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How Trump's Land of the Free Turned into the Home of the Cages for Immigrant Families Seeking Asylum

Christina Mendoza

In the spring of 2018, former United States Attorney General Jeff Sessions, of the Trump administration, announced a zero-tolerance policy for “criminal illegal entry” into the United States.¹ The policy warned “those who wish to challenge the Trump administration’s commitment to public safety, national security, and the rule of law” that illegal entry into the country will “be met with the full prosecutorial powers of the Department of Justice.”² The zero-tolerance policy significantly harmed migrant children and parents seeking asylum in the United States by forcefully separating them from each other and placing them in detention centers across the nation.³ The Trump administration should be held accountable for the effects of the zero-tolerance policy and make reuniting the separated families a priority.

In July of 2018, Health and Human Services (HHS) reported that nearly 3,000 children were separated from their families after being detained by U.S. Customs Enforcement.⁴ Just nine days before this report was released, HHS estimated that the number of children separated from their families and under HHS care was 2,047, suggesting a rapid increase in the separation of families at the border.⁵ Facing public outcry opposed to the inhumane separation of infants and children from their families, the Trump administration justified these actions by blaming the separations on immigration policies created by the Democratic Party.⁶ President Trump said, “The Democrats have to change their law — that’s their law.”⁷

¹ *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry*, DEPARTMENT OF JUSTICE (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

² *Id.*

³ See *The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children*, SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT, <https://www.srcd.org/policy-media/statements-evidence/separating-families>.

⁴ Clare Foran, *HHS Now Estimates Under 3,000 Kids Separated from Parents in Government Custody*, CNNPOLITICS (July 5, 2018, 6:30 PM), <https://www.cnn.com/2018/07/05/politics/separated-families-border-immigrants-number-of-kids/index.html>.

⁵ *Id.*

⁶ Maya Rhodan, *Here Are the Facts About President Trump's Family Separation Policy*, TIME (June 20, 2018, 10:37 AM), <http://time.com/5314769/family-separation-policy-donald-trump/>.

⁷ *Id.*

CONDITIONS AT DETENTION CENTERS NATIONWIDE

Conditions at the detention centers were obscured by a lack of transparency by Immigration Customs Enforcement (ICE) officials, forcing journalists to seek entry at detention facilities across the nation to uncover the conditions in which refugees were being detained.⁸ They discovered appalling conditions, such as cramped detention quarters surrounded by chain-linked fences.⁹

In an open letter to the public, an anonymous migrant woman staying at a detention facility described it as “la perrera” or dog pound, due to the chain-link fences surrounding her.¹⁰ She further revealed that she was not allowed to bathe for up to eight days at a time, and stated that refugees were sometimes punished at the facility or even refused food and water.¹¹

Children at the detention facilities were kept indoors for twenty-two hours each day and forced to sleep on thin mats with foil-colored blankets.¹² Children took care of other children, with teenagers at the facilities teaching the younger children how to change the diapers of infants.¹³ The sounds of crying and distraught children permeated the detention facilities, with ICE officers caught on audio tape mocking the kids.¹⁴ On a tape recording, one ICE officer can be heard saying “we have an orchestra here” as children cried in the background; a second officer can be heard saying “all we need is a conductor.”¹⁵

THE DANGERS OF FAMILY SEPARATION

Children who are forcefully separated from their parents are at risk of suffering from toxic-stress, which is prolonged exposure to severe stress that can cause irreparable harm and disrupt the architecture of a child’s developing

⁸ Jacob Soboroff and Julia Ainsley, *McAllen, Texas, immigration processing center is largest in U.S.*, NBCNEWS (June 18, 2018, 5:38 AM), <https://www.nbcnews.com/news/us-news/mcallen-texas-immigration-processing-center-largest-u-s-n884126>.

⁹ *Id.*

¹⁰ Emanuella Grinberg, Jamiel Lynch and Keith Allen, *‘They treated us as though we were animals’: Letters from Inside an Immigration Detention Facility*, CNN (July 4, 2018, 2:57 PM), <https://www.cnn.com/2018/07/03/us/detention-center-letters-grassroots-leadership/index.html>.

¹¹ *Id.*

¹² Soboroff and Ainsley, *supra* note 8.

¹³ *Id.*

¹⁴ M.L. Nestel, *Audio Recording Emerges of ‘Orchestra’ of Crying Children in Migrant Detention Center*, ABC NEWS (June 19, 2018, 2:08 AM), <https://abcnews.go.com/US/audio-recording-emerges-orchestra-crying-children-migrant-detention/story?id=55986000>.

¹⁵ *Id.*

brain.¹⁶ The American Academy of Pediatrics (AAP) issued a statement denouncing the zero-tolerance policy and urged the Department of Homeland Security to stop the separation of children from their families.¹⁷

In this statement, AAP President Colleen Kraft noted that “[s]o many of these parents are fleeing for their lives. So many children know no other adult than the parent who brought them here. They can be as young as infants and toddlers.”¹⁸ Kraft argued that the policy of separating children from their families contradicts the protection and promotion of children’s health, stating that “immigrant children are still children; they need our protection, not prosecution.”¹⁹

The American Psychological Association also called upon the Trump administration to stop the separation of families, noting that the policy of “separating children from their families as they attempt to cross into the United States without documentation is not only needless and cruel, it threatens the mental and physical health of both the children and their caregivers.”²⁰ The statement stands on psychological research that shows that immigrant families experience unique stressors related to the violence or other conditions that led them to flee their home country in the first place, and the separation of families causes harmful and long-term effects to both the children and their caregivers.²¹

Unfortunately, the effects of the Trump administration’s policies do not just exist in theory. In May of 2018, a Honduran man became severely distraught at a Starr County, Texas detention facility after Border Patrol agents separated him from his wife and three-year-old child.²² The man suffered a

¹⁶ *AAP Statement Opposing Separation of Children and Parents at the Border*, AMERICAN ACADEMY OF PEDIATRICS (May 8, 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Statement of APA President Regarding the Traumatic Effects of Separating Immigrant Families*, AMERICAN PSYCHOLOGICAL ASSOCIATION (May 29, 2018), <https://www.apa.org/news/press/releases/2018/05/separating-immigrant-families.aspx>.

²¹ *Id.*

²² Nick Miroff, *A family was separated at the border, and this distraught father took his own life*, THE WASHINGTON POST (June 9, 2018), https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html?utm_term=.8092262e02e6.

death by suicide shortly after the separation from his family, and the death was not publicly reported by the Department of Homeland Security.²³

Additionally, reports of abuse and sexual assault at immigrant detention centers also surfaced this year, with allegations that ICE guards sexually abused immigrant women held in detention centers.²⁴ In May of 2018, Maria, a woman staying at the T. Don Hutto Residential Center in Texas was released after being permitted to stay with her brother in Washington, D.C. while her asylum case was pending.²⁵ Maria packed up her few belongings on the morning of her release and was escorted into a van with a male ICE guard.²⁶ Shortly after leaving the detention center with Maria, the ICE guard took advantage of the vulnerable situation by driving onto a dirt road, tying up Maria's hands and repeatedly sexually assaulting her.²⁷ Immigrants in detention centers are placed in a vulnerable position compared to the power of ICE officers, and abuse toward refugees must be addressed.²⁸

THE CRUEL MESSAGE CONVEYED BY FAMILY SEPARATIONS

By enacting cruelly punitive immigration policies, such as the separation of families, the Trump administration promotes a toxic notion that refugees are undeserving of humane treatment. The Trump administration's continued use of scare tactics and belittlement of immigrant's rights, sends the message that immigrants and refugees are not welcome in the United States. According to Fred Tsao, the Senior Policy Council at the Illinois Coalition for Immigrant and Refugee Rights, these messages "may play well with domestic audiences who are less concerned about humanitarian crises elsewhere in the world and who may be hostile toward newcomers whom they perceive as threatening."²⁹ The hostile attitude toward immigrants and refugees incites hate crimes, bigotry, and violence toward immigrants as well.³⁰

²³ *Id.*

²⁴ Emily Kassie, *Sexual Assault Inside ICE Detention: 2 Survivors Tell Their Stories*, NYTIMES (July 17, 2018), <https://www.nytimes.com/2018/07/17/us/sexual-assault-ice-detention-survivor-stories.html>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Email Interview with Fred Tsao, Senior Policy Counsel, Illinois Coalition for Immigrant and Refugee Rights (Nov. 9, 2018).

³⁰ Brendan Campbell, *Rising hate drives Latinos and immigrants into silence*, THE CENTER FOR PUBLIC INTEGRITY (Aug. 22, 2018), <https://www.publicintegrity.org/2018/08/22/22119/rising-hate-drives-latinos-and-immigrants-silence>.

The scare tactics of the Trump administration, and the risk of violence by members of society who view immigration with hostility will not deter asylum seekers from pursuing safety and a new home in the United States.³¹ People will take extraordinary risks for the chance to find a safe and secure home when they have experienced and escaped from horrifying conditions in their home country.³² Therefore, the Trump administration should set an example for the humane treatment of refugees, rather than impose harmful policies that send the message of immigrants not being welcome in the United States.

HOLDING THE TRUMP ADMINISTRATION ACCOUNTABLE

In addition to public protests across the nation,³³ litigation against the Trump administration also arose as a result of the family separation policy.³⁴ In 2018, the American Civil Liberties Union (ACLU) filed a federal class-action suit against ICE on behalf of parents who were wrongfully separated from their minor children.³⁵ The parents sought an injunction, or an order from the court, to stop the practice of family separation, but ICE requested that the court dismiss the case.³⁶

The parents in the lawsuit alleged that the separation from their children after seeking asylum and *without* determining that the parents were unfit to care for their children, was a violation of their due-process rights.³⁷ The Fifth Amendment of the United States Constitution provides that no person shall be “deprived of life, liberty or property” without due process of the law.³⁸ This clause protects immigrants, as well as citizens, because the Constitution protects individuals within the territory of the United States, regardless of immigration status.³⁹ Moreover, the right to family integrity and the right to keep

³¹ Tsao Interview, *supra* note 29.

³² *Id.*

³³ See Dakin Andone, *Coast-to-coast protests denounce Trump immigration policies*, CNN (June 30, 2018), <https://www.cnn.com/2018/06/30/us/june-30-immigration-protests/index.html>.

³⁴ *Family Separation in Court: What You Need to Know*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/family-separation-court-what-you-need-know>.

³⁵ *Ms. L. v. U.S. Immigration & Customs Enft.*, 302 F. Supp. 3d 1149, 1155-56 (S.D. Cal. 2018).

³⁶ *Id.* at 1155.

³⁷ *Id.* at 1154.

³⁸ U.S. CONST. amend. V.

³⁹ *Ms. L.*, *supra* note 35 at 1161.

one's family together is a protection judicially afforded under the Fifth Amendment although it is not explicitly stated in the Constitution.⁴⁰

Furthermore, when the actions of governmental officers is so egregious and outrageous that it "shocks the conscience," a violation of due-process may be found.⁴¹ In the case of *Ms. L v. U.S. Customs Enforcement*, the district court held that the actions of the governmental officers in separating the families indeed shocked the conscious and denied the government's request to dismiss the case.⁴² On a separate date, a federal judge granted the parents' injunction to stop the separation of families and ordered their reunification.⁴³ ICE was given until July 26, 2018 to reunite all separated children with their parents, but failed to meet this deadline.⁴⁴

A CALL FOR THE REUNIFICATION OF FAMILIES

The practice of separating families seeking a safe-haven in the United States after fleeing violence and poverty is inhumane and goes against the values of this country as a nation of immigrants. Beyond national security, immigration policies must take into account the humanitarian duty to ensure the well-being of immigrants seeking safety, security, and new opportunities in the United States.⁴⁵

Although in June of 2018 President Trump issued an executive order ending the practice of family separations, the executive order did not address the situation of families affected by the policy before the executive order was issued.⁴⁶ The Trump administration stated that over 450 parents may have been deported without their children,⁴⁷ and hundreds of minors remain in government custody.⁴⁸ The court-mandated deadline to reunite families has long

⁴⁰ *Id.* at 1162-65.

⁴¹ *Id.* at 1165.

⁴² *Id.* at 1167.

⁴³ *Id.* at 1149-50.

⁴⁴ *Family Separation in Court*, *supra* note 34.

⁴⁵ Tsao Interview, *supra* note 29.

⁴⁶ Richard Gonzales, *Trump's Executive Order On Family Separation: What It Does And Doesn't Do*, NPR (June 20, 2018), <https://www.npr.org/2018/06/20/622095441/trump-executive-order-on-family-separation-what-it-does-and-doesnt-do>.

⁴⁷ Miriam Jordan, *More Than 450 Migrant Parents May Have Been Deported Without Their Children*, THE NEW YORK TIMES (July 24, 2018), <https://www.nytimes.com/2018/07/24/us/migrant-parents-deported-children.html>.

⁴⁸ Arelis R. Hernández, *Nearly 250 migrant children still separated from parents*, ACLU report says, THE WASHINGTON POST (Oct. 18, 2018), <https://www.washingtonpost.com/local/immigration/nearly-250-migrant-children-still-separated-from-parents-aclu-report-says/2018/10/18/>

passed,⁴⁹ and the Trump administration must be held accountable for its failure to comply with this deadline. As a nation built by immigrants,⁵⁰ the United States should welcome refugees and allow them to thrive in a new and secure home.

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⁴⁹ *Family Separation in Court*, *supra* note 34.

⁵⁰ See Jose Antonio Vargas, *Immigrants Make America Great, Because Immigrants Made America*, HUFFINGTONPOST (May, 26, 2017), https://www.huffingtonpost.com/entry/immigrants-make-america-great-because-immigrants-made_us_5928a40ce4b08861ed0cc96d.