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Children as Pawns of US Immigration Policy

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Children as Pawns of US Immigration Policy

The highly publicized imposition and retraction of the “family separation” border policy by the current U.S. Administration was not an anomaly in U.S. history. In this manuscript, we place these troubling recent events in the context of decades of U.S. immigration policies and politics. We then describe the consequences of family separation and other current immigration policies on child health. We end with a call to action: Pediatricians and other advocates for child health should demand a new direction in immigration policy that stops the use of children as pawns. Instead, the United States should adopt as a fundamental guiding principle support for children and families, both abroad and at home.

The Road to Family Separation

Migration to the U.S. was largely unrestricted until 1875,¹ when the Page Act closed the border to Chinese women. From that time forward, migrants have been used as easy scapegoats in times of political unrest and economic uncertainty.^{2,3} Uneasiness over the demographic shifts that accompanied the country’s continued expansion would sometimes yield to the economic reality that migrant labor was invaluable, however. These tensions have been most sharply defined over immigration from Mexico and Central America.

During the Great Depression, in response to an unwarranted perception that migrants were depleting the job supply, “voluntary repatriations” of Mexican-Americans - 60% of whom were U.S. citizens - were effectuated by threat of deportation rather than legal removal proceedings.⁴ Just a decade later, fearing a shortage of agricultural labor in the wake of World War II, the U.S. entered into a bilateral agreement with Mexico that led to the creation of the Bracero program.^{1,5} The government-subsidized Bracero program provided U.S. growers with cheap Mexican contract labor.⁶ The program was restricted to male workers in order to discourage permanent settlement.⁵ Increased undocumented migration was an unintended consequence, however. By the late 1940s, Mexico began to experience its own agricultural labor shortage and anti-immigrant sentiment in the U.S. was growing. In response, the Mexican government worked to contain

emigration while the U.S. government increased its surveillance and deportation efforts along the Mexico-U.S. border.^{7,8} In 1954, the multi-year US deportation campaign was officially named “Operation Wetback.”^{7,8}

Though none of these policies explicitly targeted children or families, the movement of millions of people across the Mexico-U.S. border was inevitably consequential to the lives and well-being of migrant families. Faced with possibility of having their children “returned” to a country they had never known, some parents contending with the government’s deportation efforts in the 1930s opted to hide their children. Many of these children would never see their parents again.⁴ The poor working conditions of Mexican Bracero program contract workers contributed to the failure of these men to return to Mexico and reunite with their families.⁵ Women left behind in Mexico were forced to pursue undocumented migration while their children became child laborers.⁵ Some children lost both parents.⁵ The mass deportations of the late 1940s and early 1950s tragically separated families⁹ and marked the beginning of a militarization of the US southern border, presaging policies that have ruptured family relationships in the name of immigration enforcement.

Over the next 40 years, the U.S. government continued to pursue aggressive border control policies. President Nixon’s short-lived “Operation Intercept” was promoted as a campaign to stop the movement of illegal drugs into the country, but it created an unprecedented search-and-seizure policy along the Mexico-U.S. border that would guide future U.S. immigration policy.^{10,11} Policies began to directly target children and families. In the early 1990s, the innocuously named “Border Youth Project” involved rounding up homeless Mexican children as young as 8 or 9 who had crossed the border into California and deporting them back to Mexico.^{12,13} While the goal of the project was ostensibly to reunite the children with their families, once released from detention they generally became untraceable and their ultimate fates unknown.¹³

During the Clinton administration, U.S. immigration policy converged with the government’s increasingly neoliberal agenda in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Congress's stated goal was to promote immigrant self-sufficiency and eliminate public assistance as an incentive for immigration.¹⁴ The act did not explicitly separate families. By decreasing access to federal housing benefits, health insurance, food assistance, and other benefits, however, the act undermined family stability and opportunities for children.

The Clinton administration also reached the *Flores* settlement, in response to a 1985 lawsuit alleging the mistreatment of an immigrant child. Under this settlement, children cannot be detained for longer than 20 days and must be released to parents, other relatives, or specially licensed programs.¹⁵ In cases in which children cannot be immediately released, the settlement requires that the "least restrictive" setting be found.¹⁵

In the 1980s and 1990s, many criminal offenses became grounds for removal from the country.¹⁶ Under George W. Bush, the concept of "crimmigration" expanded beyond targeting those who had committed crimes. In 2005, the Department of Homeland Security initiated a zero tolerance policy that eliminated the need for an individual to commit particular criminal offenses before becoming subject to removal from the United States.¹⁷ "Operation Streamline" allowed the U.S. Border Patrol to criminally prosecute any individual caught attempting to cross the Mexico-U.S. without proper documentation, irrespective of their criminal history.¹⁷ This shift toward criminalizing immigration law violations left the Bush administration to grapple with the issue of how to handle undocumented crossings that involved entire families. Under George W. Bush, the Department of Homeland Security created an exemption which barred the prosecution of children and parents traveling with their children.¹⁷ Ten years later, the Obama administration confronted this same dilemma.

In 2014 there was a marked increase in the flow of migrants from Central America due to increased gang-related violence and economic uncertainty in Guatemala, Honduras, and El Salvador.¹⁸ This surge in migration involved both family units and unaccompanied children.¹⁸ While it was clear that the *Flores* settlement applied to unaccompanied children, it was not clear that it applied to children traveling with their parents.¹⁹ The

Obama administration's initial response to the migration surge was humanitarian in nature but, as political pressure built, the administration turned to a policy of enhanced detention and deterrence.¹⁹ Prompted by a challenge to the government's detention and release policies in newly opened family detention centers, the Ninth Circuit ruled that the Flores agreement applied to both accompanied and unaccompanied minors, but that there was no affirmative right to release for accompanying parents.¹⁹ Faced with the possibility of separating families, and already under pressure from House Democrats, the Obama administration decided to release both parents and children after 20 days rather than releasing children while prosecuting their parents.²⁰

In 2015, the Department of Homeland Security implemented the Family Case Management Program, which provided participating families an alternative to detention that allowed them to remain in their communities while awaiting immigration hearings.²¹ The department also created the Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) programs, and attempted to expand DACA beyond its original scope.^{22,23} DACA provided undocumented children and young adults who came to the U.S. as children relief from deportation and the opportunity to apply for work permits. DAPA allowed some parents of U.S. citizen children and legal permanent residents to apply for work permits and gain temporary protection from deportation.^{22,23}

Children as Political Bait

The Trump administration has made enhanced immigration enforcement activities a cornerstone of its domestic policy agenda. Almost immediately upon entering office, President Trump signed an executive order expanding the categories of migrants prioritized for removal, directing the Department of Homeland Security to increase the number of immigration enforcement officers and aggressively pursue immigration law violators, empowering state and local law enforcement officers to perform the functions of federal immigration officers, and directing the Departments of Justice and Homeland Security to revoke federal grants from any "sanctuary" jurisdiction refusing to comply with federal immigration law.²⁴ Another ex-

ecutive order expanded the use of expedited removal proceedings, allowing migrants to be removed from the country without a hearing before a judge.²⁵ Previously, expedited removal only applied to migrants at ports of entry, within 100 air miles of a border, or within 14 days of arrival.²⁶ The new policy makes migrants who have been in the country for up to 2 years subject to expedited removal proceedings.²⁵ Between 2017 and 2018, the administration ended Temporary Protected Status -- a program allowing individuals from countries plagued by hardships such as war or natural disaster to settle in the U.S. until their home country conditions improved - - for migrants from Honduras, Nepal, El Salvador, Haiti, and Nicaragua by pressuring the Department of Homeland Security to make inaccurate determinations about the safety of those countries.²⁷ Despite successful legal challenges to the sanctuary city provision and Temporary Protected Status terminations, these directives have contributed to an environment of fear and persecution.^{28,29,30}

Undeterred by persistent legal challenges to its policies, the administration has continued its aggressive pursuit of an anti-immigration agenda. The administration has signed 44 new agreements with state and local authorities for their assistance with immigration enforcement.³¹ It has also severely limited the use of deferred removal actions. Previous administrations focused immigration enforcement activities on individuals deemed to pose risks to public safety, allowing for prosecutorial discretion and deferred deportation of those without criminal histories and with strong personal and community relationships in the U.S.³² The Trump administration's reversal of this policy has led to a sharp drop in deferral actions, increasing the likelihood of family separations.³²

While many previous policies contributed to the separation of families through the deportation of adults, other policies have been aimed at children themselves. The Trump administration moved to end DACA, placing the 800,000 children and young adults who gained legal protection under the program in a state of uncertainty about their legal status and risk of deportation.³³ Though legal challenges that led to a preliminary injunction preventing the termination of this program made it possible for existing

DACA participants to renew their DACA, the government stopped accepting new applications.^{34,35} The future of the program remains uncertain.

In July 2017, Immigration and Customs Enforcement (ICE) began a “surge initiative” that targeted undocumented parents who paid to have their children smuggled into the U.S.³⁶ Immigration enforcement officials began to use information obtained from U.S. Customs and Border Protection to locate the parents of unaccompanied minors.³⁷ Once located, immigration authorities go to the parents’ homes to immediately detain them.³⁷ Although described by ICE officials as an effort to “disrupt and dismantle” human trafficking operations, in practice the policy disrupts and dismantles families.³⁷ A field specialist with the Office of Refugee Resettlement explained that “[t]he kids are basically being used as bait at this point.”³⁷

In April 2018, the Office of Refugee Resettlement, the Department of Health and Human Services, and the Department of Homeland Security became more aggressive in their pursuit of family members. The agencies entered into an agreement requiring the Office of Refugee Resettlement to request information about the immigration status and criminal history of any person identified as a potential sponsor of an unaccompanied minor.³⁸ This policy allows ICE to run background checks on any individual stepping forward to sponsor an unaccompanied minor without any limitation on its immigration enforcement activities once that information has been obtained.³⁹ As a result, sponsors without legal status risk their own deportation and separation from their families when they step forward to offer shelter for family members.

The “zero tolerance” policy was initiated in April 2018.⁴⁰ The policy required all undocumented crossings of the southern U.S. border to be referred for criminal prosecution.⁴¹ In announcing the policy, the administration openly acknowledged the possibility that criminal prosecutions of parents might lead to family separations.⁴¹ Within 2 weeks of the policy taking effect, 650 children were separated from their parents.⁴² The United Nations characterized family separation as a human rights violation.⁴² Parents fleeing untenable conditions in their home country faced a terrible

choice -- leave their children behind or migrate with them in the knowledge that they could be taken away by U.S. authorities. The lack of a plan to reunite families reflected, at a minimum, the government's indifference to the potential for permanently breaking families apart.⁴³ Public outcry and lack of political support for the policy led the administration to end family separations via executive order in June 2018.^{44,45}

Consequences of Family Separation on Children's Health

Family separation is devastating to the health of children. In order to fully recognize the ongoing impacts of immigration policy on physical and mental well-being, it is essential to understand these harms.

Family separation is known to result in emotional trauma for both children and adults.⁴⁶ Even a brief separation from parents can have lasting negative health consequences for children.⁴⁷ For young children in particular, separation from parents may be interpreted as "a complete loss of their love and protection" and interrupts the critical bond children develop with their caregivers.²⁹ The grief and anxiety resulting from prolonged separation leads to toxic stress, which can impede a child's physical growth and brain development.²⁹ When children are placed in stressful situations, the body responds by increasing blood pressure and heart rate as well as releasing stress hormones such as cortisol. In the presence of nurturing parents, most children are able to cope with these physiological changes and return to normal. When children are exposed to the same stress in the absence of parental support, however, persistently elevated cortisol levels can become toxic to their developing brain.⁴⁸ Toxic stress may also have a lasting impact on the ability of these children to perform well in school, regulate their emotions, and develop critical social skills.^{29,49} The resulting physical and mental health problems extend the trauma of family separation far beyond the actual event, with some effects lasting well into adulthood.⁵⁰

While family separation under any circumstances can cause irreparable harm to children, the separation of families who are fleeing violence - - as was the case for many migrant families crossing the southern U.S. border -- can be especially detrimental. Children who are separated from

parents during or after a traumatic event (such as witnessing violence in their home countries or the trauma of the migration journey itself) may be more vulnerable to the negative health effects of family separation.⁴⁶ In this manner, the separation of migrant children from their parents under the Trump administration's zero tolerance policy likely aggravated existing childhood trauma and resulted in more severe physical and mental health consequences for separated children than family separations occurring under other circumstances. After visiting the detention facilities, the president of the American Academy of Pediatrics called the family separations child abuse.⁴³

The harms of family separation are not limited to the formal family separation policy at the border. Within the United States, the very threat of a parent or caregiver's deportation is enough to increase the risk of mental health and behavioral problems in children when compared to those whose parents are not undocumented.²⁹ Children with one or more undocumented parent live in fear of being separated from them, with one study finding that as many 30% of these children reported being afraid "nearly all or most of the time."⁵¹ In the same study, 75% of undocumented parents reported seeing anxiety, difficulty sleeping, frequent crying, and/or other symptoms of post-traumatic stress disorder in their children.⁵¹

Another population living under the fear of family separation is the children of current DACA recipients, whose legal status has recently been threatened by the Trump administration's attempts to put an end to the DACA program.³³ One study of DACA participants and their children found that children whose mothers were protected from deportation by DACA were 50% less likely to be diagnosed with anxiety or adjustment disorders than otherwise similar children whose mothers were not protected.⁵² If the administration ends the DACA program, countless existing and future children of current DACA participants will live in fear of family separation and be at risk of corresponding mental and behavioral health consequences.

Whether it's migrant children arriving with their parents at the border, children whose parents were deported after living in the U.S. for many years, or children of undocumented or DACA-ineligible parents who con-

tinue to live in fear that their parents will be taken from them, the harms of actual or threatened family separation are well-documented, severe, and long-lasting. In many cases, the children being harmed are themselves U.S. citizens, on whose success and well-being the future of this country depends.²⁹

Discussion

The publicity afforded to the Trump administration's 2018 family separation policy as part of "zero tolerance" – and its subsequent retraction – opened many Americans' eyes to the harms of immigration policy for children. The evidence did not come out of nowhere; it was the accumulation of decades of struggles for immigrant children. These harms continue to affect thousands of children, bolstered by a range of administration policies that have the effect of separating families.

And more harm may be coming. The Trump administration has threatened to undo birthright citizenship,⁵³ hold lawful receipt of essential benefits such as health insurance against families in immigration proceedings,⁵⁴ and even re-instate the family separation policy of 2018.⁵⁵

A persuasive objection to the use of children as pawns in immigration policy can be made on the health consequences alone. Policy arguments also include the fact that steps being taken are ineffective in reducing immigration. The conditions of countries of origin make seeking refuge the only viable alternative for many families. Ethical arguments start with the core principle that parents should have the primary role of caring for their children. The Trump administration's policies are forcing parents to choose between keeping their children safe and staying together. Put another way, at our borders and with our immigrant population, the U.S. is rejecting not only the rights of children, but family values.

There are alternatives. A different approach could start with more foreign aid to countries devastated by violence and poverty. Furthermore, comprehensive immigration reform is needed, including immigration enforcement that is focused on individuals at highest risk of committing serious crimes.

Such considerations should inform pediatricians and others who work on behalf of children at this critical juncture in U.S. politics. We can speak to the facts of immigration policy, to the consequences for children (including our own patients), and to the principles that these policies reflect. For the United States, immigration is more than a look into the future of the country; it is a look into the mirror.

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