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Familias Separadas: The Zero Tolerance Policy that Changed the U.S. Immigration System

Saúl G. Amezcua
Bard College, sa9534@bard.edu

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*Familias Separadas: The Zero Tolerance Policy that
Changed the U.S. Immigration System*

Senior Project Submitted to
The Division of Social Studies
&
Multidisciplinary Studies
of Bard College

by
Saúl G Amezcua

Annandale-on-Hudson, New York
May 2019

Para mi mami Herminia Garcia Valenti. Sin ti nada seria posible. Tu eres la roca de my vida y sacrificastes todo para Giacomo, Grace, Ana, Victoria y Yo. Tu esfuerzo no fue por nada. Te amo con todo mi corazón y todo lo que he logrado es gracias a ti ama. Todos los elogios van para ti y este proyecto es para ti. Te lo mereces. I love you to infinity mami.

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INTRODUCTION

as the rain came gently
from the heavens
so we came

as the monarch moves freely
over lands & borders
so we move

as the dahlia tenderly holds
her dearest petals
so we hold each other

as the eagle rises
to greet the mountain air
so we rise

- isabella martínez, "*as flower, as song*"

At the age of 15 years old, my mother crossed the southern border alone and scared, leaving Mexico and entering the United States. Crossing the border wasn't her choice, but instead a decision made by my mother's parents because an opportunity had arisen for her to attempt a crossing. By this time, two of her older brothers were already in the U.S. waiting for her. There was no future for my mother in Mexico. Her father worked in the Tobacco fields located in the high mountains of Nayarit, Mexico. My grandparents did not have much at all. They made little money and could barely provide food themselves much less a family of 11 people. Despite having so little, they had hope. Hope of a better future and a better life which they heard could exist across the border in the United States. In 1990 my mother attempted to enter the U.S. through the means of illegal entry. It was the fastest and most affordable option. She arrived in Baja California, a northern state in Mexico that borders southern California. It was her first attempt, and my mother's brothers had hired a "Coyote," a person paid to smuggle people across the border. Many Coyotes were people who grew up on the border and knew their way around; some were known to be ruthless men, capturing women who were alone, raping them or selling them off to be sex slaves. My mother was fortunate in her first attempt to cross because she was with another family that had two daughters her age. It was a two-day journey that involved moving only at night. During the 1990's, it was much easier to cross the border than it is today. Enforcement of the border was done mainly through daily patrols on vehicle, with fences, walls and natural borders like rivers and the Sonoran Desert doing most of the work. Now due to extreme border militarization there are infrared sensors, motion detectors and thousands of Border Patrol agents with assault rifles in armored SUV vehicles surrounding the border. The group my mother was in had to travel discreetly and swiftly at night through the desert to avoid being spotted and apprehended. On her first attempt, the night before they could reach the U.S.

border, they were captured by the Mexican police. My mother says that when she was detained the police felt pity for her because she was only 15 and without any family members accompanying her. They brought her to the city of Tijuana, which is located in the Mexican state of Baja California and let her go. She was released and still alone as she had to wait for her brothers to reevaluate the next step of action, which ultimately became to try again.

Throughout this entire time, she had no direction over her life except for the fact that she wanted to live. Finally, after a couple weeks of waiting the next opportunity arrived. She doesn't remember much about the second time around except that it was dark, cold, and everything was a blur. Again, the journey was long, filled with walking and dodging the dangers that arise within the desert at night. High temperatures during the day, on top of the scorching Sun, are hot enough to dehydrate you in the matter of minutes. At night, it becomes cold enough to the point where you can see your own breath as you breath quickly to stay warm. When my mother reached the last checkpoint in the journey, the Coyote told her to run as fast as she could across the desert floor until she reached a giant fence and wall. At the fence she was told to climb it and continue to keep running and running until she reached the neighboring town. He told her to never turn back around and to keep her focus straight ahead. In the neighboring town there was another man waiting for her. He held her hostage until one of my mother's family members had officially paid the fee to cross. My mother was very fortunate in her second attempt; she made it safety and began her life in the U.S. in the southern California town called Escondido. She attended high school, learned to speak English and raised a family until 28 years later, she finally received her first documentation status. Although my mother crossed the border by herself, and not with her family, the thing she shares with many people who have crossed the border is the risking of one's life in the hopes of achieving a better life in the United States. My mother was

very fortunate compared to so many of the migrants who have made the same journey as her. Many have ended up imprisoned, caged, maimed, dead, or have been separated from their children and parents under the false claim of public safety and security. Human lives have been stripped of their humanity and reduced simply to statistics. The stories of migrants are important in understanding the reality of so many people's lives. Migrants who like my mother, only wish for a secure future for their families.

In the Spring of 2018, I published a written story of my mother's life and her journey to the U.S. while I was abroad in Berlin, Germany.¹ While I was abroad, I was fortunate enough to enroll in an amazing class titled, *Migration, Gender, & Nationalism*. It was taught by Professor Agata Lisiak who became a close mentor and supporter throughout my entire semester abroad.² She encouraged me to write about my mother's experience and created the path for its publication. It was during this time period abroad that the Trump Administration's "zero tolerance" policy was in full effect. The effect of the policy made it a hard time for me in Berlin and an even harder time within the class. It was painful to watch the dehumanization of the migrant families by the Trump Administration. Especially during the media coverage of the zero-tolerance policy where many photos, videos, and reports of human exploitation came to light. Seeing how parents were being incarcerated and deported, while their children were left in camps and shelters was hard on me mentally. I was enraged, distressed, and broken. I spoke to my mother a lot for comfort during my interviewing process with her for my final project in *Migration, Gender, & Nationalism*. My final project in that class would later become the

¹ Saúl Amezcuca, "Documenting the Undocumented: How the US-Mexico Border Shaped My Mother's Life," *Media Diversified* (blog), June 21, 2018, <https://mediadiversified.org/2018/06/21/documenting-the-undocumented-how-the-us-mexico-border-shaped-my-mothers-life/>.

² "Profiles," accessed April 17, 2019, <https://berlin.bard.edu/people/profiles/agata-lisiak>.

finished published piece. Throughout the entire process of creating the final essay, I couldn't separate the history and events that my mother had gone through, with what was happening to the families at the border. I considered how different my mother's life would have been if she was one of the minors captured during the enforcement of the zero-tolerance policy. I grieved for the parents and children that were affected by it. It was during this period of pain, frustration and anger that I began to conceive an idea on what I wanted to present my senior thesis on.

When I returned back to the U.S. to begin my senior year at Bard College, I had begun to investigate and formulate ideas on how I could structure my senior thesis. My senior year has been a constant journey of learning, growing, and reflecting on how I should present my work. I knew I wanted to explore and write about what the actions of the Trump Administration at the U.S. southern border meant for the future of U.S. immigration policy. I was shocked by what happened, but I also asked myself if the policy was really surprising or, given the history of poor treatment of migrants within the United States, it ought to have been expected.

My senior project focuses on the policy that resulted in the separation of immigrant families at the southern U.S. border from April to June 2018. I focus on the U.S. history of policymaking with regard to immigration and the developments that lead up to the Trump administration enacting the zero-tolerance policy. I will analyze the history of the U.S. immigration system and its deep connection to maintaining family unity. From the genesis of the early immigration system which was kickstarted by the creation of the Immigration Act of 1924, dubbed the Johnson-Reed Act. To our now modern immigration system created upon the foundation of The Immigration and Nationality Act of 1965 (also known as the Hart-Celler Act), family unity has always been a core element of the U.S. immigration system. Even throughout the mid 1980's till

the late 2010's, when the U.S. immigration structure began to rapidly change towards a system which primary focused on limiting immigration and addressing the increasing number of unauthorized migrants. Family unity was still a central component of the social and political structure of the U.S. immigration system.

This idea of family unity was turned upside when President Donald Trump began separating children from their parents in order to create a deterrence and end the common practice of releasing families awaiting trial. The zero-tolerance policy marked a new era in the immigration system in which the idea of family unity no longer stood. In this era, the notion of family became a weapon that was utilized by the Trump Administration to change the immigration system towards a merit-based and militarized system. This new system would be one in which families were no longer a priority, but were instead targeted, criminalized and used as leverage to install fear and deterrence among other migrants.

In chapter 1, I emphasize the specific history of the U.S. immigration system, breaking it into different eras and examining its connection to family unity. This is important because it provides the background information needed to understand the changes that have happened within the immigration system. I focus on the political and social climates between the years of 1924 and 2016. It was in this time period that the U.S. immigration system begins to take shape and become the modern U.S. immigration system we know today. Throughout this time period there have been many substantial changes to the immigration system, but the idea of family unity has always remained. Even after the 1980's when mass deportations began, families were either kept together in detainment for the maximum time allowed or released together to await trial. The latter was common among migrants wishing to seek asylum after a failed attempt to enter the U.S. via unauthorized means.

In chapter 2, I focus on the Trump Administration's zero tolerance policy, specifically with what led to its creation, its motivation, and the challenges it presented to families seeking asylum. I deconstruct the false narrative that was created by the Trump Administration which argued that the policy was not intentionally used for its deterrence effect. I provide a detailed explanation that proves the zero-tolerance policy was in fact used as a deterrence effect and who was to blame for the defense and prolonging of the policy. I analyze how the policy was directly meant to target individuals and families who, under normal conditions, would exercise their right to claim asylum if they were detained for illegal entry. Although, since 1996 any illegal entry into the U.S. has been a federal misdemeanor under the title "Improper Entry by Alien", previous administrations have mostly disregarded the misdemeanor if the individual(s) seek to make a defensive asylum claim. All defensive asylum claims are processed through a special U.S. court system entitled the Executive Office for Immigration Review (EOIR). From there migrants stood before an immigration judge who would then decide if the claim to asylum was valid or not. This all completely changed under President Trump's zero-tolerance policy. Under the new policy, regardless of any asylum claim, all migrants including children were prosecuted and apprehended. This is where the separation began as minors could only legally be held for a maximum of 20 days. To avoid this the Trump Administration marked all minors as "unaccompanied" regardless of whether or not they were alone. They then prosecuted and deported the adults under the charge of "Improper Entry by Alien." The children were then legally treated as unaccompanied minors which meant they needed to be transferred into the custody of U.S. Office of Refugee Resettlement (ORR) under the Department of Health and Human Services (HHS).

In my final chapter I speak about the cruel conditions in which the children were kept while under the supervision of ORR. This then contributed to the massive bipartisan opposition to the separation policy, which ultimately led to its ending. Within this chapter I expand on the surprising change in policy undertaken by the Trump Administration when it was met with public and media opposition to the separation of families. As immigration was one of the main tenets of President Trump's platform, his "trump card" so to speak, it was surprising to see such a quick retraction of the policy. Even with a small majority of support for the separation policy within the Republican party, the Trump Administration was still forced to backpedal and opted to end the policy via executive order. From there I write about what sparked the bipartisan support and how the notion of family unity, which has always been a part of the immigration system, was a hidden force behind the backlash. I speak about prominent figures who publicly came out in opposition of the policy and how the media added to the social and political climate during its duration.

In my conclusion I warn the readers about the trajectory of immigration policy in the aftermath of zero-tolerance. How although the policy of separating migrant families was "officially" ended, the practice still continues under the guise of profiling which migrant "appears" to be a danger to the child. I highlight the account of a mother of three who had her children separated from her and sent to another state because of a past record of deportation. Although the zero-tolerance policy has seemingly ended, in reality it has become a bigger threat because of the lack of media coverage, and its ability to disguise its attacks on the families of immigrants under the banner of protecting children.

Chapter 1 La Historia: A History on the U.S. Immigration System & its Roots in Family Unity

Though we tremble before uncertain futures
may we meet illness, death and adversity with strength
may we dance in the face of our fears.

- Gloria E. Anzaldúa, *This Bridge We Call Home*³

³ Gloria Anzaldúa and AnaLouise Keating, *This Bridge We Call Home: Radical Visions for Transformation* (Psychology Press, 2002).

1.1 Introduction

Immigration in the United States has gone through many different shifts and eras, not only in terms of how policy and laws should decide what to do with immigration but also on how we should view and protect these migrants. Since the conception of the U.S.'s modern immigration system family unity has always been at its core. The U.S.'s immigration policy as we know and understand it today had its fundamental foundations in the Immigration Act of 1924, commonly referred to as the Johnson-Reed Act. This initiated an era labeled here as "The Era of Quotas." The Johnson-Reed Act did not create the immigration policy we are familiar with today but instead laid out a precedent for "illegal" and "legal" immigration by framing immigration as lawful and unlawful. The Johnson-Reed Act was the first time the U.S. attempted to address immigration, both in a wanted and unwanted lens.⁴ It established a massive federal immigration restriction policy for the purpose of controlling and manipulating immigration through a nationality-based quota system which also prioritized families. This continued for about forty-years until a new immigration law changed the basic structure of immigration. This new law became known as the Immigration and Nationality Act Amendments of 1965, also called the Hart-Celler Act. This law marked a second era, inspired by the civil rights movement, in which immigration was diversified with the elimination of the Nation-based Quota system,

⁴ Keeping in mind the Chinese Exclusion Act of 1882, which was also an act similar to immigration control, but not one of massive federal level scale that aimed to create an immigration system but instead an act aimed directly at a specific group of people by excluding them access of entry within the U.S. So, although the Chinese Exclusion Act of 1882 was an act aimed at stopping a certain group from entering into the U.S. it was not an immigration act nor was it significant to the history of the Immigration Act of 1924.

that had proven to be discriminatory in favoring specific European countries.⁵ Again, the notion of family unity was extremely important as many migrants used family connections to reach the United States. With the beginning of the Hart-Celler Act, the U.S. entered a new era, which I will call the “Era of Mass Immigration”. During this era, the U.S. opened its borders like never before, and we saw a period in time in which immigration, both authorized and unauthorized, increased immensely. This era is what sparked discussions about what unauthorized migration into the U.S. could jeopardize, such as jobs and government assistance programs. Rising in this era was the opposition toward unwanted migration by the federal government. This later resulted in an immigration system that we better understand today, with the creation of Immigration Reform and Control Act of 1986. The Immigration Reform and Control Act of 1986, also called the Reagan Amnesty Act resulted in increased border security and mass deportations of unauthorized migrants. This shift in policy is called the “Era of Mass Deportations” because the U.S. began to focus its immigration platform on restricting access into the U.S. with increased security at the border and larger scale deportations. Although this shift occurred, the importance of family unity continued to stand, as migrants with family connections to the U.S. still held priority and families were rarely split up through deportation unless it was a serious situation that endangered multiple parties.

The Hart-Celler Act of 1965 had a monumental effect on immigration in terms of racial and gender integration into the United States. Unlike the Immigration Act of 1924 that limited the number of immigrants allowed into the United States through a national origins quota system. The Hart-Celler Act of 1965 was followed by the end of the Bracero Program which was

⁵ Rebecca E. Zietlow, “To Secure These Rights: Congress, Courts and the 1964 Civil Rights Act,” *Rutgers Law Review* 57 (2005 2004): 945–1008.

Congress laid a precedent for making the immigration system fairer with the previous 1964 Civil Rights Act, which completely changed the legal and social systems within the U.S. in regards to race.

established by executive order on July 1942 and ended on December 1, 1964. Over the program's 22-year lifespan, over 4.5 million Mexicans were accepted and hired which ultimately led to the infamous immigration law enforcement initiative known as Operation Wetback in 1954. Timothy J. Henderson writes in *Beyond Borders: A History of Mexican Migration to the United States* that the end of the Bracero program and birth of the Hart-Celler Act of 1965 was no coincidence, especially given the influence of the civil rights movement. Henderson writes that progressive politicians viewed the Bracero program as exploitative of Mexican workers and detrimental to the conditions of American workers. Henderson also acknowledges that the immigration policy in place before the Hart-Celler Act of 1965 was racist and preferred Western-Europeans over all other migrants. In June 11th, 1963 President John F. Kennedy gave a speech to the American Committee on Italian Migration, in which he called the immigration policy under the Johnson-Reed Act, as "intolerable" and acknowledged its bias against the Italian community.⁶ It not only hindered Italians from entering the U.S. but also discriminated against people from Asian, Eastern-European, and African nations.⁷ The Hart-Celler Act of 1965 eliminated the quota system, which disproportionately favored three countries in particular: The United Kingdom, Germany, and Ireland. These three countries had accounted for 70 percent of all visas handed out.⁸ Although the Hart-Celler Act of 1965 did not entirely abolish "quotas" there were no longer limits set towards a country on how many migrants could be accepted.⁹ Instead, there was a cap set on immigration as a whole from different hemispheres. This drastically diversified the U.S

⁶ Remarks to American Committee on Italian Migration at the East Colonnade of the White House, 11 June 1963 <https://www.jfklibrary.org/asset-viewer/archives/JFKPOF/045/JFKPOF-045-003>

⁷ "The Immigration Act of 1924 (The Johnson-Reed Act)," *Office of the Historian, United States Department of State*, accessed December 3, 2018, <https://history.state.gov/milestones/1921-1936/immigration-act>

⁸ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America*, Politics and Society in Twentieth-Century America (Princeton, N.J: Princeton University Press, 2004).

⁹ Nation-based quotas were abolished, but instead there was now an across the board set limit on how many migrants the U.S. could accept. This was based on hemisphere which also decided country cap.

immigrant population which shifted from an estimated 75% percent European to as low as 15% European.¹⁰ Amongst Asian countries, migration was four times greater than it was prior to the Hart-Celler act of 1965.¹¹ Today, one in four people in the U.S is a direct descendants of those who entered under the 1965 act.¹² Throughout this change to the immigration system, families were given a priority in accepted Visas. Wives and children were at the top of the list, which was followed by siblings and parents. This order and policy became the staple of family unity and protection within the U.S. immigration system.

1.2

Post- Hart-Celler Act

Although the Hart-Celler Act ended a discriminatory quota-based system on nations, the act still retained a quota-like-system. The quotas which had previously limited immigration based on nationality now placed an annual cap of visas allowed for an entire year based on the Earths hemisphere. Thus, the world was divided into the Western and Eastern hemisphere with 170,000 of Visas given to the Eastern Hemisphere, with each country allowed 20,000 per year. With the Western Hemisphere, the annual cap of visas was 120,000 visas with the same 20,000 cap per country. This process had levels of hierarchy that placed a large emphasis on families being prioritized. With about three to fourths of the allowed Visas being reserved for migrants who

¹⁰ “The Legacy of the 1965 Immigration Act,” CIS.org, accessed December 3, 2018, <https://cis.org/Report/Legacy-1965-Immigration-Act>.

¹¹ “The Legacy of the 1965 Immigration Act.”

¹² “The Hart-Celler Immigration Act of 1965,” *Center for Immigration Studies*, accessed December 3, 2018, <https://cis.org/Report/HartCeller-Immigration-Act-1965>.

came in through family connections. Most of these family connections were for wives, children, and in some cases parents.

Henderson notes that although the government intended for the Hart-Celler Act of 1965 to be “friendlier” and give more “equal” opportunities to migrants in general. It did not take into account the vast majority of Mexican immigrants that were coming into the U.S. after the ending of the Bracero program. This contributed to the mass unauthorized migration of Mexican-Americans in the United States. Many people who participated in the Bracero program were already migrating in and out of Mexico into states like Texas, Arizona, and New Mexico. This migration did not stop after the Bracero program was ended because work was always more abundant and rewarding in the United States. Because of this, many Mexicans continued to enter to fulfill the still high and open demand of labor force. This later contributed to the establishment of stronger border security and the "crackdown" on Mexican migrants entering and already within the U.S. after the Immigration Reform and Control Act of 1986.

The immigration reform did not fix the immigration problem, as complications with the Hart-Celler Act of 1965 began to arise. Henderson gives the example of Visas that were allowed by the U.S. government to be issued and how they were disproportionately unfair despite their attempt at being fair to each country. He gives the example of the difference in priority given to countries like Uruguay and Mexico. Both which were given the same number of allowed visas even though Uruguay had far less need of an immigration quota, since fewer people in Uruguay were trying to enter the United States. Additionally, Uruguay is 5,000 miles away from the nearest U.S. border thus giving two different countries with very different situations the same allowance.¹³ Although there were still set limitations on countries, it was not a "national quota

¹³ Timothy J. Henderson, *Beyond Borders: A History of Mexican Migration to the United States*, Viewpoints/Puntos de Vista (Malden, Mass: Wiley-Blackwell, 2011).

system" in the sense that the U.S. was not looking for specific requirements to fulfill but instead each country was given a cap of the number of migrants that could apply and enter.

Adding to the immense flow of migration into the U.S. from Mexico was the destabilization of Mexico's political climate and economy. With the abrupt end to the Bracero program and the new immigration reform of 1965, deportation rapidly increased in comparison to previous years.¹⁴ Henderson writes that within a year of the Hart-Celler Act, deportations of undocumented migrants were eight times higher than the year prior.¹⁵ Not only was immigration changed in a way that allowed more people into the United States, border patrol stations and a crackdown on undocumented migrants, specifically Mexicans, saw deportation numbers rise up to a higher degree than prior to the 1965 act.

Although deportations increased this did not stop migrants from attempting to enter the United States. Estimates of the number of unauthorized migrants were about 540,000 in the timeframe of 1965-1969. This then increased in 1980, with new studies estimating as much as 3,000,000 total unauthorized immigrants in the United States.¹⁶ This then dropped to 2,093,000 in 1983, most likely due to the Refugee Act of 1980 that established new definitions and policies

¹⁴ Henderson, 90-98.

¹⁵ Henderson 96-97.

¹⁶ "Illegal Immigration, Population Estimates in the United States, 1969-2016 - Illegal Immigration - ProCon.Org," accessed December 3, 2018, <https://immigration.procon.org/view.resource.php?resourceID=000844>, which states 1969 but uses it to mean "before 1970" and after 1965 was interpreted by ProCon.org to mean as of 1969"

"Estimates of the number counted in the census [1980] provide a firm empirical basis for setting a lower bound on the total in the country as of 1980. The estimates presented in this paper, along with the results of other studies (Panel on Immigration Statistics, 1985), suggest that the undocumented Mexican population in 1980 was in the 1-2 million range, with the total number from all countries falling in the range of 2-4 million. [...] Of the undocumented present and counted in 1980, 941,000 entered during 1975-1980; 576,000 entered during 1970-1974, and 540,000 entered before 1970 [and after the passage of the Immigration Act of 1965]. [...] Finally, the estimates for 1980 show a high proportion of recent arrivals and very few who entered the United States prior to 1960." Robert Warren and Jeffrey S. Passel, "A Count of the Uncountable: Estimates of Undocumented Aliens Counted in the 1980 United States Census," *Demography*, Aug. 1987

for refugees.¹⁷ This act was signed by President Jimmy Carter on March 17, 1980, and raised the cap on individuals claiming refugee status from 17,400 to 50,000 a year. The president also established the ability to exceed that cap when a president deemed it necessary. Although this helped lower unauthorized immigration briefly, it did not stop the increasing flow of unauthorized immigration in the United States. The constant increase in immigration eventually leads to the Immigration Reform and Control Act of 1986.

The Immigration Reform and Control Act of 1986, often called the Reagan Amnesty Act, was signed into law by President Ronald Reagan on November 6th, 1986.¹⁸ The bill focused primarily on the hiring of unauthorized immigrants and sought to help legalize certain migrants who fit a specific criterion on date of entry within the United States. The bill specifically made it so that any employer had

to attest, on a form developed by the Attorney General, that the employee's work status has been verified by examination of a passport, birth certificate, social security card, alien documentation papers, or other proof” and for the employee to "similarly attest that he or she is a U.S. citizen or national or authorized alien, and the employer to keep such records for three years in the case of referral or recruitment, or the later of three years or one year after employment termination in the case of hiring.¹⁹

The bill also strengthened security at the U.S. southern border, created the H-2A visa which was specifically for temporary seasonal agricultural workers. The “Amnesty” aspect of the bill said that any migrant who came into the U.S. prior to January 1st, 1982 and was able to prove that they had no criminal history or background during their time in the U.S. was able to become documented. Other requirements to the Reagan Amnesty Act were that migrants had to possess

¹⁷ US Census Bureau, "Change in the Undocumented Alien Population in the United States, 1979-1983," census.gov, Winter 1987

¹⁸ In 1987, the Reagan administration decided that minor children of parents who were legalized under the 1986 law should be protected from deportation. In 1990, the George H.W. Bush administration decided that all spouses and unmarried children of people who were legalized under the 1986 law could apply for permission to remain in the country and receive work permits. (This policy was formalized in the Immigration Act of 1990.)

¹⁹ Simpson, “S.1200 - 99th Congress (1985-1986).”

"minimal" knowledge of U.S. government and history and know entry-level English. Through the Reagan Amnesty Act, around 2.7 million individuals were granted legalization status and although estimates on undocumented immigration during this time show that a large portion of unauthorized migration was documented, trends in unauthorized migration were still rising.²⁰

One of the criticisms of the Reagan Amnesty Act was that it did not stop the arrival of unauthorized immigrants coming into the U.S. but instead primarily focused on the migrants who were already settled in the United States. Another common critique was the fact that the bill also allowed employers off the hook if they were caught employing unauthorized workers if employers claimed they had no idea they had received falsified documents. Thus, this solely placed the responsibility and blame on only the unauthorized workers. Although the bill was publicly presented as being aimed at ending the exploitation of unauthorized workers in situations where employers were using these migrants as a way to acquire cheap labor, the loophole did not stop or hold employers accountable for these actions.

By the time of the authorization of the Reagan Amnesty Act, immigration was no longer being viewed as a way to fuel the increasing and growing U.S. economy as it had been before. Social and political outlooks were changing the way immigrants and refugees were viewed. Prior to this moment, immigration was understood as the product of humanitarian crises for which the U.S. felt it had a responsibility to provide assistance. At the same time immigration was a way to boost the U.S. economy through the acceptance of "skilled" migrants into the United States. Following the Reagan Amnesty Act, we see laws put in place that increased the grounds for deportation. Subsequent to the Reagan Amnesty Act, deportations were limited to what the U.S. classified as "serious crimes", which included weapon possession, drug trafficking, rape, and

²⁰ Mark Hugo Lopez, Jeffrey Passel, and Molly Rohal, "NUMBERS, FACTS, AND TRENDS SHAPING THE WORLD," n.d., 128.

murder. Following the Era of Mass Immigration that occurred with the start of the Hart-Celler Act of 1965, we again see a new era emerge. This new era, which I will label as the “Era of Mass Deportations” was filled with political compromises on how immigration should be handled by both ends of the political spectrum. This resulted in constant disagreements and widespread disapproval on the topic of immigration. Unauthorized immigration continued to rise which concerned many conservative politicians while liberal members wanted to push for more access and opportunity for migrants entering the United States, both documented and undocumented. This difference in priority resulted in a push for more immigration policies that urged for more deportations and border security. These policies still strongly emphasized the importance of protecting families, keeping them together and providing more stabilization and security for immigrants as long as they adhered to strict guidelines.

1.3

Immigration Crack Down

The political and social climate of the 1980s began to shift from viewing immigration as a way of helping the U.S. economy, to viewing it more as a threat to the culture and social makeup of the United States. The concept of “illegal immigration” was changing and forging the threshold of a new era which I call the “Era of Mass Deportations”. This era was filled with policies meant to compromise and please both conservatives and liberals but failed to prioritize the migrant themselves. Prior to this, the Era of Mass Immigration completely diversified the immigration process of the U.S. and created frameworks and systems for refugees to be included in the immigration system. This went on for about 20 years, however as unauthorized migration rose across the continent and massive political attention was placed on increasing drug use in

America. President Nixon's initiated the infamous "war on drugs" in June 1971. Nixon's war on drugs eventually was passed down to Ronald Reagan who continued the legacy by imposing the Anti-Drug Abuse Act of 1988.

The Anti-Drug Abuse Act followed through with the trend of stricter immigration enforcement by making deportation for migrants related to drug offenses a lot easier. Prior deportation for drug-related offenses mostly happened when connected to large-scale drug trafficking. This new enforcement made the simple use of drugs a valid means for deportation. The Anti-Drug Abuse Act created a constraint upon authorized reentry into the United States. This policy is a good example of how the U.S. structured their immigration enforcement policy as it tried to focus primarily on targeting immigrants who were publicly viewed as "bad". While simultaneously making it harder for immigrants within the U.S. who weren't necessarily causing harm. Essentially the Anti-Drug Abuse Act made it easier for the U.S. to deport migrants and harder for both authorized and unauthorized immigrants to fit the mold of a "model citizen". This placed large amounts of pressure on migrants within the U.S. to assimilate and made it easier for migrants to also be exploited. At the same time, there was still an emphasis on not disrupting families and solely attacking the "singular migrant individual". Meaning that families as a whole were not targeted but instead the Act was meant to address migrants who were not conforming to U.S. social norms.

This is significantly shown with the "Family Fairness Initiative" which was a program created and orchestrated by the Immigration and Naturalization Services. This program started in 1987 and continued until late the 1990s when it was taken over by the Immigration Act of 1990 that created the Family Unity Program. The Family Fairness Initiative was created because of a major loophole within the Reagan Amnesty Act which did not take into account the children or

spouses of those who would be authorized under the new bill. This became a failure to the immigration systems core because families were no longer being considered as a whole. Because of this, many minors and spouses were left at risk of being deported while the member who was able to become documented under the Reagan Amnesty Act was not. This raised many concerns of family separations and the American Immigration Council published a fact sheet detailing "Publicly available estimates at the time were that 'Family Fairness' could cover as many as 1.5 million family members, which was approximately 40 percent of the then-unauthorized population".²¹ This meant that 40 percent of unauthorized migrants were at risk of deportation and family separation. Because of the Family Fairness Initiative, the entire family was considered and protected from deportations.

In 1989, Republican President George H. W. Bush Sr. entered office as the 41st President. He established a new INS commissioner after the previous commissioner Alan C. Nelson was fired from office in June 1989 amidst allegations of mismanagement and maladministration.²² In July 1989, the Bush Sr. administration pushed for a bill that aimed to stop all spouses and children of those who were legalized under IRCA from deportation under the premise that it was cruel. The Senate overwhelmingly agreed with the legislation and passed the bill with an 81-17 vote, protecting the family members of those undergoing the process of legalization set out by the Reagan Amnesty Act. Unfortunately, the bill failed to pass in the House of Representatives, reflecting the shift in priority of this era on immigration policy. One in which the lack of a consensus undermined attempts at reform via legislation. Following this legislative failure, on

²¹ 1615 L. St NW, Suite 800 Washington, and DC 20036 USA202-419-4300 | Main202-419-4349 | Fax202-419-4372 | Media Inquiries, "As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled," September 3, 2014, <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/>.

²² "INS Chief Resigns; Under Fire in Justice Dept. Audit". Associated Press. June 26, 1989. Retrieved November 15, 2018.

October 26, 1989, the new INS Commissioner, Gene McNary, was sworn into office. On February 2nd, 1990 under the administrative direction and with the support of President George Bush Sr, the INS expanded the Reagan’s Family Fairness policy to all ineligible spouses and children under 18 of family members who were being legalized by Reagan’s Family Fairness policy. Commissioner McNary was later quoted explaining, “It is vital that we enforce the law against illegal entry. However, we can enforce the law humanely. To split families encourages further violations of the law as they reunite”.²³ Here commissioner McNary is echoing a view central to U.S. immigration policy, a system that both enforces the law yet respects the notion of family unity. Although the U.S. government still wanted a stronger and secure border to prevent the rise of unauthorized migration, it still maintained a moral family-oriented approach.

This family-oriented sentiment by leaders within INS not only led to the creation of the Immigration Act of 1990 but also further emphasized the importance of family protection under it. This new reform was marked at the time as the biggest change to the U.S. immigration system since the Hart-Celler Act of 1965. It was revolutionary in the sense that it represented an important structural change to the immigration system. One important change was the rise in the cap of the number of immigrants that the U.S. would allow in. The new max number was set at 700,000, with 465,000 visas being specifically set aside for family-sponsored immigrants – so 66% of total Visas were to be used for family members of U.S. citizens. Not only were family related Visas made a priority, but to get a Visa in general, there was a new hierarchy that laid out which immigrants would receive preference over the other. They were ranked in order of 1st family-related immigrants; 2nd employment-based immigrants; and 3rd diversity immigrants. With regard to family-related immigration, the bill sought to "allocate[...] annually by

²³ Brief of Former Federal Immigration and Homeland Security Officials as Amicus Curiae, p. XX, *United States v. The state of Texas*, 579 U.S. __ (2016)

preference specified numbers of visas for family-sponsored immigrants, according to certain formulas," among designated groups of migrants.²⁴ This preference had its own categories for individuals that fit this criterion. 1st to “unmarried sons and daughters of U.S. citizens”; 2nd “spouses and unmarried sons and daughters of permanent resident aliens”; 3rd “married sons and daughters of U.S. citizens”; and 4th “brothers and sisters of U.S. citizens, if such citizens are at least 21 years of age”.²⁵ Within this law, we see a new structural change towards the importance of family unity within the newly formed immigration system.

Although this act's intention was to reform the immigration system by focusing on both a family-oriented visa and a skilled immigrant labor approach. It, unfortunately, did not stop the continuous rise of unauthorized immigration in the United States. Even though about 66% percent of allowed Visas were set aside for families. The quota was quickly filled up and at times would take years before someone was able to claim a spot. This left many migrants outside of the new system, forcing them to take alternative measures. The pressure of wanting to live in the U.S. yet avoiding painful wait times that could last over 15 years, contributed to the increasing number of immigrants entering into the U.S. through unauthorized means.²⁶ Families were willing to risk capture at the border for the hopes of attaining a better life within the United States. Time was of the vital essence and many families knew what was at stake and could not afford to risk being forgotten in the always backlogged immigration system.

After President George Bush Sr. left office, immigration was still a large topic of discussion among politicians and the general public. The war on drugs and poverty was still on the rise and

²⁴ Edward Kennedy, “S.358 - 101st Congress (1989-1990): Immigration Act of 1990,” webpage, November 29, 1990, <https://www.congress.gov/bill/101st-congress/senate-bill/358>.

²⁵ Kennedy.

²⁶ Muzaffar Chishti Yale-Loehr Stephen, “The Immigration Act of 1990: Unfinished Business a Quarter-Century Later,” migrationpolicy.org, July 6, 2016, <https://www.migrationpolicy.org/research/immigration-act-1990-still-unfinished-business-quarter-century-later>.

a new President was in office, President Bill Clinton. President Clinton entered office on January 1993, and like many presidents in this era, he focused a lot of his platform on immigration. Pressures of unauthorized immigration and the war on drugs/poverty still rising. President Clinton signed the "Violent Crime Control and Law Enforcement Act of 1994." Although aimed at ending crime in America through harsher sentencing and policing. It also affected countless immigrants across the United States. The bill's stricter reforms of the criminal process resulted in an even larger number of deportations. If an immigrant, both lawful and unlawful was caught in a criminal act, the Violent Crime Control and Law Enforcement Act allowed officials to avoid processing an individual through the proper deportation process which required immigrants to appear before a court. Under this new act, officials had the power to deem an offense as grounds for deportation without giving the migrant a proper trial. This decision increased and made the deportation of immigrants a lot easier but also helped fuel the mass incarceration of poor black and brown people all across America.²⁷

Although the Violent Crime Control and Law Enforcement Act of 1994 that President Clinton passed was not directly aimed at immigration, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was. This act reinforced and solidified the criminalizing tendency of the Violent Crime Control and Law Enforcement Act, except this time it was aimed directly at migrants. Although deportations were already slightly rising as a result of the Violent Crime Control and Law Enforcement Act of 1994, the Immigrant Responsibility Act really accelerated mass deportations in America to an even larger scale than before.²⁸ The Immigrant Responsibility Act served as a paradigm for the Era of Mass Deportations. The bill focused on

²⁷ "The Complex History of the Controversial 1994 Crime Bill | Brennan Center for Justice," accessed December 3, 2018, <https://www.brennancenter.org/blog/complex-history-controversial-1994-crime-bill>.

²⁸ Dara Lind, "The Disastrous, Forgotten 1996 Law That Created Today's Immigration Problem," Vox, April 28, 2016, <https://www.vox.com/2016/4/28/11515132/iirra-clinton-immigration>.

the increased militarization of border patrol and continued the ongoing process of criminalizing immigrants with a "criminal" background or record by deporting massive amounts of immigrants who fit the easy-to-fit description of a "bad" immigrant. A "bad" migrant was forged as being one who didn't contribute to the commonwealth or exemplify the hard to fit box of a model citizen. Both political parties were at odds on how to properly deal with the spreading public fear of unauthorized immigration, but both agreed that "bad" immigrants should be the ones targeted. Democrats wanted to continue to allow immigrants who were "at risk" to enter the U.S, but Republicans felt the priority should have been focused on the continual rise of unauthorized migrations. In order to compromise, immigration reforms during this time aimed at dealing with immigration by focusing on restricting anyone who fit the model of a bad migrant. While also simultaneously establishing limitations that made it harder for migrants, in general, to enter into the U.S.

In California, particularly during the early 1990s, there was a strong wave of anti-immigrant sentiments. Communities felt that the government was not putting in enough effort to make changes to the immigration system. One issue against immigration within these communities that was brought to the forefront, was the fact that unauthorized immigrants were able to use government-funded assistance programs. These programs included government sponsored welfare, public education, and free healthcare. Governor of California at the time, Peter Barton Wilson (1991–1999), had very strong anti-immigrant sentiments and used the public's similar opinion on immigration to fuel his political campaign and agenda.²⁹ Governor Wilson published an open letter addressed to President Clinton in August 1993 where he blamed California's budget problems on immigrants living within the state.³⁰ In the open letter, he

²⁹ Henderson, *Beyond Borders*, 128–30.

³⁰ Henderson, 128.

proposed legislation that would repeal a clause in the Fourteenth Amendment within the U.S. Constitution, which granted immigrants born in the U.S. birthright citizenship.³¹ Following the open letter to President Clinton, Governor Wilson continued onward with his agenda against migrants with a bill called Proposition 187.³²

Proposition 187 was drafted when a small group of people within California created a petition that pushed for stricter immigration regulations and limitations. The petition which garnered over 385,000 signatures was originally under the name "Save-Our-State" initiative or SOS.³³ It later became better known as Proposition 187. Proposition 187 was filled with reforms to California's immigration policy, and similar to Governor Wilson's letter, it proposed massive changes that included "denial of social services, including public education and all non-emergency healthcare to undocumented immigrants".³⁴ On top of this, any undocumented child enrolled in the California school system would have to register as an undocumented student along with their parent(s).³⁵ Anyone who was "suspected" of being undocumented was to be reported to INS by service providers and school administrators. Proposition 187 also further established the usage, manufacture, and distribution of fake documents as a federal felony, which included a minimal sentence.³⁶ What was confusing about the criminalizing of the fake documents was that businesses who hired undocumented workers were not mentioned at all or held accountable even though they were doing the hiring and could have easily addressed this themselves.³⁷ Proposition 187 was a clear attack on migrant families within the State of

³¹ Henderson, 128.

³² Henderson, 129.

³³ Henderson, 128.

³⁴ Henderson, 128.

³⁵ Henderson, 128.

³⁶ Martin, Philip. "Proposition 187 in California." *The International Migration Review* 29, no. 1 (1995): 255-63. doi:10.2307/2547004.

³⁷ Henderson, *Beyond Borders*, 129.

California, as a majority of the bill's propositions were directed towards ending family assistance and education. When it came down to vote to support or oppose Proposition 187, the majority of California voted in support for it with 59% of the votes.³⁸ Almost immediately after Proposition 187 was voted on and passed, a federal district court judge blocked it arguing that it violated the United States Constitution. This court block signifies an establishment of immigration as a family-centered process.³⁹

Although Proposition 187 failed in becoming a legal law within the state of California, Proposition 187 succeeded in showing that there were strong anti-immigrant sentiments growing within the U.S. populations. Proposition 187 wanted to strip financial and education aid to migrants and reverse the protection of birthright citizenship. This bill mainly targeted undocumented families, especially children who benefited from both the educational and health care provided by the state of California and the Federal Government. If Proposition 187 would have passed without any confrontation, it would have completely undermined the core value of previous policies which aimed at ensuring families were together, stayed together, and were protected. The feelings that people had about Proposition 187 would not completely die, as we see today in our U.S. President, the same issues on immigration that were contested in the '90s would again now be brought to the attention of the American People.

1.4

Enforcement at The Border

³⁸ Henderson, 128.

³⁹ "CA's Anti-Immigrant Proposition 187 Is Voided, Ending State's Five-Year Battle with ACLU, Rights Groups," American Civil Liberties Union, accessed December 8, 2018, <https://www.aclu.org/news/cas-anti-immigrant-proposition-187-voided-ending-states-five-year-battle-aclu-rights-groups>.

With the continual rise of both authorized and unauthorized immigration in the 1990's and more aggressive border enforcement, came another problem. This was the treatment of migrants attained at the U.S. Mexico border. Those who were trying to enter lawfully and unlawfully. Before the early 1990s regulations on how immigrants should be treated, kept, and processed were very vague. Men and women from all ages were housed in the same quarters where they would be subject to constant strip-searches in each other's presence for long periods at a time. One of the biggest issues was the handling of accompanied and unaccompanied minors, which did not have a set limit on how long they could be held. INS did have regulations set forth to protect minors, but they were only sufficient enough to protect minors from the people they were housed in. One important figure in changing this was Jenny Lisette Flores who was a 15-year-old girl from El Salvador, who in 1985 was apprehended for trying to enter into the U.S. without documentation.

El Salvador's Civil War lasted from 1979-1992. 12 years filled with economic depression, and constant death. In the civil war, the U.S. backed the Salvadoran Military Government against a leftist political party known as the "Frente Farabundo Martí para la Liberación Nacional" (FMLN). During this period of the Cold War, fear of Communism spreading throughout the United States and the West had a large effect on U.S. foreign policy. The Soviet Union had not collapsed yet, and in Germany, Berlin was still separated by a wall. The Salvadoran civil war was marked by thousands of civilian deaths and millions displaced from their homes.

In 1985 when 15-year-old Jenny Lisette Flores attempted to enter into the U.S. she was one of many trying to flee the brutality of the war raging on in her homeland. Jenny Flores was detained by INS in southern California for a period of two months. She claimed she suffered

constant abuse throughout her detainment. Jenny's mother, who was already in the U.S. as an unauthorized migrant, asked a cousin of Jenny, who was a legal resident, to pick up Jenny from the INS detention facility. INS refused to give up Jenny arguing they would only release migrant minors to a close parent relative and continued to keep Jenny in the detention center. INS argued this was done according to a "fear" of releasing unaccompanied minors into the wrong hands. Because of this, it was INS protocol to only release minors into parents' hands regardless of whether other people could prove they were related and a guardian. Although Jenny's mother was living in the United States, she feared that because of her undocumented status, upon arriving in the detention facility they would also capture her and deport her back to El Salvador. Eventually, the Center for Human Rights and Constitutional Law caught wind of Jenny Flores' situation and initiated a lawsuit against the U.S. which would be known as *Flores V. Reno*.⁴⁰ The Center for Human Rights and Constitutional Law argued that the both the U.S. policy on detaining and releasing minors were in direct violation of an individual's Due Process and Equal Protection clause stated in the U.S. Constitution. Lower courts came to an agreement that the handling of minors, especially the use of strip searching them, was in violation of the U.S. Constitution. When it came to the policy of releasing minors the lower courts upheld the claim that the U.S. had acted within the law in refusing to release the minors to someone who wasn't a parent or legal guardian. This decision made it all the way to the Supreme Court in 1992 when the Court eventually upheld the lower court's decision. However, this subsequently changed in 1997 under the Presidency of Bill Clinton. Both the U.S. government and the party representing Jenny Flores came to an agreement called the *Flores v. Reno Settlement Agreement*, in which

⁴⁰ Jenny was not the only minor mentioned in the lawsuit, as this case mentioned many other minors who were also subject to cruel conditions and length times in detention facilities.

both parties on behalf of future policy and change came to a consensus on the rules and regulations of handling unaccompanied minors entering the United States.

The Flores Settlement created a national rulebook for the way in which minors were to be apprehended, detained, and released. Generally, the Flores settlement requires that the federal government do three things when detaining minors. Firstly that "INS shall release a minor from its custody without unnecessary delay" which was legally set to no more than 20 days for minors who were unaccompanied.⁴¹ The second important ruling was that minors should be released to anyone that falls under the new guideline of people who minors could be released to. This was done in order of preference, in case multiple parties at once wanted to gain custody of the minor. This was important because before, INS and the Federal government refused to release a minor unless it was to a parent or legal guardian forcing many unaccompanied minors to be held for weeks by INS regardless of any close family in the U.S. offering to take in the minor. The final important ruling was that during the minor's time in custody INS was made responsible for ensuring that the minors were provided with the "least restrictive setting appropriate to the minor's age and special needs" and that their "physical, mental, and financial well-being" were met.⁴² Minors would no longer be subject to strip searches, cell blocks with opposite genders, and locations without basic necessities, like sleeping and dental products. If a parent or guardian could not be found for the minor who was detained, then after the 20-day deadline they would be placed into facilities that could take care of them until their transfer into a temporary foster care system, which in most cases became distant family member.

⁴¹ O'Connor, Janet Reno, Attorney General, Et Al., Petitioners v. Jenny Lisette Flores Et Al., U.S. (U.S. Supreme Court 1993).

⁴² O'Connor, U.S.

The Flores Agreement became the standard for how minors should be treated through subsequent administrations. Although the flow of unauthorized migrants and minors both accompanied and unaccompanied continued to rise, Presidents were held in check as to how they dealt with minors attempting to enter the United States. It wasn't until 2014 that the Flores Agreement would again become subject to public discussion. In 2014 the Obama administration was facing a crisis in immigration, especially in relation to minors and families. Large pressure was being placed by the record-breaking levels of unauthorized immigration into the United States. The Department of Homeland Security released a document that placed the number of authorized migrants within the U.S. at 12.1 million as of January 2014, compared with an estimated 8.5 million in 2000.⁴³ The year 2014 was not only a difficult year for the Administration because of the record number of unauthorized migrants, but it also saw a record number of families and unaccompanied minors apprehended at the U.S. Mexico border. The Obama administration tried to address this in part by detaining accompanied minors with their parents/guardians who were caught entering the U.S. in facilities where they would await deportations. This practice exceeded the 20-day time period but maintained on keeping families together. Following reports that this was being used as a way to stop the rising number of families seeking asylum, Federal Judge Dolly M. Gee from the United States District Court for the Central District of California, halted the policy as a violation of the Flores Agreement of 1997.⁴⁴

⁴³ Bryan Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2014," 2014, 9.

⁴⁴ Julia Preston, "Judge Orders Release of Immigrant Children Detained by the U.S.," *The New York Times*, December 21, 2017, sec. U.S., <https://www.nytimes.com/2015/07/26/us/detained-immigrant-children-judge-dolly-gee-ruling.html>.

What was interesting about Judge Gee's decision, was that previously the Flores Agreement only applied to minors who came into the U.S. who were unaccompanied. Meaning that any accompanied minors weren't necessarily protected under the Flores agreement. Judge Gee established that the Flores agreement also applied for minors that were accompanied by an adult, which meant that the entirety of the Obama administration's policy was in violation of the Flores agreement. Judge Gee gave the Obama administration one week to figure out what to do with the families who were detained and to ensure that in the future they would not hold minors in any detention for any periods that violated the set limit by the Flores Agreement. This was a very important decision because what would follow would be the formalization of the already common practice of the previous Bush administration. This was the practice of releasing the families altogether when the 20-day time period came.⁴⁵ After 2014, the practice of releasing apprehended family units that included minors continued up until the start of Donald Trump's presidency in 2016.

In 2014, in between the months of June and September, the number of unaccompanied minors and family units had reached an all-time high. For family units, the number was as high as 16,000 apprehended and over 10,000 for unaccompanied minors.⁴⁶ This was a dramatic increase from the years before with the number's years prior to averaging at less than 4,000 for each category.⁴⁷ The Obama administration tried to grapple with this by placing pressure on Mexico to fortify their southern border with Guatemala. This resulted in the Mexican Government policy known as Programa Frontera Sur (Southern Border Program) in July 2014.

⁴⁵ Dara Lind, "'Catch and Release,' Explained: The Heart of Trump's New Border Agenda," Vox, April 9, 2018, <https://www.vox.com/2018/4/9/17190090/catch-release-loopholes-border-immigrants-trump>.

⁴⁶ Marc R. Rosenblum Ball Isabel, "Trends in Unaccompanied Child and Family Migration from Central America," migrationpolicy.org, January 6, 2016, <https://www.migrationpolicy.org/research/trends-unaccompanied-child-and-family-migration-central-america>.

⁴⁷ Marc R Rosenblum and Isabel Ball, "Trends in Unaccompanied Child and Family Migration from Central America," *Fact Sheet*, n.d., 11.

This program was initially meant to help migrants from Central America apply for asylum in Mexico rather than letting migrants cross through Mexico to get into the United States. Programa Frontera Sur was partially funded by the U.S. government as a strategy to redirect incoming migrant flows to Mexico rather than the U.S. southern border. In the end, the program failed to successively deter migrants away from the U.S. and instead created a platform for President Trump to use in the 2016 Presidential election.

1.5

Conclusion: No Longer A Family-Focused System

With the election of President Trump, a different approach to immigration emerged. Instead of a family-oriented system, immigration would become a zero-tolerance policy focusing completely on shutting down the entry and arrival of migrant families seeking asylum. President Trump ridiculed President Obama and Bush's policy on releasing families, labeling it as the "Catch and Release" policy. President Trump made claims that releasing migrants after they were apprehended at the border lead to migrants disappearing when summoned to appear in immigration court. In April 2018 President Trump stated

we have a country where if they step one foot — not two feet — if one-foot hits our country, we have to take those people gently, register them, and then release them. Okay? We're going to release them, essentially, in a short period of time. So, we release them. And then they're supposed to come for a court case. We hire more judges — we're trying to hire thousands of judges. No other country in the world does it. We hire judges so that these people will come back. Now, they're on the land. We release them. They go someplace into our country. They're supposed to come back within two or three years for a court case, but nobody ever comes back. It's bad enough to say, "Come back in three years." But nobody comes back anyway. This is our country.⁴⁸

⁴⁸ "Remarks by President Trump at a Roundtable Discussion on Tax Reform," The White House, accessed December 3, 2018, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-roundtable-discussion-tax-reform/>.

This demonization of families being released because of the Flores Agreement led to the present practice of separating children from their families under a zero-tolerance policy which happened during March 2018- to early June 2018 at the Southern U.S. Mexico border. The policy established the removal of a child from their parent(s) or guardian when apprehended, which also labeled any child apprehended as an unaccompanied minor. The result was that the child(ren) would go through the same legal process as if they had tried to enter into the United States alone. Because of the Flores Settlement, this meant that after the 20-day time period. The separated children would be relocated to facilities built for housing unaccompanied minors. This happened until they could be placed in a foster-care system, or distant relative in the United States. Because the parent(s) or guardian(s) that accompanied the child(ren) are not protected by the Flores Agreement, meaning they can be detained much longer and in most cases, deported immediately back to their country of origin. This new policy forced the separations of families which completely deviated away from the family-centered core of what the immigration system had been since 1924.

The separation of families signaled a new era, one that was not characterized by a family unity-oriented approach like it had been before. Instead, the separation of families marked an era in which the U.S. government viewed the notion of a family-oriented immigration system as the problem with immigration in the United States. The zero-tolerance policy emerged from previous policies and perceptions of immigration that laid a precedent for the new era I will call “The Zero-Tolerance Era”.

After 1965, we saw a change in U.S. history, as the immigration system became diversified and expanded. We saw a growth in immigration, as well as a rise in unauthorized migration into the United States, particularly those from war-torn, and impoverished, Latin-

America. This led to a series of family-oriented policies which sought to not only document those who had spent years already within the United States as undocumented migrants, but also the families of these immigrants as well. This was seen through the emergence of the Reagan Amnesty Act, which is argued to be one of the most liberal immigration policies since the Immigration and Nationality Act of 1965. Moving from this we then saw how the U.S. began to focus on criminalizing immigrants through a series of policies. These policies had a negative effect on the immigrant community in terms of making the ideal model of a "good" immigrant harder to fit, while also making the role of "the bad" immigrant easier to embody. We saw this with the Violent Crime Control and Law Enforcement Act of 1994 and the Immigrant Responsibility Act of 1996. These bills tried to manage immigration by making it harder for migrants to come and stay within the U.S. but at the same time easier to deport them. During the 1990's we encountered the mistreatment and humiliation of migrants specifically minors, which led to the Flores Agreement that laid down the precedent for the humane treatment of minors entering the United States. Fast forwarding to 2014 the Flores Agreement came into question again with a Federal Court deciding it not only applied to unaccompanied minors but all minors regardless of status.

Although the immigration system in the U.S. was continuing to get stricter and also becoming harder for migrants to enter the U.S. both through authorized and unauthorized ways. It still maintained a strong priority for family units as a whole. This all began to change with the Trump administration, which focused its agenda and approach on criminalizing *all* immigration, even family units. This led to the Trump administration seeking to end what they viewed as a weak point in the immigration system, which was releasing migrant families who came with minors. This, in turn, resulted in the Trump administration deciding to separate minors from the

adults they came with in order to deter new migrants from coming and also to stop the "catch and release" policy President Trump resented. The anti-birthright sentiment that we saw emerge and almost overcome the state of California in the 90's. Is one that today has generated a lot more federal attention under the Trump Administration, which is claiming to make an end to birthright citizenship to children born to undocumented parents.⁴⁹ Although it was ruled unconstitutional by the courts, President Trump has vowed to overturn it because he views it as another weak point in the U.S.'s immigration system. Like the separation of families that occurred. The zero-tolerance approach to the system of immigration is disregarding the family-oriented approach that has guided our immigration system since the beginning of the Immigration Act of 1924.

Prior to the Era of Zero-Tolerance, we saw massive public anti-immigration attitudes that led to propositions, bills, and increased border security aimed at dealing with immigration and stopping unauthorized immigration. Although deportations were made easier and authorization harder, the U.S. still maintained a strong family-oriented approach in the sense that its immigration policy aimed at reuniting, protecting, and helping families of both undocumented and documented status, especially minors. This was completely abandoned and turned upside in the Era of Zero Tolerance which enforced a stricter stance on immigration criminalizing every individual regardless of family or age. No more is the idea of family protection and reunification the goal of the U.S immigration system, but instead, the new focus has become immigrant family deterrence, deportations and separations.

⁴⁹ "Trump Vows Executive Order to End Birthright Citizenship, a Move Most Legal Experts Say Would Run Afoul of the Constitution," Washington Post, accessed December 11, 2018, https://www.washingtonpost.com/politics/trump-eyeing-executive-order-to-end-citizenship-for-children-of-noncitizens-born-on-us-soil/2018/10/30/66892050-dc29-11e8-b3f0-62607289efee_story.html.

Chapter 2 La Separación: An Explanation & Analysis of the Family Separations that Occurred Under the Zero Tolerance Policy

Broken spears lie in the roads;
We have torn our hair in our grief
The houses are roofless now, and their walls
Are red with blood.

Worms are swarming in the streets and plazas,
And the walks are spattered with gore
The water has turned red, as if it were dyed
And when we drink it,
It has the taste of brine

We have pounded our hands in despair
Against the adobe walls,
For our inheritance, our city, is lost and dead
The shields of our warriors were its defense.
But they could not save it.

- Excerpt from a Nahuatl Poem Depicting the Fall of Tenochtitlán⁵⁰

⁵⁰ Ramirez Ricardo Bishop, *Power from the Margins: The Emergence of the Latino in the Church and in Society* (Orbis Books, 2016).

2.1 Introduction

In 2018 public outcry both shook the Trump administration and signaled the arrival of a new era of immigration. It began with reports of separated families at the U.S.'s southwestern border and the criminal prosecution of adult asylum seekers. The family separation policy signaled the beginning of a zero-tolerance stance that the U.S. would take in regard to immigration. Within the span of eight months, at least 2,700 families were stripped from one another and separated with no intent, on the part of US government, for reunification. At least 1,995 children were taken from 1,940 adults from April 18th, 2018 to May 31st, 2018.⁵¹ During the months of April and May, the U.S. Department of Health and Human Services reported that the number of children in custody increased from 8,886 to 10,773. Some of the children separated from their parents were as young as 8 months old.⁵² Months before Attorney General Jeff Sessions had announced the zero-tolerance policy, families were already being separated at the border under the Trump Administration. Between October 1, 2017-May 31, 2018, at least 2,700 children were separated from their families at the border. What finally brought attention to

⁵¹ Dara Lind, "The Trump Administration's Separation of Families at the Border, Explained," Vox, June 11, 2018, <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

⁵² "In Rare Bipartisan Outcry Against Migrant Family Separation, White Evangelicals Avoid Implicating Trump," accessed February 14, 2019, <https://rlp.hds.harvard.edu/news/rare-bipartisan-outcry-against-migrant-family-separation-white-evangelicals-avoid>.

"Trump's 'Zero Tolerance' at the Border Is Causing Child Shelters to Fill up Fast," Washington Post, accessed February 14, 2019, https://www.washingtonpost.com/world/national-security/trumps-zero-tolerance-at-the-border-is-causing-child-shelters-to-fill-up-fast/2018/05/29/7aab0ae4-636b-11e8-a69c-b944de66d9e7_story.html.

Garance Burke and Martha Mendoza, "At Least 3 'Tender Age' Shelters Set up for Child Migrants," AP NEWS, June 20, 2018, <https://apnews.com/dc0c9a5134d14862ba7c7ad9a811160e>.

the separations was the sharp increase in children being taken from their parents in a short amount of time. Shockingly 1,995 of the 2,700 children were separated within a six-week window (April 18-May 31) at the end of that eight-month period.⁵³ Within the 6 weeks of the enforcing of the zero tolerance policy family separations increased by over 1100% in comparison to averages between October and March of that year.

These events lead to a bipartisan outcry that included high-profile Republicans like Laura Bush, Ralph Reed, Franklin Graham, George Will, and Steve Schmidt, the latter two renouncing their Republican party membership.⁵⁴ Many religious organizations joined these public figures in condemning the policy including the U.S. Conference of Catholic Bishops, the Council of Bishops of the African Methodist Episcopal Church, the Quaker Friends Committee on National Legislation, the Islamic Society of North America, the Jewish Orthodox Union, and the Soto Zen Buddhist Association.⁵⁵

Although the zero-tolerance policy did not specifically state that a child must be separated from their parent or guardian it did not stop the DOJ from initiating the process of arresting the adults, taking them away from their children and marking their children as “unaccompanied minors”. The act of separating children from their parent or guardian was carried out under a policy in which all persons, including those seeking asylum, who were apprehended for illegal entry into the U.S. would be transferred over to DOJ to be prosecuted for

⁵³ Dara Lind, “The Trump Administration’s Separation of Families at the Border, Explained,” Vox, June 11, 2018, <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

⁵⁴ “In Rare Bipartisan Outcry Against Migrant Family Separation, White Evangelicals Avoid Implicating Trump,” accessed February 13, 2019, <https://rlp.hds.harvard.edu/news/rare-bipartisan-outcry-against-migrant-family-separation-white-evangelicals-avoid>.

⁵⁵ “In Rare Bipartisan Outcry Against Migrant Family Separation, White Evangelicals Avoid Implicating Trump.” These acts were in association with or committed by the Department of Justice (DOJ), Department of Homeland Security (DHS), Office of Refugee Resettlement (ORR) under the Department of Health and Human Services (HHS), Immigration and Customs Enforcement (ICE), and U.S. Border Patrol. Each department held a role in ensuring family separation occurred.

the federal misdemeanor of illegal entry.⁵⁶ This zero-tolerance policy was announced on April 6th, 2018, by then-Attorney General Jeff Sessions and Thomas Homan, who at this time was acting Director of Immigration and Customs Enforcement (ICE). This announcement was important because it marked the disregard of any defensive asylum claim from migrants entering the United States. This meant that unlike before, when a migrant could claim asylum if apprehended at the border. Now a migrant would be criminally prosecuted regardless of whether or not they had a claim to asylum. This is why the policy is called “zero tolerance” because it meant the U.S. was now taking a hard stance on immigration where criminalizing migrants is more important than assisting them.

The Trump administration announced in early April of 2018 that it was ending the practice of catch and release. President Trump villainized the Obama administration for allowing it to continue.⁵⁷ Catch and release, as President Donald Trump dubbed it, was the common practice that occurred when adult migrants were apprehended at the border with minors. Under this policy, upon apprehension by Border Patrol, the law required a Border Patrol agent to ask a migrant if they feared persecution in their home country. If the migrant said “yes”, then they would be given an interview to determine if their fear was credible. If passed, they would then be labeled as asylum seekers. After this, the migrants would then enter the official process of Asylum which varies in length but could take anywhere from several months to several years. All asylum seekers must go through the immigration court system, which has been criticized for

⁵⁶ Dara Lind, “Trump’s DHS Is Using an Extremely Dubious Statistic to Justify Splitting up Families at the Border,” Vox, May 8, 2018, <https://www.vox.com/policy-and-politics/2018/5/8/17327512/sessions-illegal-immigration-border-asylum-families>.

⁵⁷ Julie Hirschfeld Davis, “Trump Signs Memo Ordering End to ‘Catch and Release’ Immigration Policy,” *The New York Times*, October 3, 2018, sec. U.S., <https://www.nytimes.com/2018/04/06/us/politics/trump-immigration-policy.html>.

its delays and backlogs.⁵⁸ In July 2018 there were over 733,000 pending immigration cases, which was towards the end of the separation policy.⁵⁹ Something that is important to note is the fact that asylum seekers are not provided an attorney which means one needs to be privately hired. This is important to understand because many asylum seekers are fleeing war-torn Latin-America and arrive at the U.S. with little to no money. Hiring a private attorney is in many cases not financially possible for migrants and results in little power within the court system. It is reported that migrants applying asylum have a five times higher chance of getting accepted if they have an attorney. In 2017, 90 percent of migrants who did not have an attorney present to represent them in court were denied asylum, compared to almost half who did have attorneys and were accepted.⁶⁰ Because the U.S. was not legally allowed to hold the minor in custody, the common practice became to release the minor and their parent or guardian whom they arrived with. This is especially convenient because many facilities that are made to hold families operate at near capacity. Because of this, both the Bush and Obama administration made it a common practice to release the family after the 20-day period until they were given an official court date.

This catch and release practice as the Trump administration labeled it, was one of the many reasons the Trump administration acted by separating families. The administration claimed it was easy for migrants to “disappear” once released from detainment and not show up to their assigned court date. President Trump and many of his Republican supporters were in direct

⁵⁸ Denise Lu and Derek Watkins, “Court Backlog May Prove Bigger Barrier for Migrants Than Any Wall,” *The New York Times*, January 24, 2019, sec. U.S., <https://www.nytimes.com/interactive/2019/01/24/us/migrants-border-immigration-court.html>, <https://www.nytimes.com/interactive/2019/01/24/us/migrants-border-immigration-court.html>.

⁵⁹ “Fact Sheet: U.S. Asylum Process,” National Immigration Forum, accessed February 14, 2019, <https://immigrationforum.org/article/fact-sheet-u-s-asylum-process/>.

Nadwa Mossaad and Ryan Baugh, “Refugees and Asylees: 2016,” n.d., 10.

⁶⁰ Mossaad and Baugh, “Refugees and Asylees: 2016.”

“Fact Sheet: U.S. Asylum Process,” National Immigration Forum, accessed February 14, 2019, <https://immigrationforum.org/article/fact-sheet-u-s-asylum-process/>.

opposition to this because they believed it created a loophole within the immigration system that migrants would then exploit. Essentially the Trump Administration believed that many of the claims for asylum were in fact without merit and should not be considered.⁶¹ Although missing an assigned court date is something that rarely does occur, there is no evidence that suggests it was a major threat to the immigration system and that it contributed greatly to undocumented migrants within the United States. To address this phobia of “disappearing migrants,” the Trump Administration, criminalized the adults and sent the minors to different facilities. This was done instead of continuing the practice of processing migrants claiming asylum and releasing them until their court date. The Trump administration focused on criminalizing an important aspect of the common defensive seeking asylum process. Because any illegal entry or crossing into U.S. territory is a federal misdemeanor, regardless if it is to seek asylum, the Trump administration chose to focus on that fact. Rather than if the migrant was seeking asylum. Under the new policy, when a migrant was now apprehended at the border they were immediately detained and escorted to a federal jail under the charge of the federal misdemeanor. Legally a minor could not be accompanied to the jail, so they would be separated, marked as an unaccompanied minor and then transferred over to the Department of Health and Human Services (HHS). Within HHS, the Office of Refugee Resettlement (ORR) would then take charge of the minors’ resettlement to either the U.S. foster care system, or a detention center.

⁶¹ “Jeff Sessions’ False Claim about Merits of Asylum Cases,” @politifact, accessed April 24, 2019, <https://www.politifact.com/truth-o-meter/statements/2018/jul/02/jeff-sessions/jeff-sessions-false-claim-80-percent-asylum-appli/>.

2.2

The Trump Administrations “Zero Tolerance” Policy

The policy of family separation that took place under the title of zero tolerance gained widespread attention from politicians, celebrities, former first ladies, and the media. However, there was no real "new" policy created specifically aimed at separating families. Instead, the Trump Administration expanded on an already existing law that states any adult entering into the U.S. through an illegalized means should be criminally prosecuted. This was marked as a federal misdemeanor for a first-time offender but very often for migrants seeking asylum it was never enforced. This was seen during the Obama and Bush administrations, in which when a migrant was apprehended for crossing the U.S. border but claimed asylum, the administrations would focus on the asylum claim first, rather than the law-breaking aspect of it. What the Trump administration did differently was ignore any claim to asylum, focusing instead on the law-breaking aspect which meant arresting and deporting the migrant(s). If any adult migrants happened to be accompanied by minors when apprehended, the Trump administration would still continue to criminalize the adult, which then ultimately lead to separating the family. Only adults were legally allowed to be placed into jails and prosecuted because under U.S. law, as a minor cannot be criminally prosecuted for illegal entry into the United States. To bypass the fact that a child could not be criminally prosecuted under the same guidelines as an adult, and in order to fully arrest and deport the adults. The Trump Administration argued that separation was needed to enforce the law.

Although family separations are not new to the history of the U.S. or even the post 9-11 immigration system, the Trump Administration did something no other era or presidency did. This was the attack on the idea of family unity within the immigration system by separating

families who were seeking asylum in order to deter immigration away from the United States. The Trump administration made a clear stance that family unity was no longer a core value within the immigration system. During the Bush Administration (2001-2008), an inspector general report from the Department of Homeland Security assured that family separation only occurred when a parent was criminally charged or if a shelter/facility lacked any space for both the adult(s) and the minor(s). This policy resulted in a backlash which then pushed the Bush administration to create facilities where families would be held together. The Obama Administration, just like the Bush Administration, mainly separated families if the minor was viewed at risk or endangered by the adult and if the adult was to be criminally prosecuted.

Both the Bush and Obama Administration viewed the idea of family unity to be important and did not resort to focusing on the federal misdemeanor that occurred when an individual entered the U.S. through unauthorized means. Instead, the main priority was family protections and processing asylum claims. The Trump Administration viewed catch and release as a weak policy with President Trump claiming

We have to have a wall. If we don't have the wall, there's no bill. We have to catch and release. We catch a criminal, a real criminal, a rough tough criminal, we take his name and then we release him. And we say please show up to court in a couple of months. You know what the chances of getting him to court are? Like zero. OK. It's crazy. Then we have the lottery program, right. It's called lottery visa.⁶²

Trump's comments claim that the catch and release system was a way for migrants to find a loophole into wrongfully entering into the United States. These claims were at best misleading,

⁶² Tim Hains On Date June 15 and 2018, "Trump: 'New Prime Minister Of Italy Is Great,' 'It Seems Strong On Immigration Wins Now,'" accessed February 27, 2019, https://www.realclearpolitics.com/video/2018/06/15/trump_new_prime_minister_of_italy_is_great_border_security_popular_around_the_world_now.html.

as the American Immigration Counsel states that 96% of families detained seeking asylum showed up to their court dates.⁶³

Instead, the Trump Administration wanted to create their own loophole by establishing a deterrence policy targeted at migrants already trying to enter the United States. Their way of stopping migrants was to criminalize all illegal entry and begin prosecuting adults. This is where the zero tolerance or "family separation policy" began. On April 6th, 2018, the Office of Public Affairs under the Department of Justice released a statement that read

Attorney General Jeff Sessions today notified all U.S. Attorney's Offices along the Southwest Border of a new "zero-tolerance policy" for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien. The implementation of the Attorney General's zero-tolerance policy comes as the Department of Homeland Security reported a 203 percent increase in illegal border crossings from March 2017 to March 2018, and a 37 percent increase from February 2018 to March 2018—the largest month-to-month increase since 2011.⁶⁴

This Whitehouse statement said that any illegal or attempted illegal crossing would be criminally prosecuted, regardless of whether or not the individual was trying to claim asylum, even though they are legally allowed to do so. Jeff Sessions publicly defended the separation policy saying, "If you are smuggling a child then we will prosecute you, and that child will be separated from you as required by law... if you don't like that, then don't smuggle children over our border."⁶⁵

A couple of days prior to the announcement of the policy, Sessions increased U.S. Border Patrol and ICE resources at the U.S. Mexico border by sending 35 federal prosecutors and 18

⁶³ "Detaining Families," American Immigration Council, August 15, 2018, <https://www.americanimmigrationcouncil.org/research/detaining-families-a-study-of-asylum-adjudication-in-family-detention>.

⁶⁴ "Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry," April 6, 2018, <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

⁶⁵ "Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration," May 7, 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

immigration judges.⁶⁶ Here we again see the Trump Administration, this time under Sessions leadership, propagating a false narrative that migrant adults being accompanied by minors are not families but instead an attempt to smuggle a child into the U.S.

Publicly the Trump Administration defended this policy by claiming that it was acting "as required by law", but, as the actions of previous administrations showed, it was not required by law to separate families at all. In this case, it was done because the Trump Administration's agenda was to deter migrants from coming into the U.S. as it believed it was addressing a fault in the immigration system. President Trump tweeted "The Democrats are forcing the breakup of families at the Border with their horrible and cruel legislative agenda. Any Immigration Bill MUST HAVE full funding for the Wall, end Catch & Release, Visa Lottery and Chain, and go to Merit-Based Immigration. Go for it! WIN!"⁶⁷

In reality, this zero-tolerance policy was not a law that was created but instead a redirection of focus of criminalization on migrants. This was done by viewing them under a criminalized lens rather than under the lens of individuals and families seeking help. Homeland Security Secretary Kirstjen Nielsen tweeted "We do not have a policy of separating families at the border. Period... (but if) the adult has broken a law...illegal actions have and must have consequences...no more free passes, no more get out of jail free cards."⁶⁸ Because of this many activists have argued that this policy was used as a deterrent to lower the amount of crossing

⁶⁶ "Justice Department Announces Additional Prosecutors and Immigration Judges For Southwest Border Crisis," May 2, 2018, <https://www.justice.gov/opa/pr/justice-department-announces-additional-prosecutors-and-immigration-judges-southwest-border>.

⁶⁷ Donald J. Trump, "The Democrats Are Forcing the Breakup of Families at the Border with Their Horrible and Cruel Legislative Agenda. Any Immigration Bill MUST HAVE Full Funding for the Wall, End Catch & Release, Visa Lottery and Chain, and Go to Merit Based Immigration. Go for It! WIN!," Tweet, @realDonaldTrump (blog), June 15, 2018, <https://twitter.com/realDonaldTrump/status/1007671131841671169>.

⁶⁸ Sec Kirstjen Nielsen, "We Do Not Have a Policy of Separating Families at the Border. Period.," Tweet, @secnielsen (blog), June 17, 2018, <https://twitter.com/secnielsen/status/1008467414235992069?lang=en>.

attempts at the border. It infringed on a migrant's right to claim asylum and bypassed the notion of family that has been a part of the U.S. immigration system.

The U.S. has a strong and recent history of using deterrence as a strategy, during the 1990s the U.S. Border Patrol implemented a strategy called Prevention Through Deterrence. The strategy was enacted to shift migration routes away from areas that were walled and fence, which were often ineffective at stopping unauthorized migration. Instead, U.S Border Patrol would heavily monitor and militarize the areas of the border that were fenced and common location to attempt a crossing point. This was done while also simultaneously and purposely leaving parts of the U.S/Mexico less monitored around harsh areas like the Sonoran Desert.

In a National Border Patrol Strategy document released in 1994 it stated, "The prediction is that with traditional entry and smuggling routes disrupted, illegal traffic will be deterred, or forced over more hostile terrain, less suited for crossing and more suited for enforcement."⁶⁹ The reasoning for this, which at first sounds counter-intuitive to what the U.S wants to accomplish with immigration, is so that "illegal traffic will be deterred, or forced over more hostile terrain, less suited for crossing and more suited for enforcement."⁷⁰ "More suited for enforcement" as used in this quote does not mean enforcement by individuals of U.S Border Patrol, but instead enforcement of policing by the harsh environments of the U.S/Mexico Desserts. The Sonoran Desert is used as a tool of prevention by focusing U.S. resources on areas which are common for migrants and diverting/deterring migrants to take more riskier and harsher routes in which very few manage to complete, much less survive.⁷¹ Essentially the U.S. Border Patrol document

⁶⁹ Jason De Leon and Michael Wells, *The Land of Open Graves: Living and Dying on the Migrant Trail* (Univ of California Press, 2015).

⁷⁰ Jason De León, Eduardo "Lalo" García, and The Undocumented Migration Project / 16 Feb 2016, "A View From the Train Tracks," SAPIENS, February 16, 2016, <https://www.sapiens.org/culture/prevention-through-deterrence/>.

⁷¹ León, García, and Feb 2016.

showed the harsh reality that the U.S purposely diverted migration routes into dangerous and hostile terrain knowing full and well that it would result in many deaths of human beings.⁷²

2.3

From Asylum Claim to Federal Misdemeanor

Prior to the Trump Administration's execution of their zero-tolerance standpoint and policy, the initial process for asylum seekers was broken down in two ways, Affirmative and Defensive. An affirmative asylum claim is when someone claims asylum at a specific location used to process asylum claims, while a defensive asylum claim is done when a migrant is apprehended by I.C.E or border patrol but believes deportation will place them at risk. An affirmative asylum claim can occur when a migrant journey to a U.S. port of entry and files a claim for asylum, which has traditionally been the approach favored by presidential administrations. An affirmative claim can also occur if the migrant is already present in the U.S. and advances a claim within a year of arrival. If an individual makes an affirmative claim for asylum, then it is a U.S. Citizenship and Immigration Services (USCIS) officer opens an investigation if whether or not the individual's claim to asylum is valid.

Filing a claim for asylum under the affirmative process is characterized as the "legal" way to enter in the U.S. if you are fleeing some form of persecution.⁷³ It is through this process that many presidential administrations have urged migrants to seek because it is socially and

⁷² Reece Jones, "Death in the Sands: The Horror of the US-Mexico Border," *The Guardian*, October 4, 2016, sec. US news, <https://www.theguardian.com/us-news/2016/oct/04/us-mexico-border-patrol-trump-beautiful-wall>.

⁷³ Every year people come to the United States seeking protection because they have suffered persecution or fear that they will suffer persecution due to: Race, Religion, Nationality, Membership in a particular social group or political opinion.

"Learn About the Asylum Application Process," USCIS, accessed February 18, 2019, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum>.

politically viewed as one of the “right” ways to enter into the U.S. Although checkpoint areas are set up all across the border and also within big cities, their accessibility for migrants varies due to a series of procedural barriers. Migrants applying for an affirmative asylum case are required to provide their own interpreter for their asylum interview with USCIS. Another barrier placed is the fact that due to a backlog of asylum cases many can take anywhere from 6 months to several years – in 2018 the average pending wait time was 721 days.⁷⁴ This can be a huge deterrent to migrants who financially cannot afford to take the risk financially investing in applying to asylum, which is very costly. As a result, many would-be asylum seekers choose not to go through the affirmative asylum route and instead put their trust into crossing into the U.S. through unauthorized methods and if detained claiming a defensive asylum process.

The Defensive asylum process is triggered when an immigrant claims asylum after being apprehended by U.S. Customs and Border Protection (CBP) or Immigration and Customs Enforcement (ICE) often following an unrecognized crossing of the border. This is called defensive because officially under U.S. law entering into the U.S. through a non-point of entry without proper documentation is a federal misdemeanor -- “Improper Entry by Alien” -- which for a first offense can be punished by up to 6 months in prison.⁷⁵ In response to this arrest, a migrant can make an asylum claim in order to halt the process of being deported or removed from the U.S. (Although this is the most common scenario, migrants can choose to also push a defensive asylum claim if they were denied an asylum claim through the affirmative process.) All defensive asylum claims must be processed through a special U.S. court system entitled the Executive Office for Immigration Review (EOIR). As stated earlier in the text, under the 1996

⁷⁴ “Fact Sheet: U.S. Asylum Process,” National Immigration Forum, accessed February 18, 2019, <https://immigrationforum.org/article/fact-sheet-u-s-asylum-process/>.

⁷⁵ “[USC03] 8 USC 1325: Improper Entry by Alien,” accessed February 21, 2019, <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1325&num=0&edition=prelim>.

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), any person claiming asylum must be legally detained regardless of asylum claim status. All migrants must then after being detained appear in front of an EOIR judge to continue in the defensive asylum process. When a migrant is finally given a court date, they must provide themselves with a lawyer at their own expense, but any migrant under a defensive process is provided with a translator if they cannot speak English. At court, the EOIR judge hears from both parties and then decides if the claim for asylum is eligible. If the EOIR judge declares a migrant's case to be ineligible then the migrant and the prosecutor have the right to appeal the decision, which further prolongs the process and is a bigger financial burden on the migrant. If the appeal is denied, then the migrant is ultimately deported back to their home country.

With the Trump administration, the focus of asylum claim changed from protecting those seeking asylum into focusing on the federal misdemeanor that occurred. Prior to the Trump Administration's zero-tolerance policy families apprehended by ICE or CBP for unauthorized entry into the U.S. with minors would be largely viewed as having a credible defensive claim to asylum and the federal misdemeanor charge was not emphasized within the process. Under the Trump administration's zero-tolerance policy this was no longer the case. Instead of having the option to initially claim for asylum under the defensive asylum process CBP or ICE was ordered by the Trump Administration to focus solely on the fact that a federal misdemeanor had occurred. This meant that any unauthorized immigrant apprehended was given no option of claiming asylum and was instead immediately prosecuted and arrested. Trump Administration believed that such an approach would operate as a disincentive to migrate and result in fewer migrants entering the United States. In order to justify this new policy then-Attorney, General Jeff Sessions claimed in a June 25th, 2018 speech to the National Association of School Resource

Officers “that 80 percent of asylum claims are without merit.”⁷⁶ This was, of course, found to be a false claim because in reality what actually occurred was that 80% of migrants were denied a claim to asylum. This did not mean that 80% were without merit but instead highlighted the fact that asylum claims were being denied for the general purpose of not allowing migrants in. The Trump Administration in 2017 denied more asylum claims than any previous administration. This allowed the Trump presidency to manipulate the numbers and make the claim that asylum claims were without merit.

2.4

Family Separation as a Deterrence Policy

Former Attorney General Jeff Sessions in early May, when the zero tolerance policy was at its mid-point, was quoted saying “If you are smuggling a child then we will prosecute you, and that child will be separated from you as required by law, if you don’t like that, then don’t smuggle children over our border.”⁷⁷ Although in this moment Sessions was making it seem like the government had its hands tied and was forced to separate children from their parents or caregivers in order to “enforce the law.” In reality, due to the rising opposition of the policy from all around the political spectrum, the Trump Administration tried to shift its original agenda and

⁷⁶ “Attorney General Sessions Delivers Remarks to the National Association of School Resource Officers,” June 25, 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-national-association-school-resource-officers>.

⁷⁷ “Attorney General Sessions Delivers Remarks to the Association of State Criminal Investigative Agencies 2018 Spring Conference,” May 7, 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-association-state-criminal-investigative>.

“Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration,” May 7, 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

blame, which was originally made as a deterrent and for criminalizing migrants, into a new narrative that made the Trump Administration seem innocent. This is crucial because controlling the narrative is a strong tactic in mobilizing support for the Trump administrations cause and redirecting shame to the opposing Democrat party. This was exactly what the Trump Administration tried to do when under pressure. Evidence from a leaked signed memo shows that Secretary of Homeland Security Kirstjen Nielsen signed off in April on a document which explained the implications and outcomes of the family separation zero tolerance policy. As stated previously, on June 17th, 2018 Security Kirstjen Nielsen tweeted “We do not have a policy of separating families at the border. Period.”⁷⁸ But, in late September of 2018 the Open the Government and the Project on Government Oversight acquired documents through a Freedom of Information Act request (FOIA). These released documents which exposed Homeland Security and the Trump Administration in their knowledge and purpose of their zero tolerance policy as being primarily used as a deterrent.⁷⁹ The document stated that the U.S. family separation policy would have “the greatest impact on current flows”, on immigration and labeled family separation at the border as the “most effective” and most preferable clearly connected to the idea of deterrence.⁸⁰ Many government officials have repeatedly denied claims that the zero-

⁷⁸ Sec Kirstjen Nielsen, “We Do Not Have a Policy of Separating Families at the Border. Period.,” Tweet, @SecNielsen (blog), June 17, 2018, https://twitter.com/SecNielsen/status/1008467414235992069?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1008467414235992069&ref_url=https%3A%2F%2Fwww.cbsnews.com%2Fnews%2Fdhs-sec-kirstjen-nielsen-denies-family-separation-policy-exists-blames-media%2F.

⁷⁹ Sec Kirstjen Nielsen, “We Do Not Have a Policy of Separating Families at the Border. Period.,” Tweet, @secnielsen (blog), June 17, 2018, <https://twitter.com/secnielsen/status/1008467414235992069?lang=en>.

⁸⁰ “Newly Released Memo Reveals Secretary of Homeland Security Signed off on Family Separation Policy – Open the Government,” accessed March 11, 2019, <https://www.openthegovernment.org/2018/09/24/newly-released-memo-reveals-secretary-of-homeland-security-signed-off-on-family-separation-policy/>. “New Proof Surfaces That Family Separation Was About Deterrence and Punishment,” Just Security, November 27, 2018, <https://www.justsecurity.org/61621/proof-surfaces-family-separation-deterrence-punishment/>.

tolerance policy was implemented primarily as a deterrent, and instead was just a refocus on what the U.S. law already established. Yet statements and actions have proven otherwise.

Former White House Chief of Staff John F. Kelly stated in an NPR interview

but a big name of the game is deterrence...It could be a tough deterrent — would be a tough deterrent. A much faster turnaround on asylum seekers...The children will be taken care of — put into foster care or whatever. But the big point is they elected to come illegally into the United States, and this is a technique that no one hopes will be used extensively or for very long”.⁸¹

The evidence of a deterrence policy isn't something that is new, just two weeks after President Trump was inaugurated, a DHS official under the name John Lafferty brought up the strategy of family separation to be used as a deterrent in a town hall meeting for Citizenship and Immigration Services officials.⁸² The New Yorker also reported that in a meeting which happened in August of 2017, a DHS official named Gene Hamilton said "that over the next few days we'd need to generate paperwork laying out everything we could do to deter immigrants from coming to the U.S. illegally," and it was said that family separations were brought up as one of the proposed solutions.⁸³ Jeff Sessions again was also asked On Fox News's *The Ingraham Angle*, if in fact the family separation policy was used as a deterrent to which he responded "So, yes, hopefully, people will get the message and come through the border at the port of entry and not break across the border unlawfully" blatantly admitting that families being separated should be viewed as a message to other migrants thinking of entering into the United

⁸¹ "Transcript: White House Chief Of Staff John Kelly's Interview With NPR," NPR.org, accessed March 11, 2019, <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>.

⁸² "Trump Admin Discussed Splitting Moms, Kids to Prevent Asylum in Feb. 2017," NBC News, accessed March 13, 2019, <https://www.nbcnews.com/politics/immigration/trump-admin-discussed-separating-moms-kids-deter-asylum-seekers-feb-n884371>.

⁸³ Jonathan Blitzer, "How the Trump Administration Got Comfortable Separating Immigrant Kids from Their Parents," May 30, 2018, <https://www.newyorker.com/news/news-desk/how-the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents>.

States.⁸⁴ On a leaked transcript of a conference call acquired by *The Washington Post*, the United States Department of Health and Human Service (HHS), acting assistant secretary, Steven Wagner, was quoted saying “We are staying one step ahead of the need...we expect that the new policy will result in a deterrence effect, we certainly hope that parents stop bringing their kids on this dangerous journey and entering the country illegally.”⁸⁵ Thomas Homan who at the time was the I.C.E Director until June 29th, 2018 tried to justify the separation policy by saying “Every law enforcement agency in this country separates parents from children when they're arrested for a crime...there is no new policy. This has always been the policy. Now, you will see more prosecutions because of the attorney general’s commitment to zero tolerance.”⁸⁶ Homan tried to justify the separations by saying they have always happened when someone is arrested for a crime, which is true, but it doesn’t mean it is right. Another problem with Homan’s statement is equating the act of seeking refuge with a child with being arrested for a violent crime and having your child taken away from you by Child Protection Services (CPS), which are not same, and both rooted in deeper levels of systemic U.S. racism.

Seeing that the zero-tolerance policy was in fact used as a deterrent, it is clear that the Trump Administration and their supporters tried to spin the blame on the Democrats after the severe and well-needed backlash they experienced. President Trump in a speech said “If the Democrats would sit down instead of obstructing, we could have something done very quickly — good for the children, good for the country, good for the world. It could take place quickly.

⁸⁴ “MSNBC Live With Velshi and Ruhle : MSNBCW : June 19, 2018 8:00am-9:00am PDT,” June 19, 2018, http://archive.org/details/MSNBCW_20180619_150000_MSNBC_Live_With_Velshi_and_Ruhle.

⁸⁵ “Analysis | Here Are the Administration Officials Who Have Said That Family Separation Is Meant as a Deterrent,” *Washington Post*, accessed March 14, 2019, <https://www.washingtonpost.com/news/politics/wp/2018/06/19/here-are-the-administration-officials-who-have-said-that-family-separation-is-meant-as-a-deterrent/>.

⁸⁶ “Sessions: ‘Zero-Tolerance’ Policy May Cause Families to Be Split at Border,” accessed March 14, 2019, <https://www.cbsnews.com/news/sessions-zero-tolerance-policy-may-cause-families-to-be-split-at-border/>.

We could have an immigration bill. We could have — child separation — we're stuck with these horrible laws. They're horrible laws. What's happening is so sad — is so sad. And it can be taken care of quickly, beautifully, and we'll have safety.”⁸⁷ It is severely upsetting to see this as a response, especially since here President Trump was stating that because the Democrats would not “sit down”, meaning trying to stop the Trump administration from ending the catch and release policy, the Trump Administration for the “good of the children” was forced to separate and destroy families. What is even more upsetting is the fact that there was no plan set in place to reunite the families together after separation. This again provides strong evidence that the policy was conceived purely as a deterrent or violent method because there was no objective created to resolve the separations that took place. This resulted in many children who were separated and transferred to foster care or relative being “lost” and unaccounted for the U.S. Government. The U.S. has failed to hold themselves accountable in the process which has resulted in fear that children who were separated have been forced into the global slave trade. If it wasn’t for a federal judge order, the Trump Administration wouldn’t have created any form or reunification process which was not set up in the first place.⁸⁸

2.5

Conclusion: Exploited Immigrants

⁸⁷ “Remarks by President Trump at a Meeting with the National Space Council and Signing of Space Policy Directive-3,” The White House, accessed March 11, 2019, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-national-space-council-signing-space-policy-directive-3/>.

⁸⁸ Sara Randazzo, “Judge Orders Migrant Families Separated at Border to Be Reunited Within 30 Days,” *Wall Street Journal*, June 27, 2018, sec. US, <https://www.wsj.com/articles/judge-orders-immigrant-families-reunited-within-30-days-1530074079>.

The Trump Administration's policy of separating children from their parents was due to the administration wanting to end the practice of releasing migrants seeking asylum who had been detained, while simultaneously creating a deterrent factor that would limit future border crossings. The administration did this by prosecuting all adult migrants who were apprehended at the U.S. border regardless if they had a claim to asylum. For adults traveling with family and children, they were separated, prosecuted and deported while the child was marked as unaccompanied. This was done to avoid any legal trouble of detaining a minor because minors can only legally be detained for up to 20 days under the Flores Agreement. Due to the backlogs in many immigration courts, it is common for migrants to be released after 20 days and to be heavily monitored by ICE. This is sometimes done through GPS ankle bracelets or family detention centers.⁸⁹ Because minors cannot be detained for more than 20 days it was common to have them released and their asylum claim prioritized. But part of the impetus for the new Trump policy was to minimize the periods of such release. Despite data showing that 98% of asylum seekers released from detention to await a pending immigration court hearing show up their court hearings, the Trump Administration had made the idea of catch and release a theme of its electoral campaign, claiming migrants would take advantage of the situations of being released.⁹⁰ As such, the Administration did not want to put in the position of releasing asylum seekers – indeed the focus upon the misdemeanor was motivated by foreclosing the period of release occasioned by such claims.

⁸⁹ “Fact Sheet: U.S. Asylum Process,” National Immigration Forum, accessed February 21, 2019, <https://immigrationforum.org/article/fact-sheet-u-s-asylum-process/>.

⁹⁰ “FACT CHECK: Asylum Seekers Regularly Attend Immigration Court Hearings,” Human Rights First, accessed February 21, 2019, <https://www.humanrightsfirst.org/resource/fact-check-asylum-seekers-regularly-attend-immigration-court-hearings>.

However, at the same time, minors cannot be prosecuted for unauthorized entry, especially when accompanied by an adult, complicating prosecution as a response. As stated in section 2.2, previous presidential administrations had focused on the claims for asylum but the Trump Administration's zero tolerance policy pivoted the focus to criminalization. Because a minor couldn't be prosecuted, the Trump Administration had to come up with a new strategy to deal with minors if its zero-tolerance approach was to be implemented. Family separation was a response to this issue, ensuring that even migrants accompanied by a minor could be detained and fully prosecuted. In these cases, the adult would be immediately prosecuted and sent to a federal jail facility or to a Department of Homeland Security (DHS) immigration detention center without their (now) unaccompanied minor. In court, adults would have the option of either pleading guilty or continuing to push their asylum claim – extending the period of time in which they were separated from their child. If a migrant were to choose to plead guilty, it could hurt them in the future attempts to enter the U.S. in an authorized manner. Either plea resulted in the adult being separated from their child. The process of separation saw many migrant parents being tricked into being separated from their child. One case state that a couple accompanied with their child was detained and the father was immediately deported, while the mother with the child was asked to enter into a bus and that her child would immediately follow. Upon the mother entering the bus, it promptly drove away without her daughter getting on board.⁹¹ Other cases state that parents were told by officials that the children would only be temporarily taken in order to be photographed or bathed but were never returned. This process was supposed to occur

⁹¹ Michelle Mark, “Border Patrol Told a Migrant Mother to Get on a Bus and Her Daughter Would Be Right behind Her — but the Doors Closed and It Drove Away without Her,” INSIDER, accessed February 21, 2019, <https://www.thisisinsider.com/family-separation-tactics-tricks-trump-zero-tolerance-2018-6>.

within a 72-hour time frame of the family apprehension.⁹² At the same time as the adult was being transferred to a DHS facility, the child would be re-classified as an unaccompanied minor, despite the fact that they were not truly unaccompanied, and sent to the U.S. Department of Health and Human Services (HHS) where they would be held in a facility shelter. This was done until they would be again relocated to either a relative's house in the U.S. or the U.S. foster care system. Parents are forced to serve time in jail while awaiting their trial case to occur. Conditions with the jails have been described as being traumatic, with many migrants claiming harassment and abuse. Technically once the parent(s) or adult(s) serve time in jail and receive their court date, they would have been reunited with their children, but that was not the case under President Trump. Once convicted a migrant would be returned to the custody of the immigration officials to go through the process of deportation. It is during the deportation process in which parent(s) or adult(s) can be reunited with their children at a civil detention center. Sadly, because structurally the U.S. government had no intention or means planned out to reunite families, migrants would be locked up for weeks and months without any phone access. In many reported situations the parent(s) or adult(s) or the child were deported without the other party being notified or reunited. This cruel way of separation lead to many children feeling like they were abandoned by their parents, and left many children traumatized by the act of being forcibly stripped and sent away.

In my next chapter, I will lay out what exactly happened to the children when they were sent off to the Office of Refugee Resettlement (ORR) which transferred them to government facilities and the U.S. Foster Care system.⁹³ I will explain how the system that dealt with

⁹² The Texas Tribune and Darla Cameron Essig Emma Platoff and Chris, "What Happens When Immigrant Families Cross the Border Outside a Port of Entry," The Texas Tribune, June 20, 2018, <https://www.texastribune.org/2018/06/20/what-happens-when-immigrant-families-cross-border-outside-port-entry/>.

⁹³ "Home," Office of Refugee Resettlement | ACF, accessed March 26, 2019, <https://www.acf.hhs.gov/orr>.

unaccompanied minors during the Trump Administration was not prepared for the massive number of children entering the system, nor were they trying to reunite children with their families. In some reports children were kept in cages with limited food, water, resources. The language barrier and a large number of children under the ages of five led to inadequate uses of space and violence towards the children. The Trump administration had no intention of reunited families which led to a long backlog of cases that resulted in slow reunification and in many cases "lost children" that the government lost track of within the foster care system. It was the massive amount of coverage that included images and videos of the facilities that led to the strong bi-partisan support that resulted at the end of the practice separating families.

Chapter 3 Las Consecuencias: The Aftermath & Backlash which Contributed to the Policy's Termination

Sometimes a breakdown can be the beginning of a kind of breakthrough, a way of living in advance through a trauma that prepares you for a future of radical transformation.

- Cherrie Moraga

3.1 Introduction

Within the immigration system, the notion of family unity has always been an important aspect or core within immigration policy making. From 1924 to contemporary times, the U. S's immigration system has prioritized immigrants entering who had claims of family ties within United States. During the campaign and presidential rallies, President Donald Trump has stated his plans to uproot the U.S. immigration system and transition it away from being centered on family unity and more towards a merit-based approach. With this idea and through his action against families seeking asylum at the border. The zero-tolerance policy under President Trump has sought to create a system that uses the concept of the family against immigrants themselves. This shift marked the emergence of a new era in immigration in which the very concept and perception of the family has become the weapon used to criminalize and militarize the border. Trump's zero tolerance policy provoked a strong bipartisan backlash that led to the ending of the policy in June. This backlash focused on the human rights violations of the parents and children brought to light by the media, which caught the attention of many celebrities and politicians. Children were kept in cages while the parents were deported without hesitation or delay. The scenes of children targeted and punished in cruel ways became fuel to the ongoing fire of opposition to the policy.

It was strange to see President Donald Trump retract from his policy because, throughout the entirety President Trump's presidency, immigration had always been the main topic of discussion. Even with a majority of republican voters being in support of the policy, President

Trump could not hold overall support for the policy. When President Trump signed an executive order ending the practice in June 2018, it was seen as a significant defeat because the implementation of this policy reflected the core of his campaign promises on immigration reform. Large bipartisan support against the policy forced President Trump to end the policy and rethink his strategy and plan on reworking the immigration system.

Although not explicitly stated, the idea of family unity had a large impact on why the American public was so against his policy when it came to light. After the policy was ended, there was no formal apology to the children and families affected by the policy. Instead, the Trump Administration released a contradictory statement declaring the importance of family unity while simultaneously defending the Administration's actions for the policy. This lack of resentment in President Trump's statement led to many activists believing the family separation policy is only marking the beginning of a new set of strategies aimed at dealing with immigration.

Below I will argue that immigration was extremely central to the Trump Administrations platform, before his presidency, it was his key point while campaigning for the election. Because of President Trump's connection to immigration and how crucial it is to his platform as president, I argue that his withdraw of the family separation policy was an unusual response, especially since a majority of his supports were in favor of the separation policy itself. I outline that his withdrawal of the policy that occurred on June 20th was due to the strong bipartisan backlash with many prominent figures within the media opposing the policy. This pushback is what closed in on the Trump Administration and forced them to search for alternatives to enforce their zero-tolerance stance on immigration policy. I argue that it was the cruel and inhumane practice of the policy that garnered the opposition. This in turn was used as a tactic by the media to put pressure

on the Trump administration and force them to fold on the policy but not issue. I speak on how although the policy was forced to come to an end, the Presidents anti-immigration agenda was not. Despite the fact that the separation policy ended, President Trump and his administration continued to defend their actions of using it in the first place and did not implement any form of reunification. I argue that the moral detachment that occurs in the form of lack of remorse, ownership, and movement away from policies that mirror the family-separation are all indicators that this Era of Zero-Tolerance is not over, but merely just shifting into a new form.

3.2

The Centrality of Immigration Reform to the Trump Administration

The subject of immigration has been central to President Trump's political brand since the announcement of his presidential bid in 2015. Immigration has been cited as being his "signature issue," and has been in effect also his "trump" card.⁹⁴ Since the beginning, Trump has promised his supporters that there will be new changes to the immigration system. Building "The Wall" and having "Mexico pay for it" have long been key catchphrases that have garnered the support and approval of his supporters.⁹⁵ President Trump's entire campaign platform was built upon the promise that he would drastically change the way immigration is treated within the United States, and his supporters loved this idea, quickly latching on. Shortly after President Trump was inaugurated as President of the United States of America, he had already signed

⁹⁴ Anthony Zurcher, "Where Trump Stands on Key Issues," July 6, 2017, sec. US Election 2016, <https://www.bbc.com/news/election-us-2016-37468751>.

⁹⁵ Linda Qiu, "The Many Ways Trump Has Said Mexico Will Pay for the Wall," *The New York Times*, January 12, 2019, sec. U.S., <https://www.nytimes.com/2019/01/11/us/politics/trump-mexico-pay-wall.html>.

Executive Order 13767 titled “Border Security and Immigration Enforcement Improvements.”⁹⁶ This executive order was meant to show his supporters that he was serious about immigration and would follow through with the promises he made during the campaign trail. The executive order established a foundation for the future of the immigration system, not only in terms of funding and focus but also in terms of militarization and criminalization. Section 5 of Executive Order 13767 initiated the construction of the detention facilities that were used to house and detain the children that were targeted in his zero tolerance policy.⁹⁷ The Executive Order calls for action to “immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico.”⁹⁸ These facilities are multimillion-dollar deals, which have subsequently been deemed cruel and inhumane by reporters and politicians alike.⁹⁹ Section 6 of Executive Order 13767 subtitled “Detention for Illegal Entry” states

The Secretary shall issue new policy guidance to all Department of Homeland Security personnel regarding the appropriate and consistent use of lawful detention authority under the INA, including the termination of the practice commonly known as ‘catch and release,’ whereby aliens are routinely released in the United States shortly after their apprehension for violations of immigration law.¹⁰⁰

Here we see the precursor to what became the deterrence-focused policy of family separations. President Donald Trump since the very beginning has made it extremely clear that when it comes to immigration and his wall, he will not budge. This was recently made even more clear when

⁹⁶ “Border Security and Immigration Enforcement Improvements,” Federal Register, January 30, 2017, <https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements>.

Within 5 days of entering office.

⁹⁷ “Border Security and Immigration Enforcement Improvements,” Sec. 5. Detention Facilities. (a).

⁹⁸ “Border Security and Immigration Enforcement Improvements,” Sec. 5. Detention Facilities. (a).

⁹⁹ Allyson Hobbs and Ana Raquel Minian, “Perspective | A Firsthand Look at the Horrors of Immigration Detention,” Washington Post, June 25, 2018, <https://www.washingtonpost.com/news/made-by-history/wp/2018/06/25/a-firsthand-look-at-the-horrors-of-immigration-detention/>.

¹⁰⁰ “Border Security and Immigration Enforcement Improvements,” Sec. 6. Detention for Illegal Entry.

President Trump on December 22, 2018, made the decision to shut down the federal government due to disagreements in the legislative branch about how much money should be allocated to President Trump's promised wall. The wall which was originally intended to be paid for by the Mexican Government became the cause for the longest shutdown in U.S. History and the third federal shutdown under Trump Precedency. The shutdown stretched for 35 days until it was officially ended on January 25, 2019.¹⁰¹

Knowing how headstrong the Trump Administration was on immigration, it was very abnormal and out of character to see the Trump Administration fallback on a policy as they did with their zero-tolerance approach. From April 6th, 2018 when then-Attorney General Jeff Sessions directed Border Patrol “to adopt immediately a zero-tolerance policy for all offenses” till June 20th, 2018 when President Trump officially signed Executive Order. The separation policy stayed alive and active.¹⁰² In between April 6th and June 20th, 2018 were 75 days or over 10 weeks where families seeking asylum were torn apart. 75 days is an incredible amount of time, especially for the families who were targeted with this policy and had to suffer through the means of being forced into custody, arrested, deported and separated from their child(ren). Although this 10-week period was described as inhumane, it was still unusual to see the Trump Administration publicly come out and admit their policy was wrong and then move to end it. President Trump in a state said “It is unfortunate that Congress's failure to act and court orders have put the Administration in the position of separating alien families to effectively enforce the

¹⁰¹ Mihir Zaveri, Guilbert Gates, and Karen Zraick, “The Government Shutdown Was the Longest Ever. Here’s the History.,” *The New York Times*, January 9, 2019, sec. U.S., <https://www.nytimes.com/interactive/2019/01/09/us/politics/longest-government-shutdown.html>.

¹⁰² “Affording Congress an Opportunity To Address Family Separation,” Federal Register, June 25, 2018, <https://www.federalregister.gov/documents/2018/06/25/2018-13696/affording-congress-an-opportunity-to-address-family-separation>. Masood Farivar, “Sessions Announces ‘Zero-Tolerance’ Policy on Illegal Border Crossings,” VOA, April 6, 2018, <https://www.voanews.com/a/jeff-sessions-zero-tolerance-policy-illegal-entry-us/4336134.html>.

law.”¹⁰³ Throughout the entire duration of the bipartisan backlash of the policy which separated families, the Trump Administration continued to try to shift the blame on to Democrats within Congress even though the fault was clearly on that of the administration. The Trump Administration went from relying on targeting family immigration and using it as their trump card for its political platform. To having their stance on immigration become another form of major defeat for the Presidency following the administrations' loss in both Healthcare, and the Muslim Ban that was imposed in January of 2017. This all adds to the argument that we are entering a new era of immigration that no longer prioritizes the important notion of families, but instead views the concept of family within the immigration system as the problem because there was never any real form of apology, but instead a haphazardly way of still continuing a zero tolerance stance.

3.3

How the Children Were Affected

The zero-tolerance policy which had the intention of deterring migration away from the United States resulted in the arrests of thousands of parents and caregivers. The adults who were apprehended by Border Patrol were then transferred over to the U.S. Marshals who would hold the adults in federal jail to await trial which in most cases led to the deportation of the adult without their child. The minors (children) would then be labeled as an “unaccompanied minor” and transferred to the supervision of the Department of Health and Human Services (HHS).¹⁰⁴

¹⁰³ “Affording Congress an Opportunity To Address Family Separation,” Section 1. Policy.”

“Hobbs and Minian, “Perspective | A Firsthand Look at the Horrors of Immigration Detention.”

¹⁰⁴ Even though the child was accompanied by an adult(s)

Within HHS there is a specific office called the Administration for Children and Families, which was created with the passing of the United States Refugee Act of 1980 (Public Law 96-212).

Within the Administration, for Children and Families, there is a program and mini organization called the Office of Refugee Resettlement (ORR) which then takes on the responsibility for the children. The ORR's support is provided not just for minors marked as “unaccompanied alien children” but also for refugees, individuals seeking asylum, and victims of human trafficking.¹⁰⁵

The ORR would then transfer the children to facilities, which are operated by both federal and privately contracted companies, or the U.S. Foster Care system. It is within these locations that there have been substantial reports of abuse, mistreatment and sexual harassment.¹⁰⁶ Many politicians, celebrities, and public figures have publicly condemned the use of separating families, as well as the conditions in which they are placed before they are transferred over to a guardian. Under the zero tolerance policy that was enforced from April 6th until June 20th, 2018 almost 3,000 children were separated.¹⁰⁷ Within that short time frame, more than 30 children a day would be stripped away while their parents would be prosecuted and deported.¹⁰⁸ The Trump Administration had no plan to reunite the families until June 26th, 2018 when Federal Judge Dana Sabraw of the United States District of California issued a preliminary injunction and

¹⁰⁵ “What We Do,” Office of Refugee Resettlement | ACF, accessed March 26, 2019, <https://www.acf.hhs.gov/orr/about/what-we-do>.

¹⁰⁶ “Nearly 6,000 Complaints of Abuse at Migrant Children Shelters Made over Four Years,” PBS NewsHour, February 26, 2019, <https://www.pbs.org/newshour/nation/nearly-6000-complaints-of-abuse-at-migrant-children-shelters-made-over-four-years>.

¹⁰⁷ The New York Times, “Trump Signs Executive Order to End Family Separation,” *The New York Times*, accessed March 27, 2019, <https://www.nytimes.com/video/us/politics/100000005964607/After-Heated-Criticism-Trump-Signs-Executive-Order.html>; “Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry,” April 6, 2018, <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>; Miriam Jordan, “Family Separation May Have Hit Thousands More Migrant Children Than Reported,” *The New York Times*, January 18, 2019, sec. U.S., <https://www.nytimes.com/2019/01/17/us/family-separation-trump-administration-migrants.html>.

¹⁰⁸ Jordan.

“As of December, the department had identified 2,737 children who were separated from their parents under the policy and required to be reunified by a federal court order issued in June 2018”

ordered the federal government to cease the use of separating families and to reunify them.¹⁰⁹ Children under the age of five were ordered to be reunified with 14 days and all other children within 30 days. At the time of Judge Sabraw’s announcement, the U.S. had 2,044 children in custody who were separated from their parents because of the zero-tolerance policy.¹¹⁰

Inside the detention centers, which varied from location to location, insiders have reported “prison-like” conditions where the children were “huddled together, tears streaming down their faces.”¹¹¹ Three Brazilian siblings, aged 6, 10, and 16, who were kept together were reported to have been told that they were not allowed to hug each other throughout their period of detention.¹¹² When asking for their parents, officials only told the children that their parents were “lost.”

A shelter located in Tucson; Arizona was initially only meant for children who were apprehended at the border. Due to the Trump Administration practice of separating families, the shelter began to receive children who were targeted by the policy as well. In a report for the *Los Angeles Times* Antar Davidson, who worked as a youth care worker for the shelter, described seeing children in shock, running away, and attempting suicide.¹¹³ Around 100 similar shelters are also operated under contract to the U.S. government. Within 17 states these shelters house over 11,000 children.¹¹⁴ The shelter in Tucson houses up to 300 children, with 70 out of 287 children housed at the time of the article, being under the age of 13, with some being as young as

¹⁰⁹ Ella Nilsen, “A Federal Judge Just Ordered the Trump Administration to Speed up Family Reunifications,” Vox, June 27, 2018, <https://www.vox.com/2018/6/27/17506698/aclu-lawsuit-trump-administration-injunction-family-reunification-separation>.

¹¹⁰ Nilsen.

¹¹¹ Molly Hennessy-Fiske, “‘Prison-like’ Migrant Youth Shelter Is Understaffed, Unequipped for Trump’s ‘Zero Tolerance’ Policy, Insider Says,” *latimes.com*, accessed April 10, 2019, <https://www.latimes.com/nation/la-na-border-migrant-shelter-20180614-story.html>.

Hennessy-Fiske.

¹¹² Hennessy-Fiske.

¹¹³ Hennessy-Fiske.

¹¹⁴ Hennessy-Fiske.

4.¹¹⁵ Southwest Key, which is the largest contracted shelter provider to the U.S. government, has been the most frequently mentioned throughout the news and media. Many of the shelters are reported to be understaffed and lacking efficient training to handle the cases of children within their shelters, although Southwest Key denies this. Allegations of sexual abuse and misconduct from Southwest Key's staff towards the children have also been reported in federal documents.¹¹⁶

Another shelter in McAllen, Texas, where most of the families who were separated and processed were placed. Allowed journalist a glimpse into the facility after a large number of requests from outside news sources put pressure on the facility.¹¹⁷ The resulting videos and images show children in giant cage-like fences, wrapped in metallic blankets, lying on limited mats that covered the glossy hard concrete floors. Manuel Padilla, who was a Border Patrol sector chief of the area said that approximately 1,174 children were taken from their parents in the South Texas Rio Grande Valley sector.¹¹⁸ This enormous facility, nicknamed Ursula, is a 77,000-square foot warehouse.

Brownsville, Texas, is the location of another detention center, called Casa Padre. Casa Padre was once a Walmart before it was turned into a detention center where it houses over 1,400 boys.¹¹⁹ In a statement provided by the CEO of Southwest Key and addressed to NPR, the ages in the facilities range from "zero to 17".¹²⁰ Many reports have connected the abuse

¹¹⁵ Hennessy-Fiske.

¹¹⁶ Michael Grabell Topher Sanders, "Worker Charged With Sexually Molesting Eight Children at Immigrant Shelter," text/HTML, ProPublica, August 2, 2018, <https://www.propublica.org/article/worker-charged-with-sexually-molesting-eight-children-at-immigrant-shelter>.

¹¹⁷ Lisa Ryan, "Inside 3 Detention Centers Where Immigrant Children Are Kept From Their Parents," The Cut, June 18, 2018, <https://www.thecut.com/2018/06/inside-ursula-border-patrol-center-family-separation.html>.

¹¹⁸ Ryan.

¹¹⁹ Ryan.

¹²⁰ "What We Know: Family Separation And 'Zero Tolerance' At The Border," NPR.org, accessed April 10, 2019, <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>.

encountered in these facilities to permanent “psychological” damage that could possibly scar and negatively affect the children for the rest of their lives.¹²¹

Although Federal Judge Dana Sabraw ordered the federal government to reunite all children under the age of five within 14 days and the rest within 30 days, the Trump administration failed to meet the deadline.¹²² Out of 102 children who were under the age of five, the Trump Administration was only able to reunite 2. This was due to the lack of a plan of reunification. The migrant parents were criminalized, arrested and deported very swiftly and there was no process set in place to track whose child belonged to who, or if there was any outside family available in the U.S. to take the children. When asked about this failure, President Trump stated “Well, I have a solution. Tell people not to come to our country illegally. That’s the solution. Don’t come to our country illegally. Come as other people do. Come legally.”¹²³ In his statement, President Trump isn’t acknowledging the shortcomings of his administration but is instead blaming the migrants for the separation policy in the first place for attempting to come into the U.S. seeking refuge. He does not acknowledge the simple fact that these are the lives of children and adults that are having to suffer because of the shortcomings of his actions.

Following the announcement that the Trump Administration would not meet the deadline of reuniting the children and families together, the ACLU sued the Trump Administration to speed

¹²¹ “The Science Is Clear: Separating Families Has Damaging Psychological and Health Consequences,” *UConn Today* (blog), June 22, 2018, <https://today.uconn.edu/2018/06/science-clear-separating-families-long-term-damaging-psychological-health-consequences/>.

¹²² Jamiles Lartey, “Trump Blames Missed Reunification Deadline on Families: ‘Don’t Come to Our Country Illegally,’” *The Guardian*, July 10, 2018, sec. US news, <https://www.theguardian.com/us-news/2018/jul/10/donald-trump-family-reunification-deadline-border-separations>.

¹²³ The White House, ““Well, I Have a Solution: Tell People Not to Come to Our Country Illegally. That’s the Solution: Don’t Come to Our Country Illegally. Come like Other People Do—Come Legally. I’m Saying This Very Simply: We Have Laws, We Have Borders. Don’t Come to Our Country Illegally.’ Pic.Twitter.Com/KiwB8rJVDI,” Tweet, @whitehouse (blog), July 10, 2018, <https://twitter.com/whitehouse/status/1016689753675034624?lang=en>.

up the process and hold the Administration accountable in ensuring the children were reunited with their families.

3.4

President Trump's Lack of Remorse & Apology

In a June 2018 Quinnipiac poll, 55% of Republican voters stated their support for the family separation policy while only 35% within the party voted in opposition.¹²⁴ Of this group, 77% of Republicans polled voted in support of “building a wall along the border with Mexico.”¹²⁵ When all 905 voting participants were taken into account, 27% of American voters were in support of the policy that separated children from their families while 66% of American voters surveyed were in opposition.¹²⁶ From this demographic, the highest age group, gender, and race who voted in favor of the family-separation practice were White Men ages 50+.¹²⁷ Although a majority of Americans disagreed with the policy, over half of Republicans voted in support of separating families. In disregard to the public opinion, the Trump Administration continued to push for their agenda even though they were widely disfavored. In the same poll, only 39% of total Americans were still in favor of Trump's wall yet the administration still pushed forward with trying to get funding for it. The Trump Administration tried to defend its

¹²⁴ “STOP TAKING THE KIDS, 66 PERCENT OF U.S. VOTERS SAY, QUINNIPIAC UNIVERSITY NATIONAL POLL FINDS; SUPPORT FOR DREAMERS IS 79 PERCENT” *Quinnipiac Poll*, June 18th, 2018. Available at https://poll.qu.edu/images/polling/us/us06182018_uwsf18.pdf/

The question asked was “As you may know, some families seeking asylum from their home country cross the U.S. border illegally and then request asylum. In an attempt to discourage this, the Trump administration has been prosecuting the parents immediately, which means separating parents from their children. Do you support or oppose this policy?”

¹²⁵ *Quinnipiac Poll*.

¹²⁶ *Quinnipiac Poll*.

¹²⁷ Ages 35-49 had a 29% approval of the policy while age group 50-64 and 65+ both had a tied approval percentage of 30% indicating that the margins from ages 35+ weren't that far off.

usage of the policy, falsely blaming the rising spike in the number of individuals seeking asylum and claiming the situation at the border was a U.S. national crisis. Staff writer John Cassidy for *The New Yorker*, who perhaps best summarized the consequences of the Trump policy, wrote “There is no ‘crisis’ at the southern border, except the humanitarian one of Trump’s own making.”¹²⁸ This quote sums up what happened during the family separation policy because it points out the unethical reaction to an unreasonable fear undertaken by the Trump Administration.

Clearly the Trump Administration didn't end the policy because they knew it was horrible, otherwise, they wouldn't have created it in the first place or tried to defend and prolong for as long they did. What caused President Trump's reversal and defeat was the bipartisan political and social pressure that was placed on him. In the midst of the many who publicly showed disapproval of the policy were five former first ladies of the United States, three of them from Republican Administrations; Rosalynn Carter, Hillary Clinton, Laura Bush, Michelle Obama, and current first lady Melania Trump. Former first lady Rosalynn Carter is quoted stating “The practice and policy today of removing children from their parents' care at our border with Mexico is disgraceful and a shame to our country.”¹²⁹ What shocked many and garnered the most attention from the media was a published statement in the *Washington Post* by former first lady Laura Bush who wrote

I live in a border state. I appreciate the need to enforce and protect our international boundaries, but this zero-tolerance policy is cruel. It is immoral. And it breaks my heart. Our government should not be in the business of warehousing children in converted box stores or making plans to place them in tent cities in the desert

¹²⁸ John Cassidy, “Why a Rogue President Was Forced to Back Down on Family Separation,” June 21, 2018, <https://www.newyorker.com/news/our-columnists/why-a-rogue-president-was-forced-to-back-down-on-family-separation>.

¹²⁹ Matt Stevens and Sarah Mervosh, “The 4 Former First Ladies Condemn Trump’s Border Policy,” *The New York Times*, July 18, 2018, sec. U.S., <https://www.nytimes.com/2018/06/19/us/politics/first-ladies-trump-family-separation.html>.

outside of El Paso. These images are eerily reminiscent of the internment camps for U.S. citizens and noncitizens of Japanese descent during World War II, now considered to have been one of the most shameful episodes in U.S. history.¹³⁰

Former first lady Michelle Obama retweeted the post by Laura Bush writing “sometimes truth transcends party.”¹³¹ Although it wasn’t only these important public figures who spoke out against the policy, many political figures from both sides of the political spectrum reacted in notions of disapproval. It is important to note the rarity and tremendous impact it had to have all living former first ladies to side together regardless of political beliefs.¹³² This, topped with mass media coverage and immense public disapproval. Placed the Trump Administration in a tough situation where they were forced to fold. During this time Vox Media in collaboration with ProPublica, a nonprofit newsroom aimed at investigative journalism, released an article that contained a video with voice recordings of the separated children in the detention centers.¹³³ The video was, to say the least, incredibly disturbing and graphic. It garnered the attention of the mass media which put more pressure on the Administration. Not just audio recordings were released, but a large number of photos and videos were taken of the children locked in the metal cages. They show the children crying, wrapped in metal foil blankets that were distributed to the

¹³⁰ “Laura Bush: Separating Children from Their Parents at the Border ‘Breaks My Heart’ - The Washington Post,” accessed April 9, 2019, https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-b1dd6a09b549_story.html?noredirect=on&utm_term=.36a103188802.

¹³¹ Michelle Obama, “Sometimes Truth Transcends Party.” <https://twitter.com/Laurawbush/Status/1008526531734458375> ...,” Tweet, @MichelleObama (blog), June 18, 2018, https://twitter.com/MichelleObama/status/1008768272895012867?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwetemb%7Cwtterm%5E1008768272895012867&ref_url=https%3A%2F%2Fwww.nytimes.com%2F2018%2F06%2F19%2Fus%2Fpolitics%2Ffirst-ladies-trump-family-separation.html.

¹³² David Smith Tom Phillips in Mexico City, “Child Separations: Trump Faces Extreme Backlash from Public and His Own Party,” *The Guardian*, June 19, 2018, sec. US news, <https://www.theguardian.com/us-news/2018/jun/19/child-separation-camps-trump-border-policy-backlash-republicans>.

¹³³ Ranjani Chakraborty, “The Voices of Children Separated at the Border,” Vox, June 20, 2018, <https://www.vox.com/2018/6/20/17482476/children-separated-at-border-audio>.

children for warmth.¹³⁴ It was these leaked images, coupled with many more visual imageries that became the catalyst for the large public outcry at the situation. Again, it is important to note that the Trump Administration did not sign the executive order ending the practice out of goodwill, but instead because of the public and political pressure that was being placed on the administration at a crucial time ahead of the midterm elections. It was a strategic and political move to divert attention away from the backlash. What was frustrating for many advocates was the absence within the executive order of any form of ownership or apology. Instead the statement was only a reiteration of the Trump Administration stance on immigration. In a press conference, the day the executive order was signed President Trump stated

We're going to be signing an executive order...We're going to keep families together, but we still have to maintain toughness, or our country will be overrun by people, by crime, by all of the things that we don't stand for, that we don't want...we have to keep our borders strong. We will be overrun with crime and with people that should not be in our country.¹³⁵

Although President Trump repeats the notion of keeping families together, the statement was unapologetic and immediately followed with the defense and false accusation that the policy is needed. He said, “keep our borders strong” or else we risk being “overrun with crime and people that should not be in our country.” The addition of this statement does not make sense as the overwhelming majority of the migrants affected by the separation policy were families who would be seeking asylum under normal circumstance. They were not drug traffickers or criminals. Following this statement, in response to the question of whether it was the images of the children that had an effect on his move towards an executive order, Trump said

¹³⁴ “US Family Separation Crisis – in Pictures,” *The Guardian*, June 22, 2018, sec. US news, <https://www.theguardian.com/us-news/gallery/2018/jun/22/us-family-separation-crisis-in-pictures>.

¹³⁵ “Remarks by President Trump and Vice President Pence in Meeting with Members of Congress,” The White House, accessed April 10, 2019, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-meeting-members-congress/>.

Yes. They affect everybody.... But I have to say that you have double standards. You have people that want absolute security and safety, and you have people that do look at the children. And then you have people like me, and I think most of the people in this room, that want both. We want the heart, but we also want strong borders, and we want no crime.¹³⁶

In his response, President Trump again equated the idea of having secure borders where crime is stopped, to targeting families who are exercising their right under international law to seek asylum and protection. President Trump's response suggests that one cannot have secure borders without having to resort to inhumane practices that target migrant families and children. Thus, President Trump's remarks and executive order were not an apology or acknowledgment of wrongdoing, but instead, a forced change of direction on his administration's agenda on immigration. The executive order lacked any inclusion of a form or process of reunification for the families and children targeted throughout the implementation of the policy.¹³⁷ It was not until Federal Judge Dana Sabraw, of the United States District Court for the Southern District of California, six days later that commanded the Trump Administration to reunite the families who were affected.

3.5

Donald Trump's New Immigration Goal

With the topic of immigration being President Trump's signature issue, it was unusual to see a fast retraction from a policy that was doing exactly what the Administration always wanted. President Trump, since the beginning of his presidency, has stated his disapproval of the current

¹³⁶ "Remarks by President Trump and Vice President Pence in Meeting with Members of Congress."

¹³⁷ "Affording Congress an Opportunity To Address Family Separation," Federal Register, June 25, 2018, <https://www.federalregister.gov/documents/2018/06/25/2018-13696/affording-congress-an-opportunity-to-address-family-separation>.

state of the immigration system. The Trump Administration has consistently used the term “catch and release” to refer to the practice that the Obama Administration was critiqued for, which was releasing migrant families from custody while any court cases within the immigration system were pending.

It was this practice of releasing migrant families that the Trump Administration wanted to end. In the eyes of the Trump Administration, the practice of catch and release was another way of letting migrants take advantage of the U.S's immigration system as there was fear that migrants would "disappear" and not ever show up for their court cases. The Trump Administration answer to this perceived problem was to target migrant families apprehended at the border who sought to seek asylum between a port of entry, which is the legal right of any migrant.¹³⁸ The Trump Administration would use the tactic of criminalizing the migrants, marking any child or children as unaccompanied, and prosecuting and deporting the adult(s). This was done without giving them the option to apply for asylum which has always been an option prior. Through this shift of focus the Trump Administration was able to effectively knock down two birds with one stone. (1) by criminalizing – and thus enabling immediate deportation of – incoming migrants who would try to apply for asylum after being detained through a point of entry. Hence stopping the administration from being forced into the catch and release dilemma they so fiercely despised. (2) by automatically creating a “detering” factor which would spread throughout the border and lower the number of migrants who would venture into the U.S. through a point of entry. This policy worked seamlessly with the approach that the Trump Administration was aiming for in their immigration reform.

¹³⁸ “Obtaining Asylum in the United States,” USCIS, October 19, 2015, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>.

For the Trump Administration and many of their conservative congressional supporters, immigration reform meant “securing the border,” “ensuring the swift removal of unlawful entrants,” “eliminating the Visa Lottery,” and ending “chain migration.”¹³⁹ The solution to “securing the border” for the Trump Administration is the infamous “Wall” that President Trump had advocated for since the start of his campaign trail in 2015. Efforts at “ensuring the swift removal of unlawful entrants” were seen in his zero-tolerance policy, as any migrant(s) who tried to enter the U.S. in between a port of entry was automatically prosecuted and arrested, hence creating the family separation. President Trump’s plans of eliminating the Visa Lottery and ending chain migration on immigration reform are crucial to the overall structure of his immigration policy and add to the argument that with the Trump Administration we are entering a new era of immigration. One that no longer prioritizes the important notion of families, but instead views the concept of family within the immigration system as the central problem. By eliminating the Visa lottery, which partially serves the purposes of diversifying the immigration system. President Trump’s goal ensures that certain migrants wouldn’t have the necessary means of gaining an edge in immigration, like individuals applying from countries with low rates of U.S. based migration.¹⁴⁰ What the Trump Administration refers to as “chain migration” applies to the definition of family-based immigration.¹⁴¹ Family-based migration is a term used to describe migration into the U.S. that is family sponsored. This was created under the Immigration and Nationality Act of 1965, which allowed the U.S. to prioritize those seeking admittance with family already located within the U.S. territories. Homeland Security data

¹³⁹ “Immigration,” The White House, accessed April 7, 2019, <https://www.whitehouse.gov/issues/immigration/>.

¹⁴⁰ “Green Card Through the Diversity Immigrant Visa Program,” USCIS, January 11, 2018, <https://www.uscis.gov/greencard/diversity-visa>.

¹⁴¹ Linda Qiu, “What Is ‘Chain Migration’? Here’s the Controversy Behind It,” *The New York Times*, August 10, 2018, sec. U.S., <https://www.nytimes.com/2018/01/26/us/politics/the-facts-behind-the-weaponized-phrase-chain-migration.html>.

reported by the *New York Times*, states that from the years 2007 to 2016, 63.6% of migrants who obtained a green card, were through a sponsored family member(s).¹⁴² Family-based migration laws allow U.S. citizens and U.S. green card holders to sponsor parents, siblings, spouses, and children for a permanent residence.¹⁴³ This is evidence that family-based migration has been an integral part of the U.S.'s immigration system. The idea of keeping families together, not separating them, has always been an integral part of the U.S. immigration system and a top priority for past presidents as seen in chapter 1. In spite of the fact that the U.S. immigration system has constantly been making it harder for incoming migrants to seek asylum and legal status. The notion of family unity has continued to maintain a critical element within the U.S. immigration system. Migrants who have already obtained a legal status in the U.S. being able to help a family member receive a bump in the system has always been a part of immigration history. Ending what the Trump Administration labels as “chain migration” and the Visa lottery, which both serve to make the immigration system more equitable signifies the Administration’s goal in prioritizing specific type of migrant.

The Trump Administration’s vision is to move the immigration system away from its family-based approach into a new “merit-based entry” system. President Trump on June 15th, 2018 tweeted “The Democrats are forcing the breakup of families at the Border with their horrible and cruel legislative agenda. Any Immigration Bill MUST HAVE full funding for the Wall, end Catch & Release, Visa Lottery, and Chain, and go to Merit-Based Immigration. Go for

¹⁴² Linda Qiu, “What Is ‘Chain Migration’? Here’s the Controversy Behind It,” *The New York Times*, August 10, 2018, sec. U.S., <https://www.nytimes.com/2018/01/26/us/politics/the-facts-behind-the-weaponized-phrase-chain-migration.html>; “2016 Yearbook of Immigration Statistics,” 2016, Office of Immigration Statistics, n.d., 124.

¹⁴³ Qiu. “Under current law, American green card holders can sponsor their spouses and unmarried children for permanent residence — just like naturalized and native-born citizens. And United States citizens can also petition for residence for their parents, siblings and married adult children”.

it! WIN!”¹⁴⁴ This tweet was in response to disapproving national outcry provoked by the family separation policy. Within his tweet, President Trump again laid down his guidelines for what immigration reform will look like under his presidency, a merit-based system that does away a family-unity centered focus. A merit-based immigration system could exclude millions of migrants from being able to apply or attain any form of legal documentation within the United States. A merit-based system for immigration has the potential to be rooted in a plethora of toxic issues like racism, xenophobia, elitism, and sexism. Although a merit-based system is not entirely evil and rooted in stopping migrants from entering a new country. A merit-based system is inherently classist because one of the main purposes of a merit-based approach to immigration is its connection to the economic system. Merit-based systems prioritize migrants who possess higher levels of education, English-language proficiency, skills, and wealth for the purpose of benefiting a country's economic needs. This leaves behind low-income or low skilled migrants that may not speak English. Merit-based is also inherently sexist because statically countries from Latin-America, Southeast Asia have a disproportionate number of women who would not be labeled as “highly skilled”. This leaves behind millions of women who make up just over half of the incoming migrants in the U.S.¹⁴⁵

President Trump's zero tolerance approach to immigration was the start of an integral change in the framework of the U.S. modern immigration system. It was the beginning of a new

¹⁴⁴ Donald J. Trump, "The Democrats Are Forcing the Breakup of Families at the Border with Their Horrible and Cruel Legislative Agenda. Any Immigration Bill MUST HAVE Full Funding for the Wall, End Catch & Release, Visa Lottery, and Chain, and Go to Merit-Based Immigration. Go for It! WIN!," Tweet, *@realDonaldTrump* (blog), June 15, 2018, https://twitter.com/realDonaldTrump/status/1007671131841671169?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweteembed%7Ctwterm%5E1007671131841671169&ref_url=http%3A%2F%2Ftime.com%2F5314769%2Ffamily-separation-policy-donald-trump%2F.

¹⁴⁵ Jie Zong Burrows Jeanne Batalova Jie Zong, Jeanne Batalova, and Micayla, “Frequently Requested Statistics on Immigrants and Immigration in the United States,” *migrationpolicy.org*, March 11, 2019, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

era and the start of a shift away from a family-oriented immigration system, to a more militarized and merit-based approach. The merit-based approach, which would limit the number of migrants coming in through a filtration system, would be set to only prioritize only a specific type of migrant. The push to change the immigration system was met with backlash because it was viewed as too aggressive and vividly exploited the rights of human beings. Even though the separation policy was from the very beginning exactly what he promised and what his supporters wanted to see. When the policy began to come to light and the general public saw what was happening and how it was being enforced, President Trump lost key general support. This backlash placed a tremendous amount of pressure on the Trump Administration and its supporters, which evidently lead to the forced retreat.

3.6

Not Over Yet

Although the Trump Administration was able to temporarily install a detrimental policy which rerouted the framework of the modern U.S. immigration system. The core value of family unity, in the end, held up. Public backlash and Data shows that a majority of Americans were not in agreement with the actions and plans the administration has for immigration. Although the fact that the policy was purposely targeting families and children had a huge role in the public outcry. The reception of the policy showed that the American people have power and pressure over the Trump Administration. The downfall of the American public is the fact that after the policy seemingly ended, coverage and attention on immigration violations has substantially vanished. A majority of people within the Republican party voted in favor of the policy, despite its cruelty, which shows that the conflict between migrants and the Presidency are only just

beginning rather than ending. A lesson to be learned is the fact that we shouldn't wait until children are targeted and affected in order to act, but instead, never allow situations like this to ever occur. If it wasn't for the mobilizing of shame towards the Trump Administration, the policy would still be in effect today. The seemingly beginning and end of the separation policy tells us that the Trump Administration has a goal and desire to uproot and rewire the entire basis of the immigration system. Aiding the creation of a new system in which merit comes before the needs of the migrant. Within this new era titled "The Era of Zero Tolerance" the Trump Administration aimed at criminalizing the very concept which kept the immigration system together, family unity. Although it backfired, President Trump's push for a merit-based system should also be viewed critically. A merit-based approach could easily become a disguise to end family-based migration which has continued to help thousands of families each year. In a time and era when families are separated and tear gassed, the notion of family unity must be protected more than ever.

CONCLUSION

Qué hacer de aquí y cómo?
(What to do from here and how?)

Perhaps like me you are tired of suffering and talking about suffering, estás hasta el pescuezo de sufrimiento, de contar las lluvias de sangre pero no has llluvias de flores (up to your neck with suffering, of counting the rains of blood but not the rains of flowers). Like me you may be tired of making a tragedy of our lives.

- Gloria E. Anzaldúa, *This Bridge Called My Back*¹⁴⁶

¹⁴⁶ Cherríe Moraga, *This Bridge Called My Back: Writings by Radical Women of Color* (Kitchen Table, Women of Color Press, 1983).

Did Family Separations End?

As we have seen, since the beginning of the U.S. immigration system there has been a continual thread of family unity. The Immigration Act of 1924, also known as the "Johnson-Reed Act," infamously mandated quotas for immigrants entering the U.S. from other countries. Nevertheless, under the section of this Act titled "non-quota immigrants" and "preferences within quotas," there was still large emphasis on protecting and prioritizing wives and minors migrating to the United States.¹⁴⁷ Although the law itself was inherently racist as it prioritized the immigrants that U.S. politicians felt were the best racially for the United States. The prioritization of family members still existed throughout this "Era of Quotas." The creation of the modern structure of the U.S. immigration system, what we know today as the Immigration and Nationality Act of 1965 or the "Hart-Celler Act," saw a continued and expanded emphasis on family. Although the Hart-Celler Act established that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence". It very much prioritized and revolved around family reunification.¹⁴⁸ A newly instituted sponsorship program allowed for U.S. citizens to sponsor relatives, who would then receive priority within the overall process of applying for a Visa. This "Era of Mass Immigration" ultimately lead to an "Era of Mass Deportations" following the Immigration Reform and Control Act of 1986. This act marked a shift in

¹⁴⁷ "1924 Johnson-ReedImmigrationAct.Pdf," accessed April 20, 2019, <https://immigration.procon.org/sourcefiles/1924Johnson-ReedImmigrationAct.pdf>.

¹⁴⁸ "The Hart-Celler Immigration Act of 1965," CIS.org, accessed April 20, 2019, <https://cis.org/Report/HartCeller-Immigration-Act-1965>.

immigration policy from solely prioritizing incoming migrants to also focusing on deportations and border security. Although the predominant aspect of this era was a focus on keeping migrants out rather than letting them come into the United States. The emphasis on family reunification remained. Family sponsored Visas continued to be an integral part of the U.S immigration system along with the protection of families and minors applying for asylum.

This family focus was abandoned once the Trump Administration began the practice of family separations. The family-separation policy marked a new era within immigration policy, dubbed here the “Era of Zero Tolerance,” in which families seeking asylum were forcibly separated from each other. Parents/adults were prosecuted and deported, while their children were marked as “unaccompanied minors” and transferred to detention facilities and the foster care system. From here the U.S. immigration system began to follow the anti-immigrant rhetoric that was popularized by President Trump throughout his presidential campaign and which has marked his time in office. The zero-tolerance policy made it a priority to deter future migrants from applying for asylum, while also ending the practice of releasing the families together to await trial after an apprehension at the U.S. border. This policy resulted in thousands of children being torn from their parents without any system set in place to reunite them. In many cases it took several months before a parent, usually through their own efforts, was able to reconnect with their child. The U.S. government refused to do anything about it until a federal court decision forced the U.S government to reunite the families. Throughout the duration of the separation policy, reports emerged that children were being abused, neglected, and many were

left mentally, and emotionally scarred by the traumatic experience.¹⁴⁹ In some cases, children and parents attempted to harm themselves and some committed suicide.¹⁵⁰

After June 20th when President Trump ordered the end of separating families, there was no mention of any program aimed at rehabilitating or reuniting the families who were affected by the policy of separation. Since June 6th, when Federal Judge, Dana Sabraw issued a decree mandating the U.S. government to come up with a plan to reunite the families, the media coverage has since faded. Although the separation policy was ended by President Trump, the U.S. has still continued to separate families and has even pushed for a resolution where migrant children can be held with their parents indefinitely in order to move around the policy dubbed catch and release. With this, the U.S. immigration system has become a system that criminalizes and detains immigrants in family prisons rather than the outward violence by separating the families.

The “Era of Zero Tolerance,” as far as it pertains to family separation, still continues. After several weeks of heavy backlash from the public opposition and media coverage to the family separation policy. On June 20th, 2018, President Trump signed Executive Order 13841, *Affording Congress an Opportunity to Address Family Separation*.¹⁵¹ This signaled the legal end to the practice of separating family and established a goal of “maintain[ing] family unity.”¹⁵² This was a complete reversal of the previous stance of the Trump Administration, which had previously stated family separation was one of its goals in reforming the immigration system. The Executive

¹⁴⁹ Dara Lind, “People Are Dying Because of the Trump Administration’s Immigration Policy,” Vox, June 12, 2018, <https://www.vox.com/2018/6/12/17448778/separated-family-father-suicide-killed-deported>.

¹⁵⁰ Jeffery C. Mays and Matt Stevens, “Honduran Man Kills Himself After Being Separated From Family at U.S. Border, Reports Say,” *The New York Times*, July 18, 2018, sec. U.S., <https://www.nytimes.com/2018/06/10/us/border-patrol-texas-family-separated-suicide.html>.

¹⁵¹ “Affording Congress an Opportunity To Address Family Separation,” Federal Register, June 25, 2018, <https://www.federalregister.gov/documents/2018/06/25/2018-13696/affording-congress-an-opportunity-to-address-family-separation>.

¹⁵² “Affording Congress an Opportunity To Address Family Separation,” Section 1. Policy.

Order held that adults would continue to be prosecuted for any unlawful entry but that the families would be housed together. Instead of transferring the adults to the Justice Department, which was originally done under the “zero tolerance” policy, the families would instead be relocated to the Department of Homeland Security (DHS). The Executive Order failed to mention any plan of relocating and reuniting lost family members, which was requested by Judge Dana Sabraw, of the United States District Court of California. In an attempt to continue the Administration’s aim of ending catch and release, the Executive Order sought to establish the power of the federal government to seek for indefinite detention of the families under DHS. This was in violation of the Flores Settlement, and was eventually struck down by higher courts.¹⁵³ Nonetheless, section 3 of the Executive Order left the door open for further family separations as it stated “The Secretary shall not, however, detain an alien family together when there is a concern that detention of an alien child with the child's alien parent would pose a risk to the child's welfare.”¹⁵⁴ This section allowed the Trump Administration to separate families at the U.S. border in the same way they did during their zero tolerance approach, albeit for an outwardly different reason.

In early March of 2019, the *New York Times* published an article detailing how the U.S. under the Trump Administration has still continued its practice of separating families, despite President Trump’s signing of an Executive Order which ended the practice.¹⁵⁵ The article noted that in the 8 month period since the policy’s apparent termination, over 200 migrant children

¹⁵³ “Trump’s Goal To Get Tougher On Immigration Will Have To Involve The Flores Settlement,” NPR.org, accessed April 25, 2019, <https://www.npr.org/2019/04/09/711536545/trumps-goal-to-get-tougher-on-immigration-will-have-to-involve-the-flores-settle>.

¹⁵⁴ “Affording Congress an Opportunity To Address Family Separation,” Sec. 3. Temporary Detention Policy for Families Entering this Country Illegally. (b).

¹⁵⁵ Miriam Jordan and Caitlin Dickerson, “U.S. Continues to Separate Migrant Families Despite Rollback of Policy,” *The New York Times*, March 11, 2019, sec. U.S., <https://www.nytimes.com/2019/03/09/us/migrant-family-separations-border.html>.

have been separated from their families.¹⁵⁶ In a report provided to the federal judge overseeing the policy, 245 children were identified as having been taken from their families and relocated to shelters and foster homes in the United States. As was the case under the zero-tolerance policy, some of these separations have no associated documentation as to the locations of the children being separated, a failure that further prolongs the process of reunification.¹⁵⁷

Although the reasons for separating the families are the still the same the methods now are completely different. Before, the separations were occurring because the migrant(s) committed the federal misdemeanor of illegal entry into the United States. Now the separations are occurring because, as documented by the *New York Times*, under President Trump's Executive Order ending family separations, he still gave power to officials to separate families if officials felt there would be a risk posed to the child's welfare absent such a separation.¹⁵⁸ This fairly subjective judgment has been used against migrant parents who have been vaguely "flagged for fraud, a communicable disease or past criminal history — in some cases relatively minor violations, years in the past, that ordinarily would not lead to the loss of parental custody."¹⁵⁹ This process leaves migrants vulnerable to whatever negative frames an official might use in identifying someone who would "pose a concern" to a child and thereby wrongfully justifying a separation. Although it is important to have protections set in place to protect children from harm of human trafficking and exploitation, leaving the deciding factor so open ended can be used to further harm and target migrant families. It is especially concerning to see this type of power in the hands of a presidency that has been historically shown to be very xenophobic. Under the policy of the Obama Administration a child was only separated from their

¹⁵⁶ Jordan and Dickerson.

¹⁵⁷ Jordan and Dickerson.

¹⁵⁸ "Affording Congress an Opportunity To Address Family Separation."

¹⁵⁹ Jordan and Dickerson, "U.S. Continues to Separate Migrant Families Despite Rollback of Policy."

parent or guardian in extreme cases.¹⁶⁰ Proof that President Trump's Administration is taking advantage of the power to decide when a parent or guardian isn't suitable for a child, without any form of oversight or veto is expressed in the *New York Times* article.¹⁶¹ It demonstrates how when individuals within the Health and Human Services Department's Office of Refugee Resettlement have tried to oppose a separation, they deemed was wrong. Border Patrol agents have given little to no justification for continuing the separation.¹⁶² It was reported that when asked for documentation on the decision, Border Patrol agents refused to provide additional information, and in cases when documentation was provided, it was described to be totally illegible.¹⁶³ It was also reported that some of the apprehensions occurred without DHS being notified or informed, which raises the possibility that more than 245 children could have been separated but were never formally accounted for.¹⁶⁴

Many of the reasons used to justify the separations included past criminal records, which the *New York Times* investigators found included past non-violent offences committed by the parents, which can make the claim very questionable. In one case, the parent had, in the past, been convicted of possession of an amount of marijuana. Because of this, Border Patrol agents deemed the parent a hazard to the child's safety even though there was no evidence of current drug use or possession.¹⁶⁵ The article recounts an incident that occurred in December, when a mother of three, Deisy Ramirez was apprehended in Arizona and had all three of her children taken from her. The children, whose ages were 5, 8, and 15, were sent to a foster care facility in New York.¹⁶⁶ It took almost 6 weeks before any communication between Ramirez and her

¹⁶⁰ Jordan and Dickerson.

¹⁶¹ Jordan and Dickerson.

¹⁶² Jordan and Dickerson.

¹⁶³ Jordan and Dickerson.

¹⁶⁴ Jordan and Dickerson.

¹⁶⁵ Jordan and Dickerson.

¹⁶⁶ Jordan and Dickerson.

children occurred, and her eldest daughter was admitted to a hospital in March after threatening to take her own life.¹⁶⁷ Deisy Ramirez's lawyer has stated that the U.S. government has failed to give him any reason for the separation, but that the only connection that can be made is the fact that a decade ago Ms. Ramirez was deported for illegal attempt of entry.¹⁶⁸

Since the ending of the zero-tolerance policy, around 2,700 children have been reunited with their families, but reports state that there are still thousands of children who have yet to be accounted for, or reunited.¹⁶⁹ President Trump's failure to make amends for the damage his policy has caused, and his ongoing anti-immigrant rhetoric makes it clear that a clause meant to protect migrants from child trafficking and harm, is predominantly being used to continue to separate children from their families. Family separation has not ended, but instead has entered a darker stage, where it is happening unmonitored and uncontrolled. The Trump Administration is still continuing to execute its strategy of militarization of the border and criminalization of migrants for the purpose of continuing a zero-tolerance approach. In this case the zero tolerance is of any migrant who the Trump Administration suspects is a danger to U.S. society. This is largely going unnoticed or is not prioritized by the same media and prominent individuals who once called for the ending of the family separation policy when in full effect. We all need to do better.

¹⁶⁷ Jordan and Dickerson.

¹⁶⁸ Jordan and Dickerson.

¹⁶⁹ Miriam Jordan, "Family Separation May Have Hit Thousands More Migrant Children Than Reported," *The New York Times*, January 18, 2019, sec. U.S., <https://www.nytimes.com/2019/01/17/us/family-separation-trump-administration-migrants.html>.

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