

FAMILY SEPARATION

NOT JUST A BORDER PROBLEM,
A BAY AREA PROBLEM

Laura Ernde

M

ention the term ‘family separation’ and it immediately evokes the crisis at the southern US border. Thousands of children were separated from their parents last spring as a result of the Trump Administration’s “zero-tolerance” immigration policy.

Adults entering the country without advance permission were prosecuted and any children accompanying them were put into shelters or foster care, alarming attorneys and human rights activists nationwide.



Family members separated by deportation visit through the United States-Mexico border fence in Tijuana, Mexico. Photo: Jim West / Alamy

Many organizations, including the Justice & Diversity Center (JDC) of the Bar Association of San Francisco (BASF), strongly opposed the short-lived policy that had enormous consequences that continue to reverberate today. For example, in court documents filed in April, federal officials said it could take up to two years to identify all the immigrant children who were separated.

But the continued fallout from the crisis obscures a much more common problem. Every day, right here in the Bay Area, children are being separated from their parents. These separations take place in a number of contexts, say attorneys who represent children and families in those cases.

They might be children of immigrants who are facing possible deportation or unaccompanied minors who immigrated here. Or they might be local children whose parents have died or are behind bars. Finally, they could be children who are in the dependency court system over allegations of neglect or abuse.

“All of these kids are in our backyard. It’s not visible. But it is still happening—overwhelmingly to our minority communities,” said Jill McInerney, an attorney who administers the BASF-run program that provides representation to children and parents in San Francisco dependency court.

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Abigail Trillin
Legal Services for Children

One thing that all family separations have in common is the experience of significant trauma, said Abigail Trillin, executive director of Legal Services for Children (LSC), an organization that provides legal advocacy and social services to children who are without their parents due to all sorts of circumstances.

Fortunately, the Bay Area is home to a number of legal organizations that are dedicated to preventing separations and providing representation to the families involved.

“One of the ways they recover is with a stable, consistent adult. That’s really true in so many of the contexts in which we work,” Trillin said. “That’s the best shot that any of our clients have moving forward and healing.”

Even a short separation from a parent can have a lasting effect on a child, said Florence Chamberlin, a senior attorney at Kids in Need of Defense, a national nonprofit that represents unaccompanied immigrant and refugee children in their deportation proceedings.

Chamberlin, who is based in San Francisco, shared the story of a Guatemalan mother with three children who came to the US fleeing domestic violence and have been living in a shelter here since the late fall. In the process of crossing the border, the children were separated from their mom for a brief time. The separation was particularly traumatic for the middle child, an eleven-year-old boy who experienced bullying while in the detention shelter, she said.

“The mom reported to me that the boy is still afraid to sleep separately from her. He insists on sleeping with his Bible because he thinks it will keep him safe,” Chamberlin said.

FAMILY SEPARATION IN THE DEPENDENCY CONTEXT

Attorneys who represent parents and children in dependency proceedings have similar stories to share about the effects of separation.

“There are a lot of similarities to what we’re seeing at the border and some of the unfortunate things we see in the forcible removal of children in the dependency context,” said Zabrina Aleguire, co-executive director of East Bay Family Defenders, a nonprofit focused on keeping families together. “I think it’s a really important connection to make.”

The purpose of dependency proceedings is to protect children who are being abused or neglected. But Aleguire and others say that too little attention is given to the detrimental effects of removing children from their homes.

Studies have shown that even when families are experiencing difficult circumstances, children often have better outcomes if they stay with a parent rather than being removed, Aleguire said.

“Whether that might be a harrowing journey across a border or surviving in a low-income community where there’s violence in the neighborhood around them and

destabilizing factors around them, there's a profound security that children gain by staying with their parents in a challenging situation," she said. "*Especially* when in a challenging situation."

The dependency process receives little media attention, largely because California dependency courts are not open to the public. Much of the scant news coverage centers on the rare but extreme cases where children are severely harmed.

In practice, serious physical and sexual abuse only accounts for 5 to 9 percent of dependency cases. Most cases arise from simple neglect, which can have its roots in societal problems such as poverty and drug addiction, McNerney said. "The research is clear: separating children from their parents results in some level of harm to children's developing brains. It is important to act cautiously and carefully when considering this action. This system only works when social workers and attorneys who have enough time and expertise to evaluate and address the unique circumstances of each individual family," she said.



With each day and week that passes from the initial removal, it gets harder and harder to reunite a family, even when the court agrees that's the preferred outcome.

African Americans comprise just 5 percent of San Francisco's population but represent more than half of the children in foster care. "Those stats are staggering," McNerney said.

Trillin echoed McNerney's sentiments and said San Francisco's notorious housing crisis exacerbates the problem.

Foster families tend to be middle class with extra room and ability to take in a child. "That's not a thing anymore in San Francisco. There's no middle class in this town. There are no people with extra rooms in their houses," Trillin said.

As a result, potential foster parents can't afford to live in the city, which means most foster care placements are in far-flung counties a two- to three-hour drive away. "First they get separated from their family and then they almost always get separated from their community," Trillin said.

While low-income and minority families are most often affected, families across the socioeconomic spectrum get reported to Child Protective Services, Aleguire said. Because hospitals and schools are required to report suspicious activity, any family can get caught up in the system. It then falls to an imperfect and overwhelmed system to sort out which reports are accurate.

"People don't understand how broad-reaching the child welfare system is," Aleguire said. "Foster care is not a panacea. Everybody thinks we need more foster homes. I would invite people to think about whether we need fewer."

Instead, Aleguire suggests more resources to help the parents get out of the challenging circumstances that destabilized the family in the first place.

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East Bay Family Defenders

FAMILY SEPARATION AFTER ICE ARREST

Other family separations occur when U.S. Immigration and Customs Enforcement (ICE) officials arrest immigrants at homes, jails, and, at times, even courthouses. California Chief Justice Tani G. Cantil-Sakauye has decried the practice of courthouse arrest, saying it “undermines due process, fairness and access to justice in our state court systems.”

When ICE makes arrests locally, the immigrants are brought to the ICE field office at 630 Sansome Street to determine whether to deport immediately or hold the immigrant in a detention facility pending a hearing. In either case, immigrants who are parents are separated from their children.

“Family separation has always been a huge concern in every aspect of detainee work,” said Valerie Zukin, legal director for the California Collaborative for Immigrant Justice (CCIJ), housed at JDC. “The main family separation we see is not literally the government ripping kids out of people’s arms. It’s the government ripping the parent out of the house and into immigration detention.”

The children of those detained immigrants are left not only separated but wondering whether their parent will be deported.

“Think about the parent of the children suddenly left on their own. The person who is the breadwinner is in detention. There’s no childcare help or co-parenting for the children. It can make a stressful situation become an almost untenable situation,” Zukin said. “I’ve seen that play out countless times.”

Once the parent is in detention, there’s little or no way to communicate with the children or other family members. Most of the adults who are detained have children, either here in the Bay Area or in Mexico, she said.

For children in the Bay Area whose parents are in detention, the first signs of the impact often appear in the school setting, with kids acting out and having their grades slip. Sometimes there’s severe psychological trauma, she said.

The program that Zukin oversees provides limited representation for detainees at an early stage in the proceedings. It amounts to a brief consultation. Attorneys assist detainees the day they appear in court in order to identify candidates for pro bono help later on. “It’s like a tiny little Band-Aid on a huge wound,” Zukin said.

It can take months or years for their immigration cases to be resolved. A recent *New York Times* investigation found the immigration courts overwhelmed and unable to handle the flow of families seeking asylum at the border.



**AFRICAN AMERICANS COMPRISE
JUST 5 PERCENT OF SAN
FRANCISCO'S POPULATION BUT
REPRESENT MORE THAN HALF OF
THE CHILDREN IN FOSTER CARE.**

Jill McInerney

The Bar Association of San Francisco

The immigration courts now have more than 800,000 pending cases—each one taking an average of 700 days to process.

Zukin said that immigration judges seem less willing to make bond available to immigrant detainees, even though these are people who are being detained for civil and not criminal purposes. “This family separation isn’t actually required,” she said.

Family separation is an all-too-common occurrence, said Katie Kavanagh, a rapid response attorney with the California Collaborative for Immigrant Justice, who handles consultations and advocacy for immigrant detainees.

As a side project, Kavanagh has also traveled to Tijuana to help immigrants crossing the border. (Read her article chronicling her experience on page 30.) Although the “zero tolerance” policy is no longer in effect, families are running into other roadblocks to crossing together, she said.

In some cases, it’s a minor traveling with a grandparent, an aunt or uncle. “Those families don’t have the same protections,” she said.

On a recent weekend in April, Kavanagh met with a truck driver from Honduras and his ten-year-old son. The family is seeking asylum in the United States because a criminal enterprise that had infiltrated his truck driving co-op threatened him with violence for speaking out about the problem.

The man got separated from his wife and eight-year-old son after they crossed the border together and were, for unknown reasons, sent down different paths, she said. The mother and eight-year-old were sent to stay with family members in Houston pending a determination on asylum. But the father and other son were detained in Tijuana.

“This is a family following all the legal steps,” she said, a family who waited in line for two months at the border before being separated.

UNACCOMPANIED MINORS

Another factor compounding the problem of family separations is the increase in the number of unaccompanied minors crossing the border.

Beginning in 2012, the Office of Refugee Resettlement, which is tasked with finding placements for these youth, has reported a surge in unaccompanied minors. In 2018, 49,100 spent an average of sixty days in detention centers awaiting placement.

The goal is to reunify the minors with family living in the United States or elsewhere, Trillin said.

Clearly, family separations in the Bay Area in all of these contexts—whether related to immigration or dependency court—is a major concern for local attorneys. What can you do? Reach out to the organizations mentioned in this article for opportunities to engage. (Or, refer to page 22, “How You Can Help.”)

Laura Ernste is a San Francisco-based communications consultant. She has covered legal affairs for more than a decade, as a journalist and former editor of the California Bar Journal.

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FOR DETAILS, AND TO RSVP, PLEASE VISIT
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UPCOMING RECEPTIONS

Tuesday, June 25

5:30 – 7:30 p.m.

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and Associates Reception
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Tuesday, July 9

5:30-7:30 p.m.

Latinx Partners
and Associates Reception
Greenberg Traurig

Wednesday, July 17

5:30-7:30 p.m.

African American Partners
and Associates Reception
Keker, Van Nest & Peters