



Powell Law, PLLC

## **Immigration Take-Away Points**

### **Asylum**

People who are seeking asylum at our borders today are primarily coming from El Salvador, Guatemala, and Honduras. They are fleeing persecution (primarily related to gang violence and domestic violence).

One may only seek asylum if one has a credible fear of persecution upon return to his/her home country and must go through a strict federal procedure to be granted asylum. Asylum is not amnesty (i.e. not a blanket pardon for everyone who has entered unlawfully regardless of their reason) and it is not based on economic need.

An asylum case usually takes 2-4 years for a final determination from an asylum officer or an immigration judge (the only two authorities who may make a decision).

### **Laws**

8 U.S.C. §1325(a) states that anyone who enters unlawfully is guilty of a misdemeanor.

The Immigration and Nationality Act (INA) §208(a) states that, whether or not they present themselves at a port of entry, a person *must be physically present within the borders of the US*, in order to make a request for asylum. A person may request asylum regardless of whether they are in the U.S. lawfully provided that they apply within a year of entry.

How do these two laws work together? In effect, if someone has entered the United States to seek asylum and if they are granted asylum, the manner in which that person entered becomes a moot point. If an asylum officer or immigration judge determines that this person has a credible claim of asylum, the application will be approved despite the manner of entry (at least as of 07/15/2018). Until now, a conviction under 8 U.S.C. §1325(a) has not barred someone from seeking asylum.

### **Policies**

Under Jeff Sessions' "zero tolerance" policy, the Department of Justice (DOJ) was directed to prosecute everyone who entered at a non-port of entry under 8. U.S.C. §1325(a). Prior to this

policy, the DOJ had the discretion to prosecute. Since asylum seekers must be in the United States, regardless of how they entered, in order to seek asylum, the DOJ usually chose not to prosecute based on humanitarian grounds.

Because parents are held under the U.S. Marshall while going through the federal criminal court system, the *Flores* settlement (which states that children must be held in the least restrictive means possible) is being used to uphold the argument that children must be separated from their parents. There is no law that mandates separation of children from parents; this is an interpretation of the *Flores* settlement.

President Trump's Executive Order, signed on June 20, states that his administration will resolve the problem of separating children from parents by expanding indefinite family detention, an issue that has a long and litigious history.

On June 25, the Customs and Border Patrol (CBP) said it would no longer refer families for prosecution under the DOJ until the two agencies can come to an agreement that would not result in family separation. This further demonstrates that there is no law mandating family separation and that agencies are exercising prosecutorial discretion.

As of July 9, Operation Streamline is going into full effect in San Diego, and everyone crossing without authorization will again be prosecuted in federal criminal court (separate from immigration court) under 8 U.S.C. §1325, regardless of whether they are seeking asylum, and there is now discussion that someone convicted under this law will be barred from seeking asylum. One of the many results is that our federal court system is being overwhelmed.

Customs and Border Patrol (CBP) has been turning people away at ports of entry, which is illegal under U.S. law and international law if someone is seeking asylum. If an asylum seeker is unable to enter at a POE, they will resort to entering without authorization, where they will likely be apprehended, convicted under 8 U.S.C. §1325, and possibly barred from seeking asylum.

### **Alternatives to Detention**

- ❖ Release asylum-seekers on bond to attend hearings outside of detention.
- ❖ Require monthly check-ins with ICE either in person or via phone call
- ❖ GPS ankle monitor bracelet
- ❖ Enroll in a case management program which guides asylum-seekers through the immigration process

### **How Can I Help?**

Roughly 1 in 10 individuals in detention have legal representation. If you would like to donate to efforts on the ground to provide legal representation, donations can be made to assist with legal fees for immigrants held in detention centers. Please make your checks payable to St. Stephen Lutheran Church, and mark in the memo line "Jean Kuhn Mem Fund-Immigration."