



10 Things to Know about How Trump's Executive Order will Harm Women and Children Seeking Protection

On January 25, 2017, President Trump signed two executive orders relating to immigration. Although these orders have not yet been implemented, this backgrounder discusses the potential impact of the Executive Order on "Border Security and Immigration Enforcement Improvements" on women and children seeking protection in the United States.

1. It ignores that individuals have a right to seek asylum at our borders

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, failing to articulate that those seeking asylum at the border do so legally, would call them 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. It will massively increase the use of immigration detention in the United States

The Executive Order 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 violation of immigration law." In addition to ignoring that individuals have the right to asylum, the policy also ignores the many findings of a lack of accountability and oversight already prevalent in detention. 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,

and a move away from private prison contracts, and to end the use of family detention. To massively expand the system is not only deeply irresponsible but will also be **costly to the U.S. taxpayer** and harmful to those locked up there. Moreover, the misguided and blanket use of detention as a deterrent is not only illegal, it is also ineffective, as the Obama Administration's own attempts to deter asylum-seeking families already demonstrated.

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

Our immigration courts are overburdened, with immense delays in court cases that undermine our **immigration process**. But Trump's Executive Order makes clear that U.S. policy is now to "expedite determinations of apprehended individuals' claims of eligibility to remain in the United States." The Executive Order 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. 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. Most individuals have no access to counsel or even basic legal information from detention, leaving them unable to understand the 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 critically, the courts can't 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. It will result in the illegal criminal prosecution of asylum seekers

Another section calls on the Justice Department to prioritize prosecution of “offenses having a nexus to the southern border.” 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. It also violates international law when we **criminally prosecute asylum seekers**. When criminal prosecutions at the border increase, asylum seekers and others funneled into criminal prosecutions have effectively no chance to pursue their claims.

5. It will keep asylum seekers detained for the duration of their cases

Trump's executive order seeks to end the practice of releasing asylum seekers from custody, including including those seeking protection at a port of entry and who pass their initial asylum screening interview, known as a credible fear interview. The order says that parole authority can only be used on “a case-by-case basis” and only “when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole” exists. 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. Now, 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 of their case.

6. It will deprive even more individuals of the basic right to a hearing before a judge

Today's executive order dramatically expands the “expedited removal” provision of current immigration laws, allowing for expedited removal to be applied to anyone apprehended who has been in the U.S. for less than two years (provided they can establish when they entered). Originally intended only for those who presented without documents at an official port of entry, and since expanded to those apprehended within 14 days of entry and 100 miles of the border, expedited removal permits the summary return of individuals who immigration officials find inadmissible without a chance to have that determination reviewed by a judge. Individuals who are seeking asylum in the United States must first be referred to asylum officials for a “credible fear” interview to determine whether they should be allowed to make their asylum claim before an immigration judge. **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 that the credible fear standard was intentionally meant to be a low one. Asylum officers and immigration courts will now be even further overwhelmed and backlogged, while asylum seekers will be even further disadvantaged.

7. It means that more asylum seekers will be turned back, or will have their cases processed outside the U.S.

Asylum seekers—including women and children – may well be completely precluded from seeking protection in the United States under the new executive order. As U.S. Customs and Border Protection (CBP) staff are increased, 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, the Executive Order suggests DHS return individuals to the contiguous country from which

they arrived while their U.S. immigration court proceedings are pending. It's unclear exactly how this would function, but in the case of the southern border thousands of asylum seekers may ultimately have their U.S. asylum claim or immigration case processed while in Mexico; leaving them vulnerable to criminal and trafficking groups, likely unable to access counsel, and potentially forcing 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 immigration officials may end up seeking asylum or protection from the Mexican government, increasing the burden on an inadequate asylum and child welfare systems there.

8. It plays into the hands of traffickers, smugglers, and drug cartels

Creating more immigration restrictions will inevitably force women, children, families, and asylum seekers desperate to reach safety underground and into the hands of traffickers, smugglers, and drug cartels. Many asylum seekers are already attempting to seek protection at the U.S. border and pushed back into **dangerous border territory**. Trump's executive order suggests his policy will address the danger posed by "drug- and human-trafficking networks and smuggling operations," but denying access to protection for asylum seekers from the border, forcing their case to be processed from Mexico, or attempts to deter with detention and similar policies will only serve to increase the reach and presence of organized crime.

9. It will tear apart families

Today's 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. 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.

Family separation traumatizes families, impacts their ability to fight their immigration case, and can make it impossible to ever reunite with a child or loved one. It also places an immense burden on local and state child welfare systems. ICE and DHS must take steps to ensure that families are never unnecessarily separated, can pursue immigration cases together where appropriate, and are reunited when separation does occur.

10. Taken together, the orders prioritize everyone.

While this backgrounder has largely focused on the impact of the Executive Order on "Border Security and Immigration Enforcement Improvements," both January 25, 2017 orders, including the one entitled "Enhancing Public Safety in the Interior of the United States," leave all immigrant, asylum-seeking, and refugee communities in the United States extremely vulnerable. That can include survivors of domestic violence who are **already impacted** by immigration enforcement when facing the choice of seeking help from law enforcement.

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