

Social Work Policy Analysis: Asylum Reform and Border Protection Act of 2015

by

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Abstract

Unaccompanied Minors from Mexico and the Northern triangle region of Central America have fled to the United States border in increasing numbers since 2009. Nearly 102,000 arrived during fiscal years 2014 and 2015 alone. President Obama called it an "urgent humanitarian crisis" in the summer of 2014. The history that has led up to, and the social, political, and economic conditions surrounding the crisis, are explored through a social work policy analysis of the House of Representatives Bill 1153, termed Asylum Reform and Border Protection Act of 2015, using the Popple and Leighninger (2014) model. If passed, it will reform three major immigration laws: the Immigration and Nationality Act of 1965, the Homeland Security Act of 2002, and the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008. If compromised by this bill thousands of children waiting for their asylum court dates, often without legal representation, and a potential 75,000 more who could arrive by the end of fiscal year 2017, will be denied protection and sent home to conditions marked by gang violence and poverty in parts of Honduras, Guatemala, and El Salvador. This has already been the fate of Mexican children who face special repatriation agreements established by TVPRA 2008. This author concludes that social workers, teachers, and other helping professionals must advocate for this growing vulnerable population. Their well-being ultimately lies in the hands of U.S. politicians that craft immigration reform and contribute to the all too often xenophobic political climate of today.

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I. Delineation and Overview of the Policy Under Analysis

A. What is the specific policy or general policy area to be analyzed?

The policy under analysis is the House of Representatives Bill 1153, Asylum Reform and Border Protection Act of 2015. The purpose of the bill is to reform the process of apprehending and processing unaccompanied immigrant children in the United States and address other immigration and asylum issues (HR Bill 1153, 2015). The focus of this analysis will be on specific sections of the bill that apply directly to the holding and removal processes, and protection rights of unaccompanied children in response to the thousands of Central American children who arrived at the United States border in increasing numbers between 2009 and 2015 (American Immigration Council [AIC], 2015). These sections include: Sec. 2 *Clarification of Intent Regarding Taxpayer-Provided Council*, Sec. 3 *Special Immigrant Juvenile Visas*, Sec. 4 *Credible Fear Interviews*, Sec. 8 *Unaccompanied Alien Child Defined*, Sec. 9, *Modifications to Preferential Availability for Asylum for Unaccompanied Alien Minors*. Sec. 10 *Notification and Transfer of Custody Regarding Unaccompanied Alien Minors*, Sec. 13 *Additional Immigration Judges and ICE Prosecutors*, Sec. 14 *Minors in the Dept. of Health and Human Services Custody*, Sec. 15 *Foreign Assistance for Repatriation*, and Sec. 22 *Notice Concerning Frivolous Asylum Applications*. These sections call for major amendments to the Immigration and Nationality Act of 1965, the Homeland Security Act of 2002 and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (HR Bill 1153, 2015).

B. What is the nature of the problem being targeted by the policy?

1. How is the problem defined?

The migration of children to the United States from Latin America is not a new phenomenon (Chisti & Hipsman, 2014; R&G, 2015). The demographic however is shifting: prior to 2012, the majority were Mexican nationals. Today, 75% are said to be fleeing Central America (GAO 15-362, 2015). The number of unaccompanied arrivals began increasing in 2009, but rose more profoundly in 2012 and finally reached a dramatic peak in 2014 of 68,541 (Department of Homeland Security (DHS), 2015); at that time, President Obama declared an “urgent humanitarian situation” (AIC, 2015). This author has not found an official White House definition for "urgent humanitarian situation" but several news reports cite that the naming of the situation has a specific agenda and is in response to specific characteristics of the situation, such as the overwhelming rise in the number of apprehensions of a specific population, and their reasons for fleeing (Gamboa, 2014). Although total apprehensions at the U.S. border are actually lower than in previous years, unauthorized entries at the Southern border are showing new trends: an increasing number are under the age 18 and without parents, they bring possible asylum claims, and have traveled long and dangerous treks from non-contiguous countries (Obama, 2014). The use of the term "humanitarian situation" as opposed to "refugee crisis" allows the government to execute an aggressive response without promising refuge to children who may not qualify under the strict U.S. qualifications to be granted refugee status (Gamboa, 2014). The U.S. grants refugee protection only to those individuals who are outside their country of origin and not yet in the United States, who are fleeing persecution because of their identity with a certain political, religious, social, or racial group, and who are not a safety concern to the

United States (United States Citizenship and Immigration Services [USCIS], 2015). In a letter to House Speaker John Boehner, the president requested Congress's support for an ample Federal Government response to address the rise of minors seeking refuge at the U.S. Southern border who have suffered "violent crime, abuse, and extortion" on their journey and in their home countries (Obama, 2015).

The United Nations High Commissioner for Refugees, António Guterres, has also recognized the severity of the issue and called it a "refugee crisis" (United Nations High Commissioner for Refugees [UNHCR], 2014). Latin America is home to over 6 million internally displaced persons in need of refuge, and a large majority seeking refuge North are children (UNHCR, 2014). Although they are not fleeing official war as seen in Syria, for example, the top three nations of origin amongst the migrants, Honduras, Guatemala, and El Salvador, face violence and unrest at the hands of criminal gangs (Arch & Weinstein, 2014). UN officials ask that the United States recognize these minors as part of a "refugee crisis" by merit of their need for international protection and their particular vulnerability as children (Arch & Weinstein, 2014).

In the years leading up to the "surge" in 2014, unaccompanied children accounted for just 10% of migrants at the U.S. border. Between 2012 and 2014, that number rose to 15% (Vargas-Ramos, 2014). In FY 2014, the number of unaccompanied minors apprehended by US Customs and Border Patrol totaled 68,541, and the 2015 number reached 39,970 (DHS, 2015). Of these totals, the majority come from these four countries: Honduras (27%), Guatemala (25%), El Salvador (24%), and Mexico (23%). For the purposes of this analysis, the focus of discussion will be on the issue of migration and repatriation of children from the Northern Triangle of Central America: Honduras, Guatemala, and El Salvador. The

migration from this region has increased markedly more than Mexico, although the current total numbers from each country are now comparable (AIC, 2015). Mexico has a long history of migration to the United States, with a steady increase beginning in 1990 that later subsided at the start of the United States recession in 2007, and has remained constant since (Vargas-Ramos, 2014). In contrast, migration from Central America, although rising following the civil wars of the region in the 1980's, was still a much lower share until 2012 (Stoney & Batalova, 2013). Additionally, the reasons Mexican children cite for their arrival at the U.S. border, while related, are unique from the Central American children, as is their treatment upon apprehension (UNHCR, 2014).

Children apprehended at the border from a contiguous country are to be detained and screened by qualified officers within 48 hours for risks of human trafficking or possible asylum claims (William Wilberforce Trafficking Victims Protection Act of 2008 [TVPRA 2008], 2015). If the Department of Homeland Security (DHS), specifically Customs and Border Patrol (CBP) or Immigration and Customs Enforcement (ICE), decides the child can safely return home, then that child is eligible for voluntary return, which removes them from the United States without the consequences of an official deportation. If, however, it is determined that an asylum claim can be made, the child is transferred to the Department of Health and Human Services (HHS), specifically the Office of Refugee Resettlement (ORR), to be placed in formal immigration removal proceedings with the Executive Office for Immigration Review (EOIR) (TVPRA of 2008, 2015). Children from noncontiguous countries in contrast, are transferred to ORR immediately. CPB or ICE does not screen the children for asylum claims. They only determine they are unaccompanied and from a non contiguous country, and then transfer them to ORR within 72 hours, regardless of whether

the child presents a credible fear of returning home. Then, they would enter into formal removal proceedings with EOIR, much like children from contiguous countries who have a possible asylum claim (TVPPRA of 2008, 2015). The reasoning and history behind this distinction will be discussed further in the Historical Analysis.

2. For whom is it a problem?

Those most directly impacted by the crisis are the youth and families (Chisti & Hipsman, 2015). Whether parents remain in Central America, or are already in the U.S., they must bear sending their children into unknown dangers in order to save them from their situation at home. Central American children have a long journey across Mexico to reach the U.S. border on foot or atop trains such as "La Bestia," a notorious freight train with several cargo lines that carries products North for export, that has left many migrants with amputated limbs from falling, or killed (Villegas, 2014). Many of these children travel with the enlistment of Mexican human smugglers known as "coyotes" (Castillo & Sherman, et al., 2014). Parents have paid them to lead the way North, and protect their children from extortion by gangs in route, trusting, sometimes too optimistically, that the coyotes do not take advantage of the children themselves (Castillo & Sherman, et al. 2014). Furthermore, the children face even larger risks of being exploited if they do not receive protective status in the U.S., are ordered removed or deported, and are sent back via unsafe routes (Chisti & Hipsman, 2015). If they do arrive safely, opportunities at home are not likely to have improved. Youth are the most directly impacted by poverty in Latin America, and those fleeing violence face worsened threats and possible death if returned (Chisti & Hipsman, 2015).

C. What is the context of the policy being analyzed (i.e. how does this specific policy fit with other policies seeking to manage a social problem)?

The 2015 HR Bill 1153 was a response to the "surge" of unaccompanied minors in 2014, but also a response to an administration largely marked by gridlocked immigration reform (AIC, 2015). President Obama failed to pass the Development, Relief, and Education for Alien Minors Act in 2010, known as the "Dream Act" which would have given "Dreamers" or the 65,000 students who graduate high school or earn a GED every year the opportunity to qualify for conditional legal permanent resident (LPR) status and begin a six-year track to U.S. citizenship (AIC, 2010). Individuals who would qualify had to have entered the U.S. before age 16 and lived in the U.S. continuously for five years. They would receive conditional lawful permanent resident status for 6 years to allow them to work, pursue higher education, or join the military. Students would also be eligible for federal work study and students loans, in-state tuition, and state financial aid. After two years in higher education or the military, the student's status would officially be LPR. The bill, originally introduced in 2001, failed to pass again in 2010 when 2.1 million undocumented youth could have benefitted from the legislation (AIC, 2010). Following this failure, President Obama took executive action to enact Deferred Action for Childhood Arrivals (DACA) in 2012, an initiative that would grant a two-year protection from deportation to dreamers, an estimated 2.1 million undocumented young people (National Immigration Law Center (NILC), 2015). The same eligibility applies except applicants had to be born after June 15, 1981, and had to have lived in the U.S. since June 15, 2007. It solely delays deportation to give dreamers a chance to apply for college, work, or the military. DACA can be renewed after two years, or dreamers can apply for LPR status (NILC, 2015).

Much less generous than the Dream Act, the DACA initiative does not include a pathway to citizenship, and no support for financial aid for college, but some states have already enacted their own similar Dream Act bills to allow these students to receive in-state tuition and scholarships (NILC, 2015). This initiative still received much backlash from Conservative politicians, and is often blamed for encouraging youth migration by sending the message that minors will be protected under this initiative, or offered a "permiso" and be allowed to stay in the U.S. (Chisti, Hipsman, & Bui, 2014; Chisti & Hipsman, 2015; Greenblatt, 2014; Meckler, 2014; Restrepo & Garcia, 2015). It is possible that a false rumor was spread by "coyotes," a term for human smugglers, to increase business or that DACA was misinterpreted by migrants who have family members in the states (Meyer & Isacson, 2015). However, staunch opponents of DACA who believe it has encouraged migration of unaccompanied minors by sending the false message that all young immigrants will qualify (when qualifications for the law include having already been present in the United States on the date of the law's enactment, June 15, 2012) (NILC, 2015) ignore the fact that the rise in arrivals of unaccompanied minors had been observed years prior (AIC, 2015). Attempts to change DACA's age cap and extend the year a person was required to be present in the U.S. to 2010 were announced on November 20, 2014 (NILC, 2015; DHS, 2015; USCIS; AIC, 2015). The announced changes also extended the deferred action and work permits to three years, and included action to protect an estimated 4 million parents of U.S. citizens from deportation in a program known as DAPA (Gonzalez, 2015; DHS, 2015; USCIS; AIC, 2015). However, these changes were blocked by a federal district court in Texas through an order issued on February 16, 2015 which filed suit against the initiative along with 25 other states (NILC, 2015; Hennessy-Fiske, 2015; The Associated Press, 2015). Despite the fact that

the expanded initiative explicitly states it will not apply to new arrivals, those in opposition of the bill argue it will further fuel the migration of unaccompanied minors (Gonzalez, 2015; Hennessy-Fiske, 2015). The U.S. Supreme Court will hear the case of Texas vs. the United States by June 2016 and it's expected the 2016 presidential campaign and whether or not the trend of unaccompanied minors at the border continues will influence the ruling (Gonzalez, 2015; American Immigration Council [AIC], 2015).

Senator Chaffetz's bill was announced following the summer 2014 "surge" of unaccompanied minors at the U.S.-Mexico border, when the term 'urgent humanitarian situation' was first used (AIC, 2015). Other efforts had already been set in motion to address the overwhelmingly large number of children now in U.S. custody. President Obama called on FEMA to open up emergency shelters to house the arrivals, specifically to address the large number of children in holding cells in the border town of Brownsville, TX (Preston, 2014). A Ventura County Naval Base in Oxnard, CA was opened to house 600 children. Lackland Air Force Base in San Antonio, set up by the Department of Health and Human Services (HHS) was opened to hold up to 1,200 minors. These emergency efforts were a part of the goal to provide housing, food, medical care, and education while the children are in U.S. custody. Homeland Security announced they would increase efforts to identify human smuggling networks, and began working with government agencies in Mexico and Central America to distribute public service messages warning youth of the life-threatening consequences of traveling North (Preston, 2014). Representative Chaffetz calls for additional legal personnel to speed up removal proceedings in Section 13, *Additional Immigration Judges and Immigration and Customs Enforcement Prosecutors* (HR Bill 1153, 2015). President Obama also included increased numbers of judges and prosecutors in his

supplemental appropriation request of \$3.7 billion for the crisis at the border in addition to legal representation for minors and a number of other goals the funding would support (Office of the Press Secretary, 2015; Office of Management and Budget, 2015).

In a letter to Speaker of the House John Boehner, President Obama requested \$1.1 billion to be directed toward the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) for increased investigations of smuggling rings, transportation of minors to HHS care, and the detention and removal of undocumented adults traveling with children. Four-hundred forty-three million dollars were intended for DHS Customs and Border Patrol (CBP) to address increased operational costs associated with the apprehension of children and collaboration with Central American governments to detect smuggling networks. Sixty-four million would support the Department of Justice (DOJ) Executive Office of Immigration Review (EOIR) to provide additional immigration judges as well as lawyers to advise children in the asylum process and represent them in court. Three hundred million was designated for the Department of State and other international programs which support repatriation of migrants to Central America and public service campaigns to families in Mexico and Central America to discourage the dangerous trek. Finally, \$1.8 billion would be allocated for HHS specifically to provide quality care for unaccompanied minors as they await their court date (Office of the Press Secretary, 2015; Office of Management and Budget, 2015). These appropriations requests failed to pass the Senate in July 2014, even when Senate Democrats whittled it down to \$2.7 billion (Chist, Hipsman, & Bui, 2014). The House successfully passed a \$694 million spending bill for the crisis in August 2014 (Chisti, Hipsman, & Bui, 2015), and in December 2014, President Obama signed the FY 2015 Cromnibus Appropriations Bill with a much lower budget that amounted to \$389 million in

total for the crisis (*American Immigration Council*, 2015). This figure in reality is miniscule compared to the 2015 national budget of \$3.8 trillion and the Department of Homeland Security's \$60 billion, and offers only a temporary fix (Bernardo, 2016).

The numbers of unaccompanied children who have arrived in 2015 is lower than in 2014, at 39,970 compared to the 68,541 in 2014 (Department of Homeland Security, 2015). Still, the Obama administration is seeking to be better prepared than they were in 2014, to house unaccompanied minors from Central America, as the Office of Refugee Resettlement (ORR) increases the capacity of current shelters for 'unaccompanied alien minors' (UAC) from 7,900 to 8,400 (Preston, 2015; U.S. Customs and Border Protection, 2015), a drastic shift from his initial response in 2014, which was to implement a policy of expedited removal of UAC (AIC, 2015). President Obama announced in December 2015 that it would open two new shelters in Texas and one in California by the end of the month, which will accommodate 1,400 more UAC with the goal of keep the border secure and calm, avoiding overcrowded border patrol stations (Preston, 2015). Secretary of Health, Sylvia Mathews Burwell, additionally asked the Pentagon to have 5,000 more beds prepared for expected new arrivals. In December 2015, the U.S. still had the capacity for an additional 8,400 unaccompanied minors and had not seen shelters overflow yet. The most recent additional precautions are in reaction to the sharp rise of unaccompanied minors in November 2015, which was described as the "surge." It was also during the same month that United States citizens witnessed terrorist attacks in San Bernadino, CA and in Paris, France. These attacks sparked nationwide fear and conversation around securing borders and accepting refugees with caution (Preston, 2015). In his budget proposal for FY 2017, President Obama asked ask Congress for \$1 billion to send to Honduras, Guatemala, and Mexico to support economic

development and implement programs that might counter corruption and gang violence (The White House, 2016; see also Preston, 2015).

One policy response to the crisis is taking place beyond U.S. borders. It is known as *Programa Frontera Sur Mexico* (in English, *Mexico's Southern Border Strategy*) (Archibold, 2014; Gonzalez-Barrera & Krogstad, 2015). Largely due to pressure from the United States and from Central American countries, Mexico has implemented the *Southern Border Strategy* to better secure the border between Guatemala and Mexico (Archibold, 2014). The strategy was announced on July 7, 2014 and has resulted in increased deportations from Mexico to Central America, rising from 80,079 in 2013 to 107,814 in 2014, a 13% increase, the majority of which were Central Americans in 2014 (Boggs, 2015). More striking however is the increase in deportations of unaccompanied minors. Eighteen thousand one-hundred sixty-nine of the 107,814 deportations from Mexico in 2014 were unaccompanied children, a 117% increase from the 8,350 unaccompanied children deported in 2013 (Boggs, 2015).

As part of the *Southern Border Strategy*, Mexico has opened five new border patrol stations along the most popular routes, including train routes where migrants attempt to ride atop freight cars (Archibold, 2014). These measures are a dramatic shift from Mexico's tradition of being sympathetic toward migrants traveling through their country to the U.S. border. Since 2010, illegal immigration to Mexico has been considered a civil rather than criminal offense, and the government in fact has tried implementing temporary travel visas to allow them to make their journey to the U.S. without reliance on smugglers. In reality, these visas are hard to obtain, so most migrants travel through undocumented. Humanitarian visas, which would allow migrants to remain in Mexico for protection concerns, are also difficult to

acquire because one must exhibit physical proof such as an injury to qualify (Archibold, 2014).

It is believed that deportations at Mexico's Southern border have lessened the flow of unaccompanied minors to the U.S., as the number has dropped 42% between October 2014 and February 2015, compared to the same time the previous year (Boggs, 2015). President Obama met with President Enrique Peña Nieto of Mexico on January 6, 2015 and praised Mexico's handling of unaccompanied minors that led to the decrease at the U.S. border. However, many migrants are finding new routes along the sea, rather than train routes, and are easier preyed on by criminal gangs and corrupt officials without the protection of migrant shelters run by churches and nonprofits that had become established along traditional routes. The *Washington Office on Latin America* (WOLA) has found increased corruption within Mexico's agencies for immigration enforcement and border security, namely the *National Institute for Migration and Mexican Commission for Refugee Assistance*. WOLA calls on the U.S. to acknowledge the *Southern Border Strategy* as an inhumane solution thus far, and support Mexico in combating the corruption and strengthening their protection of asylum-seekers (Boggs, 2015).

The United States government finally instituted a long-debated proposal for in-country processing of asylum claims of minors in Guatemala, Honduras, and El Salvador on December 3, 2014 (AIC, 2015). The program is titled, *Central America Minors Resettlement/Parole Program (CAM program)* (Khan & Gonzalez, 2015; U.S. Citizenship and Immigration Services (USCIS), 2015). It is intended for a narrower population than the vast majority of unaccompanied minors traveling to the U.S., however. The *CAM program* allows children under the age of 21 in Central America, to reunite with their families in the

U.S. if they have one or more legal parents residing in the U.S. (Khan & Gonzalez, 2015; USCIS, 2015). To date, this author has not found in-country asylum application programs for Central American asylum-seekers without family members in the United States.

D. Choice Analysis (i.e. what is the design of programs created by a policy and what are the alternatives to this design?)

Representative Chaffetz's policy takes the design of 'expedited removal' of unaccompanied minors to repatriate them back to their home countries within 48 hours of their arrival to the U.S. (HR Bill 1153, 2015). By rolling back protection rights laid out by TVPRA 2008 for UAC from Central America, Chaffetz aims to deter future UAC migrants and free up the backlog of asylum cases in the Executive Office of Immigration Review (U.S. House of Representatives Judiciary Committee, 2015). According to the terms of the 2008 legislation, the William Wilberforce Trafficking Victims Protection Reauthorization Act, which will be explained further in the Historical Analysis section that follows, UAC from noncontiguous countries are allowed to remain in the U.S. upon apprehension to apply for refugee status (TVPRA 2008, 2015). These minors stay in the care of the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) and are given a court date to defend their case for asylum, which can be anywhere from one to five years away because so many minors are waiting in line already (ORR, 2015; Chisti & Hipsman, 2014).

Described below are three bills from Congress, a California state law, and a United Nations policy that can be seen as alternatives to H.R. 1153:

H.R. 1149 *Protection of Children Act of 2015*

Republican House Representative John Carter of Texas District 31 who serves on the Committee of the Judiciary and Foreign Affairs proposed H.R. 1149 *Protection of Children Act* in February of 2015 (H.R. Bill 1149, 2015). Similar to H.R. Bill 1153 *Asylum Reform and Border Protection Act*, this bill amends TVPRA 2008 to eliminate special circumstances for UAC from noncontiguous countries so that all children apprehended at the U.S. border have the same rights. The bill proposes that an immigration official at the border screen Central American children for asylum concerns and determine if they can be returned to their country of origin without an asylum hearing or contact with HHS. If it is determined the child has no credible fear of returning to their home country, it allows the child to remain in Border Patrol custody for 14 days at which point removal proceedings are to begin. If credible asylum claims exist, the child must be transferred to HHS within 30 days (allowing him/her to remain in Border Patrol custody for a month) at which point he/she has the right to legal counsel, but at no cost to the government. The bill does not indicate who would pay, but this author speculates even more children will go without a lawyer. The bill additionally requires non-contiguous countries to make repatriation agreements with the United States for safe removal of UAC (H.R. Bill 1149, 2015).

S. 2611 *HUMANE ACT*

Republican Senator John Cornyn of Texas, who serves on two committees, Homeland Security and Governmental Affairs, proposed Senate Bill 2611, *HUMANE Act* (S. Bill 2611, 2015). This bill also proposes that UAC from contiguous and noncontiguous countries alike should be treated in the same manner of expedited removal. Senator Cornyn's bill focuses even more intensely on a speedy timeframe: All UAC should be taken into U.S. custody by Border Patrol upon apprehension and screened for possible asylum claims by Border Patrol

personnel. If the children suggest a desire to ask for asylum, they will be interviewed by an asylum officer within seven days. If the asylum officer determines no credible fear of return exists, an immigration judge must order the UAC be placed in removal proceedings unless they agree to voluntary return, within 72 hours of the asylum officer's conclusion. If it is determined the UAC are possibly eligible for relief from removal, they are to be transferred to HHS custody until a final hearing to determine if they are granted asylum or repatriated to their home country. The bill also orders the Attorney General of the Department of Justice to employ 40 additional immigration judges to speed up screenings and placements of UAC, and requires the Secretary of Homeland Security (DHS) to give congress an updated plan for maintaining security and calm of the border (S. Bill 2611, 2015).

H.R. 4936, the *Vulnerable Immigrant Voice Act of 2014*

H.R. 4936, the *Vulnerable Immigrant Voice Act of 2014* was introduced in July of 2014 by Hakeem S. Jeffries, New York House Representative of the Democrat party on the Committee of the Judiciary (H.R. Bill 4936, 2015). It amends section 292 of the *Immigration and Nationality Act* (INA) to require the Attorney General to appoint legal counsel to UAC and immigrants with severe mental disabilities (H.R. Bill 4936). Section 292 of the *INA* states that UAC have a right to legal representation but at no cost to the federal government (*INA* of 1965, 2015). This bill would eliminate that statement and require the U.S. to take full responsibility for finding and funding legal counsel for UAC (H.R. Bill 4936).

SB 873 *Human Services and Vulnerable Immigrant Voice Act of 2014 (VIVA)*

California Governor Jerry Brown made Senate Bill 873 law in September of 2014 (ILRC, 2015; California Legislative Information, 2015). This legislation provides \$3 million in legal aid for unaccompanied minors in U.S. custody awaiting immigration hearings. The

additional funding will be distributed through the California Department of Social Services to provide attorneys and legal advocates to children in removal proceedings or asylum hearings. It also makes more accessible the use of Special Immigrant Juvenile Visas in California Superior Court and Family Court. This is a type of asylum visa for undocumented children in the custody of the state who cannot be reunited with a parent, and who demonstrate it is unsafe to return to their home country (AIC, 2015). This legislation ensures that courts are educated on the qualifications for the visa and are aware of their responsibility to recognize when the qualifications are present in a case (ILRC, 2015; California Legislative Information, 2015). It also states that declaration by the minor is sufficient evidence to warrant protection and the issuance of a visa (ILRC, 2015; California Legislative Information, 2015).

General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin

The United Nations Committee on the Rights of the Child has laid out basic principles and expectations of UN member states in caring for and protecting unaccompanied children (UNCRC, 2015). It asks that states treat these children with non-discrimination according to nationality and race. The best interests of the child should be the primary concern when planning short-term and long-term care. Article d asserts their "right to life, survival, and development," demanding that countries recognize the risks of sending them back home. It furthermore says that children have a right to voice their need for protection and nations must in turn protect their confidentiality, especially when such statements can be life-threatening to themselves and their families. Every child should be: 1. assessed for asylum claims according to child-sensitive procedures, 2. appointed a legal adviser and

allowed access to all asylum procedure options, 3. placed into care that offers them the greatest amount of freedom and allows them to remain with siblings, 4. provided education while in state custody, and 5. given access to health and mental health care. Countries should make all attempts to protect children around the world from trafficking and other abuse, and only re-unite children with family or home country if it is in the best interests of the child. Placement in their home country, a third country, or a host country should be accompanied by reintegration support. Personnel working with unaccompanied children should undergo comprehensive training to recognize their unique needs. Data and statistics on the identifying variables and trends of unaccompanied children should be collected and implemented into improvement of policies (UNCRC, 2015).

This author has found that several proposed solutions for the care of unaccompanied immigrant children can be found within the year that the 'urgent humanitarian crisis' was announced, but also as far back as the Immigration and Nationality Act of 1965. They range across the spectrum from left-leaning to right-leaning political ideology, while all claiming to work for the best interest of the child and family reunification. Historical legislation that pertains to this vulnerable population will be discussed further in the section that follows.

II. Historical Analysis

A. What policies and programs were previously developed to deal with the problem? In other words, how has this problem been dealt with in the past?

United States immigration history is long and complex, and in regards to protection of immigrants and refugees, U.S. policy is intertwined with international policy written for the United Nations and its member states. The UN High Commissioner for Refugees has contributed a significant amount to the research and commentary on the crisis (UNHCR, 2015). Because the House of Representatives Bill 1153, *Asylum Reform and Border Protection Act of 2015* (HR Bill 1153) outlines recommendations and reforms for the treatment of unaccompanied minors and their status as asylum seekers or refugees, the history will focus on the development of the 'asylum seeker' and 'refugee' definitions and policy, and 'unaccompanied alien child' definition and policy as outlined by the United Nations and the United States (*Asylum Reform and Border Protection Act of 2015*, 2015). Included under the subheading *United States* is the history of violence and instability in Central America, United States involvement in the conflict, and the factors that led to increased Central American migration North and ultimately the "surge" in 2014 (*American Immigration Council*, 2015).

United Nations.

In 1951, the United Nations developed the *Convention Related to the Status of Refugees* to spell out what kind of protection status and rights European refugees in the aftermath of World War II were to receive. The *1967 protocol* expanded the convention to apply to displaced persons around the world. Article I(A)2 of the 1951 convention defines a refugee as the following:

“a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable to or unwilling to avail himself or herself of the protection of that country, or to return there, for fear of persecution” (UNHCR, 2015).

They specifically sought to make a distinction between the terms ‘refugee’ and ‘migrant,’ by regarding a migrant as a person who leaves their country for reasons such as family reunification, education, or economic opportunity, and still enjoys protection of their country while abroad. (UNHCR, 2015). Although sometimes stated synonymously, asylum-seeker is defined as an individual seeking international protection but for whom official refugee status is lacking or pending. Many displaced persons fall under this category due to lengthy and complicated refugee application processes, and relevant to the present crisis, most of the children arriving from Central America are being called asylum-seekers, but not yet refugees (UNHCR, 2015).

The United Nations has taken additional measures to address the case of asylum-seeking children specifically. In 1997, they included the definition and treatment of unaccompanied children in their *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (UNHCR, 2015). Unaccompanied children are defined as persons under the age 18 who are separated from both parents. The guidelines ask that states recognize their particular vulnerability as children and not refuse entry into their country. Prompt and professional interviewing of the child should be done by an expert in child welfare and refugee issues. Guardians should be appointed immediately and under no circumstances should the child be detained. Every child should have an opportunity to apply

for refugee status with legal counsel (UNHCR, 2015). The same year these guidelines were set forth, the United States reformed their own policy regarding migrant children to align more closely with the UN, in the *Flores Settlement of 1997*, and the international climate as a whole sought increased recognition of issues faced by, and rights for, children (Wyler, 2013).

United States.

As a part of the United Nations (UN) General Assembly, the United States accedes to the refugee definition of all persons fleeing persecution, as outlined by the *1951 Convention and 1967 Protocol*. As a part of these treaties, in addition to the 1975 UN *Convention Against Torture*, the United States may not return an individual to a country in which they are being persecuted or tortured (American Immigration Council [AIC], 2015). Furthermore, the *United States Refugee Act of 1980* created a formal agenda for resettling refugees, and solidified a commitment to their protection (Human Rights First [HRF], 2010). This commitment however does not stand alone. There are policies established by the *Immigration and Nationality Act of 1965*, and other subsequent laws that limit the number and nationality of people the United States accepts annually. Notable to the case of children is the *Flores Settlement of 1997* (Women's Refugee Convention et al., 2015). A California district court heard the case of *Flores vs. Reno* in response to disapproval of the treatment of unaccompanied minors in U.S. federal custody, an issue that had been growing since the 1980s. The resulting settlement established national policy for the detention and care of children in the custody of the Immigration and Naturalization Service (INS). It mandated that they are held in least restrictive settings that meet safety and health standards, and released to a family member or to a licensed sponsor, such as foster care, to await their appearance before immigration court. They were also to be provided with education, counseling,

recreation services, and access to an attorney (although it was not paid for by the U.S. government). Children often rely on immigrant and children's rights organizations such as the *Vera Institute for Justice* or *Kids in Need of Defense* (KIND) for sponsored lawyers, and of course those resources are limited (Vera Institute of Justice; KIND, 2016). The *Flores vs. Reno* decision now applies to the Department of Homeland Security (DHS) which replaced INS in 2002, and many of its measures were adopted by the *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, which will be discussed further in the following section (Women's Refugee Convention et al., 2015).

The migration of children and families to the United States from Latin America is not a new phenomenon. It dates back to civil wars in the region throughout the 1980s and the violence that ensued, as well as to the economic displacement due to trade agreements initiated by the U.S (Meyer, et al., 2015; Pérez, 2013). The majority demographic of migration however, is shifting: prior to 2012, the majority were Mexican nationals. Today, 75% are said to be fleeing Central America (GAO 15-362, 2015). Migration from Guatemala and El Salvador can be traced to the cold-war era and ongoing civil wars in the 1980's, when many fled the violence of autocratic militaries supported by the U.S. in the name of democracy (Pérez, 2013). The United States, with help of the Honduran government, which also feared the supposed threat of ties between the Soviet Union and leftist nationalism in Central America, funded brutal government force in El Salvador and Guatemala against anyone suspected of leftist affiliation (Meyer, et al., 2015). Thousands fled to the United States for asylum but were not granted refugee status because the U.S. would not recognize persecution by governments they considered allies (Meyer, et al., 2015).

In response to the large number of migrants from El Salvador and Guatemala seeking

protection in the U.S., the U.S. attempted to improve conditions in Central America by initiating the Caribbean Basin Initiative (CBI) in 1983, a unilateral preferential trade agreement to give Central America access to American goods to provide resources that had been depleted because of the civil war. The trade agreement remained until it was strengthened and replaced by the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) in 2004, which went into effect for Honduras, Guatemala, and El Salvador in 2006 (Meyer, et al., 2015). Much of the Central American working class was already forced to relocate to find work after the CBI in 1983. CAFTA-DR only worsened this economic displacement (Wood, 2013). Remaining local farms could not compete with less expensive imports from large, subsidized farms in the United States (Wood, 2013).

In the 1990s, United States economic support of Central America gradually faded after the fall of the Soviet Union and the eventual peace accords in El Salvador in 1992 and Guatemala in 1996. This allowed only minimal U.S. support for the restoration of democratic leadership and economic reform in the region (Meyer, et al., 2015). In fact significant migration from Honduras rose in the 1990s as their economy struggled to adjust to post-cold war globalization, and worsened further after Hurricane Mitch in 1998, which affected much of the land and agriculture of Central America's Northern Triangle (Honduras, Guatemala, and El Salvador). Honduran migration rose most sharply however, after the coup d'état of 2009 overthrew the Honduran government. Unrest persists today as the country has largely been taken over by powerful, criminal gangs (Reichman, 2013).

The prevalence of criminal gangs in Honduras, Guatemala, and El Salvador has a long history. In 1996, the U.S. passed the *Illegal Immigration Reform and Immigrant*

Responsibility Act, beginning a massive wave of deportations to Mexico and Central America (Meyer, et al. 2015). Forty-six thousand of these were convicts and many were members of gangs that originated in Los Angeles. Two are famously known as Mara-Salvatrucha (MS-13) and the 18th Street Gang (M-18), still the most powerful and violent gangs in Central America today (Meyer, et al. 2015). They arose from the first wave of Central American migrants in the 1980's, looking for a way to survive urban life in the United States (Pérez, 2013). This focused deportation initiative only worsened after the terror attacks of 9/11 in 2001, which saw the beginning of the militarization of the border and a collective view of Latin American immigrants as criminal invaders, and even terrorists (Brown, 2013). In 2005, U.S. Operation Community Shield further accelerated deportations of members of transnational gangs, who returned home to impoverished and increasingly urbanized communities adjusting to the plight of their previously largely agrarian economy and culture. Gangs members arrived to the still war-torn and impoverished region, and recruited the most vulnerable, children, to join their gangs. They promised an escape from poverty and the assurance of security, and otherwise threatened their lives and the lives of their family if they did not join. The rise of organized crime in these countries would prompt a steady increase in the number of children and families fleeing, culminating in a historical record of unaccompanied minors at the U.S. border from 2012 to 2014 (Pérez, 2013).

William Wilberforce Trafficking Victims Reauthorization Act of 2008.

The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 is the existing policy in place being used to define and address the crisis of unaccompanied children at our southern border that became so apparent in 2012 (Wasem, 2014). It was named by President Bush after an English abolitionist from the 19th century,

and was adapted from the Victims of Trafficking and Violence Protection Act (TVPA) of 2000. TVPA was enacted by President Clinton to enhance efforts to prevent human trafficking (Siskin & Wyler, 2013). Section 235 was added to TVPRA of 2008 and titled *Enhancing Efforts to Combat the Trafficking of Children*. In it, President Bush included specific instructions for 'unaccompanied alien children' (UAC) which he previously defined in the Homeland Security Act of 2002 as children under the age of 18 without lawful immigration status in the U.S., and without a parent or legal guardian in the U.S. (Chisti & Hipsman, 2015). A significant measure of section 235 was an agreement made with contiguous countries, Mexico and Canada, that UAC would be screened for possible trafficking risks and asylum claims. The administration decided in 2009 that UAC from all countries would be screened, but specific terms applied to Mexico and Canada for a swift and safe repatriation of children to their home country (Wasem, 2014). A major goal of TVPRA was family reunification, and because of the proximity of Mexico to the United States, it was possible to coordinate with welfare officials in Mexico to ensure safe arrival back home. Children from Central America were much further from home, and because there were far fewer of them, the Department of Health and Human Services (HHS) could house them or place them with sponsors for longer periods while they filed for asylum or awaited an immigration hearing (Chisti & Hipsman, 2015).

The process of apprehension and determination of the immigrations status of unaccompanied minors is as follows: Children apprehended at the border from a contiguous country are to be detained and screened by qualified officers within 48 hours for risks of human trafficking or possible asylum claims (TVPRA of 2008, 2015). If the Department of Homeland Security (DHS), specifically Customs and Border Patrol (CPB) or Immigration

and Customs Enforcement (ICE), decides the child can safely return home, then that child is eligible for voluntary return, which removes them from the United States without the consequences of an official deportation. They are to be returned immediately to appropriate government or welfare officials in Mexico or Canada during daylight hours. If, however, it is determined that an asylum claim can be made, the child is transferred to the Department of Health and Human Services (HHS), specifically the Office of Refugee Resettlement (ORR), to be placed in formal immigration removal proceedings with the Executive Office for Immigration Review (EOIR) (TVPRA of 2008, 2015). They should be housed in the least restrictive setting possible until ORR can identify a relative, foster care family, or other state licensed care facility for placement of the child while they await their hearing. Children from noncontiguous countries in contrast, are transferred immediately to HHS where the same process is followed but without their first being screened by CPB or ICE. Once CPB or ICE determines they are unaccompanied, they are to be transferred to HHS within 72 hours, regardless of whether the child presents a credible fear of returning home. Then, they will begin the same process that children from contiguous countries who have a possible asylum claim would begin (TVPRA of 2008, 2015).

Children are given an opportunity to defend an asylum claim with EOIR. There are four major protections for which they might be eligible: *Asylum*, *Special Immigrant Juvenile Status (SIJS)*, *U Visas*, or *T Visas* (AIC, 2015; Corcoran, 2015). *Asylum* is an arrangement of international protection for individuals who have fled to the United States, and demonstrate the inability to receive protection by their own nation having suffered persecution due to political views, religious belief, affiliation with a social group, race, or nationality. *SIJS* is a kind of amnesty given to UAC under age 21 who are in custody of HHS because of

mistreatment or abandonment by one or both parents. A *U visa* is available to any unauthorized immigrant who has been a victim of a crime and has agreed to assist law enforcement in investigation of the crime. *T visas* are available for any unauthorized immigrant who has suffered a form of human trafficking (AIC, 2015; Corcoran, 2015). The federal government provides all funding for DHS to apprehend, detain, and transport UAC, and for HHS to care for the children once in their custody by awarding grants or entering into contracts with voluntary agencies that provide such care (TVPRA of 2008, 2015). This includes reimbursement to state foster care programs. All attempts must be made to provide them a lawyer and a child advocate, or guardian ad litem. Currently, Congress is negotiating how to distribute funds for the crisis in order to address the issue more holistically, with a proposal from President Obama to split the funds between DHS, HHS, the Department of State to aid sending countries, and the Department of Justice Administrative Review and Appeals to ensure legal counsel for children (Campos, 2014).

HR Bill 1153 proposes several amendments to TVPRA 2008. Section 10, 'Notification and Transfer of Custody Regarding Unaccompanied Alien Minors,' proposes extending the length of time that unaccompanied children from Mexico may be held in custody by border patrol, from 48 hours, to 7 days, and changes the length of time for Central American children from 72 hours to 30 days (HR Bill 1153, 2015). Section 235b of TVPRA 2008, had mandated a holding period of no more than 48 hours for Mexican children before voluntary return to Mexico or transfer to ORR care, and no more than 72 hours for Central American children before transfer to ORR care (TVPRA of 2008, 2015). Section 275 (c.)(2)(A) of TVPRA 2008, mandates that children only be placed in secure settings if they present a danger to themselves or others. However, Section 14 of HR Bill 1153, *Minors in*

the Department of Health and Human Services Custody, amends that policy by allowing children to remain in detention facilities simply if there is no available placement option (HR Bill 1153, 2015). Section 15 of HR Bill 1153, *Foreign Assistance for Repatriation*, upholds section 235(a)(2) of TVPRA 2008, where an agreement was made with contiguous countries for swift repatriation from CBP without involvement of ORR if no credible asylum claims are determined (TVPRA of 2008, 2015). H.R. 1153 creates the policy that in order for Central American countries to receive foreign assistance from the United States, they must agree to enter into this agreement (HR Bill 1153, 2015). The U.S. has sent significant foreign aid to Guatemala and El Salvador since the 1980's civil war era, and to Honduras following Hurricane Mitch in 1998 (Meyer, 2016). The amounts have waxed and waned according to the level of instability in the region, rising markedly following the *Mérida Initiative* in fiscal year 2008, when President George W. Bush joined with Mexico to supply U.S. counterdrug and anticrime efforts for Mexico and Central America. The Obama Administration split the Central America portion of the *Mérida Initiative* into a separate *Central America Regional Security Initiative* (CARSI) in fiscal year 2010 that has led to record high numbers of foreign assistance with the increasing severity of gang and drug trafficking violence. By fiscal year 2015, about \$114 million was sent in foreign aid to Guatemala, \$47 million to El Salvador, and \$71 million to Honduras (Meyer, 2016). In fiscal year 2016's budget, Congress allocated \$226 million for Guatemala, \$119 million for El Salvador, and \$163 million for Honduras (Meyer, 2016). Foreign aid doubled in just a year for each country following the 2014 'surge' of children at the border. Whether this flow of money into the region helps or hurts the conditions has been a contested argument of late and President Obama is seeking to shift foreign assistance initiatives from its traditional focus on security and militaristic law

enforcement to investment in economic stability and social programs, specifically for youth (Kat, 2015; USA Today, 2016; U.S. Global Leadership Coalition, 2016; Washington Office on Latin American Affairs, 2015). Regardless of opinion on the matter, it is certain by these numbers that withholding foreign aid will have a significant fiscal impact for all of the Northern triangle region.

Immigration and Nationality Act of 1965

Referenced often in the provisions of HR Bill 1153, is the Immigration and Nationality Act (INA), which dates back to 1965; it was passed in Congress during the Lyndon B. Johnson Administration to eliminate the previous quota system which favored Western European immigrants (Thompson, 2004). Its enactment allowed for an influx of 40 million immigrants between 1965 and 2002, many from Latin America (Thompson, 2004). In section 208 a(2)A of the INA, titled *Safe Third Country*, the law states that aliens fleeing persecution to the United States may be removed to a safe third country according to a bilateral agreement with that country, if not granted asylum in the U.S. (INA of 1965, 2015). They may be eligible for refugee status in the U.S. however, and may apply for asylum from there. (INA 1965, 2015). This is due to United States refugee policy found in section 101(a)42 of the INA, that is almost identical to the United Nations policy already stated, which requires that in order to apply for refugee status, the individual must be outside his or her country of origin, but not yet within the country in which they are seeking such status (INA of 1965, 2015; United States Citizen and Immigration Services, (USCIS), 2015). However, Section 208 a(2)E of the INA states that this policy will not apply to children, defined here as an "unmarried person under 21 years of age," thus allowing them to remain in the United States while they apply for asylum (INA of 1965, 2015). Under Section 9 of H.R.

1153, *Modifications to Preferential Availability for Asylum for Unaccompanied Alien Minors*, is the proposal to strike Section (a)(2)(E) so that the policy applies to children and adults alike (HR Bill 1153, 2015). Additionally, Section 9 of H.R. 1153 proposes striking section 208 (b)(3)(C) of the INA, which states that an asylum officer has initial jurisdiction over the decision to repatriate to a safe third country or permit asylum application (INA of 1965, 2015). Striking this section would allow for that decision to be made by Border Patrol officials upon apprehension of a minor, rather than officials trained in asylum law (HR Bill 1153, 2015). Section 22 of H.R. 1153, titled, *Notice Concerning Frivolous Asylum Applications*, implements an additional subsection to 208(d)(4) of the INA to prevent fraudulent asylum claims. This would implement a written warning on the asylum application notifying applicants of the consequences of submitting a fraudulent claim (HR Bill 1153, 2015). This is in direct response to the belief that a majority of asylum claims are not credible or lack the criteria for due protection (House Judiciary Committee, 2015).

Homeland Security Act of 2002

The significance of the Homeland Security Act (HSA) as it pertains to this bill, is its definition of UAC (HSA of 2002, 2015). This definition was used in the terms of TVPRA 2008 (TVPRA of 2008, 2015). The HSA was put into effect under the Bush Administration of 2000-2004. In response to the terrorist attacks of 9/11, President Bush launched initiatives to increase border security, essentially through the militarization of the border between the U.S. and Mexico (Brown, 2014). In addition to the array of heightened security, was the replacement of the Immigration and Naturalization Service (INS) by the Department of Homeland Security (DHS). This change in administration included new provisions for the treatment of immigrant children, including the transfer of care from the Commissioner of

Immigration and Naturalization to the Director of the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services (HHS). It also introduced a new term, 'unaccompanied alien child' defined in Section 462(g)(2) of the HSA as "a child who has no lawful immigration status in the United States, has not attained 18 years of age, and who has no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody" (HSA of 2002, 6 USC § 279, 2015). Section 8 of HR Bill 1153, *Unaccompanied Alien Minor Defined*, amends the definition by adding that an unaccompanied alien also does not have a "sibling over 18 years of age, aunt, uncle, or grandparent over 18 years of age" in the U.S. to provide care and custody (HR Bill 1153, 8(2)B, 2015). If at any time this status were to change and one of the individuals listed were found in the United States, the child's status as an UAC would be removed (HR Bill 1153, 2015). This change would affect children who migrate here to reunite with a family member already in the states (UNHCR, 2015). If the child is no longer considered a UAC, their rights to certain protections such as the Special Immigrant Juvenile Visa, which is a special visa for undocumented children without a parent to care for them, may be denied (AIC, 2015; UNHCR, 2015; Starr, 2015). Additionally, if caught with an adult family member, their rights and afforded care also change. Although the *Flores Settlement* had called for all children in U.S. custody to have minimal detainment periods, this is not applied to children within migrant families since they are not considered 'unaccompanied.' They remain under the care of the Department of Homeland Security in detainment facilities for long stretches, rather than with the Office of Refugee Resettlement, and are subject to deportation without a formal court hearing (Starr, 2015; Peralta, 2015).

B. How has the policy/program under analysis developed over time?

1. What people or groups of people, initiated or promoted the policy?

This author found only one group directly endorsing HR Bill 1153, however many others demonstrate support of policies included in the bill. The Home School Defense League has come out directly in support of the bill because of section 2, *Asylum Cases for Homeschoolers* which offers protection to families who are persecuted because they desire to homeschool their children (Smith, 2015; HR Bill 1153, 2015). The bill would allow for up to 500 people to receive asylum in the U.S. each year if they faced limited freedom to practice homeschool in their home country, or persecution based on their belief in homeschooling. Thus "homeschoolers" are recognized as a specific social group, which allows them to fall under the terms of asylum (Smith, 2015; HR Bill 1153, 2015). A family from Germany, the Romeikes, won asylum in the United States for this reason and are outspoken about expanding this protection to more families (Smith, 2015).

The following examples demonstrate indirect support of H.R. 1153's goal to send UAC back to their home countries through their opposition to the children's arrival. These are reactions by United States citizens who disapproved of and demonstrated against the United States temporary resettlement of unaccompanied minors that overwhelmed the border in 2014 (Ludden, 2014; Martinez, Yan, & Shocheit, 2014; CBSNews, 2014). They took place in the month of July as Texas began transporting migrants to other states to handle the overwhelming number arriving in the Rio Grande Valley Region of Texas. About 50 unaccompanied minors were flown to Tucson, AZ on July 14, 2014 to be resettled in a small nearby town, Oracle, AZ. They were going to be housed at Sycamore Canyon Academy, a school for at-risk youth (Martinez, Yan, & Shocheit, 2014; NBCnews, 2014). Oracle

resident, 50-year old Robert Skiba organized a demonstration to protest at the scene of the children's arrival, after Pinal County Sheriff Paul Babeu made it public and expressed his concern over American taxpayer dollars paying for their care. Skiba argues that the kids could be MS-13 gang members, and another resident, told CNN he is "protesting the invasion of the United States by people of foreign countries." Fliers were distributed reading "We are being invaded!" publicizing a "National Day of Protesting Against Immigration Reform, Amnesty and Border Surge" (Martinez, Yan, & Shocheit, 2014).

This movement spurred 11 groups around the country to express their dissent of the situation (and indirect support of Chaffetz's goal to minimize the number of children allowed to stay in the U.S.) (Martinez, Yan, & Shocheit, 2014). Primarily in California, Texas, Florida and Arizona, a total of 260 protests were held nationwide at state capitols, Mexican consulates, and freeway overpasses, against the government's handling of the unaccompanied minor crisis. Groups sponsoring the protests include *Americans for Legal Immigration PAC*, and the *Tea Party Community*. They cited the threat of disease, security risk by drug cartels, gang members, and terrorists potentially among the minors, as well as taxpayer money being used to fund the transportation, shelter, education, and legal aid of "illegals." Residents in Vassar, Michigan also protested the same weekend at a City Council meeting, against the placement of undocumented children in Tuscola County at a local social service agency, Wolverine Human Services, who proposed housing the minors at their facility. Vassar Mayor Dan Surgent and members of Michigan's Immigration Control and Enforcement said they did not want the children in their town and they did not trust President Obama (Martinez, Yan, & Shocheit, 2014). Another response following the same trend occurred in Lawrenceville, VA, a small town of 1,400 (Ludden, 2014). Buses of unaccompanied migrant children were to

arrive at a former campus building of St. Paul's college that had been leased to the federal government (Ludden, 2014). Brunswick County sheriff, Brian Roberts, expressed security concerns along with several residents. A deal was already in motion to house up to 500 children in the private building and residents expressed fears of disease, increased criminal activity, and paying for people who broke the law (Ludden, 2014).

The initial demonstration that made headlines and seemed to spark the nationwide response was in Murrieta, CA on July 3, 2014 (CBSnews, 2014). About 120 protesters gathered around the Border and Customs Patrol station in Southern California in reaction to the news that 140 unaccompanied minors would be flown into San Diego and transported to nearby Murrieta, CA of Riverside County, a town of about 106,000. County supervisor Jeff Stone stated that he and other residents are concerned about the already hurting economy and social services in Murrieta, CA. They said they were afraid the children would take jobs and resources from U.S. citizens. Earlier that same week, protesters had already blocked buses of women and children migrants just North of San Diego and forced them to turn around (CBSnews, 2014). At each of the demonstrations mentioned however, were immigration advocates who showed up to voice their welcoming of children in need of protection, and have since formally voiced their opposition to HR Bill 1153 in several letters to Congress which is to be discussed in the following section (CBSnews, 2014; Ludden, 2014; Martinez, Yan, & Shocheit, 2014)

2. What people, or groups of people, opposed the policy?

Democrats of the House Committee on the Judiciary has gathered a number of letters that responded in opposition to the bill following its write-up (The House Committee on the Judiciary Democrats, 2015). Several prominent groups have spoken out against the policy,

from human rights groups to labor unions, and their statements can be found at the House Committee on the Judiciary Democrats' website: *Human Rights First* has responded directly to the bill with a fact sheet detailing the ways in which its provisions contradict the United States' obligation to protect persecuted populations. Religious leaders across the liberal-conservative continuum, from the *Hebrew Immigrant Aid Society*, to the *U.S. Conference of Catholic Bishops* have written to the House Judiciary Committee in opposition from religious morals and 'American values' perspective which they say respect United States history of immigration and all populations seeking freedom, security, and a new beginning. They see H.R. 1153 as a short-term and unsustainable solution to a complex humanitarian crisis. They ask that the United States examine the reasons causing the increase in unaccompanied minors fleeing their home countries, rather than criminalize them and send them back to dangerous environments they will only try to leave again (The House Committee on the Judiciary Democrats, 2015).

Three groups who together advocated for the *Flores Settlement of 1997* and TVPRA 2008 have together recently released a statement against H.R. 1153: the *Lutheran Immigration and Refugee Service*, *Kids in Need of Defense*, and the *Women's Refugee Commission* (Lutheran Immigration and Refugee Service [LIRS], 2015). Their statement can be accessed at their own website, but they also wrote to the House Judiciary committee arguing that this bill will reverse major progress made by TVPRA 2008, such as minimal detainment periods for children. They claim it will interfere with fair asylum and immigration hearings and create hazardous conditions for the custody and repatriation of children (LIRS, 2015). Advocacy groups for legal rights of immigrants have also weighed in on the bill, including the *National Immigration Law Center*, which specifically points out it's

elimination of due process for unaccompanied children and inhumane treatment while they are in U.S. custody (The House Committee on the Judiciary Democrats, 2015). Several more civil rights and other advocacy groups have stated their opposition to H.R. 1153. For a complete list of letters to the House Committee on the Judiciary Democrats, see Appendix A.

United Nations (UN) official Leslie Velez also submitted testimony to the House Judiciary Committee, asserting that unaccompanied children deserve proper access to asylum proceedings before being repatriated (Weissentstein & Arce, 2014; see also CBSDC). The UN High Commissioner for Refugees and other UN officials urged the United States to consider Central Americans fleeing to the United States as refugees. They contend that the children's daily exposure to armed conflict, threat of forced gang membership, and obvious lack of protection by the state, should merit refugee status. This statement was made just before migration and interior department officials of the United States, Mexico, and Central America met in Nicaragua in July of 2014. Honduran President, Juan Orlando Hernandez called on the United States to recognize that many Hondurans have been displaced by an unofficial war by gang members and corrupt police, in part fueled by the trafficking of Cocaine to the United States (Weissenstein & Arce, 2014). When asked if the administration would consider it a "refugee crisis," White House spokesperson Josh Earnest said it was a "humanitarian situation that requires urgent attention" (CBSDC, 2014). This author argues this statement is a direct avoidance of using the term 'refugee' due to specific characteristics an asylum seeker must exhibit. (As formally stated, migrants fleeing criminal violence are not technically eligible for asylum as the terms of the UN agreement specifically state that refugees status is reserved for those persecuted for political beliefs, or identities within other social groups [UNHCR, 2015]). However, there has been some talk of a change in asylum

and refugee terminology that could pressure the United States and Mexico to treat Central Americans as asylum-seekers and refugees (Weissenstein & Arce, 2014; see also CBSDC, 2014).

C. What does history tell us about effective/ineffective approaches to the problem being addressed?

The handling of unaccompanied alien children (UAC) can be most prominently traced to the *Flores settlement of 1997*, as a result of the Supreme Court case of *Reno vs. Flores* in 1997 (Aronson, 2015; Chen & Gill, 2015). At that time, as many as 130 children in federal custody at a time was deemed an "influx." This is the same term often used to describe the near 70,000 that arrived in 2014, causing well over 130 children to be held in each detention facility at a time. Beginning in 2002 and lasting until 2007, Border Patrol was apprehending 80,000 children yearly (this number includes children within family units and unaccompanied children). Between 2008 and 2009, the number of unaccompanied children increased 145% per year, and by 2010, the estimated number of unauthorized children, accompanied and unaccompanied alike in the U.S. reached one-million. In 2012, when the first extreme rise in arrivals took hold at a total of 24,481, children were no longer attempting to cross undetected, but rather gave themselves over to border patrol hoping to receive protection. It is believed that a rumor, largely proliferated by smugglers to benefit their business, spread to Central America that children would be granted amnesty, post the Obama Administration's Deferred Action for Childhood Arrivals (DACA) in 2012, and as a result, children began giving themselves over to Border Patrol, thus increasing the numbers in detention and ORR facilities. Previously, INS and then ORR (INS became DHS and transferred care of UAC to ORR in 2002) were successful at least at managing the number of

children in their care enough to avoid media attention. This does not mean, however, that policies set by the *Flores Settlement*, *HSA 2002*, and *TVPRA 2008* were followed through successfully. This issue will be examined on two fronts: How were the children treated in DHS custody, and how successfully were children repatriated, prior to the "surge" in 2014? Noticeable challenges in maintaining the growing number of children in ORR custody began in 2010. Following 2014, when three times the number of children were in need of housing and services, many immigration reform proposals called for longer detainment periods in ICE custody and fast-track repatriation of Central American and Mexican children alike, the two most prominent reforms apparent in H.R. 1153 (Aronson, 2015; Chen & Gill, 2015; H.R. 1153, 2015).

Central American children in U.S. under the *Flores Settlement*, *HSA 2002*, and *TVPRA 2008*

Although the *Flores Settlement* established minimum health and safety standards for children in U.S. custody when in a state of full capacity, such as access to drinking water and toilets, this policy was set at a time when "full-capacity" was a dramatically lower figure than it is now (Aronson, 2015; Chen & Gill, 2015). The policies established are far outdated and unsustainable for the number of children in U.S. care since 2012, with the number of apprehended minors reaching over 65,000 in 2014 alone. Still, many of the *Flores Settlement* policies and procedures were codified in *HSA 2002*, as well as *TVPRA 2008*. The *Flores Settlement* seems to have set the precedent of addressing the issue from a focus on humane detainment and due process, largely neglecting children's long-term outcomes (Aronson, 2015; Chen & Gill, 2015).

HSA 2002 may have established the most positive reform in regards to humane care for children by transferring their care to ORR from the previous INS, and often cites "best interests of the child" as it's primary goal (Aronson, 2015; Chen & Gill, 2015). Unlike in the manner of INS custody, this move to ORR allowed children to remain in the care of officials who were not also enforcing immigration law, which was left up to the Executive Office for Immigration Review (EOIR). However, *HSA 2002* only charged ORR with providing children a list of legal advisers, making it clear that the government's first goal was the preservation of U.S. resources even at the cost of ensuring due process, let alone ensuring any kind of long term trajectory for the children's cases and well-being (Aronson, 2015; Chen & Gill, 2015).

TVPPRA 2008 did not propose any long term plan of care for the children and instead attempted again to improve apprehension and basic care of children in U.S. custody (Aronson, 2015; Chen & Gill, 2015). It required that children be placed in ORR facilities according to specific needs, primarily referring to the least restrictive settings possible, and only more restrictive settings for children who pose a threat. The problem is that children are often deemed criminals according to their illegal crossing, and regardless, detention facilities fill up so fast, that children are placed wherever there is space, even if it is not the "least restrictive setting possible" as *TVPPRA 2008* calls for. Three naval bases were opened in 2014 to provide emergency housing intended to hold 2,675 children each at a time; however, the actual numbers greatly exceeded capacity to accommodate the overwhelming children in need. Still, as many as 3,500 children are stuck in detainment facilities at the border at any given time in cramped, cold conditions, until shelter space opens up. In 2010, the Vera Institute reported that children remained in immigration detention for 61 days on average (as

opposed to the mandated transfer of care within 72 hours to ORR custody.) In 2011 this number rose to 72 days, however by 2014 it decreased to 35 days, largely because the detention facilities needed room for the increasing numbers of children apprehended at the border daily. Children are being transferred much more quickly to the ORR to free up space for the continuing arrivals (Aronson, 2015; Byrne & Miller, 2012; see also Chen & Gill, 2015). ORR shelter care, is considered one of the "least restrictive settings possible," but fails to provide the adequate mental health counseling, education, and living conditions mandated by *TVPPRA 2008*. Ideally children are placed in foster care, or with family sponsors who are often themselves undocumented. ORR fortunately does not release immigration status of sponsors to ICE prosecutors, although that does not diminish the fear these families experience in working with any government officials. Still, despite the anticipation the sponsors might have to appear in court at the UAC's mandated court date, 77% of these cases successfully make it to their hearing (Aronson, 2015; see also Chen & Gill, 2015).

When children are processed by Customs and Border Patrol and before they are released to ORR, they are issued a 'Notice to Appear' (NTA) in immigration court (Aronson, 2015). This creates a variety of issues: Firstly, the children are given a court date before receiving referrals to legal counsel. Secondly, they are likely to be moved several times between shelters according to capacity before they are eventually placed in long-term foster care or with another sponsor such as a family member or group home, which may be far away from their NTA location. ICE prosecutors are supposed to change the court date location accordingly, but with the number of children in the system, this can be delayed until it's too late. If children miss their date, they are further backlogged on the list to appear in court, at which time they have to explain why they missed their original date (Aronson,

2015). Currently, the Vera Institute of Justice (2015) is the primary facilitator of the Unaccompanied Children Program, which is a nationwide effort to contract willing pro-bono legal representation for children in removal proceedings. They oversee 26 non-profit agencies who help to recruit these lawyers (Vera Institute of Justice, 2015). However, the impracticality of such a task for so many children leaves many still unrepresented by the time of their court date. Whether they receive a lawyer or not, children wait on average 6 months to two years to be at their court date, with the most extreme cases up to five years. This is due to a long backlog of children's cases that has worsened with the increasing number of arrivals (Aronson, 2015). TVPRA 2008 only requires that children are provided legal counsel "to the greatest extent possible" (TVPRA of 2008, 2015).

This wait period of 6 months to two years has created the problem of children "aging out" of the Unaccompanied Children Program after they have reached the age of 18 (Aronson, 2015). If they are in foster care or with family may remain with those sponsors but are not guaranteed the same level of effort to provide these children with legal counsel because they are no longer considered minors. For children who age out while they are still in an ORR shelter, which recently has been an average of a year before long-term foster care is found, children lose their original relief eligibility and their cases must be re-evaluated according to policy for adults, which offers far less protection. At this point individuals still in ORR shelter care are transferred to adult detention centers unless released on parole. For children who make it to their court date, those who meet asylum criteria may remain in the states with a protective visa and eventually apply for permanent legal status, or renew their visa after two years (Aronson, 2015).

For children who do not meet asylum criteria, repatriation by 'voluntary departure' is their only option (Aronson, 2015; Chen & Gill, 2015). Children must demonstrate a safe means of travel home and the U.S. will fund the travel. Unlike 'removal' this process will not bar these individuals from reentry to the U.S., thus allowing these children to attempt to cross again in the future. This is where legal counsel for every child is so imperative. According to a study of UAC from 2005-2014, 49% of children with legal counsel were awarded asylum, as opposed to the 10% without legal representation (Chen & Gill, 2015). Even though a large majority of UAC would qualify for a type of protection, many are still repatriated every year (Aronson, 2015; Chen & Gill, 2015). *TVPRRA 2008* did implement a significant change in regards to the distinction between UAC from Mexico, and UAC from Central America, stating the UAC from contiguous countries be repatriated within 72 hours while UAC from noncontiguous countries be transferred to ORR care (TVPRRA 2008, 2015). This change may have allowed for more Central American children to receive protection because they are given a chance to stay and defend their case (Aronson, 2015; Chen & Gill, 2015; TVPRRA 2008, 2015; Chisti & Hipsman). Because H.R. 1153 wants to change the policy so that UAC from Central America are repatriated per the process of Mexican children, it is worth investigating how successful repatriations of Mexican children are, in addition to cases of Central American children who have been repatriated (HR Bill 1153, 2015).

According to the terms of TVPRRA 2008, ICE is responsible for the removal of children from contiguous countries who do not pass the initial screening for asylum protection upon apprehension (TVPRRA 2008, 2016). This should include significant communication with the receiving government and welfare officials to ensure the child is received into the right hands. Travel should only occur during daylight hours, and family

reunification is the ultimate goal. The U.S. has to secure travel documents for the child, and must rely on the agreement by the receiving country to take the child. Documentation expectations for repatriation of their nationals varies by country. Contiguous countries allow ICE to use a valid passport, while many non-contiguous ask for documentation specific to the repatriation. Once all travel documents are settled, two ICE officials are to escort the UAC back to their home country on a commercial airline. Because of the near proximity of the U.S. with Mexico, these UAC are repatriated per 'Local Repatriation Agreements' which does not necessarily require an airline ticket, but rather vehicle and ICE escort. It also requires close communication with the Mexican Consulate and must be done during daylight hours (Snider, 2014).

The issue is that many cases of repatriation do not follow procedure (Meyer & Isacson, 2015; Isacson, Meyer, & Davis, 2015). To begin with, the child is often uninformed as to what is happening (Pizzey & Fredrick, 2015). The 'voluntary return' document they sign is in English (Pizzey & Fredrick, 2015). It is well-documented that migrant men are frequently deported at night, but this is also often the case for women and children, and UAC (Isacson, Meyer, & Davis, 2015). Repatriated migrants are vulnerable to abuse and extortion en route home, by gangs and corrupt police, especially UAC. Many will return to their smuggling rings or other forms of trafficking by drug cartels because they have no other choice. They end up crossing the border several times, only to go through the same 'voluntary return' process again. Additionally, Mexican authorities who receive kids, the Mexican consulate and then Mexican child protective services, are not screening the repatriated children for protection needs, or working with appropriate child welfare officials when 'family reunification' is not in their best interests (Isacson, Meyer, & Davis, 2015).

The U.S. policy of returning migrants during daylight hours does not control for the time of day or night that Mexican authorities will release repatriated children they receive, and whether or not they will be escorted in a safe route to their final destination, if they have one (Partlow, 2015; Meyer & Isacson, 2014). Beyond their release to Mexican authorities, Border Patrol does not follow up on the trajectory of the children's cases (Partlow, 2015). In 2009, Mexico's government established a program for receiving migrants from U.S. Border Patrol, known as the 'Humane Repatriation Program' facilitated by Mexico's Migration Agency which placed permanent offices in Mexico's border cities to receive migrants (Isacson, Meyer, & Davis, 2015). These facilities offer short-term shelter care of three days to provide meals, first aid, and information about the dangers of making the traverse home. Still, U.S. government officials receive no guarantee from these shelters that UAC will be escorted all the way home, or that proper decisions will be made with welfare professionals (Isacson, Meyer, & Davis, 2015). The primary goal is usually family reunification, and when the *Washington Office on Latin America* (WOLA), "an American non-governmental organization whose stated goal is to promote human rights, democracy and social and economic justice in Latin America and the Caribbean" (WOLA, 2015) watched an interview conducted by the social worker at the shelter, they witnessed that no questions were asked about the child's fear of returning home (Pizzey & Fredrick, 2015). If returning repatriated children to contiguous countries is so flawed, it seems very less likely there will be guaranteed safe returns that are in the best interest of children when they are returned to non-contiguous countries. H.R. 1153 does not have a proposal to improve the repatriation process (H.R. 1153, 2015).

These inconsistent deportation proceedings only compound the fact that Customs and Border Patrol officials are far under-trained to properly screen children for asylum risks, and have such large numbers of unaccompanied youth's to apprehend and process, that children's reasons for fleeing are often never heard, and instead they are shuffled into deportation proceedings as quickly as possible (Meyer & Isacson, 2015; Partlow, J, 2015; Pizzey, Frederick, & WOLA 2015). Even more alarming is a new program known as the "Juvenile Referral Process" which according to reports is being used to hold unaccompanied youth longer, up to an average of 71 days, before releasing them in order to discourage them from crossing again. It is in response to the acknowledgment that children, known as "circuit kids" or "niños de circuito", may cross more than 60 times and each time are deported the same day. These are most often children who are being exploited as drug smugglers and even human smugglers of Central American children and other migrants as a part of underground "coyote" operations. Human rights officials fear this program is being used to gather information from children who may be involved in drug cartels. This increases the children's risk and that of their families upon return if gangs suspect they gave information away (Partlow, J, 2015).

This author had a difficult time finding documentation of repatriation routes for Central American children who are not granted asylum relief after their hearing, beyond individual testimonies captured by journalists. Carrie Khan of National Public Radio (NPR) reported from conversations with families at Casa San Juan Shelter in Guatemala City (Khan, 2014). Khan saw 14 children file out of a government van with their belongings on their back. Ibaro Vasquez, age 15, was deported from the United States after six months in a detention facility. His father, recently deported from Arizona, was there waiting for him.

Government officials have the parents sign a release at the shelter, and then they are allowed to take them home. Several of the children spoke of the dire economic and security conditions that drove them to leave. Luis Fernando, 17 years old, said he wanted to be able to work in the U.S. and send money back home, and that he will try to cross the border again (Khan, 2014).

D. To what extent does the current policy/program incorporate the lessons of history?

The proposed policy changes by H.R. 1153 focus on processing procedure and treatment of children in U.S. custody, much like the *Flores Agreement*, *HSA 2002*, and *TVPPRA 2008* did, rather than the complex legal framework faced by UAC after they're apprehended (HR Bill 1153, 2015). It plans to nearly do away with the legal process altogether by applying the same swift deportation agreement with noncontiguous countries that is already the case for Mexican children. Based on the outcomes of the Mexican children who were repatriated, it can be expected that ensuring safe arrival back home of these children will be even less likely because of the more distant coordination that is required with home countries that do not border the U.S. (Partlow, 2015). Much like the Mexican children, if only screened upon apprehension, it is likely that children eligible for asylum relief will be denied this protection because it goes unrecognized or is disregarded by overwhelmed ICE officials without child welfare training or knowledge of asylum terms (Meyer & Isacson, 2015; Partlow, 2015; Pizzey, Frederick, & WOLA 2015). The ICE officials screening young migrants are the same ones who have intimidated them with aggressive apprehension, often with guns drawn (Pizzey & Fredrick, 2015). Youth are less likely to open up to someone who poses such a threat (Pizzey & Fredrick, 2015). Of the 17,000 Mexican children in ICE

custody in 2013, only 4.5% were transferred to ORR care to have their asylum case heard (Pizzey & Fredrick, 2015).

H.R. 1153 also calls for extending TVPRA 2008's allotted detainment period in ICE custody to deter youth but reports show that they are already being held in detention centers longer than policy allows (HR Bill 1153, 2015; Aronson, 2015; Byrne & Miller, 2012; Chen & Gill, 2015). Setting up harsher standards for detainment and repatriation will not discourage them to migrate. Unaccompanied children may no longer turn themselves into Border Patrol but will still attempt to cross, however undetected, if conditions in Central America persist (Khan, 2014; United Nations High Commissioner for Refugees, 2014). The bill includes one measure to offer financial assistance to Central American countries to potentially aid the root causes of migration (HR Bill 1153, 2015). However this assistance will only be awarded if countries agree to the repatriation agreements set with contiguous countries for expedited removal of UAC by ICE instead of the opportunity to present an asylum case (HR Bill 1153, 2015). As seen with the multiple re-entries of Mexican UAC, and the testimony of Central American UAC, this policy may only create a short-term fix that increases risks for the migrants and does not address their reasons for migration (Inskeep, 2014; Khan, 2014; & Pizzey, Frederick, & WOLA., 2015).

Steve Inskeep of NPR spoke with Foreign minister of Honduras, Mireya Aguero Corrales (Inskeep, 2014). She specifically spoke of the \$3.7 billion that Obama requested from Congress to handle the migrant crisis, and pointed out that only \$300 million of that would be used to support programs for improved repatriation of UAC. She talked about the issues returned migrants face when they arrive back in Honduras but cannot actually safely return home to the situation they fled. They remain displaced within their own country. San

Pedro Sula, the second largest city in Honduras (after the capital, Tegucigalpa), is a major source of the child migrants who flee drug crimes, not the economic conditions. San Pedro Sula is actually a fairly prosperous city, but the drug trafficking makes it one of the most dangerous cities in the world. Corrales' says Honduras does want their children back, but recognizes that past and current policy has not put the mechanisms in place to make that a safe or sustainable option for this extremely vulnerable population (Inskeep, 2014).

III. Social Analysis

A. Problem description

1. How complete is our knowledge of the problem?

United States Customs and Border Patrol has continually released the numbers and statistics on unaccompanied minors crossing the border since the initial "surge" in 2014 when Obama declared an "urgent humanitarian situation" (Markon & Partlow, 2015; Chuck, 2015; Krogstad, Gonzalez-Barrera, & Lopez, 2014). A marked increase of unaccompanied minors from Central America began in 2009, rose dramatically in 2012, and spiked most profoundly to 68,541 in 2014 alone (ten times the number in 2009) (American Immigration Council (AIC), 2015; Chisti, Hipsman, & Bui, 2014; Greenblatt, 2015). These children are primarily fleeing gang violence and poverty in Honduras, El Salvador and Guatemala (Chisti & Hipsman, 2014; AIC, 2015). Although the number for 2015 initially was thought to reach 90,000, so far the total count is 39,970, with a surge of 10,500 children crossing the U.S.-Mexico border in October and November alone (Marjen & Partlow, 2015; U.S. Customs and Border Protection [CBP], 2015). The reason for the lower number is credited to the increase of deportations at the Mexico-Guatemala border (Archibold, 2014; Meyer & Isacson, 2015). Still, the United States struggles to make room for the minors that continue to arrive, as well as care for the minors who arrived in 2014 and prior who have entered into a backlogged immigration court system that has children waiting a year or more for their hearing (Chisti, Hipsman, & Bui, 2015; Greenblatt, 2015). Rates of violence largely by drug cartels and gangs in Honduras, Guatemala, and El Salvador continue to rise and youth remain a primary target for recruitment into criminal activity (Meyer & Isacson, 2015; AIC, 2015).

2. Are our efforts to deal with the problem in accord with research findings?

The United Nations High Commissioner for Refugees published a report in 2014 based on surveys of 404 children from Guatemala, Honduras, El Salvador, and Mexico who arrived to the U.S. after 2011 (UNHCR, 2014). Of the children from the three Central American countries, 72% were thought to warrant serious protection needs (UNHCR, 2014). In 2014, the United States was not equipped with the amount of space and personnel needed to care for these many children, flooding the news with images of kids housed in cold, cramped holding stations along the border meant to hold adults for a couple days, now holding children for up to a month (Burnett, 2014; Meyer & Isacson, 2015). This year, the Department of Health and Human Services has taken additional precautionary measures to increase shelter space to prepare for another spike in arrivals and prevent a repeat of last year's overrun border patrol facilities (Perez, 2015; Markon & Partlow, 2015; U.S. Customs and Border Patrol (CBP), 2015; Preston, 2015). Congress has also issued additional funding for increasing the number of immigration judges to speed up deportation proceedings and asylum hearings (Office of the Press Secretary, 2015; Office of Management and Budget, 2015). The Asylum Reform and Border Protection Act of 2015 focuses on quickening deportation with as little involvement in formal court hearings as possible (HR Bill 1153, 2015). This policy does not give children a chance to defend their case and potentially receive a form of much needed protection (HR Bill 1153, 2015; AIC, 2015).

Per U.S. asylum law, to qualify for formal *Asylum*, individuals must demonstrate received threat for their association with a political view, membership in a social group, religious belief, or race and nationality (AIC, 2015; Starr, 2015). Thus, according to Attorney Heather Axford of Central American Legal Assistance Center in NYC, gang threats do not legally warrant protection (Starr, 2015; Corocoran, 2015). Axford says the most likely form

of protection that minors will qualify for is the *Special Immigrant Juvenile Status* (SIJS) based on their abandonment by one or both parents (Starr, 2015). The testimonials included here demonstrates the need to expand access to these visas for unaccompanied minors, not further limit access as H.R. 1153 proposes to do (HR Bill 1153, 2015; Montagne, 2015; Starr, 2015). The *SIJS* was created 25 years ago to protect undocumented children in U.S. custody if they had been harmed, neglected, abandoned, or otherwise unable to reunite with one or both of their parents (USCIS, 2015; Starr, 2015; TVPRA 2008, 2015). Being granted this status gives these minors a 'green card' which gives them the ability to live and work in the U.S. permanently (USCIS, 2015). H.R. 1153 wants to amend the terms of the *Special Immigrant Status*, so that children may only receive it if they are unable to reunite with *both* parents (HR Bill 1153, 2015). This creates a problem for children who have a parent already present in the U.S., as seen in the case of Henry Gomez, who immigrated to the U.S. unaccompanied when he was 12 years old (Starr, 2015). Henry's mother lived in the U.S. since he was six years old because as a single mom she could not support him in El Salvador. Henry's father abandoned him and then was killed so he lived with his uncle. When a gang stormed their house and killed both his uncle and his cousin for refusing to join their gang, Henry's mother immediately arranged to pay \$6,000 to have a smuggler bring Henry to the U.S. He was apprehended by immigration officials and eventually reunited with his mother in Long Island, NY. Attorney Axford, mentioned above, offered her services and found that Henry would be eligible for SIJS since he had one parent that he could not be reunited with (Starr, 2015). If H.R. 1153 is instated, he would no longer be eligible for this protective status (Starr, 2015; HR Bill 1153).

Without the guidance of Attorney Axford, Henry Gomez may not have known he was eligible to apply for an SIJS visa (Starr, 2015; Chen & Gill, 2015). The Vera Institute of Justice published a report that showed 49% of children represented in court by an attorney between 2005 and 2014 received protection, compared to only 10% of those not represented received protection (Chen & Gill, 2015). According to another recent study by Syracuse University, there were 63,721 pending court cases in 2014 (Fessler, 2015, Syracuse University, 2015). Of those, only about one-third of unaccompanied children were represented by a legal attorney (Fessler, 2015; Syracuse University, 2015). Of the 21,588 cases already filed since the surge began in 2012, only 41% were represented. Children with a lawyer on average received protective status 73% of the time, compared with the mere 15% of children without a lawyer (Fessler, 2015; Syracuse University, 2015). If the bill's goal is to award less protection to these minors and have them ordered deported, then their change is in accord with research findings. However, human rights and immigration reform activists argue it is a failure by the U.S. to protect a vulnerable population (Aronson, 2015; Chen & Gill, 2015).

3. What population is affected by the problem?

a. Size

The primary population affected by the crisis of course are the unaccompanied minors themselves and their families (Chisti & Hipsman, 2015). U.S. actors affected by the crisis will be discussed in subsection c. At the height of the crisis in 2014, the migration of 68,541 unaccompanied minors to the United States stemmed from four major countries: Honduras (28%), Mexico (25%), Guatemala (24%), and El Salvador (21%) (Chisti & Hipsman, 2015). Under the terms of TVPRA 2008, section 235, one fourth of these children,

children from Mexico, were immediately returned without a chance to file a claim for asylum within 48 hours due to previous repatriation agreements made with Mexico (Gootnick, 2015). The remaining, about 57,000, were transferred to the Office of Refugee Resettlement to await formal immigration hearings (AIC, 2015; Burnett, 2015). Mexico's initiative to deport children at the Mexico-Guatemala border is contributing to the thinning of flows at the U.S. border in 2015 (Gonzalez-Barrera & Krogstad, 2015). In 2015, the total number of unaccompanied minors reached 39,970, with the largest sending country being Guatemala, followed by Honduras, El Salvador, and Mexico (U.S. CBP, 2015). In October and November of 2015 alone, 10,588 minors were apprehended (Chuck, 2015; Burnett, 2015), and 800 more in December were just placed in make-shift shelters such as facilities for church camps in North Texas (Gordon, 2015).

b. Defining characteristics

Of the Central American children, about 71.3% who have arrived since 2011 are boys (Krogstad, Gonzalez-Barrera, & Lopez, 2014). In 2013, of the 38,759 apprehensions, 91% of the minors were age 13-17, with children under 12 accounting for 9%. The number of teens dropped to 84% in 2014, meaning that migration of minors 12 and younger rose to 16%, marking a 117% increase in one year (Krogstad, Gonzalez-Barrera, & Lopez, 2014; Restrepo & Garcia, 2014). This author had the opportunity to hear directly from a young migrant, Manyi, who is 17-years-old, and was traveling from Tegucigalpa, Honduras. He was staying at *Casa del migrante ABBA A.C.* in Celaya, Mexico when this author met him while taking a class on migration in Guanajuato, Mexico. He shared that his motivation for leaving is to take care of his family financially from Los Angeles, California, where he plans to find work for five years before returning to his country (Manyi, personal communication, July 29,

2016). He was a car mechanic at home, but he did not earn enough to support himself and eight family members. Five years of saved U.S. dollars would take care of he and his family for many more years in Honduras. He has four siblings, a wife, a two-year-old son, mother, and grandmother who he left behind and who are relying on him to support them with “remittances” (money wired by migrants from the United States to their home country). He was riding atop trains that travel North from Central America through Mexico. He said he had to stay awake for days at a time in order not to fall off, and he could not travel with very much money, or a cell phone, because he would be robbed. He found food, rest, the means to call home, and traveling companions at various shelters throughout Mexico offered by good Samaritans along the route of the trains. According to Manyi, what made him finally decide to leave after having considered it for several months, was surviving a shooting attack by gang members in his own neighborhood. After that, his family agreed to let him go. His 15-year-old brother wanted to accompany, but Manyi insisted he stay home, stay in school, and take care of their siblings and the rest of the family while he made the dangerous trek North alone. He said that his final goodbye at 4am before jumping atop the first train of many in his journey, created a painful sensation in his chest that he’s never felt before. Still, he holds back his tears when he has the chance to talk to his wife on the phone, and remains hopeful for the future (Manyi, personal communication, July 29, 2016).

As mentioned above, 17-year-old Manyi is from Tegucigalpa, Honduras, one of the top four cities being fled by unaccompanied youth right now. A study by the Department of Homeland Security found the top four sending cities to be San Pedro Sula, Tegucigalpa, and Juticalpa in Honduras, and San Salvador in El Salvador (Restrepo & Garcia, 2014). These cities are considered the most dangerous and impoverished in all of Central America

(Restrepo & Garcia, 2014). A UNHCR report from interviews of 404 unaccompanied minors from Honduras, Guatemala, El Salvador, and Mexico revealed that at least 58% of them had protection needs. Forty-eight percent of the children cited violence in society (specifically by drug cartels and criminalized gangs) as a reason for leaving. Twenty-one percent reported abuse in the home, 16% cited deprivation (extreme poverty), and 81% stated economic opportunity and family reunification in the States as reasons for leaving (UNHCR, 2014).

The United Nations Office on Drug and Crime cites that gang members outnumber police in all of the Northern Triangle (Restrepo & Garcia, 2014). In 2013, they found that 30% of homicides were gang related. In 2012, there were 323 gang members per 100,000 residents, a total of 20,000. Guatemala had 22,000 gang members that year, and Honduras 36,000. The police force in El Salvador totals a maximum of 16,000, and Honduras 15,000. In the entire triangle region, Ambassador William Brownfield, assistant secretary of state for international narcotics and law enforcement affairs, told Congress in 2012 that the number of gang members had reached 85,000. It is estimated the numbers have only increased after a gang truce that had reduced homicides between March 2012 and 2013 fell apart. Furthermore, bleak economic conditions make this region easily susceptible to organized crime and transnational criminal organizations because many people have no other choice but to comply with them to survive. The most notorious and powerful continue to be the MS-13 gang and Mara-Salvatrucha gang. In Honduras, 67.4% of people live in poverty, 54.8% in Guatemala, and 45% in El Salvador, and the three countries are considered some of the world's most economically unequal (Restrepo & Garcia, 2014). Poverty (also recently affected by drought), is the second highest cited reason for leaving (UNHCR, 2014; Montagne, 2015; Peralta, 2015). The Refugee and Immigrant Center for Education and Legal

Services, or RAICES, interviewed 925 children housed at the Lackland Airforce Base in Texas during the summer of 2014 (Restrepo & Garcia, 2014). They found 63% qualified for deportation relief by an immigration judge, with the primary reasons being sexual assault, trafficking, domestic abuse, gang intimidation, persecution, or torture. Similarly, interviews of Salvadoran children who were returned from Mexico after being stopped in transit to the U.S., revealed that 61% cited crime, threats by gangs, and insecurity as reasons for fleeing (Restrepo & Garcia, 2015).

c. Distribution

The three countries, which together are known as the 'Northern Triangle Region,' Guatemala, Honduras, and El Salvador, were cited as three of the five most dangerous countries in the world in 2013 (Restrepo & Garcia, 2014). In 2012, the homicide rate in Honduras was the highest in the world at 90.4 per 100,000, with 187 per 100,000 in San Pedro Sula, Honduras itself. Within the first five months of 2014, 2,000 children fled to the U.S. from this city. El Salvador's homicide rate is fourth at 41.2 per 100,000 (however it spiked to 70 per 100,000 after the failed gang truce in 2013) and Guatemala fifth at 39.9 per 100,000 (Restrepo & Garcia, 2014). To demonstrate the enormity of these numbers, other countries in Central America have much lower rates. Nicaragua's is 11.3 per 100,000, and Costa Rica is 8.5 per 100,000 (Restrepo & Garcia, 2013).

The majority of unaccompanied children are traveling through the Rio Grande Valley region of Texas when they get to the U.S. border (Meyer & Isacson, 2015). This is a notable change from previous years when the largest migrant port of entry along the Southwest border was Tucson, Arizona. The shift is accredited to the relatively shorter distance across the desert in Texas compared to Arizona, and the ability for children to make use of train

routes coming from the South of Mexico into the border town state of Tamaulipas, MX, which borders the state of Texas. Smugglers are also making wider use of this crossing location in recent years due to the vastness of the Texan border and relatively fewer number of Border Patrol personnel compared to Arizona, although Tucson still remains the second highest trafficked border area for unaccompanied children, followed by Laredo, Texas, and Del Rio, Texas (Meyer & Isacson, 2015). Texas border patrol facilities became so overwhelmed with the number of kids that many were flown to Arizona and California to be processed in border patrol stations there (Martinez, Yan, & Shoichet, 2014; see also CBSnews, 2014). Fifty-four thousand children were placed with sponsors to await their immigration hearing in 2014 (Chisti & Hipsman, 2014). According to the Office of Refugee Resettlement (ORR), the top ten states sponsoring the children are California, Texas, Florida, New York, Maryland, Virginia, New Jersey, Georgia, Alabama, and Louisiana (ORR, 2015). The majority are placed with family members, and the remainder in state-sponsored programs such as foster care and group homes (ORR, 2015). Providing for children's housing is not the only expense however, as communities and public resources are expected to make available education, healthcare, and psychological services for children coping with trauma (Chisti & Hipsman, 2014; Fessler, 2014). The largest debated expense of late is whether or not the state should provide children with legal counsel (Aronson, 2015).

4. What theory or theories of human behavior are explicit, or more likely, implicit in the policy?

A theory of human behavior implicit in H.R. 1153 Asylum Reform and Border Protection Act is Piaget's Theory of Cognitive Development. Piaget believed children's thought-processes are very different than adult's, and he described four stages of

development that children progress through: Sensorimotor, Preoperational, Concrete Operational, and Formal Operational (McLeod, 2015). The last two, Concrete Operational (ages seven through eleven) and Formal Operational (eleven years and older), are the most relevant because these are the ages at which children in Central America are witnessing and/or experiencing the violence in their communities, and deciding to leave (American Immigration Council, 2015; Chisti & Hipsman, 2015). During the concrete operational stage, children develop the ability to think logically, but have not yet grasped the ability to think hypothetically (McLeod, 2010). They become less egocentric and more aware of surrounding events (WebMD, 2015). Children in the fourth stage, Formal Operational, develop the ability to think abstractly. They can consider several possibilities before making decisions, create hypotheses, and contemplate potential consequences (WebMD, 2015). The majority, 84%, of unaccompanied children migrating to the United States from Central America in 2014 were in this last stage, being of the ages 13-17 (Krogstad, Gonzalez-Barrera, & Lopez, 2014; Restrepo & Garcia, 2014). However, 16% are under the age of 12, meaning that many are still in the Concrete Operational Stage. In Chaffetz's bill, he calls for holding these children accountable and eliminating asylum fraud (HR Bill 1153, 2015). This makes the assumption that the children migrating are able to think rationally about their decision to cross the border illegally, understanding the consequences. For unaccompanied minors ages 13-17 years in the Formal Operational Stage, it is certain by testimonies gathered by the United Nations High Commissioner for Refugees (2014) that these children understand the gravity of their situation in their home country enough to be willing to travel such a dangerous trek. For many, there are no other options, and whatever consequences lie beyond the U.S. border are bound to be less severe than what they face in their home country, whether it is poverty, gang

threats, or domestic abuse (United States High Commissioner for Refugees [UNHCR], 2014).

Younger children seldom left by their own decision alone, and more often by the urging of a care-taker who arranged for a human smuggler, known as a 'coyote', to take them (UNHCR, 2014). In this case, according to Piaget's Theory, these children are able to think about their parents or other family members' desires for them, in addition to their own (McLeod, 2010; WebMD, 2015). They are rationally able to acknowledge the danger of their situation at home, although perhaps less able to think through possible consequences of the travel dangers and of crossing the U.S. border (UNHCR, 2014; WebMD, 2015). Chaffetz seeks to capitalize on this fact by blaming the smugglers to an extent, and pointing out the vulnerability of these children in being convinced to take such an arduous journey (H.R. 1153, 2015; States News Service, 2015). He argues the United States must make reunification of families their top priority, assuming this is in the best interest of children (H.R. 1153, 2015; States News Service, 2015).

5. What are the major social values related to the problem and what value conflicts exist?

The major social values related to the problem fall under two primary themes that repeatedly seem to conflict with one another: The first is humanitarian concern and protection for the unaccompanied minors themselves (Chisti & Hipsman, 2014). The second is concern for the safety of U.S. citizens, by way of secure borders and preservation of American resources (Goodlatte, 2015). The beginning of the crisis came just after the Obama Administration announced plans to use executive action to curtail the frenzy of deportations he began earlier in his career and that he had become known for by immigrant rights

advocates (Meckler, 2014; Miller, 2014; Tumulty & Nakamura, 2014). The initiative announced in the beginning of summer 2014 was to stop deportations of undocumented persons without any criminal record, and expand his earlier DACA (Deferred Action for Childhood Arrivals) initiative to more undocumented youth and also parents of U.S. citizens, an initiative to be known as Deferred Action for Parents of Americans (these actions were discussed in the Delineation and Overview and will be discussed further in the Political Analysis, section V.) (Tumulty & Nakamura, 2014; Gonzalez, 2015; DHS, 2015). The crisis stalled his decision to use executive power until the immediate crisis at the border was handled. President Obama wanted to ensure that he could send the message to parents in Central America that sending the kids on a perilous journey North would only put them in more danger, not give them a free pass to residency (Meckler, 2014; Miller, 2014; Tumulty & Nakamura, 2014).

The value conflict was seen within the Democrat party in congress itself (Tumulty & Nakamura, 2014). Halting action to curtail deportations could allow for swifter repatriation of newly arrived unaccompanied minors. However, this also meant turning away children who'd traveled thousands of miles to flee desperate situations (Tumulty & Nakamura, 2014). Obama's Immigration Accountability Executive Action initiative, which included the goal of "deporting felons, not families" was stalled until November 2014; at this time he decided first to ease the American public concern for border security and focus on handling the surge of newly arrived minors in the Summer of 2014 by expediting deportation proceedings, and deterring another crisis (Office of the Press Secretary; Tumulty & Nakamura, 2014). When pictures of children cramped in the "hieleras," or "freezers," which became the name of the infamously cold detention cells they were held in, flooded the media, the problem

suddenly had a face and it appeared the U.S. was partly responsible (Burnett, 2014).

President Obama's approach to the situation quickly emphasized the humanitarian concern for children in the care of U.S. immigration officials as he called for increased funding and support for shelter and care of the minors in U.S. custody (Tumulty & Nakamura, 2014).

Some immigration advocates point out the United States' human rights obligation to protect unaccompanied children, by agreement with the United Nations Committee on the Rights of the Child in 2006 (Corcoran, 2014; House Committee on the Judiciary Democrats, 2015; UNCRC, 2015). This kind of language is even used in the words of Representative Chaffetz and outspoken supporter of the bill, Bob Goodlatte, House Judiciary Chair and Republican Representative of Virginia (Goodlatte, 2015; States New Service, 2015). They first call for measures of border security and preservation of American resources by way of preventing American tax dollars from funding legal representation for minors. However, they also cite family reunification, prevention of more children taking the dangerous trek North, and reducing supposed "fraudulent" asylum claims to protect only those who are most in danger (Goodlatte, 2015; States New Service, 2015). Chaffetz, Goodlatte, and much of the Republican party repeatedly blame Obama's DACA initiative for encouraging the surge of unaccompanied minors, citing the dangers they face on the way and the cramped shelters they are subjected to living in when they get here (Goodlatte, 2015; Miller, 2014; States New Service, 2015; Restrepo & Garcia, 2014). However, many human rights and immigration activists disregard these as sincere concerns (House Committee on the Judiciary Democrats, 2015). They argue his bill would compromise the U.S.'s obligation to protect vulnerable populations by denying them due process for asylum and protection from life-threatening situations at home (House Committee on the Judiciary Democrats, 2015).

6. What are the goals of the policy under analysis?

a. Manifest (stated) goals

HR Bill 1153, Asylum Reform and Border Protection Act of 2015 includes a number of goals to heighten border security and reform the asylum application process. In regards to unaccompanied minors from Central America specifically, a number of sections are aimed at increasing safeguards to prevent supposed 'asylum fraud' and repatriate children more quickly. This section will outline each of the sections introduced in the Delineation and Overview section of this paper, and includes portions of the bill that apply directly to the case of 'unaccompanied alien children' (UAC) in response to the 'surge' in 2014 (HR Bill 1153, 2015; State New Service, 2015; Goodlatte, 2015). Section 2, *Clarification of Intent Regarding Taxpayer-Provided Council*, seeks to ensure that American tax dollars are not spent on funding lawyers for unaccompanied minor children (UAC) (HR Bill 1153, 2015). Section 3, *Special Immigrant Juvenile Visas* intends to change the terms of this type of protection so that children must be unable to reunite with either parent, not just one as the Immigration and Nationality originally called for. Section 4, *Credible Fear Interviews* and Section 22, *Notice Concerning Frivolous Asylum Applications*, are written to ensure that protective status is only received by those who qualify under the strict guidelines of asylum law. Section 8, *Unaccompanied Alien Child Defined*, disqualifies children from falling under this status if any relative over 18 is identified in the states who could serve as a legal guardian, thus blocking them from protections outlined only for UAC. Section 10, *Notification and Transfer of Custody Regarding Unaccompanied Alien Minors*, intends to change asylum law that allows children to apply for asylum within the United States. The new policy would mandate children be removed to a safe third country to apply for asylum

from there, as is the policy in place for adults. This section also extends the amount of time that children may be held in border detention facilities from 72 hours to 30 days, before being transferred to ORR care. Sec. 13 *Additional Immigration Judges and ICE Prosecutors* will increase personnel in the immigration court system to speed up deportation proceedings. Section 14 *Minors in the Dept. of Health and Human Services Custody* amends former policy established by the INA stating children, once transferred to ORR care, should not be held in secure facilities unless they are a threat to self or others. The new terms would allow children to be held in a secure facility even if they are not a threat, if no other placement option can be found for them. Sec. 15 *Foreign Assistance for Repatriation* states that the United States will withhold foreign assistance to sending countries who do not comply with repatriation agreements similar to that of contiguous countries. These agreements allow the U.S. to repatriate unaccompanied minors back to their home country within 48 hours of their initial apprehension in the United States (HR Bill 1153, 2015).

b. Latent (unstated) goals

Chaffetz and supporters claim goals behind the bill are primarily protection and well-being of the children, prevention of continued life threatening migration by minors, reunification of minors with their parents back home, safety of the border, elimination of “fraudulent” asylum claims, and equal protection rights for children from contiguous and noncontiguous nations alike (HR Bill 1153, 2015; United States House of Representatives Judiciary Committee, 2015). It is this author's definition that the latent goals within the bill include limiting the rights of UAC from Central American countries to preserve U.S. resources and establish indiscriminate enforcement at the border in line with Conservative, firm immigration ideology. Chaffetz, Goodlatte, and much of the Republican party are

opposed to Obama's recent executive actions on immigration reform to cut back on deportations of non-criminal immigrants, making it clear that this bill is another proposal for limiting the acceptance of immigrants and asylum-seekers to this nation (Goodlatte, 2015; United States House of Representatives Judiciary Committee, 2015).

c. Degree of consensus regarding goals

The debate over concern for vulnerable children vs. border security brings mixed feelings from the American public and political leaders alike (Pew Research Center, 2014; Gordon, 2015; Tumulty & Nakamura, 2014). This author could not find specific conversation over the consensus of the goals of H.R. 1153, but recent news and policy updates related to H.R. 1153's goals demonstrate divided opinions on the best way to handle unaccompanied children in the U.S. and those still arriving at the U.S. border (Pew Research Center, 2014; Gordon, 2015; Burnett, 2015). In 2014, a public survey by Pew Research Center found that 53% of those polled favored expedited deportation proceedings even if it meant sending home children eligible for asylum (Pew Research Center, 2014). A similar poll by an ABC News/Washington Post survey found that 53% also favored Obama's request for 3.7 billion to manage the crisis, with 43% disapproving, and 4% undecided (Martinez, Yan, & Shoichet, 2014). The most recent initiative announced in relation to the Central American immigration crisis at the U.S. border is a planned operation to deport Central American families and it is receiving reactions on both sides (Markon & Nakamura, 2015; Peralta, 2015). The relevance for unaccompanied minor children is the fear that the administration will extend the deportations to unaccompanied minors. Secretary of Department of Homeland Security, Jeh Johnson, pushed for the initiative. Groups for stronger immigration enforcement believe the deportations are long over-due and still not enough to deter further Central American

migration (Markon & Nakamura, 2015; see also Peralta, 2015). Director for the Center for Immigration Studies, Mark Krikorian, believes the initiative is "enforcement theatre" a type of show to convince the American people the government is taking the issue seriously and to warn future migrants. He does not see it as an impactful initiative however and believes deportation has to be enforced on criminals and non-criminals alike (Martin, 2015). Members of the American Immigration Lawyers Association and National Immigration Law Center are pushing back saying that these children and families are refugees in need of protection, not criminals that warrant deportation (Markon & Nakamura, 2015). Similarly, Elizabeth Keyes, of the University of Baltimore School of Law Center for Immigration Studies, who provides legal advocacy for unaccompanied minors, argues that Immigration and Customs Enforcement (ICE) often does not have the right address for families to give them notice of their hearing, and those who show up are often unrepresented (Martin, 2015). She said judges themselves acknowledge the children are in danger but admit they don't fit into strict guidelines of U.S. asylum law (Martin, 2015). The deportations will be targeted towards children and families who were released from detention and given a court date to determine if they qualify for asylum. A federal judge in California had demanded these children and families be released from detention but the Department of Homeland Security believes that this created a loophole for migrants to escape deportation. Many were not approved for asylum or did not show up to court and the government wants to enforce the law on these individuals. Immigrant rights advocates and legal experts argue that these children never received legal counsel to make a strong case for asylum (Markon & Nakamura, 2015). Close to the issue currently are residents of Texas who are receiving and housing kids from the recent influx in October, November, and December, in emergency shelters, most often by

church groups. While some are glad to show a compassionate response to the children, others, such as Ellis County, Texas Commissioner Paul Perry argue that it's still U.S. tax dollars spent because of failed immigration policy (Burnett, 2015; Gordon, 2015).

7. What are the hypotheses implicit or explicit in the statement of the problem and goals?

Chaffetz and Goodlatte, believe that repatriating Central American children according to the process for Mexican children will eliminate the incentive to migrate (States New Service, 2015; Goodlatte, 2015; United States House of Representatives Judiciary Committee, 2015). Stricter Immigration and Customs Enforcement (ICE) policies regarding detention of children will deter future migrants. Additional ICE prosecutors and immigration judges will speed up removal proceedings to relieve the backlogged Executive Office for Immigration Review (EOIR), and is a better investment of American dollars than are legal advisors for UAC. Tightened monitoring of asylum application will prevent the U.S. from accepting UAC who don't warrant protection and potentially pose a threat to the United States, and allow proceedings for 'credible' claims to proceed more efficiently (States New Service, 2015; Goodlatte, 2015; United States House of Representatives Judiciary Committee, 2015). Goodlatte and Chaffetz believe this bill can help reverse "an administration made disaster" (Goodlatte, 2014).

IV. Economic Analysis

A. What are the effects and/or potential effects of the policy on the functioning of the economy as a whole—output, income, inflation, unemployment, and so forth?

The decision to repatriate unaccompanied minors upon arrival or allow them to stay for an asylum trial will undoubtedly have an economic impact on the minors and their families, and the American public living in communities resettling minors (Pierce, 2015). There is much evidence of short-term costs for the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) since the crisis began (Government Accountability Report [GAO], 2015). No certain prediction can be made about the long term costs throughout the United States, and how H.R. 1153 will impact those costs. However, evidence of how the unaccompanied minors are affecting local economies in the communities they have been resettled in to await their court dates, and analysis of the results of their asylum cases so far gives an idea of the future consequences. Finally, speculations will be made on how Representative Chaffetz's H.R. 1153 Asylum Reform and Border Protection Act of 2015 will affect the economic outlook associated with the rising number of Central American children seeking refuge in the United States (GAO, 2015).

From 2009 to 2014, the total number of 'Unaccompanied alien children' from Guatemala reached 35,231 (GAO, 2015). From El Salvador during the same time period, the total was 31,567, and from Honduras, 32,841 (GAO, 2015). Since the start of FY 2012 (October 2011), Immigration and Customs Enforcement (ICE) has documented that a total of 111,250 unaccompanied children have been transferred to the Office of Refugee Resettlement (Miller, 2015). Between the start of FY 2014 (August 31st, 2013) and August 31, 2015 alone, just after the most pronounced surge of children that was seen during the

Summer of 2014, 77,194 children were released by the Office of Refugee Resettlement to communities around the U.S (Office of Refugee Resettlement [ORR] 2016). ICE Enforcement and Removal Operations Assistant Director of Field Operations, Phillip Miller, told Congress July 2015 that since 2012, just 7,013 children have been returned to their countries of origin (Miller, 2015). The majority of these children were from Mexico, however 1,682 were repatriated to Honduras, 2,347 to Guatemala, and 601 to Honduras (Miller, 2015). The economic weight of those who stayed to defend an asylum case or remained undocumented will be outlined in terms of short term and long term costs.

Short-term Costs

White House budget officials announced in June 2014 that the cost of care and resettlement of unaccompanied minors could exceed \$2.28 billion in 2015, which is twice the amount that the Office of Management and Budget requested for the crisis in 2014 (Zezima & O'Keefe, 2014). The Office of Refugee Resettlement (ORR) (2016) appropriated \$948 million to fund services for unaccompanied minors in 2016 (completely funded by the federal government). ORR shelters care for children on an average of 35 days until they can be placed in long term settings with family members. These shelters are operated by nonprofit organizations while ORR provides food, clothing, education, medical screening, and additional medical and mental health attention as needed. Education and medical expenses are the two largest expenditures once children are in HHS custody. Children do not integrate into local schools until they are placed in long term settings to await their immigration trials. Before they can do this, they must receive vaccinations just like U.S. citizen children would (ORR, 2016).

The U.S. Government Accountability Office Report 15-521 (GAO 15-521, 2015) analyzed the financial costs of UAC in DHS custody from February 2014 through September 2014. Total costs for the DHS for this period totaled \$97 million. Customs and Border Patrol (CBP) was responsible for \$67 million (69%) and ICE \$30 million (31%). Of CPB's costs, 44% was spent on contracted services, including food, medical, sanitation, and decontamination, and FEMA flight assistance with UAC transport during the large UAC increase. Twenty-three percent was spent for construction, rent, and utilities (temporary air conditioning, waste removal, and custodial services) for its UAC processing centers. Twenty-two percent was for personnel travel, salaries, overtime, and benefits. Of ICE's costs for UAC, 76% went to transportation of UAC and 18% for ICE salaries, benefits, and overtime (GAO 15-521, 2015)

GAO also analyzed the cost of the Department of Health and Human Services (HHS) for minors (GAO 15-521, 2015). From 2009 - 2014, about \$2 billion was spent on the ORR's UAC program. In 2014 alone, the costs totaled \$910 million (45% of the costs for this entire period). ORR's UAC program costs include three primary categories: shelter costs, services to UAC, and administrative costs. Shelter costs refer to care and custody of UAC, and made up 84% of total program expenditure between 2009 and 2014. ORR's UAC costs increased a total 600% from 2009 to 2014 because of the increasing number of UAC apprehended from Central America and transferred to ORR care. In 2014 alone, ORR saw a 142% increase in program costs. Services to UAC, such as medical care, legal services, background checks, and home assessment/post-release services provided by HHS or HHS-contracted organizations, made up 12% of program costs from 2009-2014. Administrative costs (ORR

UAC program staff salaries and benefits, as well as travel and supplies) made up 4% of costs during the same period (GAO 15-521, 2015)

In 2012 and 2014, ORR spent an additional \$260 million for temporary shelter beds to accommodate the unexpected increases in UAC (GAO 15-521, 2015). Temporary beds were added through additional shelter grants and contracts with Department of Defense facilities. While the cost per day of one shelter bed was \$153 in 2009, it rose to \$248 per day in 2014, or \$90,000 per year (a 63% increase). The increase in expense per bed is attributed to higher ratios of staff per child, and a diversity of shelter locations. With the increasing number of UAC in the U.S., they are no longer housed solely in Southwest border states where rent and labor costs are relatively less expensive. ORR began adding shelter capacity in states where rent and labor are more expensive because the additional space was necessary. Case managers are also a recent addition to shelters in attempt to lessen the length of stay of UAC (GAO 15-521, 2015)

The immigration court system had 243 immigration judges in 2014, with a backlog of 375,500 cases (this figure includes all immigrants in the court system) (Costa, Cooper, & Shierholz, 2014). This unbalanced ratio of judges has unaccompanied minors waiting an average of 587 days for their hearings (Costa, Cooper, & Shierholz, 2014). However, in 2015, the Department of Justice mandated they be given priority and seen by a judge within 21 days of their arrival (Semply, 2014). This pushes the average wait time for all other immigrants to 1,071 days (Syracuse University, 2015). In FY 2013, the backlog of all other immigration cases was 334,230 and by FY 2015, that number reached 456,644 (Syracuse University, 2015). For the majority of children, even if they are seen by a judge within 21 days, this usually only means that they are given a follow-up court date, leaving their status

"pending" for an average of 1.5 to 2.5 years (Syracuse University, 2015). Of the 13,014 children ordered removed in FY 2014, only 1,863 were actually deported because of the vast number who didn't come to their court date (Kandel, 2014). This is largely attributed to the fact that the federal government only has to supply legal representation to the best of its ability. If children do not have a lawyer, their likelihood of appearing at their court date is slim (Syracuse University, 2015). Although a federal grant in 2014 of \$9 million was allocated for this purpose, that is only enough for about 2,600 of the still near 70,000 pending cases (Department of Health and Human Services, 2014). Non-profit organizations such as Kids in Need of Defense, the National Immigrant Justice Center, Catholic Charities, and the Florence Project, also advocate for and recruit pro-bono legal representation (Pierce, 2015). However, over 70% of migrant children still do not have access to legal services (HHS, 2013). Legal representation makes a significant difference in case outcomes. Between October 1, 2013 and August 31, 2015, over 90% of cases of children without legal representation were ordered deported. This was the result for only 18% of those with legal representation (Syracuse University 2015).

Many children awaiting immigration proceedings adjust to life in the United States in the meantime, and this requires resources for their care and education (Costa, Cooper, & Shierholz, 2014; Pierce, 2015). According to GAO 15-521 (2015), UAC are not themselves eligible for many federal public benefits beyond what HHS provides during their shelter stay. The majority are placed with sponsors in the form of family members and friends, and less often, foster care. Many stay with caregivers who do not have legal status and the ability to apply for federal public benefits. The only programs they qualify for without documentation are emergency medical assistance, short-term disaster relief, public health assistance for

immunizations, and the U.S. Department of Agriculture school-meals program (free and reduced breakfast and lunch in public schools) (GAO 15-521, 2015). UAC do not qualify for Medicaid, or insurance through the Affordable Care Act (Jochin, 2016). Individual states however, may be reimbursed for emergency services that undocumented persons receive, and several states have enacted their own policies to expand healthcare coverage to unaccompanied minors (Jochin, 2016).

Under federal law, all children in the United States, regardless of immigration status, have a right to attend U.S. schools (U.S. Department of Education, 2014). As immigrant children begin attending U.S. schools, funding must be increased and is done so through state and local taxes. School districts, however, may request additional federal education funds to provide the education of immigrants through a variety of "Migrant Education Programs" established by Title I Part C of the Elementary and Secondary Education Act of 1965 (U.S. Department of Education, 2015). Title I Part A, "Services for Educationally Disadvantaged Children," provides additional funding for schools with large populations of native and foreign born low income students, and provided \$14.4 billion for this purpose in 2015 (U.S. Department of Education, 2014). An additional federal grant of \$14 million was appropriated by Congress for FY 2015 to help 35 states with concentrated numbers of UAC to pay for services for these children in local school districts. However, for the 60,000 of these children placed in public schools in FY 2014, that amounts to only \$233 per student per year, leaving the remaining costs up to local taxpayers or cuts in school programs (Pierce, 2015). The U.S. Department of Education projected that the cost to the U.S. school system for 2015-16 will amount to \$12, 605 per student per year (2014).

Long term costs

A major long-term cost of unaccompanied minors if they are allowed to stay to await a fair asylum trial, will be the continued cost of increased public school attendance (Pierce, 2015). While undocumented immigrants pay property and sales tax, which are major contributions to the public school system, many unaccompanied minors are here without working parents to contribute to those taxes. While some school districts are resisting taking these minors in, several have offered reports on how they are not only accepting these students but attempting to meet a variety of unique and often expensive needs (ORR, 2016; Pierce, 2015). Montgomery County Public School District of Montgomery County, Maryland is one such example (Montgomery County Public Schools They had a total of 153,852 general students in 2015, and registered a total of 380 unaccompanied minor students between July 1, 2015 and August 22, 2015 (St. George, 2015; Pierce, 2015). Their Central American student enrollment increased 44.7% between 2013 and 2015. The primary challenges they saw faced by the migrants was family reunification, interrupted education, acculturation stress, and trauma. Montgomery County responded by expanding and adding a variety of new programs to meet the migrants' needs (Pierce, 2015; St. George, 2015).

The issues presented by unaccompanied minors in Montgomery County required far more than education alone to meet their needs (Pierce, 2015). Emphasis was placed on emotional support within their existing English as a Second Language program and bilingual parent volunteers were recruited to help new students navigate their new educational setting. They implemented training programs for teachers to orient them to the needs of unaccompanied minor students and conducted school district wide assessments of how each school is meeting this population's needs. Montgomery County funded enhanced mental

health programs in these schools and local colleges help to identify and support at risk children. There additionally exists a county health program known as "Care for Kids" which supports health care of kids who do not qualify for state and federal insurance programs. This county is by far an example of one that has gone above and beyond to adequately provide for this population. However, they relied on many volunteers and the willingness of the community residents to support funding of these additional programs. Other school districts in places such as San Francisco, California, Sussex County, Delaware, and Whitfield, Georgia have created programs with similar approaches known as "newcomer academies," transitional schools with classes focused on English, reading and math to target the highest educational needs before integration into the mainstream classroom (Pierce, 2015).

Still, there are many school districts throughout the U.S. pushing back with their main argument being the "unreasonable" costs (Pierce, 2015). Two examples highlight the general trend of those opposed to accepting unaccompanied minor children into their schools. New York's Nassau County, the fifth largest concentration of UAC in the U.S., tried to require documentation of students in order to enroll them in school until the state of New York banned them from doing so. Several counties in North Carolina have resisted as well. Brunswick County Board of Commissioners (2014), for example, asked for the removal of unaccompanied children from their schools because they required 'excess resources.' They specifically asked the government to stop settling them there (Brunswick County Board of Commissioners, 2014). More North Carolina counties followed their example (Pierce, 2015).

Immigrant children settling into U.S. elementary and high schools right now will likely graduate from high school or complete their GED (Pierce, 2015). If the students go on to college or apply for jobs, the U.S. economy will be affected by an increased working

population. Of course, this can only be predicted based on past observed effects of immigrant labor on the economy. Unemployment will depend largely on whether or not UAC receive legal status by the time they enter into the workforce. Many studies show that immigration policies which would allow for the legalization of immigrants have vast potential economic benefits (Kane, 2015, Smith, 2012, AIC, 2015). One example relevant to UAC is the American Immigration Council's (2015) prediction on the benefit of the passing of the 'DREAM' Act, the Development, Relief, and Education for Alien Minors, which would create an opportunity for legal status for unauthorized students who graduate high school or earn a GED and want to pursue education or occupation. If the DREAM Act or similar legislation were passed, the U.S. would benefit by \$329 billion over the next 20 years from the creation of 1.4 million jobs and an added \$10.2 billion in tax revenue (American Immigration Council, 2015).

Kane (2015) of the Hoover Institution argues that although immigrants increase labor supply, they also increase a demand for goods (and labor) so that citizens' employment is not displaced. Additionally, many of the workers send their wages in the form of 'remittances' back to family members in their home country. That cash flow eventually creates demand for U.S. goods in the form of exports. If left undocumented, UAC in the workforce in the future will have taxes deducted from their paychecks for benefits they will not receive if they do not become citizens, adding to the supply of benefits for citizen workers. According to the standard free-market principle that a growing economy creates real wage growth with increased productivity, increasing the labor supply and demand for goods will only boost incomes across the nation. While low-skilled citizen workers are at a very small risk of wage

depreciation or being replaced by lower paid workers, high wage workers benefit from increased purchasing power (Kane 2015).

B. What are the effects and/or potential effects of the policy on the behavior of individuals, firms, and markets—motivation to work, cost of rent, supply of commodities, etc.?

Based on the outcomes of several unresolved unaccompanied minor cases, most are likely to stay in the United States a long time without legal status and likely to face many economic challenges themselves as they become adults and potentially parents (Pierce, 2015). Today, 65% of unauthorized immigrants live at or below the poverty level (Migration Policy Institute, 2016). Unauthorized mothers and their children are eligible for the federal means based program 'Supplemental Nutrition for Women, Infants, and Children' (WIC), but they are not eligible for all other major means-based federal programs such as Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Medicaid, the Children's Health Insurance Program (CHIP), Child Care and Development Fund, and direct services from Developmental Disabilities Councils (HHS, 2016). Many of these children's needs went unmet in their home countries, including nutrition, shelter, safety, and education (UNHCR, 2014). They survived dangerous travel experiences that included traumas such as violence, extortion, assault, and theft. Then, they resettled in the United States in shelter and eventually unfamiliar homes, with a long acculturation process ahead of them (UNHCR, 2014; ORR, 2015). High levels of physical and psychological stress leave children prone to behavioral, emotional, and mood disorders (Tores-Fernández, Chavez-Dueñas, & Consoli, 2015). Not only are the sufficient number of mental health resources not available to them, but there are not enough culturally competent

resources either. If these basic and psychological needs are left unmet, they are at far greater risk of developing serious psychological conditions as they become adults, which could create an economic burden for the minors themselves and U.S. health care services (Tores-Fernández, Chavez-Dueñas, & Consoli, 2015).

Economic opportunities in Central America for young people are slim, leaving little to no options for minors sent back to their home countries (UNHCR, 2014). In a UNHCR report of 404 children fleeing Mexico, El Salvador, Guatemala, and Honduras, 51% cited economic reasons as one of their motivations for migrating. Many will be left with no choice but to engage in the drug trade and criminal gang activity in order to survive (UNHCR, 2014). Central American economies have struggled since the passing of the Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) (Meyer, Seelke, Taft-Morales, & Margesson, 2015). This trade agreement was first implemented in 2006 between the U.S. and El Salvador, Honduras, Nicaragua, and Guatemala, and later joined by the Dominican Republic and Costa Rica (U.S. Customs and Border Protection). It allows U.S. corporations to export tariff-free low priced products, such as subsidized corn and other agricultural staples to this region (Perez-Rocha & Paley, 2014). Consequently, it has depleted their farming economies, forcing many rural families off their land. Economic opportunities now exist mainly in the form of 'maquiladoras' or urban textile factories, the illegal drug trade, or agricultural work in the United States. This migration of children from Central America is timely as the effects of CAFTA are realizing their worst potential of destroying economic opportunity for the upcoming generation of workers (Perez-Rocha & Paley, 2014). The World Bank (2012) has documented that emigration in Central America has steadily increased since the passing of CAFTA in 2006. Many young people today are forced to drop

out of high school to support their families, and without work in Central America, are left only with the option to leave. In 2010, it was found that 54% of the labor force was under 35 years, but still 30% of young people, between ages 15 and 24, were neither employed nor in school. These people become potential recruits for gang violence and the lucrative economy of drug trafficking. Between 2010 and 2020, the working age population will increase by 25 percent, but the labor market is not likely to keep up (Bashir, Gindling, & Oviedo, 2012). It is estimated that many will try to cross the U.S. border again undetected to seek economic opportunity in the states (Martinez, 2014; Johnson, 2014).

There are several organizations, both faith based and non-faith based with a focus on human rights and immigrant specific rights, who will be impacted by this policy as they continue to offer support to UAC. One such example is that of Sacred Heart Catholic Church in McAllen, Texas, just five miles North of the U.S. - Mexico border (Johnson, 2014). In the Summer of 2014, they gave shelter, food, clothing, and legal aid (in the way of volunteer attorneys who educate migrants on deportation proceedings, inform them of their rights, and offer advice) to over 5,400 Central American migrants, including many unaccompanied minors. The program is run by Catholic Charities USA (Johnson, 2014). Similarly, a United Methodist Church in Dallas, TX, began orchestrating a combined effort by churches statewide and in New Mexico and California, to provide supplies, bilingual volunteers, shelter, and legal services (Hodges, 2014).

There are also a number of 'sanctuary cities' who have been both historically and recently involved in efforts to provide refuge for Central Americans and unaccompanied minors, dating back to 1980 when migration increased in response to ongoing civil wars in the region (Chisti & Hipsman, 2015). Major cities in California such as San Francisco and

Los Angeles, along with the states of Connecticut and Rhode Island, the District of Columbia, and over 350 more local jurisdictions have adopted policies that prevent local law enforcement from questioning residents' immigration status or working directly with ICE. The name 'sanctuary city' comes from the sanctuary movement of the 1980s when many U.S. communities and churches united to help protect Central Americans fleeing civil war in the region at the time, from being deported back to those conditions. A rise in this kind of movement was seen again in the post-911 implementation of strict immigration enforcement, and again most recently for the influx of unaccompanied minors (Chisti & Hipsman, 2015).

Chelsea, Massachusetts, just Northeast of Boston, is a prominent city that has adopted this role of 'sanctuary city' for unaccompanied minors (García Mathewson, 2015). The 'Chelsea Collaborative' is an organization that was developed in 1988, long before the city became an official 'sanctuary city' in 2007, to respond to the needs of a diverse community, including their near 50% foreign born population. They became a prominent resource for the growing number of unaccompanied minors that have settled in and around the area since 2014, including nearby Lynn, Massachusetts, which has a particularly large population of Guatemalan migrants and many newly settled unaccompanied minors. The Chelsea Collaborative receives support from the Greater Boston Legal Services to provide legal representation to unaccompanied minors, relying on the help of volunteers, donations, and grant money (García Mathewson, 2015; Chelsea Record Staff, 2014).

However valiant the efforts of the aforementioned examples of churches and other organizations, it remains to be known how immigration reform that seeks to increase deportation, like H.R. 1153, will affect unaccompanied minors in these cities. Sanctuary cities came under major scrutiny after the fatal shooting of Kathryn Steinle in San Francisco,

CA by Juan Francisco Lopez-Sanchez, an undocumented immigrant from Mexico (Dinan, 2016). Republican lawmakers in Congress quickly acted to sanction sanctuary cities following the tragedy, still now trying to block them from any kind of federal grant funding if they do not comply with federal immigration enforcement policy (Dinan, 2016). If H.R. 1153 becomes law and repeals TVPRA 2008's policy that allows children from noncontiguous countries to remain in the U.S. for a fair asylum proceeding, will these organizations chose to help an even larger number of kids who would be staying illegally? As non-profit organizations who rely on grant funding, it is possible that heightened legal stakes will change their position on how much they can support unaccompanied minors. See appendix B for a limited list of prominent organizations offering refuge and services to unaccompanied minors, provided by the *Washington Office on Latin America* (2014).

C. Opportunity cost; cost/benefit analysis

The opportunity cost of H.R. 1153 will be analyzed by outlining H.R. 1153's economic proposals, and then comparing them to the economic proposals of the four bills that were introduced in the Delineation and Overview section of this analysis. A primary theme of Representative Chaffetz's policy is to minimize the spending that already exists, as previously outlined in the budget and spending of DHS and HHS. It is clear that Representative Chaffetz's idea of managing the cost of these minors is not to find a way to sustain them here, nor is his a priority to improve quality of care in border and ORR facilities (H.R. 1153, 2015). His proposals focus on minimizing the number that are able to stay, and minimizing the length of stay of those who will be deported. He calls for adding 50 judges in the Executive Office for Immigration Review each fiscal year to speed up removal proceedings in Section 13, *Additional Immigration Judges and Immigration and Customs*

Enforcement Prosecutors (H.R. 1153, 2015). Section 2, *Clarification of Intent regarding Taxpayer Provided Council* amends Section 292 of the Immigration and Nationality Act so that federal funding will not supply legal representation for UAC (HR Bill 1153, 2015). He has stated as one of his primary reasons for this bill, that he wants to prevent additional taxpayer money from being spent on the issue (States News Service, 2015). If H.R. 1153 is passed, UAC will be sent back at a much faster rate and have a decreased chance of applying for asylum (H.R. 1153, 2015). While the United States will spend more in transportation of minors back to their home country, Chaffetz intends to withdraw foreign aid to any countries that do not enter into repatriation agreements similar to those established with contiguous countries through section 235(a)(2) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, as outlined in Section 16, *Suspension of Foreign Assistance* (H.R. 1153, 2015). This kind of agreement allows for children to be screened upon apprehension for asylum risks and returned within 24 hours if none are verified (TVPPRA 2008). Chaffetz's policy will ensure that children are sent back as soon as possible upon apprehension, and prevent longer stays in custody and ORR care (H.R. 1153, 2015).

There are two bills that are very similar to Chaffetz's, the House of Representatives Bill 1149 *The Protection of Children Act of 2015* and House of Representatives Bill 2611 *HUMANE ACT* (H.R. Bill 1149, 2015; S. Bill 2611, 2015). Alternatively, the state of California made law Senate Bill 873 *Human Services* in September 2014, which advocates for increased protection and legal representation of the unaccompanied minors (Immigrant Legal Resource Center, 2015; California Legislation Information,). HR 4936, the *Vulnerable Immigrant Voice Act of 2014*, also proposes that it is the responsibility of the U.S.

government to provide every unaccompanied minor with legal representation (H.R. Bill 4936, 2015).

Both H.R. 1149, the *Protection of Children Act of 2015* and S. 2611 the *Helping Unaccompanied Minors and Alleviating National Emergency Act, (HUMANE Act)*, take the model of expedited removal for UAC and identical rights between those of UAC from contiguous and noncontiguous countries alike by repealing TVPRA 2008 (HR Bill 1149, 2015; S. Bill 2611, 2014). If this is the case, then it is likely that a much smaller number will be transferred to the HHS because much of U.S. Border Patrol is ill-trained in screening minors for asylum risks (Chisti & Hipsman, 2014; AIC, 2015; UNHCR, 2014). The timeframe for children in Border Patrol detainment facilities varies between the bills (HR Bill 1149, 2015; S. Bill 2611, 2014; H.R. 1153, 2015). S. 2611 limits the time to seven days before entering into removal proceedings or transfer to ORR, while H.R. 1149 and H.R. 1153 allow 30 days. Although S. 2611's seven days could potentially save DHS money, H.R. 1149 and H.R. 1153 may have intentions of deterring future UAC, and thus future associated costs, with the threat of long detainment periods (HR Bill 1149, 2015; S. Bill 2611, 2014; H.R. 1153, 2015).

Like H.R. 1153, H.R. 1149 rejects federally funded legal representation for minors (HR Bill 1149; H.R. 1153, 2015). S. 2611 uses the language, "shall be provided with access to legal counsel" without proposal for funding it (S. Bill 2611, 2015). S. 2611 also calls for 40 additional judges for expedited removals, much like H.R. 1153's call for an additional 50 judges (HR Bill 1149, 2015; S. Bill 2611, 2014). Based on the outcomes of unaccompanied minor cases so far, both of these policies have the potential to increase and hasten deportations (TRAC, 2015). The government will avoid funding facilities and services

provided by ORR, as well as lengthy asylum proceedings (HR Bill 1149, 2015; S. Bill 2611, 2014).

A significantly different proposal in H.R. 1149 is that HHS must allow DHS to investigate the sponsors that children, who have been allowed to stay to apply for asylum, have been placed with (HR Bill 1149, 2015). Because the majority stay with family members, many of whom may be undocumented themselves, this potentially could cost the government more in deportation costs and in finding alternative arrangements for UAC, such as foster care (AIC, 2016). Beyond this specific difference however, only minor variations in terminology and numbers exist between these three bills (HR Bill 1149, 2015; S. Bill 2611, 2014; H.R. 1153, 2015). They are for the most part similar enough to have relatively the same potential economic benefits, but also severe consequences. The United States runs the risk of sending children back to violent conditions that threaten their lives, a clear violation of *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, a policy established by the United Nations Committee on the Rights of the Child to lay out basic principles and expectations of UN member states in caring for and protecting unaccompanied children (UNCRC, 2015). Furthermore, if these children are sent back, it is possible that they will only try to cross the border again but with the intent to remain undetected in crossing and settle in the U.S. undocumented (Martinez, 2014).

If SB 873 Human Services and Vulnerable Immigrant Voice Act of 2014 (VIVA) or H.R. Bill 4936, the *Vulnerable Immigrant Voice Act of 2014* determine the guidelines for care and protection of these minors, the U.S. is likely to pay more in the short run for care and legal services (SB 873, 2014; H.R. 4936, 2014). They will also uphold their pledge to the

protection of vulnerable populations, which President Carter established at the start of the civil wars in Central America that have profoundly affected the conditions forcing people to leave today (Gzesch, 2006; ORR, 2012). The *Refugee Act* expanded the terms of political asylum in the U.S. which prior had not been in line with the 1951 UN Convention and the 1967 Protocol Relating to the Status of Refugees. The United States adopted the protocol in 1968, but only recognized refugees fleeing Communism. The *Refugee Act* reinstated the Convention's pledge to protect anyone with a "well-founded fear of persecution." (Public Law 96-212, 94 Stat. 102; Gzesch, 2006; ORR, 2012). The state law in place in California now promoted by Governor Jerry Brown, provides additional funding for providing unaccompanied minors with legal representation. HR 4936, the Vulnerable Immigrant Voice Act of 2014 (VIVA) similarly makes it the responsibility of the government to ensure that unaccompanied children have a fair asylum case. Based on the much larger percentage of children so far who have received asylum status or deportation relief because they had legal representation, compared to those who were not represented, it is clear that it is instrumental in granting asylum to a minor (Syracuse University, 2016). If children are granted legal status, the U.S. will benefit from increasing a documented population that qualifies for insurance, public benefits, and will be able to contribute formally to the economy in the future (AIC, 2015).

V. Political Analysis

A. Who are the major stakeholders regarding this particular policy/program?

1. What is the power base of the policy/program's supporters?

The Asylum Reform and Border Protection Act of 2015 was written by Utah Republican House Representative, Jason Chaffetz. His primary goal with this bill is to tighten regulations for immigrants claiming 'credible fear' when they arrive, in order to prevent fraudulent asylum claims, and expedite removal processes of all unaccompanied migrant children (HR Bill 1153 2015). He makes the argument that many of Obama's immigration policies have led to the border surge in 2014 (States News Service, 2015). With additional judges and attorneys, and more strict asylum guidelines, he believes children will be more quickly reunited with their families and less people will arrive at our border hoping for asylum relief. The committees on the bill include the House Judiciary Committee, specifically the Subcommittee on Immigration and Border Security, and the Committee on Foreign Affairs. House Judiciary Committee Chair, Robert Goodlatte (R-VA) endorses the bill and sees it as a crucial piece of conservative immigration reform against the Obama Administration's immigration policies, which he says resulted in increased illegal immigration and supported employment of undocumented immigrants. Trey Gowdy, House Subcommittee Chairman on Immigration and Border Security, also supports the bill as a step toward restoring border stability, and the confidence of the American public (States News Service, 2015).

The bill passed the House Judiciary Committee 21-12 on March 18, 2015 (Library of Congress, 2015). They cited a DHS report that claims that 70% of asylum applications on average have possible fraud but immigration officials approved 90% of asylum cases in

2013, 82% of asylum cases in 2014, and in 2015, 60% of unaccompanied minors' asylum claims have been approved (United States House of Representatives Judiciary Committee, 2015). Goodlatte and Chaffetz are concerned about American taxpayer dollars spent on these individuals, and the fact that faulty asylum claims are slowing down legitimate claims from being approved and furthermore delaying reunification of unaccompanied minors with their families (U.S. House of Representatives Judiciary Committee, 2015). This comes as no surprise, as Chaffetz claims two of his most important values are "accountability" and "fiscal discipline" (Chaffetz, p.1, 2016). He is known for his work on identifying government fraud and reducing federal spending (Chaffetz, 2016). Goodlatte and Chaffetz specifically reference the \$50 million in taxpayer money that the Obama administration has requested to fund immigration lawyers for unaccompanied minors in removal proceedings (U.S. House of Representatives Judiciary Committee, 2015). In a markup of the bill, seeking other committee members' support, Chairman Goodlatte expressed his largest concerns with the Administration's handling of the crisis and their asylum policy (Goodlatte, 2015). The 'credible fear' process in place now, he claims, has made migrants believe that all they have to do is claim fear of persecution to a Customs and Border Patrol (CPB) officer and they will be offered a 'free pass.' He also disapproves of the administration's disregard for Section 292 of the *Immigration and Nationality Act of 1965*, which does not allow for American taxpayer money to fund lawyers for non-citizens in immigration hearings. Section 2 of H.R. 1153 clarifies this intent and instead provides funds for 50 additional immigration judges and 60 additional ICE prosecutors (Goodlatte, 2015; HR Bill 1153, 2015).

At the height of the crisis in 2014, there was a mix of reactions by Republicans and Democrats in the Senate and the House (Chang, 2014; Chisti, Hipsman, & Bui, 2014;

Diamond, 2014). The first congressional hearing on the issue was titled "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors" (Restrepo & Garcia, 2014; U.S. House Committee on the Judiciary, 2015). Republicans contended that weak border enforcement and the Deferred Action for Childhood Arrivals program (DACA), which gives undocumented youth a two year protection from deportation and work permits, has falsely given Central Americans the notion that they would also be eligible.

Representative Darrell Issa (R-CA) voiced he wanted an end to the program and immediate deportation of minors to send a strong message that they will not receive protection if they come (Restrepo & Garcia, 2014).

The majority of Republicans favored expedited deportations and denied President Obama's request for additional money allocated to the Department of Health and Human Services (HHS) (Chang, 2014; Chisti, Hipsman, & Bui, 2014; Diamond, 2014). Hal Rogers, Chair of the House Appropriations Committee, opposed the Senate's bill for \$2.7 billion to help handle the crisis, half of these funds being intended for HHS. Rogers and Republicans behind him argued that the terms of TVPRA 2008 need to be changed so that children from contiguous and non contiguous countries alike can be repatriated upon apprehension. He said this would save the U.S. \$1.3 billion and proposed an alternate bill to allocate just \$1.5 billion in emergency spending for the crisis. Republican Representative Mo Brooks of Alabama and Kay Granger of Texas support amending the trafficking law. Push back by Democrats in Congress left many bills stagnant (Chang, 2014), including H.R. 1153, which has not moved since it was approved by the Judiciary Committee and introduced to the House as a whole February 27, 2015 (Library of Congress, 2016). Several Republican governors, including Rick Perry of Texas and Iowa Governor Terry Branstad believe the

Obama administration created the border surge with his executive action in 2012 to allow deportation relief to young immigrants brought here as children before 2012 (Chang, 2014). Even some Democrats, notably Representative Ron Barber of Tucson, Arizona, believe the administration should have known this might be a consequence of the executive action (Tumulty & Nakamura, 2014).

There are also a few large organizations that are supporting this bill and have a history of supporting anti-immigration bills like this in the past (Numbers USA Action, 2015; Vaughn, 2016; see also Deparle, 2011). *Numbers USA Action* is a non-partisan organization that supports and advocates for policies that would limit the number of immigrants allowed to settle in the United States. They refer to themselves as an "immigration-reduction organization" (p.1, Numbers USA Action, 2015). The Center for Immigration Studies is also a non-partisan organization that conducts research on immigration flows and issues to reveal the consequences of immigration policy in the United States. Both organizations have been outspoken about harsher immigration policy since they were begun by a man named Dr. John Tanton in the 1980's (Deparle, 2011). Tanton is a farmer who was concerned about the increased competition in the agricultural sector due to low-paid immigrant workers, and he also helped start FAIR, the Federation for American Immigration Reform (FAIR) (Deparle, 2011). FAIR actually experienced a shift from Conservative to more Moderate immigration reform policy since its beginning (Deparle, 2011). FAIR submitted a statement denouncing the bill, according to a letter received by the House Committee on the Judiciary Democrats (House Judiciary Committee Democrats, 2015). However, the Center for Immigration Studies who claim to be for 'low immigration' but also 'pro-immigrant' continues to speak out

about the cost, safety concerns, and perceived corruption surrounding the unaccompanied minor crisis, and have denounced Obama's handling of the situation (Vaughn, 2016).

2. What is the power base of the policy/program's opponents?

As already mentioned in section B of the Historical Analysis, there are several human rights and legal advocacy groups opposed to this bill, who have written into the House Committee on the Judiciary Democrats (House Committee on the Judiciary Democrats, 2015). This author did not find formal political statements in addition to those sources that have spoken out against this bill specifically, but did find politicians opposed to similar bills and immigration ideology in support of more humanitarian reform among some Congress members and presidential hopefuls (Chang, 2014; Kaplan, 2014). Most recently is the wave of protests against the latest announcement of deportation raids on Central American families and potentially unaccompanied minors as well, in addition to the stalling of executive action Obama announced in 2012 and 2014 (Tumulty & Nakamura, 2014; Nakamura, 2015; Gonzalez, 2015).

Most Democrats in Congress at the dramatic peak of the crisis in 2014 took the approach of maintaining TVPRA 2008's terms to ensure children from Central America are properly screened for protection needs by an asylum officer (Chang, 2014; Chisti, Hipsman, & Bui, 2014; Diamond, 2014). Senator Barbara Mikulski, of the Senate Appropriations Committee, who helped initiate the Senate bill that would allocate \$2.7 billion for the crisis, believed the bill was imperative in order to provide basic living necessities to children while immigration cases are pending. Senate Representatives like Democrat Tom Harkin of Iowa also agreed each child has a right to apply for asylum (Chang, 2014). Maryland Governor, Martin O'Malley, a widely known far-left Democrat, stated that sending these children back

to a situation in which their life was in danger is against American values (Chang, 2014; Kaplan, 2015). Representative Beto O'Rourke, a Democrat of Texas, agreed with this position, despite the opposite view of his constituents in El Paso, Texas, who believe there just aren't enough resources to take the children in (Chang, 2014).

Democrat Senator of new Jersey, Robert Menendez, chairman of the Senate Foreign Relations Committee, held a press conference joined by Senators Durbin and Hirono, and Representatives Gutierrez, D-IL and Roybale-Allard, D-CA, to outline the policy changes to address the issue as a humanitarian and refugee crisis (Pachon, 2015). California Representative Lucille Roybal-Allard shortly after helped craft the *Vulnerable Immigrant Voice Act* of 2014 (HR 4936) to prevent undocumented immigrants and persons with disabilities from having to appear in court without legal counsel (CBS DC, 2014). She was backed by Representatives Judy Chu and Karen Bass of California, and Representative Hakeem Jeffries of New York. However, the bill was struck down by by other Democrats in the Senate, demonstrating the policy divides that exist within the two parties already at war with each other (Kaplan, 2014). Senate majority leader Harry Reid, D-Nev., said the Senate didn't have a clear enough plan, and Congress quickly shifted its focus to a bi-partisan bill announced by Senators John Cornyn, R-Texas and Henry Cuellar, D-Texas, called the Humane Act, a bill very similar to H.R. 1153 that would change the terms of TVPRA 2008 to repatriate Central American children according to the policy established for Mexican children. This bill was discussed in detail in Section D. of the Delineation and Overview of this analysis. While House Majority leader Kevin McCarthy showed support, as well as Senators John McCain, R-AZ and Jeff Flake, D-AZ, Democrats like Senator Robert Menendez of New Jersey staunchly opposed it, and White House Spokesman Josh Earnest

said the administration is hesitant to consider any kind of change to the 2008 law (Kaplan 2014).

News stories of children in cramped border patrol facilities faded for a while, with the focus shifting to the refugee crisis in Europe (Editorial Board of the Washington Post, 2016). However, the fury of the presidential race for 2016 has brought the issue back to public and political conversation, with statements from serious contenders in both parties: Republican candidates Donald Trump and Marco Rubio, and Democratic candidates Hillary Clinton and Bernie Sanders (Werner, 2016). Despite President Obama's support of Syrian refugees, he also supported the announcement of deportation raids on recent arrivals of Central America families and potentially unaccompanied minors with outstanding deportation orders in December 2015 (Nakamura, 2016; Johnson, 2016). The raids so far are responsible for the 121 Central Americans who have already been taken into custody in January 2016 alone (Nakamura, 2016; Johnson, 2016). These deportations have included only family units so far, however the shift in harsh deportation policy is concerning for minors and potentially discouraging to minors who need to flee Central America and are contemplating making the trip to the United States (Nakamura, 2016; Peralta, 2015). This news ironically came just after Secretary of State John Kerry announced an expanded refugee resettlement program for families fleeing civil war in Syria (Nakamura, 2016).

3. How well are the policy/program's intended beneficiaries represented in the ongoing development and implementation of the policy/program?

It does not appear that the wellbeing of UAC are at the heart of this bill. In fact their voice has not been included at all in the crafting of Chaffetz's proposals for policy reform. This author has only found interviews of unaccompanied minors' experiences within human

rights and other aid organizations, or testimony gathered by journalists (United Nations High Commissioner for Refugees, 2014; also see appendix in the Historical Analysis). Pertaining specifically to H.R. 1153, little to no communication has been documented between Representative Chaffetz himself and intended beneficiaries. There is however conversation and communication between Congress, President Obama, and Central American leaders over the broad topic of policy reform for unaccompanied migrant children. Secretary of the Department of Homeland Security (DHS), Jeh Johnson has worked closely with DHS, the Department of Health and Human Services (HHS), and the Department of Justice (DOJ) to increase resources for the crisis. Arguably all three are stakeholders as they need assistance stabilizing border regions and overcrowded border patrol facilities, providing care and housing for children transferred to the Office of Refugee Resettlement (ORR), and addressing the already backlogged Executive Office for Immigration Review (Markon & Partlow, 2015; Office of the Press Secretary, 2014; Diamond, 2014). Gil Kerlowske, commissioner of U.S. Customs and Border Protection (CBP) reported by the end of Summer 2014 that he was pleased with the decreasing numbers of youth, but also concerned it could just be due to the rising Summer temperatures making travel more dangerous. The Pentagon, HHS, and CBP have worked closely throughout the crisis (Diamond, 2014).

In 2014 alone, 54,000 unaccompanied children were released to family or sponsors in the U.S. The top ten states resettling minors, Texas, New York, California, Florida, Virginia, Maryland, New Jersey, North Carolina, Georgia, and Louisiana, are grappling with how to provide legal, health, education, and social services (Chisti & Hipsman, 2015). Texas is often the first to host recent arrivals, opening up large facilities such as church camps to house the children (Gordon, 2015; Burnett, 2015). Many of the families who end up sponsoring these

kids are undocumented themselves, and endure additional fear of deportation because of their increased involvement with government personnel (Aronson, 2015; Chen & Gill, 2015). The number of asylum applications from El Salvador, Guatemala, and Honduras to surrounding countries in addition to the United States, such as Mexico, Panama, Nicaragua, Costa Rica, and Belize, have increased (UNHCR, 2014). Mexico, under U.S. pressure, has increased immigration enforcement at its southern border, with the implementation of *Programa Frontera Sur* (Chisti & Hipsman, 2015). Some of the Central American children repatriated to their home countries are housed in migrant shelters on their return journey, such as in Ciudad Juarez of Chihuahua, Mexico (Gamboa, 2014). Many other shelters and churches in Mexico have opened their doors for migrants in route to the Northern border (Archibold, 2014).

U.S. politicians, including our current President, Congress members, and 2016 presidential candidates, all have a stake in the conversation on this issue (Diamond, 2015). According to a polls of a Pew Research Report, it is cited that just 28% of the public approved of President Obama's handling of the issue in 2014 (Pew Research Center, 2014). 2016 presidential candidates are expected to take a stance on the issue, and disagreement even amongst same party members has stalled Congress from passing legislation on the issue (Diamond, 2015). Much of the political discourse is occurring in border regions, most prominently Rio Grande Valley Region of Texas. The cities of Brownsville and McAllen TX, which border the infamously dangerous Matamoros of Tamaulipas, MX, have already been plagued by police corruption amidst drug trafficking and has experienced increased chaos as Customs and Border Patrol intercept children and attempt to place them in overwhelmed holding centers (Burnett, 2014). The Obama Administration and Congress are

facing major budget decisions to provide housing and legal assistance to the minors (Gamboa, 2014). As order shelters in most heavily trafficked regions including the Rio Grande Valley of Texas and Tucson, AZ overflow, the government has temporarily housed minors in alternative facilities such as Lackland Air Force Base in San Antonio, Texas, Ventura County Naval Base in Oxnard, California, and Fort Still in Oklahoma (Zezima & O'Keefe, 2014; Chisti, Hipsman, & Bui). Finally, as formerly mentioned, the crisis has in part led to the case of *Texas vs. the U.S.*, challenging Obama's 2012 deferred action for 1.2 million childhood arrivals (DACA) who arrived *before* June 2012 and stalling his 2014 action that would have protected 3.7 million unauthorized parents of citizens (DAPA) (Chisti & Hipsman, 2015).

B. How has the policy/program been legitimized? Is the basis for legitimization still current?

The Asylum Reform and Border Protection Act of 2015 is not well-known outside of Congress and a few supporters, but Senator Chaffetz's writing of the bill was a result of the 'surge' of unaccompanied minor children in 2014 that left politicians and U.S. citizens alike with a host of fear and opinions on how to handle the issue. One prominent criticism that came up, and which is included in writing of the bill, is that of faulty asylum claims and a credible fear process that needs reforming (American Immigration Council [AIC], 2016). The number of credible fear claims began to increase dramatically in 2012, and United States Citizenship and Immigration Services Associate Director, Joseph Langlois, said two-thirds of claims made in 2013 were by migrants from El Salvador, Guatemala, and Honduras. The current *credible fear* policy has been in place since the passing of the Illegal Immigration and Immigrant Responsibility Act of 1996, when the United States established a process by

which border-crossers could make an asylum claim, and if warranted substantial by a border patrol agent, they can defend their claim in court. If not, they are subject to immediate deportation, known as 'expedited removal' (AIC, 2016). This same policy would be applied to unaccompanied migrant children from Mexico and Canada in 2008, when President George W. Bush signed the *William Wilberforce Trafficking Victims Protection Reauthorization Act* into law (Chisti & Hipsman, 2014). However, unaccompanied minors from Central America would continue to be given a guaranteed asylum proceeding because no such agreements existed with Central American countries (Chisti & Hipsman, 2014). House Judiciary Committee Chairman Bob Goodlatte (R-VA), and prominent supporter of H.R. 1153, began calling the credible fear process a "loophole" in 2013, claiming that young people came to the border because they believed they'd receive automatic protection. (American Immigration Council, 2016). As mentioned prior, Goodlatte referred to the dramatic influx as an "administration made disaster" on June 2, 2014 in a press release, blaming President Obama's 2012 DACA initiative for encouraging young migrants (Goodlatte, 2015). However, a missing piece of this argument is the fact that the rise in unaccompanied minors began in 2009, right after President George W. Bush signed TVPRA 2008 so that unaccompanied migrant children from Central America would receive temporary protection and a fair trial for asylum before being sent home (AIC, 2016; TVPRA 2008).

When the number of unaccompanied arrivals exceeded 65,000 in 2014, the administration began calling it a 'humanitarian situation' and Congress became divided over what to do (Chang, 2014). Supporters of bills like Chafetz's H.R. 1153 were concerned primarily about the security of our border and American resources (Boerma, 2014). U.S.

Customs and Border Protection Commissioner from 2006-2009, Ralph Basham, and Marine Corps. Gen. John Kelly, head of the U.S. Southern Command, told Secretary of Homeland Security Jeh Johnson that the influx of children was just as much a security threat as the influx of weapons and drugs (Boerma, 2014). Goodlatte and Chafetz both argued that American tax-payer dollars should not be spent on long-term care and legal services for these kids, especially amidst what many agreed were overwhelmed border facilities and a backlogged immigration court (Goodlatte, 2015; States News Service, 2015; see also AIC, 2015). However, at the same time that the threat to our National Security became a major argument, so did the human rights violations in cramped detention centers for migrants along the border (Burnett, 2014; Basu, 2014; Boerma, 2014; Santos, 2014). Images of crowded detention cells of children flooded the news. The detention cells are known as 'las hieleras' or 'the freezers' because of the cold concrete walls they're made of. NPR interviewed several children who cited inadequate medical care, insufficient food and water, and even verbal abuse by officers. Many of these testimonies were included in a protest letter to the Department of Homeland security by immigrant advocacy groups in 2014 (Burnett, 2014). Representative Chafetz did not hesitate to use the argument of overrun detention facilities as a way to advocate for changing TVPRA 2008 so that Central American children are sent home and spared this experience (HR Bill 1153, 2015; Goodlatte, 2015; States News Services, 2015).

C. To what extent is the policy/program an example of rational decision-making, incremental change, or change brought about by conflict?

H.R. 1153 Asylum Reform and Border Protection Act was introduced in early 2015, just following the 'humanitarian crisis' as announced by President Barack Obama in the

Summer months of 2014 (AIC, 2016). The number of unaccompanied minors arriving at our border jumped from just under 20,000 in 2009 to over 65,000 in 2014 (AIC, 2016).

Communication by phone with legal counsel of judicial affairs for Representative Chaffetz, whose name was preferred not disclosed, answered a few questions of this author (Unnamed Legal Counsel for Representative Chaffetz, personal communication, February 19, 2016).

When asked what Representative Chaffetz's main motives were for the writing of the bill, the legal aid first made mention of Congress's concern about a 2015 DHS report that cited 90% of asylum applications were approved in 2013, and 82% in 2014 (these were applications overall, not just of unaccompanied minors). He said Chaffetz primarily wanted to strengthen the standard for asylum application to minimize fraud and prioritize it for those who really need it. When asked if Representative Chaffetz had spoken with any of the unaccompanied minors for their testimony, the answer was "no." This author additionally asked if his sponsoring of this bill had anything to do with his run for Speaker of the House in November 2015. The legal aid answered "no," that the bill was proposed far ahead of those elections, in February 2015. Although H.R. 1153 has not moved since the passing out of the judiciary committee, Chaffetz intends to push it forward through the House and then onto to the Senate, in a package with three other immigration bills: H.R. 1149, The Protection of Children Act, and H.R. 1148, the Michael Davis, Jr. in Honor of State and Local Law Enforcement Act, and H.R. 1147, Legal Workforce Act ¹(Unnamed Legal Counsel for Representative Chaffetz, personal communication, February 19, 2016). There may be a strategy behind passing all four bills together, but this was not indicated by the legal aide.

¹ For more information on H.R. 1149, H.R. 1148, and H.R. 1149, see Footnotes at the end of the References

Chaffetz's legal aide lastly recommended the author read Representative Chaffetz's press release on the bill to hear a statement directly from him (Unnamed Legal Counsel for Representative Chaffetz, personal communication, February 19, 2016):

"This bill takes an important step in plugging a hole in our legal immigration system that has long been abused. By providing additional resources – including judges and attorneys to more quickly adjudicate asylum cases, we can more quickly assess the credibility of claims and reduce the wait times for those with legitimate asylum requests. As a result, unaccompanied children can more quickly reunite with their families. Furthermore, by strengthening the standards for "credible fear" claims, we will have the ability to more quickly identify those abusing the asylum program and provide a disincentive for others to follow their lead" (Chaffetz, 2016).

Rather than re-write an entire new law, Chaffetz drew on three former laws and proposed major changes to these: The Immigration and Nationality Act of 1965, the Homeland Security of 2002, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (HR Bill 1153, 2016). These changes are all outlined in detail in the Historical Analysis section. However, one major policy change has become most prominent in political and public discourse (AIC, 2016; Chisti, Hipsman, & Bui, 2015). This proposal is aimed to gain control of the increasing numbers of Central American children arriving at the border expecting to receive protection, by changing the existing law for Central American children as outlined by TVPRA, to mirror the policy for Mexican children. That is, Central America would have to enter into repatriate agreements that would allow children to be sent back within 48 hours of apprehension if not approved to stay and defend their case for asylum (HR Bill 1153, 2015).

D. What are the political aspects of the policy/program in relation to stated goals?

The proposal of this bill came just on the cusp of several important political headlines, a prominent one being Chaffetz's run for Speaker of the House following the step-down of John Boehner in October 2015 before Representative Paul Ryan was awarded the position (Neuman, 2015; Shastri, 2015). Chaffetz, although originally a moderate Democrat, became a tea-party Republican following his college career at Brigham Young University (Evans, 2015). Since becoming Utah Representative in the House, and Chairman of the House Oversight and Government Reform Committee, he has become known for investigating the Secret Service for security lapses in the White House, and forcefully challenging Planned Parenthood (Evans, 2015). He believes in limited government, and takes a very traditional conservative approach that advocates for strong national defense and harsher laws to control immigration (Chaffetz, 2016). This bill is not his first on immigration reform. He was also the original sponsor of HR 213 Fairness for High-skilled Immigrants Act which, as implied by its titled proposed policies to prioritize immigrants with educational or professional credentials. He has co-sponsored and supported seven more immigration bills in the past, two of which have passed. All have similar approaches of conservative reform that include enhanced border security and enforced consequences against immigrants here without documentation (Chaffetz, 2016).

Chaffetz is also a representative of one of the 26 states that have brought a lawsuit against Obama's executive action in 2014 (Lopez & Krogstad, 2015) saying he believed the deferred action policies for young immigrants encouraged the influx of unaccompanied minors who misunderstood the law to include them as well (States News Service, 2015; Goodlatte, 2015). These executive actions would expand the Deferred Action for Childhood

Arrivals program in 2012 for young immigrants brought here illegally as children and grant deferred action to parents of citizens or permanent residents of five years (NPR's Associated Press, 2015). Congress is awaiting the Supreme Court ruling which is said to be announced in the Spring of 2016 (Krogstad & Lopez, 2015; NPR's Associated Press, 2015). Chafetz's bill was proposed just before the 2016 presidential elections, when the immigration dialogue amongst candidates was only beginning (Hutchinson, 2015; Caldwell, 2015). It is predicted that congressional action is unlikely until the 2016 term begins, however. For Republicans like Chafetz, tough-on-immigration stances win the votes of cheap labor lobbyists and traditional conservatives. For Democrats, legalization of more immigrants expands their voting demographic. With congress in gridlock, it's hard to say if one party has the potential to pass compromise legislation (Hutchinson, 2015; Caldwell, 2015).

The year 2015 is also the lowest on record for deportations by the Obama administration (Caldwell, 2015). Compared to his previous years in office, deportation numbers under President Obama dropped considerably due to a renewed focus on deportations of criminal immigrants and recent arrivals, and the protection of immigrants who qualified for deferred action announced in 2012 and 2014 (Caldwell, 2015). Although heightened immigration deportations began under the Bush administration, Obama was given the name "deporter-in-chief" by immigration advocates in 2012, and presidential candidates like Donald Trump have promised to carry that legacy on, while Democrat Hillary Clinton is pledging to be "less harsh and aggressive"(Caldwell, 2015). The presidential nomination has expanded the conversation of immigration to that of refugee resettlement in the United States (Kaplan, 2015). While candidates debate whether or not to take in refugees of conflict zones in the Middle East, several human rights leaders such as Greg Chen and David Leopold of

the *American Immigration Lawyers Association* (AILA) assert that deportation of Central American children contradicts the United States' encouragement to countries in Europe to keep their borders open for refugees from the Middle East. They refer to the children as Central American asylum-seekers and says they should be treated as such, not as criminals contributing to the "border problem" as the Obama administration has made it out to be. Michelle Brané, Director of the Migrant Rights and Justice Program at the Women's Refugee Commission defends the children's international right to ask for protection, and also their right to understand the terms and expectations of the legal system to make their asylum case successful. In December 2015, Wendy Young, President of *Kids in Need of Defense*, spoke out against the announcement to deport Central American families and potentially children. This announcement came just after President Obama's pledge to take in 10,000 Syrian refugees in the next year. The trajectory of future Central American migrant children lies in the hands of the next presidential candidate. With candidates Bernie Sanders and Hillary Clinton pledging to be more humanitarian, many Republican candidates have promised indiscriminate deportations of all "illegal border crossers" (Kaplan, 2015).

Secretary of the Department of Homeland Security (DHS), Jeh Johnson, recently released a statement on a number of measures they are taking to secure the border (Johnson, 2016). Many of the announced policies mirror those proposed in Chaffetz's bill. In the statement, he addressed the increased number of Central American unaccompanied children in October and November of 2015. Johnson said they are working closely with the Department of Health and Human Services to increase the number of beds in their facilities. He also announced the success of the 2014 "Operation Coyote" in which 1,022 smugglers of Central American migrant children were taken into U.S. custody. He emphasized Congress's

latest passing of an omnibus spending bill to send \$750 million in aid to Central America, and the expansion of the U.S. Department of State's Refugee Admissions program that allows Central American minors to apply for asylum in their home country. The goal of the program, titled the *Central American Minors Refugee/Parole Program*, otherwise known as the *CAM program*, is to deter children from making the dangerous trip to the United States. They've also expanded the public messaging campaign to inform families abroad of the realities of the immigration system in the U.S., aiming to warn them that their children will not simply receive a "free pass" and will undergo an arduous journey. While Johnson boasts the 6,000 applications they've already received through the *CAM program*, he does not have an exact number on the children who have received protection because of it (Johnson, 2016).

Conclusion

The final two sections of the Popple and Leighninger social work policy analysis model are the *VI. Policy Evaluation* and *VII. Current Proposals for Policy Reform* (Popple & Leighninger, 2014). Being that the Asylum Reform and Border Protection Act of 2015 is a bill that is yet to be instated as law (H.R. 1153, 2015), these last two sections cannot be applied. However, it can be anticipated that immigration policy reform will continue for the population of unaccompanied migrant children as long as they continue arriving at the border to plea asylum. This author hopes that the United States government and country as a whole will recognize their need for refuge, and the systemic change that is necessary in order to address the root causes of migration from Central America and Mexico.

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Appendix A: List of groups who wrote to the House Committee on the Judiciary**Democrats in opposition to HR Bill 1153, Asylum Reform and Border Protection Act**

Advocates for Human Rights;

American Federation of State, County and Municipal Employees (AFSCME);

American Immigration Lawyers Association;

The Christian Church (Disciples of Christ);

Coalition for Humane Immigrant Rights of Los Angeles;

Committee on Migration; Save the Children; Refugee Council USA;

Farmworker Justice;

Federation for American Immigration Reform (FAIR);

Feerick Center for Social Justice, Fordham Law School;

General Assembly of the Presbyterian Church (U.S.A.);

Hebrew Immigrant Aid Society;

Human Rights First;

Immigrant Justice Network;

The Leadership Conference on Civil and Human Rights;

National Council of Asian Pacific Americans; Asian Americans Advancing Justice;

National Immigration Law Center;

National Task Force to End Domestic and Sexual Violence;

Network, A National Catholic Social Justice Lobby;

Safe Passage Project;

Service Employees International Union;

Tahirih Justice Center

U.S. Conference of Catholic Bishops,

We Belong Together (The House Committee on the Judiciary Democrats, 2015).

**Appendix B: Limited list of prominent organizations offering refuge and services to
unaccompanied minors**

Legal Aid Providers:

American Bar Association

American Immigration Lawyers Association

Catholic Legal Immigration

Kids in Need of Defense (KIND)

Vera Institute (Washington Office on Latin America, 2014).

Social Service Providers:

Baptist Children and Family Services (BCFS)

Catholic Charities USA

Catholic Diocese of Brownsville

Church World Services

Heartland Alliance

Lutheran Immigration and Refugee Service

Migration and Refugee Services/USCCB: Providing Safe Passage to Unaccompanied

Children from Central America

Save the Children

South Texas Human Rights Center

U.S. Committee for Refugees and Immigrants (USCRI)

World Vision (U.S.)

Footnotes

1. H.R. 1149, The Protection of Children Act, sponsored by Republican Representative John R. Carter of Texas, amends the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to repatriate all Unaccompanied Alien Children (UAC) along the same terms (H.R. 1149, 2015). TVPRA had established a special agreement with contiguous countries to repatriate children within 48 hours if they did not present asylum claims, but children from all other countries would be held until formal asylum cases are heard (TVPRA 2008, 2016). H.R. 1149 would require removal proceeding to begin within 14 days of arrival; then within 30 days they should be transferred from border patrol custody to the Department of Health and Human Services (HHS) only if it is decided by the Department of Homeland Security that they may qualify for asylum (H.R. 1149, 2015). H.R. 1147, The Legal Workforce Act, sponsored by Republican Representative Lamar Smith of Texas, intends to amend the Immigration and Nationality Act to establish an employment verification system (EEVS) that would replace the current E-Verify system which is used to make sure that employees have legal status to work in the United States. The adjustments of the new system would in theory strengthen the process of verification and decrease the ability of workers to use false social security numbers (H.R. 1147, 2015). H.R. 1148, the Michael Davis, Jr. in Honor of State and Local Law Enforcement Act, sponsored by Republican Representative Trey Gowdy of South Carolina, amends the Immigration and Nationality Act to enhance state and local law enforcement's ability to detain and report 'illegal aliens' to the Department of Homeland Security (DHS) to be transferred to federal custody and more quickly entered into deportation proceedings (H.R. 1148, 2015). Although this author has not found a clear strategy for passing these four these bills together, they all

demonstrate a theme of anti-immigrant sentiment (H.R. 1147, 2015; H.R. 1148, 2015; H.R. 1149, 2015). This author speculates that the tough-on-immigration policies targeted towards adults might appeal to Congress members who may be sympathetic to child migrants, but are in favor of more accountability for adult immigrants. Immigrant advocates who wrote to Congress in opposition to Chaffetz's H.R. 1153 included their opposition of H.R. 1147, H.R. 1148, and H.R. 1149 as well, so it is appears that advocacy groups aware of H.R. 1153 are also aware of the entire package of bills (The House Committee on the Judiciary Democrats, 2015).