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Policy Point-Counterpoint: Are the Trump Administration's Immigration Policies Just or Unjust for Immigrant Children in Particular and the Country in General?

Cover Page Footnote

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Policy Point-Counterpoint: Are the Trump Administration's Immigration Policies Just or Unjust for Immigrant Children in Particular and the Country in General?

Immigration laws in the United States have always been contentious among lawmakers, but current disagreements have moved beyond lawmakers to people on the street, with political affiliations often polarizing views.¹ Much of the recent debate surrounds policies concerning undocumented immigrants, particularly the Trump administration's policies on those crossing the nearly 2000-mile border between the United States and Mexico, known as the Southern border.² The American Civil Liberties Union (ACLU) views immigration issues as human rights issues, specifically declaring many of the Trump administration's policies human rights violations.³ Of major concern is the treatment of undocumented immigrants' children. Many of the children illegally crossing the borders have been separated from their parents and detained in overcrowded shelters and makeshift tents across the United States.⁴ Indeed, the ACLU claims that more than 900 children, "including numerous babies and toddlers," were separated from their families between June 2018 and July 2019 despite a court order to end the practice.⁵ Other children, already in the U.S., lose their families and stable homes through mass raids on places known to hire immigrants.⁶ It is estimated that 5.1 million children under the age of eighteen, brought to the U.S as young children or born in the United States, fall into this latter group.⁷

The Centers for Disease Control's seminal research study on adverse childhood experience (ACE's) revealed that children exposed to various traumatic events—including the incarceration of a parent—are at increased risk of developing psychological and emotional problems with lasting impacts throughout their lives.⁸ In a recent *L.A. Times* editorial, their editorial board describes the current immigration policies as embedding "cruelty as a common thread."⁹ The National Association for Social Workers describes the policy on mass raids as

“inhumane and an attack on immigrant families and children,”¹⁰ and The Human Rights Watch believes the Trump administration’s policies are a move backwards on human rights, indicating a level of unjust or unreasonable measures in treating immigrants.¹¹ Are the current administration’s immigration policies indeed unjust? For immigrants? For the country? Or are they a just and sensible way of controlling who enters the country, ensuring American security?

Congress, comprising both the House and the Senate, is responsible for enacting immigration laws, but has been crippled by political controversies for decades, stalling progress in immigration reform.¹² While congressional leaders debate who merits admittance into the United States, ad hoc policies implemented by presidential executive orders have been used by both the current and past administrations to curb legal immigration. Congress has continuously declared comprehensive immigration reform (CIR) a priority, passing independent legislation, but never agreeing on any one. The last successful CIR was the 1965 Immigration and Nationality Act.¹³ Between 2005 and 2007, three versions of CIR legislation passed the House or Senate, independently, but none passed both chambers.¹⁴ The last enacted Congressional immigration reform was *The Secure Fence Act* in 2006. This dealt specifically with border crossing and a call for strengthening the borders between the United States and Mexico. To date, this has not been fully completed.¹⁵ Practically speaking, this deadlock means presidential executive order is the only method of keeping immigration policy up to date with the needs of the country.

Immigrants comprise 14 percent of the U.S. population of over 323 million people—meaning over 43 million people in the U.S. are immigrants.¹⁶ The United States has several pathways for legal entry yet many individuals and families bypass these pathways and enter the country illegally, being deemed “undocumented immigrants,” or in the words of the current

administration, “illegal aliens.”¹⁷ The reasons given for illegal entry include: asylum-seeking, refugees escaping danger and hardship, and system back-logs, where millions of would-be immigrants sit on a waiting list—often time for years—to obtain a visa. Some individuals obtain temporary visas, i.e., visitors, students, skilled workers, etc., with which they are given a limited time to stay in the country. Millions extend their stay illegally, joining the ranks of undocumented immigrants.¹⁸ Indeed, it should be noted that the majority of people in the U.S. without proper documents came here with valid visas and simply did not leave when they expired. For example, in 2017 (the last year the Department of Homeland Security released figures), 700,000 people overstayed their visas as opposed to the 300,000 apprehensions along the Southern border reported by Customs and Border Protection.¹⁹

Since his inauguration in 2017, President Trump has made immigration a major focus of his administration, implementing “no-nonsense” policies through the issuance of executive orders, with the declared aims of deterring undocumented immigrants from entering the United States, and preventing terrorism.²⁰ These policies include: a ban on individuals from specific Muslim countries; building a border wall between the United States and Mexico (and campaigning on the promise of having Mexico pay for the wall); border apprehension, during which children and families are separated and held in separate facilities for processing and deportation; and mass immigration arrests, during which ICE agents raid known workplaces for immigrants, rounding up and deporting undocumented workers. Many cases, referred to as, “rocket docket,” are deliberately rushed through the courts, giving individuals no time to prepare for their court hearings, and separating families without notice.²¹ Some states, such as California, have defied these mass deportation strategies by refusing to comply with the administration’s policies. These states, deemed sanctuary states (there are also several sanctuary

cities, including New York City, where police refuse to aid ICE officials with mass deportation raids), are threatened with federal funds being withheld if they fail to comply.²² The Trump administration argues that undocumented immigration has a profound effect on every single component of society, impacting hospitals in particular and the economy in general.²³ If we accept that as true, does it make his administration's immigration policies just?

Point: Immigration Policies in the United States are Unjust, Causing Severe Harm to the Mental Health of Individuals, and are a Violation of Human Rights.

To be just is to be fair and unprejudiced. The current administration's immigration policies are unjust because they are unfair and prejudiced. Human rights advocates, such as the ACLU and the United Nations, have declared that "no human being is illegal," decrying current U.S. immigration policies as discriminatory and abusive as they deny immigrants due process rights.²⁴

The Pew Research Center reports that a majority of the public (69 percent) view immigrants as hardworking, which helps to strengthen the country.²⁵ This includes the estimated 11.1 million undocumented immigrants living in the United States that significantly contribute to the workforce, many of who are parents of the over 4 million children born in the United States. An increasing number of unaccompanied youths are also traveling to the United States daily through the Southern border.²⁶ For many of these individuals, the decision to cross the border into the U.S is made by their parents or family members already residing in the United States.²⁷ While their parents and family's motivation is to give them a better life, the shock of leaving their life, friends, family, and an extensive circle of support that they have known since birth can not be underestimated. This group and the negative impact of the changes they face when

starting a new life in the United States are not fully understood, and a just immigration would attempt to understand their plights.

Over the last two years there have been sweeping changes in immigration policies, leaving many children of undocumented immigrants facing problems not often suffered by other children, as they are in constant fear of losing their parents, families, and in most cases, the only home they have ever known, all while on the look-out for agents of the U.S. Immigration and Customs Enforcement (ICE). The current administration implemented several “anti-immigrant” policies that have raised the attention of various opponents civil and human rights organizations, including the American Immigration Council and the multi-ethnic nonprofit organization Families for Freedom. They have vehemently opposed the recent policies due to the risk to privacy and the danger of violations of rights. These policies would frequently follow the exposure to a series of traumatic events occurring in the immigrant's countries of origin, such as violence, gang activity, extreme poverty, dysfunctional family environments, and crime. These immigrant groups then relocate to the United States and are susceptible to all forms of discrimination, racial profiling, and bullying based on their skin color, inability to communicate due to poor to no English, and acculturation.²⁸

According to the American Academy of Pediatrics, these traumatic events may lead to a series of adverse emotional and behavioral outcomes such as symptoms of posttraumatic stress disorder, excessive anxiety, irritability, fear, and social isolation. For younger children, the negative impact associated with these types of exposure can be severe and may present in the form of disrupted eating and sleeping patterns, as well as withdrawal, frequent low moods, and internalizing behaviors. Insecurity due to poor attachment styles, difficulty forming relationships, and poor identity formation have also been reported.²⁹ If our children are truly our future, the

impact goes beyond the individual child and family to the nation as a whole. The Centers for Disease Control revealed startling data on children and adolescent mental health in the United States, noting over 4.4 million children between the ages of three and seventeen have been diagnosed with anxiety, and almost 2 million children in the same age group have been diagnosed with depression.³⁰

The Trump administration's family separation policy, known as "zero tolerance," includes separating immigrant parents and children at the border. This policy was aggressively defended by his office for weeks, while most of the country was horrified by it. Nevertheless, it also incited anti-immigrant hate groups to coalesce and promote negative attitudes among community members against any individual that may appear different to them, regardless of their legal status.³¹

A new proposed rule announced by the Department of Justice in October 2019 has initiated a public debate regarding the administration requiring the Department of Homeland Security to collect DNA samples from migrants taken into custody, which will promote a significant expansion of the FBI's database.³² The coercion of DNA collection—a particularly sensitive, and personal type of identifying information—on such a large scale raises serious privacy concerns that may outweigh the potential benefits for the criminal justice system, and at the same time, may increase the emotional distress among these groups and their families.³³

On a similar note, the White House issued a new proclamation on October 4, 2019, known as the "Healthcare Ban" and the suspension of entry of immigrants who, based on their declaration, "will financially burden the United States Healthcare System."³⁴ The proclamation also includes the high costs associated with healthcare and publicly funded programs that are ultimately funded by American taxpayers. Interestingly, the new rule highlights reports from the

National Immigration Law center and research, and reviewed by the nonpartisan Congressional Budget Office, indicating that thousands of immigrants, particularly those who obtain Individual Taxpayer Identification numbers (often obtained under aliases) in order to work in the United States, have a percentage of their paychecks deducted for payroll taxes. This includes between 50 to 75 percent of undocumented immigrants, who contribute over \$11.74 billion of dollars in federal, state, and local taxes each year.³⁵ They also contribute to approximately \$7 billion annually into Social Security, which they will not be able to collect.³⁶

The nature of these policies, combined with negative attitudes and remarks of our current administration's leaders against the immigrant community, has encouraged many Americans to forget and disregard the iconic legend written in a bronze plaque of the most significant symbol of America, the Statue of Liberty. Its inscription reads: "Give me your tired, your poor, your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me; I lift my lamp beside the golden door."³⁷

Counterpoint: The Trump Administration's Immigration Policies are Just for the United States

The age-old debate of morality versus law takes on new passion and fervor with the hot button topic of immigration, leading some to wonder: Can people favor strict legal immigration laws out of a sense of fairness for the protection and well-being of the country, and still be considered compassionate and just? Laws are established in an attempt to create a just society, unfortunately, good intentions are often not recognized, and "fair" outcomes are subjective.

In the formative stages of moral development, according to psychologist and cognitive theorist Lawrence Kohlberg, a person learns about obedience and punishment and comes to understand that morality is dictated by a predominantly outside force. Laws are regarded as

social contracts. If one person violates a law, perhaps everyone would—thus there is a duty and obligation to uphold rules and laws. The world is viewed as holding different opinions, rights, and values that should be respected mutually, and when necessary, changed to meet the greatest good for the greatest number of people. Democratic government is theoretically based on this reasoning, achieved through inevitable compromise and majority rule. It is not until the very last stage, which most people never reach, that moral reasoning is based on abstract reasoning of principles such as equality, dignity, or respect. Here laws are valid only insofar as they are grounded in justice. People choose the ethical principles they want to follow and are compelled by guilt and conscience to sometimes violate law.³⁸

Within the immigration debate, where does the balance of social order and individual human rights come into play in our democratic republic? If the internal moral principles of every human being were based on the same code of ethics and all personal decisions based on equal justice, there would be no need for structured laws. If only all of America's diverse residents shared the same values, we would have no need for government intervention and there would be no controversy of "legal" versus "illegal" immigration. However, the reality is that we live in an organized society where "liberty, and justice for all" is interpreted individually by each person, and then engraved into law by elected officials in a system of government.

What about those who have respected the written law? What about fairness to those standing in line waiting for legal citizenship? Or whose asylum claims have moved further down to the bottom of the pile because of the influx of migrants crossing our southern border, taking advantage of loopholes in our system or hoping to stay off the grid?

Historically, the United States has been a global leader when it comes to assisting individuals fleeing persecution, but we are also a nation that believes in the rule of law. Many

believe our system is overwhelmed by unchecked mass immigration, yet no new laws are being passed by Congress or rarely even discussed with serious intent to reach a compromise.³⁹

Therefore, the Trump administration is using its legal authority under the Immigration and Nationality Act to manage and protect the integrity of our immigration system.⁴⁰

To be eligible for refugee or asylum status, improving one's economic status is not a factor. A migrant must be "unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."⁴¹ New presidential proclamations are not intended to deter legitimate asylum seekers from seeking protection; rather the expectation is to allow for their claims to be more expeditiously heard and adjudicated, and to ensure that immigrants seek protections in a safe and legal manner.⁴² Compared to two decades ago, there has been a massive increase in fear-of-persecution or torture claims by those who enter the United States through the southern border. Affirmative asylum requests increased from 28,000 in fiscal year 2010 to 143,000 in FY 2017, resulting in a backlog of 320,000 pending cases as of the end of June 2018.⁴³ Although the majority of asylum claims are found to satisfy the credible-fear threshold, only a fraction of adjudicated claims ultimately qualify for asylum or other protection.⁴⁴

A decade ago, approximately one in every 100 border crossers was an asylum seeker or unaccompanied child in search of humanitarian protection. Today, that ratio is more than one in three. The change has been driven by extreme and ongoing insecurity in El Salvador, Guatemala, and Honduras,⁴⁵ but it is also partly due to people taking advantage of outdated laws that do not address changing immigration trends and lead to loopholes. Until recently, immigrants who were stopped at or near border points were given court dates and released in the

U.S. However, most fail to show up to their court hearings, and instead choose to stay in the U.S. and hoped the system never catches up with them. Of those family units or unaccompanied minors caught entering the country illegally in 2017, 98 percent remain in the U.S. today. Of those who pass a credible-fear hearing and are released, 40 percent never file for asylum.⁴⁶ Wait times for asylum court hearings have also increased over the past decade to more than two years. This creates incentives for individuals without qualifying claims to apply, because asylum seekers are permitted to remain in the U.S. while claims are decided and, if a decision is not reached within 180 days, granted work authorization.⁴⁷

Prior to the 1997 Flores agreement ruling that the U.S. government must process and release children “expeditiously,” later defining this as a maximum of twenty days, the U.S. was generally able to hold and quickly remove immigrant families who entered the country illegally, thus deterring most from trying. After the ruling it became widely known that if migrants came to the border with children, they would be caught and then released.⁴⁸ However, legal scholars agree Flores was never intended to be a de facto law. It said the government was going to establish permanent protections for children’s rights, although Congress has yet to step up to make those laws.⁴⁹

Not all Trump immigration policies are controversial. It seems to be that those predicted to be effective and are not leading to political controversy, are also not highly publicized in the media and not widely known by the public. For example, the emergency “first in, first out” policy, initiated in January 2018, which prioritizes asylum cases most recently filed over backlog cases, is based on a successful mid-1990s asylum reform that significantly reduced a similar backlog then. At the start of the Trump administration, the backlog of affirmative asylum cases was 233,389 and grew to 325,277 in January 2019, more than 50 times higher than pending cases

in 2010. Since that policy went into effect the number of pending cases has increased less than 5 percent, as of May 2019.⁵⁰ According to a Migration Policy Institute (MPI) report, this positive step is beginning to show results and, if managed properly, could make a significant impact on current backlogs and delays.⁵¹ Additionally, in April 2019, the Trump administration published a regulation that places arriving asylum applicants in streamlined immigration court proceedings where they may only apply for asylum, rather than any benefit, and ensures the applications be completed within 180 days.⁵²

While there is an unacceptable and inevitable risk of psychological trauma or health consequence to children or families—as many argue—waiting out the system may be fair, and may carry minimal risk compared to the brutal conditions meritorious asylum seekers are fleeing. Could it be a fair price to pay for the reward of living “legally” and worry-free to pursue the American dream? The detention system, if operating at capacity but not subject to overcrowding, should ideally be a safe, sanitary, and relatively comfortable experience for families. In August, DHS announced a change that allows families to remain together in “campus-like settings” with suites, big screen televisions, video games, classrooms, libraries, and recreation areas that include soccer fields and basketball courts.⁵³ If these changes do occur and become the norm, the system could be an acceptable place to allow proper time for the law to take its course. It not only ensures that immigrants legitimately qualify for asylum, but that they also go through a fair screening process for their own safety and to minimize the risk that violent criminals slip through the system to continue their deviant behavior in the U.S.

Simply trying to manage the high level of illegal immigration is taking away resources from other important border security and trade missions. Border patrol agents regularly report seeing gangs and drug trafficking organizations send large groups of immigrants into certain

sectors to distract and overwhelm DHS capabilities.⁵⁴ Among other security enhancements, resources such as criminal analysts, interpreters, document analysts, forensic interview specialists, and victim assistance specialists are being allocated to identify “fake families” and protect children from trafficking and “child recycling,” a process that uses children multiple times to pose in families to help migrants gain illegal entry.⁵⁵ According to DHS, from October 2017 to February 2018, there was a 315 percent increase in migrants fraudulently using children. In 2019, DHS confirmed over 1000 fraudulent claims, with one official stating “it is an escalating trend.”⁵⁶ Investigations now include a DNA testing pilot and for some migrant children to be fingerprinted, whereas before they only occasionally took photos.⁵⁷ Some claim this is a civil liberties violation, however, when protecting a child, particularly one of whom the federal government has little or no information, safety should take priority.

The aim of immigration reform remains the same as always—for those with meritorious claims to receive the benefits associated with asylum that they deserve. No one is well served by illegal immigration—not American citizens, not immigrants who enter the country legally, and not even the immigrants who are risking their futures on these dangerous treks. While outdated immigration laws take precedent, Americans grow frustrated and sometimes even hostile, Congress seems unable to stop their bickering, and the current Administration continues their “zero tolerance” enforcement and fair-minded perspective that seems to be working. Good intentions go unrecognized, and justice remains subjective.

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