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TREAT THE CHILDREN WELL: SHORTCOMINGS IN THE UNITED STATES' EFFORT TO PROTECT CHILD TRAFFICKING VICTIMS†

MICAH N. BUMP*

INTRODUCTION

With the passage of the Trafficking Victims Protection Act of 2000 (TVPA) and its subsequent reauthorizations, the United States vowed to protect victims of human trafficking.1 In addition to the primary emphasis on protection suggested by its title, the act also focuses on the prosecution of traffickers, and prevention of further trafficking.2 While it may appear that protecting trafficking victims and prosecuting traffickers go hand-in-hand in furthering the ultimate goal of eradicating human trafficking, considerable tension exists between these two aspects of the anti-trafficking fight.3 Researchers and advocates are increasingly voicing their concern that the U.S. Government’s approach is too heavily focused on prosecuting crimes to the detriment of protecting victims.4 In other words, the U.S. Government is taking a law enforcement approach and not a victim-centered approach to combating trafficking.

The debate thus far on this issue has focused almost exclusively on the entire population of trafficking victims with little or no distinction between adult and child trafficking victims.5 The particular vulnerability of child victims, related to bio-physiological, social, behavioral, and cognitive phases of the maturation process, distinguishes them from adult

† On September 30, 2008, the Notre Dame Journal of Law, Ethics & Public Policy hosted a panel discussion entitled “Yearning to Breathe Free: Immigrants and the American Dream.” A version of this paper was presented at that event.

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2. Id. § 7101(a).


5. See, e.g., Haynes, supra note 3, at 347–49. The Haynes article brought this issue to the fore, but did not specifically focus on the needs of children.
victims and underscores the necessity of special attention to their particular needs.\textsuperscript{6} Although the drafters of the TVPA recognized this difference and included provisions to guarantee extra protection for child victims,\textsuperscript{7} current practice indicates that the United States is falling short of this goal.\textsuperscript{8} The focus of this article is to highlight the shortcomings of the current implementation of the TVPA as it pertains to the protection of children.

Based on original field research, this article will shed light on the troubling practice of federal prosecutors and investigators pressuring child trafficking survivors and their child welfare professionals to aid in the investigations and prosecutions of traffickers. In doing so, government prosecutors ignore the concerns of child welfare professionals related to the adverse effects that forced testimony and interviews have on a child trafficking survivor's progress. To illustrate the detrimental effects of this practice, this article focuses on a specific case in which federal prosecutors used a subpoena to compel child trafficking survivors to testify in front of a grand jury against their will. While this is the only case the author knows of to date in which authorities used a subpoena to force a child's participation in a trafficking prosecution,\textsuperscript{9} the incipient nature of the anti-trafficking movement warrants discussion to prevent future problems and avoid precedent setting. Furthermore, the case presented in this article is indicative of the more routine practice of federal investigators and prosecutors pressuring child welfare professionals to make child trafficking victims available for interviews.\textsuperscript{10}

Forced testimony and interviews adversely affect the child trafficking survivor's emotional and physical well-being and break down the trust that exists between law enforcement personnel and social service providers.\textsuperscript{11} While the practice may be allowed for adults, it is explicitly prohibited for children.\textsuperscript{12} Not only is it morally irresponsible, it is legally untenable and not good anti-trafficking policy. The TVPA, the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), and the

\begin{itemize}
    \item \textsuperscript{6} See Bump et al., Second Conference on Identifying and Serving Child Victims of Trafficking, 43 (1/2) INT'L MIGRATION 343, 343–51 (2005). The particular vulnerability of child victims, related to bio-physiological, social, behavioral, and cognitive phases of the maturation process, distinguishes them from adult victims and underscores the necessity of special attention to their particular needs.
    \item \textsuperscript{8} Bump et al., \textit{supra} note 6, at 343–51.
    \item \textsuperscript{9} This was also confirmed by a telephone interview with the girls' immigration attorney.
    \item \textsuperscript{10} \textit{See also} Bump & Duncan, \textit{supra} note 3.
    \item \textsuperscript{11} Interview with URM caseworker, August 1, 2006; \textit{see also} Bump & Duncan, \textit{supra} note 3.
\end{itemize}
corresponding legislative history explicitly state that, for their own protection and well-being, child victims of trafficking are not required to cooperate with federal prosecutors in order to remain in the United States and receive benefits to aid in their post-trafficking recovery.  

METHODOLOGY

This research is part of an ongoing collaborative effort between the Institute for the Study of International Migration, and Migration and Refugee Services of the U.S. Conference of Catholic Bishops (USCCB/MRS). The latter is a national non-governmental organization providing technical assistance to federally-funded foster care and unaccompanied minors service networks. The project uses three primary data sources: 1) key informant interviews with service providers in the USCCB/MRS, the Lutheran Refugee and Immigration Services (LIRS) refugee foster care, and Unaccompanied Refugee Minors (URM) programs, each of which serve child victims of trafficking; 2) interviews with child survivors of trafficking selected from among children currently in care; and 3) analysis of case files of child trafficking survivors.

Interviews With Key Informants

The research team conducted a total of thirty-one in-depth interviews with representatives of fourteen programs that serve trafficked children. This sample included programs in seven states. The service providers were recruited for this study with the assistance of USCCB/MRS. As part of its mandate, USCCB/MRS works with the federal government and local communities in providing services to refugees and trafficking victims admitted to the United States. The key informant interviews with program managers and caseworkers from the URM programs provided an opportunity to understand the circumstances contributing to the repeat and continued victimization of child survivors of trafficking before they either age-out or leave the federally funded programs. While the information about child victims already determined eligible by the Office of Refugee Resettlement (ORR) provided some data on their characteristics and the circumstances that brought them to the United States, much less was known about their post-emancipation conditions, attainment of employment, earnings abilities, and recovery from trauma. During the course of the interviews, participants were

14. The number of service providers interviewed for this project does not correspond with the total number of child survivors served by the programs since several providers assisted more than one child.
asked to describe in detail both their experiences in helping trafficked children deal with the consequences of trafficking from initial intake, and the children's condition at the time of the research.

**Interviews With Emancipated Survivors**

The best information about how child survivors cope before and after emancipation comes from the survivors themselves. The research team received permission to attempt to contact thirty-nine survivors of human trafficking who had turned eighteen by the time of this study. All of the survivors were either currently in the care of a URM program or had received services through the URM network sometime in the past. This sample included thirty-seven females and two males. Only a portion of the thirty-nine survivors were available to interview. Fourteen of the thirty-nine, or thirty-six percent, had emancipated from the URM program by August 2006. This meant that they were no longer receiving services from the programs that had agreed to facilitate access to the survivors for the research project. In two cases, the programs were still in touch with the survivor and were able to assist in arranging an interview. However, the research team was unable to contact the remaining twelve. Thus, the overall sample was reduced from thirty-nine to twenty-seven. The research team was able to interview seventeen of the twenty-seven survivors. Although the sample size was relatively small, the paucity of existing research on survivors of child trafficking was a strong motivator to conduct this research.

**Case File Reviews**

The research team supplemented the individual interviews conducted with key informants and trafficking survivors with reviews of individual case files. These files provided background information on the children, information on their migration and trafficking history, and a chronological presentation of the services provided to the child subsequent to entering into the post-trafficking program. Access to case file review allowed the research team to obtain in-depth information about sixteen additional cases. The case file reviews were especially useful for this analysis because they contained the history of communication between service providers and federal prosecutors on the topic of child trafficking survivors participating in a trafficking investigation and prosecution.

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16. See Appendix 1 for a more in-depth statistical portrait of trafficked children in federal custody.

17. At the time of the fieldwork, the vast majority of unaccompanied child trafficking survivors were cared for through the URM program. While many still receive services through the URM program, they can be served by state Child Protective Services or licensed child shelters.
OVERVIEW OF THE TVPA

In October 2000, Congress passed the TVPA to comprehensively address the human trafficking phenomenon. The act defines trafficking as all acts involved in the recruitment, abduction, transport, harboring, transfer, sale, or receipt of persons within national or across international borders, through force, coercion, fraud, or deception, in order to place persons in situations of slavery or slavery-like conditions, forced labor or other services such as forced prostitution, domestic servitude, bonded sweatshop labor, or debt bondage. Its stated purposes were "to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims."

ACCESS TO SERVICES UNDER THE TVPA: THE TENSION BETWEEN PROTECTION AND PROSECUTION

Section 107 of the TVPA specifies that adult and child victims of trafficking are eligible for a number of different services and benefits regardless of their immigration status. These include access to immigration relief, work permits, vocational training, job placement, and social services through referral to appropriate non-governmental organizations (NGOs). Other benefits include access to the URM programs, the Children’s Health Insurance Program (CHIP), and the Temporary Assistance to Needy Families (TANF) program. Victims between ages sixteen and twenty-four who have received work permits may be eligible for Job Corps, a program run by the U.S. Department of Labor. In order to access these benefits, the victims must be certified (adults) or determined eligible (children) for services by the federal government.

Certification of adult trafficking victims and eligibility determinations for child trafficking victims are made by the ORR within the Department of Health and Human Services (HHS), after close consultation with the U.S. Secretary of Homeland Security. ORR certification of adult victims requires confirmation that the adult victim (1) is willing

20. Id. § 7101(a).
21. Id. § 7101(b)(1)(B).
23. See id. § 7105(b)(1)(A); see also Bump et al., supra note 6, at 350–59.
25. Id. § 7105(b)(1)(E); see also Bump & Duncan, supra note 3, at 205–07; Bump et al., supra note 6, at 343–50; Elzbieta M. Gozdziak & Margaret MacDonnell, Closing the Gaps: The Need to Improve Identification and Services to Child Victims of Trafficking, 66 HUMAN ORG. 171 (2007).
to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons and (2) has either made a bona fide application for a T-visa with the Bureau of Citizenship and Immigration Services (BCIS) in the Department of Homeland Security (DHS) or is a person whose continued presence in the United States is assured by the Secretary of Homeland Security in order to assist with prosecution in trafficking cases.\textsuperscript{27}

Victim advocates criticize the fact that the TVPA makes cooperation with law enforcement an obligatory condition for accessing immigration benefits and victims' assistance services for anyone eighteen years or older.\textsuperscript{28} They argue that not all victims have the same opportunity to access services and make a successful T-visa application, regardless of their willingness to cooperate with law enforcement. Despite the TVPA only requiring that a trafficking victim be “willing to assist in every reasonable way” in order to receive benefits,\textsuperscript{29} if law enforcement chooses not to investigate the case it is highly unlikely the victim will be certified.\textsuperscript{30} Thus, in practice, the statutory language “willing to assist in every reasonable way” has been tempered significantly, to encompass primarily those cases where federal law enforcement personnel decide to use the information willingly provided by the victim to carry out an investigation.\textsuperscript{31}

The unequal access to services is a multi-layered problem that commences at the point of rescue. When a rescue is conducted by federal government entities such as the Federal Bureau of Investigation (FBI) or Immigration and Customs Enforcement (ICE) agents, a chain of events is triggered that ensures a greater possibility that the potential victim is identified as such. Compared to trafficking victims discovered by non-federal law enforcement entities, those rescued by federal law enforcement officials are more often deemed “eligible for immediate shelter and protection assistance . . . than do those who in essence rescue themselves by fleeing their abusive situation and then seeking assistance.”\textsuperscript{32} Being

\textsuperscript{27} See id. § 7105(b)(1)(E)(i). Certain publicly funded services related to the protection of life and safety of victims of human trafficking do not require certification or determination of eligibility. See id. § 7105(c)(1). These services include access to appropriate forms of shelter, medical and legal assistance, witness protection, translation services, and repatriation. See id. § 7105(c). Access to these services depends on law enforcement recognizing that the person may be a victim of trafficking. See id.


\textsuperscript{30} See, e.g., Haynes, supra note 3, at 347–49.


\textsuperscript{32} Haynes, supra note 3, at 350.
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deemed eligible for immediate protection by federal law enforcement is an important first hurdle in the certification process; regardless of a victim's willingness to cooperate with the investigation and prosecution, only those "rescued" by law enforcement will generally be certified. By predominantly certifying only those victims that they encounter, the DOJ and DHS ignore the reality that most trafficking victims are not uncovered by their raids, and in doing so put the majority of trafficking victims at risk. This trend forms the basis of the claim that the government's implementation of the TVPA has been too focused on prosecution.

"Children under age eighteen are exempt from the certification process but still need a 'determination of eligibility' from ORR in order to gain access to services." This requires that the child be a victim of trafficking as defined in the TVPA. In such cases, ORR will issue a letter of eligibility determination, similar to the adult certification letters, stating that a child is a victim of a severe form of trafficking. The principal difference between adult and child victims of trafficking regarding access to services under the TVPA is that trafficking victims less than eighteen years old may gain access to benefits, including immigration relief, without having to participate in the investigation or prosecution of their traffickers.

Given that the TVPA's cooperation-for-services requirement does not extend to children, it would seem logical that the criticism contending that the TVPA's implementation is too prosecution-focused would not apply to children to the same extent. But what happens when federal prosecutors feel that they absolutely need the assistance of the child trafficking survivor to effectively proceed with their case? This question is best answered in the context of the priority placed on anti-trafficking by both Congress and the Executive and the low number of identifications of trafficking victims and prosecutions of traffickers relative to the estimates of total trafficking cases. Trafficking cases are difficult to prose-
cute because they are resource intense—they require coordination across different government agencies, international fact-finding, interpreters, witness protection, and witness cooperation. Despite these challenges, federal prosecutors are highly motivated to bring forth trafficking cases because the cases are often high-profile and bring good publicity, and because the President has prioritized the fight against trafficking. On balance, prosecutors have a strong impetus to pursue trafficking cases whenever possible.

Thus, if the only barrier standing between a potentially strong case against human traffickers is the unwillingness of a child to cooperate with law enforcement, federal investigators and prosecutors are likely to pressure the child, and the URM programs designed to care for them, to participate in the investigation and court proceedings. This is done with little regard for the desires of either the child or the program, and only superficial concern about the potentially harmful emotional and physical effects of participation on the child. In the case I discuss below, federal prosecutors went so far as to use a subpoena to compel two child trafficking victims to testify, against their will, before a grand jury regarding a case involving their traffickers, among whom were the mother, grandmother, and aunts of one of the victims. This case has set a precedent by which federal prosecutors and investigators, through the use of the subpoena, may circumvent the intent and purpose of the TVPA that child trafficking victims not be required to cooperate with law enforcement.

Although this is the only case to date where U.S. Attorneys from DOJ and ICE investigations have used a subpoena to circumvent the TVPA and force a child trafficking survivor's testimony, the seriousness of the consequences as well as the likelihood that similar cases will emerge in the future justify its use as an example. Moreover, it portrays the more routine, but equally disconcerting problems of DOJ prosecu-

During the same time, only 400 cases were prosecuted on human trafficking charges. See Anthony M. DeStefano, The War on Human Trafficking: U.S. Policy Assessed 118–141 (2007), for a discussion of the U.S. response and the priority placed on anti-trafficking.


40. This case presents details of the case United States v. Medrano, No. 05-CR-148, slip op. (D.N.J. 2006). Fictitious names are used to protect the identity of the trafficking survivors and their immigration lawyer. Other details of the case, such as the U.S. Attorneys involved in prosecuting the case, are available through public documents and major news media outlets and thus represent the real names of the individuals.
tors and ICE investigators insisting that URM programs grant access to children, while ignoring the warnings from child welfare and medical professionals regarding the potential detrimental and irreversible consequences of both forced interviews and interviews conducted in a manner not appropriate for children.41

MELINDA AND PAULA'S STORY42

Melinda and Paula are both originally from Honduras. Melinda is the second of four children. Her mother worked as an evangelical Christian pastor and her father worked in agriculture until he had to have his leg amputated two years prior to her trafficking, due to complications with diabetes. Melinda indicated that her family was very poor and that she often went hungry. She reportedly sought to come to the United States to work and send her earnings to her parents so that her father could afford surgery for his leg. Paula is the fourth of five children. Her desire to travel to the United States was also spurred by a desire to help ailing family members. Her father had serious kidney problems and her mother reportedly suffered from heart disease—both were too ill to work. Two of her brothers were diagnosed with epilepsy. The entire family lived in a rural area on a banana plantation. Her older brother worked on the plantation and provided for the entire family.

While it is unclear if the two girls were in contact prior to coming to the United States, they both made initial preparations for the journey through the assistance of Melinda's mother, grandmother, and aunts. In 2003 and 2004, each was smuggled separately from Honduras, through Mexico and Houston, to New Jersey. Melinda arrived first, in 2003. Both girls were fourteen years old when they migrated. Melinda described the journey as the worst part of the entire ordeal and revealed that she was sexually assaulted by her smuggler en route. Once at their final destination in New Jersey, the girls were put to work as dance-hall girls in bars, where they spent long hours catering to immigrant men. Their job was to get the men to pay for expensive drinks and dances. Some of the dance-hall girls were encouraged to engage in prostitution to pay off their debts sooner, although there apparently was no forced prostitution involved.

41. See text accompanying notes 42–56.
The conditions of Melinda and Paula's work at the bar differed somewhat because Melinda was related to members of the trafficking network while Paula was not. The traffickers did not force Melinda to pay back any of her smuggling debt. She was able to keep all the money she earned working at the bar, estimated at about $240 to $500 a week. In contrast, the traffickers immediately informed Paula that she owed $15,000 for the smuggling costs and that most of her earnings had to go to paying down the debt. Both were put to work six days a week and were subject to physical and emotional abuse. While they were not forced to prostitute, Paula later revealed that she engaged in such activity at the encouragement of her traffickers. They were forced to drink alcohol and smoke marijuana with the clients. The ordeal ended when DHS agents from ICE conducted two separate raids of the operation in early 2005 during which they apprehended both girls, along with several other women. While many of the adult women apprehended in the raid were deported, Melinda and Paula were placed in the custody of the URM program through ORR.

**Melinda and Paula's Adjustment to the URM Program**

The initial adjustment to the URM program proved difficult for both girls. Paula arrived at the program at the end of January 2005 and Melinda arrived a few weeks later in early February. While they arrived at separate times and had different living situations, having each other's company was positive for both girls. Melinda's desire to stay in the program was heavily impacted by meeting and spending time with Paula. Still, the girls faced many challenges. Melinda did not have a clear understanding of where she was going to live or what the URM program entailed. Early in the adjustment process she expressed that she had been able to earn enough money at the bar to help her father receive the required operation. Therefore, she felt she had fulfilled her initial reason for migrating to the United States and wanted to return home.

Paula had an equally difficult adjustment for similar reasons. Her original motivations for coming to the United States were extreme poverty and a desire to help her parents, who were suffering from heart disease and kidney problems. That two of her brothers were epileptic only compounded the situation. As the next eldest child, making money by any means was imperative. Her managers at the bar permitted her to send some money home to help her family, thereby increasing her identification and bond with them. In addition, Paula's actions were shaped

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43. This is an example of the well-documented victim distortion phenomenon called Stockholm Syndrome, also known as "identification with the aggressors" or "traumatic bonding." See Colin Feltham & Windy Dryden, Dictionary of Counseling 109, 223 (Whurr Publishers Ltd. 2d ed. 2004). See also Deborah L. Harrison, Victims of Human Trafficking or Victims of Research? Ethical Considerations in
by daily forced alcohol and marijuana use. All of these factors shaped her positive identification with the bar environment. Thus, Paula’s sudden removal and immediate entrance into the URM program where she could no longer work and immediately provide for her family caused significant upheaval.

Faced with the sudden unknown, both Melinda and Paula initially expressed anger, depression, and a strong desire to return home. However, after interviewing with the URM program officer and their immigration lawyer they were able to understand the legal process and social services that were in place. They both decided to stay in the United States for “at least a few months,” in order to “have something to show for their time here” and have another opportunity to “stay and make money.” The initial adjustment was extremely trying for both girls, and each made suicide threats and/or attempted to harm themselves. Both had to be placed in residential treatment facilities. The lack of clear self-identification as victims further complicated the adjustment period. Melinda and Paula enjoyed earning money for their families and the access to drugs and alcohol, which made them more susceptible to trauma and more resistant to offers of help in the post-trafficking stage. It seems that each girl’s self-identity, understanding of her situation, and subsequent goals may have conflicted with the goals of service providers and law enforcement. Melinda and Paula did not appear to harbor especially strong resentment towards their traffickers, and did not see themselves as trafficking victims. Clear identification of someone as a perpetrator correlates with a less traumatic aftermath. Melinda was especially ambivalent because of her family relationship to the traffickers.

**Forced Interviews and Testimony: The Exacerbation of Melinda and Paula’s Adjustment Challenges**

Adjustment challenges similar to those of Melinda and Paula usually last about six months according to social workers experienced in working with this population. The girls arrived at the URM program in late January and early February of 2005. Just two months later, in early April, ICE enforcement officials sent a letter to the URM program requesting that two ICE agents, an Assistant U.S. Attorney, and a U.S. Department of Labor (DOL) agent be allowed to conduct interviews with both girls pursuant to their investigation of the traffickers.

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44. E-mail from Melinda and Paula’s former immigration lawyer to author (Apr. 8, 2008) (on file with author).

45. Notes from case file review [hereinafter Notes] (on file with author).
The interview request put the program into a predicament, because while they wanted to assist in the investigation, their primary role was to ensure the best interests of Melinda and Paula, and they felt that the interviews would be contrary to the girls' best interests. As this was the first time both the local and the national URM programs faced the issue, they were not sure how to respond. While they understood the emotional ramifications of participation in the interviews, they did not have a grasp of the legal ramifications of not complying with the request. Moreover, although the URM programs often arrange for legal services related to immigration matters, they deal with other types of legal issues less often—the girls did not have legal representation beyond that of the immigration lawyer. This led the immigration lawyer to play a more active role in dealing with the initial, as well as subsequent interview requests.

Three days after receiving the letter of request from ICE, the URM program responded directly to ICE stating that they would be willing to arrange for an interview, but only after obtaining Melinda and Paula's consent and consulting with the girls' immigration attorney, who was a staff member of an NGO providing legal assistance to the URM program on immigration issues. The URM representative mentioned that it was the program's opinion that Paula should not be interviewed at that time because of her fragile emotional state and status as a current patient in a residential treatment facility. They judged Melinda to be able to meet the stress of the interview process.

In response to the request, Melinda declined to be interviewed stating she had already shared all the information she possessed. Despite Melinda's refusal and the program's conclusion that Paula was not emotionally fit for an interview, ICE insisted that they interview the girls in preparation for their case. Although it disapproved of the interviews, the program acquiesced. It did so out of concern that its failure to cooperate with ICE officials might negatively affect the long-term immigration status of the girls and future relations between the program and ICE officials. In early May 2005, a few weeks after the initial request, the girls were interviewed. Two ICE agents, an Assistant U.S. Attorney, and a DOL agent participated in the interviews, which were conducted without use of child-specific interviewing techniques such as rapport building, ensuring the children understood the topic of concern and the reason they were being interviewed. While not specific in detail, the girls' caseworkers noted that both showed emotional setbacks after the interviews and that interviewing against their will only exacerbated the challenges of adjustment.

46. Telephone Interview with Melinda and Paula's former immigration lawyer (Feb. 15, 2008).
Less than one month later, the U.S. Attorneys subpoenaed Melinda and Paula to testify in front of a grand jury in New Jersey. While the program staff understood that child trafficking victims did not have to testify in order to receive services through the URM program, they were unsure about whether the girls would have to obey the subpoena. They were clear, however, about the potential negative effects that such testimony would have on their clients. Thus, on the advice of the immigration lawyer, the URM program immediately sent two letters, one on behalf of each girl, to the immigration attorney explaining the potential harm that testimony would cause. These letters were immediately faxed and sent via certified mail to the U.S. Attorney involved in the case. The letter on behalf of Melinda read in part:

June 6, 2005

Dear [Attorney]:

It is our understanding that Melinda has been subpoenaed to testify before the Grand Jury in Newark, New Jersey. We believe that it is not in her best interest to testify at this time. Melinda is getting accustomed to her foster home, going to school and building relationships. Melinda is receiving therapy once a week to address the trauma that she experienced. Daily she is working on her feelings of stress, sadness, and separation from family that at times makes her emotionally unstable. If the trip is unavoidable, we would like to express concerns regarding the increased risks in the following areas:

1.) Melinda fears that if she testifies she will never be able to return to Honduras due to retribution.
2.) During medical appointments, Melinda has expressed having stomach pains due to stress.
3.) Melinda’s final day of school [conflicts with the testimony date]. She will be missing two days of school at a critical time in the curriculum.
4.) There is a risk of Melinda running due to her familiarity with the area.
5.) There is a potential contact with traffickers.
6.) Emotional stress and the effects it will have on each client (Melinda has expressed feeling nervous/worried, a lack of appetite and is very emotional and begins to cry.)

If the subpoena is unavoidable, our staff will make every effort to assist her in processing this additional stress. In addition, our assessment is that it is not in Melinda’s best interest to testify or
participate in the criminal trial at this time. We appreciate your consideration of the recommendations listed above.47

Paula’s social worker, therapist, and consulting psychiatrist authored a parallel letter on her behalf and sent it to the immigration lawyer the same day. The letter stated in part:

June 6, 2005

Dear [Attorney]:

It is our understanding that Paula has been subpoenaed to testify before the Grand Jury in Newark, New Jersey. We believe that it is not in her best interest to testify at this time. Paula faces stressors and displays bad behavior. [This past month] in response to a concern for her mother’s health and a change in her telephone limited [sic] she broke a mirror and placed shards in her mouth. [This past month] she walked in the street after she was informed that she was placed in foster care on a temporary basis. She has been diagnosed with depressive disorder. It would be the recommendation of both the MSW and the Consulting Psychiatrist that she not be mandated to testify in the trafficking case. She may potentially put herself at risk if placed in such a stressful situation. It is possible that it will do more harm than good for her treatment and progress.

Sincerely,
MSW, Therapist, Consulting Psychiatrist48

Despite indications that Melinda and Paula were unfit to testify, neither the URM program staff nor the immigration attorney made an attempt to quash the subpoena. The lawyer (and her superiors) made no motion to quash because they, as immigration attorneys, had never before faced this issue, and because they had not been advised to quash the subpoena by the other attorneys they consulted with.49 ICE investigators and the U.S. Attorneys ignored the warnings pertaining to the girls’ emotional and physical health and stated to the immigration attorney that if they didn’t comply, they could be held liable for obstruction of justice.50 In order to pressure the local URM program into acquiescence, the investigating team from ICE and DOJ made calls to the national URM office and HHS stating that they expected the girls’ testimony and the program’s cooperation.

47. Letter from URM Program representative to Melinda and Paula’s former immigration lawyer (June 6, 2005) (on file with author).
49. E-mail from Melinda and Paula’s former immigration lawyer to author (Apr. 8, 2008) (on file with author).
50. Id.
In the end, Melinda, but not Paula, testified in July 2005 in front of a grand jury. As a result of her testimony, U.S. prosecutors worked with Honduran authorities to incarcerate Melinda's mother, grandmother, and aunts in Honduras for their role in the girl's trafficking. Her caseworker described these legal proceedings, including testifying, as "extremely emotional" for Melinda. The caseworker reported that Melinda made suicidal statements after returning from court. Melinda attempted to follow through with her statements when she swallowed a mixture of pills less than a month after testifying. When asked why, she stated that "it was to take away the pain." Melinda was placed in a residential treatment home and while she showed some signs of progress, she continued to struggle with feelings of depression, low self-esteem, and guilt. She expressed a sense of responsibility for the incarceration of her mother and grandmother, and needed the accompaniment of a therapist whenever she spoke with any family members in Honduras.

The process of testifying necessarily included forced exposure and re-experiencing of a difficult and confusing situation. Despite Melinda's own protests, and the protests of her doctors and caregivers, the U.S. Attorneys continued to press for more information. In fact, as the letter reproduced below demonstrates, they expressed their desire that Melinda and Paula not see each other on a daily basis for fear of the effects it could have on their prosecution of the girls' traffickers.

While it is unclear if the U.S. Attorneys knew about the harmful effects that testifying before the grand jury and being interviewed had on Melinda and Paula, if they did have such knowledge, they were not hindered from demanding more interviews. DOJ prosecutors wrote the following letter in September 2005:

Sept. 17, 2005

Dear [Attorney],

As you know, on July 21, 2005, the grand jury returned a 31 count Superseding Indictment charging Luisa Medrano, et al. with conspiracy to commit force [sic] labor and other criminal violations. Trial is scheduled for January 25, 2006.

We will need to interview both Melinda and Paula again prior to the trial date and will appreciate your help in arranging the interviews and preparing the girls for our visit as you did before our interviews in May. Before we make plans to interview the girls again, please provide a more complete update on the status of both girls. Are they both in counseling? How often do they go to counseling? Is Paula continuing to make progress? Is Melinda

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51. See Notes, supra note 45.
52. Id.
making a good adjustment? Are both girls in school this fall? Is the same case worker assigned to both girls? Have there been any concerns on your end that we should be aware of. When we do come to interview the girls we will, of course, give you plenty of notice so you can let them know and will make every effort to ensure that our visit will not interrupt their school.

As I indicated in my [earlier] letter to you, when the Special Agent [from ICE] and I visited LSS in May and interviewed the girls, we expressed our concern about continued day to day contact between the two girls. It appeared clear to us at that time, that Melinda had a great deal of access to telephones during the school day and routinely calls Honduras. Can you let me know what steps have been taken to improvise [sic] this situation? Melinda’ [sic] mother has been charged in Honduras and as that trial date approaches, she may feel additional stress being together with Paula (whose mother testified against Melinda’s mother in Honduras) and cause additional tress [sic] and conflict for both girls . . .

[Yo]u can reach me to provide this additional requested information as to the status of Melinda and Paula at any time and to provide any other information that you think is important to these girls.

Sincerely,

Christopher Christie (US [sic] Attorney, New Jersey)

Deborah Gannett (Assistant US [sic] Attorney, New Jersey)\(^53\)

While Melinda and Paula’s immigration lawyer and the URM program were deciding how to respond to the letter, the DOJ lawyers wrote a follow-up letter repeating the request to interview both girls in the fall of 2005 prior to the trial date.

Shortly after receiving the second letter from the U.S. Attorneys, Melinda’s therapist wrote the following response:

October 14, 2005

Dear [Attorney],

It is not in Melinda’s best interest to interview based on her reactions from testifying and previous interviews. During therapy she has continued to report feelings of stress, depression, and anxiety in relation to her trauma and how the legal proceedings will affect herself and her family. Also, it has been observed that Melinda displays increased signs of depression and anxiety before and after

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interviews including sleeping difficulties (nightmares), nausea, inability to concentrate in school, and crying. Depression reached such a point that she attempted to harm herself in order to take the pain away. Therefore in [sic] her best interest that she not participate in the interview.

Sincerely,

Therapist, MSW54

The director of the URM program wrote a similar letter on behalf of Paula which stated, in part, the following:

October 14, 2005

Dear [Attorney],

It is the collective professional opinion that it would not be in Paula’s best interest for her to interview. Setbacks for Paula have occurred after any limits are set on her behavior. She has limited capacity to control her own reactions to stressful and difficult situations. Incidents include threatening to harm herself, aggression and threats toward other youth or residential staff and attempting to run away. She was in a residential placement and after some progress was placed in a foster home, however, her unhealthy coping strategies have resulted in her need for a higher level of care and supervision. This interview would likely cause further instability for Paula and it is not in her interest to participate at this time.

In summary, both Melinda and Paula have been traumatized repeatedly by the people and circumstances leading up to their placement in foster care. These two young women need stability and peace of mind to continue the healing process that has begun. Both currently lack the appropriate coping skills to handle another traumatic experience; therefore we believe that an interview of this magnitude or any required testimony would jeopardize their emotional and physical health.

Sincerely,

Program Director55

Fortunately for Melinda and Paula, there was no need for further interviews with DOJ and ICE officials after some of the members of the suspected trafficking ring pled guilty. Nevertheless, the series of exchanges between government lawyers/investigators and the URM program underscores the tension existing between the prosecution and protec-

54. Letter from Therapist and MSW to Immigration Attorney (October 14, 2005) (on file with author).
tion elements of the TVPA. Government prosecutors and investigators completely ignored the multiple requests of the social service and health care professionals mandated to ensure protection and care for child trafficking survivors. In doing so, they violated both the letter and the spirit of the TVPA which specifically states that child trafficking survivors are not obligated to cooperate with law enforcement in the investigation or prosecution of their traffickers in order to obtain access to benefits. Why, then, did this occur?

WHY DID DOJ ATTORNEYS AND ICE INVESTIGATORS USE A SUBPOENA AND IGNORE THE PROGRAM'S REQUESTS TO AVOID INTERVIEWS AND TESTIMONY?

There are several factors that may have contributed to DOJ and ICE circumventing the TVPA for purposes of the prosecution. First, federal prosecutors and ICE investigators have a high incentive to apprehend, charge, and prosecute traffickers. The President has proclaimed combating human trafficking a priority area and the DOJ must provide annual reports to Congress on U.S. Government activities to combat trafficking in persons. While Congress and the Executive have prioritized anti-trafficking and backed the effort with significant resources, identification and prosecution remain a major challenge. Human trafficking estimates are far from precise, but there is a major gap between the 14,500–17,500 international victims that the government estimates enter the United States each year and the 1,100 victims identified since the passage of the TVPA. The DOJ often touts a tremendous growth rate in its trafficking prosecutions, but as shown in Table 1, the absolute number of overall prosecutions remains relatively low, especially given the estimates of the total number of international trafficking victims.


58. See DeStefano, supra note 37; Gozdziak & MacDonnell, supra note 25; Haynes, supra note 3.

entering the country each year. Regardless of whether the estimates are correct, the bottom line is that it is difficult to identify trafficking victims and prosecute their traffickers. Thus, when the opportunity for prosecution emerges, federal prosecutors are likely to pursue the case vigorously.

**Table 1: Overview of All Trafficking Prosecutions 2001 - 2006**

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Given the public outcry against trafficking, DOJ prosecutors and ICE investigators will also leverage prosecutions for publicity purposes, which is exactly what happened in Melinda and Paula's case. Immediately after the grand jury returned the thirty-one count indictment on July 21, 2005, the U.S. Attorney for the District of New Jersey issued a press release about the case. The *New York Times* and several other local and international media outlets ran stories on the subject the next day. The case was featured in the Attorney General's 2005 annual report to Congress. ICE also broadcast the event through its own press release and featured the case, along with a picture of ICE agents taking custody of alleged trafficking ringleader Luisa Medrano, in its August 1, 2005 issue of Inside ICE newsletter under the headline: *ICE Breaks Jersey Smuggling, Slave Ring.*


While such publicity is necessary and expected, there is a disconnect between the statements made by the U.S. Attorney and ICE officials in the aftermath of the indictment and the effects that participating in the prosecution had on Melinda and Paula. Referring to the case, the U.S. Attorney stated, "This was inhumane and sadistic treatment of young women who were kept as virtual slaves. These are among the most vile crimes I've seen in my time as U.S. Attorney, and we will bring the full weight of federal prosecution against these defendants." The ICE Agent in charge of jurisdiction similarly stated, "This case illustrates ICE's commitment in identifying, investigating and prosecuting individuals who participate in the trafficking of human beings. These individuals are criminals, driven by greed, who act without conscience in their brazen disregard of human rights and freedoms." Both were correct in their characterization of the human traffickers, and in their espousal of humane treatment for the young women trafficked. However, the DOJ and ICE actions that resulted in forced testimony and the interviews of Melinda and Paula undermined their own statements, especially when the medical and social service professionals taking care of the girls stated that such action was contrary to the girls' best interests.

A second factor contributing to the circumvention of the TVPA is that DOJ lawyers deal with relatively few child victims compared to adults. Child victims only account for approximately ten percent of all victims certified by ORR since the passage of the TVPA in 2001. Given that access to services is tied to cooperation for adult victims of trafficking, the DOJ is accustomed to having its will enforced when dealing with adults. Furthermore, the DOJ controls a significant portion of the funding stream for adult victim support services, whereas victim support services for children are controlled by ORR. Previous research indicates that the DOJ funding is given under certain conditions mostly related to the likelihood that someone predetermined—by ICE or the FBI—to be a victim will then be cared for while information is gathered which might be useful toward prosecution. This determination results in a narrow group of trafficking victims being served and predisposes them to be willing to cooperate with law enforcement. This does not happen with children because children are cared for by a different

64. See Press Release, Christie, supra note 60, at 2.
65. See id. at 3.
66. See infra app. 1.
67. See U.S. Dep't of Justice, Office of Victim Services, OVC-Funded Grantee Programs to Help Victims of Trafficking, Sept. 19, 2008, http://www.ojp.usdoj.gov/ovc/help/traffickingmatrix.htm; see also U.S. Dep't of Justice, Office of Refugee Resettlement, Victims of Human Trafficking, Sept. 18, 2008, http://www.acf.hhs.gov/programs/ort/about/whoweserve-5.htm ("Children victims of trafficking (under the age of 18) do not need to be certified in order to receive services and benefits. ORR will issue a letter stating that a child is a victim of a severe form of trafficking and is therefore eligible for benefits.").
68. Haynes, supra note 3, at 346.
agency—ORR. This may have contributed to the DOJ’s and ICE’s insensitivity to the children’s wishes and the URM program’s recommendations.

The final factor contributing to the circumvention of the TVPA is that the URM programs caring for child trafficking survivors are not in a position to effectively deny a DOJ request to interview the child. This is caused, in part, by the unequal balance of power between federal law enforcement agencies and the social service programs in the URM network. The control DOJ and ICE exert through the rescue and certification process by only recommending for certification the victims they rescue enables them to determine, in large part, which victims are eligible to stay in the country. Oftentimes, the long-term best interests of a child entails remaining in the United States legally, and the URM programs do not want to jeopardize this so they do not challenge DOJ and ICE requests for interviews.

In Melinda and Paula’s case, the URM program avoided dealing directly with DOJ prosecutors and ICE investigators by relying on the girls’ lawyer to interact with them. For the most part, the pro-bono and legal-aid attorneys working with URM programs on trafficking cases deal only with immigration related issues. Most often, they lack the time, resources, and expertise to effectively advocate on behalf of child trafficking victims regarding federal criminal procedure, requests for interviews, and other non-immigration related matters. Nevertheless, Melinda and Paula’s attorney was thrust into this position and had to respond to a federal grand jury subpoena and multiple requests for interviews. This is an extremely difficult position for the attorney advocating for immigration relief because the same government agency, DHS, is involved both in the investigation and prosecution of the traffickers as well as provision of immigration relief. There is concern from the URM programs, and the attorneys they work with, that failure to cooperate with ICE investigations and DOJ prosecutions could negatively affect immigration relief for trafficking survivors in their care.

There is no record of Melinda and Paula’s lawyer attempting to quash or modify the subpoena in any way despite the fact that the Federal Rules of Criminal Procedure specifically state that “[o]n motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.” Based on the emotional states of Melinda and Paula, there was ample reason to believe that the

69. Telephone Interview with Melinda and Paula’s former immigration lawyer, supra note 46.
70. See generally Haynes, supra note 3, at 345 (discussing the problem caused by multiple agencies with anti-trafficking mandates).
71. Telephone interview with Melinda and Paula’s former immigration lawyer, supra note 46.
subpoena in this case was unreasonable and oppressive. However, because the program was facing pressure from ICE and the DOJ and was being threatened with obstruction of justice charges, it did not move to quash. While the use of the subpoena is an isolated incident, it is indicative of the fact that URM programs caring for the children and the pro-bono/legal aid lawyers managing immigration paperwork usually are not tasked to deny the legal requests of U.S. Attorneys and ICE investigators. Consequently, they lack the institutional support to do this work.

LEGAL ARGUMENTS AGAINST THE USE OF SUBPOENAS TO GAIN THE TESTIMONY OF CHILD TRAFFICKING VICTIMS

Even if a hypothetical motion to quash the subpoena on Melinda and Paula's behalf was unsuccessful based on reasonableness and oppressiveness standards, the girls' participation in the grand jury testimony could have been blocked according to several well-established canons of statutory interpretation.73 The first canon holds that when the literal construction or interpretation of a statute produces an absurd or unjust result and is clearly inconsistent with the purposes and policies of the act in question, it should be avoided at all costs.74 Barring a deliberate attempt by DOJ prosecutors and ICE investigators involved in Melinda and Paula's case to ignore the language of the TVPA stating that children did not have to interview or testify against their will, they must have interpreted the TVPA in a fashion that permitted such action. Whatever that interpretation may have been, it clearly produced an absurd, unjust, and unreasonable result in that the basic protection of Melinda and Paula's welfare was compromised. The drafters of the TVPA took special care to create special rules aimed at protecting child trafficking victims from exactly what happened to Melinda and Paula as a result of their testimony.75 The child welfare and medical professionals gave ample notice that the girls' welfare would be compromised by forced testimony and interviews, but the advice went unheeded.

The second is the principle of lex posterior, which holds that a later norm supersedes the validity of the earlier, contradictory norm.76 Applied to Melinda and Paula's case, the statutory language of the TVPA stating that no child trafficking victim less than eighteen years of age has

73. See generally 3A Norman J. Singer, Sutherland Statutory Construction § 67:14 (6th ed. 2003) (stating that because the Federal Rules, although judicially promulgated, have many of the characteristics and create many of the same problems as do statutory codifications, the methods and rules of statutory construction are relevant when addressing a conflict between a judicially promulgated rule and a legislatively promulgated statute).
74. 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 45:12 (7th ed. 2007).
76. Singer, supra note 74, § 36A:4.
to cooperate or assist law enforcement in the prosecution or investigation of their traffickers was codified in 2000 and 2003 while the first judicially promulgated Federal Rules of Criminal Procedure pertaining to the use of subpoenas became effective in 1944.77 Lastly, the canon of statutory interpretation holding that the specific trumps the general is also applicable to this case. This canon holds that when two separate laws or rules conflict, the more specific applies with the reasoning being that Congress probably deliberated on the issue and developed specific intent.78 Whereas the Federal Rules generally allow for the issuance of subpoenas to obtain testimony in criminal cases, the TVPA and subsequent reauthorizations specifically state that such activity is not applicable to children less than eighteen years old.79

**Moving Forward**

Unfortunately for Melinda and Paula, the damage caused by forced interviews and unwanted participation in grand jury testimony caused them an inordinate amount of stress, emotional anguish, and physical harm. Their plight is a paradigmatic example of why Congress exempted child trafficking survivors from participating in investigations and from testifying against their will. This case is particularly egregious because Melinda was forced to testify against her own family members, which resulted in the incarceration of her mother, grandmother, and aunts in Honduras. This is not to undermine the importance of apprehending, prosecuting, and sentencing traffickers; such activity is essential to the anti-trafficking effort, but it should not be carried out at the expense of a child’s emotional and physical well-being.

Most cases are not as black and white as that of Melinda and Paula in that they do not involve subpoenas, suicidal children, and testimony against parents. While the method of making children testify that was employed in this case is not the norm, the poor interaction with law enforcement is the norm, and the negative effects experienced by Melinda and Paula are not uncommon. Even more common are children adjusting from traumatic situations who need time and special preparation before interviewing with lawyers and investigators. When participation in a prosecution occurs in a child-centered manner, it can boost confidence, bolster resiliency, empower, and bring a sense of closure to a survivor.80 In such a case, the law enforcement-centered approach and the victim-centered approach converge to produce the best possible outcome in the fight against trafficking. The fundamental concern among URM programs is that the well-being of children be maintained at all

78. Singer, supra note 74, § 51:5.
80. See Bump & Duncan, supra note 3.
times before, during, and after prosecution so that a successful prosecution is also a successful outcome for the child involved. When a child does not wish to participate directly with testimony or interviews, that desire should be honored.

There is a general consensus among both legal advocates and victims' advocates that prosecution of traffickers is in the best interest of the trafficked child as long as the child's best interests are upheld during the entire process.\(^\text{81}\) Successful prosecutions depend greatly on collaborative efforts between the prosecutor and the child advocate. The prosecutor relies on service providers to help the survivor understand the importance of her testimony and the process of the prosecution. The social service provider relies on the prosecutor to bring justice and closure to the child's ordeal through legal action. Both parties benefit from penal action taken against traffickers. However, when events transpire as they did in Melinda and Paula's case, the general lack of trust and protocol impedes successful collaboration between law enforcement and social services. These shortcomings need to be addressed so that both sides can work together to develop the trust necessary to carry out successful prosecutions while upholding the physical and emotional well-being of the children caught up in the process.

Apparently, there is some movement towards introducing a victim-centered approach to prosecuting trafficking cases. In early 2007, the DOJ announced the creation of a Human Trafficking Prosecution Unit within the Civil Rights Division's Criminal Section.\(^\text{82}\) The new unit prides itself on using a victim-centered approach to the problem of trafficking and the prosecution of traffickers.\(^\text{83}\) The DOJ stated that because the new unit "works closely with U.S. Attorneys' offices and human trafficking task forces around the country," it is able to disseminate and reinforce the victim-centered approach to trafficking.\(^\text{84}\) To what extent the new unit will be able to compel U.S. Attorneys, like those in Melinda and Paula's case, to put their own aspirations aside in favor of taking a victim-centered approach remains to be seen. A recent report from the Government Accountability Office, does, however, shed light on the issue.\(^\text{85}\) It concludes that there is still progress to be made in establishing

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\(^{81}\) See, e.g., Bump & Duncan, supra note 3, at 212-13.


\(^{84}\) Id.

\(^{85}\) U.S. GOV'T ACCOUNTABILITY OFFICE, supra note 38.
the authority of the new DOJ division as the interagency leader in pursuing trafficking crimes. The report stated that:

[While FBI officials acknowledged CRT/CS [Human Trafficking Prosecution Unit] as the leader on trafficking in persons, they also said that leadership needs to cut across agencies, since no one agency carries out trafficking cases alone. ICE officials said that agencies are all equal partners in the effort to combat trafficking and that while CRT/CS [the Human Trafficking Prosecution Unit] may take the lead on prosecutions, the investigative agencies each take the lead on their own investigations.86]

Thus, while the creation of the Human Trafficking Prosecution Unit and its victim-centered approach are laudable, there is ample room for progress among ICE and other parts of the DOJ, especially U.S. Attorneys.

Specifically, the following measures should be enacted to further guarantee that the best interests of child trafficking survivors are upheld:

1. **The TVPA should be amended so as to explicitly state that child trafficking victims, upon being certified as such, do not have to comply with any subpoena issued to compel appearance in court or other legal proceeding, any investigative interview requests, or any other interview requests not approved by the URM program tasked to care for them.** This should be accompanied by the issuance of a legal document that explicitly sets forth this rule. As it currently stands, the federally funded programs in charge of upholding the best interests of child trafficking survivors are not in the position to effectively deny a request from ICE investigators and U.S. Attorneys working on a prosecution. After the proposed change, in the case of ICE investigators and the threat of a subpoena, the survivors and their programs would only have to make reference to the legal document. The fact that the TVPA specifically states that children are not required to cooperate with law enforcement has not stopped U.S. Attorneys and immigration investigators from distorting the intent and spirit of the TVPA, and more proactive steps must be taken.

2. **The U.S. Federal Government needs to develop interagency protocols for child trafficking prosecutions and investigations to ensure that the child victims remain safe, that the number of interviews is limited, and the interviews are conducted in a child-friendly manner.** Investigating and prosecuting perpetrators is an essential element in eradicating human trafficking, but should not come at the expense of a child trafficking survivor’s well-being. Every effort should be made to develop a cohesive and mutually respectful relationship between the child welfare professionals who care for child trafficking survivors and the law enforcement.

86. *Id.* at 27.
professionals from the DOJ and ICE, with the understanding that the DOJ and ICE heed the expert opinions of URM staff and consultants.

3. All staff members of programs serving child trafficking survivors need to be better trained as to what to expect from law enforcement and prosecutors, and as to the roles of the various actors involved in child trafficking cases. Social workers, ICE investigators, and government prosecutors all have intersecting, but differing duties. The prosecutors and investigators do not necessarily have the child-victim witness’ best interests at heart; their duty lies with the case and the investigation. Social workers need to understand this distinction and how it affects the children they strive to serve.
APPENDIX: STATISTICAL PORTRAIT OF TRAFFICKED CHILDREN IN FEDERAL CARE

This section provides a statistical portrait of the 142 children trafficked across international borders determined eligible for benefits by ORR since the passage of the TVPA in 2000 through September 2007. It is important to bear in mind that this group of trafficked children is the only cohort of child victims of trafficking in the United States about whom reliable statistical information is available. While some NGOs claim to provide services to trafficked minors, they keep data concerning those services confidential, and in many cases do not refer their clients to ORR for determination of service eligibility.87

A significant number of child victims of trafficking have been referred to the Federal Government but were determined ineligible for federally funded services. Between 2004 and 2007, the USCCB and LIRS referred to the Federal Government a total of 151 cases which involved an estimated 800 to 2,300 individual child victims.88 Only fourteen out of the 151 cases were pursued by federal law enforcement authorities, out of which twenty-three children received benefits—the remaining children, estimated at between 785 and 2,280, received none.89

There are numerous reasons why so many children did not receive benefits. In some cases, federal law enforcement agents or U.S. Attorneys were not sympathetic to the children’s plight and/or deemed the children victims of smuggling rather than trafficking.90 In at least one case, underage victims of arranged marriages were considered to have been kidnapped rather than trafficked.91 In other cases, the children were reluctant to disclose detailed information about their experiences which led to insufficient evidence of the crime of trafficking.92 In yet another case, a group of choir boys was brought to the United States by a convicted sex offender who promised to pay them for their singing. When he did not pay, they went back to Zambia before the case could be thoroughly investigated.93 In several cases, the child’s original story changed and federal law enforcement chose not to endorse benefits.94 In some

88. Author e-mail communication with Julianne Duncan, U.S. Conf. of Cath. Bishops’ Migration & Refugee Servs. (June 2007) (on file with author).
89. Id.
90. Id.
91. Id.
92. Id.
93. Author e-mail communication with Julianne Duncan, U.S. Conf. of Cath. Bishops’ Migration & Refugee Servs. (June 2007) (on file with author).
94. Id.
cases, lack of sufficient evidence to support the endorsement of trafficking benefits led to the children being placed in removal proceedings and receiving deportation orders.\textsuperscript{95} There is little systematic data on these children.

\textit{Data Overview}

ORR provided the research team with data detailing gender, date of birth, country of origin, and the certification date of each trafficking victim through August 2006. Using the date of birth and certification date data, the team was able to determine the age at which certification took place. Furthermore, by cross-checking the data provided by ORR with data on the cohort of children receiving care as unaccompanied children within the URM system, the researchers were able to identify a child's status as accompanied or unaccompanied. The URM programs were able to provide more detailed data on the unaccompanied children receiving care within the system. This data included information on the type of trafficking, the year and place of identification, the type of person or organization that identified the child, family involvement in trafficking, and pregnancy/parenting status of the trafficking survivors.

After August 2006, ORR changed its policy on providing data to researchers and would only make available information on country of origin and place of birth. An additional forty-six children were certified as trafficking victims by ORR between August 2006 and September 2007.\textsuperscript{96} While the data on this cohort are more limited, they are presented below in Table 1, so as to give as complete a picture as possible on the population of children identified as trafficking victims.

\textbf{Country of Origin}

Table 1 indicates that Mexico and Honduras are the two largest countries of origin of the child survivors of trafficking. Overall, forty-three children are from Mexico and twenty-one are from Honduras. We received data on unaccompanied/ accompanied status for 102 of the 142 children. The Mexican children are almost evenly spread between the two groups with fifteen accompanied and eighteen unaccompanied. All nineteen Hondurans are unaccompanied. China, El Salvador, Guatemala, and Morocco account for the most unaccompanied children after Mexico and Honduras, with six, three, two, and two, respectively. Two African countries, Ghana and Cameroon, are the source countries of one victim each. India, Argentina, the Dominican Republic, and Nicaragua are the source countries of the remaining four unaccompanied victims. Fourteen of the accompanied children are from Peru and were freed as

\textsuperscript{95} \textit{Id.}

\textsuperscript{96} Author e-mail correspondence with ORR (Aug. 2006) (on file with author).
part of the same case. Three accompanied children are from Guatemala; Russia, Thailand, and Pakistan each account for two accompanied children, and there is one accompanied child from each of the following countries: Albania, China, Ecuador, El Salvador, Micronesia, and India.

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Source: Author’s Analysis using data provided by the USCCB/MRS and ORR, 8/06, 9/07

**Age**

The children ranged in age from two to seventeen years (Figure 1). The vast majority (83.3%) of the children were between fourteen and seventeen years of age when they were trafficked, and approximately two-thirds of all trafficked children were concentrated in the sixteen to seventeen year age range when trafficked. The unaccompanied and accompanied cohorts differed in terms of age breakdown. The unaccompanied children were older on average than those who were trafficked with other family members; the mean unaccompanied age was sixteen while the mean accompanied age was thirteen years. The range of ages is much larger for the accompanied than the unaccompanied survivors. The
accompanied children ranged in age from two to seventeen while the unaccompanied children ranged in age from thirteen to seventeen.

**Figure 1: Child Trafficking Victims: By Age**

(As of 8/2006) N=101*

[Bar chart showing the distribution of age ranges for accompanied and unaccompanied children.]

Source: Author's Analysis using data provided by the USCCB/MRS and ORR, 8/06.

*Age information for one accompanied child from Mexico was not available.

All but five of the fifteen trafficked children who were younger than thirteen years of age came from Peru (Table 2). This concentration, as well as the overall wide age range of the accompanied children, was largely the result of a single 2004 case that occurred in New York. The case, which involved a husband and wife trafficking operation which orchestrated a scheme to traffic Peruvians for labor, involved sixty-nine Peruvian victims, including fourteen children.97 All of these young children were part of larger trafficked family groups, and account for the wide age range of the accompanied children.98 The age difference between accompanied and unaccompanied victims indicates that the risk of unaccompanied trafficking increases with age.

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98. Id.
Table 2: Child Trafficking Victims by Country of Origin and Age (As of 8/2006)

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Source: Author's Analysis using data provided by the U.S. Committee for Refugees and Internally Displaced Persons (USCCB/MRS), 8/2006.

*Age information for one accompanied child from Mexico was not available.

Gender

The population of trafficked minors in the discussed cohort was predominantly female, with females comprising 83% and males 17% of the survivors (Figure 2). There was a substantial difference in the male/female ratio between the unaccompanied and accompanied cohorts. Among the accompanied children, fifteen of the forty-six survivors, or 33%, were males, while only two, or 4%, of the fifty-six unaccompanied children were males. Again, the single Peruvian case described above affected the distribution because eight of the fifteen accompanied males were from that single case. Five of the remaining seven accompanied male survivors were from Mexico, and there was one accompanied male survivor each from Albania and Zambia. The two unaccompanied male survivors were from El Salvador and Honduras. The disproportionate distribution of female victims (96% among the unaccompanied, and 67% among the accompanied) seems to indicate a higher vulnerability of teenage girls to trafficking. This feature could also be an artificial result of both the victim identification process and service eligibility determination. However, the gender breakdown of the overall trafficking population, including adults, varies by only five percentage points. As of August 2006, 78% of all victims were female, while 22% were male.
Figure 2

Total Trafficked Minors Eligible for DHHS Services: By Gender (As of 8/2006) n=102

Female, n=85, 83%
Male, n=17, 17%

Accompanied Trafficked Minors Eligible for DHHS Services: By Gender (As of 8/2006) n=46

Female, n=31, 67%
Male, n=15, 33%

Unaccompanied Trafficked Minors Eligible for DHHS Services: By Gender (As of 8/2006) n=56

Female, n=54, 96%
Male, n=2, 4%

Source: Author's Analysis using data provided by the USCCB/MRS and ORR, 8/06.

Type of Trafficking

The unaccompanied children were trafficked for labor, sexual exploitation, and domestic servitude, or a combination thereof (Figure 3). Trafficking for sexual exploitation was the most prevalent form of abuse. More than 70% of all the unaccompanied children were trafficked for sexual exploitation or a combination of sexual and labor exploitation. A smaller percentage, 24%, was trafficked solely for labor, including domestic servitude.

Figure 3 - Unaccompanied Trafficked Minors: By Type of Trafficking (as of 8/2006) n=56

Sex, n=34, 60%
Sex and Domestic servitude, n=5, 9%
Sex and labor, n=1, 2%
Unknown, n=3, 5%
Domestic servitude, n=7, 13%
Labor, n=6, 11%

Source: Author's Analysis using data provided by the USCCB/MRS and ORR, 8/06.

Victim Identification: Year, Type, and Place of Identification

The first child victim determined eligible for services was identified in 2001. The low number of victims identified each year (see Figure 4) highlights the fact that identification of child victims of trafficking
remains a challenge—one of the most urgent issues facing the anti-trafficking community is the improvement of identification of trafficking victims. Previous research has concluded that first contact with unidentified victims would most likely be made by one of the following three groups: (1) immigration/DHS at or between ports of entry and at detention facilities, (2) police/local law enforcement, or (3) social services/health care providers. 99 While the DHHS Rescue and Restore Campaigns have focused on outreach to the latter two groups, more can be done at the border.

FIGURE 4 - TRAFFICKED MINORS ELIGIBLE FOR DHHS SERVICES: BY YEAR OF IDENTIFICATION (AS OF 8/2006) N=102

Source: Author’s Analysis using data provided by the USCCB/MRS and ORR, 8/06.

Improvements at the southern U.S. border have the most potential for increasing the identification of trafficked victims. The TVPRA of 2003 focuses on border interdiction as an area in need of improvement and focuses on the need to identify victims at international borders, but does not specifically mention this need in the United States. 100 Border patrol agents do not systematically screen unauthorized migrants (children or adults) for trafficking because of time constraints. 101 Thus, while there is a recognized need to improve the border patrol’s work on combating trafficking, implementation of adequate protocols appears to be lacking.

U.S. immigration officials apprehend annually more than one million migrants, including approximately 100,000 minors, at U.S. borders. 102 This represents a large pool of possible victims who are likely
slipping through the proverbial cracks. Currently, there are no bilateral protocols in place to identify trafficking cases at initial apprehension. Lack of trust between governments is often viewed as a barrier to proper identification. Table 3 indicates which states the unaccompanied trafficked children were identified in, and by whom they were identified. These data show that none of the unaccompanied children in this cohort has been identified by the U.S. Border Patrol at the southern border of the United States since the passage of the TVPA in 2000. To the research team's knowledge, there has yet to be a child trafficking victim identified by the U.S. Border Patrol at the southern border.

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Six of the fifty-six unaccompanied trafficking victims were fortunate enough to have been rescued from their trafficking situations before any exploitation actually occurred (Figure 5). It is important to gain a comprehensive understanding of these cases for several reasons. The effects of trafficking on a child that has not yet been exploited are potentially less dire, and as a result, re-integration of such a child may be less problematic. Additionally, another barrier to improved identification of trafficked victims at the U.S.-Mexico border is the fact that at the time of apprehension at the border, trafficked individuals may not yet have suffered the most terrible exploitation, and may not have even known that they were being trafficked.

Some insight into what might be done at the border to improve victim identification is provided by six cases where exploitation was preempted. All six cases involved Chinese females; five of them were seventeen years old and one was thirteen years old. All five of the older girls were part of our study, and we interviewed three of them. They were all apprehended at ports of entry: three at airports in New York City and two at the Mexican border. All five were put in removal proceedings and transferred to the Division of Unaccompanied Children’s Services (DUCS) within the ORR. After varying lengths of time in DUCS care,
ranging from three to twenty-one months, all of the girls were reclassified as trafficking victims. The delay in the trafficking determination is the result of the length of time it took to develop rapport with the children, understand the complexities of their trafficking history, and convince federal officials that the girls were victims of trafficking even though they had been apprehended before they reached their final destination.

**Figure 5:** Unaccompanied Trafficked Minors Eligible for DHHS Services: By Preemption of Trafficking

(As of 8/2006) N=56

<table>
<thead>
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<th>Trafficking Not Preempted, n =50, 89%</th>
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<tbody>
<tr>
<td>Trafficking Preempted, n=6, 11%</td>
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</table>

Source: Author's Analysis using data provided by the USCCB/MRS and ORR, 8/06.

The heightened sense of security in the post-9/11 environment has channeled resources overwhelmingly toward combating terrorism. As a result, border patrol agents and staff are not receiving enough training on trafficking issues or on identification of trafficking victims. Even if this were not the case, the U.S. Border Patrol does not have the time to devote to trafficking investigations. Identification is further complicated by the fact that identification of children, especially females, at the border is difficult because they often present themselves and are classified as twenty-one years old. As indicated previously (Figure 1), the majority of the child trafficking survivors identified to date were seventeen years old. This fact suggests that in many cases it may be relatively easy to falsify age and deceive border patrol agents; analysis of fingerprint records at the border shows an unusually high number of female entrants who are twenty-one years old.

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103. Interview with Tucson Sector Border Patrol personnel, *supra* note 101.
104. *Id.*