

# THE CURRENT STATE OF IMMIGRATION AT THE BORDER

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# FAMILY SEPARATION

## Zero Tolerance Policy

April 2018

"zero tolerance policy" mandates the prosecution for illegal entry of everyone apprehended between ports of entry, including asylum seekers.

Under this directive, while parents in federal custody underwent prosecution, the administration took away their children without any clear requirement of eventual reunification.



# FAMILY SEPARATION (CONTINUED)

Trump Admin. Executive Order on Family Separation

June 20, 2018

expanding the use of family detention, while reaffirming his commitment to a "zero tolerance" policy of border prosecutions, even for those who lawfully claim a fear of persecution and are entitled to seek asylum in the United States

Against long established legal policies of US humanitarian law prosecutorial discretion

Also Calls for children and parents to be detained indefinitely

June 26, 2018 San Diego District Federal Court order to reunify children separated under Family Separation policies; officially 2737 children ordered to be reunified; Trump officially rescinded policy but family separation still continues; As a Nov. 2019; Federal Inspectors have found 118 new cases of family separation since the court order

# FLORES V. RENO SETTLEMENT AGREEMENT

In 1993, the US Supreme Court granted certiorari/apellate review in the landmark case of *Flores v. Reno* in order to address the federal detention of immigrant children. In 1997, the US government and plaintiffs in that case reached a consent decree settlement which set guidelines to protect unaccompanied minor children from unlawful mistreatment while held in federal custody. Collectively known as the *Flores Settlement Agreement*, these holdings evolved over time and also eventually became codified into US regulations.

# FLORES SETTLEMENT AGREEMENT

In 2014, the Ninth Circuit Court of Appeals in California ruled that the *Flores Settlement Agreement* covered not just unaccompanied minor children but also expanded it to cover children accompanied by their migrant families as well. It also set a general standard that children cannot be kept in federal detention facilities for more than 20 days at a time due to the physical and mental health ramifications of prolonged detention on children.

# FLORES SETTLEMENT (CONTINUED)

June 22, 2018 President Trump has ordered the Justice Department to file a request to modify a court agreement known as the Flores settlement to allow for immigrant families to be detained together at the border.

July 9, 2018 Judge Dolly Gee issued an order denying the government's ex parte application for limited relief from the settlement agreement, stating, the "defendants' ex parte application is a thinly veiled motion for reconsideration without any meaningful effort to comply with the requirements of Local Rule 7-18.... It is apparent that [the] defendants' application is a cynical attempt, on an ex parte basis, to shift responsibility to the judiciary for over 20 years of congressional inaction and ill-considered executive action that have led to the current stalemate.... In light of the foregoing, the court denies the ex parte application because it is procedurally improper and wholly without merit."

July 27, 2018 Judge Gee issued a Motion that a Special Master/Independent Monitor should be appointed to oversee detained children.

# FLORES SETTLEMENT (CONTINUED)

September 7, 2018

DHS/HHS issued a notice of proposed rulemaking to amend regulations related to the apprehension, processing, care, custody, and release of undocumented juveniles and would terminate the *Flores* Settlement Agreement. Comments were due by 11/6/18.

August 23, 2019

Trump Administration announced that the Flores Settlement would terminate effect 60 days from the announcement

October 22, 2019

Rule took effect terminating the Flores Settlement

**OUTCOME: UNACCOMPANIED CHILDREN CAN BE LEGALLY HELD IN PRISON/DETENTION FACILITIES IN DHS CUSTODY INDEFINITELY**

- Termination will funnel billions in tax-payer dollars to private prisons to jail children and families
- Prolonged detention causes profound and well-documented harm to the physical and mental well-being of children & families

# METERING AND ASYLUM TURNBACKS

Metering: otherwise known as “queue management” is the process of CBP and ICE turning around asylum seekers lawfully requesting asylum at the border ports of entry and requiring them to wait for months in Mexico for the opportunity to start the asylum process

- Beginning in March 2018 CBP is allowed to limit the number of persons daily able to request asylum at ports of entry
- As of November 2019, the Strauss Center estimated more than 21,000 people waiting in border cities in Mexico to start the asylum process



# ASYLUM BAN

November 9, 2018, President Trump issued a proclamation that, in combination with a rule promulgated by DHS and DOJ, bars from seeking asylum any individuals who enter the United States from Mexico between ports of entry.

November 19, 2018, Judge Jon S. Tigar of the U.S. District Court in San Francisco temporarily blocked the Trump administration from denying asylum to migrants who cross the southern border into the United States without inspection, saying the policy likely violated federal law on asylum eligibility.

# ASYLUM BAN (CONTINUED)

The asylum ban was issued on November 9, though the White House had as early as last month floated drastic changes to the way the United States affords protection to people fleeing persecution in their home countries.

The asylum ban would allow only people who cross at legal checkpoints on the southern border to request asylum, while those entering elsewhere would be able to seek different forms of protection that are harder to win and offer fewer benefits.

Judge Tigar's order remains in effect until December 19, at which point the court will consider arguments for a permanent order.

The injunction reflects the judge's conclusion that the plaintiffs are likely to succeed on the merits of the case

# ASYLUM BAN (CONTINUED)

Judge Tigar said the president could not change asylum law by executive fiat. "Whatever the scope of the President's authority, he may not rewrite the immigration laws to impose a condition that Congress has expressly forbidden," he wrote.

Judge Tigar reasoned that the "failure to comply with entry requirements such as arriving at a designated port of entry should bear little, if any, weight in the asylum process."

The judge determined that the changes proclaimed and ordered by the Trump administration would amount to a transformation of long-established asylum procedures, codified both at the international level and by Congress.

As the government sought to show that the ban was necessary and lawful, the judge seemed skeptical, observing that border apprehensions are near historic lows and that, regardless, federal law says all people on or arriving to U.S. soil can apply for asylum, no matter their manner of arrival or entry.

# ASYLUM BAN (CONTINUED)

Judge Tigar voiced concern for the fate of asylum seekers under the changes. The administration's rule, he observed, would force individuals "to choose between violence at the border, violence at home, or giving up a pathway to refugee status."

Judge Tigar wrote that the government's argument that the manner of entry can be the lone factor rendering a migrant ineligible for asylum "strains credulity."

Judge Tigar reasoned that the "interpretive guide" of the U.N. Refugee Convention lent extra force to congressional requirements. The intent of Congress, Tigar wrote, was "unambiguous."

Judge Tigar stated "And if what Defendants intend to say is that the President by proclamation can override Congress's clearly expressed legislative intent, simply because a statute conflicts with the President's policy goals, the Court rejects that argument also."

July 2019 Trump administration modifies the Asylum Ban into a 2.0 version (See the Slide on Asylum Transit Ban)

# MIGRATION PROTECTION PROTOCOL (MPP)

January 24/25, 2019? “Remain in Mexico Plan” or Migration Protection Protocols (MPP)

The MPP alters screening procedures at ports of entry for Central American asylum applicants by having USCIS officers conduct an "assessment" that determines whether applicants can pursue their claims from within the United States or whether they will be forced to do so from Mexico.

Those Exempt from MPP include: Mexican nationals, Unaccompanied Children, Individuals processed for expedited removal

assessment involves complex questions regarding persecution and torture on legally protected grounds

access to counsel during screening is prohibited.

ICE Officer may use MPP to separate asylum seeking family units where one parent and child is permitted to entry into the US to start the normal asylum process and other parent is sent back to Mexico to do the MPP

CBP/Border Patrol makes the MPP assessment

Originally, MPP used for only people from Spanish speaking countries but in January, 2020 it was expanded to include Brazil

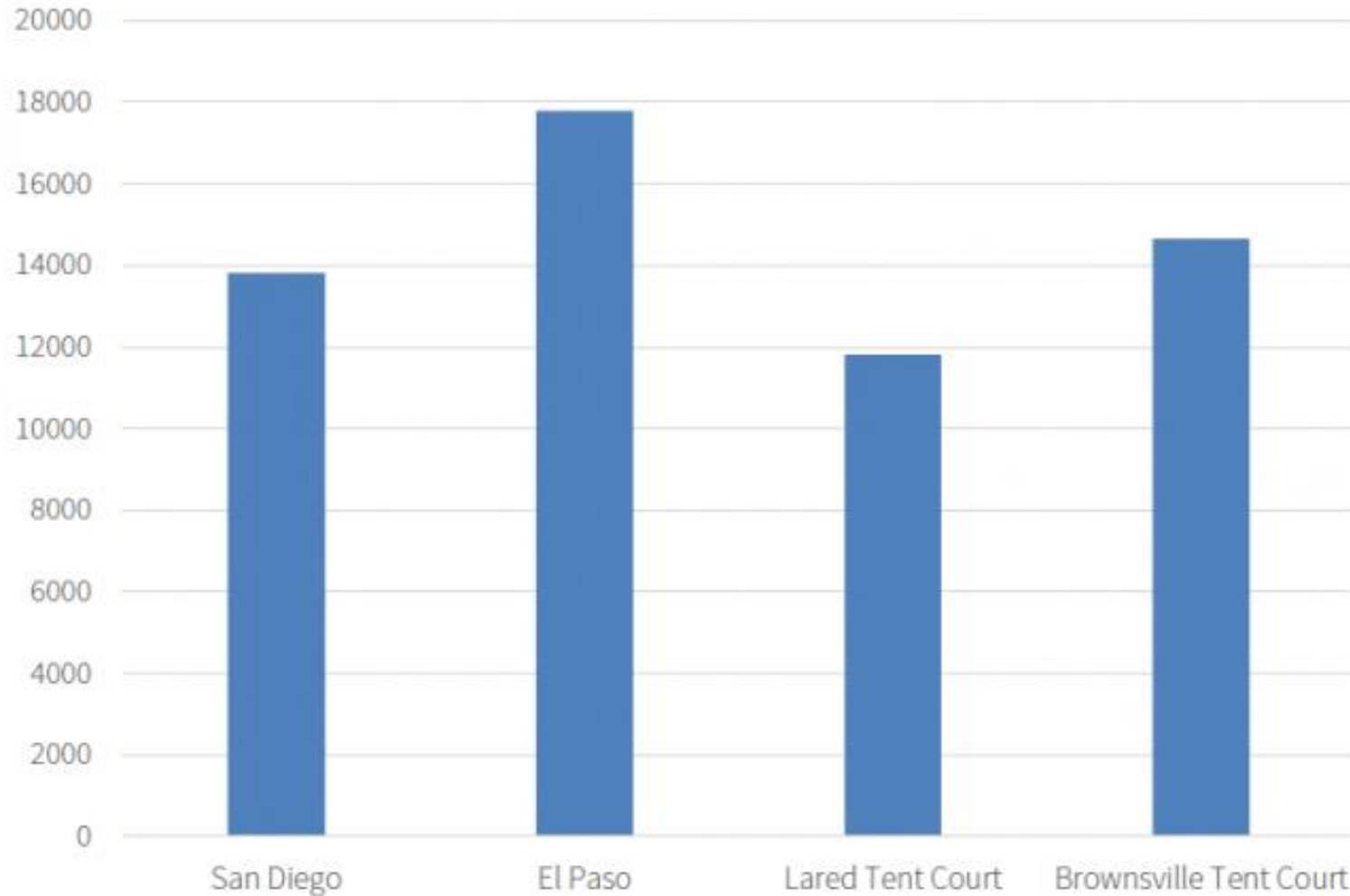
# MPP (CONTINUED)

## MPP Screening

- Asylum-seeker must affirmatively assert fear of returning to Mexico to have CBP Officer refer he/she for asylum officer assessment
- Rate of qualifying for MPP exemption between 1%-13% due to serious flaws in screening process
- Many asylum seekers in Mexico are in danger
  - Human Rights Watch through Jan. 2020 reported 816 publically documented cases of rapes, assault, kidnapping and other serious crimes against people sent back for MPP
  - Individuals sent to Brownsville and Laredo must pass through the Mexican state of Tamaulipas which US State Department classifies as being as dangerous as Syria, Yemen and Afghanistan

Figure 1: People sent back under MPP, by court through December 31, 2019

Source: Transactional Records Access Clearinghouse, *Details on MPP Proceedings*, <https://trac.syr.edu/phptools/immigration/mpp/>.



# RATES OF SUCCESSFUL ASYLUM GRANTS UNDER THE MPP PROGRAM GREATLY REDUCED

As of Dec. 2019, Data on MPP courts shows that 29,309 cases completed and only 187 people granted asylum; Approval rate is .6% <https://trac.syr.edu/phptools/immigration/mpp/>

By comparison, 2019 asylum approval rate before the Philadelphia Immigration Court (which the Pittsburgh region is part of) is Immigration Judge specific and between 29.9%- 64.7% See TRAC <https://trac.syr.edu/immigration/reports/judge2019/denialrates.html>

Why is MPP Approval rate so dismal?

- Lack of access to a Lawyer/Counsel in Mexico; less than 5% of asylum applicant enrollees in MPP have an attorney
- Lack of access to housing and homelessness while waiting months for your case to be heard
- Missed court due to danger of travel around border region to reach the tent courts
- Lack of access to evidence turned over to ICE/CBP upon initial apprehension;



# ASYLUM TRANSIT BAN

- Known as the “Second Asylum Ban” or Asylum Ban 2.0
  - Announced July 16, 2019
  - Prohibits asylum for individuals entering the US at the Southern land border after transiting through another country after leaving their home; Second Asylum Ban- asylum applicants must first seek asylum in countries that they travel through prior to reaching the US Southern Border
  - Allows for only Withholding of Removal and CAT relief
  - Does not exempt unaccompanied children contrary to the INA
  - Applies to people in the MPP program who applied for asylum earlier and turned back to Mexico
  - Applies at the end of the asylum process once an Immigration Judge makes a decision on the I-589
  - Fall-out: family members assessed under the Asylum Transit Ban can be permanently separated
- required asylum applicants to first seek asylum in countries that they travel through to reach the US Southern Border

Federal Injunction put into place preventing the Government’s implementation on Asylum Ban 2.0 on July 24, 2019

On September 11, 2019 SCOTUS stayed and reversed the injunction allowing Trump Admin. To implement Asylum Ban 2.0 while lawsuit works way through courts

June 30, 2020, another US District Court in the District of DC struck down Trump’s Second Asylum Ban for failure to follow the Administrative Procedures Act (APA) by implementing it without having the necessary question and comment period (Q& A) required under rule making changes

## RECENT EXECUTIVE ORDERS BANNING LEGAL IMMIGRATION TO THE US

### I. Travel Ban 3.0

Added following 6 countries Eritrea, Kyrgystan, Myanmar, Nigeria, Sudan and Tanzania to the EO Travel Ban already in place in against certain lawful visa holders from Syria, Iran Libya, Somalia and Yemen, Chad North Korea and Venezuela (government officials of the Maduro government only);  
January 2020

### II. Proclamation Suspending the Entry of Immigrants Who Pose a Risk to the US Labor Market During the Economic Recovery Following the COVID-19 Outbreak

Announced April 22, 2020

- 60 days bar on non-immigrant visas including employment based green cards
- includes spouses of Legal Permanent Residents

### III. Amendment extension on June 23, 2020 to Add Ban on Non Immigrant Visas

- added certain categories of non-immigrant work visas to April 22<sup>nd</sup> EO including H1B (specialty workers, ex. Eng. Scientists etc.), H2B (laborers, in construction, landscaping workers etc) J visas (interns, trainees, teacher exchanges, summer worker programs), L visa (international exchange workers and spouses)
- valid through the end of the year

(CONTINUED)

IV. Travel Ban Suspending Travel from Brazil –May 24, 2020

V. Travel Ban Suspending Entry of Students and Business Visitors from China, May 29, 2020

VI. Proclamation Banning F-1 Foreign Students from Universities with Remote Learning Programs for Fall 2020- July 6, 2020

- As of July 19, 2020, the Trump Administration is backing off of this EO policy after lawsuit brought by many US colleges and Universities, Harvard College and MIT v. US Dept of Homeland Security and ICE

**THANK YOU!**

