

The Ethical and Public Health Implications of Family Separation

Mia Stange and Brett Stark

I. Background

Families fleeing violence and migrating to the United States are experiencing unprecedented threats to health, family unity, and well-being. In the past year alone, over 100,000 adults and children were apprehended between points of entry by Customs and Border Protection while attempting to enter the United States.¹ The number of individuals traveling as family units in Fiscal Year 2017 was five times that of Fiscal Year 2013.² Of those family units, 95 percent migrated from the Central American countries of Guatemala, El Salvador, and Honduras, all currently besieged by historic levels of gang-related violence and endemic political corruption.³ A recent study conducted by the United Nations High Commissioner for Refugees found that more than 80 percent of a sample of Central American women apprehended at the border passed a “credible fear screening,” indicating *prima facie* eligibility for asylum protections, and that almost all of them had experienced sexual or physical abuse, threats of violence to themselves or their family, or extortion as a catalyst for their migration.⁴

Mia Stange, M.P.H., oversees programmatic operations and partnerships for Terra Firma, a Medical-Legal Partnership for unaccompanied immigrant children. She holds a B.A. in Public Health from Brown University and a M.P.H. from Johns Hopkins University. **Brett Stark, Esq.**, is Legal Director and co-founder of Terra Firma at Catholic Charities New York, where he represents unaccompanied immigrant children in federal and state litigation, specializing in asylum and Special Immigrant Juvenile cases. A former Equal Justice Works fellow, Brett has worked in refugee resettlement in Kenya, on human rights in Israel, and was a 2008 Fulbright Scholar in Taiwan. Brett is a graduate of Harvard Law School and the University of Rochester, and is admitted to the New York Bar and the Eastern and Southern Districts of New York.

In April of 2018, the Trump Administration announced a Zero Tolerance policy, in which all adults who entered the U.S. unlawfully would be criminally prosecuted in an effort to deter migration.⁵ Whether even more family units would have entered the U.S. if not for the Zero Tolerance policy is unknown. What is well-established, however, is that the enforcement of the policy resulted in the separation of more than 2,000 parents from their children in the first two months; many of the separated children were under the age of five.⁶ In January 2019, the Inspector General (IG) of the U.S. Department of Health and Human Services found that even this number had been undercounted, resulting in a new total of 2,737 separated children.⁷ As recently as December 2018, the IG also received new information that children were still being separated.⁸

Under the Zero Tolerance policy, an adult who is apprehended outside a designated port of entry is detained by Immigration and Customs Enforcement (ICE) and later charged with illegal entry.⁹ If the adult traveled with a minor, the child is separated from his or her parent and re-classified as an Unaccompanied Minor, and placed into the care of the Office of Refugee Resettlement (ORR).¹⁰ Both the child and the adult are placed in deportation proceedings, and if the adult is returned to his or her country of origin, the child may stay behind and pursue a separate asylum claim or seek other relief from deportation.¹¹ As a historic percentage of immigrant families seek refuge in America, a public health lens is needed to fully understand the public health implications of family separation and its potential legal consequences.

II. Family Separation Represents a Substantial Harm to Public Health

The separation of families that has resulted from the enforcement of the Zero Tolerance policy is a significant public health problem. Multiple studies document the trauma of forcible family separation: research on Latina mothers who had been separated from their children found that they reported clinically-significant symptoms of depression, anxiety, and stress.¹² Similarly, children separated from their caregivers were noted to exhibit heightened rates of anxious behavior, distress, and symptoms of post-traumatic stress disorder.¹³ Both the American Academy of Pediatrics and the American Medical Association have

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adopted policies opposing family separation based on a body of scientific literature "replete with evidence of the irreparable harm and trauma to children caused by separation from their parents."¹⁴

Pediatricians and advocacy groups have documented sub-standard conditions in adult and children's immigration detention facilities operated by the United States.¹⁵ Specifically, facilities have been found to have inadequate food and water provision, limited access to medical care, and minimal basic comfort levels.¹⁶ Crowded conditions can escalate the risk of communicable diseases such as tuberculosis, varicella, and measles.¹⁷ Delayed medical care, particularly for those with chronic health conditions, can be life-threatening: A 2018 report released by Human Rights Watch found that eight of the 15 deaths reported in immigration detention centers from December 2015 to April 2017 were attributed to substandard medical care.¹⁸ The highly-publicized deaths of two children in federal immigration custody in December 2018, attributed to delayed medical care, indicate an ongoing problem.¹⁹

The combination of the mental health effects of family separation and the potential health effects of inferior detention conditions creates a critical issue

of relevance to the 20,000 families with children that were projected to cross in 2018 alone.²⁰ The risks of the traumatic experience of parent-child separation, particularly for children under five, can lead to life-long impacts to their health and well-being.²¹ Exposure to Adverse Childhood Experiences early in life has been linked with a number of physical, developmental, and psychological consequences, including reduced longevity.²² A nurturing parent or caregiver relationship has been found to buffer the toxic effects of exposure to adverse experiences and stress, while forcible separation from this relationship can exacerbate the risks of harmful sequelae.²³ Researchers have observed that children in detention facilities may demonstrate symptoms of trauma including non-age appropriate bedwetting, social withdrawal, and language delay.²⁴ Furthermore, the toxic stress of separation may influence mental health indicators and family functioning even after reunification or release from detention.

III. Family Separation Compromises Parents' Fundamental Legal Rights to Provide Informed Consent

It is a well-established principle that before treating a patient, a physician or other healthcare provider must obtain the consent of the patient.²⁵ American

law presumptively assigns parents the right to consent on behalf of their children.²⁶ The right to consent includes the right to refuse or discontinue treatments, even those that may be life-sustaining.²⁷ Courts have specifically recognized the "natural rights" of parents to make medical decisions for their children.²⁸ Every U.S. state, however, provides for termination of parental rights by a court.²⁹ In these cases, a "best interest" standard has become the judicial and ethical touchstone for courts, physicians, and parents.³⁰

Zero Tolerance is an affront to principles of consent, parental rights, and best interests. A parent detained by ICE cannot practically participate or consent to treatment for a son or daughter detained by ORR. Unlike termination of parental right cases, the child's best interests are not considered by any court (to the contrary, family separation is "decried by child-welfare experts"³¹). The loss of fundamental parental rights is thus effectuated without legal recourse or judicial review. The government's authority in the health arena arises primarily from its constitutionally sanctioned "police power" to protect health, welfare, and safety.³² Since family separation is demonstrably harmful to public health, and potentially unjustifiable

to ensure health, welfare, and safety, Zero Tolerance is ultimately both misguided as a policy matter and constitutionally suspect. A federal judge in the Southern District of California said that family separation is “brutal, offensive, and fails to comport with traditional notions of fair play and decency...[it] ‘shocks the conscience’ and violates [the] constitutional right to family integrity.”³³

IV. Conclusion

When immigrant parents are forcibly separated from their children pursuant to a policy of family separation, the manifold harms are not only medical and psychological, but legal and ethical. Family separation adversely affects the health of immigrant families in addition to posing potential ethical ramifications that remain to be fully ascertained. Studies conducted by the United Nations High Commissioner for Refugees, among others, overwhelmingly suggest that the unstable social, political, and economic factors in Guatemala, El Salvador, and Honduras causing families to flee show no signs of abating.³⁴ Given that the number of families fleeing violence continues to comprise an increasingly large portion of arriving immigrants, policymakers and systems that interact with newly-arrived immigrant families must be informed by and responsive to the public health and legal frameworks that govern both our ethical responsibilities and moral obligations.

Note

The authors have nothing to disclose.

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