

THE EFFECT OF RHETORIC: THE NARROW NEXUS  
BETWEEN GREAT BRITAIN'S 1938 KINDERTRANSPORT  
RESCUE OPERATION AND THE UNITED STATES 2018 ZERO  
TOLERANCE IMMIGRATION POLICY

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I. INTRODUCTION

On May 7, 2018, Jeffery Sessions, the former Attorney General of the United States, announced a Zero Tolerance Policy, under which all adults entering the U.S. illegally would be subject to criminal prosecution. If that adult were accompanied by a minor child, the child would be separated from the parent(s).<sup>2</sup> Within weeks, over 2,000 children entering the U.S., from infants to late teens, were forcibly separated from their parents and detained.<sup>3</sup> This sparked national and international condemnation of the practice.<sup>4</sup> The punitive immigration policy is a nadir in a long history of the United States' contentious relationship with the influx of immigrants across the United States' southern border.<sup>5</sup> This article will compare the United States Zero Tolerance Policy of familial separation to the British Government's Kindertransport efforts in 1938, which ushered 10,000 Jewish children out of Germany, Poland, and Austria on the precipice of World War II. Analyzing these policies and examining the motivations and strategies that designed them, there emerges a distinct inverse relationship. One is born from the instinct to protect, the other is born from fear. Yet, both expose strikingly similar rhetoric addressing the questions surrounding national policy and immigration.

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<sup>2</sup> See U.S. Att'y. Gen., *Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration* (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

<sup>3</sup> *Ms. L. v. U.S. Immigration & Customs Enft ("ICE")*, 310 F. Supp. 3d 1133, 1139 (S.D. Cal. 2018).

<sup>4</sup> *Id.* at 1136.

<sup>5</sup> There are strong parallels that can be drawn between President Trump's enforcement plans and actions and those of other eras. See Bill Ong Hing, ARTICLE: ENTERING THE TRUMP ICE AGE: CONTEXTUALIZING THE NEW IMMIGRATION ENFORCEMENT REGIME, 5 TEX. A&M L. REV. 253, 254-255.

## II. KINDERTRANSPORT WAS A MERCIFUL PLAN

Immediately after Adolf Hitler's ascent to power in 1933 Germany, his Nazi government launched a campaign of persecution against Jews.<sup>6</sup> Within months, tens of thousands of Jews left Germany. Soon after, emigration slowed considerably as visas became impossible to obtain.<sup>7</sup> In the first six years of Hitler's regime more than 400 legal restrictions were imposed against the Jews.<sup>8</sup> However, it was Kristallnacht, "The Night of the Broken Glass,"<sup>9</sup> on November 9<sup>th</sup> and 10<sup>th</sup>, 1938 that brought a marked increase in anti-Semitic violence and persecution.<sup>10</sup> That evening, some 30,000 Jewish males were rounded up and taken to concentration camps.<sup>11</sup> This unprecedented violence against Germany's Jews generated international outrage.<sup>12</sup> However, within the international community, solutions stalled.<sup>13</sup> In response, the British government approved the Kindertransport operation in which private refugee organizations brought 10,000

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<sup>6</sup> *Kindertransport and KTA History*, The Kindertransport Association (Jan. 10, 2019, 12:53 PM), [http://www.kindertransport.org/history02\\_1933.htm](http://www.kindertransport.org/history02_1933.htm)

<sup>7</sup> *Id.*

<sup>8</sup> Some of these were: Restitution of the Civil Service (April 7, 1933, removing Jews from civil offices); Admission to the Bar (April 7, 1933, removing Jews from the Bar); Law Against the Over-Crowding of German Schools (April 25, 1933, drastically limiting the number of Jewish students permitted in schools); and Executive Decree to the Law Concerning Denationalization (July 14, 1933, defining Jews from Eastern Europe as "undesirable" and subject to denationalization). See *Anti-Semitic Legislation 1933-1939*, U.S. HOLOCAUST MEM'L MUSEUM, (Jan. 10, 2019, 12:58 PM), <https://encyclopedia.ushmm.org/content/en/article/antisemitic-legislation-1933-1939>.

<sup>9</sup> This event came to be called *Kristallnacht* (The Night of Broken Glass) because of the shattered glass that littered the streets after the vandalism and destruction of Jewish-owned businesses, synagogues, and homes. *Kristallnacht*, Unites States Holocaust Memorial Museum, (Jan. 10, 2019, 1:05 PM), <https://encyclopedia.ushmm.org/content/en/article/kristallnacht>.

<sup>10</sup> *Kindertransport*, THE NATIONAL HOLOCAUST CENTRE AND MUSEUM, (Jan. 10, 2019, 1:03 PM), <https://www.holocaust.org.uk/kindertransport-overview>.

<sup>11</sup> *Kristallnacht*, UNITES STATES HOLOCAUST MEMORIAL MUSEUM, (Jan. 10, 2019, 1:14 PM) <https://encyclopedia.ushmm.org/content/en/article/kristallnacht>.

<sup>12</sup> *Id.*

<sup>13</sup> Conference convened by President Franklin D. Roosevelt to deal with the Jewish refugee problem. It was held in Evian, France, from July 6-15, 1938. During the conference, it became painfully obvious that no country was willing to volunteer anything. For more reading see: *Evain Conference*, Shoah Resource Center, (Jan. 10, 2019, 1:22 PM), [https://www.yadvashem.org/odot\\_pdf/Microsoft Word - 6305.pdf](https://www.yadvashem.org/odot_pdf/Microsoft Word - 6305.pdf)

Jewish children from Germany to Great Britain.<sup>14</sup> The British Jewish Refugee Committee appealed to members of Parliament and a debate was held in the House of Commons.<sup>15</sup> British Foreign Minister Samuel Hoare led the movement. On November 21, 1938 he addressed the House of Commons.

So also, with these Jewish and non-Aryan children, I believe that we could find homes in this country for a very large number without any harm to our own population. ... I venture to-night to take the opportunity of commending this effort to my fellow countrymen in general. Here is a chance of taking the young generation of a great people, here is a chance of mitigating to some extent the terrible sufferings of their parents and their friends.<sup>16</sup>

In his words a careful balance was struck. The belief in Parliament was that some countries would be more sympathetic towards children than adults because children would not be a threat to the job market.<sup>17</sup> This swayed the government to permit an unspecified number of children under the age of seventeen to enter the United Kingdom.<sup>18</sup> Children were admitted on temporary travel documents, with the idea that they would rejoin their parents when the crisis was over.<sup>19</sup> The majority of children had

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<sup>14</sup> Shauna Carmichael, *The Persecutor Bar, Former Child Soldiers, & Lessons from Research on Child Development*, 18 *Scholar: ST. MARY'S L. REV. & SOC. JUST.* 381, 426 (2016).

<sup>15</sup> *Kindertransport and KTA History*, The Kindertransport Association (Jan. 10, 2019, 1:30 PM), [http://www.kindertransport.org/history03\\_1933.htm](http://www.kindertransport.org/history03_1933.htm)

<sup>16</sup> (citations omitted) He also proposed that each child be guaranteed either by their funds or by generous individuals. See Samuel Hoare, *Speech to the House of Commons, November 21, 1938*, HANSARD PARLIAMENTARY DEBATES, Commons, 5th ser., vol. 341, 1473-1474, <https://api.parliament.uk/historic-hansard/commons/1938/nov/21/racial-religious-and-political-minorities>.

<sup>17</sup> *Kindertransport*, THE NATIONAL HOLOCAUST CENTRE AND MUSEUM, (Jan. 10, 2019, 1:03 PM), <https://www.holocaust.org.uk/kindertransport-overview>

<sup>18</sup> *Kindertransport and KTA History*, The Kindertransport Association (Jan. 10, 2019, 1:30 PM), [http://www.kindertransport.org/history03\\_1933.htm](http://www.kindertransport.org/history03_1933.htm)

<sup>19</sup> *Kindertransport*, THE NATIONAL ARCHIVES, (Jan. 10, 2019, 1:35 PM), <http://www.nationalarchives.gov.uk/education/resources/kindertransport/>.

“guarantors” who would cover the re-emigration costs.<sup>20</sup> These guarantors were mostly people who had some kind of connection with the families of the children refugees or who had responded to the many advertisements in the newspaper, the Jewish Chronicle, from families seeking help.<sup>21</sup> But, at a time of uncertainty in employment and with the country on the brink of war, few households could pay the sum of £50 required, the equivalent of \$2,500 U.S. dollars today.<sup>22</sup>

Financing the “unguaranteed” children, those who did not have a previously arranged place of stay, became the responsibility of the Movement for the Care of Children in Germany, later known as the Refugee Children’s Movement (hereinafter, “RCM”).<sup>23</sup> The RCM relied on charitable donations alone as it had been previously agreed with the Home Secretary that no refugee child would become a burden on state finances.<sup>24</sup>

The first Kindertransport from Berlin departed on December 1, 1938, the first from Vienna on December 10, 1938.<sup>25</sup> For the first three months, the children came mainly from Germany, and then the emphasis shifted to Austria.<sup>26</sup> In March 1939, after the German army entered Czechoslovakia, transports from Prague were hastily organized.<sup>27</sup> Trains of Polish Jewish children were also arranged in February and August 1939.<sup>28</sup> During this time not all refugee missions were as successful.<sup>29</sup> Also, from their arrival, the children struggled to maintain contact with their parents. The beginning of the war in 1939 further

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Deborah Oppenheimer, et al. "Kindertransport." *Encyclopaedia Judaica*, edited by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 12, MACMILLAN REFERENCE USA, 2007, pp. 160-161. *Gale Virtual Reference Library*, (Jan. 10, 2019, 1:36 PM), <http://link.galegroup.com>

<sup>24</sup> *Kindertransport*, THE NATIONAL ARCHIVES,(Jan. 10, 2019, 1:35 PM),<http://www.nationalarchives.gov.uk/education/resources/kindertransport/>

<sup>25</sup> Oppenheimer, Deborah et al. "Kindertransport." *Encyclopaedia Judaica*, edited by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 12, Macmillan Reference USA, 2007, pp. 160-161. *Gale Virtual Reference Library*, <http://link.galegroup.com> (last updated September 28, 2018).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> The woeful history of the *St. Louis*, a German ship carrying both adult and child Jewish refugees to Cuba in 1939, is an example of the terrible fate of many refugees. For more information see: *St. Louis*, Shoah Resource Center, [http://www.yadvashem.org/odot\\_pdf/Microsoft Word - 6039.pdf](http://www.yadvashem.org/odot_pdf/Microsoft Word - 6039.pdf).

limited communication and hopes of a speedy reunification.<sup>30</sup> In addition, the German government restricted the delivery of mail to and from Jews, forcing parents and children to rely on intermediaries or the Red Cross.<sup>31</sup>

The last group of children from Germany departed on September 1, 1939, the day the German army invaded Poland and provoked Great Britain, France, and other countries to declare war.<sup>32</sup> With the outbreak of war, borders were closed and all transports ceased.<sup>33</sup> The most reported reason for ending the transports was that the RCM had run out of funds.<sup>34</sup> At the time, rising unemployment, anti-Semitism and the concern that German refugees were now regarded as “enemy aliens” shifted some of the community’s commitment away from the Kinder.<sup>35</sup>

Less than a year later, Britain’s policy of internment came into force in May 1940.<sup>36</sup> This affected older child refugees who had reached the age of sixteen before 1940.<sup>37</sup> Many of the Kinder were treated as German and Austrian nationals.<sup>38</sup> Approximately 1,000 of the Kinder were held in makeshift internment camps, and around 400 were transported overseas to Canada and Australia.<sup>39</sup>

Most of the Kinder survived the war, and some reunited with parents who had either spent the war hiding or endured the

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<sup>30</sup> Later, in 1942, many stopped receiving letters for reasons they could not understand until later. Oppenheimer, Deborah et al. "Kindertransport." *Encyclopaedia Judaica*, edited by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 12, Macmillan Reference USA, 2007, pp. 160-161. *Gale Virtual Reference Library*, <http://link.galegroup.com> (last updated September 28, 2018).

<sup>31</sup> <https://www.jewishvirtuallibrary.org/the-kindertransport> (last updated October 3, 2018).

<sup>32</sup> Oppenheimer, Deborah et al. "Kindertransport." *Encyclopaedia Judaica*, edited by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 12, Macmillan Reference USA, 2007, pp. 160-161. *Gale Virtual Reference Library*, <http://link.galegroup.com> (last updated September 28, 2018).

<sup>33</sup> Kindertransport, THE NATIONAL ARCHIVES, (Jan. 10, 2019, 1:43 PM), <http://www.nationalarchives.gov.uk/education/resources/kindertransport/>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> In one Isle of Man camp over eighty percent of the internees were Jewish refugees. See *WW2 The People’s War*, BBC, (Jan. 10, 2019, 1:47 PM), <https://www.bbc.co.uk/history/ww2peopleswar/timeline/factfiles/nonflash/a6651858.shtml>.

<sup>39</sup> Oppenheimer, Deborah et al. "Kindertransport." *Encyclopaedia Judaica*, edited by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 12, Macmillan Reference USA, 2007, pp. 160-161. *Gale Virtual Reference Library*, <http://link.galegroup.com>

Nazi concentration camps.<sup>40</sup> Although, reunions were not always happy due to the multiple traumas related to the long estrangement.<sup>41</sup> Similar to the trauma that the children in 2018 suffered when separated from their parents at the U.S. border, the Kinder themselves were often very disoriented and quite miserable about having to leave their parents. They needed to pretend all the time and memorize new facts about themselves, sometimes even new names.<sup>42</sup> In many cases the children became very close to the families with which they lived, creating great problems after the war when their real parents or relatives came to claim them.<sup>43</sup> Although most of these children eventually returned to Jewish family or friends, some rescuers and even some children refused to give up their new families, having gone through so much together.<sup>44</sup> Further, the majority of the children were faced with the reality that home and family were lost forever.<sup>45</sup> Ultimately, the Kindertransport rescue operation was a unique merciful act during a period marked by widespread brutality and indifference.<sup>46</sup> However, after scratching the surface, there are parallel concerns reflected in the Kindertransport plan and the Zero Tolerance Immigration policy of 2018.

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<sup>40</sup> Oppenheimer, Deborah et al. "Kindertransport." *Encyclopaedia Judaica*, edited by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 12, Macmillan Reference USA, 2007, pp. 160-161. *Gale Virtual Reference Library*, <http://link.galegroup.com> (last updated September 28, 2018).

<sup>41</sup> See Craig-Norton, Jennifer, "Contesting the Kindertransport as a "Model" Refugee Response" *European Judaism* Vol. 50 No. 2 Autumn 2017.

<sup>42</sup> *Great Britain and the Holocaust: The Kindertransport*, JEWISH VIRTUAL LIBRARY, (Feb. 7, 2019, 9:16 AM), <https://www.jewishvirtuallibrary.org/the-kindertransport>.

<sup>43</sup> Craig-Norton, Jennifer, "Contesting the Kindertransport as a "Model" Refugee Response" *European Judaism* Vol. 50 No. 2 Autumn 2017.

<sup>44</sup> See *Id.*

<sup>45</sup> Oppenheimer, Deborah et al. "Kindertransport." *Encyclopaedia Judaica*, edited by Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 12, Macmillan Reference USA, 2007, pp. 160-161. *Gale Virtual Reference Library*, <http://link.galegroup.com> (last updated September 28, 2018).

<sup>46</sup> *Id.*

III. IN CONTRAST, THE 2018 UNITED STATES ZERO TOLERANCE IMMIGRATION POLICY WAS DEVELOPED AS A DETERANT

On May 7, 2018 Jeffery Sessions, then Attorney General of the United States, announced the administration's Zero Tolerance Policy:

Today we are here to send a message to the world: we are not going to let this country be overwhelmed. People are not going to caravan or otherwise stampede our border. We need legality and integrity in the system. That's why the Department of Homeland Security is now referring 100 percent of illegal Southwest Border crossings to the Department of Justice for prosecution. And the Department of Justice will take up those cases. If you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law.<sup>47</sup>

Within a month of this announcement the true politics of this policy were exposed when Ms. L<sup>48</sup> and her daughter, who had legally approached the United States border, were "forcibly separated."<sup>49</sup> Ms. L's six-year-old daughter was physically pulled away from her while "screaming and crying, pleading with guards not to take her away from her mother."<sup>50</sup> They would not see each other again for over four months.<sup>51</sup>

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<sup>47</sup> The United States Department of Justice, (Jan. 10, 2019, 1:49 PM), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

<sup>48</sup> Ms. L is a Catholic citizen of the Democratic Republic of the Congo fleeing persecution from her home country because of her religious beliefs. The Court maintained her anonymity by referring to her as Ms. L. *See* Ms. L. v. U.S. Immigration & Customs Enft ("ICE"), 310 F. Supp. 3d 1133, 1137 (S.D. Cal. 2018).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Ms. L. v. U.S. Immigration & Customs Enft ("ICE"), 310 F. Supp. 3d 1133, 1138 (S.D. Cal. 2018).

Ms. L was not alone. By July 2018, over 2,000 children were detained. Migrant families that lawfully entered the United States at a port of entry seeking asylum were separated.<sup>52</sup> Meanwhile, families that were separated due to entering the United States illegally between ports of entry have still not been reunited following the parent's completion of criminal proceedings and return to immigration detention.<sup>53</sup>

Before the implementation of the Zero Tolerance Policy, when United States Customs and Border Protection (hereinafter, "CBP") apprehended an alien<sup>54</sup> family unit attempting to enter the United States illegally, it usually placed the adult in civil immigration proceedings without referring him or her for criminal prosecution.<sup>55</sup> CBP only separated apprehended parents from children in limited circumstances or if CBP could not determine whether the adult was the child's parent or legal guardian.<sup>56</sup> Under the Flores Agreement,<sup>57</sup> family units either remained together in family detention centers operated by United States Immigration and Customs Enforcement (hereinafter, "ICE") while their civil immigration cases were pending, or they were released into the United States with an order to appear in immigration court at a later date.<sup>58</sup>

However, the May 7, 2018 announcement resulted in a dramatic change in the United States Border policy that caught the CBP, Department of Homeland Security (hereinafter, "DHS"), and ICE off guard. From the beginning of the ill-conceived plan, familial separations occurred that were not "required by law." An ex post report issued from the Office of the Inspector General of

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<sup>52</sup>*Id.* at 1137.

<sup>53</sup>*Id.*

<sup>54</sup> The term "alien" refers to any person not a citizen or national of the United States. 8 U.S.C.A. § 1101.

<sup>55</sup> *Special Review - Initial Observations Regarding Family Separations Issues Under the Zero Tolerance Policy*, Office of Inspector General, (Jan. 10, 2019, 1:56 PM), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>

<sup>56</sup> *Id.*

<sup>57</sup> The Flores Agreement is a 1997 settlement that establishes minimum conditions for the detention, release, and treatment of children — to generally limit the time children can stay at such family centers to 20 days. *Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015). In July 2018, that Federal court denied the Government's request to modify the Flores Agreement to allow it to detain families for longer. *Flores v. Sessions*, 85-cv-4544 (C.D. Cal. July 9, 2018). DHS and HHS recently proposed regulations that, if implemented, would terminate the Flores Agreement. 83 Fed. Reg. 45,486 (Sept. 7, 2018).

<sup>58</sup> *See Id.*

Homeland Security (hereinafter, “OIG”) summarizes the chaos, “DHS was not fully prepared to implement the administration’s Zero Tolerance Policy or to deal with some of its after-effects.”<sup>59</sup>

The report noted, “DHS provided inconsistent information to aliens who arrived with children during Zero Tolerance, which resulted in some parents not understanding that they would be separated from their children and being unable to communicate with their children after separation.”<sup>60</sup> The report detailed, a lack of a fully integrated Federal immigration information technology system which made it difficult for DHS to reliably track separated parents and children.<sup>61</sup> This raised questions about the Government’s ability to accurately report on separations and subsequent reunifications.<sup>62</sup> Further, on June 23, 2018, DHS announced that DHS and Health and Human Services had “a central database” containing location information for separated parents and minors that both departments could access and update.<sup>63</sup> However, OIG found no evidence that such a database ever existed.<sup>64</sup>

The report also observed that CBP reported that overcrowding at the ports of entry caused them to limit the flow of people that could enter.<sup>65</sup> An immigration Attorney assisting immigrants at the border described, “[the CBP] started stationing an officer at the middle of the bridge, right on the international border, just on the [United States] side, and not allowing the asylum-seekers to set foot in the United States at all, people are flat-out being denied access to the legal way to request asylum.”<sup>66</sup> As the OIG report observed, “[t]his may have led asylum-seekers at ports of entry to attempt illegal border crossings instead.”<sup>67</sup>

Amid this bureaucratic dissonance, images of immigrant children in chain-link holding cells and audio of children weeping for their parents found their way into the media, creating a swell of public outrage.<sup>68</sup> In response, less than eight weeks after the

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<sup>59</sup> Special Review, *supra*. at 1.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 4.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> *Id.* at 10.

<sup>64</sup> *Id.*

<sup>65</sup> Special Review, *supra*. at 4.

<sup>66</sup> Lorelei Laird, *Border Lines ABA Works to Meet Immigrants' Increased Need for Legal Assistance and Oppose Family Separations*, ABA J., August 2018, at 64–65.

<sup>67</sup> Special Review, *supra*. at 5.

<sup>68</sup> Lorelei Laird, *Border Lines ABA Works to Meet Immigrants' Increased Need for Legal Assistance and Oppose Family Separations*, ABA J., August 2018, at 64.

Zero Tolerance Policy was announced and with over 2,000 children detained in makeshift camps, President Trump attempted to put this apocalyptic genie back in the bottle.

On June 20, 2018, he issued an Executive Order titled “AFFORDING CONGRESS AN OPPORTUNITY TO ADDRESS FAMILY SEPARATION.” In it, he stated, “[i]t is the policy of this Administration to maintain family unity, including detaining alien families together where appropriate[.]”<sup>69</sup> However, as the United States District Court of Southern California, pointed out, the Order “did not address reunification of the burgeoning population of over 2,000 children separated from their parents.”<sup>70</sup> The Court went on to grant a preliminary injunction.<sup>71</sup> ICE was enjoined from detaining Class Members in DHS custody without and apart from their minor children, absent a determination that the parent is unfit or presents a danger to the child, unless the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child in DHS custody.<sup>72</sup> The California District Court went on to conclude that the Zero Tolerance Policy portrayed a “reactive governance” and displayed “responses to address a chaotic circumstance of the Government's own making.”<sup>73</sup> They belie measured and ordered governance, “which is central to the concept of due process enshrined in our Constitution.”<sup>74</sup>

#### IV. POLAR OPPOSITE POLICIES, YET THE NEXUS LIES IN THE RHETORIC

The differences between these two policies are vast. The Kindertransport was a rescue mission in response to an international crisis. Conversely, the Zero Tolerance Policy was a reactive political deterrent which created an additional crisis for the immigrant population. However, the focus of this analysis will be on one narrow similarity, the overlap in the rhetoric used to discuss immigrant populations.

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<sup>69</sup> *Ms. L. v. U.S Immigration & Customs Enft ("ICE")*, 310 F. Supp. 3d 1133, 1140 (S.D. Cal. 2018).

<sup>70</sup> *Id.* at 1136.

<sup>71</sup> *Id.* at 1148.

<sup>72</sup> *Id.* at 1149.

<sup>73</sup> *Ms. L. v. U.S Immigration & Customs Enft ("ICE")*, 310 F. Supp. 3d 1133, 1149 (S.D. Cal. 2018).

<sup>74</sup> *Id.*

The Kindertransport was born from political compromise and an eagerness to mitigate the suffering of the Jews. However, the effort was not immune to national fears of the “enemy alien.” Although the children arrived as refugees, some of them were transformed into “enemy aliens” and swept up into internment and deportation. That trajectory is unwittingly mimicked over seventy years later by the United States 2018 Zero Tolerance Policy. The similarities between two policies are grounded in national economic fears and racial prejudice fueled by political rhetoric. However, where the British Parliament recognized national anti-Semitic actions and worked to dissuade them through political debate, the Trump administration incited national xenophobic fears with statements aimed at the public.

The foundation laid by the Trump administration for the 2018 Zero Tolerance Policy began with public anti-immigration rhetoric during his Presidential campaign. President Trump's signature campaign promise on immigration was the guarantee of a border wall separating the southern border of the United States from the northern border of Mexico.<sup>75</sup> The language he chose to use was disparaging to Mexican immigrants. “They are not our friend, believe me,” he said, “[t]hey’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.”<sup>76</sup> Trump's public misdirected blame of “Mexico” for societies' ills harken back to the Nazi regime's persecution of the Jews. Similarly, Nazi Germans believed that the Jews were responsible for most of society's ills, including murder, theft, and prostitution.<sup>77</sup>

Seventy years ago, Hitler's campaign of anti-Semitic propaganda, fed by national economic fears, reached beyond the borders of Germany.<sup>78</sup> Parliament struggled to extend a hand to the persecuted in Germany, knowing their British constituents held similar prejudices and fear, which is where the

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<sup>75</sup> Bill Ong Hing, ARTICLE: ENTERING THE TRUMP ICE AGE: CONTEXTUALIZING THE NEW IMMIGRATION ENFORCEMENT REGIME, 5 TEX. A&M L. REV. 253, 276-277.

<sup>76</sup> Katie Reilly, *Here Are All the Times Donald Trump Insulted Mexico*, Time Magazine, August 31, 2016 <http://time.com/4473972/donald-trump-mexico-meeting-insult/>

<sup>77</sup> NUREMBERG: THE SHADOW SPREADS: IMPACT OF S.B. 1070 AND TRENDS IN MODERN IMMIGRATION LAW, 14 RUTGERS J. LAW & RELIG. 551, 569.

<sup>78</sup> See Commander Sir Archibald Southby, Speech to the House of Commons, November 21, 1938, Hansard Parliamentary Debates, Commons, 5th ser., vol. 341, 1473-1474, <https://api.parliament.uk/historic-hansard/commons/1938/nov/21/racial-religious-and-political-minorities> (last updated September 28, 2018).

Kindertransport policy was born.<sup>79</sup> Yet, decades later, in 2018 the language used to debate the policy of the U.S. immigration policies is reminiscent of the language used to discuss Jewish immigrants seeking asylum.

In the table below, on the left are quotes from the 1938 Kindertransport debate in The British House of Commons and on the right are quotes President Trump made before and after the 2016 Presidential Election.

Parliament 1938	President Trump 2016
<p>“Space can be found in the world to accommodate these people; but, in our desire to help this stream of refugees, we must not lose sight of the fact that there exists in the minds of many of our own people a very real fear lest there should be a tremendous influx into this country of refugees who are unable to maintain themselves and who would have to compete with our own citizens for a livelihood. Our first duty is to our own people.”<sup>80</sup></p>	<p>“When do we beat Mexico at the border? They’re laughing at us, at our stupidity, And now they are beating us economically. They are not our friend, believe me. But they’re killing us economically. The U.S. has become a dumping ground for everybody else’s problems.”<sup>81</sup></p>
Parliament 1938	President Trump 2018

Ultimately, Parliament did not open their borders to all Jewish refugees.<sup>82</sup> The Kindertransport campaign did not extend

<sup>79</sup> *Id.*

<sup>80</sup> Commander Sir Archibald Southby, Speech to the House of Commons, November 21, 1938, Hansard Parliamentary Debates, Commons, 5th ser., vol. 341, 1473-1474, <https://api.parliament.uk/historic-hansard/commons/1938/nov/21/racial-religious-and-political-minorities> (last updated September 28, 2018).

<sup>81</sup> Katie Reilly, *Here Are All the Times Donald Trump Insulted Mexico*, Time Magazine, August 31, 2016 <http://time.com/4473972/donald-trump-mexico-meeting-insult/> (Last updated November 1, 2018).

<sup>82</sup> “[W]ith these Jewish and non-Aryan children, I believe that we could find homes in this country for a very large number without any harm to our own population.” Samuel Hoare, Speech to the House of Commons, November 21, 1938, Hansard Parliamentary Debates, Commons, 5th ser., vol. 341, 1473,

to adult Jews because the children alone did not pose a threat to the British economy.<sup>83</sup> Parliament made a strategic decision to only open their borders to Jewish children.<sup>84</sup> Likewise, British citizens were open to Jewish children, but many chose to hide or disregard the Kinder's religion and race.<sup>85</sup> Finally, once the war began and the borders were closed, some 1,000 older Kinder were interred and 400 were deported.<sup>86</sup> The fact that many of the "enemy aliens" were Jewish refugees and therefore not likely to be sympathetic to the Nazis, "was a complication no one bothered to try and unravel, [the older Kinder] were still treated as German and Austrian nationals."<sup>87</sup>

On the other hand, the above quotes from Trump were taken from his social media feed and a 2018 political rally speech. Once in office, President Trump did not use his rhetoric to persuade Congress. Instead, he worked to transform his campaign rhetoric into law via executive order.<sup>88</sup> By side stepping the political process, President Trump shifted the purpose of his language and changed the rhetorical situation.<sup>89</sup> As a result, his words were intended to rally his political base alone, altering the effect of his language. For example, in 2018, months after implementing the Zero Tolerance Policy President Trump announced his intent to revoke the 14<sup>th</sup> Amendment of the United States Constitution granting the right of birth right citizenship via

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<https://api.parliament.uk/historic-hansard/commons/1938/nov/21/racial-religious-and-political-minorities> (last updated October 10, 2018).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Rising unemployment, anti-Semitism and the concern that German refugees were now regarded as 'enemy aliens' were issues which concerned the Government. *Kindertransport*, THE NATIONAL ARCHIVES, (Jan. 10, 2019, 2:09 PM), <http://www.nationalarchives.gov.uk/education/resources/kindertransport/>.

<sup>86</sup> In 1940, more than 1,000 Kindertransportees over 16, boys and girls, were interred on the Isle of Man and other sites. For more reading: Suhanyiova, Lucia, *Kindertransport, The Bratislava History Project*, <http://www.internationalschoolhistory.net/BHP/history/kindertransport.htm>.

<sup>87</sup> *WW2 The People's War*, BBC, (Jan. 10, 2019, 1:47 PM), <https://www.bbc.co.uk/history/ww2peopleswar/timeline/factfiles/nonflash/a6651858.shtml>.

<sup>88</sup> These included: The Muslim Ban, the expansion of expedited removal under INA § 235(b)(1)(A)(iii)(I), the ICE Enforcement Executive Order. See Hing, *supra* note 75, at 276-277.

<sup>89</sup> For more reading: Lloyd F. Bitzer, *The Rhetorical Situation*, vol. 1, Philosophy and Rhetoric, 1-14 (1968) [http://www.arts.uwaterloo.ca/~raha/309CWeb/Bitzer\(1968\).pdf](http://www.arts.uwaterloo.ca/~raha/309CWeb/Bitzer(1968).pdf)

executive order.<sup>90</sup> This would have revoked the very right his own immigrant relatives exercised. The plan received much attention in the press and drew another comparison to the rhetoric of Nazi Germany:

Adolf Hitler 1920	President Trump 2018
"Only a national comrade can be a citizen. Only someone of German blood, regardless of faith, can be a citizen. Therefore, no Jew can be a citizen." <sup>91</sup>	"We're the only country in the world where a person comes in and has a baby, and the baby is essentially a citizen of the United States, with all of those benefits. It's ridiculous. It's ridiculous. And it has to end." <sup>92</sup>

Although the administration did not pursue this plan, this type of rhetoric had an effect on the public. Six months into President Trump's presidency, the Center for American Progress reported: "Trump's Immigration Policies Are Harming American Children."<sup>93</sup> On top of an increased threat of deportation, immigrants and their children are also becoming targets of heightened racism and discrimination.<sup>94</sup> Teachers have reported cases of children adopting President Trump's rhetoric to bully their peers in school, telling Latino children that they will be deported and saying they should go back to where they came from.<sup>95</sup> Since the election, adults across the country have reported spikes in fear and distress among young children from immigrant families.<sup>96</sup> More recently, the events of October 2018 were carried out by individuals that publicly espoused President Trump's anti-

<sup>90</sup> Gina Martinez, *Trump Wants to Revoke Birthright Citizenship. Here's What to Know About Why That Right Exists*, TIME (Jan. 10, 2019, 2:22 PM) <http://time.com/5439730/birthright-citizenship-trump-history/>.

<sup>91</sup> Hitler's statement on February 20, 1920. *Nazi Party Platform*, United States Holocaust Memorial Museum, (Jan. 10, 2019, 2:24 PM), <https://www.ushmm.org/learn/timeline-of-events/before-1933/nazi-party-platform>

<sup>92</sup> William Cummings and David Jackson, *President Trump says he plans to end birthright citizenship with an executive order*, USA Today, (Jan. 10, 2019, 2:27 PM), <https://www.usatoday.com/story/news/politics/2018/10/30/trump-birthright-citizenship-executive-order/1816666002/>

<sup>93</sup> See Hing supra note 75, at 256.

<sup>94</sup> *Id.* at 291-292.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

immigration rhetoric.<sup>97</sup><sup>98</sup> This has sparked a public debate whether the President's rhetoric has inspired acts of violence.<sup>99</sup> <sup>100</sup>

As discussed above, the Zero Tolerance Policy was implemented as a deterrent, without a reunification plan for the affected families. As a result, the federal agencies carried out the policy without a plan or the space to place the influx of children detainees. To date there are still approximately 350 immigrant children detained by the U.S. government.<sup>101</sup> It is important to note, President Trump's implemented policies align with many immigration policies developed by previous administrations.<sup>102</sup> However, what sets President Trump apart is his language.<sup>103</sup> His disparaging rhetoric created a heightened fear among immigrant communities.<sup>104</sup>

## V. CONCLUSION

Seventy years apart. Two separate policies. One opening borders to children only, in an effort to rescue the children of a persecuted minority. The other separating families at the border, in an effort to deter persecuted minorities from entering the

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<sup>97</sup> In October 2018 Caesar Sayoc arrested for sending several pipe bombs to prominent Democrats <https://www.cnn.com/2018/10/31/politics/pipe-bomb-suspect-doj-letter/index.html> (last updated November 1, 2018).

<sup>98</sup> On Saturday, October 27, 2018 Robert Bowers opened fire in the Tree of Life Synagogue in Pittsburgh, Pennsylvania killing eleven people. <https://www.cnn.com/2018/10/27/us/pittsburgh-synagogue-active-shooter/index.html> (Last updated November 1, 2018).

<sup>99</sup> See Yascha Mounk, *The Nature of Trump's Culpability in the Pittsburgh Synagogue Massacre*, Slate, October 27, 2018, <https://slate.com/news-and-politics/2018/10/pittsburgh-synagogue-shooting-trump-rhetoric-antisemitism-civility.html>;

<sup>100</sup> See Felicia Schwartz, *Israeli Minister Calls It Unfair to Link Trump with Synagogue Shooting*, October 31, 2018, <https://www.wsj.com/articles/israeli-minister-calls-it-unfair-to-link-trump-with-synagogue-shooting-1541015663>

<sup>101</sup> See Hannah Wiley, *Hundreds of migrant kids haven't been reunited with their parents. What's taking so long?* Texas Tribune, October 4, 2018, <https://www.texastribune.org/2018/10/04/zero-tolerance-policy-reunite-separated-immigrant-families/> (stating some 350 children separated from their migrant parents in the summer of 2018 have yet to be reunified, despite a court-ordered July 26 deadline to do it and endless hours of pro bono legal aid).

<sup>102</sup> See Hing *supra* note 75, at 255.

<sup>103</sup> See NAACP Sees Continued Rise in Hate Crimes, *Legacy of Trump's Racism*, (June 29, 2018), <https://www.naacp.org/latest/naacp-sees-continued-rise-hate-crimes-legacy-trumps-racism/> (discussing a study showing a rise in hate crimes from 2016 to 2017) (last updated November 1, 2018).

<sup>104</sup> Pre-election rhetoric undoubtedly contributed to the fear that flooded across the country in immigrant communities. See Hing *supra* note 75, at 255.

United States. On the surface, these policies are polar opposites. However, not only do both of these policies result in separating families, they also share rhetoric that reflects a reoccurring theme of racial stereotypes fueled by national economic fears.