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Social Justice Resource

“All Problems Solved”?

A Call for Perspective and Policy Shift at the U.S. Border

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EXPERIENCE

It is a great privilege to be a citizen of the United States. We are part of a nation that, at least theoretically, encourages its citizens to voice our opinions without fear of physical retaliation; to live life as we see fit; and to have a say in our nation’s governance. We are, for the most part, relatively well-educated, economically stable, and socially secure. The opportunity to enjoy these blessings was passed on to us through the sweat and determination of prior generations, and we must work hard to continue their legacy. Still, we got lucky.

Millions of other people – mothers just like ours, children like our little ones – are not so lucky. For them, life is a persistent struggle to survive. It is drought, crop failure, gang violence, rape. It is traveling for months with nothing but the clothes on their back and the child on their hip, hoping against hope to find safety and opportunity in “the land of the free and the home of the brave” – in the “city upon a hill” that beckons to those who are oppressed. It is having all hope dashed when, upon their arrival, the leaders of that land of freedom call them “monsters” and imprison them without basic sanitary essentials or legal counsel.

The reports of children separated from their parents, sleeping on cement floors, and lacking basic sanitary items, nourishment, and childcare should distress us all. The privileges and opportunities to which U.S. citizens are entitled should not be

protected at the expense of any child’s rights. If the great nation of the United States must retain its prominence by traumatizing children and families, then we need to reevaluate our definition of greatness. We should use our position of power to act on behalf of those who are vulnerable and marginalized, and should strive to live up to George Washington’s vision of America’s greatness: “I had always hoped that this land might become a safe and agreeable asylum to the virtuous and persecuted part of [humankind], to whatever nation they might belong.”



Right now, we are not living up to this ideal. Currently, we are denying freedom and hope to people looking to us for safe haven. If we in the U.S. cannot set aside our political differences in defense of the children and families who are being denied their rights and traumatized in our

names, then any claim we make to moral leadership is a farce. Regardless of one’s position on the way in which migrants should enter our country, one cannot fail to recognize that the detention camps at our southern border are in clear violation of human dignity and rights.

ANALYSIS

While most U.S. citizens do not necessarily condone inhumane treatment of detained migrants, just as most do not advocate for “open borders,” the sharp divide on this issue comes, I think, from the perspective used to frame the crisis. When one approaches the influx of people seeking asylum from the belief that they are “exploiting a loophole,”¹ it is easy to assert that the system is overrun because people are allowed to enter the U.S. without prior authorization and then turn themselves in for asylum. Given the influx of migrants crossing our borders between ports of entry, this perspective suggests, the U.S. should not be held responsible if our standards of humane treatment cannot be sustained – the ability to seek asylum between ports of entry is a “loophole” that should be fixed. In fact, we should advocate for harsher detention methods in order to deter others from “exploiting” said “loophole.” As the president puts it, “If Illegal Immigrants are unhappy with the conditions in the quickly built or refitted detentions centers, just tell them not to come. All problems solved!”²

Migrants are not the cause of the crisis, but victims of it.

If, however, one approaches the influx of migrants with a view toward the conditions causing them to flee their homes in the first place, one sees that these migrants are not the cause of the crisis, but victims of it. Seeking asylum is a right enshrined in the *Universal Declaration of Human Rights (UDHR)*.³ It is not a loophole to exploit but a necessary means of survival. The treatment of migrants as they wait for asylum, then, must be consistent with their dignity and with the moral duty to rescue a person in mortal danger when it is possible to do so.⁴ At a minimum, this means ensuring safe and humane conditions while migrants are waiting for a decision. The fact that detention facilities were “quickly built or refitted” does not excuse inhumane conditions – the flow of asylum-seekers is no longer surprising, so our response should no longer be one of temporary emergency procedures. Rather, leaders should be compelled to develop alternative means of housing

migrants safely and with dignity. As Yazmin Juarez, the mother of a two-year-old girl who died as a result of poor medical care while in detention, pleads, “It can’t be that hard in this great country to make sure that the little children you lock up don’t die from abuse and neglect.”⁵

Background

To bridge the gap here and motivate a more just and compassionate response to migrant children and their families, an overview of irregular migration issues will be helpful:



While the overall number of undocumented immigrants in the U.S. has been on a downward trend for decades,⁶ there recently has been a dramatic increase in unauthorized border crossings. According to the Department of Homeland Security (DHS), unauthorized border crossings have increased 124 percent this year, “with the greatest increase in family units.”⁷ In fact, more than 70 percent of unauthorized border crossers are unaccompanied minors or family units,⁸ and 96 percent of those are from the Northern Triangle (Honduras, El Salvador, and Guatemala), where violence is pervasive and governments are unstable.⁹ Border agencies and facilities are simply not equipped to handle this influx.

Customs and Border Protection (CBP) centers are designed to be short-term facilities that house migrants briefly during processing and until transfer to long-term Immigration and Customs Enforcement (ICE) detention centers, or Office of Refugee Resettlement (ORR) facilities for unaccompanied minors. The current number of detainees has made it impossible for CBP to authorize those transfers

efficiently, because ICE and ORR also are operating at or above capacity. Thus, thousands of migrants and their children are being housed for lengthy periods in facilities designed only for short-term processing.¹⁰

A memo by the Office of the Inspector General of the Department of Homeland Security (DHS), written upon examination of detention centers, notes many conditions that “require immediate attention.”¹¹ These include serious overcrowding issues, such as standing room only cells; prolonged detention of minors, including more than 50 children under seven years old, many of whom were held in custody for over two weeks, in violation of U.S. an international law; and serious sanitation issues, including limited or no access to showers or clean clothes, for both children and adults, in some cases for more than a month.¹²



Given these conditions, it is not intuitively surprising – though it is morally shocking – that in the past year, there have been at least twenty-two migrants who

have died while in immigration custody,¹³ including seven children.¹⁴ For context, zero children died in custody in the previous decade.¹⁵ The number of fatalities among migrants in detention does not include those who became ill while in custody but died subsequent to their release, or the unborn children (as many as 28 this year) who have died while their pregnant mothers were in custody.¹⁶ Nor does it include at least 357 migrants and asylum-seekers who die each year because they brave the heat of the desert and the Rio Grande’s currents, desperate to find safe haven.¹⁷

Policy

The overcrowding is not entirely a result of high numbers of unauthorized border crossings,

however. While the crisis did not begin with this administration, the policies of the current administration have exacerbated it. As President and CEO of Human Rights First, Michael Breen, has testified, “Since 2013, large numbers of refugees from the Northern Triangle in Central America—including many unaccompanied children and mothers with young children—have sought refuge in the United States. The persistent suffering and disorder at the border aren’t, however, the inevitable result of this displacement. Rather, they are the direct, predictable—and indeed predicted—result of the administration’s actions.”¹⁸

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Beyond cutting aid to the countries these people are fleeing, thereby eliminating the most important means of stemming the flow of asylum-seekers, this administration has effectively mandated an unsustainable number of detainees by limiting the discretion of border patrol agents to determine which migrants to prioritize for detention. Maintaining that detention is a necessary deterrent for would-be immigrants, including those fleeing danger and seeking asylum, the current administration has indicated that all people apprehended at the border are candidates for detention, regardless of whether or not they voluntarily turn themselves in to border patrol agents to claim asylum.¹⁹

According to international and U.S. law, people have the right to seek asylum in any country where they feel safe, and they are not to be punished for doing so, even if their claim is made between official ports of entry. The current administration, however, argues that harsh detention methods are necessary to deter would-be asylum-seekers and curb the influx of people. This administration also misleadingly claims that the migrants crossing the

border are dangerous rather than in danger, and that most migrants are exploiting the system.²⁰ To support its claims, this administration likes to tout the figure that nearly 90 percent of asylum-seekers are denied asylum by a judge.²¹ What they fail to acknowledge, however, is that that number seems more indicative of the confusion and chaos of the system than the intent of applicants: for asylum-seekers who have legal representation (i.e. assistance navigating the highly technical, convoluted asylum process), the number of those who appear for their hearings increases to nearly 100 percent, and the number who are granted asylum rises to more than 70 percent.²² In contrast, when an asylum-seeker cannot secure legal aid, which is not automatically provided (even to children), she must represent herself, and asylum is granted at a rate of approximately 13 percent.²³

Detaining non-violent children and families not only victimizes an already-vulnerable population; it also burdens the national budget unnecessarily.

Additionally, this administration has sought to reject targeted gang violence and domestic violence as valid reasons for claiming asylum, despite the UN Refugee Agency's determination that "forcible recruitment attempts, including under death threat, by violent groups would normally amount to persecution."²⁴ Further, in this time of crisis, this administration has engaged in a practice known as "metering," or capping the number of asylum claims, and is processing significantly less than the prior administration did.²⁵ People are then forced to wait in Mexico, in locations deemed unfit for travel by the State Department, where many are raped, robbed, killed, or kidnapped.²⁶ As Congressman Jamie Raskin notes, under this administration, "They have not been greeted as refugees whose asylum claims must be heard and taken seriously, but as presumptive criminals and threats to the American people."²⁷



Figure 1. Overcrowding of families observed by OIG on June 10, 2019, at Border Patrol's McAllen, TX, Station. Source: OIG

Detaining non-violent children and families not only victimizes an already-vulnerable population; it also burdens the national budget unnecessarily. Despite the success of many alternatives to detention, the current administration has signaled a reluctance to pursue those, for fear of making the dangerous journey to the U.S. to seek asylum too attractive,²⁸ blaming the influx of asylum-seekers on "rewards."²⁹ For example, the Family Case Management Program (FCMP) monitored families seeking asylum and demonstrated extremely high compliance rates with immigration requirements such as court hearings and immigration appointments (>99 percent).³⁰ Further, the FCMP average daily cost of \$36 is considerably lower than the average daily cost of family detention (\$319).³¹ The FCMP was terminated by the current administration in 2017.

As Breen puts it, "By keeping people unnecessarily detained, restricting processing at ports of entry, stranding asylum-seekers in Mexico, manipulating asylum law, or undermining efforts to solve the problems forcing people to flee, the administration is exacerbating a crisis it could, if it wanted to, resolve by adhering to American laws and ideals."³²

While I often hear people opine that "we can't take everyone," there is no excuse for failing to uphold the rights and dignity of the relative few that come here (there are more than 70 million refugees worldwide). In order to do so, we must come together to overhaul the immigration system, securing our borders without violating international agreements and national ideals on human rights for children, refugees and asylum-seekers.

Law

As we develop a response to asylum-seekers and survival migrants who approach our borders, we should keep in mind that our Constitution guarantees “due process” to every person, not just U.S. citizens. Further, international law is rife with principles to guide our response. Beyond the *UDHR*, which guarantees a right to asylum, the *UN Convention on the Rights of the Child (UNCRC)*, a “legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities,”³³ maintains that “governments are required to meet children’s basic needs and help them reach their full potential.”³⁴ This is based on the presumption of certain fundamental rights, including the rights to life, survival and development in the care of their parents (unless they are unsafe).³⁵



In light of this convention, UN High Commissioner for Human Rights Michelle Bachelet has criticized the “appalling” conditions of detention centers at the U.S. southern border.³⁶ She notes that “detaining migrant children may constitute cruel, inhumane or degrading treatment that is prohibited under international law,” and reminds the U.S. government additionally that “any deprivation of liberty of adult migrants and refugees should be a measure of last resort” and should include all relevant due process safeguards and human rights standards.³⁷ Bachelet warns, “States do have the sovereign prerogative to decide on the conditions of entry and stay of foreign nationals ... but clearly, border management measures must comply with the State’s human rights obligations and should not be based on narrow policies aimed only at detecting, detaining and expeditiously deporting irregular migrants.”³⁸

Refugees deserve rescue, autonomy, and a pathway to stability.

Response

To explore how nations might adhere to these international conventions and protocols, while securing their borders and maintaining economic integrity, Paul Collier and Alexander Betts – a world-renowned economist and political scientist, respectively – have researched the European refugee crisis and proposed a revised response in their book, *Refuge*. It is worth considering here. Their proposal grants priority to the moral duty of rescue (i.e. when one is able to save someone who is in danger, one ought to do so), and they propose that refugees deserve rescue, autonomy, and a pathway to stability. From that moral starting point, they suggest sustainable ways of fulfilling these duties.

For example, Collier and Betts recommend that stable nations that are nearest to the countries refugees are fleeing should be the primary hosts. In this way, refugees will be more likely to return home to help rebuild, once their home nation has stabilized. However, they argue, distant nations should welcome some refugees as a show of good faith, and they should partner with the primary host nations to alleviate any financial burden. This partnership should include direct financial assistance, as well as opening new trade opportunities with the host nations. Further, Collier and Betts say, refugees should not be kept in camps with no access to the legitimate economy. They should be encouraged to work, go to school, and practice their skills so that they can continue to contribute to the community and will be ready to participate in the rebuilding process of their home nation when the time comes. Finally, there should be a predetermined time period – say, five years – after which, if it is determined that no viable solution to the conflict or instability of the home nation is within reach, refugees are granted a pathway to permanency. On the other hand, if

stability seems to be forthcoming, they will return home.

This proposal, I think, offers a way of upholding the duty to rescue those in dire need, and of turning refugee resettlement into an economic and cultural boon for host nations. I suggest that the U.S. should consider this type of response to migrants at our border, rather than simply detaining them or shutting them out, which drains the budget and violates their dignity. It should be clear that simply refusing the claims of asylum-seekers or building a wall to keep them out will not mean “all problems solved.” Perhaps detention centers would cease to be overwhelmed, but the crises migrant families are fleeing would continue unabated while we bury our heads in the sand. As Collier and Betts point out, “The alternative to the politics of the ostrich is to embrace change.”³⁹

REFLECTION

Throughout our faith tradition, we find the call to act in ways that uphold dignity and promote justice, especially for the vulnerable and marginalized.



The parable of the Good Samaritan offers insight into what this entails, teaching us that true justice is more than adherence to the law – rather, justice works toward making relationships right. The compassion that overwhelms the Samaritan in the parable enables him to act justly as he becomes attentive to the victim’s needs and attempts to rectify the harms done, although the Samaritan bears no responsibility for those harms. The Samaritan easily could have ignored the victim, as the priest and the Levite did. Indeed, he would have thought himself justified in doing so since he was a citizen of an enemy people. However, compassion moves him to restore dignity and the possibility of

fullness of life to the victim, even at high cost and inconvenience to himself. His actions accomplish the aim of justice by facilitating wholeness and freedom – the restorative measures taken by the Samaritan contribute to righting the distorted relationships experienced by the victim as a consequence of the offense. The victim can begin to reclaim his personal autonomy, his physical faculties, and his ability to trust others; he can begin to be at peace once more with his world.⁴⁰ Jesus, explaining the breadth and depth of the law that justly commands us to “love our neighbors,” commends the Samaritan’s action: “Go and do likewise.”⁴¹

While many people attempt to escape the profound responsibility conferred by this parable and throughout Scripture by asserting a hard distinction between the call to charitable justice in our personal lives and the way justice is maintained in the political realm, Saint Augustine offers a response: Rulers, he says, act rightly “by sanctioning with suitable vigour laws that order just behavior and prevent its opposite.”⁴² Augustine also maintains that love is at the root of all human action.⁴³ Love, then, cannot be simply a virtue of the private realm because it motivates just action: If political activity is to institute laws that order genuinely just behavior, politics must be engaged with love, and justice must be implemented with an eye toward right relations. As Augustine writes, one “[destroys] justice by failing to love the person [one is] judging,”⁴⁴ and further, “an unjust law is no law at all.”⁴⁵

In fact, according to the CST principle of Family, Community, and Participation, “Economic and social policies ... should be continually evaluated in light of their impact on the strength and stability of family life.”⁴⁶ Further, our faith calls us to care for “the least of these” – and who can deny that children and asylum-seekers are among our most vulnerable? As we respond to the crisis at our border, let us commit to follow the call of our faith to give special preference in our policy-making and activity to “those without hope of a better future,” because “to ignore them would mean becoming like the ‘rich man’ who pretended not to know the beggar Lazarus lying at his gate.”⁴⁷

Let us choose to “embrace a dream for America that is filled with hope for a nation united in service of the common good.”
- Leadership Conference of Women Religious

ACTION

Please join the School Sisters of Notre Dame by participating in some of the following actions, as we “educate, advocate, and act, in collaboration with others, for the dignity of life and the care of all creation.”⁴⁸

1. There was a *Catholic Day of Action for Immigrant Children* to end the abuse of immigrant children and families by a prayerful direct action in Washington, DC, on July 18. Please hold this cause in prayer with the [Day of Action’s prayer and ritual](#).
2. Take a moment to [read what detained children are saying about their experience](#).
3. Use your Voter Voice to [urge this administration to stop the inhumane treatment of migrants at the border](#).
4. Donate to organizations committed to assisting migrant families and asylum-seekers. Some suggestions include:
 - a. [RAICES](#)
 - b. [Catholic Legal Immigration Network, Inc. \(CLINIC\)](#)
 - c. [Annunciation House](#)
 - d. [Catholic Charities Respite Center](#)
5. Use your knowledge of this issue to counter manipulated and misrepresented data whenever you hear it.

¹ [White House Fact Sheet on Immigration](#)

² [Donald Trump’s Twitter Account](#)

³ [Universal Declaration of Human Rights](#), Article XIV

⁴ For a discussion of this duty and how it pertains to nations and refugees, see *Refuge: Rethinking Refugee Policy in a Changing World*, by Paul Collier and Alexander Betts.

⁵ [Testimony of Yazmin Juarez before the House Committee on Oversight and Reform](#)

⁶ [Pew Research Center](#)

⁷ [Office of Inspector General, DHS](#)

⁸ *Ibid.*

⁹ Congressional Research Service, [The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy](#)

¹⁰ [Office of Inspector General, DHS](#)

¹¹ *Ibid.*

¹² *Ibid.*

¹³ [NBC News](#)

¹⁴ [NBC News](#)

¹⁵ [Department of Homeland Security](#)

¹⁶ [USA Today](#)

¹⁷ [National Catholic Reporter](#)

¹⁸ [Testimony of Michael Breen before the House Committee on Oversight and Reform](#)

¹⁹ Congressional Research Service, [The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy](#)

²⁰ [White House Fact Sheet on Immigration](#)

²¹ *Ibid.*

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- ²² Catholic Legal and Immigration Network, Inc., [Denied a Day in Court](#)
- ²³ [National Immigrant Justice Center, Training Webinar](#)
- ²⁴ [UNHCR: The UN Refugee Agency](#)
- ²⁵ [Testimony of Michael Breen before the House Committee on Oversight and Reform](#)
- ²⁶ [Comments of Michael Breen in response to questioning by the House Committee on Oversight and Reform](#)
- ²⁷ [Opening Statement of Subcommittee Chairman Jamie Raskin before the House Committee on Oversight and Reform](#)
- ²⁸ [White House Fact Sheet on Immigration](#)
- ²⁹ [Department of Homeland Security](#)
- ³⁰ [Comments of Michael Breen in response to questioning by the House Committee on Oversight and Reform](#)
- ³¹ Congressional Research Service, [The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy](#)
- ³² [Testimony of Michael Breen before the House Committee on Oversight and Reform](#)
- ³³ [Save the Children](#)
- ³⁴ Ibid.
- ³⁵ Ibid.
- ³⁶ [UN News](#)
- ³⁷ Ibid.
- ³⁸ Ibid.
- ³⁹ *Refuge*, Collier and Betts, 236.
- ⁴⁰ Much of this paragraph can be found in my article, “A Branch Regrafted: An Augustinian Approach to Restorative Justice,” *Journal of Catholic Social Thought* (15:1).
- ⁴¹ Luke 10
- ⁴² Augustine, *Ep.* 185.19, in *Augustine: Political Writings*.
- ⁴³ Augustine, *Confessions*, XIII.9.
- ⁴⁴ Augustine, *Sermon* 13.8, *ibid.*
- ⁴⁵ Augustine, *On the Free Choice of the Will*, 1.5.
- ⁴⁶ United States Conference of Catholic Bishops, [Economic Justice for All](#), no. 93)
- ⁴⁷ Saint Pope John Paul II, [Sollicitudo Rei Socialis](#), 42.
- ⁴⁸ [School Sisters of Notre Dame, 24th Directional Statement](#)