

MYTH VS FACT: REFUGEES SEEKING PROTECTION AT THE US SOUTHERN BORDER

Myth: The US southern border is being overrun by migrants and asylum seekers trying to get into the United States.

Fact: US Customs and Border Protection (CBP) statistics show that apprehensions at the US southern border remain historically low, especially compared with the numbers in the 1990s and early 2000s. This is true even when considering that apprehensions in FY 2018 represented an increase over FY 2017—a year that saw a disproportionate dip in apprehensions. For the administration to claim otherwise is blatantly false, as has been debunked by numerous studies and [news outlets](#).

Myth: CBP cannot handle all the families, children, and others seeking asylum at the southern border.

Fact: Every day, CBP processes hundreds of thousands of people—vehicular and pedestrian northbound traffic—at ports of entry along the US-Mexico border. At the largest land port of entry, the San Ysidro Port of Entry (San Diego, California), for example, CBP [processes](#) an average of 70,000 vehicles and 20,000 pedestrians per day. DHS Secretary Kirstjen Nielsen has specifically asked that those seeking asylum [present themselves](#) at ports of entry. However, in practice, the ports remain underequipped and understaffed to adequately and humanely process the number of persons seeking safety in our country. Instead, the administration has forced asylum seekers to wait on the Mexican side of the border, a policy known as “metering” or “queue management,” deliberately creating a crisis. If the administration genuinely cared about fixing this problem, it would 1) seek resources for ports of entry instead of trying to construct a wasteful and ineffective border wall or expanding detention space, and 2) ensure that all border facilities—both ports of entry and Border Patrol stations—had appropriately trained personnel with child welfare expertise to help process asylum-seeking families and children.

Myth: It's normal and legal for asylum seekers to have to wait days or weeks to be allowed to apply for asylum.

Fact: It is legal to seek asylum, and both US and international law require the United States to allow someone to make an asylum claim. Refusing to process an individual, family, or child expressing a fear of return at a port of entry is [illegal](#). CBP has long [failed](#) to properly screen asylum seekers at the border. The practice of forcing them to wait in Mexico for days or weeks, however, began in limited cases in 2016 and [skyrocketed](#) under the Trump administration, which has normalized and extended the practice across the southern border. In addition to being illegal, the practice is also reckless and cruel. Those left waiting are forced into extremely [dangerous](#) circumstances. Unaccompanied children are left particularly vulnerable and are, in some locations, unable to access the ports of entry through any formal process. Moreover, the Department of Homeland Security (DHS) Office of Inspector General found [evidence](#) suggesting that metering may drive asylum seekers to cross between ports instead.

Myth: Refugees from Central America should seek asylum in Mexico instead of in the United States.

Fact: Mexico may be a safe place for some asylum seekers, but it is not safe for everyone. Significant barriers prevent asylum seekers, including children, from accessing the right to seek and enjoy asylum in Mexico, including 1) detention—in some cases, prolonged detention—in poor, often overcrowded conditions; 2) lack of accessible information on how to access asylum and the rights of migrants and asylum seekers in Mexico; 3) lack of screenings for international protection concerns, as required by Mexican law; and 4) rapid deportations without access to protection or asylum, especially of Central Americans and including children, sometimes within hours of arrival to Mexico.

Additionally, migrants and asylum seekers often lack sufficient protections and therefore face elevated risks of [human](#)

[rights violations](#) while in Mexico, including violence and other abuses at the hands of organized crime and corrupt migration authorities. Further, there is a lack of justice for crimes against migrants, which allows criminals to act with impunity and encourages [repeat crimes](#).

Myth: Refugee families and children seeking protection at the border are exploiting “loopholes” in US law.

Fact: The Trump administration often refers to three categories of protections when making this claim: 1) asylum; 2) the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA); and 3) the *Flores* Settlement Agreement.

1. The right to apply for asylum in the United States, whether at a port of entry or otherwise, is firmly enshrined in US immigration law.
2. The TVPRA, among other laws, recognizes that children arriving at the border in need of safety should get additional safeguards to ensure that the US does not return them to a situation that could harm them. The legislation fills a crucial gap in US anti-human trafficking efforts; prior to the TVPRA, migrant children were not being screened by DHS to determine if they were survivors or at risk of trafficking. Many unaccompanied children were summarily returned to Mexico without anyone confirming their nationality or even asking if a return would be safe. This meant that children were returned to dangerous smugglers and traffickers waiting on the Mexican side of the border. The TVPRA helped to address this problem by requiring that DHS at least minimally screen unaccompanied children for trafficking concerns. It also reaffirms requirements in the Homeland Security Act of 2002 that unaccompanied children from non-contiguous countries and any children at risk of trafficking be transferred within 72 hours to the custody of the Department of Health and Human Services (HHS), where they can be appropriately processed and screened.
3. The 1997 *Flores* Settlement Agreement (*Flores*) was the result of more than a decade of litigation responding to the US government’s detention policy toward an influx of unaccompanied migrant children from Central America in the 1980s. At the time, children were being detained for long periods, including with unrelated adults and in prison-like conditions. The agreement sets national standards regarding the detention, release, and treatment of all children—both unaccompanied and accompanied—in immigration detention and underscores the principle of family unity. It requires: 1) that children be released from custody without delay and preferences release to a parent, and 2) that where they cannot be released because of significant public safety or flight risk concerns, children must be held in the least restrictive and an appropriate setting; generally, in a non-secure facility licensed by a child welfare entity. No family detention facility currently operated by Immigration and Customs Enforcement (ICE) meets *Flores* requirements for long-term custody.

Flores requirements to generally release children are not a loophole; in fact, the entire settlement aims to ensure the appropriate treatment of children. This is consistent with numerous expert findings that it is never in the best interest of children to detain them.

Myth: Asylum seekers at the border must be detained.

Fact: The administration continues to suggest that families and others seeking asylum at the border must be detained. This is patently false. Families and other adults who present themselves at a port of entry to seek asylum, or who are apprehended between ports of entry, can be placed into removal proceedings without being separated, prosecuted, or detained. The family is still required to appear before an immigration judge to make their asylum or other claim, but can do so from the community, where they will also have a higher likelihood of finding a lawyer to help them navigate the case. (The process is different for unaccompanied children, who go into the custody of the Office of Refugee Resettlement before being reunited with a sponsor.) Where the government chooses to detain asylum seekers—which is a choice, not a requirement—they should be released if they are found to have a credible fear of return. Numerous

programs and options exist as alternatives to detention that successfully ensure that participants appear at appointments and hearings and comply with US laws.

Myth: ICE needs more detention space.

Fact: Detention is costly, inhumane, and unnecessary to ensuring compliance with immigration proceedings. Despite this, the administration continues to press for additional detention space at a reckless and unprecedented rate. The US already spends more than \$4 billion each year for immigration detention, enforcement, and removal. The agency now holds in detention more than [48,000](#) immigrants each day, despite having been funded to detain only 40,520 in FY 2019. WRC has extensively documented the [growth](#) in and [mistreatment](#) in ICE detention of women and children, including refugees seeking asylum. Once detained, many are either offered an impossibly high bond or denied bond, parole, or release into an alternative to detention program entirely. This is despite provenly effective community-based [alternatives](#) to detention that cost a fraction of detention, have almost perfect compliance rates, and have received bipartisan support from appropriators and [voters](#). The administration's demands would expand a costly detention system that is motivated by profit and politics, not public safety or smart practices.

Myth: Refugees from Central America seeking asylum at the US border are likely to be denied asylum in the United States.

Fact: The Trump administration has taken several steps to dismantle and curtail access to asylum. At the same time, it points to low asylum grant rates as a reason why the United States should not accept those seeking protection at the border. This is disingenuous for [several reasons](#).

First, as one recent [analysis](#) shows, many of the administration's claims pointing to low grant rates for Central American asylum seekers are false; grant rates are higher than officials portray, and were even higher prior to the Trump administration taking office.

Second, the right to apply for asylum is enshrined in US law. Although it has become increasingly difficult to access, this means that anyone has the right to apply for asylum, and it is up to adjudicators with US Citizenship and Immigration Service (USCIS) or the immigration courts to determine whether someone merits a grant of asylum.

Third, US government officials cannot make any claims now or in the near future that presume how many of those seeking protection at the border today will be granted because the US immigration system suffers from extraordinary and unprecedented backlogs in case adjudication. As a result, many people seeking asylum today—or even who applied for asylum within recent years—will not have their cases decided for many years to come. This backlog is incredibly harmful, often leaving asylum seekers in limbo as they await their hearing and unable to bring family members who remain at risk at home. What we do know is that in order for those deserving asylum to be approved, they must have access to the system, and that having an attorney makes a significant difference in approval rates.

Fourth, statistics of who is granted asylum should not be taken as evidence of who should be granted asylum. Researchers have long shown [substantial disparities](#) in the rates at which asylum is granted, disparities that do not reflect whether someone was deserving of asylum, but rather that point to other factors, such as the importance of access to counsel in the likelihood of being granted asylum or interpretations of whether [certain fears](#) of persecution rise to the threshold of qualifying for asylum. Indeed, while deportations are often difficult to track, journalists have [documented](#) the [tragic outcomes](#) of many.

Myth: Those seeking asylum rarely show up to immigration court hearings or fulfill other requirements.

Fact: Despite the administration's insistence to the contrary, most asylum seekers do appear for immigration court hearings and required ICE appointments, despite the [numerous obstacles](#) they face in understanding how to do so. Numerous studies support this, in particular as it pertains to asylum-seeking families, the precise population that the

administration often singles out as “disappearing” into the United States and uses to try to justify harmful changes to US immigration law and policy.

The [Family Case Management Program](#)—a community-based alternative to detention that ICE operated from January 2016 through June 2017 for asylum-seeking families before terminating the program prematurely—not only cost the government a fraction of the cost of detention in an ICE facility, but, per ICE, had compliance rates of 99.3 percent for immigration court hearings and 99.4 percent for ICE check-ins. The program was also successful in securing removals. However, many of the families enrolled in the program were still going through their proceedings at the time the program was terminated, meaning further data on case completion is impossible.

Similarly, a 2018 [study](#) of data from 2001–2016 on detained families that were released from detention showed that 86 percent of families complied with all immigration court hearings, a number that jumped to 96 percent when the family was seeking asylum.

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