



## Trump Could Enforce the Border Without Locking Up Families

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For much of last week, the White House insisted that the only alternative to its policy of separating migrants from their infant children was anarchy. Their argument was as follows: Enforcing the border requires criminally prosecuting those who cross it illegally; such prosecutions require jailing border-crossers, lest they flee to the nation's interior; and a 1997 court settlement bars the government from sending migrant children to jail *with* their parents. Thus, the administration's only two options were to rip migrant kids from their mothers — or else, establish de facto “open borders” for Central American families.

There were several problems with this argument. For one thing, U.S. law provides migrants with a right to seek asylum in the United States — and multiple reports indicate that Customs and Border Protection (CBP) agents had been denying them that right when they sought to assert it at official points of entry. If those reports are true, then the administration's border enforcement policies do not uphold law-and-order, but *violate* it; and migrants would be well within their rights to evade such lawlessness by crossing the border between official points of entry (in fact, under international law, refugees can cross borders illegally without forfeiting their right to seek asylum, no matter the circumstances).

More fundamentally, the government can enforce a law without seeking to impose the harshest possible punishment on all who break it. Crossing the U.S. border between official points of entry is a misdemeanor — but so is not wearing a seatbelt. And, as the Cato Institute's Julian Sanchez notes, although the government *can* throw you in jail for failing to buckle up, it generally does not because that would be wildly disproportionate. Such a policy wouldn't just be excessive from the standpoint of the seatbelt-shirker — it would also divert finite law-enforcement resources away from more serious crimes. Which is precisely what the administration's insistence on prosecuting all border-crossers has already done.

In other contexts, the Trump administration has little trouble understanding the difference between leniency and lawlessness: Even as White House officials have demanded pretrial incarceration for migrant families who commit misdemeanors, they have defended Paul Manafort's right to rest in the comfort of his home while he awaits trial for a wide variety of felonies.

One could try to reconcile these positions by arguing that migrant families pose an exceptionally high flight risk. And the president has (tacitly) made that argument by insisting that the alternative to detaining migrants is a policy of "catch-and-release." But this is just another fallacy in the administration's official reasoning. And it's one that progressives *must* work to combat, as the debate over how the government should process migrants moves forward.

Last Wednesday, the president signed an executive order that purported to "end" family separation. And yet, he *also* reiterated his administration's commitment to prosecuting all adults who cross the border illegally. Thus, the White House's current position is that migrant children should be jailed *with* their parents, indefinitely — despite the fact that judiciary has forbade such a policy. To resolve this tension, congressional Republicans hope to pass a narrow piece of legislation that would nullify that decades-old court ruling, and shore up the administration's powers to detain migrant families.

This would be a terrible solution to the migrant "crisis." The judiciary barred the Executive branch from incarcerating migrant children for a reason — those children have a right to be spared such conditions. Fortunately, we don't need to choose between the lesser of two human rights violations: The Trump administration could ensure that asylum seekers don't abscond before their court dates — *without* detaining them in makeshift tent-prisons. As Alexia Fernández Campbell explains in Vox, the Department of Homeland Security already possesses effective alternatives to family detention:

The Family Case Management Program was launched by the Department of Homeland Security in 2015, in response to the waves of mothers and children seeking asylum from gang violence. Instead of keeping children in detention centers with their parents, families in certain cities were released and monitored by social workers, who helped them find lawyers, housing, and transportation, and made sure they attended their court hearings... The contractor that ran the program said that 99 percent of participants "successfully attended their court appearances and ICE check-ins." That included the 15 families who were ultimately deported.

... Central American mothers and children seeking asylum were released from detention centers in 2016 after a federal judge told DHS it could not keep children detained more than 20 days. In response, DHS ramped up its Intensive Supervision Alternative Program (ISAP) ... ISAP allows case workers and immigration officers to track immigrants with GPS ankle monitors linked to a cell phone app ... The contractor said it led to a 99.6 percent compliance rate for court appearances, though it had a lower compliance rate for deportation orders — 79 percent.

If the White House wanted to vigorously enforce America's immigration laws — without inflicting gratuitous suffering on migrant families — it could expand these programs. Instead, it ended Family Case Management in June of last year.

Put simply, cruelty is not a side effect of the administration's border policies; it is the policy, itself: Before they realized it was politically untenable, multiple administration officials described family separation as an effective and worthwhile means of deterring illegal immigration. Since then, the president himself has made clear that he isn't actually interested in enforcing America's immigration laws, at all — rather, he's called on his administration to *violate* them, by suspending due process for all deportation cases.

The impetus for Trump's border policies is not some fealty to law and order — but rather, a commitment to prolonging white America's political, cultural, and social dominance for as long as possible; or, as the president has put it, to prevent immigrants from “strongly and violently” changing American culture, as they've already, he argues, done to Europe's.

All of which is to say: Family detention is not a necessity for enforcing our border — it is an expedient for deterring refugees from exercising their legal rights (and thus, prolonging the survival of America's white majority). Anyone who disavows that latter project, should reject the notion that keeping migrant families together in jail is an acceptable alternative to family separation.