

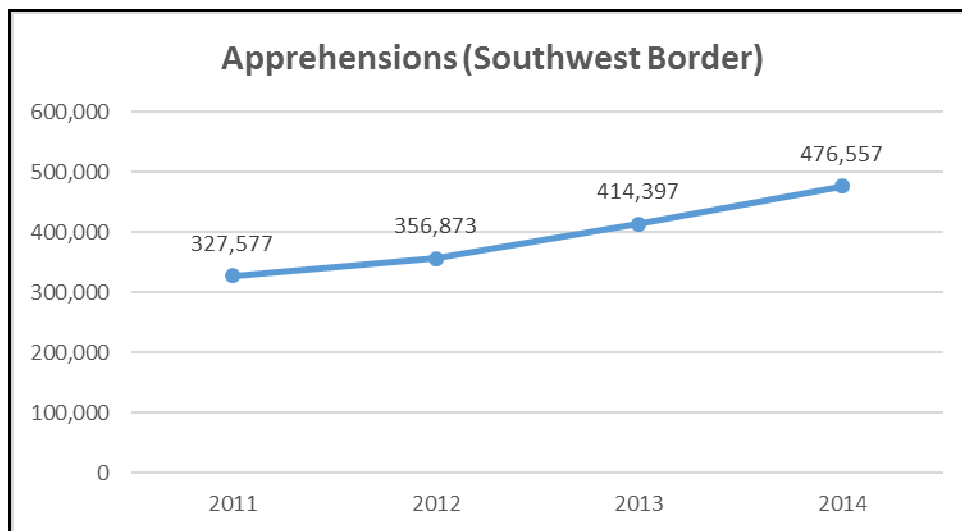
AS ILLEGAL ENTRY RISES, SOLUTIONS INCLUDE ESTABLISHING NEW WORK VISAS AND BILATERAL AGREEMENTS WITH MEXICO AND CENTRAL AMERICA

BY STUART ANDERSON

EXECUTIVE SUMMARY

Illegal entry, as measured by apprehensions at the border, has increased by 45 percent since FY 2011, according to an analysis of data obtained from the U.S. Border Patrol. Based on data through May 2014, apprehensions will reach 476,557 or higher by the end of FY 2014, which would be 45 percent higher than the FY 2011 total of 327,577. Much of the increase in illegal entry is from migrants, including both adults and unaccompanied minors, from Central America. This level of illegal entry is likely to persist if the U.S. economy continues to improve and Congress does not pass legislation to establish legal visas for lower-skilled work. Moreover, the time has come to establish bilateral agreements with Mexico and Central America that would, in part, authorize work permits for nationals of those countries in exchange for cooperation on immigration enforcement. If parents had been able to work in the United States legally and travel freely back and forth to Central America it is likely the current situation along the Southwest border would never have happened, since parents would have gone home to help their children or petitioned for them legally. The current policy primarily benefits human smuggling cartels, which profit by controlling the routes to enter the U.S. illegally. Relying on U.S. law enforcement alone (Border Patrol and interior enforcement) to resolve primarily an economic issue (people from poorer countries seeking jobs in America or joining parents already working in the United States) has proven to be a questionable policy choice. Absent a change in policy, the costs in dollars and human lives will remain substantial.

Figure 1
Increase in Apprehensions: FY 2011 to FY 2014 (projected)



Source: U.S. Border Patrol. FY 2014 apprehensions are projected based on May 2014 data.

ILLEGAL IMMIGRATION RISING AGAIN

Even before the recent arrival of Central Americans along the Southwest border, illegal immigration had been rising. Data on apprehensions make it clear illegal immigration began to rise in FY 2012. This came after years of fewer attempts to enter illegally that coincided with the sluggish economy (2007 to 2011). Maintaining the status quo is unlikely to reduce illegal entry or the unauthorized immigrant population, since there will still be no reliable legal category for lower-skilled workers. Adding more Border Patrol agents to “secure the border” may be fruitless at a time when many unaccompanied minors and parents with children are turning themselves in at the border.

Historically, apprehensions along the Southwest border have been 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.¹ 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.

Table 1
Southwest Border Apprehensions by Year

Fiscal Year	Apprehensions (Southwest Border)
1998	1,516,680
1999	1,537,000
2000	1,643,679
2001	1,235,718
2002	929,809
2003	905,065
2004	1,139,282
2005	1,171,396
2006	1,071,972
2007	858,638
2008	705,005
2009	540,865
2010	447,731
2011	327,577
2012	356,873
2013	414,397
2014	476,557*

Source: U.S. Border Patrol. *FY 2014 projected based on May 2014 data.

¹ 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.

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With the expanding U.S. economy and limited economic opportunities south of the border, the year 2000 saw likely the highest level of attempted illegal entry, with apprehensions along the Southwest border reaching more than 1.6 million. With the economy slowing in 2001 and 2002, apprehensions dropped to 1.2 million in FY 2001 and 929,809 in FY 2002. Apprehensions increased back above 1 million a year in FY 2004, 2005 and 2006, then, as the U.S. economy faltered, apprehensions began to decline to low as 327,577 in FY 2011.

Since FY 2011, the number of apprehensions along the Southwest border have increased to 356,873 in FY 2012 and 414,397 in FY 2013, and is projected, based on data obtained from the Border Patrol, to reach 476,557 or higher by the end of FY 2014, which is a level 45 percent above the FY 2011 total of apprehensions.²

The overall level of the unauthorized immigrant population is another indicator that trends in illegal immigration may be going in the wrong direction. The Pew Research Center entitled a September 2013 report: “Population Decline of Unauthorized Immigrants Stalls, May Have Reversed.” The report raised the level of unauthorized immigrants in the country from 11.5 million to 11.7 million. “The sharp decline in the U.S. population of unauthorized immigrants that accompanied the 2007-2009 recession has bottomed out, and the number may be rising again,” according to Pew.³

The increase in apprehensions does not mean illegal entry will increase to the levels seen 10 years ago or earlier. However, it likely means the U.S. government is seeing the limits of an “enforcement only” approach, rather than combining enforcement with paths to work legally at lower-skilled jobs in the United States.

THE CURRENT INFLUX AT THE BORDER

The influx of Central Americans along the Southwest border in the summer of 2014, while larger in scale, actually continues a trend that began at least two years ago. In FY 2012, 99,000 apprehensions along the Southwest border were of “Other Than Mexican” and 266,000 were Mexican, according to the Border Patrol.⁴ In FY 2013, the number of “Other Than Mexican” apprehensions increased to 148,988, while the number of apprehensions of Mexicans remained about the same (at 265,409). In other words, nearly all of the increase in apprehensions in FY 2013 came from non-Mexicans. The percentage of non-Mexican apprehensions increased from 27 percent of the total in FY 2012 to 36 percent in FY 2013.⁵ Similar trends are apparent in FY 2014. In fact, through May 2014,

² According to the Border Patrol, apprehensions through May 2014 are 15 percent above the same period last year. Apprehensions could end up even higher than 15 percent over FY 2013 by the end of FY 2014.

³ Jeffrey S. Passel, D’Vera Cohn and Ana Gonzalez-Barrera, *Population Decline of Unauthorized Immigrants Stalls, May Have Reversed*, Pew Research Center, September 23, 2013.

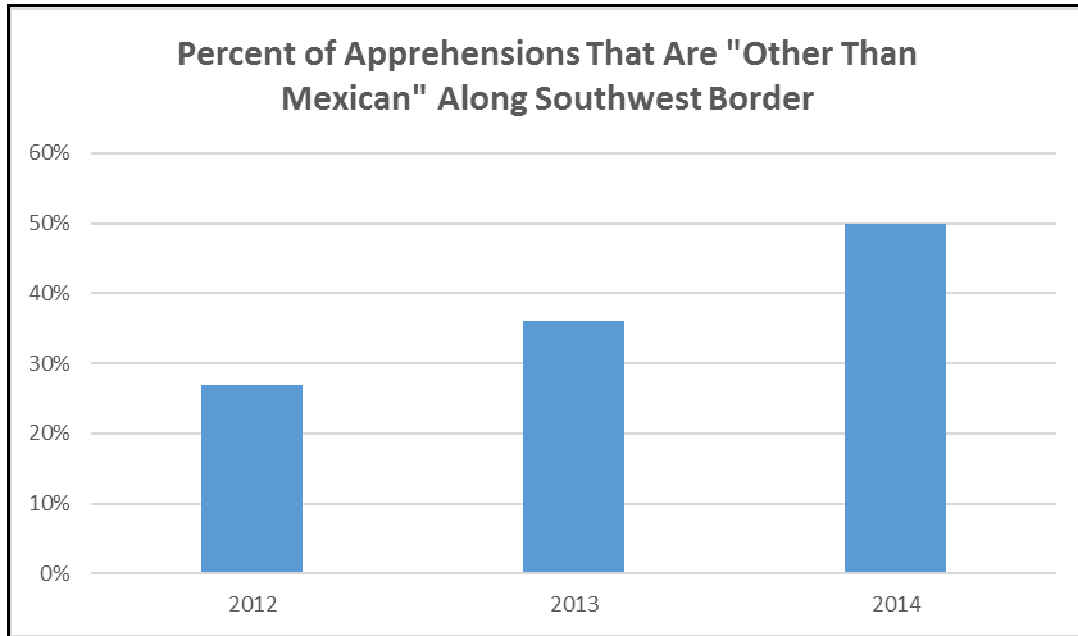
⁴ U.S. Border Patrol.

⁵ *Ibid.*

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“Other Than Mexican” apprehensions account for 50 percent of the apprehensions along the Southwest border, according to the U.S. Border Patrol.⁶

Figure 2
Apprehensions of Non-Mexicans Along Southwest Border



Source: U.S. Border Patrol. Percentage for FY 2014 is through May 2014.

KEY FACTORS IN INFLUX

Reports of thousands of minors from Central America crossing the Southwest border and in many cases turning themselves in to Border Patrol agents has caused many to seek a single factor to blame for the situation. First, the current attempted migration continues the recent trend in illegal entry, albeit at a higher level. Second, the influx of Central Americans can be attributed to a variety of factors, including the lack of legal visas for lower-skilled work in the United States, the power of human smuggling cartels, misinformation about U.S. policies and correct assumptions about policies on the treatment of unaccompanied minors.

LACK OF LEGAL VISAS FOR LOW-SKILLED WORKERS

America still does not possess a means for individuals to fill lower-skilled jobs with legal visas in year-round industries like construction, landscaping, hotels and restaurants. The influx of child migrants at the border is one manifestation of the lack of economic-based visas. Parents who first came to the country to work have found that

⁶ Ibid.

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increased border security means after making it to the United States 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, with gangs and other violence, including the abuse of girls, an additional push factor driving young people from Central America. If parents could work in the United States legally and travel back and forth to Central America the current situation likely would never have happened. That is because if parents could travel freely they would have gone home to help their children or been able to petition for them legally if the legal visa category permitted dependents or the number of employment-based green cards for lower-skilled workers was set at a more realistic level than the current 5,000 per year.

HUMAN SMUGGLING CARTELS

Human smuggling cartels, believed to be part of the Mexican drug cartels, are the prime mover of people crossing the Southwest border illegally. Smuggling migrants from Latin America into the United States may generate revenue in excess of \$6 billion a year for the cartels, according to the United Nations Office on Drugs and Crime.⁷ Homeland Security Secretary Jeh Johnson has blamed the cartels for spreading misinformation to drum up business. However, the only reason the cartels are in a position to profit from human smuggling is legal avenues are shut off to those who want to work legally in the United States at lower-skilled jobs, and also closed to their family members.

GANGS AND VIOLENCE IN CENTRAL AMERICA, MISINFORMATION, AND POLICY CHANGES

Interviews conducted by journalists with migrants in the area of the border or back in Central America detail the reasons for attempting to enter the United States unlawfully at this time. “A vast majority said they were fleeing gang violence that has reached epidemic levels in Guatemala, Honduras and El Salvador in recent years,” reports the Associated Press. “The migrants also uniformly said they decided to head north because they had heard that a change in U.S. law requires the Border Patrol to swiftly release children and their mothers and let them stay in the United States.”⁸

Other reports also describe the situation from which minors are fleeing. “Faviana has left her unwed mother and six siblings behind because of street violence,” writes *The Economist*. “She has not been to school for four years because, she says, gangs threaten to kill girls like her. Her uncle and aunt were recently murdered. Her mother is

⁷ *The Globalization of Crime*, United Nations Office on Drugs and Crime, Vienna, 2010, p. 66.

⁸ Albert Arce, “Kids at the Border Alone: What Families Believe About Fleeing to U.S.,” Associated Press, *San Jose Mercury News*, June 25, 2014.

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so poor, some days the family goes without food. Rape is a word she uses frequently; it happens all around her. But she hopes to reach the United States to go back to school.”⁹

Deploying additional Border Patrol agents is unlikely to solve the problem, since many migrants are turning themselves into agents to avoid the treacherous journey through the desert. “The belief that women and children can safely surrender to authorities the moment they set foot in the U.S. has changed the calculus for tens of thousands of parents who no longer worry about their children finishing the dangerous trip north through Mexico with a potentially deadly multiday hike through the desert Southwest,” according to the Associated Press.¹⁰

It is unknown the extent to which two policy changes in recent years have contributed to unaccompanied minors and families with children traveling to the U.S. border. But it is likely both policy changes have influenced the course of events. In 2012, President Obama announced an administrative action called the Deferred Action for Childhood Arrivals (DACA) program. It permitted unauthorized immigrants who entered America as children to receive relief from deportation and work authorization. Even though new entrants to the United States would not be eligible for DACA, the administrative action may have contributed to a misunderstanding about current U.S. law.

The second policy change came years earlier. In 2003, after Congress voted to create the Department of Homeland Security, it gave the Department of Health and Human Services (HHS) an important role in the detention or release of unaccompanied minors, authorities that previously were the domain of the enforcement divisions of the Immigration and Naturalization Service.¹¹ The intention was that HHS should err on the side of releasing minors to adult guardians, rather than detaining minors in government facilities while awaiting adjudication of their immigration case.

In addition, as reported by *The Economist*, “Whereas the United States is allowed rapidly to send illegal Mexican child migrants back across the border, it is required to treat those from Central America differently. Under the Trafficking Victims Protection Reauthorization Act of 2008, moreover, border agents cannot hold children for more than 72 hours. They must be given a court hearing before they are either deported or allowed to stay.”¹² The

⁹ “Under-Age and On the Move,” *The Economist*, June 28, 2014.

¹⁰ Albert Arce, *San Jose Mercury News*.

¹¹ The vote on the bill took place in 2002. HHS explains its role: “On March 1, 2003, the Homeland Security Act of 2002, Section 462, transferred responsibilities for the care and placement of unaccompanied alien children (UAC) from the Commissioner of the Immigration and Naturalization Service to the Director of the Office of Refugee Resettlement (ORR) . . . Unaccompanied alien children (UAC) apprehended by the Department of Homeland Security (DHS) immigration officials, are transferred to the care and custody of ORR. ORR makes and implements placement decisions in the best interests of the UAC to ensure placement in the least restrictive setting possible while in federal custody. ORR takes into consideration the unique nature of each UAC’s situation and incorporates child welfare principles when making placement, clinical, case management, and release decisions that are in the best interest of the child.”

¹² “Under-Age and on the Move,” *The Economist*.

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Trafficking Victims Protection Reauthorization Act states, “[A]n unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child.”¹³

Under the law today, it is possible for some juveniles in immigration proceedings to gain legal status and eventually permanent residence. U.S. Citizenship and Immigration Services explains, “The purpose of the Special Immigrant Juveniles status (SIJ) program is to help foreign children in the United States who have been abused, abandoned, or neglected: certain children who are unable to be reunited with a parent can get a green card as a SIJ; children who get a green card through the SIJ program can live and work permanently in the United States.”¹⁴

POLICY RECOMMENDATIONS: FOLLOW THE LAW, NEW WORK VISAS, BILATERAL IMMIGRATION AGREEMENTS WITH CENTRAL AMERICA

Three policy recommendations would help address the current situation at the Southwest border and place the United States in a better position to prevent a future influx, while also reducing illegal immigration and providing improved enforcement.

First, the Administration must obey the law on unaccompanied minors or ask Congress to change the law in a responsible fashion if it is found the law is contributing to the current problems at the border. Following the law will likely result in unaccompanied minors with meritorious cases to be allowed to stay legally, while many others likely would be returned to their home country. The Obama Administration is asking Congress for additional spending (\$3.7 billion) and changes in the law that could facilitate adjudications and repatriating unaccompanied minors to Central America.¹⁵

Second, Congress needs to pass legislation to authorize legal visas for work in the United States at jobs that are year-round and do not require a high school degree, particularly in sectors where many unauthorized immigrants now work, such as hotels, restaurants, landscaping and construction. It is likely such legislation would pass, and with sufficient annual quotas, only as part of a political compromise that would grant some form of legalization to many individuals already in the country without legal status.¹⁶ The ability to travel back and forth freely to Central America could prevent a future influx of unaccompanied minors or families, while some form of legalization could also allow family members to be reunited through legal means.

¹³ Section 235 of The Trafficking Victims Protection Reauthorization Act.

¹⁴ U.S. Citizenship and Immigration Services.

¹⁵ Julia Preston, “Obama to Seek Funds to Stem Border Crossings and Speed Deportations,” *The New York Times*, June 29, 2014; Michael Shear, “Obama Seeks Nearly \$4 billion for Immigration Crisis,” *The New York Times*, July 8, 2014.

¹⁶ Stuart Anderson, *A Path to an Agreement? Analyzing House and Senate Plans for Legalizing the Unauthorized Immigrant Population*, NFAP Policy Brief, National Foundation for American Policy, January 2014.

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Third, longer term, the best approach is to combine fully portable work permits – not tied to a specific employer – with bilateral administrative agreements between the United States and countries that send unauthorized immigrants to America. This approach would provide labor market freedom and, therefore, protection for new workers, at the same time it would elicit cooperation on immigration enforcement from Mexico and eventually other key countries.¹⁷ Today, there is only limited political incentive for foreign countries to cooperate on immigration enforcement with the United States.

Congress would authorize the President to sign bilateral administrative agreements with Mexico, followed by El Salvador, Guatemala, Honduras, and potentially other countries, to distribute an agreed upon number of work permits annually in conjunction with commitments on immigration enforcement and security issues from these nations. This approach would address the “future flow” of workers, reduce illegal immigration and establish a reliable framework for improved border security and immigration enforcement. These changes in policies would represent a significant improvement over the status quo and can help prevent a recurrence of the recent influx of unaccompanied minors from Central America to the United States.

¹⁷ For a more detailed explanation see Stuart Anderson, *Common Sense, Common Interests*, NFAP Policy Brief, National Foundation for American Policy, May 2009.

ABOUT THE AUTHOR

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