



July 18, 2018

The Honorable Chuck Grassley
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Dianne Feinstein
Ranking Member
U. S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Need for Oversight and Investigation on Border Crisis

Dear Chairman Grassley and Ranking Member Feinstein:

The Justice Department and Department of Homeland Security's recent experiment with "zero tolerance" prosecution of immigrants, resulting in the separation of children from their parents, has highlighted a host of ongoing failures in our nation's practices and policies for apprehending, detaining, processing, and removing immigrants. The Project On Government Oversight (POGO) writes to encourage you to begin a long-overdue investigation relating to the crisis of immigration enforcement and detention along our nation's southwest border.

We understand that many members of the Committee continue to work on specific policy prescriptions to reform our nation's immigration system.¹ But equally important is the Committee's role in conducting oversight of the executive branch. DOJ and DHS operated a pilot version of the "zero tolerance" program for months before implementing it across the country.² Federal judges raised doubts about the legality of the program, but rather than address their concerns, the government expanded the program without any effective system for reuniting families after separation. A host of problems soon followed.

The concerns we set forth below are very clearly covered by the Committee's jurisdiction, as many of them emanate from the Department of Justice's policies. Indeed, the intersection of so

¹ We have forged consensus recommendations among leaders from the right and left to reform our nation's immigration laws, endorsed by now-Governor of Arkansas Asa Hutchinson. The Constitution Project's Liberty and Security Committee, *Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings*, The Constitution Project, Oct. 2009. <https://constitutionproject.org/wp-content/uploads/2012/10/359.pdf>; We have also asked the Department of Justice—under both the previous administration and this one—to halt zero tolerance prosecutions given the toll this policy takes on constitutionally sound proceedings in federal court. Letter from Sarah Turberville, Director of The Constitution Project at POGO, to Jeff Sessions, Attorney General of the United States, about Zero Tolerance on Border Prosecutions, June 11, 2018. <http://www.pogo.org/our-work/letters/2018/letter-to-attorney-general-sessions-on-effect-of-zero-tolerance-policy-on-border-prosecutions-on-constitutional-rights.html>

² Katherine Hawkins, "Where Family Separation Began," Project on Government Oversight, June 22, 2018. <http://www.pogo.org/our-work/articles/2018/where-family-separation-began.html>

many of the matters of clear jurisdiction of the Committee underscores that no other entity is better positioned to ask pressing questions and get answers.

We have a long history of productively working together with your offices to strengthen and support Congressional oversight. We believe your leadership is critical to ensure that the Justice Department acts in accordance with our Constitution and the rule of law. We will follow up with your offices and hope to meet with you and your staff to discuss these concerns. You may reach Sarah Turberville, Director of The Constitution Project at POGO, at sarah@pogo.org, and Katherine Hawkins, Investigator at POGO, at khawkins@pogo.org, for any questions or concerns. Thank you for your attention to this most important matter.

Sincerely,



Danielle Brian
Executive Director

NON-EXHAUSTIVE ISSUES OF CONCERN CALLING FOR CONGRESSIONAL OVERSIGHT RELATED TO IMMIGRATION ENFORCEMENT AND DETENTION

1. “Zero tolerance” and misuse of DOJ resources

The “zero-tolerance” policy prioritizes enforcement of first-time misdemeanor violations for illegally crossing the border at a location not officially designated by Immigration and Customs Enforcement (ICE). This includes violations by many who are asylum seekers. These defendants are taken from an immigration holding facility to federal court, enter a guilty plea for having entered the country illegally in en masse proceedings, are sentenced to time served, and then returned to immigration authorities for deportation. Given the low level or even administrative nature of the offenses involved and sentences received, this practice raises concerns about the use of taxpayer funds to support thousands of needless federal court prosecutions of misdemeanants.³

The government has not provided evidence that prioritizing prosecution of first-time illegal border crossers, including asylum seekers and economic migrants, will improve public safety. One former Commissioner of Customs and Border Patrol (CBP) and former U.S. Attorney predicted that zero tolerance “will force prosecutors to misallocate resources to economic migrants,” while “organized crime, drug smuggling, and financial crimes will receive short shrift.”⁴ This warning appears prescient as federal prosecutors in San Diego report that they now must divert resources from drug smuggling cases so they can resolve immigration cases more quickly.⁵ In June, the number of people charged with drug offenses in federal court actually *dropped* following commencement of zero tolerance.

Relatedly, 19 of 26 special agents-in-charge of U.S. Homeland Security Investigations (HSI) have requested that HSI be severed from ICE because its “investigations have been perceived as targeting undocumented aliens, instead of the transnational criminal organizations that facilitate cross border crimes,” like human and drug smuggling and trafficking and transnational gang activity.⁶

2. Denial of constitutional rights in federal court

Any person prosecuted by the U.S. government in a federal district court is protected by the Constitution. Constitutional rights attach in these criminal proceedings irrespective of citizenship or immigration status. However, the quality of justice and commitment to constitutionally sound

³ Brad Heath, “Trump’s ‘zero tolerance’ border prosecutions led to time served, \$10 fees” *USA Today*, June 21, 2018. <https://www.usatoday.com/story/news/2018/06/21/trumps-zero-tolerance-border-prosecutions-led-time-served-and-10-fee/722237002/> (Downloaded July 16, 2018)

⁴ Alan Bersin, Nate Bruggeman and Ben Rohrbaugh, “Trump’s ‘zero tolerance’ bluff on the border will hurt security, not help,” *The Washington Post*, May 31, 2018. https://www.washingtonpost.com/opinions/trumps-zero-tolerance-bluff-on-the-border-will-hurt-security-not-help/2018/05/31/fafbe316-642a-11e8-99d2-0d678ec08c2f_story.html?utm_term=.fa13747c2b53 (Downloaded July 17, 2018)

⁵ Brad Heath, “DOJ: Trump’s immigration crackdown ‘diverting’ resources from drug cases,” *USA Today*, June 22, 2018. <https://www.usatoday.com/story/news/2018/06/22/zero-tolerance-immigration-crackdown-diverting-resources-drug-cases/727532002/> (Downloaded July 19, 2018)

⁶ Letter from Investigators, Immigration and Customs Enforcement to Kirstjen Nielsen, Secretary, Department of Homeland Security, about 19 ICE investigators suggesting the agency be split up. <https://www.documentcloud.org/documents/4562896-FILE-3286.html> (Downloaded July 16, 2018)

practices in federal courts on the border has deteriorated at an alarming pace because of the mass prosecutions of those charged with first-time illegal entry.

As we described in a June 11, 2018, letter to Attorney General Jeff Sessions, we are especially concerned by *en masse* hearings during which dozens of defendants plead guilty and are sentenced with minimal representation by overburdened defense counsel. This rapid processing system does not allow time for consultation or investigation regarding the charges, to file pretrial motions to suppress evidence or statements due to constitutional violations, or to discuss consequences of the conviction and potential avenues for relief. For example, defenders have reported only having a matter of minutes to speak with their client before their client's case is adjudicated.⁷

Due to the volume of cases and speed with which they are processed, defense attorneys are severely limited in the quality of counsel they are able to provide, in violation of the Sixth Amendment. Specifically:

- Misdemeanor defendants who agree to plead guilty and who will likely receive a sentence of time served can quickly enter a guilty plea, whereas those who wish to invoke their right to trial must remain incarcerated until trial. This arrangement has a coercive effect on a defendant's decision to "voluntarily" waive their constitutional right to trial.
- Defense counsel cannot communicate with pretrial detainees held at remote detention facilities, precluding counsel from developing the rapport necessary to effectively represent their clients.
- Defense counsel are deprived of a meaningful opportunity to consult with their clients before their initial appearance and bond hearing.
- Arrestees may be detained for days without adequate clothing, blankets, food, hygiene, or medical care, affecting their ability to meaningfully participate in their defense.⁸

The lack of individualized defense in these situations—virtually all of which are resolved through mass plea bargains—also means that claims may not be properly documented for appeal. Further, there have been reports of a lack of interpreters for those defendants who are not native English or Spanish speakers, resulting in serious communication problems for counsel assigned to represent them—not to mention raising major doubts about whether these defendants have understood the proceedings and their rights.⁹

Our concerns were very recently echoed by Judge Leslie A. Bowman, a federal court judge overseeing such proceedings in Tucson, Arizona, who remarked, "I am aware that a person could

⁷ John Stanton, "Inside the Courts Where Some Immigrants Plead Guilty Without Knowing What's Happening" *Buzzfeed*, July 11, 2018. https://www.buzzfeed.com/johnstanton/immigration-border-operation-streamline-due-process?utm_term=.tk0yO13#.ig7aWGM

⁸ Letter from Reuben Cahn, Exec. Dir., Fed. Defenders of San Diego, Inc., to Barry Ted Moskowitz, Chief Judge, United States District Court Southern District of California, June 4, 2018.

⁹ Letter from Reuben Cahn, Exec. Dir., Fed. Defenders of San Diego, Inc., to Barry Ted Moskowitz, Chief Judge, United States District Court Southern District of California, June 22, 2018.

probably make it through the proceedings without a thorough understanding of their rights and the court proceedings.”¹⁰

The involvement of children in these cases exacerbated many of these problems, especially for the thousands of parents separated from their children upon apprehension by CBP. Parents were forced to decide whether to plead guilty or not guilty, and make decisions that will likely get them removed from the country, without even being told basic information about the location and welfare of their children, or the effect of a guilty plea on their opportunity to reunite. This robbed defendants of the ability to make an informed decision and provide a fully voluntary waiver of their right to a trial.

For several of the same reasons we expressed concern about the new zero tolerance directive, The Constitution Project at POGO sent a letter to Attorney General Loretta Lynch in 2015 requesting that the Department of Justice reconsider the rapid rate of prosecuting misdemeanor cases under its aggressive policy known as “Operation Streamline.”¹¹ Under Presidents Bush and Obama, the Department of Justice pursued this policy to criminally prosecute people for the misdemeanor of illegal entry and the felony of illegal reentry; but, in contrast to the zero tolerance policy, under Operation Streamline, the government generally did not refer first-time border-crossers or asylum-seekers for prosecution and instead allowed immigration courts to handle the matter. Further, the government generally did not refer parents traveling with their children for criminal prosecution either.

3. Conditions of immigration detention and deportations

Nearly 40,000 people are detained in immigration facilities on any given day throughout the United States.¹² Over the course of a year, this amounts to approximately 360,000 people detained in ICE facilities. The present need for Congressional investigation into the current conditions of detention of these immigrants—including the separation of over 3,000 children from their parents (about 100 of whom who are under age 5)—is multi-faceted.

Children of all ages have been transferred to facilities thousands of miles from their parents.¹³ Unknown numbers of parents have been deported without their children, including parents of at least 19 children under age 5, and 19 other parents have been released and their whereabouts are unknown.¹⁴ DHS also reports that it is presently unable to reunite those now-deported parents

¹⁰ John Stanton, “Inside the Courts Where Some Immigrants Plead Guilty Without Knowing What’s Happening” *Buzzfeed*, July 11, 2018. https://www.buzzfeed.com/johnstanton/immigration-border-operation-streamline-due-process?utm_term=.jmaA5MnYrG#.brNowly0Pg (Downloaded July 16, 2018)

¹¹ Letter from Virginia Sloan, The Constitution Project, about Prosecutions for Illegal Entry U.S.C. § 1325) & Illegal Reentry (8 U.S.C. § 1326), July 28, 2015. https://constitutionproject.org/wp-content/uploads/2015/07/Letter-to-AG-Lynch-on-border-prosecutions-RTC_July-2015-final.pdf

¹² Rachel J. Reyes, “Immigration Detention: Recent Trends and Scholarship,” The Center for Migration Studies of New York (CMS), 2018. https://upload.wikimedia.org/wikipedia/commons/b/bf/ADP_Detained_Immigrants_1994-2017.png (Downloaded July 16, 2018). For comparison, the current Bureau of Prisons population of federal inmates is approximately 183,000. Federal Bureau of Prisons, “Past Inmate Population Totals.” https://www.bop.gov/about/statistics/population_statistics.jsp (Downloaded July 16, 2018)

¹³ Annie Correal, “Parents and Children Remain Separated by Miles and Bureaucracy,” *The New York Times*, June 30, 2018. <https://www.nytimes.com/2018/06/30/nyregion/immigrants-separated-no-progress-on-reunification.html> (Downloaded July 16, 2018)

¹⁴ Lomi Kriel, “Immigrant family separated at border struggle to find each other,” *Houston Chronicle*, May 24, 2018. <https://www.houstonchronicle.com/news/houston-texas/houston/article/Immigrant-families-separated-at->

with their children who are still located in the United States (including those presently in federal custody).¹⁵

There have also been numerous allegations of severe abuse and neglect of young children in detention.¹⁶ This has resulted in at least one state, Virginia, ordering an investigation into allegations of young teenagers who were “stripped naked, strapped to chairs, handcuffed, and had bags placed over their heads,” and “long periods of solitary confinement for minor infractions, and enduring racial epithets and taunts from guards.”¹⁷

In Texas—and perhaps at other detention facilities—migrant children in custody have been forcibly administered psychotropic medication, without parental consent, known as a “chemical straight jacket.”¹⁸ Detained children have been housed in an unlicensed facility¹⁹; meanwhile, on June 21, the government requested a blanket exception from the state licensing requirement of facilities housing families.²⁰ Following a closed briefing by the Department of Health and Human Services (HHS) on July 17, 2018, with Senators on the Senate Judiciary Committee, Senator Dick Durbin (D-IL) reported that HHS had obtained “waivers” from parents of detained children, allowing migrant children to be housed longer than 20 days and in DHS detention centers that are not licensed by child welfare agencies. HHS would not provide a copy of the waiver form to Senators.²¹

Attempts to expand detention also increase the risk of abuse of detainees. ICE has reported 1,310 claims of sexual abuse of migrants in immigration custody between 2013 and 2017, and watchdog organizations state that the actual occurrence of sexual abuse of immigrants in detention is likely much higher.²²

border-struggle-12938759.php (Downloaded July 16, 2018); Miriam Jordan, “Trump Administration Says It Needs More Time to Reunite Migrant Families,” *The New York Times*, July 6, 2018.

<https://www.nytimes.com/2018/07/06/us/migrant-children-court-families.html> (Downloaded July 17, 2018) (Hereinafter “Trump Administration Says It Needs More Time to Reunite Migrant Families”)

¹⁵ “Trump Administration Says It Needs More Time to Reunite Migrant Families”

¹⁶ Lisa Desjardins, Joshua Barajas, Daniel Bush, “Family separation lawsuit offers chilling details as Trump administration says it will fulfill federal court order,” *PBS*, July 5, 2018.

¹⁷ Lisa Desjardins, Joshua Barajas, Daniel Bush, “Family separation lawsuit offers chilling details as Trump administration says it will fulfill federal court order,” *PBS*, July 5, 2018.

<https://www.pbs.org/newshour/show/family-separation-lawsuit-offers-chilling-details-as-trump-administration-says-it-will-fulfill-federal-court-order>; Mairead Mcardle “Virginia Governor Opens Probe into Abuse Allegations at Immigration-Detention Facility,” *National Review*, June 21, 2018. <https://www.nationalreview.com/news/virginia-immigrant-detention-northam-orders-investigation/> (All downloaded July 16, 2018)

¹⁸ Reuters, “U.S. centers force migrant children to take drugs: lawsuit,” *NBC News*, June 21, 2018.

<https://www.nbcnews.com/health/kids-health/u-s-centers-force-migrant-children-take-drugs-lawsuit-n885386> (Downloaded July 16, 2018)

¹⁹ Agnel Philip, “Contractor housed separated children in unlicensed office building” *Arizona Central*, July 6, 2018. <https://www.azcentral.com/story/news/politics/immigration/2018/07/06/report-contractor-housed-migrant-kids-unlicensed-phoenix-building/764725002/> (Downloaded July 16, 2018)

²⁰ Defendants' Memorandum of Points and Authorities in Support of Ex Parte Application for Relief from the Flores Settlement Agreement, *Flores v. Sessions*, <https://www.aila.org/File/Related/14111359z.pdf> (United States District Court, Central District of California June 21, 2018). (Downloaded July 16, 2018)

²¹ Dick Durbin (@SenatorDurbin), Twitter post, July 17, 2018, 3:00 p.m.

²² Emily Kassie, “Sexual Assault Inside ICE Detention: 2 Survivors Tell Their Stories,” *The New York Times*, July 17, 2018. <https://www.nytimes.com/2018/07/17/us/sexual-assault-ice-detention-survivor-stories.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region®ion=top-news&WT.nav=top-news> (Downloaded July 17, 2018)

The latest reports of abuse at immigration detention facilities, while alarming, are a predictable outcome of documented and systemic deficiencies. A June 2018 report by the Office of the Inspector General at DHS concluded that ICE continues to grapple with significant lapses in its inspection and monitoring of its detention facilities—a report that examined adult facilities and pre-dated the recent allegations concerning detention of children.²³

The most extreme of these lapses have resulted in deaths in immigration custody. A recent report issued by civil society organizations on June 20 examined 15 “Detainee Death Reviews” that ICE released over a 16-month period and found that 8 of the 15 deaths were due to inadequate medical care.²⁴

4. DOJ’s and Other Agencies’ Failure to Prepare for “Zero Tolerance”

The man-made nature of the border crisis is well summarized by Judge Dana Sabraw of the Federal District Court of Southern California in his June 26 order compelling reunifications of migrant families:

The facts set forth before the court portray reactive governance—responses to address a chaotic circumstance of the government’s own making. *They belie measured and ordered governance, which is central to the concept of due process enshrined in our Constitution.* This is particularly so in the treatment of migrants, many of whom are asylum seekers and small children.²⁵ (Emphasis added)

The impact of the separations has led multiple federal courts to enjoin the government from continuing to separate families, as well as to require the government to reunite migrant children with their parents by the end of July. The government has requested more time to conduct reunifications, and reporting on the reunification process has revealed an incredibly confused and chaotic bureaucracy handling separations of families, care of children, and reunification efforts.²⁶

Records linking children to their parents “have disappeared, and in some cases have been destroyed,” creating additional challenges to reunifying families.²⁷ Multiple federal judges have

²³ “Neither type of inspection ICE uses to examine detention facilities ensures consistent compliance with detention standards or comprehensive correction of identified deficiencies,” Office of Inspector General, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 26, 2018, p. 4. <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf> (Downloaded July 16, 2018)

²⁴ American Civil Liberties Union, Detention Watch Network, Human Rights Watch, and the National Immigrant Justice Center, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention*, Human Rights Watch, June 2018. <https://www.aclu.org/report/code-red-fatal-consequences-dangerously-substandard-medical-care-immigration-detention> (Downloaded July 16, 2018)

²⁵ Order Granting Plaintiff’s Motion for Classwide Preliminary Injunction, *Ms. L. v. ICE.*, United States District Court, Southern District of California June 26, 2018. <https://int.nyt.com/data/documenthelper/58-federal-judge-rules-on-immigra/425f7ff96a5dcb98ecce/optimized/full.pdf#page=1>. (Downloaded July 16, 2018) (Hereinafter *Ms. L. v. ICE*)

²⁶ Editorial Board, “The mess of family reunifications,” *The Washington Post*, July 7, 2018. https://www.washingtonpost.com/opinions/the-mess-of-migrant-family-reunifications/2018/07/07/a66227fa-8146-11e8-b658-4f4d2a1aeef1_story.html?noredirect=on&utm_term=.a2120cbdd29f (Downloaded July 16, 2018)

²⁷ Caitlin Dickerson, “Trump Administration in Chaotic Scramble to Reunify Migrant Families,” *The New York Times*, July 5, 2018. <https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html> (Downloaded July 16, 2018)

said that the government tracked children far less effectively than it typically tracks defendants' property.²⁸

The government had until July 10 to reunite all children under age five with their parents, but as of July 11, had only reunited 38 of 102 "tender age" children.²⁹ That eventually rose to 56. Under the June 26 order of Judge Sabraw, the government has until July 26 to reunify the 2,000 to 3,000 children ages 5 to 17 with their parents. The court also prohibited the government from charging parents for reunification efforts, after reports that some parents were told by authorities that they must pay for DNA tests or flights to be reunited with their children.³⁰

Finally, the specter of indefinite family detention looms. While the government is presently releasing parents of children under age 5 with ankle monitors, it is unclear what will happen to parents of children ages 5 to 17.³¹ It is reported that the government is developing makeshift detention camps at military facilities to incarcerate entire families,³² but long-term detention of children would violate the court decree of *Flores v. Sessions* that requires children to be released from custody "without unnecessary delay."³³

5. Illegal treatment of asylum seekers

In apparent violation of legal requirements, the government has turned away some asylum seekers because there is "no room" for them at official ports of entry, driving many to attempt illegal crossings in order to turn themselves in to Border Patrol.³⁴ Furthermore, parents seeking asylum who have been separated from their children have also given up their asylum claims, under the false belief that deportation would mean that they will be reunited with their children.³⁵

²⁸ "The government readily keeps track of personal property of detainees in criminal and immigration proceedings. Money, important documents, and automobiles, to name a few, are routinely catalogued, stored, tracked and produced upon a detainees' release, at all levels—state and federal, citizen and alien. Yet, the government has no system in place to keep track of, provide effective communication with, and promptly produce alien children. The unfortunate reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as property. Certainly, that cannot satisfy the requirements of due process." *Ms. L v. ICE*

²⁹ Molly Hennessy-Fiske, Victoria Kim, and Eliza Fawcett, "Some migrant children are reunited with parents as Trump administration misses court deadline," *Los Angeles Times*, July 10, 2018. <http://www.latimes.com/local/lanow/la-me-deadline-separated-20180710-story.html> (Downloaded July 16, 2018) (Hereinafter "Some migrant children are reunited with parents as Trump administration misses court deadline")

³⁰ Kristina Davis, "Trump administration unveils new plan to reunite families separated at border," *Los Angeles Times*, July 14, 2018. <http://www.latimes.com/local/lanow/la-me-judge-immigration-plan-20180714-story.html>

³¹ "Some migrant children are reunited with parents as Trump administration misses court deadline"

³² Spencer Ackerman, "Ready, Fire, Aim: Military Rushes into Detention Camp Plan" *Daily Beast*, July 10, 2018. <https://www.thedailybeast.com/ready-fire-aim-military-rushes-into-detention-camp-plan> (Downloaded July 16, 2018);

³³ Civil Minutes, *Flores v. Sessions*, U.S. District Court for Central District of California, Case No. CV 85-4544-DMG, June 27, 2018. <https://www.aila.org/file/related/14111359v.pdf>; Civil Minutes, *Flores v. Sessions*, U.S. District Court for Central District of California, Case No. CV 85-4544-DMG, July 9, 2018.

<https://www.politico.com/f/?id=00000164-8176-d66b-a166-8bf6cdaa0000> (All downloaded July 16, 2018)

³⁴ Sarah Turberville and Katherine Hawkins, "Frequently Asked Questions: Criminal Prosecutions on the Border," Project On Government Oversight, June 22, 2018. <http://www.pogo.org/blog/2018/06/frequently-asked-questions-criminal-prosecutions-on-the-border.html> (Hereinafter "Frequently Asked Questions: Criminal Prosecutions on the Border")

³⁵ Tyche Hendricks, "He Gave Up His Asylum Claim To Get His Child Back, But That Hasn't Happened Yet," *NPR*, June 7, 2018. <https://www.npr.org/2018/06/27/623586693/he-gave-up-his-asylum-claim-to-get-his-child-back-but-that-hasnt-happened-yet> (Downloaded July 17, 2018)

Relatedly, on July 12, DHS issued updated guidance to asylum officers severely limiting the conditions for granting asylum.³⁶ The guidance, based on a June ruling by Attorney General Jeff Sessions, instructs asylum officers to reject claims asserting a fear of domestic or gang violence without regard to contrary circuit court precedent; it also permits an asylum officer to weigh an asylum seeker's illegal entry as an adverse factor weighing against the officer's discretion to grant the person asylum.³⁷ This violates the United States' obligations under the 1951 Refugee Convention, which requires member states to "not impose penalties, on account of illegal entry or presence, on refugees...provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."³⁸

A separate report has indicated that DOJ is developing a proposed regulation that would bind immigration judges to apply similarly restrictive standards when hearing asylum claims.³⁹ The regulation would also reportedly bar asylum claims from anyone convicted of illegal entry, again raising questions about compliance with Article 31 of the Refugee Convention and even more serious constitutional concerns about the validity of asylum seekers' convictions.

³⁶ Tal Kopan, "Trump administration to turn away far more asylum seekers at the border under new guidance," *CNN*, July 12, 2018. <https://www.cnn.com/2018/07/11/politics/border-immigrants-asylum-restrictions/index.html> (Downloaded July 17, 2018)

³⁷ Policy Memorandum, U.S. Citizenship and Immigration Services, "Guidance for Processing Reasonable Fear, Credible Fear, and Refugee Claims in Accordance with Matter of A-B-," July 11, 2018. <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-18-PM-602-0162-USCIS-Memorandum-Matter-of-A-B.pdf> (Downloaded July 16, 2018)

³⁸ "Convention and Protocol Relating to the Status of Refugees," *Treaties and Other International Acts Series*, No. 6577, November 1, 1968. <http://www.unhcr.org/3b66c2aa10.html> (Downloaded July 12, 2018)

³⁹ Dara Lind, "Exclusive: Trump administration plan would bar people who enter illegally from getting asylum," *Vox*, June 29, 2018. <https://www.vox.com/policy-and-politics/2018/6/29/17514590/asylum-illegal-central-american-immigration-trump> (Downloaded July 17, 2018)