



Can President Trump Really Separate Families?

13 Things you need to know about Trump's Family Separation Executive Order

President Trump signed an Executive Order on 20 June 2018 that he claims would end family separation – but in reality, it doesn't. Here are 13 questions and answers that will prep you with the knowledge you need when you're in the streets with your protest sign, tweeting out **#FamiliesBelongTogether**, or having a conversation with your family over dinner.

1. Why does the US government detain asylum seekers at US borders?

For years, the United States has used detention centres for “deterrence” of irregular immigrants, including asylum seekers who are seeking international protection at US borders.

This use of immigration detention centres across the US has expanded to the point of having the **largest immigration detention system in the world**.

From 2010 to 2016, the number of immigrants held *annually* in US immigration detention centres averaged approximately [396,000](#). In October and November 2017, the average daily population in immigration detention facilities was [39,322](#) people. This does not include irregular migrants incarcerated in federal prisons. There are currently 115 operational immigration detention centres across the United States.

2. Does the US government detain asylum-seeking families?

Yes, the US government also jails families in immigration detention. Despite criticism of family detention in the United States, the use of family detention centres continues, and is growing as US officials continue to expand policies and support budgets that dramatically expand immigration detention.

There is no set standard in place to determine which family is released and which family is detained, except for availability of bed space.

There are currently three family immigration detention centres in the United States, where even infants are detained:

- Berks County Residential Center in Leesport, Pennsylvania, which was the first family detention centre in the country;
- Karnes Residential Center in Karnes City, Texas;
- South Texas Family Residential Center in Dilley, Texas.

More than 3,000 people can be detained at these centres. **Even babies and toddlers are jailed.** Berks is the only centre where fathers can be detained with their children.

3. Is family detention legal?



International human rights standards contain a strong presumption against the detention of asylum-seekers and immigrants. **Detention should only be used as a measure of last resort**; it must be justified in each individual case and be subject to judicial review. Detention also undermines US obligations under refugee law.

Amnesty International opposes detention of all children – whether accompanied or unaccompanied, whether migrants or asylum-seekers – solely for migration-related purposes, since such detention can never be in the child’s best interests. Amnesty International campaigned for the release of four mothers and children who were detained in the Berks Centre for nearly 700 days. All were [freed](#) in August 2017.

In February 2018, the UN Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment [concluded](#) that:

“Detention based solely on migration status can amount to torture, most notably where it is being intentionally imposed or perpetuated for purposes such as deterring, intimidating, or punishing irregular migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to voluntary repatriation, providing information or fingerprints.”

Family detention by the US government also violates its own immigration enforcement agency’s standards on family separation and detention. In October 2016, the US Immigration and Customs Enforcement (ICE) Advisory Committee on Family Residential Centers stated that separating families is never in the best interest of the child and recommended ending family detention altogether.

4. What is the Flores Settlement Agreement?

Prolonged detention of families likewise contravenes the *Flores* Settlement Agreement (“*Flores*”), which set US standards regarding the detention, release, and treatment of unaccompanied children and children traveling with their parents. *Flores* mandates that children should be released from detention without delay and within no more than 20 days.

It directs that children should be released with their parents, other adult relatives or guardians, or licensed programs willing to accept custody. When children 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.

5. Are there alternatives to detention for asylum-seeking families?

Yes, there are effective [alternatives to immigration detention](#), which should always be explicitly considered before resorting to detention.

The US can implement humane and rights-respecting policies that neither separate nor detain families seeking protection in the United States.

Parents (or guardians) and children should be kept together and released to community-based sponsors



through alternative-to-detention options.

Alternatives to detention include:

- Reporting requirements
- Parole or an affordable bond
- Supervision programs operated by community-based organizations.

Reporting requirements should not be unduly onerous, invasive, or difficult to comply with, especially for families with children and those of limited financial means. Conditions of release should be subject to review by an immigration judge.

The US government has previously [found](#) that those people participating in its alternative-to-detention programs appeared at their immigration hearings in 99.6 percent of cases. **The Trump administration recently terminated the Family Case Management Program (“FCMP”), even though it was 99-percent effective in ensuring that asylum-seeking parents and their children appeared at their immigration court hearings** – by helping them find legal representation, guiding them through the court system, and connecting them with other community resources.

6. Why is the US government separating families on the US–Mexico border?

As early as March 2017, the Trump administration publicly proposed the use of family separations in order to “deter” asylum seekers from coming to the United States.

Family separation has occurred under prior US administrations, but it has **surged** under President Trump. During just six weeks in May and June 2018, the Trump administration separated approximately the same number of families as during the preceding 18 months combined.

In April 2018, the Trump administration introduced a “zero-tolerance” policy of criminally prosecuting every adult who irregularly crosses the US border, including asylum seekers who were coming to the US with children. Because adults were sent to jail and held in prolonged immigration detention, children could not stay with their parents. As a result, in practice, this policy also resulted in separating families. This policy was largely responsible for the recent surge in family separations, whereas the previous administration did not have a policy of prosecuting migrants on the first instance of irregular entry.

7. How many families have been separated by the US government?

According to the US Department of Homeland Security, **over 2,000 children were separated from their parents from early May to mid-June 2018**, under the “zero-tolerance” policy of criminally prosecuting those who irregularly cross the southern US border.

Additionally, US authorities informed news media that approximately 2,000 more families were separated over the year-and-a-half before the implementation of the “zero-tolerance” policy in May and June 2018.

8. Is the separation of families legal?



Forcible separation of families to deter them from seeking asylum is an unlawful practice, and the Trump Administration's deliberate decision to punish all families seeking asylum through such separations is **nothing short of torture**. The severe mental suffering that officials have intentionally inflicted on these families for coercive purposes, means that these acts meet the definitions of torture under both US and international law.

Family unity is a fundamental right, enshrined in [international human rights law](#), and recognized in US law. Forcible family separation of families not only [violates](#) those obligations, but also US obligations under refugee law and [US law](#).

On 26 June 2018, a US federal court issued a [preliminary injunction](#) ordering the US government: to reunite the thousands of children and parents it had forcibly separated; to halt deportations of those parents without children; and to stop family separations at official US border crossings unless absolutely necessary to protect the child from imminent harm. However, the order did not stop family detention or the criminal prosecutions of parents crossing irregularly into the US, which has resulted in family separations.

9. Is the US government still separating families?

Yes, the US government continues to separate families at the border in some cases, and has not taken steps to reunite those families whom it has already separated.

Since 2017, Amnesty International has found that US border and immigration authorities have lawlessly separated families even when they seek asylum regularly at official US border crossings, and not only when they cross the border irregularly.

On 20 June 2018, President Trump signed an [executive order](#) that he claimed would end the manufactured crisis of family separation under his administration's "zero tolerance" policy of prosecuting those crossing into the US irregularly.

In reality, the order did the following:

- It left open the possibility of separating families, as US authorities were doing arbitrarily for at least a year prior to the rescinded policy of mandatory separations;
- It did nothing to reunite the over 2,000 children who remained forcibly separated from their parents;
- It did not stop the policy of prosecuting families seeking safety who crossed over borders irregularly;
- It mandated the indefinite detention of children with their parents while their claims for asylum are adjudicated, which is unlawful in the US and threatens further harm to children and families.



The day after Trump's executive order, US border authorities [confirmed](#) that the practice of family separations would continue: "as was the case prior to implementation of the zero tolerance policy on May 5, family units may be separated due to humanitarian, health and safety, or criminal history in addition to illegally crossing the border."

10. Has the US government reunited the families it separated previously?

No, the US government has not reunited all of the families it separated previously.

The Department of Homeland Security issued a statement on 23 June, which suggested it did not plan to reunite separated families unless and until deporting them to their countries of origin, and that it would continue to keep them separated while they seek asylum in the US.

This US policy remains punitive and aimed at deterring people from exercising their legal right to seek asylum from persecution.

Timeline:

- On **24 June**, President Trump threatened on Twitter to turn away or deport all asylum seekers back to persecution and violence, "immediately, with no judges or court cases", which would violate the international law principle of non-refoulement.
- On **25 June**, the head of US border authorities said that his agency would temporarily halt the referral of apprehended families to criminal prosecution for crossing into the US irregularly, though apparently only due to lack of space to unlawfully hold families in immigration detention.
- The US government did not immediately announce any measures it would adopt to implement the **26 June** federal court injunction, which required the US government to stop separating families at the border and reunite those it had already separated.

11. How do family detention and family separations impact upon family members' asylum claims?

Detention impedes access to a fair and efficient process for seeking asylum. Detention presents barriers to accessing legal representation, and impedes the ability to obtain documentation in support of protection claims. It is often difficult or impossible for those in detention to communicate with family members or other witnesses in the home country to obtain crucial documents to support the asylum claim.

When children are separated from their parents, US authorities categorize them as "Unaccompanied Alien Children", and process their asylum claims separately. While it is possible to reunify the asylum claims of



the parents and children, this can be logistically difficult, due to the number of cases and due to challenges parents face in contacting their children once separated, especially when the children are infants and unable to speak.

Forcing children to undergo immigration proceedings alone, separated from their parents, severely restricts their ability to achieve protection where their claims are factually linked to those of their parents, especially for very young children who are unable to articulate the claim at all.

Furthermore, separation can result in only one family member retaining documents critical to establishing family members' identities or supporting their claims. Separation impedes the regular communication between children and parents that is critical for a child and parent to pursue a joint claim for protection.

Because there is no right to counsel for immigration cases under US law, children – as young as babies – can find themselves in the extraordinary situation of having to articulate and defend a claim themselves in an immigration court.

12. How does forcible family separation and family detention affect children?

Courts, child welfare organizations, and medical professionals have documented the serious and lasting harm on children arising from forcible separation from their parents, and from being held in detention even for short periods of time, let alone indefinitely.

Here are what the experts are saying:

- In a [statement](#) to the US Congress opposing family separation, the American Academy of Pediatrics warned: *“We know that family separation causes irreparable harm to children. This type of highly stressful experience can disrupt the building of children’s brain architecture. Prolonged exposure to serious stress – known as toxic stress – can lead to lifelong health consequences.”*
- In a [statement](#) in response to President Trump’s executive order, the American Psychological Association likewise observed: *“Decades of psychological research show that children separated from their parents can suffer severe psychological distress, resulting in anxiety, loss of appetite, sleep disturbances, withdrawal, aggressive behaviour and decline in educational achievement. The longer the parent and child are separated, the greater the child’s symptoms of anxiety and depression become.”*

There are consistent reports of sub-standard conditions in many US detention facilities, [such as forcing children to sleep on cement floors, constant light exposure during nighttime bed checks, open toilets, insufficient food and water, lack of bathing facilities, and extremely cold temperatures.](#)

Separating and detaining families serves to further [traumatize](#) those fleeing persecution and other



targeted and life-threatening harm as they seek humanitarian protection.

13. What needs to happen now?

- Reunify, as quickly as possible and unconditionally, children who have been separated from their parents or guardians.
- Halt the forced separation of children from their parents or guardians. Family units must be kept together in accordance with international standards on family unity, including the best interests of the child.
- End detention of children, whether accompanied or unaccompanied, separated or held together with their family, as it is never in their best interest.
- Immediately release together parents and children in detention.

Amnesty International is opposed to all forms of immigration detention and the separation of asylum-seeking families. In recent weeks there has been a wave of resistance across the globe against the cruel policy of family separation, and public pressure moved President Trump to backtrack and issue an Executive Order partially suspending the practice of family separation and detention -- but not the policy.

It is crucial that the Trump administration feels that people all around the world are still outraged about the practices of family separation and detention, despite the Executive Order

