

Case Law that discussed the Effects of Removal from Parents

- Ms. L. v. U.S. Immigration & Customs Enforcement, 310 F. Supp. 3d 1133 (S.D. Cal. 2018)

In a decision entering a preliminary class-wide injunction with respect to ICE’s practice of separating the minor children of parents detained for illegally crossing the border, the court discussed the harms associated with forced parent-child separations in considerable detail. Drawing from an amicus brief submitted by the Children’s Defense Fund, the court posited that “there is ample evidence that separating children from their mothers or fathers leads to serious, negative consequences to children’s health and development.”¹ Id. at 1146. The disruption that forced separations “put[] children at increased risk for both physical 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.” Id. at 1147. The court pointed to other evidence establishing “that separating children from parents is a highly destabilizing, traumatic experience that has long term consequences on child well-being, safety, and development.” Id. The court continued:

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.

Id. The court determined that the evidence “conclusively shows that Plaintiffs and the class members are likely to suffer irreparable injury if a preliminary injunction does not issue.”

- Children’s Defense Fund – Amicus Brief

The amicus brief referenced above is packed with information regarding the effects of child separation. The brief also includes a compilation of the laws in every state governing the circumstances under which a child may be separated from his or her parents. The brief asserts that those laws “reflect the universal belief that a child should remain with her parent unless doing so would be severely detrimental to the child’s welfare, and, even then, separation should be a last resort. Id. at 7. Further, the brief points to the standards espoused by the

¹ The amicus brief contains a wealth of information and cites to a number of helpful resources. It is discussed immediately below.

Council on Accreditation, an international human service accrediting organization, affirming that “it is in a child’s best interest to remain with her parent whenever possible.” Id. at 9-10.

- Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enforcement, 319 F. Supp. 3d 491 (D.D.C. 2018)

In this case, the court also recognized “the profound and long-term consequences that separation can have on a child’s well-being.” Id. at 503. Relying on the same authority as the Ms. L. court, the court note the American Academy of Pediatrics’ research indicating that “[t]he psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation – even after the eventual reunification with a parent or other family.” Id. The effects of separation can be so extreme in some circumstances that the “children may experience high rates of post-traumatic stress disorder, anxiety, depression, and suicidal ideation, in addition to developmental delays or poor psychological adjustment.” Id. The court accordingly concluded that the plaintiffs had established that they would suffer irreparable harm absent an injunction. Id.

- M.G.U. v. Nielsen, 325 F. Supp. 3d 111 (D.D.C. 2018)

The same court relied on essentially the same medical findings, emphasizing that separation may result in “toxic stress, a form of extreme and repetitive stress that adversely affects brain development,” a concept discussed more fully below, and that the effects can be devastating and long lasting. Id. at 122.

- Nicholson v. Williams, 203 F. Supp. 2d 153 (E.D.N.Y. 2002) (subsequent history before Second Circuit and N.Y. Court of Appeals follows).

This was an action brought by mothers individually and on behalf of their children in which the mothers alleged that they were separated from their children because the New York City Administration for Child Services (“ACS”) determined that the children had been neglected solely due to their observance of domestic violence against their mothers. The plaintiffs alleged that these separations violated both the substantive due process rights of mothers and children and their procedural due process rights. In considering the plaintiffs’ claims, the court relied in part on expert testimony regarding the harm that occurs as a result of child-parent separation. Noting that “attachment between parent and child forms the basis of who we are as humans” and that the continuity of “that attachment is essential to a child’s natural development,” 203 F. Supp. 2d at 198-99, plaintiffs’ experts testified that removal of children from parents results in:

- fear and anxiety;
- diminished sense of stability and self;
- despair accompanied by hyper-vigilant looking, waiting, and hoping for parents’ return; and

- heightened sense of self-blame.

Id. at 199. The experts also noted that “another serious implication of removal is that it introduces children to the foster system which can be much more dangerous and debilitating than the home situation.” Such dangers include:

- risk of additional exposure to domestic violence;
 - increased risk of abuse and child fatality;
 - lack of adequate medical care; and
 - disruption of contact with community, school, and siblings.
- Nicholson v. Scoppetta, 344 F.3d 154 (2d Cir. 2003).

On appeal, the Second Circuit held that the District Court had not abused its discretion in concluding that, in some instances, removals based solely on the child’s exposure to domestic violence suffered by mother may raise serious questions of federal constitutional law. However, given the strong preference for avoiding unnecessary constitutional adjudication, the Second Circuit certified the matter to the Court of Appeals of New York to be resolved under state statutory law.
 - Nicholson v. Scoppetta, 3 N.Y.3d 357 (2004).

The New York Court of Appeals held that far more was required to find neglect and justify the removal than a showing that the parent had been a victim of domestic violence. According to the Court, the plain language of the statute and its legislative history demonstrate that “a blanket presumption favoring removal was never intended.” Rather, it concluded, “a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal” and it “must balance that risk against the harm removal may bring” to determine factually which course is in the child’s best interests. *Id.* at 378. For New York-specific cases, the cases applying this standard will be particularly relevant. Because this memorandum is focused on identifying relevant authority discussing the general harms associated with removal, those cases are not discussed here.