



Biden Is Still Separating Families at the Border. Where Is the Media Outrage?

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While the administration symbolically ended Trump's "zero tolerance" approach, it has not put an end to family separations outright.

As President Joe Biden took the oath of office on January 20, the question of what immediate action he would pursue on immigration arguably drew the most bated breath. And as modern presidents tend to do, he settled into 1600 Pennsylvania Ave. with a spate of executive orders—many of which served only to overturn former President Donald Trump's executive orders.

One such move: Biden instructed acting Attorney General Monty Wilkinson to rescind Trump's "zero tolerance" policy that saw thousands of migrant parents separated from their children at the U.S.-Mexico border.

The new order is symbolic. Following a very public backlash and a court injunction in the summer of 2018, Trump backtracked on the risible approach, which required that prosecutors charge every single adult immigrant who crossed the border illegally—a misdemeanor—in federal court. It goes without saying that those indicted on criminal charges cannot take their children with them to jail, thus splintering families for the crime of trying to claim asylum. Hundreds are yet to be reunited. Some likely never will be.

Buried in the news cycle around Biden's gesture, however, is that the updated guidance does not, in fact, stop family separations. It just tells the state to use discretion.

Prosecutors should not rule out formally charging misdemeanor border crossers but instead "take into account other individualized factors," wrote Wilkinson, "including personal circumstances and criminal history, the seriousness of the offense, and the probable sentence or other consequences that would result from a conviction."

It's certainly an upgrade from a zero tolerance approach, which, true to its name, was without any nuance or mercy. But it still gives the federal government wide latitude in deciding which mothers and fathers get to stay with their children, and expressly does not eliminate the possibility that they could be separated—perhaps forever—simply for crossing a literal line in the sand.

"It's still difficult to ask for asylum at ports of entry," says Alex Nowrasteh, director of immigration studies at the Cato Institute's Center for Global Liberty and Prosperity. "You have to

basically try to sneak into the country illegally and ask a Border Patrol agent. But by doing that you commit a federal crime."

The approach has come to define the U.S. immigration system, in that the vast majority of legal avenues are inaccessible to the bulk of would-be immigrants, thus incentivizing illegal behavior. Nowrasteh notes that such a measure—separating families—makes sense for parents charged with "murder, theft, terrorism charges, [and] other types of serious crimes." But those who merely cross the border conceivably don't deserve to lose their children.

In light of the news, some in the media focused their attention on Biden overturning the zero tolerance policy—though it will have no tangible impact—and seemed to gloss over the remaining implication. "The policy was a disaster," the Associated Press reported. "There was no system created to reunite children with their families....Children suffered lasting emotional damage from the separations, and the policy was criticized as grossly inhumane by world leaders." All true. But what about future families?

The outlet acknowledged that "most families have not been prosecuted under zero tolerance since 2018, when the separations were halted, though separations have continued on a smaller scale." Also true. And it will still be true under Biden, as laid out under his new guidance. A.P. adds that "the ending of [Trump's] policy will affect mostly single men who have entered the country illegally"—a strange insertion, when considering that single men ostensibly do not have families to be separated from.

Vox writes that Biden's symbolic directive "is a critical step in undoing Trump's nativist legacy on immigration." After stepping back from zero tolerance, the Trump administration continued to "separate more than 1,100 additional families on a case-by-case basis," the outlet notes, "where it found that the parents were unfit to care for their children"—again, something that Biden is also keeping on the table. A CNN headline claims that "a new Biden plan could end a troubling chapter in US history," referring to the president's recently deployed task force assembled to help reunite fractured families. The piece makes no mention of the current situation.

To be clear, I have no interest in drawing a false equivalence between what Trump did and what Biden is doing, or between Trump and former President Barack Obama. "Obama did absolutely separate children. That's absolutely true and Biden's going to do it too. He's probably already doing it in some cases that are unjust," says Nowrasteh. "But the difference was that the Trump administration did it systematically to basically everyone, and the Obama administration did it in special circumstances," not unlike what Biden is presenting.

But Trump isn't president now. Biden is, and he specifically promised he'd be better on immigration—not just better than Trump, which is a low bar, but also better than his former boss. It's the media's job to hold him accountable to that promise, and they should do that.