

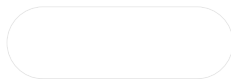
COMMENT

THE TRUMP ADMINISTRATION'S FAMILY VALUES

The policy of separating children from their parents at the southern border was the purest distillation yet of what it means to be governed by a President with no moral center.

By Margaret Talbot

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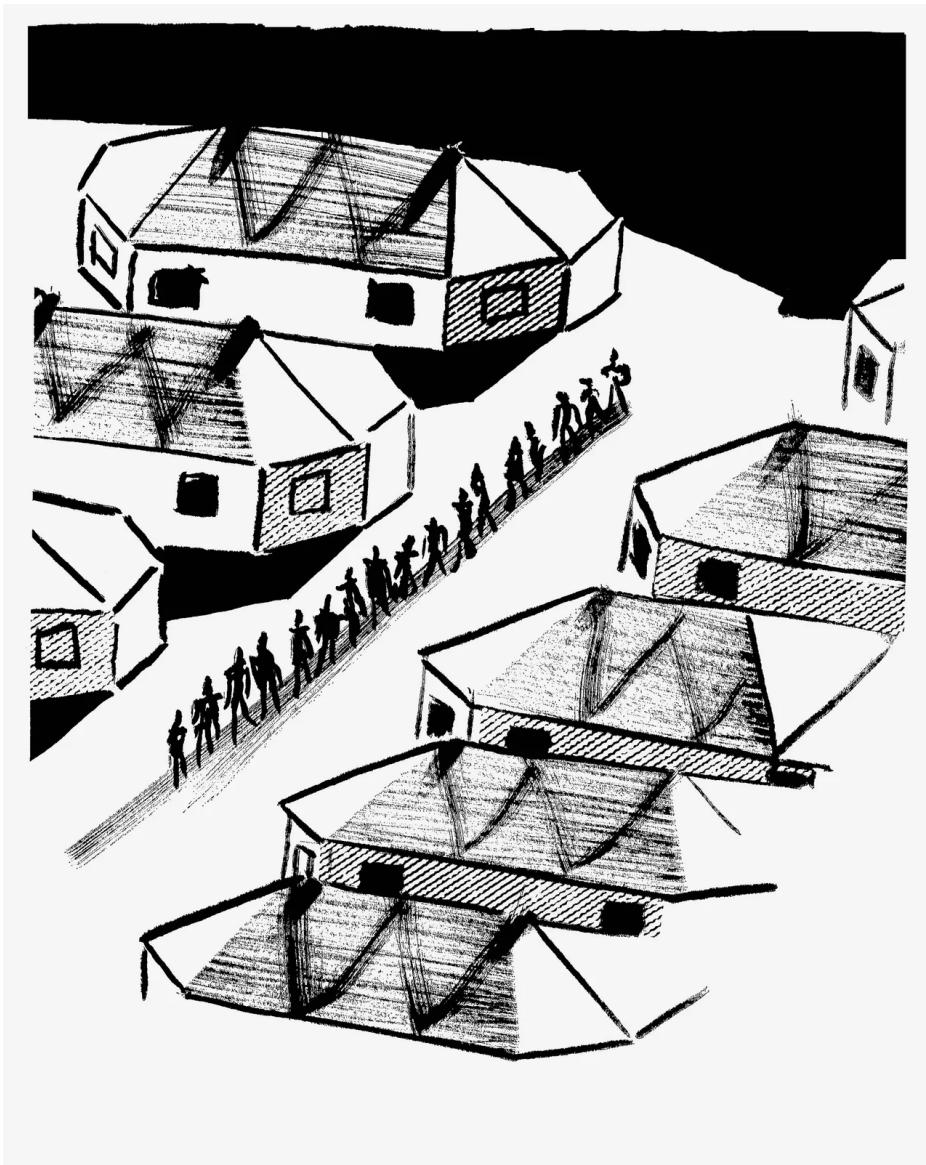


Illustration by Tom Bachtell

The theatre of cruelty unfolding at the southern border last week was the purest distillation yet of what it means to be governed by a President with no moral center. First, the Trump Administration, enacting its “zero tolerance” policy regarding migrants, forcibly separated children from their parents and detained them in a tent city and in a repurposed Walmart in parched South Texas. Photographs showed children penned in large metal cages and sprawled on concrete floors under plastic blankets. Many were sent on to facilities thousands of miles away. Those under the age of twelve, including babies and toddlers, were discharged to “tender age” shelters, a concept for which the term “Orwellian” does not quite suffice.

President Trump insisted that only an act of Congress could stop the separations, and that the Democrats were to blame. The Secretary of Homeland Security, Kirstjen Nielsen, claimed that separating parents and children was not a policy—she was simply following the law. All of this was false, as became obvious on

Wednesday, when Trump signed an executive order revoking the policy that he'd said he could do nothing about and that Nielsen said didn't exist. It would be nice to attribute this change of plans to a genuine change of conscience, but, in signing the order, Trump was transparently angry at being compelled to do so. He said, "If you're really, really pathetically weak, the country is going to be overrun with millions of people, and if you're strong then you don't have any heart. That's a tough dilemma. Perhaps I'd rather be strong."

The more likely explanation for the President's about-face was the overwhelming political pressure that he had come under. Among those denouncing the separations were Franklin Graham, the evangelist and Trump enthusiast; all four living former First Ladies; members of Congress from both sides of the aisle; the president of the American Academy of Pediatrics; and sixty-six per cent of American voters. A number of major airlines refused to comply with the policy. ("We have no desire to be associated with separating families, or worse, to profit from it," a statement from American Airlines read.) Offers of pro-bono legal assistance for the families flooded into Texas.

It would be nice, too, to think that the executive order presented a sustainable way out of the crisis. But zero tolerance will continue to wreak havoc, and incarcerating children with their parents, as the order stipulates, is no real solution. Meanwhile, it's not clear what will become of the twenty-three hundred children who have already been detained. Erik Hanshew, an assistant federal public defender in El Paso, who has been trying to assist the parents of such children, wrote in the Washington Post that his meetings with clients "have been crushing. One man sobs, asking how his small child could defend himself in a detention facility. One cries so uncontrollably, he is hardly able to speak." Hanshew has to explain to his clients that, since the infrastructure and the planning for this detention scheme were so inadequate, he may never be able to tell them where their children are, or who is taking care of them.

Administration officials portray the challenges at the border in stark, binary terms: either we treat all border crossers, including asylum seekers, as dangerous criminals to be incarcerated or we wantonly open the gates to all the world. There is, of course, a middle path, providing workable and humane alternatives to detention. One strategy is to let migrants live in the community, while submitting to varying degrees of oversight, from wearing ankle bracelets to checking in regularly with caseworkers. A 2000 study by the Vera Institute of Justice found that eighty-three per cent of asylum seekers who had initially been found to have credible reasons to fear remaining in their home country and who were released in the United States with a requirement to return for a hearing did so. Ninety-five per cent of participants in a monitoring program run by Immigration and Customs Enforcement between 2011 and 2013 showed up for their proceedings.

Alternatives to detention are also cheaper. In 2014, the U.S. Government Accountability Office reported that the ICE monitoring program cost ten dollars and fifty-five cents per person per day, as opposed to a hundred and fifty-eight dollars for detention. And a 2015 report from the Center for Migration Studies found that, among asylum seekers, “access to early, reliable legal advice is the single most important factor in fostering trust in the legal system and, as a result, ensuring compliance with the adjudicatory process.” It’s hard to imagine a scenario less likely to foster trust in the legal system than one in which your children are taken from you with no explanation of how or when you might get them back.

The Administrations of George W. Bush and Barack Obama also experimented with keeping families together when incarcerating migrants and asylum seekers. It did not go well. The largest family facility, a former state prison in Taylor, Texas, was run by a private-prison company, Corrections Corporation of America, under a \$2.8-million-a-month contract with the federal government. (The detention of immigrants has been a boon to the for-profit prison industry.) In 2008, the American Civil Liberties Union sued ICE, asking for improvements, such as installing curtains around the open toilets, increasing the hours of school instruction, and allowing the children to keep toys in their cells and to wear pajamas when they went to bed instead of prison uniforms. A federal judge in Texas ruled in favor of the A.C.L.U., and chided the federal government for letting a prison company dictate conditions for detaining immigrants. A magistrate judge monitoring the facility later concluded, “It seems fundamentally wrong to house children and their noncriminal parents this way. We can do better.” The Obama Administration stopped confining children in the facility in 2009.

The Trump Administration also faces legal challenges—the executive order calls for families to be detained indefinitely, in apparent violation of a 1997 consent decree known as Flores, which allows migrant children to be held for a maximum of twenty days—and it, too, may lose in court. In a recent opinion, Dolly M. Gee, the federal judge who will be considering the order, called family detention “deplorable.”

In the meantime, it will be important to remember what the President was willing to do in the name of toughness. It will be important to remember that Attorney General Jeff Sessions justified taking children away from their parents by quoting Biblical Scripture. It will be important to be on guard for what this Administration may try next. ♦

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