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Mexicans comprise a bigger share of border prosecutions since Trump ended family separations

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Mexicans have made up a larger share of the migrants prosecuted for crossing the border illegally since President Donald Trump signed an executive order to end family separations, a USA TODAY analysis of the nation's most active court for immigration prosecutions shows.

The analysis also shows a shift away from prosecutions of migrants from the Central American countries that the Trump administration associates with the violent MS-13 gang. The administration has cited the gang as part of its justification for the controversial "zero tolerance" border enforcement policy, which has led to thousands of children being separated from their parents.

Up to 100 mostly Guatemalan migrants amassed outside the DeConcini crossing in Nogales to seek asylum. By May 15, 2018 less than a dozen remained outside waiting. Rafael Carranza/The Republic

Of those charged with crossing the border illegally in the Southern District of Texas since Trump's June 20 order, nearly half were Mexican, complaints analyzed by USA TODAY show. In the days before the executive order, Mexicans made up 34 percent of those charged with the misdemeanor offense.

Meanwhile, the share of prosecutions of Central Americans, particularly Guatemalans and Hondurans, has fallen.

Migrants from Central America are more likely to arrive at the border as families, according to experts and apprehension data. As a result, the Trump administration's zero tolerance policy appeared to cause a spike in prosecutions of Central Americans.

The Southern District of Texas — which covers much of the Rio Grande Valley, where Central Americans have been migrating through — had the greatest increase in border-crossing prosecutions among U.S. border courts.

'Infinitesimally small'

Trump's executive order ending family separations followed weeks of public backlash.

At the height of that backlash, Homeland Security secretary Kirstjen Nielsen said during a June news conference that the threat of MS-13 was one of the factors for prosecuting parents.

"Since 2013, the United States has admitted more than half a million illegal immigrant minors and family units from Central America, most of whom today are at large in the United States," she said. "At the same time, large criminal organizations such as MS-13 have violated our borders and gained a deadly foothold within the United States."

But only in rare circumstances do migrant families have links to the gang, said Eric Hershberg, director of the Center for Latin American and Latino Studies at American University.

"There's simply no empirical evidence of the assertion — which cannot be taken as an assertion that aims to square with facts — that MS-13 members are a significant portion of those who are migrating," he said. "The fact that the people getting swept up in these arrests are families traveling with children, I think, speaks very clearly about what is going on here, and ... (the zero-tolerance policy) was clearly designed to make those families suffer."

Hershberg said research by his center and others shows an "infinitesimally small" number of migrants from Central America have a direct link to gangs like MS-13. Greater support and services, especially for unaccompanied minors, would prevent many from joining gangs after they enter the United States, he said.

"In those metropolitan areas where there's a lack of services to that extraordinarily vulnerable population, they become vulnerable to recruitment efforts and to criminal activity of gangs such as MS-13," Hershberg said. "That's a very clear finding of empirical research that we've been carrying out in several communities across the United States."

Change expected after order

Experts said the shift in prosecutions is to be expected, given the policy change: Mexicans make up a majority of Border Patrol apprehensions of people traveling alone.

"Clearly in the period before the executive order, the reason the Mexican percentage is low and the number from the (Central American countries) is high is because they were prosecuting families," said Randy Capps, director of research for U.S. programs at the Migration Policy Institute, a nonpartisan think tank. "You would expect a shift toward more Mexicans if they were only prosecuting adults and not families."

Another factor could be Central American migrant families are increasingly trying to claim asylum at ports of entry. But Adam Isacson, director for defense oversight at the Washington Office on Latin America, said the vast majority still cross the border illegally.

"You have seen the lines in Nogales, in El Paso, in McAllen, to some extent in Tijuana, which indicates there has been some increase in people using the ports of entry, but not an overwhelming increase," Isacson said.

Central American migrants have been fleeing gang violence at home, making the journey through cartel-controlled areas of Mexico. Isacson said many continue to cross the U.S.-Mexico border between ports of entry because they have to stick with smugglers who have permission from the cartels to use specific routes.

"(The cartels) are the ones who are determining who gets to cross the border where and for what," he said. "And the smuggler really doesn't have a lot of choice about where they cross with the families as a result."

Analyzing the cases

USA TODAY analyzed 3,100 criminal complaints from June 12 through June 30 for the misdemeanor of entering the United States illegally in the Southern District of Texas. The complaints identify country of citizenship.

The analysis didn't include complaints filed June 20, the day Trump issued the executive order, or filings for the felony crime of repeated unauthorized entry.

The data show a spike in minor criminal cases starting in May largely because of immigration cases. Other district courts haven't seen the same increase in prosecutions during that time.

The rate of filings has slowed since the executive order, but it's unclear whether that is due to the executive order or a cyclical summer slowdown in border crossings. The executive order didn't change the Justice Department's policy to charge all cases referred to them by border patrol.

"That's certainly interesting that they're not using fewer resources now," said David Bier, an immigration policy analyst at the Cato Institute, a libertarian think tank. "They're just focusing on more Mexicans than previously."