

APA Condemns Use of Therapy Records In Immigration Cases

A Washington Post investigation revealed that the federal government has been using the therapy records of children in detention against them. BY KATIE O'CONNOR

APA swiftly condemned the use of therapy records in immigration cases as detailed in a *Washington Post* article published February 15 and called on the government to end the practice immediately.

For decades, the Office of Refugee Resettlement (ORR) has provided migrant children and adolescents with therapy and counseling services. Yet, according to the *Washington Post* investigation, in 2017 ORR began sharing notes from the therapy sessions of some detained children with Immigration and Customs Enforcement (ICE), which then used the notes when arguing for the child's deportation in court.

The *Washington Post's* report focuses on 19-year-old Kevin Euceda, whose home in Honduras was taken over by the gang MS-13. He was forced to work for the gang before he and his sister fled to the United States when he was 17. After he was found by the U.S. Border Patrol, he was placed in a shelter, where he met with a therapist. Then, due to the history of gang involvement reported in his therapist's notes, he was sent to ORR's highest security facility in Virginia, where he has remained, and ICE has used the therapy records as evidence of why Euceda should be deported.

"They're fleeing exploitation, forced coercion into gang activity, and community and domestic violence, and they're expecting the adults in the U.S. to help, but instead those adults can use that information against them in an even more traumatic setting," said Suzan Song, M.D., Ph.D., M.P.H., director of the Division of Child/Adolescent and Family Psychiatry at George Washington University Medical Center and humanitarian protection consultant.

Crossing an Ethical Line

Confidentiality between a clinician and a patient is essential to successful mental health treatment, APA President Bruce Schwartz, M.D., said in a press release. "Violating an agreement of trust with children will cause further damage when they are at their most vulnerable," he continued.

Government policies should reflect professional ethics, said APA CEO and Medical Director Saul Levin, M.D., M.P.A., in the release. "Our organization and our members are willing to work with the administration to ensure that these children receive appropriate mental health care," he said.

On February 25, APA and the National Alliance on Mental Illness



"The situation involving unaccompanied minors at the border and the unethical use of mental health records is antithetical to every value our profession stands for," says Rebecca Brendel, M.D., J.D.

(NAMI) sent a letter to Secretary of Health and Human Services (HHS) Alex Azar and Acting Secretary of Homeland Security Chad Wolf requesting a meeting to discuss concerns about the practice of using mental health information against patients. "This practice undermines efforts to ethically treat individuals with mental health needs and

should be prohibited immediately," the letter stated.

APA and NAMI argued that the practice violates not only medical ethics and the HHS stated policy, but also the *Flores v. Reno Settlement* of 1997. The *Flores* decision requires HHS to provide detained children with mental health care and to safeguard the confidentiality of clinical records.

Ethics Opinion Issued

APA's Committee on Ethics issued an opinion on the topic after APA members requested guidance. In the opinion, the committee stated, "A psychiatrist should not become an agent of the state to the detriment of a patient."

"When the Ethics Committee promotes awareness of these situations and APA can intervene on a policy level, it allows physicians, including psychiatrists, to continue to practice according to the values that make medicine a noble profession," said Rebecca Brendel, M.D., J.D., director of the master's degree program at the Harvard Medical School Center for Bioethics, chair of the APA Committee on Ethics, and an author of the opinion. "This was an opportunity for the profession to stand strong against the government's overreach and the attempt to misuse psychiatry."

The opinion emphasizes that a government policy to share information "does not change the ethics of a physician's duty to maintain the confidentiality of a patient's information."

Individual practitioners, Brendel noted, are much more susceptible to the influence of government authority. "But knowing that APA will stand up

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effectively, swiftly, and thoughtfully for the values that matter most allows us to support our members and take a stand against unjust policies.”

“The abuse and misuse of psychiatry for state interests and prosecutorial purposes contradicts what we stand for as a group of physicians and healers,” said Richard Martinez, M.D., M.H.A., a member of APA’s Ethics Committee and one of the opinion’s authors. Martinez is the director of the forensic psychiatry and forensic fellowship program and the Robert D. Miller Professor of Forensic Psychiatry at the University of Colorado Anschutz Medical School.

ORR’s Response

A representative of the Administration for Children and Families, a division of HHS, said in an email that these minors, whom were referred to as “unaccompanied alien children” (UAC), are “especially vulnerable to exploitation and abuse.” The ORR “goes to extraordinary measures to place UAC in appropriate shelters and balance protecting UAC confidentiality and ensuring public safety in cases where a child is identified as [a] danger to themselves or others.”

Since 2017, 160,000 unaccompanied migrant children have entered ORR’s care and custody, according to the statement. During that time, ORR has received 262 requests for case files from multiple federal agencies, including ICE. Clinical notes were provided to ICE in 46 cases.



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—Saul Levin, M.D., M.P.A.

“Any decision to use materials protected by the psychotherapist/patient privilege in immigration court proceedings rests with ICE attorneys,” the statement reads. ICE referred requests for comment to ORR.

Betrayal of Trust

Shawn Sidhu, M.D., compares the act of using detained children’s therapy records against them in deportation cases to the image of someone falling off a cliff.

“You offer them your hand, you look them in the eyes, and you tell them, ‘It’s O.K.—I won’t let you go.’ And then you just let go and watch them drop into the abyss below,” said Sidhu, an associate professor in the Department of Psychiatry at the University of New Mexico. He has conducted asylum evaluations

in detention centers and in the community. He has also trained over 500 mental health providers in how to conduct these evaluations.

“Some children who have been detained have been through unthinkable traumas, Sidhu said. “All psychiatrists are familiar with trauma, and yet I’ve never seen cases anywhere near as graphic or traumatic as those in detention,” he said.

Song has worked at the Shenandoah Valley Juvenile Detention Center in

Staunton, Va., where Euceda, whose story is featured in the *Washington Post* article, is detained. There, she said, the children and adolescents feel they cannot trust people. “Mental health records can be used as a punishment,” she said. The process of therapy is very powerful, said Samina Aziz, M.B.B.S., a general and child and adolescent psychiatrist in North Carolina and a member of APA’s Council on Minority Mental Health and Health Disparities.

“It’s a privilege to have access to people’s lives, and we want to take that with the seriousness and consideration it deserves, and not have a flippancy about it,” she said. “Frequently we work with marginalized populations who are not able to advocate for themselves, and so it becomes very important to extend this promise of courtesy and thoughtfulness to everyone who walks into our offices, but particularly to children who have been traumatized.” **PN**

“Trust and Consequences” is posted at <https://www.washingtonpost.com/graphics/2020/national/immigration-therapy-reports-ice/>. APA’s statement is posted at <http://apapsy.ch/ImmigrationCases>. The opinion of the Committee on Ethics is posted at <https://www.psychiatry.org/psychiatrists/practice/ethics>.