

## Zero-Tolerance Criminal Prosecutions: Punishing Asylum Seekers and Separating Families

For the last year, the Trump Administration has launched a barrage of policies to deter and punish those who come to our borders seeking protection. At the center of these attacks is the administration's "zero-tolerance" policy, which directed that all migrants crossing the southwest border between official ports of entry be criminally prosecuted, regardless of whether they are seeking asylum or are parents traveling with children.

While U.S. Customs and Border Protection (CBP) was already separating some children from their parents, as Human Rights First detailed in its January 2018 report, separations escalated tremendously in the wake of the zero-tolerance policy. Between May 5 and June 9, 2018, alone, the government separated at least 2,235 families.

In defending these criminal prosecutions and family separations, the attorney general and Department of Homeland Security (DHS) secretary repeatedly asserted that the only "right" way to seek asylum is by crossing at an official port of entry. United States law is clear, however, that people who have crossed the border—no matter how they crossed—can seek asylum. Officials' assertions that asylum seekers can only request protection at official ports-of-entry is factually, as well as legally, misleading, since—as Human Rights First researchers witnessed—border officers at many ports of entry continue to turn asylum seekers away, telling them that ports are "full," or advising them to "wait" for days or weeks.

Between April and June 2018, Human Rights First researchers conducted three monitoring missions to McAllen, Brownsville, Laredo, and El Paso, Texas to gather information about the implementation and impact of these policies. Researchers visited five

federal courts, seven ports of entry, and nine immigration detention facilities. Based on this research, Human Rights First reports the following:

- **Criminal prosecutions of asylum seekers and migrants have sharply increased since the implementation of the zero-tolerance policy, with many federal courts experiencing record high numbers.** Statistics indicate a 60% increase in overall prosecutions between January and April 2018 and data from the federal public defender's office in El Paso shows a 360% increase in prosecutions in April 2018 over April 2017, as well as a 75% increase in May, and a 206% increase in the first two weeks of June.
- **CBP separated children from their parents and the parents were prosecuted for illegal entry and reentry.** During June 2018, Human Rights First researchers observed criminal prosecutions of numerous parents who were desperately searching for their children. In one case, CBP agents took an 8-month-old baby from a mother who was then criminally prosecuted for the misdemeanor offense of illegal entry in El Paso.
- **Despite the administration's messaging that the only "right" way to seek asylum is to cross at an official port of entry, CBP has instituted staggering barriers to accessing asylum at these ports,** including telling asylum seekers that ports are "full" or "at capacity," requiring families to wait for days without any certainty that they will be allowed entry, or even turning people back into Mexico without processing their requests for protection.
- **These turn-backs have left families seeking protection stranded in difficult and often**

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**dangerous conditions in Mexico**, where they are sometimes targeted by kidnappers, traffickers, and cartels. The practice of turning away asylum seekers at ports of entry, as Human Rights First also documented in 2017, pushes some to attempt to cross between ports of entry.

- **President Trump’s executive order did not end family separations.** Instead, it called for an increase in family detention, another inhumane practice that risks long-term damage to children. It also did nothing to reunite the thousands of children who were cruelly separated from their families.

Congress and the Trump Administration should end the criminal prosecution policy, which diverts resources from more serious security threats and violates due process and U.S. treaty obligations. Instead, DHS should refer migrants and asylum seekers into the civil removal processes that were created by Congress to address cases of people without legal authorization.

The Trump Administration should use effective, tested, and financially prudent migration management strategies, such as case management programs. ICE’s own Family Case Management Program, which was canceled last year, for example, reported almost 100% appearance rates.

Furthermore, border officials should refer those who come to official border posts for screening interviews, rather than turning them away or discouraging them from seeking protection by making them wait in danger for days or weeks.

### **DHS Forcibly Separated Thousands of Children from Their Parents Under the Zero-Tolerance Policy.**

In the immediate aftermath of the zero-tolerance policy, the attorney general and secretary of homeland security made clear that all border crossers, including asylum seekers and parents

traveling with minor children, would be criminally prosecuted for illegal entry and reentry.

In promoting the policy, Sessions stated, “If you’re smuggling a child, then we’re going to prosecute you, and that child will be separated from you... If you don’t want your child separated, then don’t bring them across the border illegally. It’s not our fault that somebody does that.”<sup>1</sup>

Similarly, Secretary Nielsen emphasized: “What has changed is that we no longer exempt entire classes of people who break the law...When DHS refers a case against a parent or legal guardian for criminal prosecution, the parent or legal guardian will be placed into the U.S. Marshals Service custody...And any accompanied child will be transferred to the Department of Health and Human Services.”<sup>2</sup>

Despite the attorney general’s assertions that criminal prosecution required the separation of children, leading former prosecutors specifically explained that “[t]he law does not require the systematic separation of families under these circumstances.”<sup>3</sup>

While 700 families were separated between October 2017 and April 2018—prior to the introduction of the zero-tolerance policy—a senior DHS official stated that 2,235 families were separated between May 5, 2018 and June 9, 2018.<sup>4</sup> Recent numbers indicate that the government has separated nearly 3,000 children from their parents.<sup>5</sup>

During “Streamline” court observations—court sessions in which large groups of migrants are prosecuted together—Human Rights First witnessed numerous cases of family separation, including:

- In the El Paso Streamline court on June 18, 2018, 12 of 35 defendants prosecuted were parents separated from their children by the U.S. government.<sup>6</sup>
- In the McAllen Streamline court on June 15, 2018, 36 of 74 defendants were parents separated from minor children. When this was raised in court, the

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judge stated that this was not the proper forum to raise family separation issues.

- In the Laredo Streamline court on June 14, 2018, at least two of 40 defendants were parents separated from their children at the border. When the federal public defender raised this, the judge stated, “This is a consequence of you coming here and breaking the laws of our country...That would happen in any case where you commit a crime...The situation you are in today is a consequence of your own decisions.” The federal public defender responded that while any parent going to jail would be separated from his child, children of parents in other criminal proceedings do not also serve a sentence.

While speaking with detained asylum seekers, Human Rights First also learned of dozens of stories of family separation, including:

- Three children, ages 8, 10, and 11, were taken from their mother “Elena” after CBP apprehended the asylum-seeking family. Elena reported that she was not permitted to say goodbye to her children and she was not told where her children were being taken. She was only given a flyer with contact information for a government hotline. Her attorney reported that when Elena met with him to discuss her pending criminal charge of illegal reentry, she was “devastated” and was screaming and crying.
- An 8-month-old boy and 16-year-old girl were taken from their mother “Linda” after the family was apprehended by CBP. Linda was then referred for prosecution for misdemeanor illegal entry. Days after apprehension, she had not received any information on the whereabouts of her child or how to figure out this information. In court, she was crying when the attorney and judge discussed her children and the separation.
- A toddler, less than two-years-old, was taken from his mother “Carmen” after she requested asylum at a U.S. port of entry. She waited two weeks before learning where her son was. She told Human Rights First that, “They put him in a car and he started to cry, but they closed the door and put me in another car. I couldn’t go to him.” She was then detained at the T. Don Hutto Residential Center in Texas.
- A three-year-old Honduran boy was taken from his father “Luis” after they were apprehended by Border Patrol. The father was sent into the criminal justice system to be prosecuted for misdemeanor illegal entry. The father carried two copies of his son’s birth certificate and both were seized at the time of arrest. Even though the father was detained at a facility in El Paso, Texas, his son was sent to a shelter in Arizona. For several days the father did not know where his young son had been sent.
- A 16-year-old Central American girl who was seeking asylum in the United States was taken from her father “Carlos” after apprehension. Her father was subsequently prosecuted for misdemeanor illegal entry. He refused to plead guilty until his sister adopted his daughter because he feared that he would be deported separately from his daughter. His case was reset for July 2018.
- A 6-year-old Guatemalan girl was taken from her mother “Paula” after they were apprehended in the United States. Paula was then prosecuted for misdemeanor illegal entry.
- A 12-year-old Honduran girl was separated from her father “Samuel” after they were apprehended at the U.S.-Mexico border. Samuel was then prosecuted for misdemeanor illegal entry. He also has a U.S. citizen child.

Reunification of separated families has been slow and riddled with numerous problems. On June 26, 2018, the federal court in the Southern District of California ordered the reunification of all separated families.<sup>7</sup> While government officials claim that there is a reunification process in place, it is clear that

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there is no reunification plan or process for families seeking asylum.<sup>8</sup> Instead, ICE officers have presented parents with the cruel choice of abandoning possibly meritorious claims for protection and reunification with their children, or seeking relief and remaining separated during the adjudication of their asylum applications.<sup>9</sup>

On July 10, when the Trump Administration failed to meet the first reunification deadline for children under the age of five, the federal judge refused to extend it, noting that “these are firm deadlines...not aspirational goals,” and that the government did not need to comply with “onerous policies for vetting sponsors,” including background checks of all family members in a prospective household.<sup>10</sup>

Even for those parents seeking to return to their home countries, reunifications have been delayed. In some cases, responsible U.S. agencies did not maintain critical records relating to familial relationships.<sup>11</sup> Human rights organizations have also reported instances of parents being deported without their children. The Texas Civil Rights Project, for example, worked with one father who was deported to Guatemala earlier this month without his child, who remains in ORR custody.<sup>12</sup> After a private briefing on family separation, Senator Dick Durbin reported that at least 180 parents have been deported without their children.<sup>13</sup>

In response to the widespread and bipartisan backlash to these family separations, President Trump signed an executive order on June 20, 2018, which he claimed would end this cruel practice. Since the executive order was signed, federal public defenders have reported a decrease in new family separation cases in criminal court. In place of family separation, however, the order directs that families be detained for the duration of immigration proceedings and orders the attorney general to request modification of the 1997 Flores settlement, which provides protections and limits on the detention of children.<sup>14</sup>

Incarcerating families for any length of time is not the solution to family separation. The American Academy of Pediatrics has condemned family detention, noting that even short-term detention can be permanently harmful to the medical and mental health of children.<sup>15</sup> It “is associated with poorer health outcomes, higher rates of psychological distress, and suicidality.”<sup>16</sup> It may also “constitute cruel, inhuman, or degrading treatment.”<sup>17</sup>

Furthermore, given the many problems that plague immigration detention facilities, as documented in Human Rights First’s June 2018 report, families will face a range of health care, treatment and legal access difficulties in detention.<sup>18</sup>

Human Rights First has also previously documented the impact of detention on the health and development of children as well as many other problems inherent in family detention, particularly when children are held in longer-term detention.<sup>19</sup>

Recent research reveals that 96 percent of families seeking asylum appear for all their hearings.<sup>20</sup> To the extent that additional appearance support is determined necessary in individual cases, the Trump Administration and Congress should support legal representation and use appearance support initiatives, such as community-based case management programs. The Family Case Management Program that ICE terminated last year reported a 99 percent appearance rate at immigration hearings and ICE check-ins between January 2016 and June 2017.<sup>21</sup>

### **En Masse Criminal Prosecutions that Violate Due Process and Treaty Prohibitions Sharply Increased Under the Zero-Tolerance Policy.**

With the announcement of the zero-tolerance policy on April 6, 2018, federal criminal prosecutions of asylum seekers and migrants along the southwest border have escalated sharply. When announcing the new policy, Sessions stated that, “the recent

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increase in aliens illegally crossing our Southwest Border requires an updated approach” and emphasized the deterrence motivation behind these prosecutions.<sup>22</sup> In addressing April 2018 Southwest border migration numbers, DHS released a statement saying, “If you enter our country illegally, you have broken the law and will be referred for prosecution. DHS has zero tolerance for those who break the law and will no longer exempt classes or groups of individuals from prosecution. Whether you are a single adult or an adult member of a family unit, if you are apprehended you will be prosecuted and put in removal proceedings.”<sup>23</sup>

In the last three months, Human Rights First researchers have observed en masse criminal prosecutions of migrants and asylum seekers for illegal entry and re-entry in five Streamline courts across New Mexico and Texas: Las Cruces, El Paso, Laredo, McAllen, and Brownsville.

According to data analyzed by the Transaction Records Clearing House (TRAC) at Syracuse University, federal criminal prosecutions of individuals apprehended by CBP near the border jumped 30% in April 2018 over March 2018 figures, and 60% since January 2018, rising from 5,191 to 8,298.<sup>24</sup> Recent information gathered from criminal defense attorneys and through Human Rights First’s observations indicate that criminal prosecutions of asylum seekers and migrants increased even further in May and early June.

For example:

- Federal public defenders in El Paso saw a 360% increase in criminal prosecutions in April 2018 over the same time in 2017. May 2018 prosecutions increased 75.4% in comparison to May 2017, and prosecutions during the first two weeks of June 2018 were 206% higher than June 2017 prosecutions.<sup>25</sup>
- On June 11, 2018, there were 180 criminal prosecutions for misdemeanor illegal entry in the McAllen Division, with 90 defendants prosecuted in the morning and 80 in the afternoon. Due to these record high numbers, Human Rights First’s observers were refused entry by the courthouse guards and U.S. marshals, despite the fact that these are public proceedings.
- After sentencing 74 defendants on the morning of June 15, 2018, the federal magistrate judge overseeing these criminal proceedings shared his views on enforcement of the civil immigration laws with the packed courtroom and numerous defendants: “It’s no secret that the government is now enforcing our immigration laws and will be doing so for the foreseeable future.” and “the U.S. has a right to enforce its immigration laws just like any other country.”
- In the Brownsville Division of the Southern District of Texas, federal public defenders reported handling three to eight misdemeanor illegal entry cases per day prior to the implementation of the zero-tolerance policy. After April 2018, one federal public defender reported average daily prosecutions of over 40 people, with some days seeing more than a hundred-people prosecuted.
- In the Tucson federal court, court records show that an average of 12,400 defendants were processed through the Streamline courts during each of the last five years. During the first eight months of fiscal year 2018, however, over 10,000 defendants were charged through Streamline.

In violation of U.S. treaty obligations under the Refugee Convention, many of those charged with illegal entry and reentry are asylum seekers. Article 31(1) of the Convention specifically forbids States from penalizing refugees for their illegal entry or presence in most cases.

In 2015, the DHS Office of Inspector General (OIG) raised concerns with CBP’s practice of referring asylum seekers for criminal prosecution, noting treaty obligations to refrain from penalizing asylum seekers for their manner of entry or presence. The U.S. Commission on International Religious



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Freedom flagged similar concerns in a 2016 report on the treatment of asylum seekers in expedited removal.<sup>26</sup>

Human Rights First researchers observed many prosecutions of asylum seekers who, despite coming to the United States to seek asylum—a legal act—were referred by DHS for prosecution instead of being referred to protection screening interviews or the immigration court process. Circumventing Article 31’s prohibitions, DHS continues to refer asylum seekers for prosecutions, federal prosecutors routinely fail to drop charges or stay prosecutions involving asylum seekers, and judges typically state that such matters are beyond the court’s jurisdiction.

A 2017 Human Rights First survey of defense attorneys indicated that—even before the zero-tolerance policy went into effect—a significant portion of illegal entry and reentry clients were asylum seekers. Of the defense attorneys who practice along the southern border, 48% indicated that more than half of their clients were asylum seekers, and 66.7% indicated that asylum seekers made up more than 25% of their caseloads.<sup>27</sup> During its recent visits to courts where asylum seekers and migrants are prosecuted for illegal entry or reentry, Human Rights First observed, or learned from federal defenders of, many cases in which asylum seekers were criminally prosecuted for these offenses.

The fast-track, *en masse* nature of Streamline proceedings threaten defendants’ constitutional due process rights. Defendants are often restrained in five-point shackles and those charged with misdemeanor illegal entry generally undergo their entire criminal proceedings—from arraignment to sentencing—in one appearance before the judge.

In Human Rights First’s years of observing Streamline courts, we’ve noted several due process deficiencies, including:

- **Comprehension concerns due to the group nature of the proceedings.** Streamline proceedings are unique in that multiple defendants are convicted at the same time. Human Rights First researchers observed groups of up to ninety defendants prosecuted at the same time. In the McAllen Streamline proceeding on June 11, 2018, 90 defendants were prosecuted for illegal entry in the morning and 80 defendants were prosecuted in the afternoon. In the Laredo Streamline proceeding on June 14, 2018, 75 defendants were prosecuted for illegal entry. This mass proceeding limits courts’ ability to ensure that defendants understand questions asked and the consequences of their actions. Judges ask many binary questions to the group as a whole, rather than to individual defendants, making it more difficult to ensure that each person understands and responds. This includes questions regarding trial rights, understanding of maximum penalties, and whether they are under the influence of any medications or other intoxicants. To alleviate concerns that judges may not be able to see each individual respond, the Brownsville Division adopted a method in which the defendants sit or stand depending on whether they answer “yes” or “no.”
- **Language access concerns.** Streamline proceedings are conducted in English with professional interpretation provided either in person or over the phone. Human Rights First researchers, however, observed several defendants who spoke less common or indigenous languages provided with insufficient interpretation services. For example, the defense attorney for a group of Bangladeshi defendants asked the phone interpreter to tell his clients that they are facing an illegal entry charge and defined the charge. After speaking to the defendants in Bengali, the interpreter told the attorney that he relayed to the defendants that they “broke the law by not entering at an authorized port of entry,” an

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improper deviation from the defense attorney's wording. It is unclear in many of these rare language cases whether the defendants actually comprehend the nature of the proceeding or are merely following the lead of their attorneys. Only in a few cases were the charges against them dismissed in the interests of justice due to language access concerns.

- **Comprehension concerns due to the speed of the proceedings.** Due to the fast-track quality of the proceedings, defendants often have difficulty understanding the overall nature of the proceedings and the individual questions asked of them. Defendants are ushered into the courtroom either in the clothes they wore upon arrival in the United States or in jumpsuits from the detention centers or jails where they are held. Even after consultation with a defense attorney and an overview of their rights from the judge, many of the defendants assume that they are in immigration court, rather than criminal court. In the McAllen court, for example, more than a dozen defendants initially refused to waive their right to a trial or plead guilty because they thought this meant waiving their right to seek asylum. The federal public defenders mentioned that this is a recurring issue.
- **High levels of guilty pleas.** In a 2017 survey, defense attorneys estimated that 99% of their clients charged with illegal entry or reentry plead guilty, sometimes in order to avoid the risk of a longer sentence if the case went to trial. One defense attorney stated, "Clients merely answer 'yes' or 'no' one after the other, almost like parrots repeating one after the other without meaningful understanding." This was consistent with what Human Rights First researchers observed during recent Streamline proceedings.
- **High number of Hispanic defendants.** Of the nearly 600 prosecutions Human Rights First researchers observed in the Southern and Western districts of Texas in June 2018, all but 18

individuals were Hispanic, or about 97%.<sup>28</sup> Of the more than 700 cases Human Rights First observed in advance of its January 2018 report, all but seven prosecuted individuals were Hispanic.<sup>29</sup> Additionally, in fiscal year 2016, 99% of individuals convicted of illegal reentry were Hispanic.

The Trump Administration's zero-tolerance and family separation policies have raised serious concerns from former high-level law enforcement officials about the diversion of criminal prosecutorial resources, the improper treatment of asylum seekers, and the interests of justice. On June 18, 2018, 70 former U.S. Attorneys—who had served under both democratic and republican administrations—detailed their concerns:

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*"As former United States Attorneys, we emphasize that the Zero Tolerance policy is a radical departure from previous Justice Department policy, and that it is dangerous, expensive, and inconsistent with the values of the institution in which we served . . . Until now, every administration has chosen a path that has balanced the need for effective enforcement and deterrence with humanity and compassion. This balanced approach is especially critical when we are faced with person seeking entry who may be eligible under established U.S. laws for the protection of asylum, as they flee persecution, horrific violence, or danger in their home countries . . . As former U.S. Attorneys we know that none of these consequences – nor the policy itself – is required by law."<sup>30</sup>*

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### Asylum Seekers Face Substantial Barriers to Seeking Asylum at U.S. Ports of Entry.

The Trump Administration is loudly broadcasting that there is only one “right” way to seek asylum: cross at an official port of entry to avoid criminal prosecution and family separation under the administration’s zero-tolerance policy.

CBP, however, has imposed staggering barriers to impede—or altogether prevent—refugees from seeking asylum at several ports of entry along the U.S.-Mexico border. This includes telling asylum seekers that they “don’t have enough space” or simply turning them away.

Human Rights First documented 125 examples of asylum seekers turned back from U.S. ports of entry by CBP officers in a May 2017 report.<sup>31</sup> Among its key findings, the report documents how CBP has unlawfully turned away asylum seekers at official ports of entry, leaving many with no choice but to attempt unauthorized border crossings. In some cases, CBP agents have pressured asylum seekers at ports of entry into recanting their expressions of fear or taken steps to produce false statements. Several advocacy groups sued to challenge these unlawful turn-back practices in July 2017, alleging that CBP was “unlawfully dissuading asylum seekers from pursuing their claims or flatly refusing them entry to the United States.”<sup>32</sup>

Recent observations—and interviews with attorneys and advocates—indicate that actions that block asylum seekers from approaching ports of entry or discourage them from seeking asylum have escalated and appear coordinated.

In June 2018, Human Rights First researchers crossed seven international bridges: Hidalgo-Reynosa, Brownsville-Matamoros, Roma-Ciudad Miguel Aleman, Progreso-Nuevo Progreso, Laredo, Paso del Norte, and Stanton Street. At these ports of entry, Human Rights First researchers identified several barriers to seeking asylum, including:

- At all seven bridges, CBP installed new checkpoints at the international border line. At these checkpoints, agents conduct document screening ahead of the processing center. According to reports received by Human Rights First researchers, these agents have told asylum seekers to return on a later day or time or have turned them away entirely on the basis that they do not have documentation to enter the United States, thus preventing them from requesting asylum at the port of entry.
- Mexican immigration officers at the Hidalgo-Reynosa Bridge stated that Mexican officers are requesting to see if some individuals have Mexican transit visas before they allow them to cross into the United States, barring those who do not have transit visas from stepping foot onto the bridge.
- Mexican migration officers reported to Human Rights First that CBP officers were calling Mexican immigration to collect any individuals at the border line, including asylum seekers, who attempted to approach the port of entry to request protection and did not have visas or other documentation. These actions, by both the U.S. border officers and Mexican immigration officers, physically prevent asylum seekers from reaching the port of entry to request protection.
- CBP agents are telling asylum seekers who attempt to approach these ports of entry that the port of entry is “full” or “at capacity.” These “capacity” narratives cause asylum seekers to be unlawfully turned away or leave them stranded for days or weeks in dangerous or difficult conditions. The Berduos, for example, are a large Guatemalan family who waited on the Brownsville-Matamoros Bridge for several days to request protection. They had a 9-month-old baby with a heat rash and a two-year-old. They had a bag full of documents to support their asylum claim and the eldest son had lost an eye and had a bullet wound in his arm (which they reported



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was part of the reason they fled from Guatemala). They were told that the port of entry was full and that they had to return the next day. CBP agents told them that many asylum seekers were “liars.” When they returned the next day, they again were told to wait.

- CBP officers tell asylum seekers that they cannot cross at the Stanton Street Bridge port of entry in El Paso, Texas, as reported to Human Rights First by witnesses with a regular presence on the bridge.

These observations and other reports of CBP claiming a lack of “capacity” raise concerns that this may be an orchestrated effort to turn away asylum seekers and slow-down asylum processing in order to discourage refugees from requesting protection. In fact, CBP recently stated that it is “not going to pull resources” to process asylum seekers at ports of entry, even though the administration has urged asylum seekers to seek protection at ports of entry rather than by crossing between ports of entry.<sup>33</sup>

At least one CBP officer confirmed that his directions came from above, telling an aid worker: “I’m sure you know I’m following directions. And this is not even local directions.”<sup>34</sup>

The claims that detention centers or processing centers are “full” are called into serious question, not only by the fact that these assertions are part of a direction to the ports of entry, but also by the observations of attorneys and advocates working in the region.

For example:

- The processing rooms visible in the ports of entry visited by Human Rights First appeared to be largely empty. For example, the processing room at the Hidalgo-Reynosa Bridge has nearly 100 chairs and when Human Rights First researchers and other attorneys passed through, the vast majority of the chairs were empty.

- A representative of Annunciation House, a migrant shelter in the El Paso area with strong knowledge of how many people are detained at the bridges, explained that he knew the port was not full given his knowledge of the facility and the numbers they are capable of processing. He told a border officer, “I know you’re not at capacity. I know that’s what you’ve been instructed to say.”<sup>35</sup>

CBP’s failure to process these cases is leaving many asylum seekers in dangerous and difficult situations. Not only do many face extreme heat, lack of food, water, and bathroom facilities, but in some areas, they also face grave dangers and risk. The Caritas shelter in Tijuana, Mexico, for example, was broken into and set on fire likely because a group of transgender women were seeking refuge there after being turned away several times by border patrol officers. Reynosa, located on the other side of the Hidalgo bridge, is located in one of the most dangerous regions in the world, even earning the U.S. Department of State’s highest travel warning.<sup>36</sup> Attorneys and aid workers on both sides of the border explain that cartels often target asylum seekers and migrants for kidnapping, threatening their lives unless their families make ransom payments.<sup>37</sup>

These barriers leave asylum seekers who have fled their countries of persecution with an extremely difficult choice: wait for an undetermined period of time in often dangerous conditions on the Mexican side of the border or resort to crossing the border between ports of entry, which opens them up to criminal prosecutions and, under zero-tolerance, family separation.

## Recommendations to the Trump Administration, DHS, and DOJ

- **End the practice of referring asylum seekers for criminal prosecution on matters relating to their illegal entry or presence, as such**

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prosecutions generally constitute a violation of Article 31 of the Refugee Convention. Instead, agents should refer them to appropriate protection screening interviews. Additionally, the administration, DHS, and DOJ should implement more effective legal oversight of immigration enforcement matters to ensure compliance with U.S. treaty obligations.

- **Immediately discontinue Operation Streamline’s criminal prosecutions.** These *en masse* group proceedings violate defendants’ due process and constitutional rights, are costly, and divert prosecutorial resources from more significant threats to U.S. safety.
- **Ensure that separated families are timely reunified, and that reunification is not contingent upon asylum seekers agreeing to give up their asylum requests.** Furthermore, no

parents or children should be deported when the other family member remains in the United States.

- **The Trump Administration should end its efforts to terminate or circumvent legal rules limiting the detention of families with children.**
- **Support legal representation, and rather than holding families in detention, employ community-based case management strategies in cases where additional appearance support is determined to be necessary.** In a 2017 DHS Office of the Inspector General review, ICE reported that 99% of participants in its Family Case Management Program across the five regions attended their ICE check-ins and appointments.<sup>38</sup> Similarly ICE’s Intensive Supervision Appearance Program (ISAP II) reported a 99.6% appearance rate at immigration court hearings and a 91.1% compliance rate with court orders.<sup>39</sup>

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## Endnotes

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  - 6 This data was obtained from observation of El Paso Streamline proceedings on June 18, 2018.
  - 7 Ms. L. v. United States Immigration & Customs Enf't, No. 18cv0428 DMS (MDD), 2018 U.S. Dist. LEXIS 107365 (S.D. Cal. June 26, 2018) (order granting plaintiffs' motion for class-wide preliminary injunction), <https://www.aclu.org/legal-document/ms-l-v-ice-order-granting-plaintiffs-motion-classwide-preliminary-injunction>.
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