

## **Memorandum of points and authorities on Harm Caused by Separating Children From their families**

The immense harm caused by separating children from their parents is undeniable.

### A. Psychological Harm

Children separated from their parents will likely suffer psychological harm. According to Alan Shapiro, an assistant clinical professor in pediatrics at Albert Einstein College of Medicine: “Separation leads to depressive symptoms: We see children who might have gained certain milestones of development start regressing all of a sudden.”<sup>1</sup>

In response to the zero-tolerance immigration policy under the Trump administration which forcibly separated migrant children from their parents, on June 14, 2018 the American Psychological Association issued a letter to Donald Trump which stated, in part:

On behalf of the American Psychological Association (APA), we are writing to express our deep concern and strong opposition to the Administration’s new policy of separating immigrant parents and children who are detained while crossing the border . . . . Based on empirical evidence of the psychological harm that children and parents experience when separated, we implore you to reconsider this policy and commit to the more humane practice of housing families together pending immigration proceedings to protect them from further trauma . . . . Decades of psychological research have determined that it is in the best interest of the child and the family to keep families together . . . . Research also suggests that the longer that parents and children are separated, the greater the reported symptoms of anxiety and depression are for children.<sup>2</sup>

Similarly, the National Academies of Sciences, Engineering, and Medicine issued a statement on June 20, 2018 urging the U.S. Department of Homeland Security to stop separating migrant children from their families. In pertinent part, their statement provided:

Young children who are separated from their primary caregivers may potentially suffer mental health disorders and other adverse outcomes over the course of their lives (NASEM, 2016, p. 21-22). Child development involves complex interactions among genetic, biological, psychological, and social processes (NRC and IOM, 2009, p. 74), and a disruption in any of these – such as family disruption – hinders healthy development and increases the risk for future disorders (NRC and IOM, 2009, p.102-104). Young children are capable of deep and lasting sadness, grief, and disorganization in response to trauma and loss (NRC and IOM, 2000, p. 387). Indeed, most mental, emotional, and behavioral disorders have their roots in childhood and adolescence (NRC and IOM, 2009, p. 1), and childhood trauma has emerged as a strong risk factor for later suicidal behavior (IOM, 2002, p. 3).<sup>3</sup>

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<sup>1</sup> See <https://www.scientificamerican.com/article/separating-families-may-cause-lifelong-health-damage/>.

<sup>2</sup> See <https://www.apa.org/advocacy/immigration/separating-families-letter.pdf>.

<sup>3</sup> <https://www.nationalacademies.org/news/2018/06/statement-on-harmful-consequences-of-separating-families-at-the-us-border>.

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### **B. Effect on the Brain Itself**

Child-parent separation will likely negatively impact the actual brain of the child. In 2000, the Romanian government invited Charles Nelson, a pediatrics professor at Harvard Medical School, and a team of researchers into state orphanages “to advise them on a humanitarian crisis that the country’s previous policies had created.” According to Dr. Nelson, as the children in these orphanages grew older, he and his colleagues began discovering concerns related to brain development. According to the article detailing Dr. Nelson’s work<sup>4</sup>:

Those separated from their parents at a young age had much less white matter, which is largely made up of fibers that transmit information throughout the brain, as well as much less gray matter, which contains the brain-cell bodies that process information and solve problems.

The activity in the children’s brains was much lower than expected. “If you think of the brain as a lightbulb,” Nelson said, “it’s as though there was a dimmer that had reduced them from a 100-watt bulb to 30 watts.”

The children, who had been separated from their parents in their first two years of life, scored significantly lower on IQ tests later in life. Their fight-or-flight response system appeared permanently broken. Stressful situations that would usually prompt physiological responses in other people — increased heart rate, sweaty palms — would provoke nothing in the children.

In addition, according to Karen Lyons-Ruth, a Professor of Psychology at Harvard Medical School, even very brief separations are stressful to infants and young children. Moreover, separations result in a flood of cortisol (a stress hormone) too much of which can damage brain cells. In addition, as Ms. Lyons-Ruth explains, attachment is key to healthy brain development and is the foundation on which we build our exploration, autonomy, curiosity, and cognitive skills. She contends that often psychologists see that the attachment system “goes badly awry” in children raised in institutions within the first two years of life.<sup>5</sup>

### **C. Later Impact**

Children separated from their parents may be impacted well into adolescence and even adulthood.

“Children who have a consistent, positive relationship with their primary caregiver tend to become healthy, happy, engaged and productive members of society. Children whose attachment has been ruptured often become mistrusting, fearful, angry and emotionally volatile adults.”<sup>6</sup> Moreover, separating a child and putting he or she into the foster care system can increase the risk of that child becoming a runaway and a victim of child sex trafficking. “Of the nearly 25,000 runaways

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<sup>4</sup> See [https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4\\_story.html?noredirect=on](https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4_story.html?noredirect=on).

<sup>5</sup> See NOVA PBS Official, Inside the Brains of Children Separated from Parents, YouTube (June 25, 2018), <https://www.youtube.com/watch?v=bwpcn8sRtqg&feature=youtu.be>.

<sup>6</sup> See [https://www.huffpost.com/entry/opinion-carnes-family-separation-trauma\\_n\\_5b2bf535e4b00295f15a96b2](https://www.huffpost.com/entry/opinion-carnes-family-separation-trauma_n_5b2bf535e4b00295f15a96b2).

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reported to [the National center for Missing & Exploited Children], one in seven were likely victims of child sex trafficking. Of those, 88 percent were in the care of social services when they went missing.”<sup>7</sup> In addition, one study found that “any separation from a primary caregiver ... was negatively associated with children’s reading achievement by age 8.”<sup>8</sup> Further, another study found that “parental separation was related to earlier initiation of sexual intercourse and to educational and externalizing problems.”<sup>9</sup>

The American Psychiatric Association (APA) and the American Academy of Child and Adolescent Psychiatry issued a statement in response to reports that the parents of 545 migrant children separated from their parents can no longer be found imploring the federal government to reunite these families because, in part, “It is well-documented in psychiatric literature that even brief family separations can cause significant and often irreparable harm to children, resulting in lifelong setbacks in learning, behavior, and health.”<sup>10</sup> (Emphasis added.)

Lastly, the Adverse Childhood Experiences patient study conducted by Kaiser Permanente and the Centers for Disease Control and Prevention, “shows that adults who had more adverse childhood experiences are much more likely to have chronic medical conditions like cardiovascular disease, hypertension, obesity, higher rates of cancer and a decrease in longevity.”<sup>11</sup>

### D. Case Law Recognizing Harm Caused by Child-Parent Separation

Courts in California and across the country have recognized the harm caused by separating children from their parents.

In *Ms. L. v. U.S Immigration and Customs Enforcement (“ICE”)* (S.D. Cal. 2018) 310 F.Supp.3d 1133, 1146–1147, the U.S. Federal District Court for the Southern District of California entered a class-wide preliminary injunction concerning ICE’s practice of separating migrant parents and children who were detained for illegally crossing the border. In finding that the plaintiffs were able to establish a likelihood of suffering irreparable harm in the absence of preliminary relief (one of the factors for issuance of an injunction), the Court explained:

One of the *amici* in this case, Children's Defense Fund, states,

there is ample evidence that separating children from their mothers or fathers leads to serious, negative consequences to children's health and development. Forced separation disrupts the parent-child relationship and puts children at increased risk for both physical

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<sup>7</sup> <https://web.archive.org/web/20181016212108/http://www.missingkids.org/KeyFacts>.

<sup>8</sup> See

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3115616/#:~:text=For%20example%2C%20Leventhal%20and%20Brooks,reading%20achievement%20by%20age%208.>

<sup>9</sup> See

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3115616/#:~:text=For%20example%2C%20Leventhal%20and%20Brooks,reading%20achievement%20by%20age%208.>

<sup>10</sup> See

[https://www.aacap.org/AACAP/Latest\\_News/APA\\_AACAP\\_Concerned\\_Parents\\_Children\\_Separated\\_from\\_Families\\_US\\_Border.aspx](https://www.aacap.org/AACAP/Latest_News/APA_AACAP_Concerned_Parents_Children_Separated_from_Families_US_Border.aspx).

<sup>11</sup> See <https://www.scientificamerican.com/article/separating-families-may-cause-lifelong-health-damage/>.

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and mental illness.... And the psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation—even after eventual reunification with a parent or other family.

(ECF No. 17–11 at 3.) Other evidence before the Court reflects that “separating children from parents is a highly destabilizing, traumatic experience that has long term consequences on child well-being, safety, and development.” (ECF No. 17–13 at 2.) That evidence reflects:

Separation from family leaves children more vulnerable to exploitation and abuse, no matter what the care setting. In addition, traumatic separation from parents creates toxic stress in children and adolescents that can profoundly impact their development. Strong scientific evidence shows that toxic stress disrupts the development of brain architecture and other organ systems, and increases the risk for stress-related disease and cognitive impairment well into adult years. Studies have shown that children who experience such traumatic events can suffer from symptoms of anxiety and post-traumatic stress disorder, have poorer behavioral and educational outcomes, and experience higher rates of poverty and food insecurity.

(ECF No. 17–13 at 2.) And Martin Guggenheim, the Fiorello LaGuardia Professor of Clinical Law at New York University School of Law and Founding Member of the Center for Family Representation, states:

Children are at risk of suffering great emotional harm when they are removed from their loved ones. And children who have traveled from afar and made their way to this country to seek asylum are especially at risk of suffering irreversible psychological harm when wrested from the custody of the parent or caregiver with whom they traveled to the United States.

(Mem. in Supp. of Classwide Prelim. Inj., Ex. 17 ¶ 16.) All of this evidence, combined with the constitutional violation alleged here, conclusively shows that Plaintiffs and the class members are likely to suffer irreparable injury if a preliminary injunction does not issue. (Emphasis added.)

Similarly, the court U.S. District Court for the District of Columbia in *M.G.U. v. Nielsen* (D.D.C. 2018) 325 F.Supp.3d 111, 122 also recognized the harm suffered as a result of parent-child separation in evaluating whether the “irreparable harm” element was satisfied for purposes of issuing an injunction:

[C]ounsel for plaintiffs have also offered evidence from medical experts describing the profound and long-term consequences that separation can have on a child's well-being, safety, and development. According to the American Academy of Pediatrics, detained immigrant children may experience high rates of post-traumatic stress disorder, anxiety, and depression. See Compl. Ex. 7, American Academy of Pediatrics Policy Statement at 8; see also Mot. Ex. 10, June 15, 2018 Decl. of Dr. Marsha R. Griffin at ¶ 9 (“There may be nothing more frightening for a vulnerable child than to be forcibly separated from their parent. Even this short-term separation will have lasting impact on their physical and

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emotional well-being.”). Children may also develop toxic stress, a form of extreme and repetitive stress that adversely affects brain development and is correlated with an increased risk of developing chronic mental health problems, as well as behavioral problems. See, e.g., Mot. Ex. 11, June 15, 2018 Decl. of Ms. Julie M. Linton at ¶ 4; Mot. Ex. 12, June 18, 2018 Decl. of Dr. Alan Shapiro at ¶ 14. Furthermore, the harm that develops during detention “does not necessarily resolve once the detainee is freed,” as children may experience “developmental delay and poor psychological adjustment, potentially affecting functioning in school and socially.” TRO App. Ex. 5, June 21, 2018 Decl. of Dr. Lisa R. Fortuna at ¶¶ 12-14.

Lastly, the U.S. District Court for the Eastern District of New York in *Nicholson v. Williams* (E.D.N.Y. 2002) 203 F.Supp.2d 153, 199 also recognized the harm caused by removal and granted the preliminary injunction requested by mothers who had been separated from their children:

Several expert witnesses, including Dr. Peter Wolf, plaintiffs' expert, testified about the primacy of the parent-child bond and the effect on a child if he or she is separated from a parent. He averred that the attachment between parent and child forms the basis of who we are as humans and the continuity of that attachment is essential to a child's natural development. Tr. 565–67. *See also*, Joseph Goldstein, *Medical Care for the Child at Risk: On State Supervision of Parental Autonomy*, 86 Yale L.J. 645, 649–50 (1977) (“No other animal is for so long after birth in so helpless a state that its survival depends on continuous nurture by an adult. Although breaking or weakening the ties to the responsible and responsive adults may have different consequences for children of different ages, there is little doubt that such breach in the familial bond will be detrimental to the child's well-being.”).

Dr. Wolf testified that disruptions in the parent-child relationship may provoke fear and anxiety in a child and diminish his or her sense of stability and self. Tr. 565–67. He described the typical response of a child separated from his parent:

When a young child is separated from a parent unwillingly, he or she shows distress.... At first, the child is very anxious and protests vigorously and angrily. Then he falls into a sense of despair, though still hypervigilant, looking, waiting, and hoping for her return ....

*Id.* A child's sense of time factors into the extent to which a separation impacts his or her emotional well-being. Thus, for younger children whose sense of time is less keenly developed, short periods of parental absence may seem longer than for older children. Tr. 565–65. *See also* Ex. 141b.

Similarly, plaintiffs' expert Dr. Stark noted the importance of a consistent relationship with a primary caretaker to a child's health development. Tr. 1562. For those children who are in homes where there is domestic violence, disruption of that bond can be even more traumatic than situations where there is no domestic violence. Dr. Stark asserted that if a child is placed in foster care as a result of domestic violence in the home, then he or she may view such removal as “a traumatic act of punishment... and [think] that something [the mother] has done or failed to do has caused this separation.” Tr. 1562–63. Ms. Groves

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testified that when a child is separated from a mother because of domestic violence, the separation is even more traumatic because the child “is terrified that a parent might not be OK, may be injured, may be vulnerable.... They feel that they should somehow be responsible for the parent and if they are not with the parent, then it's their fault.” Tr. 2772.

Plaintiffs' expert Dr. David Pelcovitz concluded that removal heightens the child's sense of self-blame, and that children exposed to domestic violence are at a significantly above-normal risk of suffering separation anxiety disorder if separated from their mother. Ex. 139. Dr. Pelcovitz stated that “taking a child whose greatest fear is separation from his or her mother and in the name of ‘protecting’ that child [by] forcing on them, what is in effect, their worst nightmare, ... is tantamount to pouring salt on an open wound.” Ex. 139 at 5.