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Perspective

The Trauma of the Family Separation Policy on Migrant Children (2017–2022)

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Abstract: This work explores the plight of child migrants in the United States, specifically examining the Trump administration's use of family separation as a means of migration deterrence between 2017 and 2020. The perspective discusses the ongoing physical and psychological trauma that these separated families continue to face. I explore the Biden administration's Interagency Task Force on Family Reunification that is working to identify and reunify those families still separated while providing them with immigration and other resources and mental health therapy. I conclude by noting the critical importance of ensuring that families are never again separated in the name of immigration enforcement.

Keywords: children rights; migration; immigration law; family law

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1. Introduction

This paper discusses the plight of child migrants to the United States during the presidential administration of Donald Trump. This exploration is significant as this time solidified the role of the U.S. government in oppressing immigrant children and families, specifically children from Central America (Honduras, Guatemala, El Salvador, and Mexico). While the processes of detaining children and families in immigration detention was well established prior to Trump's time in office, his administration employed tactical, inhumane efforts to devastate the lives of children and their families. This paper highlights the important events that led to the Family Separation Policy before elaborating on the state of the separated children and families after Joe Biden won the 2020 presidential election. The paper concludes by examining the probable long-term effects on the child migrants and reflects on how the U.S. government should work to ameliorate these harms.

2. The United States Government Intentionally Separated Migrant Children from Their Parents

Between July 2017 and January 2021, the United States Government reported that it took approximately 3913 migrant children away from their parents in the name of immigration deterrence. (Department of Homeland Security n.d.a, 6 June 2021). The Trump Administration Family Separation Policy began in 2017 and operated with a vengeance until Trump ordered its end on 20 June 2018. The Family Separation Policy was a parallel policy to the Zero Tolerance Prosecution Policy, which sought to criminally prosecute adult migrants who entered the United States seemingly without authorization—though many intended to seek asylum protection and thus were implementing the correct legal channels at their entry. Therefore, when government officials apprehended adults who were traveling with children, the adults were placed in immigration and/or criminal proceedings while their children were taken away from them to be housed in government-sponsored detention facilities. At the time, United States Attorney General Jeff Sessions boasted about the Zero Tolerance Prosecution Policy as a way to punish entrants and deter future migration (Olivares 2020, p. 290, *The Rise of Zero Tolerance*). In April 2018, Sessions stated that anyone "illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers

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of the Department of Justice" (Department of Justice n.d.b 2018). Sessions added that parents who were "smuggling a child" will be prosecuted and "that child will be separated from you as required by law" (Department of Justice n.d.a. Press Release 2018). Importantly, Sessions intentionally used language of criminality to describe the *legal* act of a parent migrating with their children in an effort to further politicize and even justify the practice of taking children away from their fit and caring parents. Despite what Sessions proclaimed, no law requires the forcible separation of children from fit parents. To be sure, the Family Separation Policy intentionally broke up migrant families to punish them and in the hopes that future migrants would be discouraged from making the same decision to travel to the United States. White House Chief of Staff John Kelley was just one of the Trump administration officials who proclaimed that the administration instituted family separation in a cruel aim at deterrence of future migration, stating, "the laws are the laws. But a big name of the game is deterrence. [Family separation] could be a tough deterrent—would be a tough deterrent. A much faster turnaround on asylum seekers" (National Public Radio n.d.). Yet, as desperate people continued to migrate to the United States in high numbers, this deterrence method proved to be a poorly conceived, inane plan. Operating with seemingly no long-term strategy and with (at best) haphazard documentation efforts, the Trump administration took children from infancy to seventeen years old away from otherwise fit parents, placing many of them in harmful and dangerous detention conditions.

Two weeks after taking office in 2021, President Biden ordered the creation of the Interagency Task Force on the Reunification of Families (the "Task Force"). The Task Force was created to swiftly reunify families who were separated by the U.S. Government as part of the Family Separation Policy and to regularly report to the President regarding the ongoing efforts. In their February 2022 Interim Report, the Task Force identified that there are 3842 children within the scope of Biden's Executive Order. (Department of Homeland Security n.d.c, February 2022). Importantly, however, due to the careless ineptitude of officials who carried out the family separation process, the total number of affected families and children may never be known. In one of their initial reports, for example, the Task Force reported that the U.S. government took between 3855 and 5636 migrant children from their adult caregivers (Department of Homeland Security n.d.b. 3 (21 August 2021)).

The Task Force is working with nonprofit organizations in the United States and on the ground in the families' home countries to find and reunify the children with their families. The Task Force must also recommend how to ensure that such a practice of family separation does not reoccur. To this last point, the Department of Homeland Security (DHS) on behalf of the Task Force published a request for public comments in the Federal Register in December 2021. Although this Task Force creation and work is laudable, as of February 2022 and more than one year into the Biden presidency, there were 1228 children who had not been reunified with their parents, either because they have not been contacted/located (266 children) or because they have been contacted but have not yet begun a reunification process (962 children) (Department of Homeland Security n.d.c. 6 (24 February 2022)). More information and current statistics from the Task Force are provided below.

Though much work remains to be done, the Task Force creation is itself an important step in the ongoing reunification and remedial efforts. In fact, the Task Force was created in part due to the negotiations in a groundbreaking case filed by families who were forcibly separated as part of the Family Separation Policy. This case, *Ms. L v. U.S. Immigration Customs and Enforcement*, paved the way for the eventual collaboration between immigration advocates and the U.S. government. I discussed the history of the *Ms. L* case in a previous article:

> In February 2018, the [American Civil Liberties Union] ACLU sued [Immigration Customs and Enforcement] ICE on behalf of Ms. L, a woman from the Democratic Republic of Congo (DRC), who entered the United States through the port of entry at San Diego, California on 1 November 2017, with her six-year-old daughter, S.S. Ms. L appeared before [Customs and Border Patrol] CBP and asserted her and her daughter's claim for asylum, stating that she had a fear of returning to her country.

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> Even though she presented credibly, CBP detained mother and child together in the San Diego, California area. But just four days later, officials took S.S. away from Ms. L and sent the child to Chicago, Illinois, leaving Ms. L imprisoned in California. Ms. L recounts that as officials forcibly took her child from her, S.S. screamed frantically to remain with her mother. For four months, until the ACLU filed the lawsuit in California federal court, Ms. L only was allowed to speak to S.S. six times via phone, without a video connection. About a month after the ACLU filed the complaint, ICE released Ms. L., and she traveled to Chicago to reunite with her daughter. (Olivares 2022, p. 520, *Family Detention and Family Separation*)

The lawsuit on behalf of a class of similarly situated families asserted a range of constitutional violations stemming from the fundamental right of parents in the parent–child relationship and in family ordering and protections. Although the defendant, DHS, asserted that it properly acted under its broad powers in separating migrant families, the federal district court denied the DHS motion to dismiss, stating that parent plaintiffs' claim could proceed because "separation from their children while they are contesting their removal and without a determination they are unfit or present a danger to their children violates due process." (Ms. L. v. U.S. Immigration and Customs Enforcement 2018, at p. 1167). The court further determined that the Family Separation Policy "shocks the conscience" and violates plaintiffs' constitutional right to family integrity. (Ms. L. v. U.S. Immigration and Customs Enforcement 2018, at p. 1159).

The case of *Ms. L* was a watershed moment in the fight against the Family Separation policy. While the case wound through litigation through the Trump presidency, when Biden became president, the case shifted from adversarial litigation to a combined effort between plaintiffs' advocates and DHS. Less than one month after assuming the office of the presidency, President Biden signed an executive order establishing the Task Force. The Task Force's charge is multifaceted and focuses on (1) locating separated families; (2) reuniting parents and children; (3) providing a mechanism for families to temporarily remain in the United States while accessing social and therapeutic services; (4) providing detailed reporting to the Biden administration regarding its processes; and (5) recommending structures to ensure that the federal government will not repeat the family separation policies. (The White House 2021). The Task Force also negotiates with class counsel in the *Ms. L* confidential settlement negotiations.

In its report published on 31 May 2022, the Task Force reported that it received 269 new registrations from separated families and that, as of 17 May 2022, 260 parents or legal guardians have been reunified with their children. Since its inception until that reporting date, the Task Force has identified 3843 children that fall within the scope of Biden's Executive Order, and of that 65% (2521) have been reunified, 9% (331) are in the process of reunification, 21% (808) have contact information available but have not had their reunification confirmed, and 5% (185) have no contact information available and their reunification status is unknown. In total, 1324 children remain awaiting reunification (Department of Homeland Security n.d.d. 2 (31 May 2022)).

The Task Force and the Biden administration have embraced a two-pronged approach to accomplish the goals of reunification. First, they are encouraging parents located in the United States to register on the Task Force website, Together.gov/Juntos.gov. Second, for parents located outside of the United States, the Task Force partners and advocates refer them to the International Organization for Migration (IOM) to receive assistance in obtaining reunification support services. Additionally, The Task Force initiated an educational campaign to reach parents who remain separated from their children to encourage them to come forward and request reunification support. The goals of the outreach program are to make parents aware of their rights and to connect them with organizations that provide reunification resources and support. The Task Force is also actively working to counter misinformation and fraudulent schemes that exploit separated parents and children by broadcasting Spanish-language radio and video ads (Department of Homeland Security n.d.d. 5–6 (31 May 2022)).

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Finally, the Task Force collaborates with DHS to allow certain, vetted reunified families to return to the United States under a grant of Parole in Place (for those parents who were deported or voluntarily departed) and receive services and resources, including employment authorization. A *Ms. L.* court order gave the Substance Abuse and Mental Health Services Administration (SAMHSA), which is under Department of Health and Human Services (HHS), the authority to provide behavioral health services to class members, including clinical treatment services, case management, psychoeducation, and parenting support (Department of Homeland Security n.d.d. 1–2 (31 May 2022)).

This last point is especially essential to the thousands of children traumatized by the government forcibly and inhumanely taking them from their parents. The next section discusses the devastation wrought on migrant children and the intense help and services that they will continue to need.

3. Looking Ahead to the Care and Protection of the Migrant Children Shattered by the Family Separation Policy

As noted above, the Task Force is undertaking a critical component of the reunification efforts. Working with the HHS SAMHSA, the Task Force is researching and proposing recommendations to assist reunited families with ongoing and essential mental and behavioral health services. In an earlier article regarding the U.S. Government's forced detention of migrant families and children and the Family Separation Policy, I noted medical professionals' outcry about these practices. The American Academy of Pediatrics (AAP) publicly noted that separation from parents and placement of children in detention —even short periods of detention—causes emotional and physical trauma to children, which can affect their long-term health and wellness:

> Dr. Colleen Kraft, the [former] President of AAP wrote in an editorial:
>
> > Studies overwhelmingly demonstrate the irreparable harm caused by breaking up families. Prolonged exposure to highly stressful situations—known as toxic stress-can disrupt a child's brain architecture and affect his or her short- and long-term health. A parent or known caregiver's role is to mitigate these dangers. When robbed of that buffer, children are susceptible to learning deficits and chronic conditions such as depression, post-traumatic stress disorder[,] and even heart disease. The government's practice of separating children from their parents at the border counteracts every science-based recommendation I have ever made to families who seek to build, and not harm their children's intellectual and emotional development. (Olivares 2020 at n.240)

Scholars and advocates have documented the significant trauma that children have suffered from being detained and separated from their families. Todres and Fink report that from the beginning of the Trump Family Separation Policy to May 2019, six children died in U.S. custody, some of them from the common influenza virus (Todres and Fink 2020, at p. 387). Their reporting goes on to note the horrific conditions children endured in their initial days after DHS apprehension and separation from their parents, including no access to medical care, lack of basic hygienic needs and sanitation, inadequate water, food and shelter (including no beds or cots to sleep and holding cells that were kept at freezing temperatures with bright lights shining all day and night), lack of privacy, no or very little means to communicate with parents, and language isolation (meaning no access to anyone able to communicate with them in their native indigenous language). Children have reported physical and sexual abuse by the adult guards while in detention facilities. (Todres and Fink 2020, at pp. 392–95) and by other children in their hastily arranged custodial care placements after the forcible separation from their parent(s) (Burke et al. 2019). Moreover, medical and psychological experts confirm that these detrimental effects on children can persist in the long term, requiring continued and intense care (American Academy of Pediatrics 2019). The infliction of trauma on children of all ages has been shown to result in long-term maladaptations in the brain and body. Even a short period of separation of children from their parents, who are their source of protection and comfort, can result in life-altering trauma (Teicher 2018). Teicher writes that

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studies about the "neuropsychiatric consequences" and the "epigenetics, inflammation and allostatic load" effects of traumatic stress show the long-term effects on "the developing brain, mind and body" (Teicher 2018). Teicher concludes that "[w]e must consider effects on the developing brain, mind and body to appreciate the long-term consequences of policies that force separation and detention of children."

Indeed, in a 2021 report for the medical journal *Pediatrics*, the pediatrician authors outline how, based on the investigative data and information from children suffering from the family separation policy, the U.S. Government's treatment of these children amounts to torture under international protocols. (Oberg et al. 2020, at p. 2). The report recounts the three criteria for torture established by the international protocols:

> "(1) severe pain and suffering" by the "intentional infliction of severe physical and/or psychological pain or suffering"
>
> (2) "Purposeful: the physical or psychological trauma is intentional and serves a specific purpose, such as coercion, intimidation, punishment and/or as a deterrence" and
>
> "(3) State consent: The trauma happens with the consent and/or acquiescence of State authorities." (Oberg et al. 2020, at pp. 1–2)

Through their investigation, research, and experience, the authors then demonstrate how the U.S. Government's treatment of migrant children in the Family Separation policy satisfies each of the three criteria. Thus, the authors conclude that the treatment is torture because "targeted physical and psychological abuse is inflicted on children. Their suffering can be painful and severe, especially given their stage of development and vulnerability. It is a purposeful US strategy to use children to reduce border crossings by their parents" (Oberg et al. 2020, at p. 2).

Rogerson recounts one case litigated in federal district court in Connecticut concerning the plight of parents whose children were forcibly separated from them at the U.S.-Mexico border and then relocated to and detained in Connecticut while parents remained detained at the Texas border. Rogerson writes:

> Petitioners [the families] submitted the expert testimony regarding the specific psychological harm suffered by them as a result of the separation. In addition to the harm caused by the separation itself, the complaint revealed that one of the subject children was kept in a cage with other young children for four days at the Port Isabel Service Detention Center before being transferred. Expert testimony submitted in the case concluded that, "there likely will be both short-term and long-term physical and mental health consequences for the children" including higher risk for "mental health consequences, including higher rates of depression, anxiety, symptoms of PTSD, substance abuse disorders" and "a higher risk of physical conditions, such as cardiovascular disease, diabetes, and even cancer. (Rogerson 2021, at pp. 609–10)

In this sense, then, the Task Force and advocates' movements towards trauma response are critically needed. As a relatively new endeavor, the grant-sponsored work of the SAMHSA with the reunified families will likely soon provide comprehensive reporting as to the status, outcomes, and ongoing challenges of the work. A California nonprofit organization, Seneca Family of Agencies, organizes the DHS SAHM federal grants to provide services to separated and reunified families (Aguilera 2020). Garcia and Aguilera report stories from families receiving treatment under the Task Force collaborative grant. Edgar, for example, is a father from Guatemala who was separated from his seven-year-old son when they were undergoing immigration processing after their apprehension in the United States (Garcia 2021). Father and son were forcibly separated for 35 days, and when they were finally reunited, the young child was markedly different than before: "The once cheerful child would say little except for yes or no. He would have crying outbursts. He was afraid to shower or sleep alone. He feared going to school and being separated from his parents again" (Garcia 2021). Through the grant-sponsored therapeutic program, the child began to receive therapy services through Hope Health Systems in Baltimore, Maryland.

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Parents, too, qualify for services as they experience the trauma of separation. One Hope Health counselor discusses how some affected parents feel: "'That is a desperate feeling, that is a feeling of guilt, because 'I wanted to protect my child and now I am powerless.' . . . 'The fear related, the guilt related, the sadness related to that separation turns into a post-traumatic stress disorder and to the more severe cases of suicidal ideation and suicide attempts'" (Garcia 2021, quoting counselor Oscar Mejia).

While the Task Force places important and significant focus on the reunification of families and the provision of resources and services, there is not yet a plan to ensure that the atrocities of family separation will not occur again. DHS sought public comment in late 2021 regarding this Task Force goal, and advocates responded with recommendations. We now wait for this comprehensive plan to finally end the practice.

4. Conclusions: Preventing Harm to Migrant Children by Stopping the Practice of Family Separation

I began to study and write about the travesty that is immigration detention in 2014. As I have written, the U.S. government has detained immigrant families and children for decades—when not considering, for example, the enslavement of kidnapped families and children, the slaughter and forced relocation of Indigenous people and the internment of Japanese and Japanese Americans—practices that are centuries old (Olivares 2022). Detaining families and children is inhumane and destructive yet continues in American immigration law. Separating parents from their children through the Family Separation Policy brought forth new, heightened trauma, which will require therapeutic interventions and other resources for years in the future. Scholars and practitioner experts have set forth numerous ideas and paths to end family separation practices and ways in which its victims should and can be compensated.

At the root of the problem, too, are the persistent deficiencies in societal and legal protections of children. Although the "best interests of the child" standard is the preeminent global standard by which to uphold child protection laws and policies, U.S. immigration law does not prioritize the best interests of immigrant children, and the practice of family separation and detention is the antithesis of what is in children's best interests. As the Young Center for Children Immigrants' Rights wrote in its recommendations to the DHS Task Force:

> By refusing to adopt a best interests of the child standard and acting in contravention to broadly accepted, evidenced-based practices which prioritize family unity barring imminent danger to the child, the federal government actively harms children. It runs a child welfare system which is parallel to those of the states, but which prioritizes immigration enforcement over children's best interests. (Young Center 2022)

There is no way to operate an immigration system that allows children to be detained and separated from their parents while claiming to be a country based in principles of humanity and safety and the prioritization of children's wellbeing. The Task Force will conclude its work and must put forth recommendations on how to ensure that family separations never again occur in the name of immigration enforcement. The psychological and physical wellbeing of migrant children depend on it.

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