

“Zero Tolerance” Cruelty: Separating Families at our Southern Border

On April 6, 2018, Attorney General Jeff Sessions announced a new [zero-tolerance policy](#) calling for the criminal prosecution of all migrants who cross between ports of entry, including individuals seeking U.S. refugee protection and parents traveling with children. It is important to note, however, that family separations were already occurring at alarming rates before Sessions’ announcement. Between October 2017 and mid-April 2018, over 700 children were separated from their parents, many of whom had requested asylum at official ports of entry.

Since the implementation of this new policy, advocates and reporters have shed light on the substantial increase in family separation cases, including those occurring at U.S. ports of entry—which should be exempt from Sessions’ zero-tolerance practices. The Deputy Chief of the Operations for Customs and Border Patrol (CBP) testified at a May 2018 [Senate Judiciary Hearing](#) that 638 parents were separated from 658 minor children during the first two weeks of the policy alone. A federal public defender in McAllen, Texas said that while he used to see one or two cases of family separation per week, he had [33 cases](#) of family separation during just one week in mid-May.

The Trump Administration’s use of criminal prosecutions and family separation to deter and penalize people legally seeking refuge escalated over the last year, as Human Rights First detailed in a January 2018 [report](#). Sessions’ zero-tolerance policy needlessly separates families, violates the rights of refugees, and has increased the already rising level of prosecutions.

Family Separation Has Significant Legal and Health Implications

When parents crossing the border are referred for criminal prosecution, they are forcibly separated from their children. Considered “unaccompanied” due to the separation, the children are placed into the custody of the Office of Refugee Resettlement (ORR), within the U.S. Department of Health and Human Services. ORR is then responsible for finding family members or foster families to care for the child. Separated family members often [struggle](#) to find each other, with some children or parents deported alone without information on how to reunite with the rest of their family. There is no process in place for the children to communicate with their parents, or for parents to receive information on where their children are being held. Additionally, when children are rendered unaccompanied, their legal cases are severed from their parents’, which causes significant problems when their claims are linked or related.

Medical professionals, including the American Academy of Pediatrics, have condemned the practice of family separation, explaining that this “highly stressful experience . . . can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health.”

While the administration claims that only those families who illegally cross between ports of entry will be separated, families who follow the law and present themselves to border officials seeking their legal right to asylum have also been separated. For example:

- ✓ [Mirian](#), a Honduran asylum seeker fleeing government persecution, presented at a port of entry in Brownsville, Texas with her 18-month-old son asking for protection. She presented several documents verifying their biological relationship, including his birth certificate. Despite this, she was forcibly separated from her son and sent to the Port Isabel Detention Center.
- ✓ [Ms. G](#), a Mexican asylum seeker, presented at a port of entry in Nogales, Arizona with her blind six-year-old daughter and her four-year-old son. Ms. G presented documentation demonstrating her relationship to her children but was sent to the Eloy Detention Center while her children were sent into ORR custody.
- ✓ A Honduran mother detained at the T. Don Hutto Residential Center was forcibly separated from her one year and nine-month-old son earlier this year after they requested asylum at a port of entry. She did not learn where her son was being held for two weeks.
- ✓ A [father](#), mother, and their 15-year-old daughter fled government threats in Venezuela in May 2017 and entered the United States near Presidio, Texas. Upon apprehension, the family handed border patrol agents U.S. forms requesting asylum. Despite their clear indication of an intent to seek asylum, border patrol separated the girl from her mother, placed her in a federal foster care center in El Paso, Texas, and referred her parents for criminal prosecution.
- ✓ A [mother](#) and her three young children fled El Salvador and crossed into the U.S. near El Paso, Texas. The mother told border patrol agents that she had received death threats from a gang and needed asylum. Although she presented the children's birth certificates proving her relationship to them, immigration officials took her children away and placed them in federal foster care in New York. Agents then detained the mother and convicted her of illegal entry.

Recommendations:

Congress and the Trump Administration should stop using the criminal justice system to attempt to deter people from seeking U.S. refugee protection and penalize those who come to our borders. Instead, they should uphold this country's refugee protection laws and treaty commitments by:

- ✓ End the cruel practice of separating parents from their children.
- ✓ Rescind the "zero tolerance" policy and end the practice of referring asylum seekers for criminal prosecution for illegal entry or illegal reentry, as such prosecutions constitute a violation of the Refugee Convention. Instead, CBP should refer asylum seekers to appropriate protection screening interviews.
- ✓ Congress should halt all funding for the criminal prosecutions of asylum seekers and reject proposals to further criminalize asylum seekers and migrants, including proposals to increase sentences or expand the scope of the crimes of illegal entry or illegal reentry.
- ✓ Effectively address the Central American refugee crisis through steps including:
 - Support initiatives to tackle human rights abuses plaguing refugee-generating countries and the development of effective asylum systems in the region;
 - increase aid and development investment in refugee-hosting countries;
 - and set a strong example by adhering to U.S. laws and treaties on the reception and treatment of those seeking refugee protection in the United States.