

# United States & Migrants: Hidden Horrors of “Zero Tolerance” - Mass trials and children taken from their parents

Thursday 14 June 2018, by [NATHAN Debbie](#) (Date first published: 29 May 2018).

FEDERAL MAGISTRATE JUDGE Ronald G. Morgan is in his 60s, with a bright-pink face and a crisp, friendly manner — though lately he has been making disconcerting little mistakes in court. He has spent eight years on the bench in Brownsville, a small Texas city on the U.S.-Mexico border. Morgan knows how to run a court smoothly, but during a morning session I attended in early May, he announced that he'd just dealt with 35 defendants — all at one time — when the actual number was 40. And after the proceedings, he forgot to pronounce their guilt. Marshals had already led them out, so Morgan sheepishly had to call the 40 defendants back to the courtroom to correct his error. These days, he seems distracted and troubled.

That is understandable. In late April, magistrates' courts in Brownsville suddenly turned into “zero tolerance” factories for criminalizing migrants, many of whom have no prior criminal record. Many are from murderously violent countries in Central America and have fled to the U.S. seeking asylum, and they often arrive with children in tow. It used to be rare to charge migrants seeking asylum with crimes. If they did so, they were put into detention with their children while they pursued their claims. Or they were released with supervision — along with their children. The best interests of the children were considered paramount, and those interests including keeping families together.

But now, in federal courts like Morgan's, not only are parents finding themselves charged with the crime of “illegal entry,” but the government is breaking up families, sending children to detention centers, often hundreds of miles from their mothers and fathers, or to distant foster homes.

These family separations had been occurring intermittently since last fall, and mass trials have been occurring off and on since “Operation Streamline” was first introduced in 2005. But on May 7, Attorney General Jeff Sessions announced that the U.S. government will prosecute “100 percent of illegal southwest border crossings.” He added that people who were “smuggling a child” will be prosecuted “and that child will be separated from you as required by law.” In practice, this means that even parents fleeing violence to protect their young children will be deemed smugglers — that is, criminals. Sessions's announcement came just two weeks after an official with the Department of Health and Human Services told Congress that the agency had lost track of 1,475 unaccompanied migrant children it had placed with sponsors.

The anguish that parents communicated in Morgan's courtroom, and the spectacle of dozens of migrants being convicted and sentenced en masse, in proceedings lasting just a few minutes and with only the most perfunctory legal representation, has shocked courthouse employees. And not just in Brownsville. Taking photographs of federal court proceedings is strictly forbidden. But in the federal courthouse in Pecos, Texas, someone apparently felt so bad about the new policies that they secretly shot a photo — obtained by The Intercept and published at the top of this page — of dozens of immigrants clogging a court in orange jumpsuits.

But most Americans do not attend these courts. They live far from the border, and Sessions's new

“zero tolerance” plan seems distant and theoretical. On the border itself, however, the new policy feels close and horribly real. Sessions’s policy of deliberately breaking up families is a new low in U.S. border policy. Today “zero tolerance” is playing out from Texas to California. In Brownsville, it’s driving Judge Morgan to distraction.

*[Not reproced here: Audio from a mass trial of immigrants presided over by Federal Magistrate Judge Ronald G. Morgan, in Brownsville, Tex., on May 10, 2018.]*

Until recently, the procedure that brought a handful of defendants a day to the Brownsville courtroom for criminal prosecution was straightforward. First, Border Patrol agents arrested people after they arrived in the U.S. “by swimming, wading or floating across the banks of the Rio Grande River,” as the government’s boilerplate complaint puts it. Subsequent to their arrests, the detainees were processed at a Border Patrol station that everyone complains feels as cold as an icebox: in Spanish, an hielera.

If a detainee expressed fear to the Border Patrol agents about returning to their country, criminal charges were rarely brought. When immigrants were bussed to the federal courthouse in Brownsville, attorneys from the Federal Public Defenders office also asked the migrants if they feared returning to their country. If anyone expressed credible fear, the public defenders asked the federal prosecutors to drop the criminal illegal entry charges and refer the person directly to the asylum system.

Meanwhile, immigrants who weren’t making asylum claims went through the criminal process. Before the “zero tolerance” policy began, Morgan and another federal magistrate, Ignacio Torteya III, usually took turns seeing between three and eight of these people a day. Most pleaded guilty. Theoretically, the judge could sentence first-time illegal entrants to six months in prison. But they almost always got time served and were then typically deported. The asylum applicants stayed in the U.S. — with their kids — while their cases proceeded.

On April 30, Torteya was on duty and was informed that he had 41 “illegal entry” cases — about six times more than usual. Accompanying each of these immigrants’ criminal cases was paperwork from the U.S. Attorney’s office with a label at the top reading “Attorney General Zero Tolerance Initiative.” Attorneys and staff from the Federal Public Defenders were ordered to represent this startling mass of defendants who would go into court at 10 a.m. The public defenders had less than two hours to speak with all 41 people. That worked out to just a few minutes per defendant.

Soon, this scenario was being repeated daily in Morgan’s court, with the added feature of people telling the judge that they were afraid to go back to their countries — and that the U.S. government was taking away their children.

Each day was the same. The courtroom was filled with exhausted immigrants, with hands cuffed and shackled to their waists, their legs in chains — dozens of defendants stumbling, shuffling, clanking, and clanging in tandem. “Raise your right hand,” Morgan commanded as a translator spoke Spanish into their headphones. The shackled defendants struggled to comply.

The judge’s job is to determine if defendants understand the criminal charges against them and whether they feel they have had adequate legal representation. If they say they want to plead guilty, he asks whether they are doing so of their own free will. After that, they can make a statement — an “allocution” — and then the judge sentences them.

Morgan has a long, scripted list of explanations and questions for the defendants. On May 7, there were 40 defendants facing charges of illegal entry. Morgan had no time to read all these items to

each individual and deal with their responses. So the judge asked many of his questions en masse. This had the astounding effect of eliciting, from otherwise mute and downcast defendants, thundering group responses.

"Are each of you satisfied with the help of the lawyer?" the judge asked the huddled people.

"Sí!" they roared in unison.

"Has anyone offered you anything or threatened you?"

Another roar: "No!"

Morgan often tried to individualize the proceedings. "Mr. Zamora, do you understand the charge against you, the maximum punishment, and your individual rights? ... Did your lawyer explain all those things to you so that you can understand?" ... "Ms. Pineda, do you understand the charge against you, the maximum punishment, and your individual rights? ... Did your lawyer explain all of these things to you so that you can understand?" And so on, through the clanking of the chains, over three dozen times. In each case, the defendant answered, "Sí," and the translator echoed, "Yes."

Sometimes the judge sighed. When it came time to hear the defendants give up their rights to trial, he got a second wind, ordering each one to stand, pronouncing their name, and asking, for example, "Ms. Guerrero, how do you plead? Guilty or not guilty?"

"Culpable." Guilty.

"OK, you may take a seat, ma'am. Mr. Escobedo, how do you plead, sir?"

"Culpable." Guilty.

Forty times.

The judge tried to vary his spiel. But as his "how do you pleads" droned on, he ran out of variations as he instructed people to take their seat.

After the guilty pleas, Morgan lectured the immigrants. "The world is a different place," he explained on his first day of mass proceedings. "This country has become a different place. I'm not going to say right or wrong — it's just what the law says."

On the second day, he was more laconic and direct, explaining that the government had made "a decision that there is to be zero tolerance."

It was unclear if the silent defendants had a clue about what the judge was referring to.

Each day, the proceedings continued with the judge offering defendants the chance to take the microphone and address him before they were sentenced. As the week wore on, several did.

One man told Morgan that he wanted to apologize for entering the United States illegally. But he'd done so, he explained, because "I have been kidnapped twice. I have a vegetable business. In my country, I can't work. That's all."

"I can't do anything about it," Morgan replied. "Coming in illegally is just going to make a bad situation worse."

A very small, very young woman with chiseled features and disheveled hair spoke. She had been

apprehended two days earlier after rafting across the Rio Grande near a county park with big trees and picnic tables that abuts the international line. She wept as she told Morgan, "I'd like to apologize, but the circumstances in my country made me do it." She said she'd been almost raped and killed there, and she had come to the U.S. for protection and to see if she could help her sisters escape the danger.

"You are going to be sent to one of the immigration camps," Morgan said. "You can try and request asylum."

By May 10, Morgan was starting to get rattled by the increasingly disturbing content of the allocutions. By then, the government had begun systematically separating mothers and fathers from their children, including children who are preschoolers. A week later, the government announced plans to house the children on military bases.

One woman who spoke about her children in open court was from Honduras. "Is my little girl going to go with me when I get deported?" she asked Morgan.

"Your Honor," interjected Jeff Wilde, director of the Federal Public Defender's office in Brownsville, "both she and the man next to her have their children with them. They had a credible fear claim [for asylum]. ... Their children have been separated from them, and I've been unable to figure out where their children are at this point."

A young father then said he'd been separated from his 6-year-old and was very worried.

The judge tried to assume his crisp air. But he seemed overwhelmed, with the parents' worry and with suspicion that the government was misrepresenting to him what was really happening to the children.

"The way it's supposed to work," he told the parents, "you're going to be sent to a camp where your child will be allowed to join you. That's my understanding of how it's supposed to work."

"They told me they were going to take her away," a mother interjected about her young daughter.

"Well, let's hope they don't," said Morgan. "You and your daughter, you should be joined together."

And then, for many seconds, he was silent.

"If You Can Imagine There's a Hell"

Did Morgan know that his assurances to these parents were very likely false? I asked his clerk, who told me that Morgan does not give interviews to the press. But up and down the border this year, from Texas to California, immigrants coming into the United States, even those applying for asylum at ports of entry, have had their children taken from them.

According to data prepared by the Office of Refugee Resettlement, a division of the Department of Health and Human Services that takes custody of children removed from migrant parents, more than 700 children were taken from adults claiming to be their parents from October 2017 through April 2018, including more than 100 children under the age of 4. Declarations included in a lawsuit filed earlier this year by the American Civil Liberties Union indicate that immigrants apprehended in Brownsville were already having their children taken away months ago. Lee Gelernt, the ACLU's deputy director for immigrant civil rights, told The Intercept that advocates working in Texas brought the Brownsville cases to the ACLU's attention.

Erika Guevara-Rosas, Americas director at Amnesty International, said in a statement that the U.S. government's separating children from their parents as they seek asylum is "a flagrant violation of their human rights. Doing so in order to push asylum seekers back into dangerous situations where they may face persecution is also a violation of U.S. obligations under refugee law."

But with the "zero tolerance" policy, the number of child separations promises to increase. In one week in May, I counted six people in the Brownsville court who said their children had been taken. There have also been reports of similar separations in district courts located in McAllen and Alpine.

Judge Morgan could easily verify that parents are not being "joined together" with their children in ICE detention centers. He could use a publicly accessible, online ICE database to see where the people who've gone through his own court are taken. In almost all cases, the destinations only house adults.

Another parent who appeared in Morgan's court was from a Central American country that provides no meaningful protection to women and children who are victims of homicidal domestic violence. She asked for her identity to be concealed, because she fears retaliation by the U.S. government. We will call her Delia. Before fleeing her country, she was for years beaten up, cut, assaulted with guns, and threatened with death by her partner. He also threatened to kill their young child. When she hid in another city, he found her and dragged her home.

Delia said she fled her country weeks ago and went on the road to Mexico, eventually crossing the Rio Grande with her child on an inner tube. She saw three Border Patrol agents watching her and floated in their direction, so she could turn herself in.

Delia said that when she arrived later that night at the hielera — the Border Patrol processing office — she told the officers that she and her child needed asylum. She described the beatings and assaults and death threats. "Oh, come on!" she said the officers snickered. "You and everyone else with that old story!"

"You're going to be deported," she remembers them telling her. "And your child will stay here." The next morning, the child was taken. Delia fell on her knees during the removal, wailing and begging not to be separated. Officials looked on indifferently, she said, as her child screamed incessantly.

When I spoke with Delia a few days later, she was in ICE detention, without her child, hours from Brownsville, and appeared to be in shock. She was having problems concentrating and answering simple questions. She wept constantly. She said she was wracked with fear and worried about her child, with whom she has had no contact since their separation. She could not imagine being deported back to her home country. "He will kill me there," she said. "He will kill both of us." Neither could she imagine her child being left behind in America. Her mind seemed shattered.

When she was able to organize her thoughts, Delia talked about two things. One was the child. The other was God.

In Brownsville, Judge Morgan also started alluding to biblical matters. It was Thursday, the fourth day of "zero tolerance" in his court, and defendants were telling their stories. The judge had just asked Holly D'Andrea, the assistant U.S. attorney handling illegal entry prosecutions that day, if it were true that families were being reunited in detention. D'Andrea sounded uncertain, but answered that she thought it was true.

"Tell you what," the judge said slowly, with a hard edge in his voice, "if it's not, then there are a lot of folks that have some answering to do. Because what you've done, in effect, by separating these children is you're putting them in some place without their parents. If you can imagine there's a hell,

that's probably what it looks like."

Seconds later, he pronounced a blanket sentence for all of the defendants: no prison, no big fine — merely time served. With that, his court concluded. In 46 minutes that morning, 32 people had been convicted, sentenced, and dispatched en masse to ICE detention. "All rise!" said the bailiff, and the judge exited the room. The chained migrants then shuffled and clanked to their fates, without their children.

**Debbie Nathan**

---

---

**P.S.**

\* The Intercept, May 29 2018, 6:26 p.m:

<https://theintercept.com/2018/05/29/zero-tolerance-border-policy-immigration-mass-trials-children/>