



## **Congress Must Decriminalize Migration to Stop Family Separation: The Case for Repealing The Laws That Make Migration a Crime**

Want to truly support immigrant families and children? Then join the call to demand that Congress stop Trump and Sessions by repealing the two laws that make migration a federal crime. The laws prohibiting “unlawful entry” and “unlawful re-entry” are the legal weapon behind the heart-breaking separation of parents and children by the Trump administration. Under a policy known as “Zero-Tolerance”, Sessions’ Department of Justice splits apart families by prosecuting and imprisoning all migrant parents using these laws and placing their children in federal foster programs.

### **Where did these laws come from?**

While the most recent versions of these laws were put in place in 1952, the criminalization of border crossing has its roots in a 1929 law [explicitly designed](#) to deter immigration from Mexico and criminalize, prosecute, and imprison immigrants. This 1929 law was part of a [long legacy](#) of white supremacist legislation denying citizenship, immigration and free movement to Black, Native, Asian, and Latinx people. Senator Blease, a pro-lynching [white supremacist](#), pushed the border criminalization laws into being, citing the “Mexican Problem.” From 1929, we can draw a direct line between open white supremacist Senator Blease and the [white supremacist](#) agenda of Attorney General Sessions. Jeff Sessions has picked up Blease’s xenophobic mantle, vowing to prosecute migrants to keep the country from being “[overwhelmed](#)” by those who seek to “stampede” the US - language that dehumanizes the mostly brown immigrants crossing the border and exposes Sessions’ [racist criminalization project](#). Sessions’ master plan involves moving these policies beyond the border zones and into every state in the country.

### **What does this have to do with family separation?**

In April 2018, the Trump administration made the [choice](#) to implement existing immigration laws in a new, more extreme way: separating immigrant parents from their children at the border in order to charge the parents with unlawful entry, a misdemeanor punishable by up to 180 days in jail, or unlawful re-entry, a felony punishable by up to 20 years in federal prison. Jeff Sessions calls this campaign of terrorizing families “Zero Tolerance,” and is wielding unlawful entry and re-entry laws as yet another weapon in the Trump arsenal. He has plans to convict hundreds of immigrants a day through the expansion of “[Operation Streamline](#),” a strategy of mass hearings and mass imprisonment, with dozens of immigrants arraigned, found guilty, convicted and sentenced simultaneously.

Experts estimate that this Zero Tolerance policy will mean the prosecution of [more than 200,000 people per year](#). Already, migrant prosecutions under these white supremacist laws have grown to consume [half of all federal prosecutions](#), and resulted in a massive federal prison boom.

Trump's June 20<sup>th</sup> Executive Order does not end this practice, it simply guarantees that parents entering for the first time will be imprisoned alongside their children while they are criminally prosecuted. What's more, people entering after a previous deportation (many times to try to reunite with their children) risk being charged with felony reentry, and face years in prison.

From their beginning, the laws that criminalize migration have generated only misery, [not deterrence](#), as people travel in search of survival for themselves and their children when conditions in their home countries become [untenable](#).

### **The Demand:**

Congress should immediately repeal 8 U.S.C. § 1325 and 8 U.S.C. § 1326, the laws that criminalize migration and punish immigrant families. For too long, legislators have ignored the harm caused by these laws, allowing the Trump Administration to carry out a plan to criminalize all immigrants and violently separate families. It is time for Congress to rein in the laws that make the grotesque crisis of children being separated from their parents possible. All those who believe that families belong together and out of jail should demand an immediate repeal of these laws.

For more information, please contact NIPNLG attorney Julie Mao at [jmao@nipnlg.org](mailto:jmao@nipnlg.org).

*This factsheet is a collaboration of the National Immigration Project of the National Lawyers Guild, Mijente, Professor Angélica Cházaro, and Law For Black Lives.*