Responses to Child Migrants and Family Separation at the Border

BY ISHANEE CHANDA

What is the appropriate response for the increasing number of families seeking to enter the United States at the southern border? That question rose to the top of the immigration debate in the spring of 2018, when the Trump administration decided to separate migrant children from their parents under a new "zero-tolerance" policy. The policy directed federal prosecutors to criminally prosecute all adult migrants referred by the U.S. Department of Homeland Security (DHS) for crossing the border illegally. Separately, the attorney general announced that domestic and gang violence are no longer accepted grounds for asylum.

The decisions led to a public outcry, along with legislation and court action addressing federal policy regarding the rights of migrant families seeking asylum at the border. Under U.S. law and international treaties, individuals may seek asylum (protection from persecution) at the border or in the United States.

These migrants make the journey to the United States for a variety of reasons. Generally, they seek to escape persecution, trafficking and gang violence, as well as pursue economic opportunity and rejoin family. The president and others have raised concerns about terrorists and criminals seeking to enter the United States, warranting additional enforcement measures.

Federal Action

In 2014, the U.S. experienced an unexpected increase in the number of unaccompanied children
arriving on the southern border, gaining humanitarian and political attention. These arrivals challenged federal and state resources, placing an immense strain on federal agencies to process and care for them. They also prompted state policymakers to ask questions about state authority over the children and the resources provided to them.

After the zero-tolerance policy was put in place, migrant parents were taken to federal jail to await court proceedings. Their children were sent to the shelter system for unaccompanied children run by the federal Office of Refugee Resettlement (ORR) in the U.S. Department of Health and Human Services (HHS). A court settlement known as the 1997 Flores Agreement states that children cannot be held with their parents in federal jail, which led to their separation. After a wave of public pushback, President Donald Trump passed an executive order on June 20, 2018, to stop the separations. The administration also filed a lawsuit looking to modify the Flores Agreement so that children can be detained with their families until their immigration proceedings.

On June 26, a federal judge in California ordered immigration authorities to reunite parents with children under age 5 within 14 days, and all others within 30 days. Since then, reunification efforts have been ongoing.

Unaccompanied children from Mexico or Canada who are in DHS custody must be screened to determine if they are victims of trafficking or persecution as required by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). DHS must transfer unaccompanied children to ORR within 72 hours. ORR then works to determine if the child has a parent, relative or family friend in the U.S. with whom the child can be placed while awaiting immigration proceedings.

This year, the number of children in ORR shelters reached record levels. Family separation increased those numbers, and it now takes longer to release children to sponsors, resulting in longer stays and HHS redirecting more than $400 million to meet increased shelter costs. Reports of poor nutrition, health care and education, along with other safety concerns in some shelters, caused a wave of public criticism. Concerns were also raised about the adequacy of ORR follow-ups with children after being released to sponsors. The Office of the Inspector General (OIG) and the Government Accountability Office (GAO) both declared in later reports that DHS and HHS were unprepared to take on the extra responsibilities required by the zero-tolerance policy.

Congress is considering legislation to address the issue. The Keep Families Together Act (S.3036) would outlaw family separations except in the case of trafficking or parental abuse. The Protect Kids and Parents Act (S.3091) would authorize new temporary shelters that would keep families together as adults await prosecution, double the number of federal immigration judges to help expedite cases, and require asylum cases to be adjudicated within 14 days. The Keep Families Together and Enforce the Law Act (S.3093) proposes keeping families together in detention centers while they await immigration proceedings, formally overturning the Flores Agreement. These bills have not yet attracted bipartisan sponsorship.

**State Action**

Six states—California, Florida, Hawaii, New Jersey, New Mexico, Vermont—and Puerto Rico adopted resolutions on child migrants in 2018. The resolutions support refugees or child migrants at the southern border and urge Congress to take supportive action or condemn the federal policy of separating migrant children from their parents.

New Jersey adopted a resolution that urges Congress to support the Keep Families Together Act. California called on Congress to recognize the detriment of family separation to the short- and long-term physical and mental well-being of the children. The state also requested that Congress issue a formal apology to all children detainees who were separated from and their parents and legal guardians.

New York introduced legislation (A.11271) that would require reports from the federal government on unaccompanied children, including the kind of services they received and where they are placed after discharge.

Governors of eight states—California, Colorado, Connecticut, Delaware, Maryland, Massachusetts, New Jersey and New York—declared their National Guard resources will not be deployed along the Southwest border as a response to the family separation policy. New York is also taking legal action to halt family separations, which parallels a similar legal battle headed by the American Civil Liberties Union (ACLU).

Federal agencies are reviewing ways to deter new arrivals, process claims of those in the United States, reduce backlogs in immigration courts, and provide appropriate care for children and families in detention. State legislators are seeking better communication and consultation with federal authorities regarding oversight, accountability, and how to effectively reunite these children with their families and provide them with the care and resources they need.