



DIVIDING FAMILIES: THE DEPARTMENT OF JUSTICE'S PLAN TO SEPARATE CHILDREN FROM PARENTS

MAY 2018

On May 7, 2018 Department of Justice (DOJ) Attorney General Jeff Sessions announced a “zero tolerance” policy for immigration into the United States, asserting that the DOJ would prosecute and separate families who attempt to cross the border.¹ This move to promote policies aimed at separating parents and children builds on the Administration’s previous attempts and similar **statements** made by current White House Chief of Staff John Kelly during his time as Secretary of the Department of Homeland Security. These efforts are, at their core, cruel and racist, and directly threaten the health and safety of immigrant children and families. Separating families stands in direct contradiction to research on promoting the well-being of children and families – it is well-documented that when children can remain safely with their parents, removing children from their families is disruptive and traumatic and can have **long-lasting, negative effects**. In addition, these policies will also lead to children being placed in the custody of an already overburdened Office of Refugee Resettlement (ORR). Further, the practice of separating families as a deterrent for immigration has not been shown to be effective and flies in the face of what we know about the basic, humanitarian needs of immigrants, their rights under federal and international law and the important role of family unity in promoting the social and emotional development of children.²

Attorney General Session’s plan also inaccurately characterizes parents who are attempting to bring their children to safety as “smugglers” and includes a decision to increase the number of judicial and prosecuting attorneys deployed to the Southwest border. This mischaracterization of parents fails to recognize that many of these families are seeking asylum and risking everything to ensure their children’s safety, often escaping extreme violence or gang recruitment. In FY2017, Customs and Borders Protection (CBP) encountered 75,622 children and their parents at the Southwest border the majority of whom were seeking asylum from countries known for heavy gang violence, turmoil and instability.³ For families seeking asylum, this policy further penalizes them because their only legal path to applying for asylum is upon their arrival to the United States or once they are living here.

Family separation due to immigration detention places children at greater risk of psychological trauma and toxic stress.⁴ According to the American Academy of Pediatrics (AAP), separating children from their parents as they seek refuge in the United States compounds the fears and anxieties they experience during an already emotionally and physically stressful time.⁵ Instead, the AAP recommends that children remain with parents, family members and caregivers during any time of anxiety or stress. Current practice is aligned with this research and supports keeping families together when possible. At present, women and children who are apprehended together are placed in one of three family detention centers for up to 21 days before being released on bond, recognizance or participation in an Alternative to Detention (ATD) program while their case is pending before an immigration judge.

Under Attorney General Session’s plan to separate parents and children and in accordance with current law, children must be transferred to the custody of the ORR within 72 hours of their detainment. ORR then works to reunify these children with a parent or family member or places them in short- or long-term foster care while they await the outcome of their immigration court proceedings.^{6,7} Following Attorney General’s Session’s announcement, White House Chief of Staff Kelly displayed a shocking lack of understanding of the policy when he was quoted as saying that “the children will be taken care of – put into foster care or whatever.”⁸ This comment is both callous and inaccurate. ORR placements are not the same as foster care homes licensed and monitored through state child welfare agencies. Oversight and funding for foster care for unaccompanied children is not done by child welfare systems but rather through ORR and its subcontractors, who are not held to the same licensing requirements.⁹



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More importantly, it has been well documented that ORR does not have the resources or capacity to ensure the safety and well-being of these children. Last month Steven Wagner, Acting Assistant Secretary of the Administration for Children and Families, disclosed that the agency had lost track of nearly 1,500 migrant children it had placed with sponsors in FY2017.¹⁰ In 2016, the Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations found that ORR was unable to safeguard children from sponsors attempting to “accumulate multiple children,” often failed to require and complete background checks on non-sponsor adult household members or backup sponsors, did not adequately use home studies or provide post-release services and often did not ensure a sponsor has adequate income to support an unaccompanied child. Furthermore, the report found that sponsors often did not ensure these youth appeared at their immigration proceedings, which could cause irreparable harm to their ability to obtain immigration relief.¹¹

Time and time again this administration has displayed a willful disregard for the safety, health and well-being of immigrant children and families. Attorney General Sessions’s plan is the most recent example of this and will only further harm children and families, many of whom have experienced trauma both in their home countries as well as during their journey to the United States. Instead of separating children and families, DOJ and DHS should work to ensure that children and families remain together throughout the entirety of their immigration court case and increase supports at the border to help families process and cope with their often traumatic pasts.

For more information on policy recommendations to protect family unity at the border, past policy efforts to separate families and the costs and implications of separating children and parents, please see CSSP’s Fact Sheet [Dividing Families: The Department of Homeland Security’s Plan to Separate Children from Parents](#) as well as [Betraying Family Values: How Immigration Policy at the United States Border is Separating Families](#) and [Separating Mothers from their Children at the Border is Wrong and Costly](#) by KIND and the Center for American Progress.

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1. <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>
 2. Jones, J., Obser, K., & Podkul, J. (2017). *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*. Retrieved from <https://reliefweb.int/sites/reliefweb.int/files/resources/BetrayingFamilyValues-Feb2017.pdf>
 3. U.S. Department of Homeland Security Customs and Border Protection. (2017). *United States Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2017*. Retrieved from <https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017>
 4. <https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families>
 5. American Academy of Pediatrics. (2017). AAP Statement Opposing Separation of Mothers and Children at the Border. [Press release]. Retrieved from <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx>
 6. Immigration experts attest that children who enter the United States with their parents are less likely to have other family members already living in the United States, meaning that a majority of children separated from their parents and referred to ORR under Sessions’s policy will likely need to be placed in short- or long-term foster care.
 7. Schmidt, S. (2017, March 7). DHS is considering separating mothers and children who cross the border illegally. The Washington Post. Retrieved from https://www.washingtonpost.com/news/morning-mix/wp/2017/03/07/dhs-is-considering-separating-mothers-and-children-who-cross-the-border-illegally/?utm_term=.c8b311c3eb75
 8. <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>
 9. U.S. Conference of Catholic Bishops and Lutheran Immigration and Refugee Service. (n.d.). Foster Care for Unaccompanied Refugee and Immigrant Children. Retrieved from <https://www.cssp.org/policy/2017/Safe-Spaces-Immigrant-Children-Families.pdf>
 10. <https://www.nytimes.com/2018/04/26/us/politics/migrant-children-missing.html>
 11. U.S. Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations. (January 28, 2016). Majority and Minority Staff Report - Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement. Retrieved from <https://www.hsgac.senate.gov/imo/media/doc/Majority%20&%20Minority%20Staff%20Report%20-%20Protecting%20Unaccompanied%20Alien%20Children%20from%20Trafficking%20and%20Other%20Abuses%202016-01-282.pdf>