

**Backgrounder: Family Separation and Immigration Detention
June 26, 2018**

Why are families being separated at the border?

On May 7, 2018, the Department of Justice and the Department of Homeland Security (DHS) announced a “zero-tolerance” policy that would refer anyone caught crossing into the U.S. by Border Patrol to the Department of Justice to be prosecuted for the misdemeanor of illegal entry. According to the American Immigration Lawyers Association, “The Administration’s policy of prosecuting individuals who enter illegally is resulting in the separation of parents from their children, including toddlers and young children.

“In order to prosecute the parent for illegal entry or reentry, DHS places the parent in the custody of the U.S. Marshals for criminal prosecution. After the criminal proceedings are completed, the individual is transferred to Immigration and Customs Enforcement (ICE) custody. DHS treats the child as if he or she arrived without any parental accompaniment, transferring the child into the custody of the Department of Health and Human Services as an unaccompanied child. In many cases, the separated child and parent cannot locate each other or reunite, even after ICE deports one of them.”¹ The Administration is not just separating kids from parents who are criminally prosecuted, but is also separating kids from parents who legally sought protection at border crossings.² Additionally, many of these families are asylum-seekers who are exercising a legal right to seek protection at our border.

The Administration has pointed to “loopholes” or a “law” that require the separation of families. Is there such loophole or law?

No. The Flores Settlement Agreement of 1997 requires that children be released from custody without delay and preferences release to a parent except in cases where they cannot be released because of significant public safety or flight risk concerns. It also requires that children must be held in the least restrictive and an appropriate setting; generally, in a non-secure facility licensed by a child welfare entity. The Flores Settlement does not require families to be separated, but rather ensures humane and best care for a child.

Are families being reunited?

Some families have been reunited, but there remains significant concern that families remain separated and without knowledge of where each other are. The President’s Executive Order on June 20 did little to ensure families will not be separated in the future and that those who are separated will be reunited. In fact, there have been several documented cases of parents being deported to their country of origin while their child is still in U.S. custody.³

¹https://www.aila.org/infonet/policy-brief-new-barriers-at-the-border?utm_source=Coalition%20List&utm_medium=COAL%20LIST&utm_campaign=COAL%20LIST-PolicyBrief18060102&utm_source=Coalition%20List&utm_medium=COAL%20LIST&utm_campaign=COAL%20LIST-PolicyBrief18060102

²<https://www.womensrefugeecommission.org/rights/resources/1647-the-flores-settlement-and-family-separation-at-the-border>

³https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html?emc=edit_na_20180620&nl=breaking-news&nid=69431586ing-news&ref=cta

What is immigration detention?

According to Detention Watch Network, immigration detention is “the practice of incarcerating immigrants while they await a determination of their immigration status or potential deportation. In 2016, the United States government detained nearly 360,000 people in a sprawling system of over 200 immigration jails across the country. Immigration and Customs Enforcement (ICE), the agency that runs the detention system, subcontracts the majority of detention space to county jails and private prison companies. Immigrants in detention include undocumented and documented immigrants, many who have been in the U.S. for years and are now facing exile, as well as survivors of torture, asylum seekers and other vulnerable groups including children, pregnant women, and individuals who are seriously ill.”⁴

What is family detention?

Family detention is the practice of detaining immigrant mothers and children together. In 2014, the Obama Administration opened several family detention centers in response to the influx of family units seeking protection in the U.S. primarily from Central America. The Obama and Trump Administrations clearly stated that detention is a form of deterrence, but the numbers of asylum seekers from Central America seeking safety at the U.S. border has not decreased since 2014, despite this policy of detention as deterrence.

There has been significant documentation of abuses and trauma from women and children detained in family detention. Additionally, women in family detention face barriers to protection such as lack of access to legal representation, language barriers, traumatization, and lack of understanding of the legal system. Bottom line, detaining families together is not a humane solution to this crisis of family separation.

Are their alternatives to detention?

Yes. There are several models for alternatives to detention that are less costly, more humane, and have high compliance rates with court hearings, including final court hearings, and with removal.⁵

What does Episcopal Church policy say about immigration and family detention?

The Episcopal Church, through General Convention policy, calls for an immediate end to the inhumane practice of detention of family detention, calls for the immediate release of detained asylum seekers (particularly those who are LGBT, indigenous persons unable to communicate in English or Spanish, and persons who have disabilities or life-threatening illnesses) and upholds the sanctity of the asylum process and urges strong support for the protection of vulnerable individuals.

These policies are rooted in our faithful understanding that immigration policies must protect and acknowledge human realities and be undertaken in a just and humane manner. For while we must ensure that those who wish to do harm here or those who are smuggling drugs or trafficking human beings are stopped, border enforcement policies must not come at the detriment to human life or our legal obligations to those seeking protection.

What can I do to help?

Learn more, contact your elected officials, hold a vigil...

Find actions here: <https://advocacy.episcopalchurch.org/immigration>

⁴ <https://www.detentionwatchnetwork.org/issues/detention-101>

⁵ <https://www.womensrefugeecommission.org/images/zdocs/The-Real-Alternatives-to-Detention-FINAL-06-27-17.pdf>