

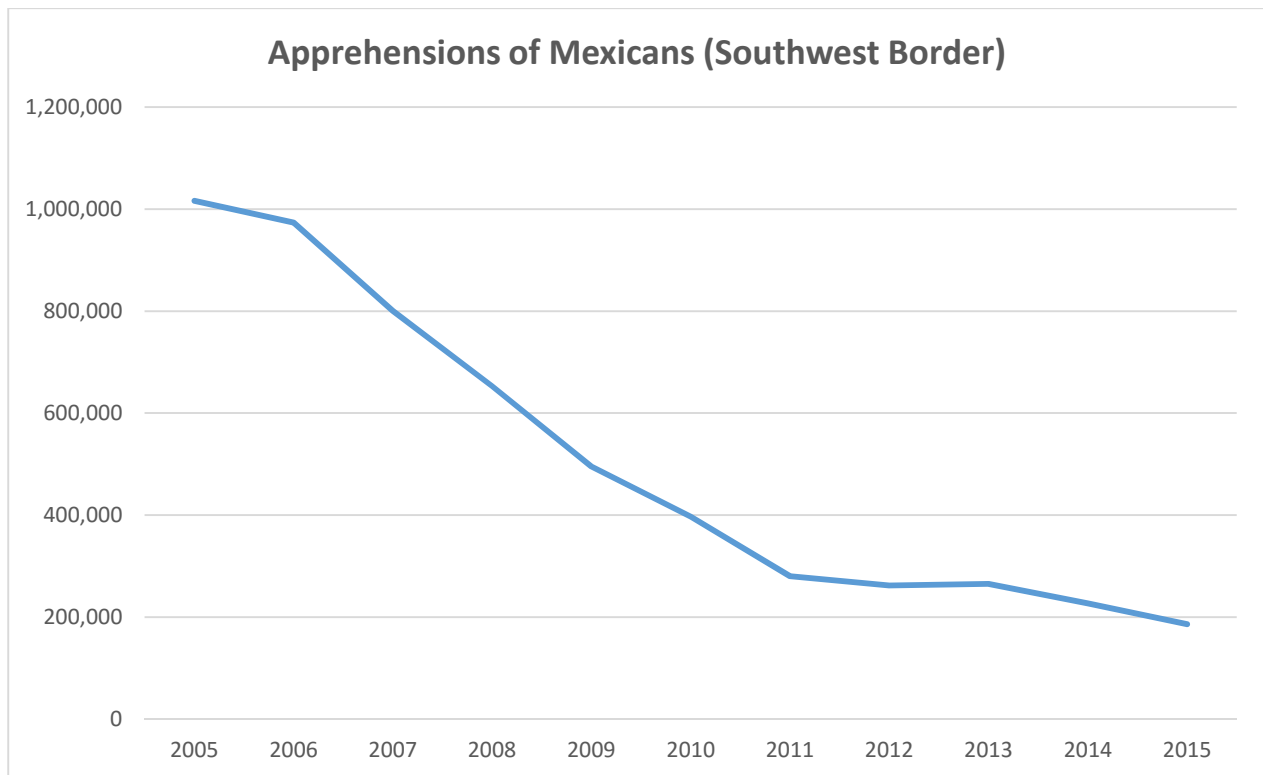
WORK VISAS BETTER THAN A WALL

EXECUTIVE SUMMARY

Building a wall along the U.S.-Mexico border, such as proposed by Donald Trump, would be ineffective and counterproductive, encouraging more unauthorized immigrants to stay long-term rather than working briefly in the United States and returning home. Contrary to the impression left by campaign rhetoric, illegal entry by Mexicans, as measured by apprehensions at the border, declined by 82 percent between 2005 and 2015. Well-designed temporary work visas could further reduce illegal entry and illegal migration and free up law enforcement resources to confront more serious security threats to the nation.

The lack of legal work visas in the United States has exacerbated the problems that have propelled people to flee violence in Central America. The violence, it should be noted, is not generalized, but according to individuals interviewed by attorneys and human rights groups it is focused against those who do not comply with the wishes of gang members. Teenage girls are threatened if they do not submit to the overtures of gang members, boys are assaulted or killed if they do not join a gang, and small business owners are told to pay extortion or risk the lives of their families.

Figure 1
82% Decrease in Apprehensions of Mexicans Along Southwest Border: FY 2005 to FY 2015



Source: U.S. Border Patrol.

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Among the key findings in this report:

- Illegal entry, as measured by apprehensions at the border, was close to a 43-year low in FY 2015. With the exception of FY 2011, the 331,333 apprehensions along the Southwest border in FY 2015 represented the lowest level of apprehensions since 1972. The 331,333 apprehensions in FY 2015 were 80 percent lower than the 1.6 million apprehensions reported along the Southwest border in FY 2000, according to the U.S. Border Patrol.
- While Mexican apprehensions have decreased dramatically (down 82 percent from 2005 to 2015), due primarily to economic and demographic factors, fear and violence in Guatemala, Honduras and El Salvador has significantly increased illegal entry by Central Americans. (Apprehensions are considered a proxy for illegal entry.) Apprehensions of “non-Mexicans” along the Southwest border increased by five-fold between FY 2011 and FY 2014, from 46,997 to 252,600. In FY 2015, apprehensions of Other Than Mexicans fell to 145,316. Through the first 10 months of FY 2016, apprehensions of Other Than Mexicans rose to 172,164. (For comparison, note there were 160,196 apprehensions of Mexicans along the Southwest border through the first 10 months of FY 2016, fewer than the apprehensions for non-Mexicans.)
- Given the large drop in attempted illegal entry by Mexicans, if apprehensions of non-Mexicans were to return to the level of FY 2011, the result would be much lower levels of illegal entry into the United States. Note that in FY 2011, only 3,933 unaccompanied alien children from El Salvador, Guatemala and Honduras were apprehended along the Southwest border. In comparison, in FY 2014, the number of unaccompanied children from those countries increased to 51,705. The number dropped to 28,387 in 2015 but has been surpassed in FY 2016, with 37,714 apprehensions unaccompanied alien children from those three countries through the first 10 months of FY 2016.
- America still does not possess a means for individuals to fill lower-skilled jobs with legal visas in year-round industries like construction, hotels and restaurants, as well as landscaping in places with mild climates. The influx of children and other migrants from Central America is one manifestation of the lack of economic-based visas. Parents who first came to the country to work have found that increased enforcement means it is not advisable to travel back and forth, as people did many years ago. Having established economic footholds superior to those in their home countries many have sent for their children to join them. If parents could work in the United States legally and travel back and forth to Central America or petition legally for their children (or spouse), then the situation of unaccompanied minors and family units appearing at the border likely would never have happened – and would not in the future.

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- The violence in Central America that is pushing many families and unaccompanied minors to come to the United States will not be solved by a border wall. In many cases, those fleeing Central America are turning themselves in to Border Patrol Agents. Attorneys note anyone can present themselves at a lawful port of entry and request asylum, which means a wall, even if relatively effective, would have no impact on Central Americans fleeing violence and seeking asylum in the United States. Ultimately, a combination of intensive effort to address root causes in Central America, in-country refugee processing, and fair and expeditious processing of asylum claims, combined with more ways to work legally in the United States, is the best approach.
- Americans should not rest their hopes on a wall being the “magic bullet” to prevent illegal immigration to the United States. No matter what material is used to build the wall, it would likely take many years and there will always be ways, at minimum, to go under or around any wall, or to find other means of gaining illegal entry to the United States. To cite one possible scenario: Before the end of 2016, Canada will grant visa-free travel for Mexicans. Virtually any citizen of Mexico could buy a plane ticket and arrive in Canada, just like Americans can buy a plane ticket and travel to Europe, without a visa. That means whether or not a wall is built, Mexicans could travel to Canada and, if they desire, attempt to enter the United States illegally across the northern border. For the United States, this would be like a homeowner building a granite wall across only their front lawn.
- The increasing use of H-2A agricultural visas (an approximate doubling between 2011 and 2015) may have contributed to fewer Mexicans attempting to enter the United States illegally since 2011. That would follow the historical pattern. Between 1953 and 1959, a large increase in the use of the Bracero program resulted in a 95 percent decline in illegal entry by Mexicans, as measured by apprehensions at the Southwest border.
- Administrative reforms should be considered to help the H-2A and H-2B visa categories work better to increase their use, since they represent legal, temporary visa alternatives to illegal entry.
- On the legislative front, Congress should look towards a system where individuals, possibly via bilateral treaties, are awarded agricultural “work permits” and can go work for any employer in agriculture. Something similar could be used for other sectors of the economy. That would address one of the primary complaints of critics by making it easier for individuals to find another employer if they are unhappy. At minimum a pilot project for this approach is warranted, since it would eliminate the need for much of the bureaucracy in the current programs (or in any future program for a visa in “year-round” sectors, such as hospitality and construction).

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Building a wall and trying to “make Mexico pay for it” is likely to complicate international relations, threaten current cooperation with Mexico on immigration enforcement and help human smuggling cartels profit from the continued lack of legal ways to work in America at lower-skilled jobs. Increased avenues to enter the United States to work legally at lower-skilled jobs is the most effective way to reduce illegal entry.

*Work Visas Better Than A Wall***ILLEGAL ENTRY BY MEXICANS HAS PLUMMETED**

The rationale for building a wall, as stated by Donald Trump, is that illegal entry by Mexicans has increased unabated across the U.S.-Mexico border.¹ However, *illegal entry by Mexicans, as measured by apprehensions at the Southwest border, fell by 82 percent between 2005 and 2015*. In FY 2015, there were 186,017 apprehensions of Mexicans along the Southwest border, compared to 1,016,409 apprehensions in FY 2005, according to the U.S. Border Patrol.² (Data for apprehensions of Mexicans in FY 2016 are similar to FY 2015.)

Historically, apprehensions along the Southwest border are a good indicator of illegal entry. “Despite their limitations, then, as now, INS apprehension figures are the best available indication of the degree of illegal immigration,” noted the Congressional Research Service in a 1980 report.³ In general, the fewer the apprehensions, the lower the flow of illegal immigration, while an increase in apprehensions generally means more illegal entry. Law enforcement, market conditions, and the availability of legal entry all affect the illegal flow.⁴

Table 1
Apprehensions of Mexicans Along Southwest Border by Year

Fiscal Year	Apprehensions of Mexicans (Southwest Border)
2000	1,615,081
2001	1,205,390
2002	901,761
2003	865,850
2004	1,073,468
2005	1,016,409
2006	973,819
2007	800,634
2008	653,035
2009	495,582
2010	396,819
2011	280,580
2012	262,341
2013	265,409
2014	226,771
2015	186,017

Source: U.S. Border Patrol.

¹ Jesse Byrnes, “Trump: NBC ‘Stands Behind Brian Williams,’ Not People Who Tell It ‘Like It Is,’” *The Hill*, June 29, 2015. “As has been stated continuously in the press, people are pouring across our borders unabated,” said Donald Trump.

² U.S. Border Patrol.

³ Congressional Research Service, *Temporary Worker Programs: Background and Issues*. A report prepared at the request of Senator Edward M. Kennedy, Chairman on the Judiciary, United States Senate, for the use of the Select Commission on Immigration and Refugee Policy, February 1980.

⁴ See also Stuart Anderson, *As Illegal Entry Rises, Solutions Include Establishing New Work Visas and Bilateral Agreements with Mexico and Central America*, NFAP Policy Brief, National Foundation for American Policy, July 2014.

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Over the past decade, two factors have contributed to this enormous drop in attempted illegal entry by Mexicans. First, the U.S. economy slowed down leading up to the “Great Recession” that began in 2007. Economic conditions in the United States influence illegal entry from Mexico (i.e., fewer jobs in the U.S. means less reason to come here.) “A reduction in the Mexican real wage or an increase in U.S. real wages leads to an increase in apprehensions in the current month,” according to economists Gordon Hanson and Antonio Spilimbergo. “This suggests that U.S. and Mexican labor markets are tightly linked.”⁵

Second, demographics have played a major role in the decline of Mexicans attempting to enter the United States unlawfully. “Undocumented migration from Mexico actually began to decline in 1999, not because of border enforcement, but because of that country’s demographic transition,” according to Douglas S. Massey, a professor of sociology and public affairs at Princeton University and co-director of the Mexican Migration Project. “From a fertility rate of around seven children per woman in the 1960s, Mexican fertility fell rapidly in subsequent years and today stands at 2.25 children per woman.”⁶

Massey explains:

The fertility rate is important because migration is undertaken by young people. The probability of migration rises sharply in the teens, peaks around age 20 and falls to low levels by age 30. If people don’t move between the ages of 15 and 30, they are unlikely ever to move at all.

In the 1980s and 1990s, the large number of people born in the 1960s and 1970s, when fertility rates were high, were moving into the migration-prone age interval to produce many migrants to the U.S. Those who are between 15 and 30 years old today were born in the 1990s and 2000s, when fertility was falling rapidly toward replacement level.

Mexico is now an aging society with an average age of 27.8 years, yielding a population that is increasingly unlikely to migrate. As a result, more people return to Mexico each year than depart for the U.S., a pattern that holds for both documented and undocumented migrants.⁷

⁵ Gordon Hanson and Antonio Spilimbergo, “Illegal Immigration, Border Enforcement, and Relative Wages: Evidence from Apprehensions at the U.S.-Mexico Border,” NBER Working Papers, 5592, National Bureau of Economic Research, Inc., 1996, p. 1355.

⁶ Douglas S. Massey, “The Surprising Reason Donald Trump’s Wall Would Be a Waste,” MarketWatch, April 21, 2016.

⁷ Ibid.

INCREASED ENFORCEMENT SWELLED THE UNAUTHORIZED IMMIGRANT POPULATION

Starting in the 1990s, political concerns about illegal immigration encouraged an increase in enforcement and changes in enforcement strategy that resulted in pushing unauthorized immigrants to cross into more remote areas. As a result, border crossing became more dangerous, as evidenced by the number of immigrant deaths at the border increasing from 263 in FY 1998 to a high of 492 in FY 2005.⁸

The increase in enforcement personnel had the unintended consequence of encouraging people to remain in the country after making it to the United States. The unauthorized immigrant population in the United States rose from 3.5 million to 11.8 million between 1990 and 2007, according to the Department of Homeland Security.⁹ During those same years, the number of authorized U.S. Border Patrol Agents increased from 3,733 to 14,923 (and is over 20,000 today).¹⁰ In other words, as enforcement efforts increased, so, too, did the unauthorized (illegal) immigrant population.

The change in strategy included Operation Hold the Line in 1993. "Operation Hold the Line was the first operation of its kind and represented a shift in ideology in policing illegal immigration," according to a history of the period. "Previous policies focused on finding and deporting illegal immigrants who had already crossed the border. Operation Hold the Line instead focused on intercepting and preventing illegal entries at the border."¹¹

Did the increase in personnel and change in tactics prove to be a successful strategy? The answer is no. "Although the intent of border enforcement was to discourage migrants from coming to the United States, in practice it backfired," explains Douglas S. Massey. "Having experienced the risks and having paid the costs of gaining entry, undocumented men increasingly hunkered down and stayed in the United States, rather than circulating back to face the gauntlet once more. As a result, the rate of return migration began to fall after 1986 and accelerated with the launching of the border operations in 1993 and 1994 . . . In addition, as male migrants spent more time north of the border, they were increasingly joined by their wives and children. And then they started making babies . . . In the end, the militarization of the border transformed what had been a circular flow of workers going overwhelmingly

⁸ U.S. Border Patrol.

⁹ Michael Hoefer, Nancy Rytina, and Bryan C. Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2007*, Office of Immigration Statistics, Department of Homeland Security, 2008.

¹⁰ U.S. Border Patrol.

¹¹ Vincent Dowd, "Operation Hold the Line," National Border, National Park: A History of Organ Pipe Cactus National Monument.

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to just three states — California, Texas, and Illinois — into a much larger settled population of families living across all 50 U.S. states — not a good outcome for a policy whose goal was the limitation and control of immigration.”¹²

VIOLENCE IS DRIVING CENTRAL AMERICANS TO THE UNITED STATES

“There is a reason Central American girls, boys, families and single adults are coming to the United States, despite the incredible risks and dangers they face on the difficult journey north: They are hoping to find shelter and protection from the extremely high incidence of rapes, beatings, gang attacks, and other grave or life-threatening violence that has taken over the Northern Triangle,” concludes a report by the American Immigration Lawyers Association (AILA).¹³

Many examples of the violence from which people are fleeing have appeared in the public record. Here is one example: “Kira is a 23-year-old indigenous Guatemalan Mayan mother who was detained with her four-year old son. Kira and her son fled Guatemala after Kira’s husband, a deacon at a local church, was targeted by gangs for preaching a religious message of non-violence, and after the gang targeted Kira, beating her face bloody on multiple occasions, and threatened her son.”¹⁴

El Salvador, Guatemala and Honduras have become extremely violent places that have driven many people to flee their homes and seek safety elsewhere. “Consider the fact that the United States, usually regarded as a violent country, has a current average of 4.5 murders per 100,000 inhabitants,” writes Oscar Martinez, author of *A History of Violence: Living and Dying in Central America*. “Honduras has 90. In 2015, El Salvador’s murder rate began to skyrocket, and by the end of summer, with an average of one murder taking place every hour, and a tally of around 4,000 dead already for the year, it looked ready to edge Honduras out of first place.”¹⁵

The drug trade and related gang activity have fueled the violence. Out of 6 million people in El Salvador, an estimated 50,000 Salvadorans are involved with gangs and there are “up to half a million more . . . who are economically dependent on them.”¹⁶ Oscar Martinez describes families in El Salvador fleeing from gangs on live television: “Live and direct: more than a dozen families fleeing their San Valentin condos in the city of Mejicanos . . . The police are offering protection for families who have been threatened by the Barrio 18 gang. Gang members threatened to kill by tonight. The residents of San Valentin, taking the threat seriously, are now fleeing on live national television.”¹⁷

¹² Douglas S. Massey, “Donald Trump’s Mexican Border Wall is a Moronic Idea,” *Foreign Policy*, August 18, 2015.

¹³ *Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States*, American Immigration Lawyers, 2016, p. 26.

¹⁴ *Ibid.*, p. 21.

¹⁵ Oscar Martinez, *A History of Violence: Living and Dying in Central America*, (New York, N.Y.: Verso, 2016), p. xiii.

¹⁶ *Ibid.*, p. xiii.

¹⁷ *Ibid.*, p. xiv.

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Residents of Guatemala have experienced similar terror at the hands of gangs. “A cheerful man with a gleaming gold tooth and an even shinier pump-action shotgun guards the hotel where I am staying, hoisting his weapon up onto his shoulder to open the door for guests as they come and go,” writes Tom Wainwright, author of *Narconomics*. “Down the road, a teenager brandishes a rifle that looks older than he is, as he stands guard outside a florist shop. Although the crime rate is sky high, it is rare to see police patrols, even in the capital. What you do see absolutely everywhere are heavily armed private security guards . . . Across the country, private security guards outnumber the police by five to one. Anyone with money can buy more than enough firepower to outgun the authorities.”¹⁸

KEY FACTORS: LACK OF WORK VISAS AND THE DESIRE TO JOIN FAMILY MEMBERS

The lack of legal work visas in the United States has exacerbated the problems that have propelled people to flee violence in Central America. The violence, it should be noted, is not generalized, but, according to individuals interviewed by attorneys and human rights groups focused against those who do not comply with the wishes of gang members. Teenage girls threatened if they do not submit to the overtures of gang members, boys are assaulted if they do not join a gang, and small business owners told to pay extortion or risk the lives of their families.

**Table 2
Unaccompanied Alien Children From Central America Encountered Along Southwest Border**

COUNTRY	2009	2010	2011	2012	2013	2014	2015	2016*
El Salvador	1,221	1,910	1,394	3,314	5,990	16,404	9,389	14,343
Guatemala	1,115	1,517	1,565	3,835	8,068	17,057	13,589	15,243
Honduras	968	1,107	974	2,997	6,747	18,244	5,409	8,128
TOTAL	3,304	4,444	3,933	10,146	20,805	51,705	28,387	37,714

Source: U.S. Border Patrol. *Figures for 2016 as of July 31, 2016.

America still does not possess a means for individuals to fill lower-skilled jobs with legal visas in year-round industries like construction, hotels and restaurants. The influx of child and other migrants from Central America is one manifestation of the lack of economic-based visas. Parents who first came to the United States to work have found that increased enforcement means it is not advisable to travel back and forth, as people did many years ago. Having established economic footholds superior to those in their home countries many have sent for their children to join them. If parents could work in the United States legally and travel back and forth to Central America or petition legally for their child (or spouse), then the situation of unaccompanied minors and family units appearing at the border likely would never have happened.

¹⁸ Tom Wainwright, *Narconomics: How to Run a Drug Cartel*, (New York, NY: PublicAffairs, 2016), pp. 109-110.

AGRICULTURAL AND OTHER WORK VISAS

Agricultural work visas, H-2A visas, allow foreign nationals to work legally on U.S. farms and nurseries, while H-2B visas permit work in nonagricultural settings. Both visas are temporary and seasonal, and neither can lead to permanent residence (a green card). The agricultural visa portion of the Senate “Gang of 8” bill passed in 2013 was considered by many a good compromise, while the proposed (new) “year-round” work visa for nonagricultural jobs in the bill was viewed by employers as too bureaucratic and with too few visas. Almost everyone expects that for any future compromise on these issues to become law some form of legalization for agricultural and other workers already in the United States in unlawful status will need to be included in the bill.

Agricultural work visas are particularly important because relatively few Americans have an interest in becoming migrant farm workers. Without a reliable workforce, it is difficult for U.S. farms to produce (or even survive financially) and, thereby, provide other related jobs downstream. “In the last decade, as fewer young agricultural workers have come to the United States, the number of field and crop laborers available to farms has been rapidly declining,” concluded a report for the Partnership for a New American Economy by economist Stephen G. Bronars. “This drop has created a severe labor shortage in many key parts of the country vital to American farmers and iconic crops. It has also had an impact far beyond rural America: The lack of workers has not only hurt the ability of U.S. farms to grow and expand, it has cost our economy tens of thousands of jobs in related industries like trucking, marketing, and equipment manufacturing.”¹⁹

Despite its reputation among growers – “The program is indeed cumbersome and litigation-prone,” said one former DOL official at a House hearing – the demand for labor in recent years has increased the use of H-2A visas.²⁰ The number of H-2A visas issued has risen steadily, going from 55,384 in FY 2011, to 65,345 in FY 2012, 74,192 in FY 2013, 89,274 in FY 2014 and 108,144 in FY 2015. Anecdotally, it appears that upward trend is likely to be reflected in the FY 2016 H-2A numbers as well.²¹ Still, processing delays remain a problem for growers and industry sources note that many agricultural employers are excluded from using the visa and others struggle to meet the visa category’s housing requirements.²²

It is possible that the increase in H-2A visas since FY 2011 has contributed to the decline in attempted illegal entry by Mexican nationals, as individuals who in the past may have attempted to enter illegally instead used the legal

¹⁹ Stephen G. Bronars, *A Vanishing Breed*, Partnership for a New American Economy, July 2015.

²⁰ Testimony of John R. Hancock before the Subcommittee on Immigration and Claims of House Committee on the Judiciary, September 24, 1997.

²¹ *Table XVI(B), Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards, Fiscal Years FY 2011-2015*, U.S. Department of State.

²² Dairy farmers are an example of an agricultural employer that is largely excluded from using H-2A, with some exceptions.

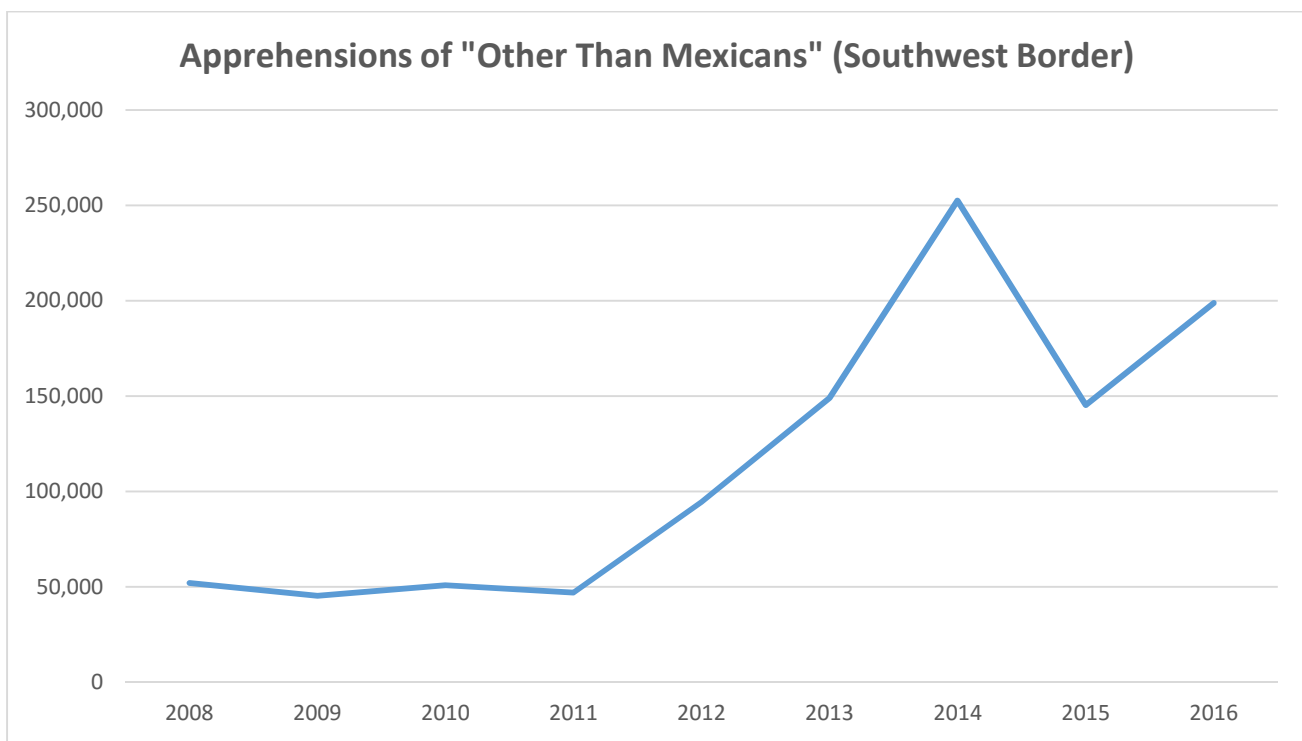
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visa process, which is a positive development. Apprehensions of Mexicans along the Southwest border dropped by 34 percent from FY 2011 to FY 2015, from 280,580 to 186,017.²³ (See Table 1.)

LARGE INCREASE IN NON-MEXICANS, INCLUDING UNACCOMPANIED MINORS

As recently as FY 2011, only 3,933 unaccompanied alien children from El Salvador, Guatemala and Honduras were apprehended by the Border Patrol. By 2012, that number had risen to 10,146 and increased further to 51,705 by 2014. The number dropped to 28,387 in 2015 but has been surpassed in FY 2016, with 37,714 apprehensions as of July 31, 2016.²⁴

Figure 2
Apprehensions of “Other Than Mexicans” Along Southwest Border: FY 2008 to FY 2016



Source: U.S. Border Patrol. National Foundation for American Policy. *FY 2016 numbers are projected.

²³ U.S. Border Patrol.

²⁴ Ibid.

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In FY 2015, the number of family units (child under 18 years old, parent or legal guardian with a family member) apprehended by the Border Patrol was 10,872 from El Salvador, 12,820 from Guatemala and 10,671 from Honduras. The figures increased for all three countries through July 31, 2016 (the first 10 months of the fiscal year) to 20,186 from El Salvador, 16,969 from Guatemala and 15,142 from Honduras. Apprehensions for family units remain much higher for each of the countries than for Mexico, which had 4,276 family unit apprehensions in FY 2015.²⁵

Given the large drop in attempted illegal entry by Mexicans, if apprehensions of non-Mexicans were to return to the level of FY 2011, the result would be much lower levels of illegal entry along the Southwest border. In FY 2011, there were 46,997 apprehensions of individuals identified as “Other Than Mexican” along the Southwest border. That number doubled to 94,532 by 2012 and then nearly tripled to 252,600 in FY 2014. In FY 2015, there were 145,316 apprehensions along the Southwest border of Other Than Mexicans, and 172,164 such apprehensions through the first 10 months of FY 2016.²⁶ In comparison, there were 160,196 apprehensions of Mexicans through the first 10 months of FY 2016.²⁷

BUILDING A WALL WILL HELP THE DRUG CARTELS

Recent history shows one of the primary beneficiaries of building a wall would likely be the drug cartels in Latin America. Tom Wainwright, author of *Narconomics*, writes, “The vast increase in spending on border security has inadvertently transformed the people-smuggling business from an optional, cheap, amateur affair into a near-compulsory, very expensive, and cartel-dominated one. It is a gift to organized crime.”²⁸

According to Wainwright, an editor for *The Economist*, the “Cartels’ ‘concentric diversification’ into people smuggling seems to have been more successful than Coca-Cola’s foray into winemaking.”²⁹ He has studied the drug cartels and notes that they have branched out similarly to other businesses. “A result of U.S. enforcement is that coyote networks are more extensive, and those networks are more criminalized,” explains David Scott Fitzgerald, co-chair of the Center for Comparative Immigration Studies at the University of California-San Diego.³⁰

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Tom Wainwright, *Narconomics: How to Run a Drug Cartel*, (New York, NY: PublicAffairs, 2016), pp. 204-205.

²⁹ Ibid., p. 205.

³⁰ Ibid., p. 201.

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This does not mean cartels directly employ all coyotes (the individuals who accept payment in exchange for guiding people to enter the U.S. unlawfully). “The relationship between coyotes and cartels is complex: rather than handling the migrants themselves, the cartels usually farm the job out to people smugglers, who pay the cartel for *derecho de piso* – literally ‘floor rights,’ or a license to use the cartels’ turf and contacts around the border,” notes Wainwright. “In some cases, it seems that the cartels have allowed their valuable drug-trafficking infrastructure to be used to smuggle migrants.”³¹ A tunnel from Mexico to California was recently found to be used for smuggling people into the United States.³²

Table 3
Southwest Border Apprehensions by Year

Fiscal Year	Apprehensions (Southwest Border)	Percentage of Apprehensions “Other Than Mexican”
2000	1,643,679	2%
2001	1,235,718	2%
2002	929,809	3%
2003	905,065	4%
2004	1,139,282	6%
2005	1,171,396	13%
2006	1,071,972	9%
2007	858,638	7%
2008	705,005	7%
2009	540,865	8%
2010	447,731	11%
2011	327,577	14%
2012	356,873	26%
2013	414,397	36%
2014	479,371	53%
2015	331,333	44%
2016	*390,000	51%

Source: U.S. Border Patrol. *FY 2016 projected based on data as of June 2016. Includes apprehensions of both Mexican and “Other Than Mexican.”

³¹ Ibid., p. 201.

³² Ibid., p. 202.

POLICY RECOMMENATIONS

VISAS FOR LOWER-SKILLED WORKERS

Increased avenues to enter the United States to work legally at lower-skilled jobs have proven to be the most effective way to reduce illegal entry. Moreover, by permitting individuals to travel back and forth to their home countries, fewer will feel compelled to stay long-term and set down roots to avoid the risk of crossing the dangerous border upon reentry.

New approaches to work visas should be market-based, low on bureaucracy and permit workers to change jobs easily. Current visa categories are inadequate in several ways. First, there is no category available for U.S. employers to hire a foreign national for “year-round” work that does not require a high school degree. It is fair to say this is the type of work (outside of agriculture) that many people who enter the country unlawfully are seeking, although many would likely work for a time and return home if that option was available. The lack of legal avenues for work has created a black market in labor.

Second, H-2B visas are available for short-term seasonal jobs not in the agricultural sector. However, the quota for H-2B visas is limited to 66,000 a year and employers consider the regulations to be problematic, although labor groups would like the regulations to be far stricter.

Third, it is clear the rules governing H-2A visas for seasonal agricultural labor are burdensome, since even though there is no numerical limit on the category, experts agree, despite the recent increase in the use of H-2A visas, most farm workers for field work are here unlawfully.³³

A fourth problem is that there is not a good category available for individuals to be sponsored for permanent residence as a lower-skilled worker. In practice, only 5,000 people a year, including dependents, can receive green cards annually in the “Other Workers” employment category. To petition for a family member, the sponsor must be here legally. Even then, the wait times for family members for Mexico can be from 2 to 21 years, depending on the category.³⁴

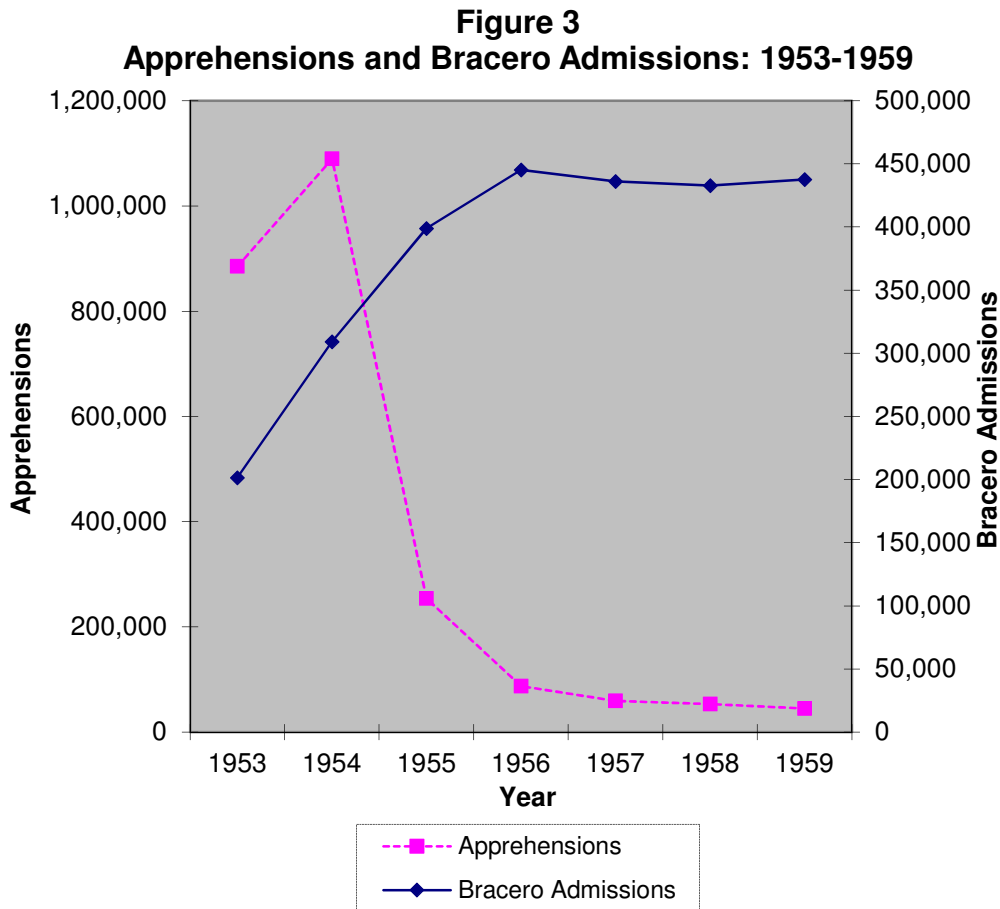
History shows that a primary cause of illegal immigration is the lack of legal visas for “lower-skilled” jobs. In 1954, the Immigration and Naturalization Service (INS) ramped up enforcement in the short-term, while at the same time making it much easier for employers to bring in Mexican farm workers under the Bracero program. The number of

³³ See also, Stuart Anderson, “More Work Visas, Less Illegal Immigration,” *Forbes*, October 5, 2015.

³⁴ *Reforming America’s Legal Immigration System*, NFAP Policy Brief, National Foundation for American Policy, September 2015.

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Mexican farm workers legally admitted more than doubled from 201,380 in 1953 to an average of 437,937 for the years 1956-1959. Moreover, Mexicans admitted as permanent residents (green card holders) rose from 18,454 in 1953 to an average of 42,949 between 1955 and 1959.³⁵



Source: Congressional Research Service, Temporary Worker Programs: Background and Issues, February 1980, p. 40; *Annual Report of the Immigration and Naturalization Service, 1959*; *INS Statistical Yearbook 1996*.

Encouraging more legal entry under the Bracero program proved to be a big success. Illegal entry, as measured by apprehensions at the Southwest border, declined by 95 percent between 1953 and 1959. This showed that Mexican workers will respond to incentives to enter and work lawfully, rather than unlawfully.

³⁵ Kitty Calavita, *Inside the State* (New York, NY: Routledge, 1992), p. 218. It appears a good portion of those who received permanent visas were petitioned for by their agricultural employers, which was later limited by the federal government.

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Apprehensions along the Southwest border dropped from 885,587 (in 1953) down to as low as 45,336 in 1959. To put that into perspective, at the rate of illegal entry in 2006, without the benefit of a market safety valve of legal visas, 45,336 would have represented just two weeks' worth of apprehensions, rather than the total for a full year as in 1959.³⁶ As Figure 3 shows, apprehensions, a proxy for illegal entry, *dropped significantly* when legal admissions under the Bracero program *increased significantly*.

After the Bracero program ended in December 1964, illegal entry, as measured by apprehensions, increased dramatically. In 1970, the INS confirmed the connection, reporting, "Since the expiration of the Mexican Agriculture Act on December 31, 1964, the number of deportable aliens located has continued on an upward climb. For the 6-year period, FY 1965 through FY 1970, 71 percent of the 1,251,466 total deportable aliens located were of Mexican nationality. Year by year, the annual percentage of this nationality group has risen, from 50 percent in 1965 to 80 percent this year."³⁷

While the lack of legal visas for jobs outside of agriculture has been a contributing factor, it is clear that ending the Bracero program jump-started large increases in illegal entry. Apprehensions of adult male Mexican agricultural workers increased by 600 percent between 1965 and 1970, according to an internal INS report.³⁸ The 1970 INS annual report confirmed that the end of the Bracero program accompanied sharp rises in illegal immigration.³⁹ And this was expected. "Reason clearly indicates that if a Mexican who wants to come to the United States for this employment can enter this country legally, with all the protection and benefits that a well-considered and well-administered employment program give him he will do so, rather than come in illegally..." according to a 1954 House report. "If, because the program is not available or is not realistically geared to the requirements of employers or workers, the Mexican seeking employment finds it's impossible or difficult to come in legally, many of them will find their own way across the long border between the United States and Mexico and get employment where they can, under whatever wages and working conditions they are able to obtain."⁴⁰

Some improvements to current temporary visa categories can be made administratively. For example, officials could work on better agency coordination to ensure approvals for workers come in a timely fashion (i.e., while still relevant for harvest), since the Department of Labor (labor certification), U.S. Citizenship and Immigration Services (petition)

³⁶ 1959 INS Statistical Yearbook; U.S. Border Patrol.

³⁷ U.S. Department of Justice, *Annual Report of the Immigration and Naturalization Service*, 1970, 1, as cited in Congressional Research Service (1980), p. 57. From 1964 to 1972, apprehensions along the Southwest border rose almost ten-fold, according to U.S. Border Patrol data.

³⁸ Unpublished INS report, October 21, 1971, CO 214h, as cited in Calavita, p. 151.

³⁹ U.S. Department of Justice, *Annual Report of the Immigration and Naturalization Service*, 1970, 1, as cited in Congressional Research Service (1980), p. 57.

⁴⁰ Congressional Research Service (1980), pp. 41-42.

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and the State Department (visa issuance at consulates) all are involved in the process. The lack of electronic filing is a problem across categories for U.S. Citizenship and Immigration Services. Finally, some type of “Trusted Employer” program could be established so long-time employers with a good track record can avoid some of the bureaucratic steps in order to focus more scrutiny on new users of H-2A or H-2B visas.

Looking ahead, Congress should consider moving towards a system where individuals, possibly via bilateral treaties, are awarded agricultural “work permits” and can go work for any employer in agriculture. The same could work for other sectors of the economy. That would make it easier for individuals to leave and go find another employer if they are unhappy, which would address the primary complaint of critics. It would allow the best employers to attract workers through their good reputation and good workplace practices. The need for much of the bureaucracy in the current programs (or in any future program for a visa in “year-round” sectors, such as hospitality and construction) would go away and it would be a system that would work for good workers and good employers. If Congress is not ready to move to such a system wholesale, then a pilot program would be a good place to start. To cite an existing category, people unable to return to danger in their homelands are awarded work authorization as part of Temporary Protected Status (TPS) and enjoy labor mobility.

A MULTI-PRONGED STRATEGY WITH CENTRAL AMERICA

The problems related to Central Americans seeking refuge in the United States differ depending on one’s priorities. If one is a Central American woman or child fleeing violence and persecution, or if one is most concerned about human rights and due process, then the problem is how to change the conditions causing people to flee, while also ensuring procedures are in place so people’s claims are heard properly. If one is an elected official or works for such an official, or one’s ideology is less supportive of immigration, then your view may be that a political or policy problem needs to be solved by preventing or discouraging people from Central America to come to the United States in the first place.

A multi-pronged strategy would involve working with Central American governments to solve the root causes that are driving people to the United States to seek asylum. That strategy could also include an expansion of in-country processing for refugees to hear claims in the region, rather than people, particularly children, making the dangerous journey to the U.S. border.⁴¹ Whether inside or outside the United States, individuals should be advised of their rights, receive fair hearings and have their claims adjudicated in a timely fashion as to whether individuals (or families) meet the standard to remain in the United States.

⁴¹ Alicia A. Caldwell, “Obama Expanding Refugee Program for Central Americans,” Associated Press, July 26, 2016.

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It appears many of those fleeing from Central America have a legitimate chance to receive asylum. "Available data strongly suggests that the vast majority of recently apprehended individuals from Northern Triangle countries have bona fide claims for protection under U.S. law," according to the American Immigration Lawyers Association. "USCIS data shows that 88 percent of the mothers and children detained in the three family detention centers in Pennsylvania and Texas are proving to the government they are likely to be found eligible for asylum and other forms of humanitarian relief by a U.S. Immigration Judge. In October 2015, UNHCR reported that already in FY 2015, out of 16,077 females from El Salvador, Guatemala, Honduras, and Mexico who were subject to the credible fear screening by a U.S. asylum officer, 82 percent proved to the government that they have a significant possibility of establishing eligibility for asylum or protection under the Convention against Torture."⁴²

DON'T BUILD A WALL

Republican presidential candidate Donald Trump has called for building a physical wall along the U.S.-Mexico border and has vowed to compel Mexico to "pay for the wall."⁴³ The first item listed on immigration reform on his campaign website states: "There must be a wall across the southern border."⁴⁴ It has become a centerpiece of his presidential campaign. However, reasonable analysis indicates there are a number of reasons why it would not represent a good use of resources or a wise policy choice.

First, simply increasing enforcement without providing the outlet of legal visas is unlikely to decrease illegal entry and is more likely to encourage individuals to stay in the United States rather than risk leaving and returning.

Second, no matter what material is used to build the wall, it would likely take many years to build, cost several billion dollars and would never be impenetrable. There will always be ways, at minimum, to go under or around any wall, or to find other means of gaining illegal entry to the United States.

To cite one possible scenario: Before the end of 2016, Canada will grant visa-free travel for Mexicans. That means virtually any citizen of Mexico could buy a plane ticket and arrive in Canada, just like Americans can buy a plane ticket and travel to Europe without a visa. "The Government of Canada has made it a top priority to re-establish and strengthen our relationship with one of our most important partners, Mexico," said a statement from the office of Canada's Prime Minister. "To this end, Prime Minister Trudeau today announced Canada's intention to lift the visa requirement for Mexican visitors to Canada beginning December 1, 2016. Lifting the visa requirement will deepen

⁴² "What's Going On With Immigration Enforcement? Fewer Border Crossers, More Asylum Seekers," AILA InfoNet Doc. 15120210, American Immigration Lawyers Association, December 23, 2015.

⁴³ "Compelling Mexico to Pay for the Wall," website of Trump-Pence 2016.

⁴⁴ "Immigration Reform That Will Make America Great Again," website of Trump-Pence 2016.

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ties between Canada and Mexico and will increase the flow of travelers, ideas, and businesses between both countries.”⁴⁵

What would this mean in practice? One thing it would mean is that whether or not a wall is built, Mexicans could travel to Canada and, if they desire, attempt to enter the United States illegally across the northern border. This would be like a homeowner building a granite wall across only their front lawn. Will the United States then also build a wall across the U.S.-Canadian border, which, not counting Alaska, is nearly 4,000 miles in length?⁴⁶

Third, a potential major complication of any plan to build a physical wall along the length of the U.S.-Mexico border is that the federal government does not own all this land. Portions of land along the border are owned by private individuals and Indian tribes, which means that absent express permission to use the land to build a wall there are likely to be legal complications. “Hundreds of property owners were sued just to build the existing chunks of wall” along the U.S.-Mexico border, reported the Associated Press. “Officials overseeing the wall's construction faced a legal and logistical nightmare from the start, according to emails obtained under the Freedom of Information Act and litigation by Denise Gilman, a law professor at the University of Texas.”⁴⁷

Fourth, the wall seeks to solve a problem, namely attempted illegal entry by Mexicans, that data show has become much less of a problem. As noted elsewhere in this report, the illegal entry of Mexicans, as measured by apprehensions at the border, dropped by 82 percent between 2005 and 2015. As Princeton University professor Douglas S. Massey writes, “Doubling down on a failed policy of border militarization by adding more fences and walls is not only moronic because it would continue, at great cost, a demonstrably counterproductive strategy for restricting immigration — but it is also senseless because net undocumented migration from Mexico has stopped.”⁴⁸

Fifth, adopting an antagonistic stance toward Mexico would interfere with current cooperation between the United States and Mexico on immigration. U.S. State Department testimony delivered at a Senate hearing noted that the Mexican government has made it more difficult for Central Americans to make it through Mexico and into the United States. “The Mexican crackdown has clearly been devised in tandem with the U.S. government,” reported *The Guardian*.⁴⁹

⁴⁵ “Canada to Lift Visa Requirements for Mexico,” statement, Office of Prime Minister Justin Trudeau, June 28, 2016.

⁴⁶ Janice Cheryl Beaver, *U.S. International Borders: Brief Facts*, Congressional Research Service, November 9, 2016.

⁴⁷ Associated Press, “Completing Border Wall is Daunting Task in Texas, Where Most Land is Privately Owned,” *Fox News Latino*, January 1, 2016.

⁴⁸ Massey, *Foreign Policy*.

⁴⁹ Jo Tuckman, “Mexico’s Migration Crackdown Escalates Dangers for Central Americans,” *The Guardian*, October 13, 2015.

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Sixth, the key facet of the plan to make “Mexico pay for the wall” is likely illegal and would lead to unintended consequences even if it was not. A Trump campaign memo (and its website) stated that unless Mexico paid America “\$5 to \$10 billion” to build the wall, the U.S. government would impose a “requirement that no alien may wire money outside of the United States unless the alien first provides a document establishing his lawful presence in the United States.”⁵⁰

Ian M. Comisky, a partner at Blank Rome LLP in Philadelphia and a former assistant U.S. attorney, points out wire transfer companies like Western Union already must adhere to the Patriot Act. More importantly, the Trump campaign’s memo argues for expanding the Patriot Act by executive branch rule in a way that would not be legal without Congress amending the law. Currently, the Patriot Act requires financial institutions to know the identity of their customers. The Trump campaign memo argues that section of the law can be reinterpreted and expanded by administrative fiat to require clerks in money transfer establishments to demand proof of legal immigration status. But the text of the law does not support such a reading of the law. Moreover, it would also interfere with numerous transactions, including potentially transactions done over the Internet.⁵¹

Ironically, even if the wire transfer rules proposed by the Trump campaign were implemented, it would lead to two potential results. People could avoid the rules through a variety of means, for example, by using straw senders, such as relatives or friends here lawfully, as Mary O’Grady has pointed out in the *Wall Street Journal*.⁵² In addition, if Mexican workers in the United States were actually prevented from sending money to their families in Mexico, then they would bring those families to America, creating more illegal immigration.⁵³

Seventh, since FY 2014, approximately half of the apprehensions at the border are “Other Than Mexican,” primarily people from Honduras, Guatemala and El Salvador. The violence in Central America that is pushing many families and unaccompanied minors to come to the United States will not be solved by a border wall. In many cases, those fleeing Central America are turning themselves in to Border Patrol Agents.

Even if individuals could not go over, under or around a wall with the help of smugglers, Anwen Hughes, deputy legal director of Human Rights First, notes anyone can present themselves at a lawful port of entry and request asylum or at least present enough information to be screened for a credible fear of persecution. “There are many compelling claims given the genuine human rights problems in those countries,” she said. Even today, some portion

⁵⁰ “Compelling Mexico to Pay for the Wall,” website of Trump-Pence 2016.

⁵¹ Stuart Anderson, “Mr. Trump, Please Tear Down This Wall,” *The Daily Caller*, May 9, 2016.

⁵² Mary Anastasia O’Grady, “Trump’s Crumbling Wall Plan,” *The Wall Street Journal*, April 10, 2016.

⁵³ *Ibid.*

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of those fleeing the violence present themselves at a port of entry.⁵⁴ That means a wall would have no practical impact on Central Americans who flee violence and seek asylum in the United States.

Ratcheting up border enforcement, including by building a wall along the Southwest border, would be expensive and counterproductive. History has shown that increased enforcement without establishing new ways to work in the United States increases immigrant deaths at the border and encourages more people to stay in the country after making it across the border. A better approach is to allow more people to work legally in America by improving existing immigration categories and establishing new categories for lower-skilled work.

⁵⁴ Interview with Anwen Hughes.

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

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