

# The Risks of 'In-Country' Processing

## An Assessment of the US Central American Minors Program

WORLD REFUGEE & MIGRATION COUNCIL RESEARCH PAPER

Claire Higgins  
Molly Fee

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### **Dr Claire Higgins**

Senior Research Fellow, Kaldor Centre for International Refugee Law; Affiliate Scholar, Georgetown University's Institute for the Study of International Migration. [c.higgins@unsw.edu.au](mailto:c.higgins@unsw.edu.au); @higginsCM

### **Ms Molly Fee**

PhD Candidate, Department of Sociology at the University of California, Los Angeles. [mfee@ucla.edu](mailto:mfee@ucla.edu); @molly\_fee

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44 Eccles Street #200  
Ottawa, Ontario, Canada K1R 6S4  
[www.wrmcouncil.org](http://www.wrmcouncil.org)

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Faced with an increased number of asylum seekers at the U.S-Mexico border, the Biden administration has reopened an Obama-era complementary pathway for Central American minors. To obtain entry into the United States on humanitarian grounds, applicants are required to remain inside their home countries while their claims for protection in the United States are assessed. Processing applicants 'in-country' in this manner raises a unique set of challenges, and experience shows there is a risk that this complementary pathway may externalise entry controls in a way that prevents access to protection. To be effective, in-country processing must constitute an *additional* avenue to safety – one that is flexible, efficient, transparent, and open for the long term.<sup>1</sup>

The Central American Minors (CAM) program was originally established in 2014 by the Obama administration, to allow asylum seekers under the age of 21 to be interviewed in Central America by US officials. It was the latest in a long history of in-country programs (also known as 'orderly departure' or 'protected entry') offered by the United States government in several countries since the 1960s, but it involved particularly strict eligibility criteria. Applicants had to reside in El Salvador, Honduras and Guatemala and have a parent lawfully based in the US; if both the parental relationship and the protection needs of the applicants were confirmed, these young asylum seekers could qualify for entry into the United States. The strict criteria were criticised by refugee advocates, who reported in 2016 that the vast majority of unaccompanied children making their way to the U.S-Mexico border at that time were seeking to reunite with undocumented parents or other relatives, and therefore would have been denied access to protection had they waited closer to home and applied through CAM.<sup>2</sup> By the time the program was closed by the Trump administration in 2017, only around 3,000 minors had qualified for entry into the United States.<sup>3</sup>

In March 2021 the State Department announced that the CAM program would be reopened. The UN refugee agency welcomed the move, describing the program as having 'a proven track record' as a 'safe and orderly way' for children to be reunited with a US-based parent.<sup>4</sup> Some civil society organisations also voiced support for the new version of this program, but

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<sup>1</sup> Higgins, C (2019) *Safe Journeys and Sound Policy: Expanding protected entry for refugees*, Policy Brief no. 8, Kaldor Centre for International Refugee Law, 2.

<sup>2</sup> Moulton, A et al (2016) *Waiting for Refuge: Benefits and Challenges of the Central American Minors In-Country Refugee Processing Program (CAM)*, Unitarian Universalist Service Committee (UUSC), 37.

<sup>3</sup> National Conference on Citizenship and the Penn Biden Center for Diplomacy and Global Engagement (2020), *A Roadmap to Rebuilding the U.S. Refugee Admissions Program*, 34.

<sup>4</sup> United Nations High Commissioner for Refugees (2021) 'Statement on the resumption of the Central American Minors program', 10 March, <https://www.unhcr.org/en-us/news/press/2021/3/60497b404/statement-on-us-announcement-of-cam-resumption.html>

have been careful to note that the same flaws which hampered the Obama-era initiative – such as a convoluted application process, long wait times, and serious safety concerns for children attending interviews – must not be replicated again.<sup>5</sup> A primary concern is that the new CAM program should not limit the ability of children to make their own way to the United States to seek protection.

History shows these challenges are inherent in programs where all or part of the processing occurs ‘in country’, in the manner of the CAM program. This is for two reasons. Firstly, the express purpose of this complementary pathway is to authorise safe and ‘orderly’ modes of travel for asylum seekers – a visa-ed plane journey rather than a dangerous desert crossing – and thus in doing so it relies on externalised entry controls, through the assessment of protection claims (and, in the case of the previous CAM program, additional biological criteria) before an individual even arrives at the border of the destination State. It is not a common pathway, and ordinarily an individual must leave their country of origin and cross an international border to access protection under international refugee or human rights law.<sup>6</sup> Secondly, and as a result, applicants may be disadvantaged, without protection safeguards such as the ability to access legal advice, to appeal a rejected claim, to re-apply if their circumstances or the risk of *refoulement* change and, importantly, to claim protection under national asylum procedures.

There are practical considerations at play too. While applicants to an ‘in-country’ visa process like CAM can avoid the potential hazards of a cross-border journey, they may face other risks to their safety by remaining within the territory of the State that is either unable to protect them (such as from the dangers of gang violence) or is unwilling to protect them. This can complicate a person’s ability to participate in the application process, to attend interviews and lodge relevant documents, or to even remain at the same address. If a person is at heightened risk they may be forced to flee sooner, and thus unable to wait through the duration of an in-country application process.

For these reasons, an in-country program must not serve to deter or prevent access to asylum for the target cohort, but instead complement other pathways through which individuals may seek protection, including the right to seek asylum directly at the border of

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<sup>5</sup> HIAS (2021) *Roadmap to Recovery: a path forward after the Remain in Mexico Program*, Executive Summary, 8; Leach, J (2021) ‘Central American Minors Program Should Be One Piece of a Broader Protection Strategy’, UUSC, 12 March, <https://www.uusc.org/central-american-minors-program-should-be-one-piece-of-a-broader-protection-strategy/>

<sup>6</sup> Applicants to an in-country program fall outside the refugee definition set out in Art 1A(2) of the *1951 Convention relating to the Status of Refugees*, as they are not outside their country of nationality.

another country. This is essential. At times in the past, the United States government has offered humanitarian visa processing 'in country' as a justification for restricting access to protection for asylum seekers who seek to reach the United States independently. In the late 1960s and early 1970s, a Memorandum of Understanding with the Cuban government saw U.S authorities fly hundreds of thousands of Cubans directly to Miami, while at the same time Washington was less interested in granting visas to thousands of Cubans who were seeking to reach the United States via Spain. Similarly, since the 1980s in-country programs have been implemented by successive U.S governments as an attempt to curb the movement of asylum seekers to Florida by sea or to the southern border. When tens of thousands of people fled the aftermath of a coup in Haiti the early 1990s, the Bush administration twinned an in-country program with a policy of maritime interception. President Clinton, who maintained the approach, said in a taped broadcast for Haitian audiences that 'leaving by boat is not the route to freedom', and the policy was aptly described by human rights observers as 'a smokescreen for refoulement'.<sup>7</sup>

In the current context, it is likely that the number of children admitted to the United States through the re-opened CAM program will fall below the number arriving at the border. The Biden administration recognises that there is no single solution to displacement in the region, so if a CAM program operates in addition to other avenues, it will be better placed to help the subset of youth who meet specific program criteria, have particular vulnerabilities, and/or are less able to flee their country. This will also ensure that CAM contributes to global initiatives in this area. Under the Global Compact on Refugees, a landmark international agreement adopted in 2018, complementary pathways are recognised as an important way in which States can expand access to third-country solutions for displaced people.

In-country programs must also be efficient. In theory, by allowing a person to apply for protection while still within their home country, in-country processing should allow applicants to bypass the limbo and uncertainty of waiting for a durable solution (such as resettlement) for years in camps or cities in neighbouring countries. However, waiting at length for approval to depart home countries or designated transit countries can not only serve to deter or prevent individuals from accessing protection, but can add new precarities to refugees' lives. Extensive paperwork requirements and drawn-out bureaucratic reviews create a particular context of waiting that is financially, emotionally, and physically taxing, particularly when

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<sup>7</sup> Sciolino, E (1993) 'Clinton says U.S will continue ban on Haitian exodus', *The New York Times*, 15 January, 1; Frelick, B (2003) 'In-Country Refugee Processing of Haitians: The Case Against', *Refuge*, 21(4), 68.

approval is not guaranteed.<sup>8</sup> It is imperative to ensure timeliness and consistency with such a visa, to minimize the added toll on at-risk populations.

If prospective applicants understand how an in-country visa process works and how long it might take, they are better placed to make an informed decision about whether to wait in their home country. An in-country program like CAM should therefore operate with transparent and flexible application criteria and processes. A flexible program can help those who may fall outside strict criteria, and the CAM program allows those children who do not qualify as refugees, but who are in humanitarian need, to be considered for parole into the United States. In June 2021 the Department of State also announced an expansion of eligibility criteria for the US-based parental figure, opening up the program to legal guardians in the United States with specified immigration status.

When the previous CAM program was closed by the Trump administration, a number of children were in the final stages of the application process, having received conditional approval to enter the United States on humanitarian grounds pending the outcome of final medical and security checks. The revocation of that approval meant that many of these children experienced prolonged separation from their families and a 'risk of physical danger'.<sup>9</sup> Their access to protection had been delayed. For this reason, an in-country program like CAM must also be based on a multi-year commitment, so prospective applicants can have confidence that it represents a viable option. If the Biden administration can commit to operating the CAM program on a multi-year basis, this can provide greater predictability for applicants and for partner organisations in Central America and in the United States.

Homeland Security Secretary Alejandro Mayorkas has told the House Homeland Security Committee that the Biden administration is aiming to provide asylum seekers with 'meaningful opportunities' to seek protection 'from as close to home as possible'.<sup>10</sup> With that aim in mind, the new CAM program must operate with predictability, efficiency, transparency, and flexibility. Only then can the administration avoid the past pitfalls of situating entry controls 'in country', and instead offer a valuable *additional* pathway to protection.

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<sup>8</sup> Fee, M (2021) 'Lives Stalled: The Costs of Waiting for Refugee Resettlement', *Journal of Ethnic and Migration Studies*, Online first, <https://www.tandfonline.com/doi/abs/10.1080/1369183X.2021.1876554>

<sup>9</sup> S.A. *et al v. Donald J. Trump et al*, No. 18-cv-03539-LB (U.S District Court Northern District of California, 1 March 2019)

<sup>10</sup> Testimony of A. N. Mayorkas, Secretary of Homeland Security (2021), Committee on Homeland Security, U.S. House of Representatives, *The Way Forward on Homeland Security*, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., 17 March, 6.



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