



Breaking Point: The Crisis on the Southern Border

By Pawel Styrna | June 6, 2019

“Two weeks ago, I briefed the media and testified in Congress that our immigration system was at the breaking point. That breaking point has arrived this week at our border.”

Then-Customs and Border Protection Chief Kevin McAleenan, March 27, El Paso, Texas

“Our apprehension numbers are off the charts. ... My greatest concern is that we will no longer be able to deliver consequences and we will lose control of the border.”

U.S. Border Patrol Chief Carla Provost, May 8, Senate Judiciary Committee hearing

The Breaking Point

With increasing frequency and urgency, the men and women tasked with protecting the nation, its borders and the American people have been issuing warnings about the growing chaos at the southern border. And Congress has done nothing besides issuing press releases and assigning blame. Even more perversely and irresponsibly, the House just passed an amnesty bill that will likely only further exacerbate the migrant surge.

On May 30, U.S. Border Patrol agents from Texas' El Paso sector apprehended 1,036 illegal aliens. In just one day, they detained 934 family members, 63 unaccompanied minors, and 39 single adults. In one day, the previous record of 430 was shattered – and there are no signs the surge will end there or elsewhere.

Everyone now agrees this is a crisis. Everyone agrees the system is “broken.” So, what next?

Reclaiming the Border

Ending the border crisis may take years, but there are several critical actions Congress *must* take to stem the flow and begin to reclaim U.S. borders:

- **Asylum reform.** Illegal aliens must be prevented from abusing our asylum system by closing asylum loopholes and credible fear standards should be tightened to ensure only legitimate claims are approved. The “remain in Mexico” policy should also be expanded to prevent false asylum claims from serving as a ticket into the U.S. After all, rampant asylum abuse is deeply unfair to legitimate asylum seekers.
- **Reform The *Flores* Settlement And Detention Policies.** Congress should modify the *Flores* Settlement Agreement, which places unreasonable restrictions on the detention of minors by DHS.
- **Hire More immigration Judges.** The current immigration court backlog is almost 900,000 pending cases in FY 2019. The backlog grew significantly under President Obama and has been increasing at an alarming rate under President Trump to unprecedented levels. Yet, the United States currently has only 400 immigration judges, a number that is woefully insufficient to clear the backlog and ensure a speedy and efficient illegal alien removal process.
- **Sufficiently Fund Border Security Agencies.** Congress must fund sufficient detention space – including family detention centers – to prevent aliens from being released into the U.S. interior while they await a court date. We should also hire more Border Patrol agents and increase the capacity of federal law enforcement training centers to train them.

How Did We Get Here?

The United States has experienced periodic spikes or surges in illegal immigration over the past few decades, but the current crisis at the 1,954-mile-long U.S.-Mexico border is unquestionably unprecedented and perhaps the most serious the country has faced. Apprehension numbers at the southern border have skyrocketed over the past year as migrant caravans have ventured to the border at a consistent rate and in growing numbers. The U.S. is on track to record *one million apprehensions* in Fiscal Year 2019.

Both current and former Department of Homeland Security (DHS) officials have consistently warned that the situation constitutes a major national security and humanitarian emergency, and that the crisis is reaching a point where control of the border could be lost.

Migrant apprehensions along the southern border continue to break records and are on track to exceed *one million apprehensions* in Fiscal Year 2019. By comparison, there were 404,000 in FY 2018 and 310,000 in FY 2017 (all apprehension numbers are available at the website of U.S. Customs and Border Protection).

While we’ve seen immigration surges in the past, this one is different than the last crisis in 2014. Five years ago, the illegal aliens apprehended were primarily single Mexican males, who could be quickly removed. Now, the influx is predominantly from Central American nations and family units. Because U.S. law treats aliens from contiguous nations differently, deporting them expeditiously is not possible.

The sheer number of migrants combined with existing loopholes and weaknesses in U.S. immigration and asylum law have coalesced to produce an unsustainable crisis on the border which is spreading to the interior U.S. where these migrants are being relocated or simply released.

DHS resources at the border are nearing a breaking point as personnel are being diverted to high-pressure sectors and spending an increasing amount of time caretaking for children and family units. With Border Patrol agents stretched thin, criminals and traffickers can exploit the border and gain access to the U.S. by infiltrating large groups of family units and children.

Politicizing a Crisis of Unprecedented Proportion

Even as apprehension numbers grew larger and larger, members of Congress, the mainstream media, and pro-amnesty activists have turned a blind eye by asserting it was a manufactured crisis and that warnings were a political tactic designed to focus attention elsewhere. Many claimed the crisis was “manufactured” by President Trump to both rally his supporters and justify his immigration policies – his signature campaign promise of building a border wall in particular.

While illegal alien apprehensions exceeded 400,000 in FY 2018, and are on track to eclipse one million in FY 2019, they do remain below historic highs. In 1986 and 2000, almost 1.7 million illegal aliens were apprehended, and during most years between the late 1980s and the early 2000s the total annual number of apprehensions routinely exceeded the one million figure.

Just as the United States has changed over the last 20 years, so too have the migrants, including their levels of education, job skills and reasons for seeking to settle in the U.S. Conversely, having absorbed the impact of previous surges, states and the Federal government are unprepared and ill-equipped to cope with the current surge.

A Simmering Pot Boils

There has been a sharp increase in apprehensions during the past two fiscal years. The total apprehended in FY 2017 was 310,000. In FY 2018 it was 404,000 – a 30 percent increase. *The number to date in FY 2019 is almost 676,000, at the eighth-month mark.* Both the current and projected apprehension number exceeds that of FY 2014 (486,000), the year of the Central American unaccompanied child migrant surge.

Monthly numbers also further reinforce the gravity of the crisis. The highest number of monthly apprehensions in FY 2014 was 61,000 (May 2014). In FY 2019 we already exceeded that number in February (76,500 apprehensions) and apprehensions from October 2018 to January 2019 were approximately 60,000 per month. The apprehension numbers for March, April, and May were 104,000, 109,000, and 144,000 respectively.

The last time the U.S. experienced such high apprehension numbers in February, March, and April was FY 2007 – more than a decade ago. Additionally, illegal aliens apprehended at the border have in the past been primarily single Mexican males, who could be removed fairly quickly. Now, majority of aliens attempting to enter the U.S. are Central Americans, particularly from the Northern Triangle countries of Guatemala, El Salvador, and Honduras.

In fact, during the first six months of FY 2019 unaccompanied children and family units represented ten and 53 percent of southwest border apprehensions, a sharp increase from previous years as far as family units are concerned. This was the first time that single adults were a minority (less than forty percent) among apprehended illegal aliens (Pew Research Center, April 10, 2019).

Why a Migrant's Nationality Matters

The fact that Central Americans are now the primary drivers of the migrant influx is important because of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The legislation differentiates between unaccompanied children (UACs) from "contiguous" countries (Canada and Mexico) and the nationals of "non-contiguous" countries, which includes the Northern Triangle nations. A UAC from a contiguous country can be removed unless the alien has been trafficked and has a credible fear of persecution.

Under the TVPRA, those who are not Mexican may be transferred to the care and custody of the Department of Health and Human Services (HHS) within 72 hours and placed in formal removal proceedings, even if they have not been "trafficked."

UACs and family units pose a particular challenge in the context of border security. The *Flores* settlement agreement, signed in 1997, places unreasonable restrictions on the detention of minors by DHS, which, in many circumstances, render minor children a get-out-of-jail-free card for adult border jumpers.

At least in part as a result of *Flores*, the number of apprehended aliens claiming credible fear increased by 67 percent between FY 2017 and FY 2018 according to CBP. DHS data also shows that only a tiny percentage of UACs (3.5 percent) are ever removed. Not surprisingly, the *Flores* Settlement has encouraged Central Americans to either bring their children on perilous journeys or to hand them over to human smugglers or strangers who claim to be their relatives.

Yet, an ICE rapid DNA testing pilot program used in early May in El Paso and McAllen, Texas, found that as many as [30 percent](#) of those tested were in fact not related to the minors they claimed as their children. ICE official emphasized that these were not cases of adoptive or step-parents. However, the current dysfunctional system – and Congress' failure to fix it – encourages such rampant fraud, in addition to child trafficking and subjecting children to long and dangerous journeys through often inhospitable terrain. That is because, as Border Patrol chief Carla Provost told the Senate Judiciary Committee in early May: "They [migrants] have received the message loud and clear: bring a child, you will be released."

Preventing Repeat

The problem is further exacerbated by the wide-scale abuse of asylum loopholes by migrants. Since 2013, the number of aliens claiming credible fear upon arrival has risen by [2,000 percent](#). This has generated a backlog of over 786,000 pending asylum cases. According to DHS, a large majority of asylum claims are [fraudulent](#). Thus, nine out of ten asylum claims have been denied by federal immigration judges.

According to the [White House](#), "as a result of loopholes in United States immigration law, migrants claiming fear are often released into communities across the United States, where they often remain indefinitely. In order to remain in the country, they often fail to show up to court hearings, fail to file an asylum application, or fail to comply with removal orders once their claims have been denied."

In essence, aliens are using credible fear and asylum claims to circumvent our laws and gain admission into the U.S., which serves as an example and an incentive for others to break U.S. immigration laws.

Caravans and More Caravans

Another unique feature of the current border crisis are migrant caravans comprised of hundreds or even thousands of people – making their way from Central America through Mexico. The first large-scale caravan departed the town of Tapachula on the Mexican-Guatemalan border on March 25, 2018 (NBC Los Angeles, April 30, 2018), a development which prompted President Trump to deploy the National Guard to the southern border.

Another major caravan left Honduras in October 2018 and made its way towards Tijuana on the U.S.-Mexico border, where it arrived in mid-November. In response, the President deployed 5,200 troops to the U.S.-Mexico frontier. Demonstrating the increasing gravity of the situation, on November 25, 2018, hundreds of migrants attempted to rush the border, with some throwing rocks at U.S. authorities, forcing CBP to temporarily close the San Ysidro port of entry and to fire tear gas (Fox News, November 25, 2018). In January and April 2019, additional caravans left Honduras (Fox News, February 4, 2019; BBC News, April 10, 2019).

A Border Patrol Overwhelmed

In May 2019 testimony before the Senate Judiciary Committee, Border Patrol Chief Carla Provost emphasized how caravans and large groups of migrants exacerbate the border crisis:

The phenomenon of large organized groups transiting Mexico has successfully accelerated migrants' timelines to reach the border by utilizing transportation services provided by state and local governments assisting in moving migrants throughout Mexico. Apprehending a group of 100 to 400 people at one time creates significant operational challenges for CBP officers and agents who have to care for and process these individuals first before continuing their law enforcement mission.

She also provided [alarming high numbers](#) demonstrating that our detention facilities are becoming rapidly overwhelmed:

Our short-term holding facilities were neither designed for the large volume of family units nor for long-term custody. We consider 4,000 detainees to be a high number of

migrants in custody, and in the past had considered 6,000 detainees a crisis. In this fiscal year, CBP has already experienced more than 14,000 detainees in custody on a single day.

As a consequence, DHS resources and personnel are being diverted from performing their essential border security duties. This, too, is historically unprecedented.

Border Patrol chief Carla Provost told the U.S. Senate: "I joined the Border Patrol nearly 25 years ago because of my strong belief in our border security mission. I could never have envisioned that today agents would spend at least 40 percent of their time as child care professionals, medical care givers, bus drivers, and food service workers."

Many short-term holding facilities are beyond capacity. As many DHS functionaries are tied up, criminal aliens – including narcotics smugglers, human traffickers, and vicious gang members – benefit from the distraction.

In addition, DHS has felt compelled to revert to “catch and release,” i.e. no longer referring detained migrant families to Immigration and Customs Enforcement (ICE) for detention. This means that the migrants are disappearing into the interior and joining the [12.5 million illegal aliens](#) already residing in the United States.

The current border crisis is far from “manufactured.” In fact, it is qualitatively different from previous crises and the full context demonstrates that calling it historic is entirely appropriate. Hence, ignoring the problem – or adhering to yesterday’s failed “business as usual” policies – will not only fail to stem the tide, but will make the situation even worse. As BP chief Provost emphasized, the border crisis is “like holding a bucket under a faucet. It doesn’t matter how many buckets you give me, if you can’t turn off the flow.”

Securing our borders and preventing our immigration and asylum system from becoming overwhelmed should not be a partisan issue. The situation on our southern border is indeed a legitimate national emergency. It should concern all Americans, regardless of their political or ideological preferences. Border security is too vital a matter to be held hostage to partisan strife. Hence, Congress must do its duty and work to address a problem that is rapidly and alarmingly spiraling out of control.