

No tolerance for zero tolerance

The Trump administration's treatment of vulnerable migrants—particularly children—is neither fair nor humane.

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A Honduran woman and her two children waiting to ask for asylum from Border Patrol agents in McAllen, Texas. Getty Images.

The sight and sound of immigrant children being separated from their parents at the U.S. southern border reflected an immigration policy guided by indifference if not cruelty. Though the policy of separating families was officially discontinued in response to protests last month, policy and practice at the border remains chaotic.

The chaos is rooted in President Trump's desire for immigration policy to be "simple" and based on "zero tolerance" for anyone crossing the border illegally. But immigration policy is complicated for two major reasons: the Constitution guarantees due process under the law to anyone on U.S. soil, and any legitimate enforcement scheme has to be governed by compassion and common sense.

When the Trump administration announced that it would criminally prosecute all those who cross the border without visas or work permits, it decided it would put children in separate facilities while their parents await trial in jail. That was a way of getting around a 1997 court agreement—developed out of concern for the well-being of children—that prevents customs officials from putting children in jail. Previous presidents handled this constraint by releasing families to stay with relatives or under the care of local agencies until the time of their court date. Compliance was high because most immigrant families want their day in court. If the administration genuinely retreats from asserting zero tolerance, it is likely to return to a similar approach.

Behind the recent manufactured crisis at the border is a more disturbing reality: a consistent effort to dehumanize immigrants. Trump calls immigrants “animals” and suggests they are like insects, “infesting” our country. Lately he’s made it clear he’d like to eliminate due process for immigrants entirely. “When somebody comes in, we must immediately, with no judges or court cases, bring them back from where they came.”

The administration has also downplayed the dangers that many refugees from Central America are fleeing. Last month, Attorney General Jeff Sessions declared that the U.S. would no longer consider the risk of violence from gangs or domestic partners a reason for granting asylum. Although the violence people are fleeing in Honduras, Guatemala, and El Salvador does not fit the traditional basis for granting asylum—that of being persecuted by the state—immigration judges have increasingly recognized that many applicants for asylum face real threats from nonstate actors.

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Giving immigrants due process and a fair hearing, ensuring that both adults and children are treated humanely while they await a hearing, keeping immigrant parents and children together—all this presents a logistical challenge. But it’s a challenge that can be met by a country that seeks to be fair and humane.

Those who recognize immigrants as vulnerable human beings will insist that the U.S. be fair and humane. They will continue to protest against dehumanizing language and cruel policies. As Rabbi Abraham Joshua Heschel wrote, “In a free society, some are guilty, but all are responsible.”

A version of this article appears in the print edition under the title "Zero tolerance is intolerable."