UNACCOMPANIED MINORS AND HUMAN TRAFFICKING

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“Walking Merchandise: child trafficking and the snakehead trade”

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Profiles experiences of 5 young people of being sent to the United States and finding themselves forced to work in the service industry to pay crushing smuggling debts
UNACCOMPANIED ALIEN CHILD/UNACCOMPANIED IMMIGRANT CHILD (UAC/UIC):

An unaccompanied alien child is a child who has no lawful immigration status in the United States; has not attained 18 years of age; and, with respect to whom, there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody.

See 6 U.S.C. § 279(g)(2).
UNACCOMPANIED REFUGEE MINOR (URM):

- Children eligible for the URM Program are under age 18, are unaccompanied, and are:
  - Refugees
  - Entrants
  - Asylees
  - Victims of Trafficking
  - Certain minors with Special Immigrant Juvenile Status
  - U visa holders
“UNACCOMPANIED MINORS”

- “Unaccompanied”

No parent or legal guardian in the U.S., or no parent or legal guardian in the U.S. available to provide care and physical custody to minor.

[Note: Determination is made at time child arrives at the border, even if later united with adult family member.]

- “Accompanied”

Arrives at port of entry to the United States with a parent or legal guardian – [Minor is processed with parent.]
If UAC arrives at the border:

- DHS/CBP determines legal status in US and age [Note: They may be coached to lie about age]
- DHS is required to transfer jurisdiction to HHS if:
  - Determined a minor
  - Not accompanied by a parent or legal guardian [Note: Traffickers sometimes pose as parent]
“UNACCOMPANIED MINORS”

- In HHS custody:
  - Minor is given a medical check-up
  - Screened for legal options and possible family re-unification
  - Placed in temporary shelters and schools

- Practitioner’s Tips:
  - Try to screen for trafficking (esp. if violence occurred at the border) in this setting
  - Minor may be housed alongside others they cannot trust
  - File ORR release for files
  - Request for HHS certification
  - Discuss and advocate against transfer to adult detention facilities
“UNACCOMPANIED MINORS”

- If the minor can be re-united with family:
  - HHS will review family plan/agreement with adult family member [who does not need legal immigration status]
  - Family member agrees to care for minor and take them to all Immigration Court hearings
  - HHS will assist with pro per Changes of Venue.

- If the minor cannot be re-united with family:
  - Minor is held in juvenile facilities while an attempt is made to find a foster family for the minor
  - HHS continues to monitor and assist minor. [Note: Responsibilities and programs for UAC/UIC and URM differ]
Support Networks/Programs for HHS/URM:

- Indirect financial support for housing, food, clothing, medical care and other needs
- Intensive case management by social workers
- Independent living skills training
- Educational supports and educational training vouchers (ETVs)
- English language training
- Career/college counseling and training
- Mental health services
- Assistance adjusting immigration status
- Cultural activities and cultural and religious preservation
- Recreational opportunities
- Support for social integration
Lack of Support Networks for Accompanied Minors or Minors Re-United with Parents

- No financial assistance
- No assistance with immigration legal services – frequently minors are absent from court hearings and ordered removed in absentia
- No support of education and career training
- Minors often disappear and in can face subsequent hardships, exploitation, be trafficked or re-trafficked


**“UNACCOMPANIED MINORS”**

- **Immigration Legal Provisions for Unaccompanied Minors:**
  - Change jurisdiction from DHS to HHS
  - No one-year filing deadline for UAC/UIC’s applying for political asylum

- **Immigration Legal Provisions for Minors**
  - Accommodations in Immigration Court
  - Asylum Guidelines for Minors
Not all UAC are trafficked. But when and how are minors trafficked?

- In home country
- En route/transit to destination country
- During smuggling/entry into the United States
- After placement with family members (both via self-reunification and placement and post HHS release to family members)
- During waiting period for legal relief (e.g. asylum application)
- Upon return to home country
Minors Trafficked into US for Forced Labor and/or Commercial Sex:

- Those that reach destination often do not get identified – go into underground economy (e.g. “Walking Merchandise”)

- Some re-united with family may be:
  - Trapped in forced labor with family (case from Pennsylvania)
  - Trafficked by family for labor, services, or into commercial sex work
  - Required to pay off debt – SF cases
Minors Trafficked En Route to US:

- Identified at the Border

- Forced Labor and/or Commercial Sex en route – indicators of what end objective of trafficker is

- False Promises to Parents or Guardians – differs from information told to minor en route

- Debts to be paid by labor/services in US
HUMAN TRAFFICKING OF MINORS - SCENARIOS

- Minors Trafficked at the Border:

- Forced drug mule and foot guide cases (often prosecuted and deported rapidly)

- “Menores del Circuito” from Mexico vs. one-time drug mule drop-off cases

- Kidnapping and held for ransom, then coerced into forced labor and services at drop houses and bars

- Placement into agricultural sectors or other jobs by coyotes to pay off smuggling debts

- Coerced and forced into prostitution, sexualized economies, or for providing individual sexual services

- Attempt and intent to coerce and force into sex or labor trafficking should be considered
WHY ARE THE UAC COMING?

-Vast majority of UACs are from Honduras, Guatemala, El Salvador, and Mexico

-Youth are NOT coming because of DACA program and TVPA—largely escaping violence, poverty, and government corruption and ineffectiveness

- Bilateral treaties incentivize use of Mexican minors repeatedly for forced labor

- Must not alter TVPA to make Central American and Mexican youth “equal” – must change TVPA to protect Mexican youth from contiguous countries
CRIMES MAY CO-OCCUR WITH CHILD TRAFFICKING

From American Bar Association’s Guide “Meeting the Legal Needs of Child Trafficking Victims: An Introduction for Children’s Attorneys and Advocates”
“Severe forms of trafficking in persons” under 21 USC 7102(9)

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

For children:
- Child sex trafficking: if survivor is under 18 years, no “force, fraud or coercion” requirement
- Child labor trafficking: same standard as for adults
LEGAL REMEDIES FOR TRAFFICKED MINORS

- Family Law
  - Restraining Order
  - Guardianship
  - Custody Order
- Criminal Defense
- Victims’ Rights Advocacy
- Civil Litigation and Employment Claims
LEGAL REMEDIES FOR TRAFFICKED MINORS

- **Immigration**
  - **Family petitions**
    - If qualify and other family members are U.S. citizens/LPRs
  - **Special Immigrant Juvenile Status**
    - Consider if minor trafficked abroad, en route, or within the U.S.
    - Must get state court order to declare that child in the United States has been abused, abandoned, or neglected
    - Can apply for green card but limited derivative options
  - **Asylum, Withholding, and Convention Against Torture**
    - Also consider if minor has been trafficked abroad or en route
  - **T visa or U visa**
    - Consider if minor trafficked en route to the U.S. or within the U.S.
  - **VAWA Self-Petition**
    - If abused child of US citizen or LPR
  - **Removal Defense**
Cooperation with Law Enforcement:

- If survivor was trafficked when under 18 years of age, not requirement to cooperate with law enforcement for T visa

- Benefits of cooperation – Continued Presence, Supplement B (law enforcement certification), statistics
  
  - Consider trauma reasons for exemption of cooperation
  
  - Consider incrimination issues if arrested or prosecuted as victim for criminalized forced labor and services (e.g. drug sales, sex work, etc.)
Family Re-unification:

- If survivor is under 21 years, it is possible to include parents and siblings (under 18 and unmarried) in T visa application without showing imminent threat of danger from trafficker.

- Survivor may want to re-unite with family.

- Ask this question to make SIJS versus U/T visa and political asylum litigation strategy decisions.
Role of Family in Trafficking

- Determine if family played a role in trafficking – providing minor to traffickers (e.g. sold minor to pay debt); or is the trafficker

- Risk to Minor to Re-unite with Family Member (note Mexico case where father sold daughter)

- Considerations in bringing over younger siblings—prevention of their trafficking but ability to care for them? [note – have been successful with qualifying minor siblings for HHS/URM]
Re-uniting with Family Also Being Trafficked
- Risk of Re-Uniting Minor with Parent(s) also being trafficked
- Parents may feel trapped/obligated – thus trapping minor
- Minor may not want to abandon parent(s) in trafficking situation
- Importance of family to stay together – even in an exploitative (trafficking) situation – harm of family separation
Duty, Guilt, and Lack of Control

- Minor may feel obligated to pay debt parents incurred
- Duty to succeed and send money home to family
- Guilt for being ungrateful to parents for their sacrifice to give minor “a better opportunity”
- Age and deference to elders – takes away minor’s control of situation
- May be unable to express opinions/disagree with decisions of elders/parents
- May not want to get parents/adults in trouble
CHALLENGES OF DOCUMENTING HUMAN TRAFFICKING OF MINORS

- Underidentification or misidentification, especially for child labor in:
  - Child Welfare System
  - ORR
  - Law Enforcement
DHHS Eligibility Letters
- Letter of eligibility for social services as a trafficking survivor
  - If URM, minor will likely have this letter
  - Attempting to request these letters – challenges/process
CHALLENGES OF DOCUMENTING HUMAN TRAFFICKING OF MINORS

- Detailed Statements of Minors
  - Helpful to establish statements made to minor en route by traffickers
  - Helpful to establish labor/services minor was required to perform en route
  - Can be re-traumatizing to minor
CHALLENGES OF DOCUMENTING HUMAN TRAFFICKING OF MINORS

- Letter/Declaration from Parents
  - If parents are not involved in trafficking, parents can recount false promises made by traffickers.
  - Parents may have information on the final intention of traffickers – e.g., to have the minor work in the US to pay off debt.
  - Parents may also be able to confirm subsequent threats from traffickers – after the minor escapes the trafficker.
CHALLENGES OF DOCUMENTING HUMAN TRAFFICKING OF MINORS

- Customs and Border Protection (CBP) interactions/records/credible fear assessment (for asylum cases too)

- Supplement B/Continued Presence
  - Cooperation is not required from survivors under 18, these are forms of primary evidence
  - LEA’s discretion
CHALLENGES OF DOCUMENTING HUMAN TRAFFICKING OF MINORS

- Obtaining passports and birth certificates
- Medical documentation
- Other Documents
OTHER RESOURCES


OTHER TRAININGS


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