

June 22, 2018

BRIEF ANALYSIS OF THE PRESIDENT'S JUNE 20 EXECUTIVE ORDER

The following is a brief summary of the primary points of concern in the June 20, 2018 Executive Order issued by the President.

- The order affirms the administration's commitment to its "zero tolerance" policy. Several concerns arise with this, including:
 - The government has the discretion to decide whether or not prosecute individuals crossing the border. The law does not mandate it. Congress could remove the relevant provision of the Immigration and Nationality Act, but it does not have to do that for the prosecutions to stop.
 - The administration is using federal law enforcement resources to arrest, detain, and prosecute individuals who may pose no actual threat to Americans' safety instead of focusing its resources elsewhere.
 - Check points have been closed for extended periods, resulting in families languishing on bridges for days at a time in horrible conditions. Prosecuting parents with children for entering a different way is inhumane.
 - The prosecutions have raised a host of due process and other legal issues that are being raised in litigation, again wasting the resources of the federal government as they defend their already wasteful policy.
 - Through this policy, the administration is treating asylum seekers like criminals and seeking to deter their arrival. This is a clear violation of its obligation to protect individuals fleeing persecution.
- The order is unclear as to whether the administration is discontinuing its policy of separating families when the parents are being prosecuted.
 - At no point does the order expressly repeal the policy of separating families.
 - The order states that it is the policy of the administration to maintain family unity and therefore it will detain families together. However, it also states that it will not detain families where it is inappropriate, inconsistent with law and available resources, or when it will pose a risk to the child's welfare. The order sets these conditions on the use of family detention, yet experts argue that it is never appropriate to jail families, that incarcerating children always poses a risk to their welfare, and that it is a waste of resources to jail families when there are much cheaper, highly effective alternatives.
- The order is unclear as to the path to reunification of families already separated.

Atlanta
142 Walker Street SW
Atlanta, GA 30301
Tel: 470-481-4700
Fax: 470-481-7400
Atlanta@tahirih.org

Baltimore
201 N. Charles St.
Suite 920
Baltimore, MD 21201
Tel: 410-999-1900
Fax: 410-630-7539
Baltimore@tahirih.org

Greater DC | National
6402 Arlington Blvd.
Suite 300
Tel: 571-282-6161
Fax: 571-282-6162
TTY: 711
Falls Church, VA 22042
GreaterDC@tahirih.org
Justice@tahirih.org

Houston
1717 St. James Place
Suite 450
Houston, TX 77056
Tel: 713-496-0100
Fax: 713-481-1793
Houston@tahirih.org

San Francisco Bay Area
881 Sneath Lane
Suite 115
San Bruno, CA 94066
Tel: 650-270-2100
Fax: 650-466-0006
SFBayArea@tahirih.org

www.tahirih.org

- Children have been taken hundreds of miles away from parents, parents do not know how to find their children quickly, and some parents have been deported without their children. The order does nothing to address this.
- Many details about the implementation of family detention remain unclear.
 - A federal court has already ruled that children cannot be detained for more than 20 days. The order requires the Attorney General to challenge that court ruling, which it has already done. If the maximum time of 20 days stands, then it is unclear what will happen after the 20 days pass. Families could be released or possibly separated at that point.
 - The order indicates that the Secretary of Homeland Security shall detain families for the duration of criminal proceedings *or* immigration proceedings. Families could be separated then reunited for immigration proceedings, held together for criminal proceedings then separated for immigration proceedings, or held for the duration of all proceedings. If there are criminal proceedings *and* immigration proceedings, it is possible that families will be incarcerated for the duration.
 - The order is unclear whether mixed-gender families will be kept together in units. For example, family units including a mother, father, and children have not typically been jailed together in the past, and it is unclear if there will be separation of some family members from others.
 - There is no mention of the treatment or conditions that families will face in detention centers. For example, it will be critical for detained families to receive mental health counseling that is trauma-informed, access to legal counsel, and services in languages they fluently speak and understand.
 - The order indicates that other agencies such as the Department of Defense should make available and also construct new facilities for the incarceration of children with their parents. The resources required for this are likely to be significant, and it is unclear on what timeline the President believes this should happen.

For more information, please contact Archi Pyati at archip@tahirh.org.