



Family Separation at the Border

The Administration's "Zero Tolerance" Policy: De Facto Family Separation

On May 7, 2018, Attorney General Jeff Sessions announced a "[zero tolerance](#)" policy towards border crossers apprehended between ports of entry. Under the policy, border officials with the Department of Homeland Security (DHS) are to refer every individual apprehended near the border who did not present at an official port of entry to the Justice Department (DOJ) for criminal prosecution for illegal entry or illegal re-entry. The government made clear that such referrals for prosecution may include individuals seeking asylum, despite the fact that prosecution inhibits access to protection and despite recent reports that many asylum seekers who instead seek asylum at ports of entry have been [denied the opportunity to present themselves](#). It also means that adults traveling with children will be separated. Although the policy focuses on prosecution, it is clearly a *de facto* family separation policy – something the Trump Administration has long [threatened](#) and been [rumored](#) to consider. It also follows on a growing trend of family separation that advocates have observed for months – including as documented in an administrative [complaint](#) and [lawsuit](#).

Although the new policy focuses on those apprehended between ports of entry, it is important to note that, even if not referred for prosecution, the administration has also separated families presenting at a port of entry.

Where Do Separated Parents and Children Go?

Once separated, parents will go to the custody of the U.S. Marshals for criminal prosecution and/or the custody of Immigration and Customs Enforcement (ICE) for their immigration case after their criminal case. Children considered "unaccompanied," either because they arrived alone or because they are separated from their parents, are transferred to the custody of the Office of Refugee Resettlement (ORR), within the Department of Health and Human Services (HHS). It is often impossible for children and parents to find each other and to reunite, even when one is [deported](#).

What about the "Missing Children"?

Once in ORR custody, unaccompanied children are screened for protection concerns and are eventually reunited with sponsors in the community. On April 26, 2018, an official with ORR--the office responsible for the care and custody of unaccompanied children, including children who *may* have been separated from their parents at the border – [testified](#) that in its follow-up calls between October and December 2017 to more than 7,600 sponsors with whom children had been placed, the agency could not determine the whereabouts of 1,475 children. This does *not* mean that the children were lost while in government custody, but rather, that the government could not confirm their whereabouts by phone during the period in which the calls were placed.

The number is *not* [specifically linked](#) to family separation, and it dates from 2017, before the Administration's zero-tolerance policy was announced. However, given that family separation related to increased prosecution will increase the number of children referred to ORR, it is more important than ever that ORR be provided the resources it needs to ensure appropriate care and follow-up for children in its custody.

How Many Children Have Been Separated?

Even before the zero-tolerance policy was implemented, the New York Times [reported](#) that 700 children had been separated from an adult claiming to be their parent from October 2017 to April 2018. More than 100 of these children were under the age of four. These numbers have since grown exponentially. On May 23, 2018, a Customs and Border Protection (CBP) official [testified](#) before the Senate Judiciary Committee that 638 parents traveling with 658 children had been "processed for prosecution" under the new zero-tolerance policy between May 6 and May 19, 2018. Given that the Administration has said that parents referred for prosecution will be separated from their children, the testimony means that more than 600 families have been separated under the new policy in less than two weeks.

Policy Recommendations

Several legislative proposals and bills introduced in Congress would help to ensure the safety and well-being of migrant children and families by halting the use of family separation as a deterrent, ensuring humane treatment at the border, helping children separated from their parents due to immigration enforcement, and providing legal representation to ensure unaccompanied children have a full and fair opportunity to make their cases and access legal protection. We also urge lawmakers to hold DHS and DOJ accountable by speaking out against family separation.

To this end, we urge policymakers to support the following:

- H.R. 2572 - Protect Family Values at the Border Act
- H.R. 5950/S.2937 – the HELP Separated Children Act
- H.R. 2043/S. 2468 - Fair Day in Court for Kids Act of 2018
- Appropriations legislation and report language that would prevent blanket and inhumane family separation practices, and track when, where, and how often family separation occurs.