
2       whether there are any efforts underway that are likewise  
3       designed to reduce the number of unaccompanied minors we  
4       are receiving now?

5             Mr. Henshaw.   Whether or not there are efforts  
6       underway to slow down the flow of immigrants coming up  
7       through Mexico and Central America?

8             Senator Franken.   Yes.

9             Mr. Henshaw.   Yes, Senator, there are.  We are  
10       working with the Mexican government and the governments  
11       of the three northern tier states to improve their  
12       abilities to slow down the flow of immigrants,  
13       particularly children, through their borders and we have  
14       had a good deal of success within the last year with the  
15       Mexican government on that.

16            Senator Franken.   Thank you.  It is no mystery that  
17       one of the purposes of this hearing is to portray the CAM  
18       program as skirting the law and a drain on Federal  
19       dollars.  It is right there in the title, "Eroding the  
20       Law and Diverting Taxpayer Resources."  But that actually  
21       seems like an unfair characterization to me.

22            Is it not true that if an applicant is approved for  
23       participation in the CAM program, that the government  
24       does not simply pay for their travel, but instead  
25       provides those granted refugee status with a loan to

1 cover travel expenses and that they must repay that loan?

2 Mr. Henshaw. That is correct. Through the  
3 International Organization for Migration, we provide a  
4 loan to pay for the air ticket only and they are required  
5 to repay that and they do that through the U.S.  
6 Resettlement Agency which resettles them in the United  
7 States.

8 Senator Franken. Thank you. What if an applicant  
9 is not granted refugee status, but is instead granted  
10 temporary parole, are they still eligible to receive a  
11 loan?

12 Mr. Langlois. They are not eligible for a loan.  
13 No, they are not. They must pay their own airfare to  
14 come to the United States.

15 Senator Franken. And it is my understanding that in  
16 order to be approved for even temporary parole, an  
17 applicant must undergo a comprehensive medical screening;  
18 is that correct?

19 Mr. Langlois. Yes, that is correct and that is not  
20 paid for, unlike refugees where the medical screening is  
21 paid for. Parolees must pay for their own medical.

22 Senator Franken. I want to talk about children for  
23 a moment. This is a concern of mine, just the welfare of  
24 children in vulnerable populations in our current  
25 immigration system.

1           Often in immigration proceedings children are left to  
2 represent themselves in court without access to counsel.  
3 They are detained in substandard conditions for far  
4 longer than should be necessary because our immigration  
5 courts are saddled with record backlogs.

6           According to the immigration lawyers in my State, a  
7 candidate for asylum will not be able to get a hearing  
8 until the fall of 2016 given the current backlog.

9           Now, when these kids finally do get a hearing,  
10 immigration judges are so overworked that they do not  
11 have enough time to carefully consider the cases. This  
12 leads to the unfortunate reality that judges are likely  
13 to miss potential candidates for asylum and may send  
14 these kids back to danger in their own countries.

15           These problems, to me, in our immigration courts are  
16 inexcusable. That is why I have supported increased  
17 funding for immigration courts and advocated for  
18 comprehensive immigration reform that would provide  
19 children with access to counsel, keep them out of  
20 solitary confinement, and allow judges to have the time  
21 to really hear their cases.

22           Can you talk a little bit about the challenges facing  
23 children as they interact with our immigration courts?

24           Mr. Langlois. Certainly, Senator. Individuals that  
25 are unaccompanied alien children that appear in front of

1 an immigration judge that wished to apply for asylum are  
2 actually given the opportunity, instead of presenting the  
3 case to the judge, to come in front of an asylum officer  
4 first for a non-adversarial interview.

5 Now, asylum officers conduct these interviews with  
6 the unaccompanied alien child. The child has the ability  
7 to have a lawyer there, but it is not paid for by the  
8 government. So we do have some backlogs with --

9 Senator Franken. And some appear without lawyers.

10 Mr. Langlois. Yes. Some do appear without lawyers,  
11 although the pro bono attorney representation rate is  
12 quite high with unaccompanied alien children.

13 After the non-adversarial, if the case is granted,  
14 they are granted asylum status. However, if they are not  
15 granted, they get put back in front of the immigration  
16 judge for the judge conduct a removal proceeding and they  
17 may renew their asylum request before the judge.

18 Again, the attorney should be at no expense to the  
19 government.

20 Senator Franken. Thank you. Thank you, Mr.  
21 Chairman.

22 Chairman Sessions. Senator Cornyn?

23 Senator Cornyn. Thank you, Mr. Chairman.

24 Mr. Langlois, Mr. Henshaw, neither one of you are  
25 policymakers, I believe; is that correct?

1 Mr. Langlois. That is correct.

2 Mr. Henshaw. Yes, sir.

3 Senator Cornyn. We will try not to shoot the  
4 messenger because I know you are just doing your job and  
5 you are trying to carry out the policies that are  
6 determined at some place else other than in your office.

7 But I want to start out just by distinguishing  
8 between the CAM program and the policies that you are  
9 implementing here and those that have been applied in  
10 other contexts.

11 First of all, there is a requirement that there be a  
12 lawfully present parent, as I heard you say, not somebody  
13 with a legal status, but somebody who is lawfully  
14 present. I think, Mr. Langlois, you did a good job ov  
15 laying out the cafeteria plan of possibilities in terms  
16 of somebody being legally present.

17 But that would include, for example, a beneficiary of  
18 the President's executive action, which is currently the  
19 subject of litigation. Is that not right?

20 Mr. Langlois. Yes, that is correct, Senator.

21 Senator Cornyn. Thank you. I was intrigued to hear  
22 about the attempt to try to place a child with a parent  
23 and the DNA testing and I actually applaud you having a  
24 criminal background check and taking other protections.

25 I do want to contrast that, though, with the roughly

1 50,000 children that appeared on our doorstep last year  
2 from Central America and the policies of the  
3 Administration.

4 As I understand, the children, once they were  
5 processed by border patrol, were turned over to Health  
6 and Human Services and could be placed with somebody  
7 other than a parent. Is that not correct? Mr. Langlois,  
8 can you confirm that?

9 Mr. Langlois. Since I do not oversee that process,  
10 I would be very reluctant to speak on that process.

11 Senator Cornyn. If you do not know, that is fine.  
12 Do you know, Mr. Henshaw?

13 Mr. Henshaw. No, sir, I do not.

14 Senator Cornyn. Well, it is my understanding that  
15 there is no requirement under that procedure for the  
16 50,000-plus children who appeared here from Central  
17 America last year. I understand the CAM program is  
18 designed to try to deal with this differently, but that  
19 causes me a lot of concern that while you recognize the  
20 importance of confirming by DNA testing that the child is  
21 actually being placed with a parent and indeed doing a  
22 criminal background check, neither of those requirements  
23 is present under the Administration's policy with regard  
24 to children who come to the United States outside of the  
25 CAM program.

1           Mr. Chairman, I think that is something we ought to  
2 look at because talking about the trafficking issue, I do  
3 not believe there is any assurance we could give anybody  
4 that the children who came here unaccompanied from  
5 Central America last year and who continue to come here,  
6 who are not necessarily placed with a parent and that  
7 individual is not given a DNA test to confirm that  
8 biological relationship nor are they subject to a  
9 criminal background check, could indeed be inadvertently  
10 placed with a child predator or a sex offender or someone  
11 else who might traffic the child, and that strikes me as  
12 a huge gap in our practice and our procedures.

13           Mr. Langlois, I was intrigued when Senator Sessions  
14 was asking you about the definition of refugee, you  
15 seemed to indicate that there was some flexibility in  
16 terms of the interpretation of what that legal  
17 requirement would mean.

18           I think you used a phrase like evolving standard,  
19 maybe. I do not want to put words in your mouth. Could  
20 you repeat what you said?

21           Mr. Langlois. Basically, the definition of a  
22 refugee is in the statute. But over the course of years,  
23 courts have fleshed out interpretations of what the  
24 standard is, what the requirements are, and it is the  
25 precedent decisions particularly involving the particular

1 social group area that have seen the most activity or  
2 interpretations of court precedents over the last few  
3 years.

4 That is what I meant to say or was referring to.

5 Senator Cornyn. Well, thank you for the  
6 clarification. As a recovering judge, I understand the  
7 role of the judiciary in this, but if you look at the  
8 statute, the statute is pretty particular and specific  
9 in terms of the requirement to pass persecution or a well  
10 founded fear of future persecution on account of race,  
11 religion, nationality, membership in a particular social  
12 group, or political opinion.

13 Mr. Chairman, I think that is something else we ought  
14 to look at. It seems to me like basically the  
15 requirement of refugees to prove what the statute  
16 requires, we have gotten rather far afield and certainly  
17 immigration is something within the unique prerogative of  
18 the Congress and not the Judiciary, although obviously  
19 they will interpret what we write.

20 But I guess the final thing I would just ask you two  
21 gentlemen is we understand the humanitarian crisis from  
22 Central America. I was down in Honduras with Senator  
23 Kaine recently in San Pedro Sula in what is reported to  
24 be the most dangerous neighborhood in the most dangerous  
25 city in the most dangerous country in the world. Thank

1 goodness we had quite a bit of protection primarily from  
2 some vetted law enforcement that had been trained by the  
3 United States Government to help provide some basic  
4 security there.

5 But if anybody and everybody who has a fear of harm  
6 qualifies as a refugee, I understand the humanitarian  
7 impulse and I sympathize with that, but if you look at  
8 places around the world, like Syria, for example, where  
9 200,000-plus civilians have been killed in a civil war  
10 and millions of Syrians are refugees because they have  
11 literally been displaced both internally and externally,  
12 if that means that anybody who is subject to potential  
13 harm because of civil unrest or other circumstances in  
14 their home country, then I wonder what the limiting  
15 factor is on their ability to come to the United States  
16 and qualify for refugee status.

17 Would you care to offer a word of comfort or  
18 reassurance?

19 Mr. Langlois. Yes, sir. Fear is not enough. They  
20 have to show that they are undergoing persecution because  
21 of their membership in one of the groups.

22 Senator Cornyn. So do you disagree or agree with  
23 Mr. Langlois?

24 Mr. Henshaw. I always agree with Mr. Langlois.

25 Senator Cornyn. Always agree with Mr. Langlois.

1 Well, it sounds like you are saying it is something  
2 different and wonder, Mr. Langlois, would you care to  
3 respond?

4 Mr. Langlois. Yes, certainly. In order to gain  
5 access to the refugee program, you have to be authorized  
6 access and we do have a cap of 70,000 for this year of  
7 individuals that can be admitted as refugees into the  
8 United States.

9 Also, just a fear of generalized violence, even if  
10 you do get access to be interviewed by USCIS, is not  
11 enough for a grant of refugee status. You have to meet  
12 the definition and a lot of it deals with is what you  
13 fear rising to a level of persecution or on account of  
14 one of the five protected grounds.

15 But simply fleeing civil strife or war does not meet  
16 the definition of refugee, as well as we do have ceilings  
17 and caps on how many individuals that we get to admit.

18 Chairman Sessions. Thank you, Justice Cornyn and  
19 Attorney General Cornyn. Actually, we have got some  
20 prosecutors here. Senator Blumenthal is experienced,  
21 too.

22 But, look, page 1 of this April 15 document talks  
23 about PSGS. That is the particular social groups that is  
24 being expanded, pretty obviously, it appears to me, page  
25 1, people who reported a serious gang-related or cartel-

1 related crime to law enforcement.

2 Now, I do not think that meets the standard that  
3 Senator Cornyn just went over. I believe you have  
4 changed the standard if you adopt that.

5 Further female heads of household, I think that is  
6 far from being a person being persecuted on that alone.

7 Mr. Henshaw, with regard to the ability of the people  
8 to be investigated or background checks in the foreign  
9 countries, most of those countries do not have good NCIC-  
10 type fingerprint database systems, do they?

11 Mr. Henshaw. No, sir, they do not. While we have  
12 worked -- I am sorry, sir.

13 Chairman Sessions. If you do a database, you are  
14 talking about inquiring as to whether or not they entered  
15 the United States and committed a crime in the United  
16 States and returned back; is that right?

17 Mr. Henshaw. All I could add, sir, is that while I  
18 was in Honduras, we established a database for gang  
19 members that were in jails. So we did have some database  
20 available us.

21 Chairman Sessions. Tell us what the real world is  
22 going to be like. If an individual comes to one of these  
23 centers to apply for refugee status, you are not going to  
24 do a neighborhood investigation, interview witnesses and  
25 that sort of thing, are you? You do not have the people

1 to investigate the backgrounds of what could be thousands  
2 of people. You do not intend to do that.

3 Mr. Langlois. We intend to interview the individual  
4 for approximately 2 hours, every case. We intend to  
5 check numerous data banks that the Department of Defense  
6 has information concerning criminal activity and gang  
7 activity, the FBI has information regarding criminal  
8 activity, as well as liaise with the FBI and ICE for  
9 their anti-gang units.

10 We will explore all available avenues in order to  
11 assess if this individual is a criminal or a gang member.  
12 We are trying to protect children from criminal activity  
13 and gang activity. I think we are motivated to pursue  
14 that.

15 Chairman Sessions. Look, I know what the position  
16 of the President is and I know what he is trying to  
17 achieve and we have a refugee program that we should  
18 utilize, but it needs to be fairly done. So I do not  
19 think you should suggest to us in any way that the FBI is  
20 going to be a big player in this. In fact, I have been  
21 told they are not a part of this program and they do not  
22 have a database in Honduras or El Salvador, anything  
23 approaching what we are talking about, and the Department  
24 of Defense does not either.

25 So for the average person who is trying to claim

1 access to America as a refugee, they are going to be able  
2 to learn the words to say to the interviewing officer,  
3 and I just do not see how you should be suggesting to the  
4 public in any real way that you are going to be able to  
5 guarantee that the persons who are admitted are cleared  
6 and are not involved in criminal activities, among other  
7 things.

8 Am I wrong?

9 Mr. Langlois. We will thoroughly pursue the aspect  
10 to ascertain if the individual is part of a gang or  
11 engaged in any criminal activity and we have got numerous  
12 ways of doing that.

13 Chairman Sessions. Well, you are not going to be  
14 able to assure that, I am certain of it.

15 How many refugees have been admitted from El  
16 Salvador, Guatemala or Honduras over the last 15 years?

17 Mr. Henshaw. I am sorry, Senator, I do not have  
18 those numbers.

19 Chairman Session. Well, is it not about zero?

20 Mr. Henshaw. It would be a low number, yes.

21 Chairman Sessions. Close to zero.

22 Mr. Henshaw. I really honestly do not know,  
23 Senator.

24 Chairman Sessions. The reason is these countries  
25 are not believed and have not qualified as countries that

1 participate in persecution of people with different  
2 religious backgrounds and nationality and social groups.  
3 If they did, they would be admitted.

4 So you are talking about large numbers of people  
5 being admitted as refugees.

6 And I have got to ask you again, Mr. Langlois. Are  
7 we not changing the definition of refugee so the  
8 President can admit these children when they have not  
9 been admitted under the law as remains in previous years?

10 Mr. Langlois. Senator, I think that the number of  
11 individuals admitted as refugees would be low because we  
12 did not provide access to the program for them to be  
13 interviewed.

14 I think that the more important figure on this is to  
15 look at the numbers of individuals that arrived in the  
16 United States and were granted asylum either by the  
17 asylum court or the immigration courts, and I would be  
18 more than happy to provide you with figures of  
19 individuals that have successfully been granted by the  
20 courts in the United States, as well as asylum officers  
21 of people gaining asylum from these three countries.

22 Chairman Sessions. Well, we are not going to accept  
23 that in the sense that you are going to convince anybody  
24 that is listening to this that we have had a program that  
25 has admitted many people in the last 15 years as refugees

1 from these countries, because they have not been. That  
2 is the fact.

3 Now, how many do you anticipate being admitted as  
4 refugees under this program, the new standard?

5 Mr. Henshaw. Senator, we just do not know what the  
6 numbers will be. It is too early to tell. So far, as we  
7 said earlier, it is only in the hundreds the number that  
8 have applied.

9 Chairman Sessions. Does USCIS currently grant  
10 asylum to any aliens from any country based on fear of  
11 gang violence or generalized threats or poverty?

12 Mr. Langlois. Again, they would have to fit under  
13 the definition of the refugee. We would have to link  
14 that to one of the five protected grounds.

15 Chairman Sessions. Well, then just on those  
16 standards alone are not in the five protected grounds.  
17 So on those standards alone, strictly done, we do not  
18 admit any from any country, do we?

19 Mr. Langlois. Senator, a gang could be a non-state  
20 persecutor, a non-state actor engaging in the persecution  
21 of an individual on one of the protected grounds. So the  
22 fear of a gang, if it is tied to a protected ground,  
23 could be the basis of an asylum claim in the United  
24 States, as well as a refugee claim overseas.

25 Chairman Sessions. Well, I think we can say any

1 generally experienced person in the field would know that  
2 it is not fear of gang violence, it generally does not  
3 meet the standards and we are not admitting people from  
4 any country on that basis.

5 And according to your document here and from what we  
6 hearing, this is going to be liberalized with regard to  
7 these countries. We have a limited number of refugees we  
8 can receive in America, so they will be using up slots,  
9 and I think at that point you are going to find this  
10 Administration begin to shift as many as they humanly can  
11 shift by any method to parolee status to justify this  
12 action.

13 My time, I have gone over. The clock did not run.

14 Senator Blumenthal is an excellent member here, and  
15 thank you for your patience.

16 Senator Blumenthal. Thank you. Thanks, Mr.  
17 Chairman.

18 Just a few quick last questions. Is there evidence  
19 that the CAM program has discouraged children from making  
20 that tortuous, arduous journey and instead go through the  
21 processing in their home countries?

22 Mr. Henshaw. Sir, the numbers are reduced that are  
23 approaching our southwest border compared with last year  
24 and we believe that is because of a number of efforts;  
25 enforced border protection, the work we have done with

1 Mexico and the northern tier countries, and this program.

2 Certainly in the case of the 500 people that have  
3 applied so far, a significant number of them could have  
4 attempted to come up illegally.

5 Senator Blumenthal. But the prospect of going  
6 through this processing without the threat of those gang  
7 networks, organized crime, traffickers who would prey on  
8 them while they are en route certainly has been a factor  
9 discouraging them from coming across the border to this  
10 country.

11 Mr. Henshaw. Absolutely.

12 Senator Blumenthal. And one other question. Do you  
13 expect that there will be additional -- based on the  
14 experience so far, that there will be additional children  
15 seeking to take advantage of this program?

16 Mr. Henshaw. Yes, I do. I think once the program  
17 becomes more widely known, there will be other children  
18 that will try and apply for it.

19 Senator Blumenthal. And the answer to this question  
20 may seem obvious, but let me just ask it for the record.

21 In terms of cost-effectiveness, if a child is  
22 ineligible for this program, is there not a saving in  
23 money, not to mention human suffering and threat, in  
24 determining that eligibility while the child is still in  
25 Honduras or El Salvador or Costa Rica rather than in this

1 country, where they would have to be transported back?

2 Mr. Henshaw. That is correct. There would be no  
3 cost of transporting them back because they would already  
4 be in their home country.

5 Senator Blumenthal. Whereas if they were here,  
6 there would be the cost of transporting.

7 Mr. Henshaw. Yes.

8 Senator Blumenthal. Thank you. Thanks, Mr.  
9 Chairman.

10 Chairman Sessions. And asylum claims should be  
11 filed in that country, in the home country of the  
12 applicant; is that correct? Refugee status, excuse me.

13 Mr. Langlois. Yes, refugee, sir.

14 Chairman Sessions. Refugee status made in the  
15 country of Honduras or wherever.

16 Mr. Langlois. Yes.

17 Chairman Sessions. And if they come here, which is  
18 an improper claim of refugee status, they are still  
19 allowed to claim asylum.

20 Mr. Langlois. That is correct.

21 Chairman Sessions. But this is all problematic  
22 because we could end up with huge numbers of trials and  
23 hearings, inability to bring witnesses, inability to do  
24 any real background, you have no background data, and I  
25 think the United States just needs to make very clear

1 what our standards are.

2 I think the President has confused that by saying I  
3 am going to give legal presence, lawful presence to  
4 people who are here unlawfully. And then now you are  
5 saying because the President gave them lawful presence,  
6 they got the advantages of lawful status and can bring  
7 relatives here, and this just begins to erode the  
8 integrity of the system and confuse people around the  
9 world who probably will see this as further benefits to  
10 attempting to come unlawfully into the country.

11 Let me ask you this, Mr. Langlois. I would like to  
12 get a sense of what benefits Central Americans brought in  
13 under these refugee programs would be eligible for in the  
14 United States once they arrive. Would they be eligible  
15 for food stamps?

16 Mr. Henshaw. Sir, could I answer that question?

17 Chairman Sessions. Yes.

18 Mr. Henshaw. Anyone that comes in under our refugee  
19 program worldwide is eligible to apply for any benefit  
20 that any other legal resident in the United States could  
21 apply for. They would have to qualify for it.

22 Chairman Sessions. And that would include Medicaid,  
23 public housing.

24 Mr. Henshaw. Yes, sir.

25 Chairman Sessions. And other cash assistance

1 programs.

2 Mr. Henshaw. Any program that any other legal  
3 resident could apply for, sir.

4 Chairman Sessions. I am concerned about the parole.  
5 And we have got another panel and maybe we can be a  
6 little -- but essentially this parole is permission for  
7 an alien to enter who otherwise meets no standards for  
8 entry and has been denied entry.

9 How many individuals do you anticipate would be  
10 paroled into the United States under this program?

11 Mr. Langlois. We do not have that figures.  
12 Individuals will first be considered for refugee status  
13 and if they are found not to qualify for the technical  
14 definition of refugee will be on a case-by-case  
15 considered for parole.

16 So we do not have the numbers right now.

17 Chairman Sessions. Is that an automatic thing or do  
18 they have to say, okay, you denied him a refugee, I want  
19 to be considered for parole?

20 Mr. Langlois. No. We will take a look at does the  
21 individual still fear harm and is there that reason that  
22 we should be granting the individual parole into the  
23 United States to reunify with their lawfully present  
24 parent.

25 Chairman Sessions. But, please, is it not true that

1 this has historically been a very restricted program? It  
2 is not an open door to anybody you would like to admit  
3 who does not otherwise qualify for it, right?

4 Yes or no? It is not an open door to admit anybody  
5 that you would like to admit that does not otherwise  
6 qualify for it.

7 Mr. Langlois. There are numerous precedent  
8 parole/refugee programs in the past that are very similar  
9 to the program that we are administering here.

10 Chairman Sessions. Would you submit those for the  
11 record?

12 Mr. Langlois. Certainly.

13 Chairman Sessions. Can you name one?

14 Mr. Langlois. Yes. The orderly departure program  
15 that I was participating in in the 1980s attempted to  
16 basically stem a mass migration coming out of Vietnam,  
17 the boat people.

18 We stood up a program in Vietnam, an in-country  
19 refugee processing program under President Reagan and  
20 President Bush and those individuals that had family  
21 members in the United States that were not granted  
22 refugee status were offered what we called public  
23 interest parole back then and it resulted in stemming the  
24 flow of boat people coming out of Vietnam.

25 It was a very large program. It lasted many years.

1 Chairman Sessions. All right. We will take that.  
2 Submit the others that you have.

3 Mr. Langlois. Certainly.

4 Chairman Sessions. Now, the law says -- the  
5 212(b) (D) (5) (A) -- the United States can use this  
6 temporary parole of individuals only on a case-by-case  
7 basis for urgent humanitarian reasons or significant  
8 public benefit, which I think traditionally public  
9 benefit has been unusually talented valuable persons, I  
10 think.

11 That is the standard, is it not?

12 Mr. Langlois. Yes, it is.

13 Chairman Sessions. And do you agree that this  
14 statute authorizes people only a case-by-case basis?

15 Mr. Langlois. Yes. That is what --

16 Chairman Sessions. I think you said that earlier.

17 Mr. Langlois. That is what is in the statute, yes.

18 Chairman Sessions. Do you agree that the statute  
19 authorizes parole only for urgent humanitarian reasons  
20 and significant public benefit?

21 Mr. Langlois. Yes. That is the statute.

22 Chairman Sessions. That is what the statute  
23 authorizes. You indicate that to grant parole under this  
24 program, USCIS must find that the individual is at risk  
25 of harm in his or her country, that the applicant meets

1 as favorable exercise of discretion.

2 Now, merits a favorable exercise of discretion.

3 Well, I do not think that is the same standard we just  
4 read. Would you agree? Is it not a more liberal  
5 standard?

6 Mr. Langlois. No. I would not agree that that is a  
7 more liberal standard. The significant public benefit is  
8 being achieved by basically attempting to deter the mass  
9 migration that we saw at the border last year. And so  
10 the significant public benefit element of the  
11 authorization of parole is being achieved in that  
12 fashion.

13 What we are doing is we are interviewing individuals  
14 and deciding on a case-by-case basis if it --

15 Chairman Sessions. You could submit that for the  
16 record, if you would like to go further. But the  
17 statutory standard is for urgent humanitarian reasons or  
18 significant public health benefits, and your language,  
19 quote, that the individual is, quote, "at risk of harm in  
20 his country and that the applicant merits a favorable  
21 exercise of discretion," closed quote.

22 Now, that is much more subject to broad  
23 interpretation and that is the kind of guidance you are  
24 giving to your officers, I suppose, and it is going to  
25 result in a lot more admissions than the statute has

1 always been interpreted to admit. Am I not correct?

2 Mr. Langlois. I would disagree with that, Senator.

3 Chairman Sessions. All right. I will submit some  
4 additional questions for the record. I thank you for  
5 your patience. This is so important that we get this  
6 correct and that we have our officers have a clear  
7 understanding of what is admitted and what is not, that  
8 we not politically abuse the law passed by Congress, and  
9 that the world knows, so we do not have people coming  
10 under the belief that somehow, some way they are going to  
11 maneuver their way into the country when they really do  
12 not qualify.

13 We should tell them in advance do not apply if you do  
14 not meet these standards. At least that is my analysis.

15 Thank you both for your testimony and we will submit  
16 some additional questions for the record and keep the  
17 record open for that purpose.

18 If our second panel would come forward.

19 Senator Blumenthal. Mr. Chairman, while the second  
20 panel is coming forward, I just want to apologize that I  
21 am going to have to go to another obligation, but I want  
22 thank them, as well as the previous panel, for your  
23 excellent work. I am familiar directly and personally  
24 with the excellent work done by Igor Timofeyev and I want  
25 to thank him for his participation on this panel and his

1 help to the Committee and to my office.

2 Again, my thanks to the panel. I apologize, but I am  
3 unable to stay.

4 Chairman Sessions. Thank you, Senator Blumenthal.  
5 We appreciate your contributions. They are always  
6 excellent and it never hurts to have a good legal mind  
7 around here.

8 Senator Blumenthal. Thank you.

9 Chairman Sessions. Thank you.

10 All right. If you would maybe stand, we will just  
11 take your oath. Everybody, if you will raise your right  
12 hand.

13 [Witnesses sworn.]

14 Chairman Sessions. Thank you. Please have a seat.  
15 I will briefly introduce our witnesses, but note that the  
16 full biographies are on the Committee's Web site.

17 First, we have Professor Jan Ting. Professor Ting is  
18 a Professor of Law at Temple University Beasley School of  
19 Law in Philadelphia, having initially joined the faculty  
20 in 1977. He was previously Assistant Commissioner of  
21 Immigration and Naturalization Service from 1990 to 1993.

22 I am sure that was an exciting time.

23 Maybe you can go -- we will let you give your  
24 statement -- well, I will let you go first, Mr. Ting, and  
25 then I will introduce Ms. Meissner.

1 TESTIMONY OF PROFESSOR JAN C. TING, TEMPLE UNIVERSITY  
2 BEASLEY SCHOOL OF LAW, FORMER ASSISTANT COMMISSIONER OF  
3 THE IMMIGRATION AND NATURALIZATION SERVICE, PHILADELPHIA,  
4 PENNSYLVANIA

5

6 Mr. Ting. Thank you, Chairman Sessions and all the  
7 members of the Committee.

8 I just wanted to -- my written testimony is on the  
9 record and I want to ad lib a little bit in response to  
10 the prior panel.

11 It is true that we have the most generous legal  
12 immigration system in the world. We admit more legal  
13 immigrants every year with a clear path to full  
14 citizenship. We give out more green cards every year  
15 than I think all the rest of the countries of the world  
16 combined.

17 Nonetheless, we have a restriction and Congress has  
18 specified what exceptions we are willing to make and one  
19 of them is for refugees who are in the United States. As  
20 the first panel noted, there is a standard, well founded  
21 fear of persecution, not discrimination, not harassment,  
22 but persecution on account of one of five specified  
23 grounds, including social group. And the same standard  
24 applies in the overseas refugee program, where the United  
25 States goes out and finds refugees and brings them to the

1 United States.

2 We have an international obligation under the  
3 Convention on Refugees with regard to asylum, but I think  
4 -- I do not think we have an international obligation to  
5 go out and find refugees and bring them to the United  
6 States. I think we do that out of the goodness of our  
7 American hearts.

8 And we have the most generous overseas refugee  
9 program in the world, as far as I am aware. Not very  
10 many countries do what we do, which is go out and find  
11 refugees. They are not in the country. We find them and  
12 we bring them to the United States financed by the  
13 American taxpayers in traveling to the United States.

14 As the first panel noted, the definition of who is a  
15 refugee is a critical definition and I think the advocacy  
16 community that wants more immigration has been pushing  
17 the definition of social group. That is the key point.  
18 And I think, you know, the Congress, when they enacted  
19 the refugee standard, did not specify what is a social  
20 group.

21 I think it might be useful for the Congress to think  
22 about what did the international community mean when they  
23 inserted the term social group into international law,  
24 the Convention on Refugees, which was then adopted by the  
25 United States in the Refugee Act of 1980.

1           I think if we look back at the record, probably what  
2 we will find is people were thinking about the imperial  
3 family of Russia. That was a kind of immutable  
4 characteristic. It was not political opinion that led to  
5 their death, it was not nationality, it was not their  
6 religion. There was some immutable characteristic about  
7 the royal family that -- and I think international  
8 lawyers wanted to provide for that possibility that there  
9 was something other than race, religion, nationality and  
10 political opinion that was worthy of protection, people  
11 are just after you because of your family blood.

12           And I think you could also make the argument that it  
13 was post-World War II, maybe they were also thinking  
14 about gypsies who were persecuted by the Nazis. Maybe  
15 they were also thinking about homosexuals who were being  
16 persecuted by the Nazis.

17           So I think you could specify, Congress could, if it  
18 wanted, specify what we mean by social group and that  
19 might be a useful way to go.

20           Congress has tried to specify who is eligible for  
21 parole. The prior panel made reference to the very  
22 generous parole provisions that were exercised after the  
23 end of the Vietnam War. But those were controversial and  
24 I think Congress thought that that was actually a misuse  
25 of the parole power. And Congress -- this was obviously

1 before the Refugee Act of 1990, and Congress has  
2 specified that parole should not be used for refugees.

3 I think that was in the Refugee Act of 1980, said  
4 parole should not be used for refugees. We have taken  
5 care of refugees in our asylum law and in our refugee  
6 processing authorization. You cannot bring refugees in  
7 under parole.

8 And Congress also specified in 1996 the only on a  
9 case-by-case for urgent humanitarian reasons or  
10 significant public benefit standard that the Chairman has  
11 referred to.

12 In doing so, the House Judiciary Committee in 1996 as  
13 very specific as to why they were making that change and  
14 they said parole should only be given on a case-by-case  
15 basis for specified urgent humanitarian reasons such as  
16 life-threatening medical emergencies or for specified  
17 public interest reasons such as assisting the government  
18 in its law enforcement-related activity. It should not  
19 be used -- right?

20 The House Judiciary Committee was very clear that the  
21 parole power should not be used to circumvent  
22 congressionally-established immigration policy or to  
23 admit aliens who do not qualify for admission under  
24 established legal immigration policies.

25 Mr. Chairman, my red light is on, so I will yield the

1 floor.

2 [The prepared testimony of Mr. Ting appears in the  
3 appendix.]

4 Chairman Sessions. Thank you.

5 Ms. Meissner is Senior Fellow at the Migration Policy  
6 Institute, a former Commissioner of the Immigration and  
7 Naturalization Service from 1993 to 2000. She first  
8 joined the Department of Justice in 1973 as a White House  
9 fellow and served in a variety of posts with the  
10 Immigration and Naturalization Service prior to her  
11 tenure as Commissioner.

12 Ms. Meissner, thank you for being with us.

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1 TESTIMONY OF THE HONORABLE DORIS MEISSNER, SENIOR FELLOW  
2 AND DIRECTOR, U.S. IMMIGRATION POLICY PROGRAM, MIGRATION  
3 POLICY INSTITUTE, FORMER COMMISSIONER OF THE IMMIGRATION  
4 AND NATURALIZATION SERVICE, WASHINGTON, DC

5  
6 Ms. Meissner. Thank you. My full statement  
7 provides background about in-country refugee processing  
8 programs as the context for the Central American program.  
9 I am familiar with most of the programs and the policy  
10 debates that surrounded them from my time in government.

11 Beginning in 1979, the United States has administered  
12 in-country processing through special programs for select  
13 countries during and in the aftermath of periods of war,  
14 political repression, and other humanitarian crises. The  
15 programs have been in Vietnam, Haiti, Cuba, Eurasian and  
16 Baltic states, and Iraq. Several of them remain in  
17 effect today.

18 In my experience, in-country programs have come about  
19 largely when policymakers are under severe operational  
20 and public pressure to respond to unmanageably large  
21 life-threatening flows or when refugee processing and  
22 admissions advance broader foreign policy commitments or  
23 goals.

24 In-country programs aim to improve access to  
25 humanitarian protection and to regulate refugee and

1 humanitarian admissions to the United States under dire  
2 conditions.

3 In-country programs have always been controversial.  
4 They have typically been implemented in combination with  
5 tough enforcement programs intended to curtail irregular  
6 flows. This has been true in the Central American case,  
7 as well.

8 The United States and Mexico responded to last year's  
9 migrant surge by quickly stepping up anti-smuggling  
10 measures, migrant interdictions, and deportations.

11 The various in-country processing programs share  
12 several additional characteristics. They have widely  
13 different numbers of admissions depending on the nature  
14 of the flows and program criteria. They have both broad  
15 and narrowly drawn criteria reflecting distinct program  
16 and policy goals that are tailored to the countries and  
17 to the humanitarian circumstances of concern to the  
18 United States.

19 They have long durations due to the intractability of  
20 the underlying conditions causing protection needs.  
21 Adjustments to the program criteria over time are based  
22 on and reflect experience and changes in the humanitarian  
23 circumstances in the countries.

24 They have congressional authorization either through  
25 explicit direction or through the annual refugee

1 consultation process. And finally, the supplementary use  
2 of parole to admit persons with compelling humanitarian  
3 claims, but who are ineligible for refugee status, has  
4 accompanied all of the programs.

5 Against this backdrop, the newest in-country program  
6 is for minors in El Salvador, Guatemala and Honduras. As  
7 with previous in-country programs, it was established in  
8 response to a humanitarian migration emergency which  
9 peaked last year in 2014.

10 That, of course, was a result of endemic violence in  
11 Central America, the dangerous and sometimes deadly  
12 journeys to the United States. This in-country  
13 processing program is now an important element in the  
14 U.S. Government's response to prevent a recurrence as  
15 happened in the prior year.

16 This Central American program is specific and  
17 targeted. It is more similar to the Haitian and to the  
18 Iraqi programs than to the Vietnam or the former Soviet  
19 Union programs.

20 Estimating the numbers of children who might be  
21 admitted depends on the number of eligible U.S.-based  
22 parents and qualifying minors who are in the region.  
23 Both are unknown.

24 We do know that there are approximately 2.7 million  
25 Salvadoran, Guatemalan and Honduran immigrants who live

1 in the United States. However, the majority are  
2 unauthorized and, therefore, cannot meet the program's  
3 lawful presence requirement for parents.

4 The share with qualifying children is also unknown.  
5 However, the largest group, permanent residents, is  
6 already eligible to sponsor their children for immigrant  
7 visas.

8 Most permanent residents wishing to bring their  
9 children to the United States will most likely have  
10 already done so under immigration criteria that are less  
11 rigorous than those for refugee eligibility. Those who  
12 are eligible to apply must then meet the statutory  
13 definition of a refugee, as has been discussed this  
14 morning -- this afternoon.

15 Although many Central American young people are  
16 threatened by gang violence and may have compelling  
17 humanitarian protection needs, gang recruitment or  
18 violence does not generally qualify as a basis for  
19 refugee status, and there, of course, the availability of  
20 parole in especially serious cases will be an important  
21 element of this program.

22 Child migrant populations arriving at the border  
23 constitute a mixed flow. Thus some unauthorized children  
24 will be deported while others are entitled to  
25 humanitarian protection.

1           In-country refugee processing has inherent  
2 limitations. They include modest numbers, strict  
3 eligibility criteria, and lengthy processing times. At  
4 the same time, it has historically been an important  
5 dimension of responses to analogous compelling migration  
6 and humanitarian emergencies.

7           A well run in-country processing program can both  
8 reduce irregular flows and provide relief to some among  
9 those who need it most.

10          Thank you.

11          [The prepared testimony of Ms. Meissner appears in  
12 the appendix.]

13          Chairman Sessions. Thank you.

14          Next, we have Mr. Igor Timofeyev, a partner in the  
15 Washington, DC office of Paul Hastings, where he  
16 specializes in appellant litigation and international  
17 arbitration. He previously served as Director of the  
18 Immigration Policy and Special Advisor for Refugee and  
19 Asylum Affairs at the Department of Homeland Security  
20 during the George W. Bush Administration, among other  
21 things.

22          We welcome you and await your statement, Mr.  
23 Timofeyev.

24

25

1 TESTIMONY OF MR. IGOR TIMOFEYEV, PARTNER, PAUL HASTINGS,  
2 FORMER DIRECTOR OF IMMIGRATION POLICY AND SPECIAL ADVISOR  
3 FOR REFUGEE AND ASYLUM AFFAIRS, U.S. DEPARTMENT OF  
4 HOMELAND SECURITY, WASHINGTON, DC

5

6 Mr. Timofeyev. Thank you, Chairman Sessions, and  
7 thank you for the opportunity to testify before you today  
8 about the new refugee and parole program for Central  
9 American minors.

10 As the Administration announced, the new refugee  
11 program forms a part of its effort to combat the illegal  
12 migration of unaccompanied children from Central American  
13 countries to the United States. This migration not only  
14 strains our border enforcement resources, it poses great  
15 risks to the children themselves.

16 The Administration's desire to address the  
17 humanitarian plight of Central American children who are  
18 victims of pervasive violence in their society is  
19 commendable and children seeking to escape persecution  
20 that qualifies refugees under U.S. law deserve protection  
21 that our nation has historically extended to refugees.

22 But in creating a dedicated refugee program for  
23 Central American children, we must ask whether the  
24 children whom we intend to benefit will, in fact, qualify  
25 for the refugee status. If not, then as Senator

1 Blumenthal noted, this program may not do enough for  
2 these children. Instead, it may create more problems  
3 than it solves.

4 Any refugee program must comply with the requirements  
5 of the U.S. immigration law and specifically the Refugee  
6 Act of 1980, the cornerstone of the modern U.S. refugee  
7 system.

8 Under this law, to be considered a refugee, an  
9 individual must demonstrate government persecution on  
10 account of one of five grounds: race, religion,  
11 nationality, political opinion, or membership in a  
12 particular social group.

13 This last statutory ground, membership in a  
14 particular social group, is the one most often involved  
15 in cases of unaccompanied children fleeing organized  
16 gang-related violence.

17 Current law mandates that to qualify as a particular  
18 social group, members of a group must share some common  
19 immutable characteristic. They must be recognized within  
20 the society as a distinct group and the group be  
21 described with sufficient particularity to determine its  
22 membership.

23 To date, no U.S. court applying this criteria has  
24 approved a social group defined solely by childhood.  
25 Indeed, courts have rejected most specific social groups

1 defined as young people resisting gang recruitment, as  
2 not being socially distinct or defined with the requisite  
3 particularity.

4 Courts have also made clear that generalized violence  
5 or lawlessness in the society is not sufficient to show  
6 persecution on account of a statutory protected ground.  
7 Therefore, it is uncertain whether the children who are  
8 the intended beneficiaries of a Central American minors  
9 program would qualify as refugees under the Refugee Act.

10 In designating unaccompanied minors in Central  
11 America for refugee processing, the Departments of State  
12 and Homeland Security were required to consider whether  
13 these children would qualify for admission as refugees  
14 under U.S. law.

15 In my view, this Committee, given its oversight  
16 responsibilities for the U.S. refugee program, is correct  
17 in asking the Administration to explain how the children  
18 from El Salvador, Honduras and Guatemala, as a group,  
19 would satisfy the refugee definition.

20 Indeed, we owe it to the children seeking access to  
21 this program to make sure the prospect of obtaining  
22 refugee status is real.

23 The Central American minors program also requires  
24 that children applying under this program have an anchor  
25 parent in the United States. Family reunification is an

1 important goal and it informs much of our immigration  
2 law. Indeed, the U.S. refugee program already contains  
3 provisions permitting children of individuals admitted  
4 into the United States as refugees to join their parents  
5 in this country.

6 The Central American minors program, however, goes  
7 beyond these provisions and extends to individuals who  
8 are in the United States only temporarily without the  
9 permanent legal status and whose presence can be  
10 terminated as a matter of discretion at any time.

11 Again, this Committee would act properly by examining  
12 whether this extension of the family reunification  
13 principle is consonant with the objectives of the U.S.  
14 refugee program.

15 I thank you, Mr. Chairman and members of the  
16 Committee, for your attention to these important issues  
17 and for the opportunity to share my thoughts today. I  
18 refer the Committee to my full written statement and I  
19 would be pleased to answer any questions.

20 [The prepared testimony of Mr. Timofeyev appears in  
21 the appendix.]

22 Chairman Sessions. Thank you very much.

23 Next, we have Anastasia Brown, Director of  
24 Resettlement Services of the United States Conference of  
25 Catholic Bishops. She has over 20 years of experience

1 with refugee resettlement and is familiar with both  
2 overseas and domestic resettlement issues.

3 Prior to her current position, she served in a  
4 variety of similar roles with other NGOs.

5 Thank you, Ms. Brown.

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1 TESTIMONY OF MS. ANASTASIA BROWN, DIRECTOR OF  
2 RESETTLEMENT SERVICES, MIGRATION AND REFUGEE SERVICES,  
3 U.S. CONFERENCE OF CATHOLIC BISHOPS, WASHINGTON, DC  
4

5 Ms. Brown. I would like to thank you, Senator  
6 Sessions and the Ranking Member, for inviting me to  
7 testify today on the Central American minors refugee  
8 program.

9 Let me say that the U.S. Conference of Catholic  
10 Bishops supports this program and, in conjunction with  
11 the U.S. Government and other stakeholders, is working to  
12 ensure that it is efficient, cost-effective, and, most  
13 importantly, life-saving.

14 Mr. Chairman, the U.S. Catholic Bishops have seen  
15 firsthand the human consequences of the violence  
16 prevalent in the northern triangle of Central America,  
17 violence which is largely responsible for the flight of  
18 children to the United States.

19 Not only have the Bishops traveled to the region to  
20 investigate the situation, they also communicate  
21 regularly with the bishops and the diocese in the region  
22 about ongoing violence and persecution in these  
23 countries.

24 From our experience, Mr. Chairman, the prevalent push  
25 factor compelling these children to migrate to the United

1 States and the neighboring countries is violence and  
2 persecution, targeted persecution by organized crime  
3 networks in the region, violence which their governments  
4 are unable to protect them from.

5 While the lack of opportunity and the desire for  
6 family reunification have been factors in this migration,  
7 violence is the real driver. In fact, a report released  
8 by the United Nations last year found that 6 out of 10  
9 children from the region had valid international  
10 protection claims.

11 Mr. Chairman, the personal stories of these children  
12 are heartbreaking. They are targeted and threatened with  
13 their life on a daily basis merely because they refuse to  
14 join in the persecution of others. Girls refusing to  
15 prostitute themselves are raped and killed. Families who  
16 do not pay renta to local gangs are threatened with  
17 death. The mothers of these children are faced with an  
18 unspeakable choice -- send their child away to try to  
19 find safety or risk having their child and family killed.

20 As one mother in El Salvador told one of our bishops,  
21 "I would rather my child die on a journey north than on  
22 my front doorstep."

23 This program, properly administered, achieves several  
24 goals in keeping with our national interests. First, it  
25 provides an alternative avenue for children in peril to

1 reach safety in the United States instead of taking this  
2 dangerous journey north, giving mothers like the one I  
3 mentioned another option for protecting her child. This  
4 helps honor our humanitarian obligations consistent with  
5 domestic and international law.

6 Second, it weakens smuggling networks that prey upon  
7 these children and families, taking away their market and  
8 reducing the chance that children become victims of human  
9 trafficking. And third, it helps manage this flow of  
10 minors as one part of a broader strategy to address this  
11 challenging issue.

12 And to clarify that last point, this program is just  
13 one element in a comprehensive strategy to address the  
14 challenge of children and families fleeing Central  
15 America.

16 First, we should not repeal current protections for  
17 these children when they do arrive in the U.S., but  
18 ensure they have the fair opportunity to tell their  
19 stories and receive protection. This is consistent with  
20 our American values of ensuring due process and providing  
21 safe haven.

22 We also need a regional approach in which Mexico and  
23 the Central American nations provide protection and safe  
24 haven to these children, a burden-sharing model. As  
25 Mexico is increasing its enforcement against these

1 children, it must also increase its protection mechanisms  
2 by giving children a meaningful chance to obtain asylum  
3 there in Mexico.

4 In addition, we need to look at the root causes of  
5 this flight -- violence, the lack of real opportunity --  
6 and address these root causes over the long term.

7 The President's budget request for assistance in the  
8 region, which includes programming for at-risk youth, is  
9 a good start.

10 In conclusion, let me reiterate that this program is  
11 no different than other in-country processing programs  
12 the United States has implemented in years past in places  
13 such as Vietnam, where I worked with the orderly  
14 departure program, the former Soviet Union, Cuba and  
15 Iraq. These have been successful programs which have  
16 provided life-saving protection to vulnerable  
17 populations.

18 If we can operate such programs in these places, we  
19 can certainly do so in this situation.

20 Moreover, the program is very limited in scope,  
21 restricted by the annual refugee allotment for the  
22 region. The current budget appropriation for the refugee  
23 program advise eligibility terms which only permit those  
24 with lawful presence in the United States to apply.

25 Mr. Chairman, this is an important program which is

1 in its infancy. It should not be eliminated, but  
2 enhanced and improved. It reflects the best of American  
3 values, reinforces our heritage as a land of safe haven,  
4 and, most vitally, saves the lives of children in  
5 desperate circumstances. Saving children's lives should  
6 never been characterized as a waste of resources.

7 Thank you.

8 [The prepared testimony of Ms. Brown appears in the  
9 appendix.]

10 Chairman Sessions. Thank you, Ms. Brown.

11 Next, we have Jessica Vaughan, Director of Policy  
12 Studies for the Center for Immigration Studies, where she  
13 has worked since 1992. Prior to coming to the center,  
14 she served as a foreign service officer with the State  
15 Department.

16 Ms. Vaughan?

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1 TESTIMONY OF MS. JESSICA M. VAUGHAN, DIRECTOR OF POLICY  
2 STUDIES, CENTER FOR IMMIGRATION STUDIES, WASHINGTON, DC

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4 Ms. Vaughan. Thank you for holding this hearing and  
5 for the opportunity to testify. It is an important  
6 discussion because the programs we are discussing are  
7 dramatic and troubling departures from existing law and  
8 policy on the admission of refugees, on grants of parole,  
9 and the family immigration process established by  
10 Congress.

11 Both programs we are talking about, and I would say  
12 CAM and also the Haitian program which is similarly set  
13 up, have been presented to the public as humanitarian  
14 programs that are in keeping with the President's  
15 authority. But, in fact, both are efforts to rewrite  
16 immigration rules to benefit certain favored groups.

17 Besides being clearly outside the boundaries of the  
18 law, they are much larger in scale than past exceptional  
19 humanitarian programs and so will impose huge costs on  
20 taxpayers and on the American communities in which these  
21 newcomers settle.

22 And I would add that there really is no indication  
23 that the CAM program in particular can ever succeed in  
24 achieving the stated goal of deterring people from  
25 contracting with criminal smuggling organizations. I

1 actually think it is more likely that illegal attempts to  
2 arrive here will increase by parents hoping to get that  
3 lawful presence status so that they can send for their  
4 family members that they leave back home.

5 As discussed, it is unclear if many will ever meet  
6 the definition of a refugee. Let us take the Central  
7 American minors program first. This has been  
8 misleadingly pitched as only for lawfully present Central  
9 Americans to bring in their family members.

10 As you have noted, there is a big difference between  
11 lawfully present and having legal status. Legal  
12 immigrants do not need to use smuggling organizations or  
13 these kind of trumped up programs to bring in their  
14 family members.

15 What this does is create a whole new family  
16 reunification program for people who came here illegally  
17 and are not eligible to use the legal system.

18 It is well established that the primary reason for  
19 the influx of Central American minors is to join family  
20 members, not to escape persecution. We know this from  
21 intelligence reports, surveys and statements of the  
22 migrants themselves. They know that due to the policy  
23 changes made by the Obama Administration to relax  
24 immigration enforcement, if they make it to the U.S.  
25 border, they will be allowed to stay indefinitely.

1           Because this is not truly a refugee situation, most  
2           of the entries will be in the form of grants or parole,  
3           but the law does not permit parole to be used in this  
4           way. Parole is supposed to be used in unique compelling  
5           cases of humanitarian need.

6           Traditionally, only about 140 minors a year have been  
7           allowed to enter with humanitarian parole out of about  
8           400 total grants of parole.

9           We do not know exactly how many Central American  
10          minors might be allowed to enter under the program, but  
11          likely it will be measured in the tens of thousands each  
12          year, judging by, first, the size of the population of  
13          illegal alien anchor parents, the large number of Central  
14          American minors we have seen surging over the border, the  
15          current enforced culture of rubber-stamping approval of  
16          benefits by USCIS, and the fact that the refugee  
17          contractors that support lenient admissions will be  
18          helping prepare the applications.

19          So the anchor parents, those with so-called lawful  
20          presence, are people with temporary protected status --  
21          that is about 276,000 aliens -- people who came illegally  
22          as part of the recent border surge and have been given  
23          parole themselves -- that is about 100,000 people, we  
24          think -- and maybe a few legal immigrants from Central  
25          America whose children are inadmissible because of prior

1 deportations, criminal convictions, fraud or other  
2 reasons.

3 Now, regular parole applicants normally have to pay a  
4 fee of \$360, but applicants for CAM will not. So legal  
5 immigrants are actually subsidizing this program.

6 Especially concerning to me is that according to the  
7 established rules, those who have been deported before or  
8 who have criminal convictions are supposed to be  
9 disqualified for humanitarian parole, but the  
10 Administration has already announced that people in those  
11 situations will be allowed to participate by getting the  
12 I-602 waiver that is usually available only to actual  
13 refugees. This is asking for trouble.

14 In 2012 and 2013 alone, the Administration deported  
15 more than 2,400 juveniles to those three countries who  
16 had criminal convictions and who are still young enough  
17 to apply for CAM if their parents are still here.

18 Meanwhile, there are 77,000 people in El Salvador  
19 alone, plus thousands more in Honduras and Guatemala, who  
20 have been sponsored by a legally resident family member  
21 or employer who have paid hundreds of dollars in fees and  
22 are waiting their turn as these CAM applicants will get  
23 special treatment.

24 Similarly, the Haitian family reunification program  
25 is a flagrant abuse of the executive's parole authority.

1 They are ordinary family-based immigrants who are getting  
2 parole for two reasons: to be able to come 2 years early  
3 and so they can get a generous array of publicly-funded  
4 services and benefits.

5 This is in direct conflict with congressional intent  
6 that family-based immigrants should not be admitted if  
7 they will be dependent on government assistance, in other  
8 words, public charges.

9 These two parole programs do not further a  
10 significant public interest as the law requires and as  
11 the Administration claims, but they will impose a  
12 significant public burden on American communities that  
13 will be absorbing them.

14 Thank you.

15 [The prepared testimony of Ms. Vaughan appears in the  
16 appendix.]

17 Chairman Sessions. Well, thank you all. It is a  
18 very important question. And I guess as a former Federal  
19 law officer for almost 15 years, you develop a certain  
20 understanding I think that is sound, which is law needs  
21 to be clear, needs to be enforced with integrity and  
22 consistency, and that produces compliance with law and  
23 less illegality and you move in a virtuous circle or  
24 spiral instead of the dangerous spiral where there is  
25 more illegality that breeds more illegality, that breeds

1 more illegality.

2 And when government leaders take policies, Ms.  
3 Vaughan, that actually suggest if you would like to get  
4 to America and bring your family, one member can go  
5 forward and will later be able to bring them and get  
6 legal status, then you have created a dangerous  
7 situation.

8 And although I am so proud of our NGOs, our church  
9 groups who give of themselves sacrificially to help  
10 around the world, a nation state is required to serve its  
11 citizens first and effectively with policies that I think  
12 are moral and defensible.

13 Well, anyway. Professor Ting, I am looking -- I just  
14 missed this on this document I raised that suggested what  
15 the new training manual will be for the PSGS, and that is  
16 the particular social groups that you talked about and  
17 the effort to expand that definition until it becomes  
18 pretty open door.

19 I think Mr. Timofeyev and Ms. Meissner also discussed  
20 that issue. But I just overlooked the title of it is  
21 "Update on New and Novel PSGS." So, I mean, the agency  
22 itself seems to be suggesting we have got a new  
23 definition, novel definition for the particular social  
24 groups.

25 Does that give you cause for pause?

1           Mr. Ting.    Yes, Senator Sessions.  I think that  
2 document apparently came out of the government training  
3 for immigration officers and it has notations on it that  
4 say, you know, and in difficult cases, consult your  
5 supervisor.

6           So clearly they are contemplating, I think, pushing  
7 the standards of who qualifies.  And I think they are  
8 pushing the standards in a lot of different ways.

9           I do not think the CAM program can find precedence in  
10 Vietnam or in the Soviet Union.  It is true that those  
11 were large-scale parole programs in-country also, but  
12 those programs preceded a congressional effort in 1996 to  
13 restrict the parole power.

14          And I think since the 1996 redefinition of the parole  
15 power and specifically case-by-case for specified reasons  
16 and particularly in light of the House Judiciary  
17 Committee Report that said it should not be used to  
18 circumvent established immigration policy or admit people  
19 who do not qualify for admission under legal immigration  
20 policies, I do not think those are adequate precedent.

21          It is true that the Administration has also launched  
22 this Haitian family reunification parole program, which  
23 is comparable in the sense that it is in-country.  We are  
24 not just going out to find refugees, as authorized by  
25 Congress in a refugee program.  We are going out to find

1 people who do not qualify as refugees, who do not qualify  
2 as immigrants, and we are going to issue them parole.  
3 That I think is unusual.

4 Legal precedent is claimed for the Haitian program,  
5 but not for CAP in the 2007 Cuban family reunification  
6 parole program. And it is true those are in-country  
7 parole programs, too. The difference is that in both the  
8 Haitian and the Cuban programs, the only sponsors are  
9 people that are in the United States legally either as  
10 U.S. citizens or as legal permanent residents.

11 As has been mentioned a couple of times now, the CAP  
12 program is unusual in that it also allows people who are  
13 illegal immigrants, beneficiaries of these new executive  
14 order deferred action programs, to also sponsor parolees  
15 under these programs.

16 So I think it is hard to find a clear precedent for  
17 the CAP program in prior practice.

18 Chairman Sessions. Well, I thank you. And just a  
19 brief answer. Does it create more ambiguity and  
20 uncertainty and can that be detrimental to an orderly  
21 policy?

22 Mr. Ting. Well, as my written testimony suggests,  
23 there has been an ongoing tension between the Executive  
24 Branch and the Congress. The Executive Branch likes to  
25 use parole in a variety of different ways to solve

1 whatever immediate political problem they are confronting  
2 and I think Congress has clearly made multiple efforts to  
3 try and restrain the Executive Branch's use of parole  
4 power in trying to narrowly define and limit the  
5 Executive Branch's parole authority.

6 Chairman Sessions. Commissioner Meissner, would you  
7 like to comment on that?

8 Ms. Meissner. I think that the nature of these  
9 emergencies and the unpredictability of them is the  
10 starting point for all of this.

11 Clearly, from the standpoint of the agencies that are  
12 administering these laws and administering these  
13 programs, it is their job to as fully as possible manage  
14 flows, respond effectively, prevent irregular flows, but  
15 the nature of the world that we live in frustrates that  
16 frequently, and that certainly has been the case for the  
17 United States. It is absolutely the case as we are  
18 seeing right now in the Mediterranean, in Europe. That  
19 was the United States 20 years ago with some of the  
20 circumstances that we faced in the case of Haiti, in the  
21 case of Cuba earlier than that, what the world faced,  
22 facing Vietnam.

23 That, as a result, requires action. It requires  
24 responses certainly within the statutory frameworks that  
25 are available to us, certainly in a way that is intended

1 to be respectful of our overall values and policies and  
2 legal requirements.

3 But circumstances change and situations evolve. This  
4 particular program now in Central America is a clear  
5 effort to create a different set of dynamics than what  
6 led to the flows in the past several years.

7 I think everybody would agree that this is a narrow,  
8 limited program. There will be a modest number of people  
9 that succeed in coming to the United States through this  
10 program either with refugee status or under parole.

11 I do not believe that parole is going to be used in a  
12 willy-nilly fashion in this program. That has not been  
13 the practice of immigration officers in the past. I do  
14 not see that it will be here.

15 But what this program is is an effort to offer a  
16 limited group of people who are under seriously dangerous  
17 circumstances an alternative. It cannot stand on its own  
18 alone. It is not the only response as a country that we  
19 can give, but it is a legitimate element of a response.

20 Chairman Sessions. All right. Mr. Timofeyev, would  
21 you like to comment on all of this and offer anything  
22 that you would like to share?

23 Mr. Timofeyev. Thank you, Senator Sessions. I  
24 would note that there are certainly -- there has always  
25 been a tension within the scope of parole between the

1 fact that it has to be applied on a case-by-case basis  
2 with individualized determination and the fact that  
3 parole quite often has been used and is still being used  
4 with respect to particular groups of people within the  
5 case-by-case adjudication being done subsequently.

6 So I think that tension is there and I think this  
7 Committee is quite right to probe at that tension to make  
8 sure that the use of parole remains consistent with what  
9 Congress intended.

10 I would add that with respect to the Central American  
11 minors program, it is not presented and it is not  
12 structured at least formally as just a parole program.  
13 It is structured as a combined refugee and parole  
14 program. And I think then the question becomes in a  
15 program where the refugee consideration ostensibly the  
16 primary one, is the group that is selected for that  
17 particular refugee processing, in fact, such that it  
18 would satisfy the refugee definition and I think that, in  
19 my view at least, is really the central question here.

20 In looking at the case law, certainly case law, as  
21 you well know, case law is always evolving to some  
22 extent, but looking at the precedents that even Mr.  
23 Langlois has acknowledged there are the resettle  
24 requirements which are shared by the vast majority of the  
25 courts of appeals, by the boards of immigration appeals

1 and by others which say that a particular social group  
2 has to demonstrate immutable characteristics, social  
3 distinction within the society, and be defined with  
4 particularity.

5 In looking at those requirements, looking at the way  
6 that the Federal courts have interpreted them, it is very  
7 difficult to me to conceptualize how these Central  
8 American children, as a group, would, in fact, satisfy  
9 the refugee definition.

10 Chairman Sessions. So even from your study of the  
11 case law, it would not back up just fraud or a definition  
12 that would justify large numbers of children qualifying.  
13 They just do not qualify. They just do not meet that  
14 test even under case law.

15 Mr. Timofeyev. Senator, the case law was -- to  
16 date, no court, again, as I mentioned, has accepted that  
17 childhood status, of being a child by itself, as  
18 sufficient to qualify as a member of a particular social  
19 group.

20 And I think also, again, what troubles me is that the  
21 case law suggests quite strongly and, in fact, holds that  
22 simply being the child who resists or being a minor who  
23 resists the gang violence or being a minor who was  
24 recruited by a gang, that is also not sufficient to  
25 satisfy the refugee definition.

1           So I think that, in my view, in setting up any  
2 program that seeks to admit refugees, in fact, we owe it  
3 to the law, as well as to the potential applicants, to  
4 make sure that, in fact, they would be able to qualify  
5 under the definition as the law requires.

6           Chairman Sessions. Ms. Brown, one reason I think  
7 even our State Department officers want to push things  
8 like parole is because people present sympathetic human  
9 faces to them.

10           You have met with and dealt with refugees for years.  
11 To what extent, though, do you believe that the  
12 government has the authority and the responsibility to  
13 set clarity in its laws of immigration and then enforce  
14 those, including deporting those who enter the country  
15 unlawfully?

16           Ms. Brown. Of course, the government must have  
17 clear laws and laws that are understandable and are  
18 enforced by the officers, and I believe this program  
19 actually does that.

20           I would just like to respond to a few things with  
21 regard to the children we have seen, and the U.S. Bishops  
22 Conference does serve both children who are approved in  
23 the refugee -- overseas refugee context throughout the  
24 world and also has served children who have been released  
25 from Federal custody and have then managed to receive

1 asylum, for example.

2 And if you take the two cases, you can, in fact, see  
3 that they do meet the refugee criteria. This is one of  
4 the reasons that we do feel that this is an important  
5 program, because many of the children, not all of the  
6 children, many of the children will meet the refugee  
7 criteria.

8 Also, I would say that there has been a lot of focus  
9 on the initial criteria of filing for the applicant.  
10 That is not the person here is a refugee, but it was a  
11 way to narrow down who may be applying for the program so  
12 as not to just say any child in Guatemala should apply  
13 for this program, any child in Honduras should apply for  
14 this program, but rather to say who might, in fact, be  
15 trying to take this journey to join their parents and to  
16 focus the attention there on them.

17 Chairman Sessions. Well, thank you.

18 Well, it is a big world and there are a lot of people  
19 in very difficult circumstances, including children, and  
20 we have to work our way through this.

21 Ms. Vaughan, what would you like to share with us as  
22 we wrap up here and any thoughts that you would share  
23 with us? It does seem to me that -- I think Commissioner  
24 Meissner's reasoning and our first panel, we are  
25 utilizing reasoning that seems to me to be difficult to

1 limit just to Central America.

2 I mean, it is a big world out there. Do you see  
3 that, for whatever reason, we ended up with this surge,  
4 do you see a danger that we could be setting precedence  
5 that would be unwise for a nation who wants to establish  
6 a lawful system of immigration that serves the interest  
7 of the American people?

8 Ms. Vaughan. There is no question that these  
9 repeated special circumstances kind of programs leads to  
10 "me tooism" kinds of requests from other groups around  
11 the world.

12 I think it is really important to address some of  
13 what I think are really flawed assumptions behind this  
14 idea that we need to provide a safe, orderly alternative  
15 for these kids to come to the United States.

16 First of all, there is this assumption that this  
17 surge of kids and also families from Central America is  
18 like a force of nature that cannot be stopped and the  
19 best thing is for us to manage it in a safe way, when, in  
20 fact, it is the result of rational people making rational  
21 choices based on information they have received that they  
22 will be allowed to stay.

23 And the second flawed assumption is this idea --

24 Chairman Sessions. That is a very important thing.

25 I totally agree with that. We have sent a very poor

1 message and it has resulted in the surge of illegality.  
2 Sending the right messages would, I think, have dramatic  
3 positive effects. And some of the message we are sending  
4 in responding to this problem is actually wrong.

5 It could indeed increase the flow even more in the  
6 future, which would be terrible.

7 But, excuse me, you had a second point.

8 Ms. Vaughan. No. I agree completely and we know  
9 that there is good evidence that that is the case, that  
10 people are responding to the policy changes and the lax  
11 enforcement climate that has been created here in the  
12 United States by the Obama Administration's policies.

13 The other flawed rationale for this program is that  
14 we somehow need to provide an avenue for these  
15 individuals to come here rather than enforce the law and  
16 deal with the fact that by giving benefits to their  
17 parents, that that somehow entitles these people who are  
18 not here with any legal status to bring in their family  
19 members.

20 The response to the surge really should have been for  
21 the Department of Homeland Security to dust off its  
22 official mass migration plan that they had carefully  
23 studied and figured out other ways to deal with this kind  
24 of surge rather than just trying to legalize it.

25 Chairman Sessions. Well, we worry about some of the

1 messages we are sending, such as allowing people who  
2 enter the country to be paroled in the country or  
3 released pending hearings on some sort of bail; children  
4 being turned over to somebody who claims to be a relative  
5 who, as Senator Cornyn said, may be a dangerous person.

6 And the result of all that, I think, creates a  
7 negative message that encourages more people to believe  
8 our borders are open and illegal entries will eventually  
9 be rewarded.

10 My law enforcement background tells me that effective  
11 enforcement of the law and a humane and responsible, but  
12 effective way deters. Failure to prosecute effectively  
13 results in a failure of deterrence and an increase in the  
14 bad behavior.

15 Giuliani's small broken windows theory in New York,  
16 you do not allow even small crimes to grow and build. It  
17 creates an instability and a lack of respect for law that  
18 is threatening to any nation who desires to be great.

19 So we thank you for that. And I would say that I  
20 truly believe that our policy should serve the national  
21 interest. It should serve the interests of the American  
22 taxpayer first. We are a nation state. We are not a  
23 humanitarian or religious organization and we serve the  
24 constituents that elect us. We have a legal bond to  
25 their interests.

1           To me, we are not serving that interest if we allow  
2 lawlessness to continue, if we have the President  
3 exceeding his executive powers, which I have no doubt  
4 that he has done, and that we do not attempt to do the  
5 right thing with immigration policy.

6           So I thank you for that. Open borders are indeed  
7 facilitating gangs and crime and drugs and enormous  
8 fiscal and economic burdens on our country. Our  
9 immigration system is in chaos. We do not know what law  
10 is going to be enforced and who will be held to account.

11           The Administration is using resources that are  
12 appropriated to it to further and advance the interests  
13 of unlawful entrants rather than to improve law  
14 enforcement and we are rewarding illegal behavior too  
15 often rather than deterring it.

16           A refugee cannot be someone who lives in a country  
17 where there is a high crime rate. We just cannot have  
18 that as a lawful policy. And we have got our neighbors  
19 in this country too often living in high crime  
20 neighborhoods.

21           A nation, as a sovereign entity, they have borders  
22 and they have a right to enforce those borders and to  
23 maintain a legal system of immigration. We just cannot  
24 continue on the path we are going.

25           I believe your testimony has been helpful to us. I

1 appreciate you being here. We are going to continue to  
2 analyze this.

3 I guess I would say, Professor Ting, you have looked  
4 at this and studied it for years, but would you not agree  
5 that it is an essential component of a lawful system of  
6 immigration that even down to the lowest Federal law  
7 officer, we ought to have clarity in our policy and that  
8 that clarity ought to be transmitted worldwide, in which  
9 we essentially say to the world please come lawfully, do  
10 not come unlawfully?

11 Is that a winning message for this country?

12 Mr. Ting. Yes. And I think there is a clear role  
13 for Congress in this. I welcome the interest of Congress  
14 in man of these immigration issues that are out there and  
15 I think without congressional interest and without some  
16 effort to assist the Administration in clarifying what  
17 the legal result is, the Administration is left to its  
18 own devices. It is free to interpret, broadly interpret  
19 its powers.

20 And I think -- I welcome the interest of Congress and  
21 the courts in clarifying what is the appropriate role for  
22 each branch of government with regard to immigration.

23 Chairman Sessions. Well, that is what Professor  
24 Turley has testified to, Law Professor Turley, that our  
25 Congress has an absolute duty to defend its duties and

1 responsibilities against executive encroachment, which  
2 tends to happen.

3 So thank you all for being here. You are now  
4 dismissed. The record will stay open for 1 week.

5 The Committee stands in recess.

6 [Whereupon, at 4:47 p.m., the hearing was concluded.]

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