Migrant children might soon be separated from their parents as a matter of course when families enter the United States irregularly, Secretary of Homeland Security John Kelly told CNN in early March. Under the proposal, which another Homeland Security official described as among the options the department is considering to “discourage [others] from even beginning the journey,” separated parents would be detained in jail-like facilities while children would be placed in foster homes or shelters for children. The suggestion has rightly drawn considerable criticism. “The idea that the government would cause harm to children to dissuade other families from crossing the border is cynical in the extreme,” my colleague Clara Long wrote in response.

Holding children in immigration detention is a recurring, if abusive, practice around the world, as Australia, Europe, and the United States each seek ways to respond to recent migration flows.
To be sure, it’s unusual to deliberately separate young children from their mothers, as the US proposal would do. But families are frequently split up, with men held separately from women and children. It’s also common for countries to detain unaccompanied children, sometimes for protracted periods.

As one example, Mexico began to detain unaccompanied children as well as adults in large numbers after 2014, at least partly at the urging of US authorities who sought to “stem the flow” of Central American asylum seekers, in the words of Lev D. Kubiak, the assistant director of international operations for US Immigration and Customs Enforcement in testimony before a House subcommittee in June 2015. Mexican immigration authorities apprehended more than 20,000 unaccompanied children from El Salvador, Guatemala, and Honduras in 2015 and over 17,500 in 2016, detaining the vast majority.

In Europe, Hungary has just adopted a measure allowing its authorities to detain asylum seekers on its territory, including families with children and unaccompanied children age 14 and above. Belgium, which had been something of a regional model after it eliminated immigration detention for families in 2009, announced at the end of 2016 that it planned to resume the practice sometime this year.

In perhaps the most extreme and flagrantly abusive use of immigration detention, Australia has forcibly transferred all asylum seekers who arrive by boat, including unaccompanied children and families with children, to offshore facilities in Nauru and Papua New Guinea. The asylum seekers sent there face the choice of indefinite banishment to those countries, relocation to Cambodia, or return to the countries they fled.

Practices such as these are a particularly inhumane response to humanitarian crises. It’s no mystery why Central American children flee their home countries in large numbers, on their own or with their families. Gang violence has plagued Central America’s Northern Triangle for decades, and children are particularly targeted. It’s not uncommon to hear reports that 13-year-olds, or even younger children, were shot in the head, or had their throats slit, or were tortured and left to die, as Óscar Martínez observed in The Nation.
Many of the arrivals to Europe, including large numbers of unaccompanied children, are coming from wartorn countries such as Afghanistan, Iraq, Syria, and Yemen or from highly repressive states, Eritrea and Ethiopia among them.

Similarly, Australia’s offshore operations on Nauru and Papua New Guinea’s Manus Island house men, women, and children from these and other countries who fled armed conflict or sustained persecution because of their political beliefs, religion, or ethnic origin.

Detention has particularly devastating human consequences, which is why international standards discourage detaining asylum seekers and call on countries to end the immigration detention of children. Nevertheless, politicians and policymakers frequently turn a blind eye to the abuses immigration detention entails. What’s more, they sometimes attempt to justify detention in terms that suggest that it somehow serves the ‘greater good.’ The reality, as I’ve seen, is anything but humane.

The Effects of Immigration Detention on Mental Well-Being

Perhaps nowhere are the adverse effects of immigration detention more evident than in Australia’s offshore operations on Manus Island and Nauru, where refugees and asylum seekers have been warehoused for more than three years. A leaked report by UNHCR, the United Nations refugee agency, found, in fact, that post-traumatic stress disorder and depression “have reached epidemic proportions” among those held in both locations.

I’ve been to the facilities on both islands and many of those I spoke with told me they were seriously considering suicide. More than a dozen adults and some of the children an Amnesty International researcher and I interviewed on Nauru had tried to kill themselves at least once by overdosing on medication, swallowing bleach or razors, hanging or strangling themselves, or setting themselves on fire. “I’m tired of my life,” a 15-year-old girl said, telling me that she had tried to commit suicide twice since she arrived on the island.

Children who were separated from one of their parents suffered particularly dramatic and immediate downturns in their mental state. A woman whose
husband had been transferred to Australia for medical treatment told me that their 9-year-old son began to repeatedly talk about killing himself: “Two weeks ago, my son took the lighter. He said, ‘I want to burn myself. Why should I be alive? I want my daddy. I miss my daddy.’ I look in his eyes and I see sadness.”

The father of another boy reported that his son had begun to have violent mood swings, stopped speaking, and avoided leaving his room after the boy’s mother was transferred to Australia for medical care without advance warning.

These kinds of adverse effects on mental well-being aren’t restricted to places like Nauru and Papua New Guinea. Human Rights Watch documented similar feelings of depression and suicidal feelings among asylum-seeking mothers and children detained for long periods in the United States. In Greece, where unaccompanied children are frequently held in police custody with no access to mental health care, we’ve spoken to children who appeared to be experiencing psychological distress and in some cases had attempted to harm themselves.

Whatever the circumstances, immigration detention causes significant harm to children and adults. Studies by Physicians for Human Rights and the Bellevue/NYU School of Medicine Program for Survivors of Torture, among others, have found that detained asylum seekers suffered high levels of anxiety, depression, and post-traumatic stress disorder and that their mental health worsened with continued detention.

Children, in particular, can experience extreme distress in reaction to even short periods of confinement. Research shows that they may become aggressive, display separation anxiety, have difficulty sleeping, and suffer loss of appetite.

These consequences are lasting: children continue to experience emotional distress for months after leaving detention settings. In light of these outcomes, a 2014 survey of pediatricians by the Medical Journal of Australia found that 80 percent of respondents believed that the mandatory detention of asylum-seeking children amounted to child abuse.

The Impact on Children’s Protection Claims
Detention can also be particularly problematic for those who are in need of refugee protection. As a practical matter, it’s much more difficult for people in detention to get the kind of specialized support they need to present their asylum claims effectively. Moreover, children as well as adults may decide not to pursue claims, even very strong ones, because they don’t want to remain locked up in the meantime.

In the United States, where most people in immigration proceedings do not have court-appointed lawyers (instead, under US immigration law, they have the “privilege of being represented, at no expense to the Government”), a 2015 study published in the University of Pennsylvania Law Review found that only 37 percent of all immigrants (and 55 percent of all child immigrants) were represented in immigration cases. For detained immigrants, adults as well as children, the representation rate fell to 14 percent.

In part, that disparity in the United States is because many immigration detention centers are located in rural areas that are often far from pro bono or private lawyers. For example, the immigration detention center in Artesia, New Mexico, where women and children fleeing violence in Central America were held when they began to arrive in large numbers in 2014, is “far away from public scrutiny and public access,” with “no lawyers to speak of [,] . . . no human rights groups, and no community based organizations,” Stephen Manning wrote in The Artesia Report, published that year.

The US government has opposed efforts to provide representation for unaccompanied children and other groups of particularly vulnerable people in immigration proceedings. In fact, one immigration judge went so far as to claim that even very young children could represent themselves adequately. “I’ve taught immigration law literally to 3-year-olds and 4-year-olds. It takes a lot of time. It takes a lot of patience,” the judge said in a March 2016 deposition reported in The Los Angeles Times, claiming, “They get it. It’s not the most efficient, but it can be done.”

But the difference between having a lawyer and being unrepresented is far from trivial: among detained immigrants, those with lawyers are more than 10 times
more likely than their unrepresented counterparts to win their cases, the 2015 University of Pennsylvania Law Review study found.

Elsewhere in the world, I’ve seen that detention has similar adverse effects on children’s ability to pursue protection claims.

In Mexico, which has also detained large numbers of Central Americans in recent years, UNHCR has estimated that as many as half of all Central American children there have strong cases for asylum—not meaning necessarily that all are refugees, but rather that their cases warrant in-depth review.

In October 2016, President Enrique Peña Nieto announced that Mexico would strengthen its refugee recognition procedures and “develop alternatives to immigration detention for asylum seekers, particularly children.”

These promises were largely unfulfilled by the year’s end. Mexico’s refugee agency, the Mexican Commission for Refugee Assistance (Comisión Mexicana de Ayuda a Refugiados, or COMAR), afforded international protection to just 124 unaccompanied children from El Salvador, Guatemala, and Honduras in 2016. That’s a considerable increase from 2015, when 57 children from these countries received protection, but still less than 1 percent of the total number of unaccompanied children Mexican authorities apprehended in each of these years.

If my interviews are any indication, Mexico’s practice of detaining most asylum seekers is an important factor that helps explain the discrepancy between the large number of unaccompanied children with plausible claims and the very small number who apply for and receive asylum. Edgar V., a 17-year-old Honduran boy, told me that when he was apprehended in Oaxaca, Mexican immigration officials advised him to apply for asylum. But it is far more common for immigration officials to tell unaccompanied children not to bother making an asylum claim, other children reported.

Despite the advice he received, Edgar had decided not to seek asylum. “I was locked up, and they said it would be a long time before I heard. I couldn’t handle that,” he said. “At least two months, up to six months for the response. When they
told me it would be six months before I heard back, I said no, I don’t want that.” Instead, he accepted being returned to Honduras.

I heard from other unaccompanied children, as well as families, who made similar decisions to forego asylum claims even when they thought they would face serious risks on return. “I don’t want to return, but because of the time locked up here, I told myself it’s better to return,” another 17-year-old boy told me, after describing a series of death threats that had led him to flee. I asked him how he would stay safe. “I won’t leave the house unless I have to,” he said. “There are criminals on every corner. They walk around armed as if they were the police appointed by law.”

To be sure, a large number of unaccompanied children would probably prefer to travel through Mexico to the United States rather than staying in Mexico. But it’s also the case that other countries in the region—Costa Rica, Panama, even Belize—are seeing increasing numbers of asylum applications from children and adults, just as Mexico is. Put another way, children and adults fleeing persecution and violence will seek safety in countries throughout the region if they are aware of their right to do so, aren’t locked up, and receive appropriate assistance to go through the process.

Using Detention to Deter Others

As US Homeland Security officials did with their family separation proposal, lawmakers and policymakers often try to justify immigration detention as a deterrent to future irregular arrivals. Australian lawmakers, for example, have repeatedly stated that mandatory detention and offshore processing of maritime arrivals are necessary to “stop the boats.”

These kinds of explanations fail to hold up in several respects.

For one, a policy of deterrence means that the state is imposing a hardship on some people to change the behavior of others. But “there is something contradictory at the heart of any policy calling for the detention of asylum-seekers, since it means that people seeking refuge from persecution are
welcomed first by being locked up,” as Michael Kagan, a University of Nevada, Las Vegas law professor, wrote in a 2016 Texas International Law Journal article.

For another, these policies don’t serve their stated purpose. Refugees and asylum seekers are primarily motivated by finding a place of safety and may be completely unaware of detention policies in destination countries, researchers have found. Similarly, migrants who aren’t fleeing persecution probably choose their destinations on the basis of factors such as family or community ties and perceived educational and economic opportunities. Alice Edwards, a senior UNHCR official, observed in a 2011 article for the Equal Rights Review, “There is no empirical evidence that the prospect of being detained deters irregular migration.” Similarly, the International Detention Coalition concluded in an April 2015 report that detention is largely ineffective at reducing irregular migration.

Moreover, international standards call for limits on the use of immigration detention. UNHCR’s Detention Guidelines call for immigration detention to be used sparingly, and only after a detailed, individual assessment; even then, they maintain that detention must be reasonable in the specific circumstances and proportionate to a legitimate public order, public health, or national security purpose. These guidelines explicitly note that mandatory or automatic detention is arbitrary, and therefore impermissible.

For children, the standard is clearer, stronger and even stricter: the UN Committee on the Rights of the Child, which oversees compliance with the global treaty on children’s rights, says that countries should “expeditiously and completely cease the detention of children on the basis of their immigration status.”

In short, as UNHCR noted in a 2014 report, “Beyond Detention,” “[n]ot only does detention not work as a deterrent, it is not a legitimate purpose for detention under international law.”

In truth, immigration detention often serves a purpose that’s largely symbolic. As the sociologists Arjen Leerkes and Dennis Broeders have observed, countries use immigration detention as a signal that they are acting to control their borders. Australia’s offshore processing system, which holds 2,000 people on remote
islands as an example to others, provides a clear illustration of this function of immigration detention. As a refugee on Manus put it, “The cost of Australia’s border protection policies is a human sacrifice—us. They need us here as a symbol to stop the boats.”

Rebranding Detention and Other Restrictions as Protection

Perhaps the most pernicious claim I hear from government officials is that detention, with its purported but unproven deterrent effect, has a protective function. Australian officials have perfected this tactic, spinning the sustained abuse of their offshore operations as a lifesaving measure by claiming that offshore operations are necessary to deter smuggling by boat and thus save lives at sea. Some European lawmakers are adopting this rhetoric and also claiming, largely without evidence, that immigration detention prevents trafficking.

Countries deploy other strategies in combination with detention. Australia, the European Union, and the United States are each taking steps to prevent asylum seekers and migrants from reaching their territories, as Bill Frelick, Ian Kysel, and Jennifer Podkul discuss in a 2016 article in the Journal of Migration and Human Security on the “externalization” of migration control.

In Australia, methods include the interdiction of boats on the high seas and pushbacks of boats to Indonesian waters. A 2015 Indonesian police investigation also found that Australian authorities paid smugglers to turn boats around. Asked to respond, then-Prime Minister Tony Abbott refused to admit or deny the reports of collusion with smugglers, saying only that the Australian government had stopped the boats “by hook or by crook.”

The United States has also employed high seas interdictions and shipboard screenings. And both the European Union and the United States have pursued intensive efforts to support and encourage third countries to “contain” asylum seekers and migrants.

In the case of the United States, that’s meant pushing Mexico to apprehend, detain, and deport Central Americans in large numbers.
The European Union has negotiated an arrangement that commits Turkey to accept the return of all asylum seekers who travelled through Turkey in exchange for billions of euros in aid, visa liberalization for Turkish citizens, and revived negotiations for Turkish accession to the European Union. In principle, the €3 billion funding is designated for projects to improve the lives of refugees as well as of host communities in Turkey. The deal also provides for the resettlement of one other Syrian refugee from Turkey for each Syrian returned to Turkey.

Under the deal, Greece and other EU countries regard Turkey as a safe country even though Syrians often face significant hurdles in registering for temporary protection and asylum seekers of other nationalities, including Afghans and Iraqis, are ineligible to even apply. Turkey has accepted obligations under UN Convention Relating to the Status of Refugees, but only for refugees from Europe. As Human Rights Watch and other groups have found, many Syrians, as well as Afghans, Iraqis, and others seeking international protection in Turkey cannot lawfully work, access health care, or enroll their children in school, meaning that their presence in Turkey is precarious.

In addition, individual EU member states are known to have turned asylum seekers away at their borders with other non-EU states. Hungary’s violent pushbacks of asylum seekers to the Serbian border are well-known. Poland, which receives large numbers of asylum seekers from Chechnya as well as from Tajikistan and Georgia, routinely denies them the right to seek asylum at its border with Belarus and instead summarily returns them there, Human Rights Watch found in a March report.

Characterizing such tactics as protective is both contrary to the facts and shamelessly manipulative. It’s simply not credible to claim that immigration detention and efforts to contain migrants in third countries protect people from serious harm.

The Way Forward

Authorities should know by now that immigration detention has serious adverse consequences for mental well-being, particularly for families and unaccompanied children. It’s also the case that detention can lead
unaccompanied children, as well as adults, to abandon well-founded asylum claims and accept return to possible harm. And closing off safe and legal routes for refugees makes it more likely, rather than less, that people will turn to smugglers in their search for safe destinations.

It doesn’t have to be this way. For many adults, probation-style periodic reporting to the authorities, or being asked for a financial deposit, and other alternatives are proven means of avoiding the negative consequences of detention while providing reasonable guarantees of appearance in immigration proceedings, the International Detention Coalition has found.

When it comes to children, countries should eliminate the use of immigration detention. Some countries have already agreed in recent years to end or sharply reduce the detention of migrant children: Japan, Panama, Taiwan, and Turkey now prohibit the detention of migrant children, and half a dozen other countries have placed limits on immigration detention of children.

But more countries, Australia and the United States among them, need to recognize that locking children up as a means of migration control is unnecessary, abusive, and counterproductive.