



10 Things to Know about How Current Immigration Policies will Harm Women and Children Seeking Protection

On January 25, 2017, President Trump signed [two executive orders](#) relating to immigration enforcement at the U.S. border and in the interior. On February 20, DHS Secretary John Kelly issued [two memoranda](#) on the implementation of these executive orders. Although questions remain around the implementation of these policies, this backgrounder describes how, taken together, the orders, memoranda, and other policies that have been announced since President Trump took office on January 20, 2017 create a blueprint for a system that fundamentally inhibits the ability of protection-seeking women and children to find safety in the United States and tears families apart.

1. They ignore that individuals have a right to seek asylum

All individuals have the right to seek protection in another country, and those fleeing harm often use any means necessary to escape their persecution, including leaving without documents. Yet President Trump's executive order on the border fails to articulate that those seeking asylum at the border do so legally, and instead calls asylum-seekers a "significant threat to national security and public safety." At a time when border apprehensions currently include thousands of women, children, and families seeking safety from Central America, these provisions ignore the fact that "catch and release" ended years ago, and that thousands of asylum seekers were already wrongfully detained under the Obama Administration.

2. They will massively increase the detention of asylum-seekers and other vulnerable women, children, and families

The executive order relating to the border calls on the DHS Secretary to "immediately construct, operate, control, or establish contracts [...] to detain aliens at or near the land border with Mexico" and to "take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law." In addition to ignoring that individuals have the right to seek asylum and should not be punished for doing so, the expansion of detention ignores the fact that our detention system is already plagued by a lack of accountability and oversight, and that migrants are often detained for prolonged periods of time despite the availability of alternatives. DHS's own [Homeland Security Advisory Committee](#) and [Advisory Committee on Family Residential Centers](#) only recently approved two reports calling for increased oversight, a move away from county jails, a move away from private prison contracts, and an end to the use of family detention. The use of immigration detention, currently funded at over \$2 billion for 34,000 detention beds, already ballooned in the last several months to [an unprecedented 40,000 immigration detention beds](#); ICE has since explored the possibility of adding at least [21,000 additional detention beds](#). Moreover, ICE [plans](#) to close its Office of Detention Policy and Planning (ODPP) and to eliminate existing detention standards that were developed to reduce abuse and neglect in detention in favor of far more basic and dangerous standards. To massively expand the system and to eliminate detention standards is not only deeply irresponsible, but will also be [costly to the U.S. taxpayer](#) and harmful to those locked up. In addition, the misguided and blanket use of detention as a deterrent is not only illegal, it is also ineffective, as the last Administration's [attempts to deter](#) asylum-seeking families already demonstrated.

3. They will ramp up the speed of immigration proceedings in a system unable to carry the load

The United States prides itself on being a country of principles and laws. Yet our immigration courts are overburdened, with immense delays in court cases that [undermine our immigration process](#). But the executive orders make clear that U.S. policy is now to "expedite determinations of apprehended individuals' claims of eligibility to remain in the United States." Implementation of the orders calls for asylum office and immigration court resources to be moved to detention facilities for the purposes of conducting asylum screenings and immigration court hearings, a [shift](#) that is already underway. Although immigration proceedings should occur in a much more timely manner than the existing backlogs, expediting credible fear interviews and immigration court proceedings will have a serious impact on the ability of asylum seekers to pursue their claim, as existing ["rocket docket"](#) practices already show. [Over 80 percent of those in detention](#) do not have access to counsel and many lack access to even basic legal information, leaving them unable to understand the asylum process and scared to share their story. Women are often too traumatized to explain the sexual or other violence they experienced, and in family detention settings may even have to do so in front of their children. And for those who manage to be able to make their case before an immigration judge, without legal counsel and from detention, it is nearly impossible to win an asylum case. Equally critical, the immigration courts cannot handle the caseloads already before them. The Administration should instead properly resource the immigration court and asylum offices, and allow those seeking protection to make their case from outside of a detention facility, while having the support of legal counsel, their families, and their communities.

4. They will result in the illegal criminal prosecution of asylum seekers, and the potential prosecution of parents acting to save their children's lives

Both the executive order and implementation memo relating to the border call on the Justice Department to prioritize prosecution of, as the executive order states, "offenses having a nexus to the southern border." This includes the already fraught practice of criminal prosecution for entry or re-entry. DHS's own Inspector General has determined that one iteration of this practice, known as "Operation Streamline," has not been found to be cost-efficient or effective. The [criminal prosecution of asylum seekers is also a violation of international law](#). When criminal prosecutions at the border increase, asylum seekers

and others funneled into criminal prosecutions have effectively no chance to pursue their claims.

The implementation memo also makes reference to the potential placement into removal proceedings or referral for criminal prosecution of anyone who “directly or indirectly [...] facilitates the illegal smuggling or trafficking of an alien child into the United States.” This could extend to parents who employ the use of a smuggler to bring their children to the U.S. As written, the memo ignores the seriousness of the choice any parent faces when separated from their children, particularly when they are acting to protect their child from further harm in the home country, and criminalizes parents for taking action to save their children’s lives. It also ignores the lack of access to sufficient safe and legal options available to families who have found themselves separated by U.S. immigration law.

5. They will keep more asylum seekers detained for longer

With its emphasis on detention, Trump’s executive order on the border seeks to keep asylum seekers detained, including those seeking protection at a port of entry who pass their initial credible fear asylum screening interview. The order says that parole authority, which has long been applied to those asylum seekers, should only be used on “a case-by-case basis” and only “when an individual demonstrates urgent humanitarian reasons or a significant public benefit” would derive from such parole. For many years it has been recognized that the release of bona-fide asylum seekers who do not pose a flight or security risk is in the public interest, is consistent with the law and is in line with American values. Although the implementation memo keeps in place existing parole guidance relating to asylum seekers who present at a port of entry, it strongly suggests that eligible individuals will not be automatically or consistently considered for parole. In other words, despite posing no danger to the community and with strong incentives to comply with their hearings, more asylum seekers will be locked up for the duration – including months or years – of their case.

6. They will deprive even more individuals of the basic right to a hearing before a judge, while making the initial threshold for an asylum seeker even harder to meet

The executive orders announce a planned dramatic expansion of the “expedited removal” provision of current immigration laws, potentially allowing for expedited removal to be applied to anyone apprehended who has been in the U.S. for less than two years (if they quickly can prove when they entered). Expedited removal permits the summary return of individuals who immigration officials find inadmissible without a chance to have that determination reviewed by a judge. If expedited removal is expanded, many more people would be subject to these kind of rapid deportation processes, moving very quickly from apprehension to deportation, and without the chance to make their cases to a judge.

Any person who is seeking asylum in the United States, but who is placed in expedited removal must first be referred to asylum officials for a “credible fear” interview, usually while in immigration detention, to determine whether they should be allowed to make their asylum claim before an immigration judge. However, the executive order and memorandum seek to heighten the standard for such an interview even further, as demonstrated by [recently issued revised lesson plans](#) on how

to conduct credible and reasonable fear interviews. [Credible fear determinations are often fraught with challenges](#) for asylum seekers, predominantly conducted by phone from a detention center, and likely now to become even harder for asylum seekers, despite the fact that the credible fear standard was intentionally meant to be a low one.

7. They will result in more asylum seekers being turned back, or having their cases processed outside the U.S.

Asylum seekers—including women and children—may be completely precluded from seeking protection in the United States under the new executive order. As U.S. Customs and Border Protection (CBP) staff attempts to increase its staff by 5,000 officers, [existing gaps in screening and mistreatment during processing](#) that have already been well documented will increase as well unless meaningful accountability and oversight mechanisms are put into place. Further, executive order and memorandum suggest that DHS intends to return individuals to the contiguous country from which they arrived while their U.S. immigration court proceedings are pending. While the memorandum references that individuals would then conduct their cases by video-teleconference, it remains unclear exactly how this would function. Those who may ultimately have their U.S. asylum claim or immigration case processed while in Mexico, will be left vulnerable to criminal organizations and traffickers, and likely unable to access counsel. This system could also potentially force Mexican nationals to make asylum claims while still in Mexico. Those who are not even placed into U.S. proceedings due to inappropriate screening by border officials may end up seeking asylum or protection from the Mexican government, increasing the burden on inadequate asylum and child welfare systems there.

8. They will tear apart families and strip certain children of critical legal protections

These executive orders will tear apart families—both those seeking protection at the border and those apprehended in the interior, including countless families with U.S. citizen family members, including U.S. citizen children. DHS Sec. Kelly has stated that DHS is considering a formal policy of separating families arriving at the border to deter their migration, a misguided and cruel approach to families largely fleeing harm and when they have no other choice left. Although DHS now says such a policy will not be formally put into place, WRC has documented extensively both the [separation of families when seeking protection at the border](#) as well as [families torn apart as a result of immigration enforcement](#) in the United States. Separation traumatizes families, impacts their ability to fight their immigration case, and can mean permanent separation of children from parents and other loved ones. It also places an immense burden on the Office of Refugee Resettlement in the cases of migrant children separated from their parents at the border.

At the same time, the executive order and memorandum suggest that children arriving alone who have a parent in the U.S. could be stripped of the legal protections they currently maintain as a result of being unaccompanied children. Such protections were put in place in recognition of children’s unique needs and particular vulnerabilities. Children who arrived alone and who lose their status as unaccompanied children would be subject to the same immigration legal processes as adults,

without the assistance of a lawyer. Parents and caretakers would be discouraged from coming forward to reunite with children, leaving children in detention throughout the duration of their asylum case.

9. These policies play into the hands of traffickers, smugglers, and drug cartels

Creating more immigration restrictions, increasing detention, and threatening parents with separation from their children, will force women, children, families, and others seeking safety underground and into the hands of traffickers, smugglers, and drug cartels. Many asylum seekers attempting to seek protection at the U.S. border are already being pushed back into [dangerous border territory](#). While the executive orders claim to counter “drug- and human-trafficking networks and smuggling operations,” they will in fact have the opposite effect, emboldening criminal networks and creating an increased market for their services. Denying access to protection for asylum seekers from the border, forcing their case to be processed from Mexico, and attempting to deter with detention and similar policies will not keep people from fleeing, and instead only serve to drive vulnerable populations further into the shadows and increase the reach and presence of organized crime.

10. Taken together, the orders prioritize everyone

The orders and implementation memos leave all immigrant, asylum-seeker, and refugee communities in the United States extremely vulnerable. DHS has rolled back the use of prosecutorial discretion and has made it clear that any undocumented person—including asylum-seekers, children, and survivors of domestic violence—are at risk of apprehension, detention, and deportation. Less than a month after the executive orders were issued, that was made clear in the case of a domestic violence survivor who was detained by ICE while in [an El Paso, TX courthouse](#). The orders and related actions are having a chilling effect on communities and will only seek to make immigrants and citizens alike less safe.

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