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Treatment of Migrant Children on the US Southern Border Is Torture

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Abbreviations: United States, US; US Southwestern border, border; United Nations, UN; United Nations Convention on the Rights of the Child, CRC; United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, CAT; Interamerican Commission on Human Rights, ICHR; Child Rights-Based Approach, CRBA; United Nations International Children’s Fund, UNICEF; Physicians for Human Rights (PHR); American Academy of Pediatrics, AAP

Table of Contents Summary: The separation of children from parents and their treatment at the US Southern border is cruel, unusual and constitutes torture requiring action by pediatricians.

Contributors’ Statement:

Drs. Oberg, Kivlahan, and Goldhagen conceptualized and designed, drafted, reviewed, and revised the manuscript.

Drs. Mishori, Martinez, Gutierrez, and Noor contributed to the initial discussion of the need and framework for the analysis, were involved with drafting parts of the manuscript, and critically reviewed it for important intellectual content.

All authors approved the final manuscript as submitted and agree to be accountable for all aspects of the work.

Background

Migrants crossing the United States (US) Southwestern border (border) have previously been predominantly male adults from Mexico. However, since 2000, border crossings have increasingly involved families and unaccompanied children. In 2019, over 851,000 persons were apprehended on the border, including 473,682 family members and 76,020 unaccompanied minors—vastly increasing the number of children subjected to immigration policies.

To deter migration, the current administration has implemented punitive policies toward children that have affected their physical and mental health—including separation from their families. Under the pretext of the COVID-19 pandemic, the Centers for Disease Control and Prevention recently ordered the deportation of immigrant children without notification of their families.ⁱ The treatment of children at the border constitutes cruel, inhuman, or degrading treatment that rises to the level of torture.

What Constitutes Torture

The prohibition of torture, in-particular against children, was codified through the Geneva Conventions (1949) and the Additional Protocols (1977). In addition, it is prohibited by the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984).ⁱⁱ Articles in the UN Convention on the Rights of the Child (CRC, 1989), which the US has signed but not ratified, define the rights of migrant and refugee children to remain with their families, be free from violence and exploitation, and enjoy optimal health and development.ⁱⁱⁱ

According to the CAT and Rome Statute, treatment of children at the border fulfills the three criteria for torture.^{iv}

1. *Severe pain and suffering*: Intentional infliction of severe physical and/or psychological pain or suffering.
 - Children have been separated from their families, housed in hotels—some as young as 1 year of age—and cared for by personnel with limited to no training in the care of children.^v
 - Children have been detained in unsanitary and dangerous conditions and exposed to harsh overcrowded surroundings, including being caged in holding cells with no beds—referred to as *hieleras* (iceboxes) by detainees, given their frigid conditions. Sleeping mats and blankets are inconsistently provided—with children forced to sleep in freezing rooms, concrete floors, with constant illumination, and with only aluminum covers for warmth, resulting in sleep deprivation.^{vi}
 - Access to physical and mental health care, medications, and vaccines have been denied resulting in preventable illnesses, hospitalizations, and death. Since 2018, at least seven children have died in US custody or immediately after release.^{vii}

As a result of this treatment, children have exhibited traumatic internalized and regressive behavior, such as crying, fear, language regression, thumb sucking, enuresis, and encopresis. Psychological trauma has resulted in general anxiety disorder, depression, posttraumatic stress disorder, and suicide attempts.^{viii} Mitigation of this trauma will require years of intense treatment and interventions.

2. *Purposeful*: The physical or psychological trauma is intentional, and serves a specific purpose, such as coercion, intimidation, punishment, and/or as a deterrence.

- The current administration has specifically stated the purpose of the Zero Tolerance policy, which includes separation of children from their families, is meant to serve as a strong deterrent to migration.^{ix}
3. *State Consent*: The trauma happens with the consent and/or acquiescence of State authorities.
- The treatment of children at the border is state-sponsored and directed by the US President through executive orders and policies implemented through governmental agencies. The separation of children from their families is part of an anti-immigration strategy that includes repeated attempts to end the Deferred Action for Childhood Arrivals program, implementing the “public charge” policy, construction of a border wall, and deportation of unaccompanied minors due to a purported risk for spreading SARS-CoV-2.

This administration’s treatment of children at the border meets the criteria for torture as outlined above. 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.

Numerous national and international organizations and experts have concluded the treatment of children at the border constitutes torture. In the words of Juan Mendez, the UN Special Rapporteur on Torture, “The physical, psychological and developmental harms to children implicit to the immigration detention environment can amount to torture or cruel, inhuman or degrading treatment.”^x Multiple international organizations concur, including Amnesty International and Physicians for Human Rights (PHR). A recent PHR report, *You Will Never See*

Your Child Again: The Persistent Psychological Effects of Family Separation, concluded that current border policies have had “profound health implications for migrant children and violate their basic human rights, including the right to be free from torture and enforced disappearance.”

^{xi} The US policy of family separation in-particular constitutes cruel, inhuman, and degrading treatment—consistent with torture.

A Call to Action for Pediatricians and Child Health Professionals

It is critically important that pediatricians and the American Academy of Pediatrics (AAP) collaborate with other advocates and advocacy organizations to forge local, national and international responses to stop and prevent torture of migrant children at the border and globally.

This includes:

Individual and Community Involvement

- Pediatricians and other child and mental health professionals should be trained in forensic assessments to identify, document, and disseminate the effects of severe ill treatment on migrant children.^{xii}
- Pediatricians should inquire and disseminate elected officials’ positions on immigration and treatment of children at the border.
- Individual pediatricians and AAP state chapters can engage in letter writing campaigns, media appearances, and publication of individual experiences working with migrant families and children.

Nationally

- The AAP and other organizations should adopt a Child Rights-Based Approach (CRBA) that grounds advocacy in the principles and parlance of human rights and standards and norms of social justice and equity contained in the CRC and CAT. A CRBA expands the framework for advocacy, moves the parlance from “needs” to “rights,” links local advocacy initiatives to global child rights movements, empowers adults and youth to claim the full spectrum of rights articulated in the CRC, and expands the ability of pediatricians and organizations to optimize the health and development of all children.
- As the foundation for advocacy, the AAP should issue and disseminate a Policy Statement, *Prohibiting Torture of Children*.

Internationally

- The AAP should lead a global call for the worldwide reunification of children on the move separated from their families, and the cessation of all cruel, inhuman, and degrading treatment directed toward them.
- The AAP, with other stakeholder organizations, should initiate/support a case against the US in the Interamerican Commission on Human Rights (ICHR). As an autonomous body of the Organization of American States, the ICHR can investigate and resolve petitions alleging violations of specific human rights, monitor and publish reports, and request measures be taken to prevent future violations.
- Child health professionals should engage and support cross-disciplinary colleagues and organizations, e.g., Physicians for Human Rights, Human Rights Watch, Doctors without Borders, World Vision, Save the Children, International Society for Social

Pediatrics and Child Health, UNICEF, in their efforts to prevent and mitigate child rights violations.

No profession bears witness to the impact of trauma on children more than pediatrics. As such, we have a unique responsibility to fulfill the rights of children to optimal survival and development. We must engage as advocates to reverse US border policies that continue to result in the torture of children. The need for action is clear.

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