



## STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE HOUSE HOMELAND SECURITY SUBCOMMITTEE ON  
BORDER AND MARITIME SECURITY

HEARING ON “STOPPING THE DAILY BORDER CARAVAN:  
TIME TO BUILD A POLICY WALL”

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The American Immigration Council (“Council”) is a non-profit organization which for over 30 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding the nation’s asylum system and the United States’ obligations, as well as our deep concern around the administration’s family separation policies and increased prosecution of migrants for entry-related offenses.

This month, the Department of Justice (DOJ) and Department of Homeland Security (DHS) have implemented a “zero tolerance” policy for those who cross the Southern border without authorization.<sup>1</sup> This policy means DHS is referring all migrants who cross the border without authorization for criminal prosecution and DOJ has been directed to accept as many of these referrals as practicable.<sup>2</sup> If these migrants arrive with children, the families will be separated when the parent(s) is referred for prosecution. The result will be a de-facto policy of family separation.

Further, with high levels of violence in parts of Central America, migration patterns have shifted in recent years, with more migrants seeking protection in the United States. Despite domestic and international legal obligations to protect migrants fleeing persecution and torture, the U.S. government nonetheless subjects individuals fleeing such harm to criminal proceedings, which violates international law.<sup>3</sup>

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<sup>1</sup> Office of Public Affairs, “Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry,” Department of Justice, April 6, 2018, <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>; “Secretary Nielsen Statement on Arrival of Central American ‘Caravan,’” Department of Homeland Security, April 25, 2018, <https://www.dhs.gov/news/2018/04/25/secretary-nielsen-statement-arrival-central-american-caravan>.

<sup>2</sup> Ibid.

<sup>3</sup> “Prosecuting Migrants for Coming to the United States,” American Immigration Council, May 1, 2018, <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions>.

Below are resources from the Council that seek to further explain these disturbing new policies and the United States' responsibilities.

### Family Separation

In December 2017, the Council, in collaboration with other organizations, [filed a complaint with the DHS Office for Civil Rights and Civil Liberties \(CRCL\) and Office of the Inspector General \(OIG\)](#) on behalf of numerous asylum-seeking families who were separated at the U.S.-Mexico border. The complaint lifted up the cases of fifteen individuals – including toddlers – who were separated from their family members shortly after their arrival at the U.S. border, and which served to illustrate an increasing trend of family separation at our Southern border.<sup>4</sup>

Forcibly separating families at the U.S.-Mexico border is an illegal and amoral practice. The United States should honor its legacy of providing safe haven to those fleeing violence and its commitment to the fundamental value of family unity and reunification.

### Immigration Prosecutions

Over the last two decades, the federal government increasingly has utilized the criminal courts to punish people for immigration violations. Particularly on the Southwest border, federal officials are vigorously prosecuting migrants either for entering the United States without permission or for reentering the country without permission after a prior deportation or removal order. Tens of thousands of migrants are subjected to criminal prosecution for these crimes every year.<sup>5</sup>

The government's approach to charging these entry-related offenses imposes heavy costs on migrants and the federal government alike. With high conviction rates for these federal offenses, many migrants are subjected to mandatory incarceration in federal prison for months or longer. For the federal government, such prosecutions are an extremely costly use of finite law-enforcement resources and have no demonstrated deterrent effect on future migration.<sup>6</sup>

The Council's factsheet, [Prosecuting Migrants for Coming to the United States](#), provides basic information about entry-related offenses, including the significant costs incurred by the government for conducting these prosecutions, the individuals who are subjected to them, and how the government's rationale for carrying them out is not supported by the data.

### Fast-Track Removals and Asylum Law

Migrants who reach the U.S. border without a valid visa will be placed in expedited removal, a fast-track removal process described in the Council's [Primer on Expedited Removal](#).<sup>7</sup> Because expedited removal does not apply to asylum seekers, DHS has pressed Congress to make drastic changes to our asylum laws to strip away these important protections.

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<sup>4</sup> American Immigration Council, et al., "Complaint Documents 15 Cases of Family Separation at the Border," American Immigration Council, December 11, 2017,

<https://www.americanimmigrationcouncil.org/advocacy/family-separation-at-the-border>.

<sup>5</sup> Transactional Records Access Clearinghouse, "Immigration Prosecutions for February 2018," March 26, 2018, <http://trac.syr.edu/tracreports/bulletins/immigration/monthlyfeb18/fil/>.

<sup>6</sup> Rebecca Gambler, *Border Patrol: Actions Needed to Improve Oversight of Post-Apprehension Consequences*, U.S. Government Accountability Office, January 2017, 36, <https://www.gao.gov/assets/690/682074.pdf>; U.S. Department of Homeland Security, Office of Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing*, OIG-15-95, May 15, 2015, [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-95\\_May15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf).

<sup>7</sup> "A Primer on Expedited Removal," American Immigration Council, February 3, 2017, <https://americanimmigrationcouncil.org/research/primer-expedited-removal>.

The ability to seek asylum, which is discussed in the Council's factsheet, [Asylum in the United States](#), is a right enshrined in both international and domestic laws.<sup>8</sup> The majority of the migrants currently presenting themselves to Border Patrol between the ports of entry and to Customs and Border Protection (CBP) at the ports along the Southern border are seeking humanitarian relief after fleeing persecution, grave violence, and even death. Under U.S. law, immigration officials are required to process any individual who presents at a port of entry and states a fear of return to their country or a desire to apply for asylum.<sup>9</sup> With threats of prosecution and family separation for those who fail to enter at a port of entry, more asylum seekers can be expected to arrive at the ports. CBP, however, has been stalling and holding off those arrivals, unlawfully refusing entry to asylum seekers.

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Separating families, criminally prosecuting migrants, and obstructing their ability to apply for asylum are cruel and un-American. These policies are punitive, costly, and run counter to our ideals. The United States can and must do better.

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<sup>8</sup> "Asylum in the United States," American Immigration Council, May 14, 2018, <https://www.americanimmigrationcouncil.org/research/asylum-united-states>.

<sup>9</sup> 8 U.S.C. § 1225(a)(3).