

**THE SILENT CRIMES: ABUSE OF CENTRAL AMERICAN MIGRANTS  
IN MEXICO AND POSSIBLE REFORM MEASURES**

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A staggering 80 percent of Central American girls and women crossing Mexico en route to the United States are raped along the way.<sup>1</sup> -Erin Siegal McIntyre & Deborah Bonello, for *Fusion*

Byron Pineda, 40, a tow-trucker who spent 28 years in the US, speaks English like a gringo and has a wife and two teenage children waiting for him back in Los Angeles. The account of his odyssey from Guatemala through Mexico included rafting across one river, wading across another, hiking over mountains to evade police patrols, collapsing from hunger, witnessing the rape of a female Honduran migrant, losing a friend from a moving train, being stabbed by a mugger, joining a circus and finally ending up in Altar [Mexico (a smuggling hub 60 miles south of the Arizona/Sonora border)], alone and broke, not knowing how or when or where he will cross the border, just that somehow, some day, he must. 'My life is over there. I want to see my kids.'<sup>2</sup> -Rory Carroll, for *The Guardian*

## I. INTRODUCTION

Byron Pineda's story is not unique. Central American migrants traversing Mexico into the United States face a myriad of dangers. In recent years, rapes, assaults, robberies, kidnapping, extortions, and even death have become commonplace. Militarization of borders and the difficulty in obtaining visas in both the United States and Mexico have arguably exacerbated these abuses by further pushing migrants to rely on the very criminal organizations and risky routes that are responsible for the above transgressions.

This Note will encourage alternatives to the current immigration policies of both Mexico and the United States. First highlighted are the dangers faced by Central Americans who traverse Mexico and enter the United States illegally. Next, the current legal responses from both countries will be examined. This Note will show that militarization of the border has not adequately addressed the problem, and how further militarization will likely not cure the dangers. Possible

<sup>1</sup> Erin Siegal McIntyre & Deborah Bonello, *Is Rape the Price to Pay for Migrant Women Chasing the American Dream?*, FUSION (Sept. 10, 2014, 2:51 PM), <http://fusion.net/story/17321/is-rape-the-price-to-pay-for-migrant-women-chasing-the-american-dream/>.

<sup>2</sup> Rory Carroll, *Altar, Mexico: How the "Migrant oasis" for Would-Be Border Crossers Became a Trap*, GUARDIAN (Oct. 14, 2015, 8:30 AM EDT), <http://www.theguardian.com/world/2015/oct/14/altar-mexico-how-the-migrant-oasis-for-would-be-border-crossers-became-a-trap>.

liberalization of immigration policies will be examined, and two models in particular will be reviewed for their potentially feasible application to Mexico and the United States. First, the policy of the Central American-4 Border Control Agreement (CA-4), signed in 2006 (between Guatemala, El Salvador, Honduras, and Nicaragua) allows free movement between countries without restrictions.<sup>3</sup> The second model is the Schengen Area within the European Union, which guarantees its members the free movement of goods, the free movement of capital, and the *freedom of movement of persons*.<sup>4</sup> The legal benefits and downfalls of each will be examined.

Lastly, this Note hopes to find a middle ground in which greater migrant legal freedom of movement can coexist with border security. On the US side, this Note will specifically focus on revision of the visa system in areas of work dominated by illegal immigration such as farm labor. On the Mexican side, either temporary visas or simply encouraging migrants to bypass Mexico altogether could reduce danger to migrants. This Note will also look at the possibility of capital stimulation to the economies of Central America in an attempt to create jobs domestically to deter the need for migration in the first place. The middle ground will be a viable alternative to greater militarization and also liberalization of movement through open borders.

## II. OVERVIEW

Many Central American migrants leave their country of origin every year because of poverty, violence,<sup>5</sup> or a desire to reunite with family members.<sup>6</sup> The Mexican government estimates that 150,000 Central American migrants cross into Mexico en route to the United States every year, though private organizations

<sup>3</sup> Wade Shepard, *CA-4 Visa for Central America Explained*, VAGABOND JOURNEY (Sep. 2, 2010), <http://www.vagabondjourney.com/ca-4-visa-for-central-america-explained/>.

<sup>4</sup> See EUROPEAN COMM'N, *THE SCHENGEN AREA* (2008), [http://biblio.ucv.ro/bib\\_web/bib\\_pdf/EU\\_books/0056.pdf](http://biblio.ucv.ro/bib_web/bib_pdf/EU_books/0056.pdf) [hereinafter SCHENGEN AREA].

<sup>5</sup> Jo Tuckman, *Mexico's Migration Crackdown Escalates Dangers for Central Americans*, GUARDIAN (Oct. 13, 2015, 8:30 AM), <http://www.theguardian.com/world/2015/oct/13/mexico-central-american-migrants-journey-crackdown> [hereinafter Tuckman, *Mexico's Migration Crackdown*]. The story of Jennifer Ramirez is common. Gangs such as Barrio 18 and Mara Salvatrucha are hyper-violent and dangerous gangs in Central America. San Pedro Sula is currently one of the harshest examples of this, being one of the murder capitals of the world, due in large part to the gang activity. Rob Crilly, "The Majority of Homicides are Young People. It's So Sad," TELEGRAPH (Aug. 3, 2015, 4:00 PM), <http://www.telegraph.co.uk/sponsored/lifestyle/honduras-gangs/11701324/honduras-murder-rate.html>.

<sup>6</sup> Rodrigo Dominguez Villegas, *Central American Migrants and "La Bestia": The Route, Dangers and Government Responses*, MIGRATION POL'Y INST. (Sept. 10, 2014), <http://www.migrationpolicy.org/article/central-american-migrants-and-la-bestia-route-dangers-and-government-responses>.

estimate that 400,000 is more accurate.<sup>7</sup> The “toxic mix” of factors<sup>8</sup> driving migrants to flee Central America indicates why militarization plans, such as Mexico’s Southern Border Plan,<sup>9</sup> are likely to fail, as “desperate [migrants] do desperate things” to get to the United States.<sup>10</sup> The Central American children crisis of 2014 at the Texas border highlights the desperation driving migrants into the United States.<sup>11</sup> Many who fled felt that the uncertainty of risk in fleeing to the United States was better than the guaranteed danger of violence and poverty pervasive in many Central American neighborhoods.<sup>12</sup> For example, as of 2014 in El Salvador, 135,000 people—2.1% of the population—have been forced to leave their homes, mostly due to extortion and violence by gangs.<sup>13</sup> Migrants are even willing to sell all their possession and use the money to pay exorbitant smuggling fees.<sup>14</sup>

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<sup>7</sup> Salil Shetty, *Most Dangerous Journey: What Central American Migrants Face When They Try to Cross the Border*, AMNESTY INT’L: HUM. RTS. NOW BLOG (Feb. 20, 2014, 12:58 PM), <http://blog.amnestyusa.org/americas/most-dangerous-journey-what-central-american-migrants-face-when-they-try-to-cross-the-border/>.

<sup>8</sup> Nina Lakhani, *Mexico Deports Record Numbers of Women and Children in US-Driven Effort*, GUARDIAN (Feb. 4, 2015, 7:00 AM), <http://www.theguardian.com/world/2015/feb/04/mexico-deports-record-numbers-women-children-central-america>. This mixture is described as a combination of “gang and cartel violence, corruption, high unemployment and low wages.” *Id.*

<sup>9</sup> Announced by the Mexican government on July 7, 2014, the Southern Border Plan is an effort to increase militarization on its southern border in an effort to both apprehend and deter Central American migrants. It combines efforts such as checking trains for migrants with public relations efforts hoping to deter Central American migrants from leaving their home countries. The Plan is backed and applauded by the Obama Administration. The Plan has partly been in response to the large number of undocumented Central American children that arrived in Texas in the summer of 2014. Clay Boggs, *Mexico’s Southern Border Plan: More Deportations and Widespread Human Rights Violations*, WOLA (Mar. 19, 2015), [http://www.wola.org/commentary/update\\_on\\_mexico\\_s\\_southern\\_border\\_plan\\_new\\_routes\\_more\\_deportations\\_and\\_widespread\\_human](http://www.wola.org/commentary/update_on_mexico_s_southern_border_plan_new_routes_more_deportations_and_widespread_human).

<sup>10</sup> Lakhani, *supra* note 8.

<sup>11</sup> Jo Tuckman, “*Flee or Die: Violence Drives Central America’s Child Migrants to U.S. Border*,” GUARDIAN (July 9, 2014, 11:28 AM), <http://www.theguardian.com/world/2014/jul/09/central-america-child-migrants-us-border-crisis> [hereinafter Tuckman, *Flee or Die*].

<sup>12</sup> The combination of factors is illustrated in stories like that of Karla. She fled Honduras, one of the current murder capitals of the world, with her family in part because she had heard the United States was permitting migrants with children to enter. She also had fear of a revenge killing by her husband, who had contacts in the local gangs that dominated her neighborhood. *Id.*

<sup>13</sup> Alberto Arce & Michael Weissenstein, *UN Pushes for Migrants to Be Called Refugees*, CNSNEWS.COM (July 8, 2014, 5:46 PM), <http://www.cnsnews.com/news/article/un-pushes-migrants-be-called-refugees>.

<sup>14</sup> *Id.*

Despite continued border militarization in Mexico, the situation is considered grave enough that the United Nations High Commissioner for Refugees has called for Central American migrants to be considered refugees fleeing an armed conflict.<sup>15</sup> Militarization, paradoxically, has also encouraged migrants already in the United States to pay smuggling fees of \$5,000 or more to have spouses or children smuggled into the United States. Whereas before, migrants would return to Central America and then return to the United States again, many now feel that the risk is too high and that the better option is to send for relatives.<sup>16</sup> With systemic poverty and violence in Central America—as well as the desire to reunite with family members—militarization under the Southern Border Plan is unlikely to prevent continued fleeing through Mexico to the United States, and therefore, only push migrants to rely on smugglers further.

Once Central American migrants choose to leave their homelands, they enter into “one of the most dangerous [journeys] in the world.”<sup>17</sup> A recent Fusion article reports that 80% of Central American migrant women are raped in the course of migration.<sup>18</sup> Some migrant women are also tricked into or forced into prostitution in Mexico.<sup>19</sup> Beyond the sexual violence, migrants also face dangers of robbery, kidnapping, beatings, severe bodily harm, and even death.<sup>20</sup> In fact, one non-government organization (NGO) estimates that there are between 70,000 and 150,000 migrants who have disappeared in Mexico.<sup>21</sup> In response to these dangers, Mexico and the United States adopted legislation. Mexico adopted the sweeping *Ley de Migración* in 2012. This law theoretically offers migrants the same protections as Mexican citizens. The United States offered migrant crime victims who cooperate with law enforcement, T-Visas and U-Visas. U-visas offer temporary immigration benefits to illegal immigrants who have been victims of “qualifying criminal activities” such as rape and kidnapping.<sup>22</sup> The T-visa is

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> AMNESTY INT’L, INVISIBLE VICTIMS: MIGRANTS ON THE MOVE IN MEXICO 5 (2010), <http://www.amnestyusa.org/sites/default/files/amr410142010eng.pdf> [hereinafter INVISIBLE VICTIMS].

<sup>18</sup> McIntyre & Bonello, *supra* note 1.

<sup>19</sup> *Id.*

<sup>20</sup> INVISIBLE VICTIMS, *supra* note 17, at 5.

<sup>21</sup> Martha Pskowski, *In Oaxaca, Caravan of Central American Mothers Calls for Unity of Movements*, AM. PROGRAM (Dec. 3, 2014), <http://www.cipamericas.org/archives/13825>.

<sup>22</sup> *Victims of Criminal Activity U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVICES (Dec. 30, 2015), <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

similar to the U-visa, but focuses specifically on victims of human trafficking.<sup>23</sup> Both of these visas are limited in number and have not meaningfully addressed the vast amount of abuse. Mexico and the United States, though, only offer retroactive protection for migrant crime victims.

The approaches of both countries have continued to rely on enforcement as deterrence, rather than an expansion of visas or an overhaul of legal mechanisms to enter.<sup>24</sup> This model has not diminished migrant deaths, but has arguably worsened the problem in the United States.<sup>25</sup> Accurate numbers in Mexico are hard to come by,<sup>26</sup> but the Director of the Americas for Amnesty International, Erika Guevara-Rosas, still refers to Mexico as a “death trap” for Central American migrants.<sup>27</sup>

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<sup>23</sup> *Victims of Criminal Activity U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVICES (Oct. 3, 2011), <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

<sup>24</sup> On the U.S. side, the Border Patrol has seen a continual multiplication of agents. Between 2005 and 2011 the number of agents has doubled. In the last couple years the number has hovered around 21,000 agents. Adam Isacson, *Will More Funds for Border Security Address the Crisis of Central American Children at the Border?* WOLA (July 21, 2014), [http://www.wola.org/commentary/will\\_more\\_funds\\_for\\_border\\_security\\_address\\_the\\_crisis\\_of\\_central\\_american\\_children\\_at\\_th](http://www.wola.org/commentary/will_more_funds_for_border_security_address_the_crisis_of_central_american_children_at_th). The Mexican equivalent has been the Southern Border Plan of 2014, which attempts to increase the number of migration agents and checkpoints on the southern border. Boggs, *supra* note 9.

<sup>25</sup> The number of deaths along the U.S. Mexico border has stayed consistent throughout increased enforcement, hovering between 300 and 500 deaths annually. Though 2014 saw a drop to 307, this is still within the increased range from the 1990s with the increase of militarization under Operation Gatekeeper. *Remains Found By Border Patrol, By Sector*, WOLA, [http://www.wola.org/files/images/05\\_remains.png](http://www.wola.org/files/images/05_remains.png) (last visited Mar. 26, 2016); *Deaths At US-Mexico Border Reach 15-Year Low*, NPR (Oct. 23, 2014, 7:27 PM ET), <http://www.npr.org/sections/thetwo-way/2014/10/23/358370958/deaths-at-us-mexico-border-reach-15-year-low>; MARIA JIMENEZ, ACLU & MEXICAN NAT'L COMM'N HUM. RTS., HUMANITARIAN CRISIS: MIGRANT DEATHS AT THE U.S.-BORDER 7–8 (Oct. 1, 2009), <https://www.aclu.org/files/pdfs/immigrants/humanitariancrisisreport.pdf> (stating that Operation Gatekeeper “concentrated border agents and resources along populated areas, intentionally forcing undocumented immigrants to extreme environments and natural barriers that the government anticipated would increase the likelihood of injury and death.” But this has only caused greater loss of life, as the reported estimated deaths between 1994 and 2009 increased “from 3,861 to 5,607”).

<sup>26</sup> Claire Schaffer-Duffy, *Counting Mexico's Drug Victims Is a Murky Business*, NAT'L CATHOLIC REP. (Mar. 1, 2014), <http://nronline.org/news/global/counting-mexicos-drug-victims-murky-business>. Though the story focuses on the drug war deaths in Mexico, the general problems with counting the dead are highlighted. Specifically, differentiating death is handicapped by “a lack of access to reliable statistical information and an overabundance of questionable data. Less than 25 percent of crimes in Mexico are reported and the legal system there makes few distinctions among the categories of homicides.”

<sup>27</sup> Anna-Catherine Brigida, *Mexico 'a Death Trap for Migrants' One Year After New Border Program Launched*, L.A. DAILY NEWS (July 9, 2015 6:00 PM), <http://>

The predictable result has pushed migrants to rely further on criminal networks.<sup>28</sup> Those migrants who are unable to pay a smuggler risk abuse at the hands of local Mexican officials, criminal gangs, and bandits. Mexico and the United States could jointly consider implementing an immigration policy such as the CA-4 or Schengen Area,<sup>29</sup> both of which allow for more liberal legal movement between countries. Instead of criminalizing Central Americans, such a move could create legal movement within Mexico and possibly the United States. This may weaken organized crime's grip on human smuggling, as Central Americans would not have an incentive to rely on smugglers until reaching the US border.<sup>30</sup> However, the militarization of the US border would still likely keep the smugglers in business.<sup>31</sup> But if the United States implemented a system to permit greater labor into the country from Central America, the infrastructure fostering abuse may be greatly altered. Yet, to understand why this is preferable, the nature of the abuses must be highlighted.

### III. BACKGROUND: DANGERS IN MEXICO

Mexico requires visas for Central Americans that are often unattainable for the poor.<sup>32</sup> The visa systems of both Mexico and the United States are generally understood by migrants as impossible to navigate and a waste of time.<sup>33</sup> For instance, a high school graduate in Mexico may have to wait 130 years for a visa.<sup>34</sup> As a result, every year tens of thousands of Central American migrants enter Mexico illegally.<sup>35</sup>

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[www.dailynews.com/general-news/20150709/mexico-a-death-trap-for-migrants-one-year-after-new-border-program-launched](http://www.dailynews.com/general-news/20150709/mexico-a-death-trap-for-migrants-one-year-after-new-border-program-launched). Migrant deaths in Mexico are generally difficult to calculate.

<sup>28</sup> JIMENEZ, *supra* note 25 (stating that Gatekeeper's long term results have been to "strengthen migrant reliance on smugglers, decrease return trips to home countries, and multiply migrant deaths.").

<sup>29</sup> Shepard, *supra* note 3; SCHENGEN AREA, *supra* note 4.

<sup>30</sup> Jared Goyette, *Taming 'The Beast': Is Mexico About to Crack Down on the Migrant Train*, FUSION (July 17, 2014, 7:58 AM), <http://fusion.net/story/6123/taming-the-beast-is-mexico-about-to-crack-down-on-the-migrant-train/>.

<sup>31</sup> *See id.* (suggesting that anywhere on the route north, when more impediments are implemented, then migrants are more likely to rely on smuggling networks and routes that evade authorities, but also expose them to greater risk of abuse).

<sup>32</sup> Villegas, *supra* note 6.

<sup>33</sup> John Stossel, *Make Legal Immigration Easier*, REASON.COM (Sept. 17, 2014), <http://reason.com/archives/2014/09/17/make-legal-immigration-easier>.

<sup>34</sup> *Id.*

<sup>35</sup> INVISIBLE VICTIMS, *supra* note 17, at 5.

A typical starting point for Central Americans crossing into Mexico is the Suchiate River on the Mexico/Guatemala border.<sup>36</sup> The border is relatively “porous” and unguarded, but migrants know they must evade detection once they cross into Chiapas, Mexico.<sup>37</sup> Many migrants start hopping on and off local buses, ducking into hills and jungles to walk miles around highway checkpoints.<sup>38</sup> Considered a lawless area, officials there do not consider murder, rape, or robbery of migrants to be serious crimes.<sup>39</sup> The local landscape has become a breeding ground for bandits with locals often acting as spies in cahoots with the bandits.<sup>40</sup> Migrants choose this route in contrast to increased risk of deportation on the main roads. They even have to worry about violence from other migrants. For example, a 20-year old pregnant Honduran woman recounted the savagery of an attack: three bandits convinced her they were fellow migrants and to travel with them.<sup>41</sup> After a while, they raped her and beat her unconscious, in the process killing her unborn child.<sup>42</sup>

These crimes are so common that the local government finally capitulated to foreign pressure and created the Prosecutor’s Office for Migrants in 2009.<sup>43</sup> But journalist Oscar Martinez, who has extensively covered the migration path, considered the efforts but a drop in the bucket of massive corruption and lawlessness, with simply not enough manpower for the job.<sup>44</sup> Compounding the problem is the natural fear of reporting the crime. Martinez summed up the situation as “a migrant putting himself in police custody is about the same as a soldier asking for a sip of water at enemy headquarters.”<sup>45</sup> Indeed, migrants’ view the local authorities simply as another potential perpetrator, as officials are frequently implicated in these crimes.<sup>46</sup> Further exacerbating the problem is that such crimes are considered a “low priority” unless officials are directly implicated.<sup>47</sup>

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<sup>36</sup> Jay Root, *Mexico Fights Illegal Immigration on its own Southern Border*, TEXAS TRIB. (Oct. 24, 2016, 12:01 AM), <https://www.texastribune.org/2016/10/24/mexico-porous-southern-border/>.

<sup>37</sup> *Id.*

<sup>38</sup> OSCAR MARTINEZ, *THE BEAST: RIDING THE RAILS AND DODGING NARCOS ON THE MIGRANT TRAIL* 30–31 (2014).

<sup>39</sup> *Id.* at 39.

<sup>40</sup> *Id.* at 36.

<sup>41</sup> *Id.* at 47–48.

<sup>42</sup> *Id.* at 48.

<sup>43</sup> MARTINEZ, *supra* note 38, at 31.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 35.

<sup>46</sup> INVISIBLE VICTIMS, *supra* note 17, at 11.

<sup>47</sup> *Id.*



#### IV. THE SPECIAL DIFFICULTIES OF JUSTICE FOR RAPE VICTIMS IN MEXICO

Migrant women victims of sexual violence are especially prone to a lack of justice. For starters, rape amongst migrant women is a crime not easily reported. In fact, women in transit often consider rape as part of the price of the journey.<sup>48</sup> Human smugglers have often given women various forms of birth control for the journey.<sup>49</sup> Migrants witnessing victimization of other migrants are common experiences.<sup>50</sup> For comparisons sake, the difficulties of Mexican women who report rape illustrate the even greater difficulty for Central American women who would report a rape. For example, in her Pulitzer Prize winning article, Washington Post reporter Mary Jordan chronicled the rape of two deaf sisters, ages 13 and 16, in a rural Mexico town in 2002.<sup>51</sup> Theoretically, rape should carry a penalty of up to 20 years.<sup>52</sup> However, only an estimated one percent of rapes in Mexico are ever punished.<sup>53</sup> Compounding the issue is that rape is often not seen as a crime in rural areas, but rather as a courting ritual if the perpetrator agrees to marry the victim.<sup>54</sup> Indeed, Jordan noted that women are often ridiculed when they go to report the crime to the police.<sup>55</sup>

Such accounts indicate the difficulty of reporting in Mexico. When this is comprised with the trauma of the abuse, the fear of deportation, and the desire to continue the journey, the punishment of the rapists of Central American migrant women is virtually non-existent.

#### V. LA BESTIA

Collectively known as *La Bestia* (The Beast), the freight trains of Mexico have been the preferred choice of travel for poor Central American migrants heading north.<sup>56</sup> They typically have boarded the trains in either the two southern states of Chiapas or Tabasco.<sup>57</sup> Because there are no passenger cars, the migrants are forced to ride on the roof of the train.<sup>58</sup> This is a double-edged sword, as the

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<sup>48</sup> MARTINEZ, *supra* note 38, at 29.

<sup>49</sup> *Id.* at 30.

<sup>50</sup> *Id.*

<sup>51</sup> Mary Jordan, *In Mexico, an Unpunished Crime*, WASH. POST FOREIGN SERV. (June 30, 2002), <http://www.pulitzer.org/winners/6969>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Villegas, *supra* note 6.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

train can get migrants to the border cheaply, but at the risk of robbery, assault, rape, loss of limbs, or even death.<sup>59</sup> In fact, the train has produced both a rash of amputees and rape victims over the years.<sup>60</sup> Further, migrants are particularly prone to extortion, often at the hands of gangs, officials, and even railroad employees. The hyper-violent Mara Salvatrucha gang<sup>61</sup> is known to control the rail lines in southern Mexico.<sup>62</sup> Migrants are forced to pay “protection” money to these gangs.<sup>63</sup> Gang members have been known to throw migrants who do not pay off the top of the train.<sup>64</sup> These train rooftops have become battlegrounds on which bands of migrants have fought back and even at times thrown the robbers off the top of the train.<sup>65</sup>

## VI. KIDNAPPING AND EXTORTION THREATS

Even with the crackdown by the Mexican government, migrants still face many dangers. At any point along *La Bestia* route, migrants must always fear kidnapping and extortion attempts.<sup>66</sup> This can come from gangs or officials.<sup>67</sup> For instance, one migrant named Jhonny relayed the price at one extortion stop as being \$100.<sup>68</sup> For those who could not pay the \$100, the choice was either risk being kidnapped until a relative could pay or be thrown off the train.<sup>69</sup> However, the risk does not stay concentrated on the freight train rooftops. Criminal gangs—at times in collusion with local officials—often kidnap migrants and take them to stash houses to hold hostage.<sup>70</sup> The migrants are forced to turn over phone numbers of relatives who are then extorted to pay for the release of the migrant. If the money is not paid, torture and death are common.<sup>71</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> See DE NADIE (Producciones Tranvia 2005).

<sup>61</sup> *Id.*

<sup>62</sup> Villegas, *supra* note 6.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> MARTINEZ, *supra* note 38, at 49.

<sup>66</sup> Shetty, *supra* note 7; Christopher Woody, *Mexico Is Facing a Deadly Central American Migrants Crisis*, BUSINESS INSIDER (June 21, 2015, 4:53 PM), <http://www.businessinsider.com/mexico-is-facing-a-central-americans-migrant-crisis-2015-6> (noting a shocking increase in migrant kidnappings in Mexico between 2012 and 2014).

<sup>67</sup> See generally INVISIBLE VICTIMS, *supra* note 17, at 11–15.

<sup>68</sup> Shetty, *supra* note 7.

<sup>69</sup> *Id.*

<sup>70</sup> See generally INVISIBLE VICTIMS, *supra* note 17, at 11–15.

<sup>71</sup> *Id.* at 11.

Migrants also face similar dangers on the highways. One of the most egregious tragedies of this type occurred in 2010 in Tamaulipas.<sup>72</sup> The Zetas cartel<sup>73</sup> kidnapped and massacred 72 Central and South American migrants on a ranch on the outskirts of San Fernando, a small town 100 miles south of the border at Brownsville, Texas.<sup>74</sup> The Zetas stopped the migrants on the highway and took them hostage, driving to a nearby ranch.<sup>75</sup> There are conflicting reports about what happened next.<sup>76</sup> One version states the Zetas attempted to extort money from the migrants who refused to pay.<sup>77</sup> According to another version, the Zetas attempted to force the migrants to work as their hit men, which they refused to do.<sup>78</sup> Another version argues that the migrants were executed because their smugglers failed to pay the adequate “piso,” or tax, to the Zetas.<sup>79</sup> In response, the Zetas deprived the smugglers of their “human cargo.”<sup>80</sup> Whatever the rationale, the Zetas proceeded to shoot each migrant in the back of the head, “execution-style.”<sup>81</sup> A lone migrant survivor escaped and sought help from a local military unit, who responded and found the bodies.<sup>82</sup> This was not an isolated incident; as of 2011, around 200 bodies were discovered in clandestine graves in the same area. One drug cartel-connected trafficker claimed the gangs may have made

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<sup>72</sup> See *Marina Encuentra 72 Cuerpos en Fosas en Tamaulipas*, EL UNIVERSAL (Aug. 25, 2010), <http://archivo.eluniversal.com.mx/notas/703946.html> [hereinafter *Marina Encuentra*].

<sup>73</sup> *Quienes son los Zetas*, BLOG DEL NARCO (Mar. 7, 2010), <https://web.archive.org/web/20110729042942/http://www.blogdelnarco.info:80/%C2%BFquienes-son-los-zetas/>.

<sup>74</sup> Jo Tuckman, *Survivor Tells of Escape from Mexican Massacre in Which 72 were Left Dead*, GUARDIAN (Aug. 26, 2010, 1:34 AM), <https://www.theguardian.com/world/2010/aug/25/mexico-massacre-central-american-migrants;MigrantsKilledforRefusingtoBeAssassins,TeenSays>, NBC News (Aug. 26, 2010, 3:50:26 PM), [http://www.nbcnews.com/id/38867434/ns/world\\_news-americas/t/migrants-killed-refusing-be-assassins-teen-says/#.WNxAGhLrL6Z](http://www.nbcnews.com/id/38867434/ns/world_news-americas/t/migrants-killed-refusing-be-assassins-teen-says/#.WNxAGhLrL6Z).

<sup>75</sup> Editorial, *Massacre in Tamaulipas*, N.Y. TIMES (Aug. 29, 2010), [http://www.nytimes.com/2010/08/30/opinion/30mon3.html?partner=rssnyt&emc=rss&\\_r=0](http://www.nytimes.com/2010/08/30/opinion/30mon3.html?partner=rssnyt&emc=rss&_r=0); Hannah Stone, *Anniversary of Migrant Massacre in Mexico Brings Few Answers*, INSIGHT CRIME (Aug. 25, 2011), <http://www.insightcrime.org/news-analysis/anniversary-of-migrant-massacre-in-mexico-brings-few-answers>.

<sup>76</sup> Stone, *supra* note 75.

<sup>77</sup> Editorial, *Massacre in Tamaulipas*, *supra* note 75.

<sup>78</sup> *Migrants Killed for Refusing to be Assassins*, *supra* note 74. William Booth, *Survivor, Drug Gang Massacred 72 Migrants in Northern Mexico*, WASH. POST (Aug. 25, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/25/AR2010082506776.html>.

<sup>79</sup> Stone, *supra* note 75.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

migrants fight each other to the death.<sup>83</sup> The mass graves from 2010 and 2011 are indicative of the great risk posed to migrants throughout the whole journey north through Mexico.

## VII. MEXICO'S VISA STANDARDS

All citizens of Central American countries are required to obtain a visa to enter Mexico.<sup>84</sup> This increases the chances of poor Central American migrants entering Mexico illegally.<sup>85</sup> Central American migrants could theoretically enter under a number of different visas, but the most frequently used is a tourist visa FMT, or a FM6, which is for foreigners crossing through Mexico en route to the United States.<sup>86</sup> These visas require that the applicant demonstrate “economic solvency.”<sup>87</sup> This is defined as having adequate means to pay for costs while present in Mexico.<sup>88</sup> This can be demonstrated by bringing paperwork to demonstrate funds in bank accounts or pensions.<sup>89</sup> But there is no indication that Central American migrants use these visas in any meaningful way.<sup>90</sup>

## VIII. RECENT CHANGES IN MEXICO

Prior to 2011, the strict General Law of Population of 1974 governed immigration, specifically illegal immigrants from Central America.<sup>91</sup> But in May of 2011, Mexican President Calderon signed the much more liberal Migratory

<sup>83</sup> Dane Schiller, *Mexican Crook Gangsters Arrange Fights to Death*, CHRON (June 11, 2011, 5:30 AM), <http://www.chron.com/news/nation-world/article/Mexican-crook-Gangsters-arrange-fights-to-death-1692716.php>.

<sup>84</sup> Villegas, *supra* note 6.

<sup>85</sup> *Id.*

<sup>86</sup> Sandra Fernandez Arenas, *Consejos, documentación y requisitos para viajar a Mexico*, VIAJE JET (Apr. 8, 2015), <http://www.viajejet.com/consejos-documentacion-y-requisitos-para-viajar-a-mexico/>.

<sup>87</sup> Maria Victoria Rodriguez, *Requisitos migratorias para viajar a Mexico*, DIARIO DEL VIAJERO (Mar. 31, 2010), <http://www.diariodelviajero.com/america/requisitos-migratorios-para-viajar-a-mexico>.

<sup>88</sup> *Diaria Oficial de la Federacion*, SECRETARIA DE GOBERNACION (Aug. 11, 2012), [http://dof.gob.mx/nota\\_detalle.php?codigo=5276967&fecha=08/11/2012](http://dof.gob.mx/nota_detalle.php?codigo=5276967&fecha=08/11/2012).

<sup>89</sup> *Id.*

<sup>90</sup> Stossel, *supra* note 33. Though this is difficult to demonstrate, the top three countries for deportation of illegal immigrants from Mexico are Guatemala, Honduras, and El Salvador. Deportations to these countries have increased since 2011. Woody, *supra* note 66.

<sup>91</sup> See LAURA V. GONZALEZ-MURPHY & REY KOSLOSKI, UNDERSTANDING MEXICO'S CHANGING IMMIGRATION LAWS 3–6, (2011), <https://www.wilsoncenter.org/sites/default/files/GONZALEZ%20%2526%20KOSLOWSKI.pdf>.

Act.<sup>92</sup> The Act has as its stated goal the “respect, protection, and safety in regard to human rights, the contribution to national development, and the preservation of national security and sovereignty.”<sup>93</sup> The Act theoretically guarantees equal treatment for citizens and immigrants. However, the Act is full of schizophrenic phrasing that curiously emphasizes respect for migrants while also emphasizing border security.<sup>94</sup> The Law decriminalized illegal immigration, making it an administrative infraction.<sup>95</sup> Further, immigrants are guaranteed the rights of citizens, such as the right to education and the right to healthcare. The new law also essentially breaks immigrants into two categories: those who are permitted to work and those who are not.<sup>96</sup>

Mexico has also shown a willingness to normalize the status of foreigners for payment. The National Immigration Institute initiated a Temporary Program of Immigration Regularization in January 2015.<sup>97</sup> The measure lasted until December 2015 and was aimed at foreigners who entered the country before November 2012.<sup>98</sup> There was a small fee for submission and issuance of a certification of temporary residence for four years.<sup>99</sup> Theoretically, for individuals of “limited resources” or those who are financially “vulnerable,” Article 16 of the Federal Act of Duties exempts them from payment if they can prove they earn the equivalent of—or below—the minimum wage.<sup>100</sup> Benefits include permitted entries and exits of Mexico and the possibility of obtaining a work permit.<sup>101</sup> Statistics of foreigners who took advantage of this are difficult to ascertain, but the effort at least demonstrates the Mexican government’s willingness to offer such legal benefits to foreigners.

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<sup>92</sup> See Francisco Alba, *Mexico: The New Migration Narrative*, MIGRATION POL’Y INST. (Apr. 24, 2013), <http://www.migrationpolicy.org/article/mexico-new-migration-narrative>.

<sup>93</sup> Ley de Migración [LM] art. 1, Diario Oficial de la Federación [DOF] 25-5-2011 (Mex.) (translated version available in English at [http://www.albany.edu/~rk289758/documents/Ley\\_de\\_Migracion\\_en\\_Ingles.pdf](http://www.albany.edu/~rk289758/documents/Ley_de_Migracion_en_Ingles.pdf)).

<sup>94</sup> See *id.* A perfect example of this is one of the enunciated principles: “Aid to international human mobility, safeguarding order and security. This principle recognizes the contribution of migrants to societies of origin and destination. At the same time, it strives to enhance the migratory authority’s contribution to public and border security, regional security, and the fight against organized crime, especially with respect to the fight against the trafficking and kidnapping of migrants and all types of human trafficking.” *Id.* art. 2.

<sup>95</sup> *Id.* arts. 6–30.

<sup>96</sup> *Id.*

<sup>97</sup> *Regularizacion Migratoria*, INSTITUTO NACIONAL DE MIGRACION, [http://www.inm.gob.mx/index.php/page/regularizacion\\_migratoria/en.html](http://www.inm.gob.mx/index.php/page/regularizacion_migratoria/en.html) (last visited Mar. 26, 2016).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

Paradoxically, while Mexico has increased rights for migrants, it has also substantially militarized its southern border since July of 2014, when current Mexican President Peña Nieto initiated the Southern Border Plan.<sup>102</sup> In response to US pressure, the Plan had two objectives: secure the largely unclosed southern border, and protect migrants from criminal organizations.<sup>103</sup> In 2014, a surge of Central Americans, especially women and children, overwhelmed detention centers and immigration courts in the United States.<sup>104</sup> The Mexican efforts have included redeploying hundreds of migration agents, increasing the number of checkpoints throughout southern Mexico, and increasing raids on the trains.<sup>105</sup> Aid from the United States to Mexico has included the State Department pledging \$86 million for checkpoints, roadblocks, naval bases, and modernization of inspection technology.<sup>106</sup>

### IX. CRACKDOWN ON LA BESTIA AND GREATER SOUTHERN MEXICO MILITARIZATION

Due to recent US pressure, the Mexican government places a premium on the apprehension of Central American migrants.<sup>107</sup> The Mexican government apprehends approximately 85,000 migrants annually, most of whom are Central American.<sup>108</sup> In July 2014, as part of this focus, the Mexican government attempted to address the train issues.<sup>109</sup> The government announced plans to increase border patrols and road checkpoints, as well as ordering the trains to go faster to prevent boarding.<sup>110</sup> Detention of Central American migrants has increased. Train operators have also implemented measures such as putting cement barriers along train tracks at points where migrants have traditionally ran to catch the trains.<sup>111</sup>

The US government has also attempted to help border security in southern Mexico. As part of the Merida Initiative,<sup>112</sup> the United States supported

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<sup>102</sup> Boggs, *supra* note 9.

<sup>103</sup> Lakhani, *supra* note 8.

<sup>104</sup> *Id.* For instance, President Obama deemed the staggering 47,000 unaccompanied children who entered an “urgent humanitarian situation.” The United States has sought to avoid the emergency by increasing pressure on the Mexican government to militarize its southern border.

<sup>105</sup> Boggs, *supra* note 9.

<sup>106</sup> Lakhani, *supra* note 8.

<sup>107</sup> Root, *supra* note 36.

<sup>108</sup> Shetty, *supra* note 7.

<sup>109</sup> Villegas, *supra* note 6.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See Steve E. Hendrix, *The Merida Initiative for Mexico and Central America: The New Paradigm for Security Cooperation, Attacking Organized Crime, Corruption and*

the increase of militarized checkpoints such as in Huixtla, Chiapas in 2013. The United States has also encouraged increased raids on the trains by pressuring the Mexican government to increase security on the southern border. The United States has even gone as far as hiring a musical group to make a song about the dangers of *La Bestia*, which has been broadcast on Central American radio stations.<sup>113</sup> In spite of the dangers, however, impoverished migrants still risk increased security to arrive at the US-Mexico border.<sup>114</sup>

## X. THE FAILURE OF MILITARIZATION

The militarization strategy is effectively limiting migrant train riders.<sup>115</sup> Some safe houses for migrants have anecdotally reported drops of up to 50% of migrants.<sup>116</sup> However, the response has forced migrants unable to afford a smuggler into taking more dangerous routes over longer distances.<sup>117</sup> The Plan is also having the exact opposite effect in terms of pushing migrants away from smuggling organizations.<sup>118</sup> With increased security, smuggling operations are seen by migrants who can afford it as a better bet of getting from Central America to the United States.<sup>119</sup> Indeed, reporter Oscar Martinez laments that increased militarization by both the United States and Mexico has only increased the cost of the journey, thus increasing the profits for the smuggling organizations.<sup>120</sup> Marta Sanchez Soler, director of the Mesoamerica Migrant Movement, agrees with Martinez, stating “Every time they add another restriction, the more they increase the business of [transporting] migrants.”<sup>121</sup>

When one means of getting to the United States through Mexico tightens, migrants simply find another means, which is known as the “balloon effect.”<sup>122</sup> An example of this effect occurred in 2005, when Hurricane Stan temporarily destroyed access to the train and migrants simply found other ways north.<sup>123</sup> Martinez concedes that the Mexican government could stop every train but does

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*Violence*, 5 LOY. U. CHI. INT’L L. REV. 107, 112 (2008) (discussing the Initiative as a foreign assistance pledge to help Mexico in three areas; counter narcotics counter terrorism and border security, beginning in fiscal year 2009. The Initiative fits within a broader hope for border containment between Mexico and Guatemala/Belize).

<sup>113</sup> *Id.*

<sup>114</sup> Root, *supra* note 36.

<sup>115</sup> *Id.*

<sup>116</sup> Lakhani, *supra* note 8.

<sup>117</sup> Root, *supra* note 36.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Goyette, *supra* note 30.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

not understand the point of such efforts. Historically, Central American migrants crossing Mexico “have shown for decades that whatever obstacle you put in their way, they are going to keep migrating.”<sup>124</sup>

Evidence exists that the same phenomena is currently occurring.<sup>125</sup> For instance, one means to avoid checkpoints is for smugglers to take migrants by sea from Guatemala past this vast militarization in Chiapas.<sup>126</sup> Another method has been for migrants to walk through the mountains and back country further inland in Mexico.<sup>127</sup> One route follows alongside the train tracks of the mountains between Chiapas and the neighboring state to the north, Oaxaca.<sup>128</sup> Migrants are forced either to take even riskier routes through Mexico or to pay smugglers increased prices, with no guarantee of safety.<sup>129</sup> Mexican corruption exacerbates the problem, as law enforcement on Mexican’s southern border can be bought off to either look the other way or assist the smugglers.<sup>130</sup> Further, the United States, while hoping for a reduction in the number of Central American migrants, continues to prepare for increased numbers of migrants arriving.<sup>131</sup> The evidence overwhelmingly points to the failure of the Southern Border Plan at reducing numbers of Central American immigrants, while also increasing the risk of abuses along the route north.<sup>132</sup>

## XI. POSSIBLE ALTERNATIVES TO MILITARIZATION IN MEXICO

### A. CA-4 Model

In contrast to Mexico, Guatemala, El Salvador, Honduras, and Nicaragua do not share the same policy of militarization. In 2006, these four nations signed

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<sup>124</sup> *Id.*

<sup>125</sup> Nathaniel Parish Flannery, *As Mexico Tightens Its Southern Border Central American Migrants Find New Routes North*, FUSION (Aug. 23, 2015, 7:24 AM), <http://fusion.net/story/124671/as-mexico-tightens-its-southern-border-central-american-migrants-find-new-routes-north/>; Root, *supra* note 36.

<sup>126</sup> Flannery, *supra* note 125.

<sup>127</sup> Rosalia Chaca, *Migrantes recorren rutas mas peligrosas*, EL UNIVERSAL (Jan. 1, 2015), <http://archivo.eluniversal.com.mx/estados/2015/migrantes-recorren-rutas-mas-peligrosas-1072758.html>.

<sup>128</sup> *Id.*

<sup>129</sup> Lakhani, *supra* note 8; Root, *supra* note 36.

<sup>130</sup> Root, *supra* note 36; Danny Gold, *Gangs of El Salvador (Full Length)*, VICE NEWS (Nov. 30, 2015, 8:01 PM), <https://news.vice.com/video/gangs-of-el-salvador-full-length>. Anecdotally, a Salvadorian smuggler specified that in spite of the recent increased militarization, Mexican officials are still susceptible to bribes by smugglers. *Id.*

<sup>131</sup> Lakhani, *supra* note 8. For instance, the U.S. prepared for another surge in the summer of 2015, with “bigger detention centers and extra electronic tagging capacity.” *Id.*

<sup>132</sup> Root, *supra* note 36.



the Central America-4 (CA-4) Treaty. Under the treaty, citizens of each nation are permitted free movement between the four nations without restrictions, and the treaty also harmonized the passport system of the four nations.<sup>133</sup> Still, the economic solvency requirement in Mexico does not exist. Foreigners are also able to travel freely between nations for 90 days at a time once they have been inspected at one of the four nations' borders.<sup>134</sup> The CA-4 is but an extension of earlier attempts at regional unity. The Central American Integration System (*Sistema de Integración de Centro América* (SICA)) was enacted in 1991 out of the Tegucigalpa Protocol, and acts as the economic and political organization for Guatemala, El Salvador, Honduras, Nicaragua, Panama, Costa Rica, Belize, and the Dominican Republic.<sup>135</sup>

### **B. Schengen Area**

A similar model that has an even more open border policy is the Schengen Area, encompassing almost every country in the European Union. The Area emerged out of the Schengen Agreement of 1985.<sup>136</sup> Under the Area, citizens of member countries are not required to show a passport at common borders. Citizens are only required to carry a valid passport or identification card, to be presented upon request by authorities attempting to establish someone's identification.<sup>137</sup> Showing a passport is only required when traveling to the few countries in the European Union (such as Great Britain) who have not yet joined or have opted out of the Schengen Area.<sup>138</sup> Additionally, when non-EU citizens enter the Area, they are required to show a valid passport and undergo customs. However, the Area is treated as a single unit, and once granted access, non-EU citizens can travel freely throughout the European Union.<sup>139</sup> To compensate for the "security deficit" of eliminated border checks, increased police cooperation is highly encouraged amongst member nations.<sup>140</sup>

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<sup>133</sup> ACUERDO REGIONAL DE PROCEDIMIENTOS CA 4 PARA LA EXTENSION DE LA VISA UNICA CENTROAMERICANA ALCANSES DEL TRATADO MARCO Y MOVILIDAD DE PERSONAS EN LA REGION (2005), <https://reddhmigrantes.files.wordpress.com/2014/06/acuerdo-regional-ca4.pdf>; *Visas y pasaportes, preguntas frecuentes*, XPLORANDO GUATEMALA (June 15, 2015), <http://xplorandoguatemala.com/preguntas/visas-y-pasaportes-preguntas-frecuentes> (discussing that at each border citizens are technically only required to show their national ID, however, migration officers still may ask for a passport).

<sup>134</sup> *Id.*

<sup>135</sup> *SICA in Brief*, SICA, [http://www.sica.int/sica/sica\\_breve\\_en.aspx](http://www.sica.int/sica/sica_breve_en.aspx) (last visited Mar. 26, 2016).

<sup>136</sup> SCHENGEN AREA, *supra* note 4, at 10.

<sup>137</sup> *Id.* at 14.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 15.

<sup>140</sup> *Id.* at 18.

## XII. OVERVIEW OF PROBLEMS WITH CURRENT PROPOSALS OF CLOSED BORDERS IN BOTH MEXICO AND THE UNITED STATES

A major hindrance to resolution of migrant abuses is that the current debate has all but stalled out between solutions: close the border or open the border. On the closed border side, some advocates argue for closing the border with walls and fencing the length of the border, as well as swift deportation of illegal immigrants.<sup>141</sup> However, this proposal does not stop immigration, but actually boosts net migration, as illegal immigrants who make it to the United States are afraid to return home to visit family.<sup>142</sup> Historically, migration has been circular, with workers returning home to Mexico and elsewhere periodically to see family.<sup>143</sup> A completed wall would likely increase net migration by in essence trapping those who make it here illegally.<sup>144</sup> Further, a completed wall would still leave open the sea option. Indeed, other groups of migrants, such as Haitians, have been arriving illegally in the United States by sea for decades.<sup>145</sup> Nothing would stop the current land migrants from joining this path to avoid a completed wall. In fact, there is already evidence that this has been occurring in recent years between both Guatemala and Mexico, as well as between the United States and Mexico.<sup>146</sup> The more general problem with this proposal is it offers no root cause solutions to the millions fleeing poverty and violence.

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<sup>141</sup> Julia Edwards Ainsley, *Exclusive—Trump Border ‘Wall’ to Cost \$21.6 Billion, Take 3.5 Years to Build: Internal Report*, REUTERS (Feb. 9, 2017, 10:05 PM), <http://www.reuters.com/article/us-usa-trump-immigration-wall-exclusive-idUSKBN15O2ZN>; Julie Hirshfeld Davis, *Trump Orders Mexican Border Wall to Be Built and Plans to Block Syrian Refugees*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/us/politics/refugees-immigrants-wall-trump.html> (noting President Trump’s statement that “the day is over when [illegal immigrants] can stay in our country and wreak havoc” and further his desire “to get them out [of the country] fast.”).

<sup>142</sup> Douglas Massey, *Donald Trump’s Mexican Border Wall Is a Moronic Idea*, FOREIGN POLICY (Aug. 18, 2015), <http://foreignpolicy.com/2015/08/18/donald-trump-immigration-border/>.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Leslie Neilan, *Haitian Boat People*, IMMIGR. TO THE U.S., <http://immigrationto unitedstates.org/536-haitian-boat-people.html> (last visited Apr. 24, 2016).

<sup>146</sup> Flannery, *supra* note 125; Elliot Spagat, *Migrants Turn to Sea to Enter U.S. Illegally*, ASSOCIATED PRESS (Aug. 26, 2010, 2:38:13 PM ET), [http://www.nbcnews.com/id/38868544/ns/us\\_news-immigration\\_a\\_nation\\_divided/t/migrants-turn-sea-enter-us-illegally/#.Vx2eRJMkKCQ](http://www.nbcnews.com/id/38868544/ns/us_news-immigration_a_nation_divided/t/migrants-turn-sea-enter-us-illegally/#.Vx2eRJMkKCQ).

### XIII. PROBLEMS WITH CURRENT PROPOSALS OF OPEN BORDERS

On the other side of the argument are the advocates for an open border similar to the CA-4 and Schengen Area.<sup>147</sup> Open border proponents argue that immigration is a net benefit to the United States, open borders are more humane, historically the United States has had open borders, and that because products and capital flow easily across borders, people should as well.<sup>148</sup> However, this position overlooks a number of factors. For instance, immigration as a drain on social benefits is not evenly distributed. Some local communities may be hindered by the costs of undocumented immigrants, while other communities may feel virtually no strain.<sup>149</sup>

Open border advocates often also ignore the current large dislike and fear toward illegal immigrants. For example, a recent poll in Texas, a border state, ranks illegal immigration as the number one threat to the United States.<sup>150</sup> A Pew National Poll demonstrated that 41% of the surveyed felt immigrants burden the country by taking jobs, housing, and healthcare.<sup>151</sup> That number jumped to 63% when narrowed to Republicans.<sup>152</sup> Further, open border proponents will likely be on the defensive for the near future due to the terrorist attacks such as in Paris, France in November of 2015.<sup>153</sup> Immediately after, questions emerged in Europe as to whether the open borders of the Schengen Area can be maintained in the face of an increase in terrorism in Europe.<sup>154</sup> The same sentiments emerged in the United States, with reports of Syrian refugees being caught at the Texas border.<sup>155</sup> In such a political climate, open borders do not appear as a viable alternative.

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<sup>147</sup> Roque Planas, *16 Reasons Why Opening Our Borders Makes More Sense Than Militarizing Them*, HUFFINGTON POST (Sept. 2, 2014, 7:36 AM ET), [http://www.huffingtonpost.com/2014/09/02/open-borders\\_n\\_5737722.html](http://www.huffingtonpost.com/2014/09/02/open-borders_n_5737722.html); Bryan Caplan, *The Case for Open Borders*, TIME (Oct. 7, 2015), <http://time.com/4062074/migrants-open-borders/>.

<sup>148</sup> Planas, *supra* note 147.

<sup>149</sup> Adam Davidson, *Do Illegal Immigrants Actually Hurt the U.S. Economy?*, N.Y. TIMES (Feb. 12, 2013), [http://www.nytimes.com/2013/02/17/magazine/do-illegal-immigrants-actually-hurt-the-us-economy.html?pagewanted=all&\\_r=1](http://www.nytimes.com/2013/02/17/magazine/do-illegal-immigrants-actually-hurt-the-us-economy.html?pagewanted=all&_r=1).

<sup>150</sup> Ross Ramsey, *UT/TT Poll: Texans Say Immigration, Terror Are Greatest Threats to U.S.*, TEXAS TRIB. (Nov. 17, 2015), <https://www.texastribune.org/2015/11/17/uttt-poll-immigration-terror-greatest-threats-us/>.

<sup>151</sup> Sara Kehaulani Goo, *What Americans Want to Do About Illegal Immigration*, PEW RES. CTR. (Aug. 24, 2015), <http://www.pewresearch.org/fact-tank/2015/08/24/what-americans-want-to-do-about-illegal-immigration/>.

<sup>152</sup> *Id.*

<sup>153</sup> Jim Bouldon, *Can Europe Afford Border Controls?*, CNN MONEY (Nov. 18, 2015), <http://money.cnn.com/2015/11/18/news/europe-border-controls-schengen-attacks-refugees/>.

<sup>154</sup> *Id.*

<sup>155</sup> Brandon Darby & Ildefonson Ortiz, *Exclusive---Confirmed: 8 Syrians Caught at Texas Border in Laredo*, BREITBART (Nov. 18, 2015), <http://www.breitbart.com/big-government/2015/11/18/report-8-syrians-caught-at-texas-border-in-laredo/>.

Another factor that must be considered is the comparative gross domestic products (GDP) of the countries being integrated. With both the CA-4 and Schengen Area models, the countries being integrated had relatively close GDPs. In contrast, creating a CA-4 system that extends into Mexico and the United States could create a massive exodus of large segments of the very poorest of Central America, if not poor Mexicans as well. The US GDP per capita in 2014 was \$54,539, well above the five other countries with whom it would integrate.<sup>156</sup> Conceivably, as pointed out, the U.N. High Commission on Refugees believes these migrants qualify as refugees. Foreseeably, opening the borders would mean even larger numbers of impoverished migrants arriving in the United States. As already noted, the Central America children influx of illegal immigrants in the summer of 2014 overwhelmed the detention centers in Texas and the immigration court system.<sup>157</sup> Eliminating much of the illegality of migration from Central America could conceivably make migration to the United States appear much more feasible in the midst of ongoing poverty and violence.<sup>158</sup> The roughly 41% of the country that feels immigrants burden the country could feasibly be enflamed by legally opening the door to potentially huge numbers of the poor of Central America.<sup>159</sup>

#### XIV. MIDDLE GROUND SOLUTIONS

At the simplest level, the long-term solution to this crisis is the elimination of the necessity for many Central Americans to migrate illegally through Mexico and into the United States. Indeed, Oscar Martinez put it bluntly: “The only thing that could stop this [illegal migration] are proposals to improve the life of the Central American countries—humanitarian visas that allow them to transit another way.”<sup>160</sup> Any solution would encompass a host of changes: reduction in poverty, viable employment, reduction in corruption, reduction in crime, and visa expansion among others. As the Mexican and US solutions have focused heavily on border security, alternative solutions could involve poverty reduction measures.

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<sup>156</sup> *GDP Per Capita (Current US\$)*, WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last visited Mar. 26, 2016). The order of descent is as follows: Mexico was \$10,293, El Salvador was \$3,182, Guatemala was \$3,166, Honduras was \$2,323, and Nicaragua was \$1,679.

<sup>157</sup> Lakhani, *supra* note 8.

<sup>158</sup> Tuckman, *Mexico's Migration Crackdown*, *supra* note 5.

<sup>159</sup> See Goo, *supra* note 151.

<sup>160</sup> Goyette, *supra* note 30.

## XV. EXPANSION AND OVERHAUL OF THE VISA SYSTEM / EXPANSION OF E-VERIFY

The United States could expand and facilitate its visa system. For instance, temporary visas for low skill jobs such as farm labor, which have seen shortages in places like Alabama, could be implemented. Theoretically, if Central Americans could easily apply for and be approved for such visas in their home countries before departure, traversing Mexico could be avoided. If migrants are willing to spend thousands of dollars to pay a smuggling network, a plane ticket would be a fraction of the cost. Certainly, this could be criticized as duplicating the Bracero Program of the 1950s and 60s,<sup>161</sup> in that illegal immigration continued alongside the Program.<sup>162</sup> One of the drawbacks of the Bracero Program was that while many farmworkers came here legally through the Program, a large number did not return to Mexico once their visas expired.<sup>163</sup> Indeed, the Immigration and Naturalization Service responded to this issue in 1954, with Operation Wetback, which was a large-scale effort to round up illegal farmworkers.<sup>164</sup> This would certainly be a concern with greater levels of Central American migrants doing farm work. The difference now is current technology and digitalization would make tracking visa holders much more viable.

### A. H2A Visa Overhaul

An overhaul of seasonal farmworker visas, currently known as H2A visas are one possible small solution to the current abuses of Central American migrants, while still allowing for increased border security in Mexico and the United States. For instance, US President Donald Trump stated during his campaign that he wants to build a giant wall, but also include a giant door.<sup>165</sup> A vast expansion of H2A visas would contribute to migrants walking through this door. Currently, only 65,000 workers with such visas were enrolled in 2012—but

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<sup>161</sup> In 1942, the United States signed the Mexican Farm Labor Program Agreement with Mexico. Fred L. Koestler, *Bracero Program*, TEXAS ST. HIST. ASS'N, <https://tshaonline.org/handbook/online/articles/omb01> (last visited Apr. 24, 2016). Commonly known as the Bracero Program, this effort aimed at “legalizing and controlling Mexican migrant farmworkers along the southern border of the United States.” *Id.* Managed by a number of government agencies, including the Department of Agriculture, the Program guaranteed a “minimum wage of thirty cents an hour” and “humane treatment.” *Id.* The Program ended in 1964, but not after 4.5 million Mexicans had participated. *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> Koestler, *supra* note 161.

<sup>164</sup> *Id.*

<sup>165</sup> Kevin R. Johnson, *Republican Debate: Trump’s ‘Big, Beautiful Door’ is a Big, Beautiful Step in the Right Direction*, TIME (Oct. 29, 2015), <http://time.com/4092571/republican-debate-immigration/>.

the number of undocumented farmworkers was estimated at 525,000.<sup>166</sup> The US Department of Agriculture (USDA) estimates that there are just over one million farmworkers overall.<sup>167</sup> Agricultural work in the United States is considered an industry heavily dependent on illegal immigration. The USDA estimated that generally the number of illegal workers altogether is around 1.2 million.<sup>168</sup>

The current system of H2A visas could be expanded. If one of the goals is security, then an expansion from 65,000 visas to around 500,000 visas could cover the vast majority of illegal workers already working in the United States annually.<sup>169</sup> The visas could then be distributed by nationality. Mexico currently provides the majority of workers, so it would receive a greater share. Priority would then go to Central Americans, with a portion going to Guatemala, El Salvador, Honduras, and Nicaragua. In line with the current system requirements, the visas could be limited to year intervals.

The qualifications and application process for H2A visas could both be loosened and streamlined with an expansion of the number of visas. Currently, H2A visa employers petitioning for visas for workers must offer a seasonal job, demonstrate a lack of US workers for the job, show that hiring the foreign worker will not adversely affect US wages in the same job, and submit a single temporary labor certification from the US Department of Labor.<sup>170</sup> The process for application involves three steps.<sup>171</sup> The employer first submits a labor certification to the US Department of Labor. Second, upon certification, the employer files a Form I-129 for a H2A visa. Third, upon approval of the I-129, the potential worker then applies for the visa with the State Department at a US Embassy or Consulate abroad.<sup>172</sup> The visa can then last for increments of up to one year, with extensions of up to three years. After three years, the worker must depart the US for a period of at least three months before reapplying.<sup>173</sup>

There is support for such reform, as the agriculture industry by and large does not approve of the current H2A system and favors reform.<sup>174</sup> Currently, the visas are looked upon as a last resort by the industry. The industry views the

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<sup>166</sup> Yunita Ong, *The H-2A Problem: Why a Perfectly Legal Farmworker Visa Program Isn't Being Used More*, MEDILL NEWS SERVICE (Mar. 5, 2015, 6:21 PM), [http://www.upi.com/Top\\_News/US/2015/03/05/The-H-2A-problem-Why-a-perfectly-legal-farmworker-visa-program-isnt-being-used-more/7521425481876/](http://www.upi.com/Top_News/US/2015/03/05/The-H-2A-problem-Why-a-perfectly-legal-farmworker-visa-program-isnt-being-used-more/7521425481876/).

<sup>167</sup> *Farm Labor: Background*, U.S. DEP'T AGRIC. ECON. RES. SERV. (Oct. 20, 2015), <http://www.ers.usda.gov/topics/farm-economy/farm-labor/background.aspx>.

<sup>168</sup> *Id.*

<sup>169</sup> Ong, *supra* note 166.

<sup>170</sup> *H-2A Temporary Agricultural Workers*, U.S. CITIZENSHIP & IMMIGR. SERVICES (Dec. 3, 2015), <http://www.uscis.gov/working-united-states/temporary-workers/h-2a-agricultural-workers/h-2a-temporary-agricultural-workers>.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> Ong, *supra* note 166.

application process, which can take months, as too complex and time consuming, especially in times of shortage when labor is needed immediately. Further, the current system excludes farmers who need year round labor.<sup>175</sup> In 2013, there existed proposed reform, such as a new visa called a W visa to replace the H2A. It would have extended the one year increment to three years and also allowed some worker mobility to prevent abuses by employers.<sup>176</sup> The reform never came up for a vote in Congress, but it is still an option.<sup>177</sup>

Logistically, aspects of the trip could resemble the Bracero Program, which required prospective employees to be received in reception centers in the United States, and for those costs of transportation to be covered.<sup>178</sup> Other guarantees were assistance in labor contract negotiations and promises from the employers to guarantee the return of workers at the end of the term.<sup>179</sup> Return of workers to reception centers, however, was an unfulfilled goal of the Program. Much of the illegal labor coexisted alongside legal labor, and the majority of workers stayed permanently in the United States.<sup>180</sup> Still, coupled with H2A visa expansion, the United States could again require even more rigorous checks on potential workers from the participating Central American countries, as well as similar reception centers and labor contract negotiation help upon arrival. This would be easier with the increases of computer technology since the end of the Bracero Program in 1964. Further, computer technology would also facilitate monitoring compliance by employers.

Such reform of the H2A visas could be coupled with greater security through mandatory enforcement of E-verify nationwide. E-verify is a government website that compares employee information with information from Homeland Security and the Social Security Administration to verify eligibility to work.<sup>181</sup> Currently 600,000 employers nationwide use the system.<sup>182</sup>

### **B. Current Resistance to Using E-Verify**

The agriculture industry, however, has not backed efforts to use E-verify industry wide because of fears of crippling the industry. The overriding concern

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Koestler, *supra* note 161.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *What is E-verify?*, U.S. CITIZENSHIP & IMMIGR. SERVICES, (Feb. 26, 2016), <https://www.uscis.gov/e-verify/what-e-verify>.

<sup>182</sup> *Id.*

has been a lack of workers.<sup>183</sup> This has been evidenced by statewide applications of E-verify. For example, in recent years Alabama and Georgia passed E-verify state laws.<sup>184</sup> In response, large numbers of illegal migrant farmworkers abandoned those states in fear of E-verify.<sup>185</sup> Where native workers stepped in to fill the void, workers deplored the work and quit in droves.<sup>186</sup> Industry complained both of the inadequacy of the native replacements and also the inability to harvest properly without the illegal workers.<sup>187</sup> Indeed, some crops rotted from a shortage of workers.<sup>188</sup> The agriculture industry may, however, get on board if there is viable H2A reform. Still, the industry may have to be forced to the table to accept E-verify.

The current benefit the agricultural industry gleans from its illegal workforce creates great resistance to change in the system.<sup>189</sup> For instance, paying farmworkers off the books avoids having to provide the extensive benefits and protections guaranteed under the H2A visa program.<sup>190</sup> Typically, workers can also buy fake Social Security numbers.<sup>191</sup> The farms then deduct taxes for the fake numbers, fulfilling their legal duty while the workers will never see the taxed benefits in Social Security.<sup>192</sup> Still, if industry is given no other option, they may accept E-verify. Furthermore, adoption of E-verify industry wide would likely help alleviate security fears by the anti-immigrant factions in the US

## XVI. MARSHALL PLAN FOR CENTRAL AMERICA?

Another solution would be a Marshall Plan-type aid package for Central America. The Marshall Plan was an effort after World War II where the United

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<sup>183</sup> *Farmers: Crisis If No Undocumented Workers*, UPI (Dec. 5, 2011, 5:43 PM), [http://www.upi.com/Top\\_News/US/2011/12/05/Farmers-Crisis-if-no-undocumented-workers/UPI-24401323125016/?st\\_rec=7521425481876](http://www.upi.com/Top_News/US/2011/12/05/Farmers-Crisis-if-no-undocumented-workers/UPI-24401323125016/?st_rec=7521425481876) [hereinafter *Farmers: Crisis*].

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Thomas Morton, *What Alabama's Harsh Anti-Immigration Laws Look Like*, VICE (Apr. 24, 2015), <http://www.vice.com/video/watch-our-hbo-episode-about-alabamas-harsh-anti-immigration-laws>.

<sup>187</sup> *Id.*; *Farmers: Crisis*, *supra* note 183.

<sup>188</sup> Morton, *supra* note 186.

<sup>189</sup> Sadhbh Walshe, *Field Work's Dirty Secret: Agribusiness Exploitation of Undocumented Labor*, GUARDIAN (Jan. 31, 2013, 8:26 PM), <https://www.theguardian.com/commentisfree/2013/jan/31/agribusiness-exploitation-undocumented-labor>.

<sup>190</sup> *Id.*

<sup>191</sup> Kimber Solana, *Illegal Immigrants Give Billions to Medicare, Social Security With No Hope of Benefit*, CTR. HEALTH JOURNALISM, (Jan. 7, 2013), <http://www.centerforhealthjournalism.org/2013/01/07/illegal-immigrants-give-billions-medicare-social-security-no-hope-benefit>.

<sup>192</sup> *Id.*



States invested \$13 billion to help spur the “revitalization of national economies” in war-torn Europe.<sup>193</sup> The United States could attempt a similar multi-faceted approach in poverty stricken Central America. The Obama Administration considered this approach for 2016, recognizing that the root causes of Central American migration need to be addressed.<sup>194</sup> The Obama Administration requested \$1 billion, but the amount stalled in Congress. Of that request, 80% was earmarked for civil society, civil institutions, and economic development. But the fear was that Congress would only authorize the security portion of the money and ditch the rest, which would be a repeat of prior measures.<sup>195</sup> However, the aid eventually passed at \$750 million.<sup>196</sup> The package is a departure from the security heavy packages of recent years. The aid invests heavily in fighting corruption, establishing viable local government, and improving the business climate.<sup>197</sup> It is too early to see whether this aid will be successful in reducing illegal immigration. Still, the approach at least attempts a new course of action away from the strictly security package model.

#### **A. Encourage Companies to Pay Better Wages in Central America**

The United States could also artificially inflate the minimum wage in each country. A conservative estimate is that each Border Patrol agent costs the United States \$100,000 per agent per year.<sup>198</sup> There have been talks of adding another 20,000 agents, amounting to another \$2 billion per year.<sup>199</sup> If the United States simply helped companies pay Central American workers more and did not hire these new agents, it could theoretically directly pay an extra \$1,000 to two million workers in Central America.<sup>200</sup> In Honduras or Nicaragua that would be a

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<sup>193</sup> *History of the Marshall Plan*, GEORGE C. MARSHALL FOUNDATION, <http://marshallfoundation.org/marshall/the-marshall-plan/history-marshall-plan/> (last visited Mar. 26, 2016).

<sup>194</sup> Adam Isacson, *Obama’s Billion Dollar Aid Request to Central America: How Has It Changed?*, WOLA (Nov. 17, 2015), [http://www.wola.org/commentary/obama\\_s\\_billion\\_dollar\\_aid\\_request\\_to\\_central\\_america\\_how\\_has\\_it\\_changed](http://www.wola.org/commentary/obama_s_billion_dollar_aid_request_to_central_america_how_has_it_changed).

<sup>195</sup> *Id.*

<sup>196</sup> Adriana Beltran, *U.S. Increase Central American Aid, But It’s No Blank Check*, WOLA (Dec. 22, 2015), [http://www.wola.org/commentary/congress\\_increases\\_central\\_america\\_aid\\_but\\_it\\_s\\_no\\_blank\\_check](http://www.wola.org/commentary/congress_increases_central_america_aid_but_it_s_no_blank_check).

<sup>197</sup> *Id.*

<sup>198</sup> Maureen Meyer, *What Is The Real Cost of an Additional 20,000 Border Patrol Agents?*, WOLA (June 21, 2013), [http://www.wola.org/commentary/what\\_is\\_the\\_real\\_cost\\_of\\_an\\_additional\\_20000\\_border\\_patrol\\_agents](http://www.wola.org/commentary/what_is_the_real_cost_of_an_additional_20000_border_patrol_agents).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

substantial increase in a worker's GDP per capita.<sup>201</sup> The more realistic picture is for the US government to incentivize companies (US or foreign) to pay artificially higher wages by offsetting the increase to companies by drastically cutting or eliminating import taxation into the United States.

### **B. Encourage US Retirees to Move to Central America**

Another approach is to work with Central American governments to encourage a large amount of US retirees to move to these countries to create viable retiree communities in each country. There is evidence that Central American countries are already attempting these measures.<sup>202</sup> Moreover, the region is already recognized as a good place to retire.<sup>203</sup> In 2014, the countries of Mexico, Panama, Costa Rica, and Nicaragua all made the top 15 list of best places to retire by Forbes magazine.<sup>204</sup> Honduras, El Salvador, and Guatemala also have the natural beauty, affordability, and resources to join this list. Governments such as Panama offer tax breaks to US retirees with a monthly income of over \$1,000 (which can come from Social Security and a pension).<sup>205</sup> There is no reason that the US government could not reciprocate tax breaks. There is also a growing industry of tours for prospective retirees in countries like Costa Rica.<sup>206</sup> Retirees are drawn to Costa Rica because of the developed tourism industry, weather, private hospitals, shopping, and entertainment.<sup>207</sup> The other Central American countries with large migrant populations could seek to emulate the Costa Rican model. Further Central America is close enough to the United States that retirees could retire there, but still return to the United States as needed.

Yet only 21,000 retirees currently receive Social Security benefits in Central America and the Caribbean.<sup>208</sup> Sustained efforts amongst the governments could significantly boost this number. This could have mutual benefits for both countries. The United States is facing a large deficit issue with

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<sup>201</sup> *Honduras Economic Indicators*, QUANDL, <https://www.quandl.com/topics/honduras> (last visited April 2, 2017); *Nicaragua Economic Indicators*, QUANDL, <https://www.quandl.com/topics/nicaragua> (last visited April 2, 2017).

<sup>202</sup> Katie Lobosco, *How Do You Retire on \$25,600 a Year? Move to Panama*, CNN MONEY (July 21, 2015, 11:25 AM), <http://money.cnn.com/2015/07/21/retirement/retire-abroad-panama/>.

<sup>203</sup> *The 15 Best Countries to Retire in 2014*, FORBES, <http://www.forbes.com/pictures/efkk45ffleg/the-15-best-countries-to-retire-to-in-2014/> (last visited Mar. 26, 2016).

<sup>204</sup> *Id.*

<sup>205</sup> Lobosco, *supra* note 202.

<sup>206</sup> Nanci Hellmich, *Retirees Eye Lower Cost of Living in Latin America*, USA TODAY (June 10, 2014, 6:42 PM), <http://www.usatoday.com/story/money/personal-finance/2014/06/10/retirees-relocation-latin-america/8414799/>.

<sup>207</sup> *Id.*

<sup>208</sup> Lobosco, *supra* note 202.

social security. The cost of living in each of these countries would be a fraction of what it is in the United States.<sup>209</sup> Further, if viable medical care could be established in each country, medical costs to the US government could be drastically reduced. Prescription drugs often also cost a fraction of what they do in the United States.<sup>210</sup> The idea would be to encourage an influx of retiree capital that would hopefully stimulate a greater local market for construction, service industry, health care, and tourism.

## XVII. CONCLUSION

The widespread and continual abuse of Central American migrants en route to the United States demands novel action. Specifically, widespread rape, robbery, assault, and even death suggest new approaches are urgent. Since the 1990s, the continual militarization in both Mexico and the United States has not diminished deaths or reliance on criminal organizations. The lack of an adequate visa system exacerbates the problem. Migrants are often presented with a difficult choice; pay thousands of dollars to a criminal organization to get smuggled into the United States, or risk not paying and being abused or killed along the route. Further, paying a criminal organization is no guarantee of safety. As has been shown, the same organizations abuse migrants. Further, these organizations are susceptible to attacks by rip off gangs and corrupt authorities.

Two main theories of thought continue to hold sway: close the border or drastically open the border. President Trump has vocally proposed the first option. Other groups on the liberal end have proposed the latter. Closing the border presents a number of problems. First, as has been demonstrated, the sheer magnitude of closing both borders is daunting. On the Mexican border, the corruption of law enforcement is the biggest challenge. In spite of the Southern Border Plan, Mexican officials are still susceptible to pay offs. Further, the continual number of Central Americans at the US border is a testament to the failure of closing Mexico's southern border. On the US border, as the late border reporter Charles Bowden pointed out, if but two people managed to sneak across every mile of the 1,900 border every day, that would be 3,800 illegal immigrants daily.<sup>211</sup> Further, even without the land option, migrants can still attempt to cross illegally by sea. At the other end of the spectrum, liberal proponents have demanded an open border area similar to that seen in the CA-4 or Schengen Area. The biggest problem with either open border model is that they exist amongst countries with relatively similar GDPs. By contrast, an area encompassing the United States, Mexico, and Central America would all but ensure a mass exodus

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<sup>209</sup> Hellmich, *supra* note 206.

<sup>210</sup> *Id.*

<sup>211</sup> Charles Bowden, *Charles Bowden on The War Next Door: Adam Smith's Invisible Hand Meets Magical Realism on the Border*, HIGH COUNTRY NEWS (Mar. 1, 2010), <http://www.hcn.org/issues/42.4/the-war-next-door>.

of the populations of Central America. On a limited scale, this taxed the resources of south Texas in 2014. In the current political climate in the wake of the Paris attacks, and the bombastic rhetoric of President Trump, an open border proposal seems far-fetched.

The more pragmatic solution is a middle ground that balances security with better legal access to the United States. Facilitating better legal access to areas of work traditionally dominated by illegal labor in the United States could alleviate the abuses in Mexico. In the area of farm labor, the H2A visa system could be greatly expanded. Such expansion could be coupled with temporary visas in Mexico to cross by land. Another option would be to encourage Central American migrants to come by plane. Migrants with relatives already in the United States may be able to borrow money. For able-bodied workers without means, perhaps the United States could encourage companies to advance wages to cover the plane ticket. These efforts could be coupled with mandatory E-verify use industry wide. Such efforts could also be coupled with attempts to stimulate the Central American economies. Encouraging US senior citizens to move to Central America could have the dual benefit of cutting down on the social services the United States owes to senior citizens while simultaneously stimulating the Central American economies through construction, medical services, real estate, and the tourism industry in general. The United States could also encourage companies to do business in Central America with tax breaks and artificial stimulation of workers' wages by perhaps diverting a fraction of the money currently used for border enforcement.

Any one of these above options could be given a trial run. Whatever is done, any change that attempts to diminish abuses, especially the astronomically high rates of rape on the journey of Central American migrant women, would be a welcome change to the status quo of abuse.

