

Shunning the huddled masses: Stop locking up moms seeking asylum

BY [ROBERT MORGENTHAU](#)
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Be humane first

On many fronts, the [Obama administration has tried to humanize immigration policies](#), only to be frustrated by an intransigent Congress and, more recently, by adverse court rulings. But in at least one area, the administration's problems are entirely of its own making: the needless — and some might say heartless — detention of mothers, with children, entering the country with valid claims for asylum.

When a person arrives in our country without legal documentation, the law requires immigration officials to determine whether the person is here to escape persecution in their country of origin.

If the person can be returned safely to their home country, then the immigration authorities commence a streamlined proceeding called “expedited removal.”

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But if immigration officials believe the person has a “credible fear” of persecution, then the immigrant is put on a more deliberate track, in which an application of asylum can be evaluated.

In the past, once immigration authorities concluded that there was a significant possibility that the immigrant would be granted asylum, they typically did the only reasonable thing — they consented to the immigrant’s release pending a hearing.

But all of that changed in June of last year, when the Department of Homeland Security instituted a “no-release” policy. To discourage increased immigration from Central America, the department detained these immigrants, in places that look very much like prisons, as their cases wended through the strained immigration bureaucracy.

This new policy represents a humanitarian tragedy on several levels. First, tens of thousands of these cases involve mothers with children who are shipped off to detention facilities to await their fate.

What is more, according to data analyzed by a think tank at Syracuse University, 85% of these “women with children” cases involve immigrants from just three countries — Honduras, El Salvador and Guatemala — the so-called “Northern Triangle” countries, suffering levels of violence among the very highest in the world.

No wonder immigration officials found these women had a “credible fear” of a tragic fate if returned. An enlightened immigration policy would have these families headed toward safety and a grant of asylum, not toward detention without charges.

Finally, the “no-release” policy represents a tragedy of human rights. The administration denies that it is detaining these mothers with children to serve as an example to others contemplating asylum, but District Court Judge James Boasberg in the District of Columbia didn’t buy that argument. He found that Homeland Security was detaining families not because they had done anything wrong, but in order to deter others from crossing our borders.

The judge issued a temporary restraining order enjoining the government from detaining families to deter others — or even from considering deterrence in making such decisions.

The U.S. Supreme Court has long held that everyone on our soil — even if that person gained entry illegally — is entitled to fundamental guarantees of due process of law. That is especially true when a person’s liberty is at stake.

This guarantee is so firmly established that, in that court case in Washington, the government conceded that it had no legal precedents to support its position.

UNDOCUMENTED CAN TAKE LESSER-KNOWN PATHS TO LEGAL STATUS

The families in that case were in one sense lucky: They had lawyers. Their lawyers persuaded the judge to issue a preliminary injunction, preventing the government from detaining them as they asserted their rights.

But the great majority of mothers with children were not so lucky. Most of them didn’t have lawyers to represent them, and it would be hard to overstate what a difference that made.

The numbers say it all: In “women with children” cases, an immigrant with a lawyer is more than 15 times more likely to be allowed to stay in this country than one without a lawyer.

Put these facts together, and you have a true humanitarian tragedy: Many thousands of women and their children flee violence and oppression, only to be detained in the U.S. without charges because they have no one to assert their rights.

To end this crisis, the President need seek no new legislation, nor assert any new executive authority. All he need do is reverse his own “no-release” policy. Doing so would not only give these families their freedom, but it would free funds that might be used to address the humanitarian crises these immigrants are fleeing.

Prompt action can provide relief to thousands of families who richly deserve their freedom, and whose detention accomplishes nothing. As an old saying has it, if we cannot be our brother’s keeper, let us at least be our brother’s brother.

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