Thank you for the opportunity to offer some perspectives on the migrant caravan, and on questions relating to asylum. I thought I’d use my fifteen to twenty minutes today to offer the kind of oral presentation I might deliver, say, to new members of Congress who do not know this issue very well, but may have seen the president’s televised comments early last month, when he said the migrant caravan was like an invasion, wrongly stated that almost everybody abuses our asylum system, and said he had told the U.S. military at the border to treat rock throwing migrants as if they were attacking with rifles.

Let me add that some of what you will hear is drawn—in some cases directly—from a memorandum to the president from Refugees International that I authored, as well as other RI products.

To be sure, forced migration from El Salvador, Honduras, and Guatemala—the Northern Triangle of Central America—has in considerable measure been caused by grinding poverty. But in recent years, in particular, it has also become quite apparent that for many tens of thousands of Central Americans, migration is fueled by well-founded fears of women, men, and children about serious violations of their human rights—in particular, fear of being targeted and threatened with death or severe harm by criminal gangs and, in the case of women, as a result of domestic violence.
The evidence of this is overwhelming. Several years ago, the head of the U.S. Southern Command, Gen. Douglas Fraser, called the Northern Triangle “the deadliest zone in the world outside of active war zones.” And subsequently, in 2014, General Fraser’s successor, General (and now White House Chief of Staff) John Kelly, wrote that drug cartels and gang activity had left, and I quote, “near-broken societies in their wake.”

A 2014 report from the UN’s refugee agency, based on surveys of unaccompanied minors from Central America and Mexico, revealed that a substantial majority of children had significant fears of serious personal harm if returned, and Department of Homeland Security (DHS) statistics reveal that high percentages of women from Central America risk severe mistreatment if returned to their countries of origin. I and others from Refugees International were recently at the border, and our team heard testimony that corroborated these statistics—such as from girls and women threatened by domestic and gang violence, or from a father who had spirited his young son out of Guatemala to escape gangs intent on extorting his family and bringing the young boy into their clutches—reflecting the circumstances of so many who have fled the Northern Triangle out of deep fear.

Before considering how to deal with this particular Central American migration challenge, I’ll provide the shortest of briefs on some of the key international and domestic practices, treaties, and laws that governments, including our own, have established to deal with forced flight.

The bedrock international obligation is the United Nations Convention Relating to the Status of Refugees. Adopted by an international conference of states in 1951, it was focused on post-war European refugees, but its terms were extended worldwide by a 1967 protocol to which the United States became a party during the Johnson administration. That document
defines a refugee as an individual who is outside their country of origin because of a well-founded fear of being persecuted—that is, being severely mistreated—due to race, religion, nationality, membership in a particular social group or political opinion. The convention and protocol state that refugees may not be returned to the frontiers of a place where their lives or freedom would be threatened due any of those five grounds. U.S. law, implementing obligations under the Refugee Convention and Protocol, provides that any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival) may apply for asylum. Under the convention and protocol, persecution can come at the hands of the state or others, and judges in the United States and elsewhere have wrestled with how expansive the five categories should be—especially when it comes to determining who is or is not a member of a social group.

But providing individual asylum is hardly the end of the story of how governments provide protection to people in flight. Today, there are some 25 million people around the world who have been forced out of their countries of origin, and the vast majority will not go through any individualized refugee determination process. Yet we know in our hearts and our heads that their return is just not possible. In some cases, the United Nations refugee agency has declared large groups of people in flight to be *prima facie* refugees—refugees at first impression—and have asked governments not to force them back. And in Africa and Latin America, governments have even agreed to include in their legal definitions of refugees people who are fleeing widespread disruptions in public order.

Domestic laws and practices have followed suit. From Germany and Turkey, to Jordan and Uganda, and even the United States, a variety of laws provide protection and rights to those individuals who might not meet the 1951 Convention definition of refugee, but
should not be returned to their countries of origin.

So why is this important?

First, because it helps us to appreciate that when it comes to protection of vulnerable asylum seekers at grave risk, the United States actually bears an exceptionally minor burden. Whether it is the more than one million South Sudanese who have fled to Uganda or the more than three million Syrian refugees in Turkey, other governments with less capacity are doing far more than the United States. In fact, at the United Nations last year, President Trump actually endorsed arrangements in which countries close to areas of conflict would host refugees, terming those efforts, “the safe, responsible, and humanitarian approach.”

And second, it helps us to appreciate that while Central American migration to the United States represents a policy challenge, it is not really a crisis. In fiscal year ending September 30, 2018, the U.S. Border Patrol apprehended just over 396,000 individuals between ports of entry at the southwest border, and that is a large number. But it is not an extraordinary number, as the annual rate of border apprehensions has averaged about 385,000 in recent years. To use another example in this vein, we do indeed have a backlog in immigration courts of asylum seekers, estimated at over 500,000, but that overall backlog of asylum seekers is roughly on par with the more than 600,000 people who overstayed their U.S. visas in 2017 alone—which nobody has called a crisis.

So if not a crisis, but rather an ongoing policy and a public affairs challenge, what exactly are the components of a responsible approach that addresses migration management, is consistent with U.S. law and our treaty obligations, reflects a modicum of humanity, and might even offer the prospect of greater regional stability?
The answer, of course, is that a complicated challenge like this one demands a multifaceted response.

On protection, the Trump administration should cease efforts to block access to asylum—American officials shouldn’t be telling asylum seekers they cannot apply for asylum in obvious violation of U.S. law; they should not inform thousands asylum seekers at ports of entry that their cases cannot be processed in a timely manner and that they must come back later; they should not criminally prosecute asylum seekers who have entered the United States between ports of entry; and they should not dramatically limit access to the benefit of asylum for those who cross between ports of entry—as a presidential proclamation would have them do.

They should not take these actions because they violate U.S. law or legal commitments to which the United States has acceded, because they put asylum seekers at grave risk of exploitation or worse at the hands of criminal gangs in northern Mexico, and because they break faith with Mexico, which is already hosting thousands of Central Americans formally seeking asylum in Mexico and unknown numbers of others who are simply taking refuge there.

But injecting humanity into U.S. policy in this way will not completely solve the policy challenges relating to migration from Central America. So let me suggest several other measures.

First, as I and 18 other former senior U.S. government officials argued in a letter to Vice President Pence and then-President-Elect López Obrador on November 30th, there are a number of actions the United States could take to effectively manage asylum processing
challenges, including—and if I may quote from the letter—“by strengthening Customs and Border Protection processing capacity at ports of entry, increasing the number of immigration judges who can hear cases, implementing alternatives to detention that have been proven to be effective, and moving forward on a range of measures to reduce the backlog of asylum cases.” These last measures, described in a report coauthored by Doris Meissner, included, for example, permitting asylum officers (rather than immigration judges) to initially consider credible asylum claims that have a high likelihood of being approved.

Second, the administration should dramatically increase support to Mexico to enable it to process, protect, and support asylum seekers. As written, Mexican laws and policies offer broader protections than those provided under U.S. asylum law, and enhanced Mexican capacity would lessen migration pressures on the United States.

Third, the administration should expand support for what is known as the Protection Transfer Agreement, whereby asylum seekers from the Northern Triangle obtain temporary refuge in Costa Rica and then can be processed for refugee admission in the United States, Canada, and other countries.

I’d even go further than that: as Roberto Suro has suggested recently, the United States should consider a special immigration initiative focused particularly on Central Americans, a program that would create an orderly and legal migration path from Central America to the United States, especially since many Central Americans who are migrating have family members in the United States. Again, the numbers are not large and, with an orderly channel established, there will be no so-called invasion to rile people up about. In dealing with large-scale migration from Cuba in the early 1990’s the Clinton Administration developed a similar effort, which proved effective.
Fourth, the administration should dramatically increase assistance to enhance protection upon return to those deported to Central America who may not qualify for asylum but may still be at grave risk. It’s simply immoral and unacceptable to be deporting people without assuming greater responsibility for addressing protection concerns upon return.

Sixth, the president should appoint a special envoy for Central America and dramatically increase assistance to promote governance and development.

Vice President Pence recently told Central American governments that the United States is committed to their prosperity, but the administration proposed significant FY 2018 and 2019 cuts in development funding to the region.

Finally, perhaps most importantly, and perhaps least likely to be achieved, the administration should lower the public temperature on this issue. The highly charged and inaccurate rhetoric that vilifies the asylum seeker population tends to foreclose humane and effective policy options, not to mention increasing fear and uneasiness within the Hispanic and other minority communities.

While this is terribly unsettling, it is hardly the first time in our history that such rhetoric has infected our politics. There was anti-Irish Catholic Know-nothingism and “yellow peril” anti-Chinese sentiment in the 19th century; there were the anti-semitic rants of Father Charles Coughlin and the tragedy of Japanese internment in the 20th century. There have always been voices of intolerance who have stoked fear and ignorance. The language of threat and invasion is not new—targets have just shifted in the 21st century to Muslims and Central Americans. To be sure, in our lifetimes, we have never had a president whose very words continually reaffirmed such sentiment, and that makes today’s challenge far more significant and far more substantial.
But, to my mind, that only reinforces the imperative for other leaders to come forward to decry expressions of fear and intolerance, focus on evidenced based policy, and trumpet the values that have best animated our national narrative and have given strength and purpose to the U.S. role in the world.