

## **FAMILY TIES AND DNA AT THE BORDER: UNTANGLING MISCONCEPTIONS**

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### **ABSTRACT**

As the Trump administration's "zero tolerance" immigration policy unfolded in Spring-Summer 2018, so too did a barrage of stories around migrant children being separated from their parents, and then mandates to re-unify them by judge-ordered deadlines. Atop the chaos were calls for DNA testing to screen migrants for trafficking, offers from genomics companies to donate tests and reagents, and the announcement of DNA as a tool to reunify families. As legislators, civil liberties advocates, geneticists, ethicists, and attorneys got involved, the media sprang into action to translate for the public the convoluted history of the use of DNA in immigration. The actors got some details right, some wrong. Some conflated facts were: 1) since a 2005 federal law authorizes collection of DNA from detainees for CODIS; 2) DNA can be useful to verify claimed relationships at the border; 3) DNA is (and has been) required in some refugee family reunification contexts; and 4) DNA often is used for family reunification immigrant petitions. Various tests were confused: consumer genomic services vs. commercial relationship testing services vs. forensic DNA laboratories. Misconceptions spread as officials remained silent on details: Would DNA be collected and stored, and would DNA profiles be databased or uploaded to CODIS? Who would get DNA test reports? How could minors and migrants under dire circumstances give informed consent? In the end, some families benefitted by DNA testing and expedited reunification, while others (such as non-traditional families) were harmed by the lack of guidance and rushed processes. The politically-charged crisis left many victims in its wake, primarily the children and families marred by the experience but also the reputation of DNA as an identity tool. The various layers of history, legal authority, technology, and partial information left media and critics no choice but to denounce use of DNA as invasive, premature, and a distinct human rights violation. We should not wait for the next crisis: a lesson must be learned here. Transparency in government process can enable experts to communicate and foster public dialogue. Experts can translate confusing aspects to the public. DNA has a valuable role in documenting identity at the border, screening for fraud, and reunification of displaced biological relatives. The forensic community has a duty to quash the rumor mill, speculation, and fear-mongering that proliferate in the absence of facts and to clarify nuances to alleviate public concerns for privacy and integrity of processes.

### **What happened this summer?**

This summer it seemed like everyone had something to say about the newly enacted "zero tolerance" policy, the Trump administration's family separations as a direct consequence of the policy, and whether or not DNA should be used in this crisis. *Whether or not DNA should be used.* Not the pros and cons or an informed debate about what policies are in place now, how oversight is managed, who should control DNA data and information, or how best to harness the science while concurrently protecting the privacy of children and families. Those are the conversations for which we were prepared, having mapped out various contexts of DNA being

used to facilitate immigration and detect and deter human trafficking. But instead, we were faced with the black-or-white prospect of whether or not DNA should be used.

It didn't help that the public dialogue shifted rapidly over the course of a few weeks from whether or not the government should use DNA to screen for human trafficking, to whether or not private companies can use DNA to help reunite families, and later to whether or not the government should use DNA for family reunification. In the aftermath of the debates playing out in the media and online, we commenced an autopsy of these dialogues. Our goal was to understand how the dialogue had shifted, what information was conveyed, and how the public communicated about DNA in this immigration—and emergency—context.

To that end, we analyzed the news sources between June 1 – July 31, 2018 with coverage of “DNA” and “migrant” for content and slant. We supplemented those data with analysis of Twitter activity for the same time frame with content on “DNA” and any of 17 trending hashtags or one of five immigration words (i.e., illegals, immigrant, immigration, migrant, refugee). The analysis of these data are ongoing, particularly the Twitter analysis. At ISHI 29 we presented our results from our preliminary analysis of these data.

### **News Coverage**

We combed through search results from three news source search engines, examining 526 items. We excluded duplicate articles, irrelevant articles, press releases, TV news scripts, and the opinion editorial<sup>1</sup> published by us personally. There also were three articles that we could not obtain online, leaving 152 news articles for analysis. To this we included an additional 31 articles of which we were aware that fell outside of the scope of traditional “news” sources queried by the search engines, providing a total of 183 articles on DNA and the family separation crisis. We further refined this collection of media sources to exclude articles just mentioning that DNA is being conducted, focusing instead on news sources that discuss whether there is utility for DNA testing, resulting in 70 articles for content analysis.

When coding the news sources for simple content, we found 19/70 articles discussed some aspect of the science of DNA testing (e.g., STRs vs. SNPs), and 9/70 articles mentioned the legal authority for DNA testing (with seven of the articles covering both science and legal authority). An additional six articles did not delve into the science or legal authority but contained content centered on the actuality of the DNA testing – these articles mostly covered the ethics. We plan to conduct deeper analysis of these 27 articles in the future to assess accuracy of the content.

The 70 news sources were also coded for slant, examining neutral/pro-/anti- immigration, zero tolerance policy, and DNA. While certainly there are people with anti-immigration and anti-zero tolerance policy stance, we found no evidence of this in our results. All pro-immigration pieces were also anti-zero tolerance, and all anti-immigration pieces were also pro-zero tolerance. Only 5/70 articles were pro-zero tolerance, and all of these were also pro-DNA. Of the 32/70 articles with anti-zero tolerance slant, 15% (5/32) were pro-DNA. Viewed from another perspective, 10/70 articles were pro-DNA, with half of these also being anti-zero tolerance and the other half being pro-zero tolerance. None of the 21/70 anti-DNA articles had a pro-zero tolerance slant.

### **Twitter Storm**

The news outbreaks only tell part of the picture, with much public opinion being lashed on Twitter. These data are far more challenging to code in that context is often absent in a 280-character statement. Nevertheless, the social media platform is where we can see opinions and

perspectives develop in real-time (including perspectives from public officials), so it warrants an in-depth analysis distinct from traditional news sources. The data presented at ISHI 29 were only preliminary, as only one coder had examined the data (not yet two as is standard scientific method), and the codebook was loosely developed at that time.

We conducted two searches on August 17, 2018 to capture a number of relevant Tweets within our search parameters, although it is expected that such searches will not capture all Tweets. Of the 219 Tweets that resulted from the two searches, we excluded irrelevant content, leaving 154 Tweets for further coding and analysis of slant. While analysis is ongoing, preliminary data on slant indicated an approximate mirror of the news source data. We found that of the 50/154 Tweets that were pro- zero tolerance, all were either pro-DNA or neutral. Of the 73/154 anti-zero tolerance Tweets, 26% were pro-DNA. Of the 77/154 pro-DNA Tweets, 25% (19/77) were anti- zero tolerance, and none of the 29/154 anti-DNA Tweets were pro-zero tolerance.

### **Policy Shifts**

The actions of the Trump administration to enact zero tolerance policy was partially justified by (a) the requirement of the Flores Agreement<sup>2</sup> to limit the length of time that the government can detain a child and (b) the Trafficking and Victims Protection Act<sup>3</sup>, which requires governments to screen for human trafficking of children. The use of DNA overlays these two policies in that the definition of “family” and “relative” is unspecified. For years (and as we presented at ISHI 26) the U.S. government has considered DNA tests to detect potential cases of human trafficking and to verify relationships of minors being placed with claimed relatives. These policies are undeveloped, still lacking context on implementation details (both technical and practical) and the parameters necessary and sufficient to ensure that non-traditional families are not stigmatized.

That said, DNA tests do hold potential promise as a screening tool and are already used in a case-by-case basis, as shown in our ISHI 26 presentation. DNA tests are already required for Priority 3 refugee family reunification petitions and are routinely requested or provided for other, more standard, family reunification visa petitions (such as the I-130 petition). Back in 2016, to broaden use of DNA tests to verify family relationships, the unsuccessful H.R. 5203 bill proposed language that would require DNA tests for such visa petitions. This language reappeared in two rejected immigration bills put before Congress this summer, H.R. 4760 and H.R. 6136.

The amplification of DNA as a solution over the summer, whether through commercial tests or government, prompted other legislative actions. First, nearly three dozen members of Congress, led by Rep Jackie Speier (D-CA-14), wrote to HHS Secretary Azar seeking answers to eight questions surrounding the DNA testing and use of the resulting genetic information. Second, an amendment introduced by Rep. Clark and Kaptur was adopted in committee mark-up for the Labor-HHS-Education Appropriations minibus bill to impose restrictions on use and protect the privacy of the genetic information obtained in this context. The REUNITE Act, introduced as H.R. 6594 and S. 3227, also includes language defining how DNA testing should be conducted for family reunification. While neither bill has made it out of committee, these or similar bills are likely to emerge in the next session of Congress.

### **Conclusions**

The data and information presented here and at ISHI 29 represent only a sampling of the

dialogue and debate surrounding the use of DNA in immigration. It is clear to us that the public and the media are ill-informed about how DNA is already used, how it is useful, and what the existing privacy protections and oversight mechanisms are. We are conducting this research of news sources and Twitter activity in an effort to highlight the outcome of this gap in knowledge. Children should not be separated from family members, whether biological or not. DNA data should not be misused. Within the gray zones of those two statements there is a whole lot of nuance and context surrounding issues of specific legal authority, consent, privacy protections, data governance, and scientific validity. We see this Summer 2018 scenario as a missed opportunity for professional discussion of these topics instead of the knee-jerk reactions amongst the public. The DNA forensics community can contribute in future dialogues by providing expert understanding and context to correct misinformation.

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