

HUMAN RIGHTS

Central American Migrations

By James G. Lamb

“Decades ago, all of us knew — and some of us rather close up — the violence, the repression, the massive displacement, the brutality, the abuses, the massacres, the disappearances, and impunity in Central America, yet the U.S. government supported and defended savage military regimes that the UN termed genocidal.” With this observation, UC Berkeley Professor Emerita Beatriz Manz offered critical context for the present as moderator for the expert panel on Central American migration and the U.S. border hosted by the Center for Latin American Studies (CLAS) at UC Berkeley on September 4, 2019.

In recent years, migration to the United States, particularly from Central America, has become a high-priority national policy concern, a freighted political and cultural controversy, and in many ways, a defining moral issue. In addition to general humanitarian responsibility for millions of people seeking refuge and asylum, the United States has a specific moral onus regarding Central America because of its history in the region.

The panel “Central American Migrations and the U.S. Border: A Moral and Political Issue of Our Time” brought together contributors from different fields to clarify these crucial topics of policy and ethics. Karen Musalo is a UC Hastings law professor and founding director of the Center for Gender and Refugee Studies and the Refugee and Human Rights Clinic. She and the Clinic have played key roles in litigation challenging Trump administration policies. Rosemary Joyce is Professor of Archeology and Chair of the Department of Anthropology at UC Berkeley. She has specialized in research on Honduras and Southern Mexico for more than 40 years. Denise Dresser is Professor of Political Science at the Instituto Tecnológico Autónomo de México. She is a prominent journalist, political analyst, and public intellectual in Mexico. Paula Worby has a doctorate in public health and is a researcher and writer for the Hesperian Health Guides. She lived in Guatemala for many years and has conducted research for the United Nations High Commissioner for Refugees. Elizabeth Oglesby is Associate Professor of Latin American Studies and Geography at the University of Arizona, Tucson. She has conducted research in

>>

A two-year-old Honduran asylum seeker cries as her mother is detained near the Mexico–U.S. border, June 2018.
(Photo by John Moore/Getty Images.)

Guatemala and served as an expert witness in the landmark 2013 Guatemala genocide trial.

Karen Musalo opened the event by reviewing legal aspects of recent asylum policy changes under the Trump administration. She began by reminding the audience that “seeking asylum is not illegal.” “Under domestic law and international treaty obligation,” she continued, “the United States is committed to protect people fleeing persecution, not to contribute to persecution.” Musalo quoted the language of the 1980 Refugee Act: “That any person physically present in the United States, or who arrives in the United States, whether or not at a designated point of arrival” has a legal right to apply for asylum. Despite this law and international treaties to which the United States has acceded, Musalo noted, the administration has “tried to thwart asylum seekers from seeking protection” through a number of actions and policies.

Metering, explained Musalo, is a policy that began in May 2018 wherein “U.S. Customs and Border Protection would... say that they didn’t have capacity to process people” who presented themselves at the Mexico–U.S. border seeking asylum in the United States. Musalo called this maneuver “an absurdity,” as “it was getting down to the level of just a handful of people getting processed every day, and the rest would be forced to wait in Mexico.” Those waiting often faced dangerous conditions, risking a gamut of violence from assault and rape to kidnapping and murder.

Next, Musalo explained “family separation,” the Trump administration migration policy that has generated perhaps the most media attention and controversy. On August 6, 2018, former U.S. Attorney General Jeff Sessions “notified all U.S. Attorney’s Offices along the Southwest Border of a new ‘zero-tolerance policy’ for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States.” Whereas asylum seekers were not typically prosecuted under previous administrations because of their right to enter to make an asylum claim, the Trump administration began to prosecute these cases. According to Musalo, this “fig leaf” was used to justify family separation on the basis that a parent would be detained in a “regular jail” and so children had to be separated from them.

This policy generated enough backlash that President Trump himself was politically obliged to sign an executive order ending family separation on June 20, 2018. By June 26, a court issued a preliminary injunction ordering the government to reunite families with children under the age of five within 14 days. Yet, Musalo pointed out, family separation “continues to this day, and hundreds

if not thousands of children have still not been reunited with their families; parents were deported without their children.... Most shamefully, the government instituted no policy whatsoever to be able to identify which child belonged to which parent to be able to actually unify them.”

Another government move came after Trump issued a “Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States” on November 9, 2018. One rule the Department of Homeland Security made to implement the proclamation prohibited asylum claims not made at points of entry, even as the metering policy continued at designated points of entry and despite the language in the Refugee Act. On November 19, 2018, Judge Jon S. Tigar of the U.S. District Court for the Northern District of California issued a nationwide temporary restraining order barring the rule from going into effect. On December 21, 2018, the Supreme Court led by Chief Justice John Roberts upheld the order, voting 5-4 to leave the lower court ruling in place.

The “Remain in Mexico” program, bureaucratically named “Migrant Protection Protocols,” started in January 2019. Musalo noted that the program is bitterly referred to by many migrants and advocates as the “migrant persecution protocols.” As of mid-September 2019, this policy has seen more than 42,000 migrant asylum seekers forced back from the U.S. border into Mexico to await their hearings. After being delayed in Mexico, asylum seekers in the program have been given mass hearings in tent courts erected along the border. Many migrants testify to the dangers they face in Mexico, and the hearings are criticized for a lack of due process, with only about 1.5 percent of migrants in the program able to access legal representation.

Musalo added that “with people sent back because of metering, you have probably 58,000 asylum seekers stranded in Mexico.” She cited a Human Rights First report detailing more than 110 publicly reported cases of “rape, kidnapping, sexual exploitation, assault, and other violent crimes against these asylum seekers returned under the [Migrant Protection Protocols].”

Musalo has played a crucial role in litigation challenging policy. “The ACLU and I were co-counselors,” she said, recalling the time they won a nationwide injunction against the policy that was later stayed. Musalo was emphatic that “the screening is a sham... people are left with no safe place to stay inside the most dangerous border cities in the world.”

Another new asylum provision is the so-called “third country” rule. On July 16, 2019, a joint rule was issued by the Departments of Justice and Homeland Security “to add



Photo by Gregory Bull/AP Photo.

This Salvadoran asylum seeker was kidnapped and forced into prostitution while migrating through Mexico, then returned to that country until her hearing.

a new bar to eligibility for asylum for an alien who enters or attempts to enter the United States across the southern border, but who did not apply for protection from persecution or torture where it was available in at least one third country outside the alien’s country of citizenship, nationality, or last lawful habitual residence through which he or she transited en route to the United States.” On July 24, 2019, Judge Tigar issued a preliminary injunction against the third country asylum rule. That injunction, however, was set aside by the Supreme Court on September 11, 2019, which stayed it by a vote of 7-2. In practice, this means that nearly all asylum seekers at the Mexico–U.S. border will have their asylum claims summarily denied, at least so long as the court cases continue without further rulings.

A major controversy surrounds the Trump administration policy of “ending the Flores Agreement” and allowing the “indefinite detention of family and children,” explained Musalo. Derided as “catch and release” by conservative critics, this agreement was a court-supervised settlement that resulted from the *Reno v. Flores* Supreme Court decision. The U.S. government and the Center for Human Rights and Constitutional Law (CHRCL) entered into the agreement in 1997 after a class-action lawsuit filed in 1985 against the U.S. government

on behalf of immigrant children in detention, including 15-year-old Jenny Lisette Flores. Under the supervision of the U.S. District Court of the Central District of California, the Clinton administration reached an agreement with the CHRCL to establish rules governing the treatment of children in detention. Later courts have interpreted the Flores Agreement to mean the federal government cannot detain children under the age of 18 more than 20 days. After that point, they had to be released, along with their families. The agreement also put minimum conditions on the detention of minors.

On June 20, 2018, President Trump issued the executive order that officially ended the “family separation” policy. It also directed then-Attorney General Jeff Sessions to ask the District Court for the Central District of California to “modify” the Flores Agreement to “allow the government to detain alien families together” for longer periods, which would include the time it took for the family’s immigration proceedings and potential “criminal proceedings for unlawful entry into the United States.” On September 6, 2018, the administration proposed a rule under the Department of Homeland Security to implement those modifications. On August 21, 2019, following court defeats at the district and appellate levels, the Department of

>>



Photo by Peg Hunter.

A pickup truck heads into the Arizona desert with water and supplies to aid endangered migrants.

Homeland Security issued a new rule that would allow migrant families to be held indefinitely. Just days later, Attorneys General from 19 states sued to stop this rule from going into effect.

Musalo expressed great hope that Judge Dolly Gee of the Federal District Court for the Central District of California would “do the right thing” regarding the Flores Agreement regulations. In fact, on September 27, 2019, Judge Gee issued a ruling that rejected the proposed Trump administration regulations. In denying decrees that would allow families and children to be detained indefinitely, Judge Gee described the government’s reasoning as “Kafkaesque.” It was in the context of the Flores decision that Judge Gee had compelled border area detention facilities to permit access for legal and medical teams that documented hygiene and overcrowding violations of minimal conditions compelled in prior legal decisions. These substandard conditions for children became an international media scandal. In her decision, Judge Gee reaffirmed, “The Flores Settlement Agreement remains in effect and has not been terminated.” The ruling remains the last legal line of defense for the rights of immigrant children in U.S. government detention.

Concluding her presentation, Musalo described how “the administration has attempted to change the

refugee definition it has issued” in order to “close down protection” for asylum seekers who have already made it to the United States. In June 2018, the U.S. Attorney General issued Matter of A-B, an effort to foreclose asylum claims based on domestic violence or threats by other nonstate actors such as gangs. This was a reversal of a Board of Immigration Appeals decision and 2014 precedent that had permitted such claims. On July 29, 2019, the Attorney General issued the decision, Matter of L-E-A, that according to Musalo, “tries to foreclose claims based on family relationship,” which is “a basis of protection” for those fleeing gang violence in a situation where a whole family is threatened.

Following a summation of the contemporary legal and policy situation at the border, other panelists provided broader historical, political, and economic contexts and perspectives, as well as detailed examples of how these government moves have played out for people on the border.

Rosemary Joyce spoke next about recent events, as well as their deeper historical causes, in Honduras. Joyce began by noting she “had the privilege of doing research in Honduras starting in the 1970s, and field work there through 2009, when a coup... tacitly approved by the United States removed the legal government.” She insisted “that we not lose track of the specificities of what’s being

done to countries and to citizens of countries [where] the United States has a long history of exploiting economies and political systems.”

Joyce recounted how, in 2009, President Manuel Zelaya’s legal government — “which had been taking a number of steps to try to reduce poverty ... and inequality in the country... steps that according to the United States’ own measures were successful” — was removed with U.S. coordination and approval. “The removal of the legal government and, most importantly, the aftermath,” Joyce continued, “led to the installation of the first of two successive presidents whose... affiliation with a small, wealthy, cosmopolitan international elite who are using the natural resources of the country and the government ... as a means to enrich themselves” was a crucial moment in the recent history of Honduras. “That 2009 moment basically changes the situation for most Hondurans. ... The conditions that were introduced in 2009,” Joyce explained, included impunity, “the ability of the very wealthy political elite to do what they wanted without any kind of accountability.”

While violence attributable to drug cartels has “subsided to a certain extent, lowering the murder rate,

[now] in many areas, the principal force imposing order is the local cartel.” Joyce reminded the audience that “the current President of Honduras, his brother, [and] his cousin are both under indictment in the Southern District of New York, and he is an unindicted co-conspirator.” She argued that drug cartels have given Honduras’s political elite additional opportunities to profit from “the misery and immiseration of the country.”

Joyce described the situation in Honduras overall as a “sort of capture of the government for the benefit of a small elite” and “to repress political opposition to the installation, initially, of the coup regime and later of the ... successor government that was elected with a minority of about 35 percent of the vote.” A more recent re-election has been strongly criticized for a lack of voting integrity. Because the government has used the police “as a security force that owes its ... loyalty primarily to the government and not the people,” Hondurans are reluctant to turn to the police, even in areas of high crime and insecurity. However, Joyce was also at pains to contest a U.S. media “exoticization” and “exaggeration” of Honduras “as an inherently violent country.” Rather, there is “a government that chooses not to exercise its responsibility for governance.”

continued on page 74 >>

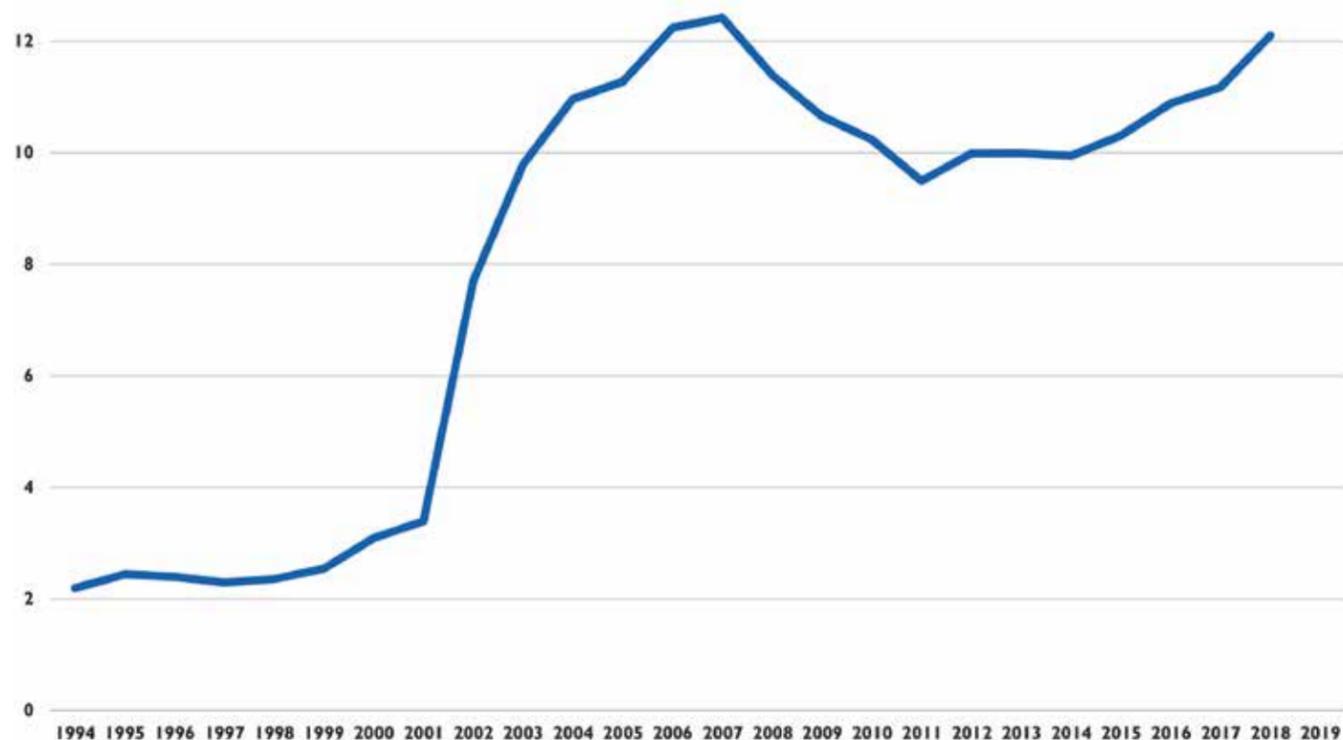
Honduran army soldiers surround supporters of ousted President Manuel Zelaya during the coup in Tegucigalpa, June 2009.



Photo by Eduardo Verdugo/AP Photo.

14 Guatemala: Remittances as Percent of GDP

Source: World Bank Economic Data, accessed February 19, 2020. Data for 2019 not yet available.



Guatemala's economy has become heavily dependent on remittances from people working abroad.

Central American Migrations

(continued from page 17)

Joyce emphasized “there are structural conditions that the United States is supporting because we support the government of Honduras.” The U.S. government sees the government of Honduras “as a major ally in the war against drug importation into the United States” and “a major neoliberal ally” in political and economic matters. This relationship has led to a dramatic rise in inequality since the 2009 coup, “probably the quickest rise in inequality that we’ve seen in modern times in the Western Hemisphere.” Joyce noted the very high rate of poverty in Honduras, with 61.2 percent of Hondurans living in poverty in 2018, according to the World Bank. Finally, Joyce argued that many Honduran migrants are being pushed out by “the increasing destruction of agricultural opportunity that comes with climate change, which is caused by the First World. ... This season’s agricultural yield is only 40 percent of what was hoped for.”

Next, Paula Worby addressed the paramount significance of migration to the economies of Central American nations, speaking specifically to Guatemala. “Migration,” Worby explained, “is so enormously entwined with the Guatemalan economy at every

level.” She first emphasized the major and growing role of migrant remittances. According to the Banco de Guatemala, remittances totaled nearly \$9.3 billion in 2018. This figure represented nearly 10 percent of the nation’s gross domestic product and came close to the \$11.2 billion of all exports, combining “traditional” agricultural and all “non-traditional” exports. Migrant remittances, she noted, “took off dramatically around 2000 ... and [have] been going up around 13 percent per year.”

Worby went on to explain that an entire economy has grown around migrating workers and their remittances, and in many cases, this economic sector is controlled by the traditional landed elite. Ancillary sectors to the massive migration of Guatemalans include “the cell phone companies, all the infrastructure and services, consumption of food that people are buying, all the cement and all the construction materials that people are using to build with money that’s been sent home.” This means “those major parts of the economy are also owned by people who have now a very vested interest [in] there being ... more migration and the maintenance of migrants in the United States,” Worby added. In

addition, there are illegal actors like “organized crime, human traffickers, gangs, [and] many others who are making money off of migration,” which has an impact not only on the economy of Guatemala, but on the integrity of the country’s institutions. This system of incentives ties into the ways in which “migration is a historic escape valve,” Worby continued. Of the Guatemalan elite that benefit from this system, Worby asked rhetorically, “Why would you want to ... use your own money to resolve long-standing inequality or structural deficiencies in Guatemala?”

This structural economic aspect underscores how difficult it can be to disentangle “purely economic” migration from asylum concerns, much less human rights and ecological issues not contemplated by asylum law. Structural violence — the ordinary violence of economic and political structures — does not map neatly onto the accepted legal reasons to seek asylum or simply to migrate. Worby was emphatic on this point. “It’s complicated! The way people leave or why people want to leave. It’s very multifaceted.” This complex reality stands in stark contrast “with the ever more narrow asylum laws that

say ‘no, it can only be one ... thing.’” In this context, she asked, “How many experiences do not make a good asylum claim here?” And “what about all the people who don’t even see themselves as asylum seekers?” is a closely related question. “In my experience,” Worby explained, “I’ve seen more people who came out of a war-torn, violent situation who are self-excluding.” This is the case despite current estimates from the United Nations High Commissioner for Refugees of nearly 90,000 Guatemalans seeking asylum per year, a 12-fold increase compared with 2010. Worby linked this century’s massive upsurge in migration to the period after which it became clear that the 1996 peace accords, which were meant to put an end to decades of war and violence that especially harmed indigenous populations, were not going to “pan out.”

“Migration just has its own dynamic,” Worby concluded, “and it has hit its tipping point.” This dynamic includes factors from macro-ecological to familial and personal. Worby noted that in Guatemala as in Honduras, one factor was “people losing their land [in] very coercive ways” for “different kinds of monocropping ... for export crops, African palm being

>>

Panel members (from left): Rosemary Joyce, Paula Worby, Beatriz Manz, Elizabeth Oglesby, Karen Musalo, and Denise Dresser.



Photo by Jim Block

one of them.” Another trend is “narco-ganado,” a way of laundering drug money through cattle ranching, which exacerbates and accompanies “the whole impact of climate disaster: there being no rain, there’s no harvest, the water sources having dried up.” All these factors have been major contributors to mass displacement.

Finally, Worby spoke to “young people’s natural wish to migrate.” She put this in the context of the “tipping point” of geographical areas and extended families where many have already out-migrated, forming a network of contacts and experiences. “They’ve seen other people go,” Worby explained. “They’ve seen people be successful, and they want to help out their parents, and they want to put the younger siblings through school ... they want to help start the family business.” She concluded by emphasizing that these “very compelling reasons” are “all entangled in answering the question why people migrate.” If you keep asking why, said Worby, “you get to these structural deep issues.”

Denise Dresser spoke next about the political situation in Mexico during the Trump administration. “We are now where many people feared and some predicted,” Dresser opened. She evocatively described Mexico as a metaphorical “backyard for President Trump.” That is, “the place where you wash the dirty laundry, you throw out the trash, you put up barbed wire.”

Moreover, Dresser explained, “Mexico has become a wall. We are de facto the barrier between immigrants and a president in the United States that presents them as a national security threat.” Mexico has been left “in charge of chasing, detaining, deporting, and stopping everyone who goes through Mexico in search of opportunities and security they can’t find in their own country,” said Dresser. She suggested it was a bitter irony that “we are now going to do” to migrants seeking transit through Mexico “what the United States did for decades with our migrants, which is criminalize them and persecute them.”

Dresser acknowledged that Mexico had only agreed to the arrangement when the Trump administration used trade arrangements to induce the Mexican government to cooperate. Trump threatened to impose 5-percent tariffs on all Mexican goods, starting in June 2019 and increasing 5 percent per month to 25 percent by October 2019, if the country did not agree to new measures to stem migration from Central America. Dresser explained that in a June 7, 2019, joint declaration, Mexico agreed to immediately expand the “Remain in Mexico” program along the entire border and to deploy “6,000 members of the newly created and militarized National Guard” troops along its southern border with Guatemala. While

comprehensible in this context, Dresser argued, the decision to go along with the Trump administration on this policy came “at the expense of dignity, immigration law, and international treaties” that Mexico has ratified.

Dresser also reminded the audience that this type of policy was “very far from the initial rhetoric” of Mexico’s President Andrés Manuel López Obrador, who “was offering humanitarian visas, asylum, and aid and assistance to the caravans that were slowly making their way through the country.” She recalled that “back in December [2018], the head of the national immigration institute was talking about immigration policy in Mexico based on human rights and development.” Instead, the resources of state security have been expended in harassing migrants and asylum seekers, with the Mexican National Guard raid of a migrant safehouse being a particularly poignant example.

This has left Mexico “in the worst of all possible worlds.” Mexico, Dresser said, has become “not only a backyard ... not only a wall, [but] also a waiting area” as the crisis along the border intensifies. “What you’re seeing along the border is a growing humanitarian crisis,” she continued, “because Mexico does not have the capacity to absorb people and provide them with a safety net while they wait.”

Despite the dire humanitarian circumstances, which are also strategically unfavorable, Dresser said that “polls show ... that Mexicans are happy to accept this situation.” Such “anti-immigrant sentiment” is growing in Mexico, argued Dresser, in part because of the “rhetoric of the government ... saying that immigrants take away jobs and use resources.” In this way, she said, “Mexico is emulating everything that the United States has done and is doing and faced the costs.”

Finally, Elizabeth Oglesby talked about the situation at the border in her local community in Tucson, Arizona. She began by “interrogating the language and the framework of ‘border crisis’” and then discussed the local realities “in terms of migrant crossing and also in terms of the local community’s humanitarian response.”

One major conclusion was just how distant the political and media rhetoric of “border crisis” can be from the lived reality of migration across the Mexico–U.S. border. Oglesby emphasized that “we’ve seen media attention to Central American migration really since 2014–2015 and now again since Trump has decided to make Central Americans enemy number one.” Yet, she noted, “despite all the media hysteria about a border crisis,” border apprehensions are still significantly lower than the peak reached in 2000, at more than 1.6 million, even after an uptick to some 400,000 in 2018.



Photo by Sarah Mirik

A protest against the Trump Administration’s immigration policies, June 2018.

Oglesby argued that one reason “Central American migration [is] so visible now” is because “Mexican migration has declined so drastically.” A related reason is that “people are coming across in a different way than they did in the 1980s and 1990s.” During those decades, migration “wasn’t visible because it was mostly single adults,” who were trying to avoid detection, but “now we see families coming, parents with children” who are “coming across the border but then ... surrendering to the Border Patrol, so it’s very visible.”

Oglesby emphasized that in recent decades, U.S. government border enforcement policies have been the greatest contributor to chaotic and harmful conditions at the border. One key reason for the changes in migration she described is that the “journey across the border became so risky and so expensive.” She noted that “in the 1990s, it only cost ... \$1,000 maybe \$2,000 to make that journey all the way from Central America. Now, it costs \$10,000 or \$12,000.” Along with “the militarization of the border ... the border walls and all of the policies that have been enacted to punish migrants ... has shaped the kind of patterns that

we’re seeing.” An earlier model in which “single adults would come to the United States and work for a while and then go back to their families in Central America ... that’s no longer viable.” Whereas in the previous model, “the labor was happening in the United States, but the social reproduction in the families and the communities was happening back in Central America,” now “because people cannot go back and forth ... a big part of what we’re seeing is also family reunification ... if families want to stay together ... the whole family has to come.”

Speaking from her experiences working in community groups and shelters assisting migrants along the Mexico–Arizona border, Oglesby closed by discussing the political aspects of border enforcement. She related stories of large-scale releases of migrants from detention timed to correspond to the impending 2018 U.S. congressional elections and seemingly geared for media impact. She noted that in “Yuma, Arizona, they did release people on the streets, even though there were empty shelter beds in Tucson and Phoenix.” Based on these experiences, “we do get the sense that this is a kind of manufactured crisis, a manufactured chaos.”

>>

Finally, Oglesby argued that when migration is viewed mainly through a security lens and the rhetoric of crisis is predominant, the moral concern for migrants as human beings can become displaced into more emotive and theoretical political and policy discourses.

Overall, the panel clarified that the most crucial issues driving the dynamics of Central American migrations to the U.S. border are large scale and long term in nature — from U.S. foreign policy to vested economic interests and climate change. This means that the political and moral issues associated with these migrations will continue to confront the United States. The discussion provided critical insight for a situation that continues to unfold.

References available online at clas.berkeley.edu.

On September 4, 2019, CLAS welcomed experts on Central America and migration to a panel about the context, current situation, and future of migration between Central America and the United States. The panel included Denise Dresser, Professor of Political Science, Instituto Tecnológico Autónomo de México; Rosemary Joyce, Professor of Anthropology, UC Berkeley; Karen Musalo, Professor of Gender and Refugee Studies, UC Hastings; Elizabeth Oglesby, Associate Professor of Latin American Studies and Geography, University of Arizona, Tucson; and Paula Worby, Ph.D., Public Health Researcher, Hesperian Health Guides. The panel was moderated by Beatriz Manz, Professor Emerita of Geography and Ethnic Studies, UC Berkeley.

James Gerardo Lamb is an instructor in the Department of Sociology at UC Berkeley.



Border patrol agents process a group of migrants in El Paso, Texas, March 2019.
(Photo by Jaime Rodriguez Sr./Customs and Border Patrol.)