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## Fact check: There is no law that requires family separation at the border, despite Trump administration's claims

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WASHINGTON — The Trump administration announced a zero-tolerance policy of criminally prosecuting every immigrant, including asylum seekers, who illegally crosses the U.S.-Mexico border in early April.

A consequence of blanket prosecution is that children are separated from their parents, who are taken into federal custody. The policy has sparked widespread bipartisan furor, finger-pointing and even warring Bible references.

The administration contends that it is forced to separate families because there is a law requiring it to do so, and that Democrats are to blame. In reality, mandatory family separation is a consequence of a policy decision that can be changed at any time.

**Department of Homeland Security Secretary Kirstjen Nielsen tweeted Sunday that, “We do not have a policy of separating families at the border. Period.” Is that true?**

Technically, there is no policy stating that “all children must be separated from their parents upon illegally crossing the border.”

Family separation is, however, a direct consequence of the administration's decision to criminally prosecute every person who crosses the border illegally.

### Who made that decision?

Attorney General Jeff Sessions announced the policy change April 6. He said in a prepared statement that a “crisis has erupted at our Southwest Border that necessitates an escalated effort to prosecute those who choose to illegally cross our border.”

### On Monday, Nielsen tweeted that she's just enforcing the law. What law requires family separation?

No such law exists. But a combination of laws and court rulings does lead to family separation.

Crossing the border outside a port of entry is a crime, as is entering the country without permission. Federal authorities have discretion over when to press charges. The Bush administration increased criminal prosecutions and the Obama administration built family detention facilities, but neither made a policy of separating families.

### Why did the Trump administration make this policy change?

Officials have said separating families could serve as a deterrent to keep migrants from trying to enter the United States.

"If people don't want to be separated from their children, they should not bring them with them," Sessions said. "We've got to get this message out. You're not given immunity. You have to, you will be prosecuted if you bring, if you come illegally. And if you bring children, you'll still be prosecuted."

President Donald Trump has also called the previous practice of capturing asylum seekers and then releasing them until a later court date a “loophole.” Some asylum seekers don't show up for their hearings, and stay in the country illegally. The Executive Office for Immigration Review found that 5,959 migrants who had been released did not show up for hearings in the first quarter of 2018, and removal orders were issued in absentia.

### **What used to happen to families who crossed the border illegally?**

Before the Trump administration, most families who crossed the border illegally were held together in Customs and Border Patrol detention facilities and entered civil proceedings. After the Obama administration expanded family detention centers, federal courts ruled that families could be held for only 20 days, in most cases.

But immigration courts have huge backlogs. Cases take an average of 561 days to resolve. Immigrants cannot be deported until they have had a court hearing, so they were generally released until their court dates. Critics, including Trump, have called that “catch and release.”

### **Why don't migrants go to ports of entry to seek asylum legally?**

News reports have documented that some asylum seekers who present themselves at points of entry have been turned away, with U.S. border guards telling them the ports are “at capacity.”

U.S. law requires Customs and Border Patrol to process and interview asylum seekers to determine if they have “a credible fear” of persecution or torture, or if they are going to be deported. The law makes no provision for denying asylum seekers entry if the ports are busy.

“These families feel like they have no choice” but to cross illegally, University of Texas at Austin immigration expert Denise Gilman said.

There is abuse of the asylum system, though it is difficult to tell how much. Some migrants do not have legitimate claims and declare asylum only if they are caught crossing illegally.

### **Would the House bill fix family separations?**

A draft of the House's compromise immigration bill, released on Thursday, wouldn't prohibit families from being separated — it would simply allow for them to be detained together longer.

If it becomes law, the bill would get rid of legal protections for children that require that they be held in the “least restrictive” conditions possible, and no longer than necessary. This would overrule a court order that only allows detaining children for 20 days and would permit family detainment for longer periods of time.