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Bridgette A. Carr
University of Michigan Law School, carrb@umich.edu

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When Federal and State Systems Converge: Foreign National Human Trafficking Victims Within Juvenile and Family Courts

By Bridgette Carr

ABSTRACT

This article highlights the concerns facing foreign national children who are both victims of human trafficking and under the jurisdiction of juvenile and family courts. Human trafficking is modern day slavery in which individuals, including children, are compelled into service and exploited. Foreign national human trafficking victims in juvenile and family court systems must navigate both the state system and a complex federal immigration system. This article explains the federal benefits available to these children and identifies the best practice approaches for juvenile and family court systems to increase identification of and support for foreign national child trafficking victims.

In the United States, regulation of immigration has historically been left to the federal government,[1] while regulation of domestic relations is primarily delegated to the states.[2] These two systems converge in certain cases involving foreign national child victims of human trafficking. This overlap creates complexities for the children themselves, decision makers, guardians ad litem, caseworkers, advocates, attorneys, and foster parents. This article identifies

1 Pursuant to the plenary power doctrine, immigration regulation has historically rested exclusively with the legislative and executive branches of the federal government. *Ping v. United States* (The Chinese Exclusion Case), 130 U.S. 581, 603 (1889) ("That the government of the United States . . . can exclude aliens from its territory is a proposition which we do not think open to controversy."); *Ekiu v. United States*, 142 U.S. 651, 659 (1892) (remarking that the power to exclude foreigners from U.S. borders "is vested in the national government, to which the Constitution has committed the entire control of international relations . . ."); U.S. *ex. rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) ("Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as the United States prescribe").

2 *In re Burrus*, 136 U.S. 586, 593-94 (1890) ("[T]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States, and not to the laws of the United States."); *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992) (affirming holding that domestic relations are within the province of state laws as it pertains to divorce, alimony, and child custody decrees); *Fagone v. Fagone*, 648 F. Supp. 488, 489 (D. Me. 1986) (finding that the Plaintiff's claim was "inextricably connected with a domestic relations matter and that it would be either impermissible or inadvisable to take jurisdiction over it.").

Bridgette Carr, J.D., is a Clinical Assistant Professor and Director of the Human Trafficking Clinic (HTC) at the University of Michigan Law School. The HTC is the first clinical law program solely dedicated to serving victims of human trafficking. Correspondence: carrb@umich.edu

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some of the issues these children face, explains the impact of human trafficking laws and procedures, and recommends best practices for juvenile and family courts when working with trafficked children.

> *Lily's*[3] *teachers knew something was wrong. Lily, a sixth grader, came to school with bruises and was often extremely hungry. Eventually one of Lily's teachers reported her suspicion, that Lily was being abused, and Lily was removed from her home. The local police helping Lily soon realized she was a foreign national and called the nearest immigration office. In interviews with Immigration and Customs Enforcement (ICE) agents, Lily recounted being forced to cook and clean for hours every day by the person she was living with. Lily had been living in domestic servitude; as such, the agents identified Lily as a victim of a severe form of human trafficking.*[4]

Under federal law, individuals under 18 years of age are victims of a severe form of human trafficking if they have been induced to perform a commercial sex act or if they have been recruited, harbored, transported, provided, or obtained for labor or services through the use of "force, fraud, or coercion for the purpose of subjection to involuntary servitude."[5] Federal law enforcement agents trained to identify cases of human trafficking interviewed Lily and realized she was a victim of labor trafficking. However, many law enforcement agents haven't received such training. Lily's experience as a victim of human trafficking could easily have been missed if untrained agents had interviewed her. When the local police called ICE about Lily's case, they were not calling because they had identified her as a victim of human trafficking, but rather because she was a foreign national in the United States without permission. By accident, the local police officer contacted an ICE agent who had worked on a number of human trafficking cases. Absent this fortuitous event, it is doubtful that Lily would have been identified as a victim of human trafficking; instead, she may have been deported.

In 2000, Congress passed landmark human trafficking legislation, the Trafficking Victims Protection Act (TVPA).[6] In addition to increasing the criminal penalties for human trafficking[7] and providing immigration relief to victims,[8] the TVPA also created a set of benefits for undocumented victims.[9] Children like Lily, who are both foreign national victims

3 Case examples in this article are based on clients of the Human Trafficking Clinic at the University of Michigan Law School. Identifying information such as names, dates, countries of origin, and locations within in the United States have been changed to protect the identity of the clients.

4 Only victims of a severe form of human trafficking are eligible for federal benefits. Trafficking Victims Protection Act (TVPA), 22 U.S.C. § 7105 (2011). The TVPA contains definitions for both victims of trafficking and victims of a severe form of trafficking. By definition all victims of a severe form of trafficking are also victims of trafficking.

5 *Id*. at § 7102(8). All references in this article to victims of human trafficking are using this definition of a victim of a severe form of human trafficking.

6 *Id*. at §§ 7101-7112.

7 *Id*. at § 7109.

8 *Id*. at § 7105.

9 *Id*. The TVPA focuses primarily on the provision of services and benefits to undocumented victims. It was presumed that U.S. citizens and other lawful residents already had access to the state and federal programs unavailable to their undocumented counterparts. *See* U.S. Dep't of Health & Human Serv., Victims Assistance Fact Sheet, *available at* www.acf.hhs.gov/trafficking/about/victim_assist.pdf ("Victims who are U.S. citizens are already eligible to receive many of these benefits."). *See also infra* note 43 discussing the general unavailability of public federal, state, and local benefits to undocumented persons.

of human trafficking and participants in a state's juvenile and family court system, occupy a unique position within both of these systems and have special needs that must be recognized and met.[10]

I. IDENTIFYING FOREIGN NATIONAL CHILD VICTIMS OF HUMAN TRAFFICKING

Most victims of human trafficking remain invisible. Worldwide, less than one half of one percent of all victims are identified.[11] Raising awareness of human trafficking within juvenile and family court systems is an important first step in increasing the number of victims identified within the United States.[12] Judges and other professionals within juvenile and family court systems may encounter victims of human trafficking. Children who are vulnerable to trafficking often share common characteristics and circumstances including a history of sexual or physical abuse, impoverished childhoods, poor education, weak family structures and support, homelessness, residence in high-crime communities and countries, and involvement in the juvenile justice and foster care systems.[13]

Lily was identified as a victim because the federal law enforcement agents working on her case had been trained to identify human trafficking. During their interviews, the agents asked Lily about her exploitation, not just about her immigration status. The agents did not view her only as a foreign national in the United States without permission. This determination, that Lily was a victim in need of help, rather than simply an undocumented immigrant, was a crucial

10 *See* Ann E. Benson & Diana E. Moller, *Addressing the Best Interests of Immigrant Children: Focus on Special Immigrant Juvenile Status* 11 Equal Justice 1 (Washington State Minority & Just. Comm'n, May 2007), *available at* http://www.courts.wa.gov/committee/pdf/mjcNewsLetters/Volume11Number1May2007.pdf (discussing how foreign-born children who have suffered trauma before encountering the justice system often have needs unique to their undocumented status, "ranging from obtaining basic identity documents to obtaining lawful immigration status."). *See also* N. Y. Juvenile Justice Coal., The Safe Harbor for Exploited Children Act Facts & FAQs, *available at* http://www.gems-girls.org/Safe%20Harbor%20Facts%20and%20FAQs.pdf (remarking that state and local juvenile detention centers are ill-equipped to provide urgent and necessary services to sexually exploited children); Theresa Vargas, *Que Es La Justicia: Immigrant Children Navigate the Juvenile Justice System*, On the Downlow, *available at* http://web.jrn.columbia.edu/studentwork/children/downlow/immig.shtml (discussing the challenges faced by undocumented foreign children in juvenile justice systems, including having poor English skills and the attendant diminished ability to communicate or understand what is happening, the lack of family presence and support, general unfamiliarity with American rights and customs, impatient or biased judges, and the lack of sufficient alternatives to incarceration).

11 *See* U.S. Dep't of State, Trafficking in Persons Report 2010, at 7 (2010).

12 This article focuses on the overlap between federal and state systems in cases involving foreign national child victims. U.S. citizen children are also victims of human trafficking. Cases involving U.S. citizen children face many of the same barriers in identification. However, a discussion of the needs of U.S. citizen victims of human trafficking within the juvenile and family court system is beyond the scope of this article.

13 *See* TVPA 22 U.S.C. § 7101; Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA of 2005), Pub. L. No. 109-164, 119 Stat. 3558, § 2 (6)(2006); Heather J. Clawson & Nicole Dutch, U.S. Dep't of Health & Human Serv., Identifying Victims of Human Trafficking: Inherent Challenges and Promising Strategies from the Field 1-2 (Jan. 2008); Heather J. Clawson et al., Dep't of Health & Human Serv., Human Trafficking Into and Within the United States: A Review of the Literature 7 (Aug. 2009); U.S. Dep't of Human Serv., Human Trafficking Victim Dynamics, Ill., *available at* http://www.dhs.state.il.us/OneNetLibrary/27897/documents/Initiatives/Trafficking/HT%20Victim%20Dynamics.pdf.

moment in Lily's case. Too often this determination, when decision makers categorize a person either as a victim of human trafficking or as someone who has violated the law, is made rapidly and it is usually not in favor of the victim.[14] Before ICE agents interviewed Lily, her trafficker had already forced her to commit a number of immigration violations, including use of fraudulent documents to enter the United States and fraudulently obtaining federal benefits.[15] Because of their training and past experience with human trafficking cases, the agents understood Lily's immigration violations within the context of her exploitation as a victim of human trafficking.[16] However, without this understanding, Lily would have been at risk for removal from the United States.

Unfortunately for foreign national victims of human trafficking, not all divisions within the Department of Homeland Security (DHS) treat potential victims in the same manner.[17] The level of awareness of human trafficking and the availability of interviewers who specialize in

14 Foreign nationals who are victims of human trafficking are at risk of being put in removal proceedings and charged with violations of the Immigration and Nationality Act. April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 Harv. J. L. & Gender 231, 246 (2007) (noting that trafficking victims who are not identified by state and local authorities as such are typically detained and deported). Victims being exploited in the commercial sex industry are at risk of being charged with a variety of criminal provisions, including prostitution, curfew violations, and truancy charges. Katharine Tanner, *When More Needs to Be Done: Commercial Sexual Exploitation of Children in the United States*, 85 Broads (Sept. 7, 2009), http://www.85broads.com/experts/katie-tanner/when-more-needs-to-be-done-commercial-sexual-exploitation-of-children-in-the-united-states ("The fact remains that it is immensely easier for local law enforcement officials to arrest a trafficked child as a prostitute and try them as such than it is to go through the intensive and drawn out process of aiding them as a victim of [commercial sexual exploitation]"); Shared Hope Int'l, National Report on Domestic Minor Sex Trafficking: America's Prostituted Children (May 2009), *available at* http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009%28without_cover%29.pdf (discussing the frequent criminalization of child victims of trafficking because of misidentification and lack of resources).

15 *See* Immigration and Nationality Act (INA), § 212(a)(6)(C), 8 U.S.C. § 1182(a)(6)(C) (stating that a person who by fraud or willful misrepresentation procures an immigration document, admission, or other benefit under the INA is inadmissible) and INA § 237(a)(3), 8 U.S.C. § 1227 (a)(3) (listing the deportability ground for falsification of documents) (2011).

16 Unfortunately, identification of victims of human trafficking within the United States is impacted by the concept of the "perfect victim." For more discussion about the "perfect victim" concept and its impact on the identification of victims and prosecution of offenders, see Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B. U. L. Rev. 157 (2007); Robert Uy, *Blinded by Red Lights: Why Trafficking Discourse Should Shift Away from Sex and the "Perfect Victim" Paradigm*, 26 Berkeley J. Gender, L. & Just. 204 (2011). Lily, in many ways, fits the stereotype of a perfect victim. She was found by law enforcement while she was still a child. Her trafficker brought her into the United States when she was a child, and she was forthcoming and pleasant to the agents during her interviews. In our experience in the Human Trafficking Clinic, decision making based on these types of "snapshot moments" often results in identification of victims like Lily. However, this approach often fails to identify human trafficking victims who don't present themselves in ways that law enforcement or decision makers expect or desire.

17 Even within the same federal agency, the Department of Homeland Security, offices have differing goals, priorities, and levels of training on human trafficking. Human trafficking victims are at risk of removal by the U.S. Immigration and Customs Enforcement and Removal Operations office, which "identifies and apprehends removable aliens, detains these individuals when necessary and removes illegal aliens from the United States. This unit prioritizes the apprehension, arrest and removal of convicted criminals, those who pose a threat to national security, fugitives and recent border entrants." *See* U.S. Immigr. & Customs Enforcement, ICE Enforcement and Removal Operations, http://www.ice.gov/about/offices/enforcement-removal-operations (last visited July 9, 2011). In contrast, U.S. Customs and Immigration Services "helps protect victims of human trafficking and other crimes by providing immigration relief." U.S. Citizenship & Immigr. Serv., Victims of Human Trafficking & Other Crimes, http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextchannel=829c3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextoid=829c3e4d77d73210VgnVCM100000082ca60aRCRD (last visited July 5, 2011).

interviewing individuals who have experienced trauma vary widely depending on the jurisdiction and the division within the DHS.[18]

The lack of training on human trafficking at the federal level means juvenile and family court systems must use extreme care when developing referral mechanisms for foreign national victims. Simply picking up the phone and calling an immigration office may result in a victim being deported. Before referrals can be made, however, victims must be identified. In order to increase the identification of victims, individuals within juvenile and family court systems must receive human trafficking training. In addition, each juvenile and family court system should develop referral protocols for potential human trafficking cases. Ideally juvenile and family courts would create system-wide referral mechanisms for all individuals to use when human trafficking is identified or suspected. Juvenile and family court systems could easily institute a referral process by utilizing the National Human Trafficking Hotline.[19] The Hotline assists in cases involving both U.S. citizens and foreign nationals and has the expertise to connect potential victims to adequately trained law enforcement officials, attorneys, and support services.

II. TREATING VICTIMS OF HUMAN TRAFFICKING AS VICTIMS

One of the stated purposes of the TVPA was that it was designed to be a victim-centered law focused on protecting victims of human trafficking.[20] From its inception the TVPA included provisions intended to increase the identification of human trafficking victims as victims rather than criminals or undocumented immigrants.[21] Achieving these goals requires

18 As of August 1, 2011, the DHS had only two victim witness specialists trained in forensic interviewing. These specialists can be sent by DHS anywhere in the world to interview potential victims. The Human Trafficking Clinic works closely with one of these agents because she is based in Michigan. It is likely that without the availability of this specialized agent and her skills and empathy in interviewing victims some of the clinic's clients would not have been identified as victims of human trafficking.

19 The National Human Trafficking Hotline is 1-888-3737-888. The National Human Trafficking Resource Center, under the auspices of the Polaris Project, began operating the Hotline in December 2007. *See* Mike M. Ahlers, *Dramatic TV Ads Sell Anti-human-trafficking Message: "Don't Be Fooled,"* CNN World (July 19, 2011), *available at* http://articles.cnn.com/2011-07-19/world/us.human.trafficking.campaign_1_human-trafficking-sexual-exploitation-human-smugglers?_s=PM:WORLD. The hotline receives an average of 1,000 calls monthly, with an increasing call volume in Summer 2011. Polaris Project, Hotline FAQs, http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/hotline-faqs (last visited July 9, 2011). The calls are reported directly to federal law enforcement where appropriate. *Id.* In addition to supporting the National Human Trafficking Hotline, the U.S. Department of Justice funds 40 human trafficking task forces. *See* U.S. Dep't of Justice, Anti-Human Trafficking Task Force Initiative, http://www.ojp.usdoj.gov/BJA/grant/httf.html (last visited July 9, 2011). If a juvenile and family court system is located near one of these task forces, a referral protocol to the task force might be the best mechanism for identifying and protecting victims.

20 TVPA 22 U.S.C. § 7101; *see generally* Dep't of Health & Human Serv., Trafficking Victims Protection Act of 2000 Fact Sheet, *available at* http://www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf; Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Remarks at the Dep't of Justice's Nat'l Human Trafficking Conference (May 3, 2010), *available at* http://www.state.gov/g/tip/rls/rm/2010/141446.htm.

21 *See, e.g.*, TVPA 22 U.S.C. § 7105(c)(4) (2011) ("[a]ppropriate personnel of the Department of State, the Department of Homeland Security, the Department of Health and Human Services, and the Department of Justice shall be trained in identifying victims of severe forms of trafficking and providing for the protection of such victims. . . ."). However, many victim advocates critique the TVPA and its reauthorizations for not going far enough to protect victims and increase identification. This is especially true because many of the mechanisms for victim protection are at the discretion of law enforcement. *See, e.g.*, Jennifer M. Chacon, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 Fordham L. Rev. 2977 (May 2006) (discussing the TVPA's shortcomings with respect to effectively identifying, protecting and assisting trafficking victims); Jennifer S. Nam, Note, *The Case of the Missing*

a shift in perspective for individuals accustomed to identifying all persons in the United States without permission as persons in violation of the law, and for those accustomed to identifying all individuals selling or being sold for sex as prostitutes. This shift in perspective must also occur within juvenile and family court systems.

As enacted and later reauthorized, the TVPA recognized the vulnerabilities of foreign national victims, especially children.[22] In light of these vulnerabilities, the TVPA created a trafficking victim protection visa (T visa) for certain foreign national victims of human trafficking. Children[23] like Lily, who were victims of a severe form of human trafficking,[24] who are physically present in the United States because they were trafficked,[25] who face extreme hardship involving unusual and severe harm if removed from the United States,[26] and who meet certain other immigration requirements,[27] are eligible for a T visa.[28] A T visa gives

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Case: Examining the Civil Right of Action for Human Trafficking Victims, 107 Colum. L. Rev. 1655, 1661 (Nov. 2007) (remarking that many advocates have criticized the TVPA for focusing on prosecutions over victim protection and trafficking prevention); Alexandra Webber & David Shirk, Immigr. Policy Ctr., Hidden Victims: Evaluating Protections for Undocumented Victims of Human Trafficking, *available at* http://www.ilw.com/articles/2006,0503-webber.shtm (discussing the conditional nature of TVPA protections and the persistent failure to identify victims by local law enforcement).

22 In passing the TVPA, Congress found that trafficking is a form of slavery "whose victims are predominantly women and children" who are often transported "from their home communities to unfamiliar destinations, including foreign countries, away from family and friends, religious institutions, and other sources of protection and support, leaving victims defenseless and vulnerable." TVPA 22 U.S.C. § 7101. In addition, foreign nationals are "frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked . . . and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes." *Id.* Foreign nationals are also often threatened by corruption within their home governments, as "[t]rafficking in persons is often aided by official corruption in countries of origin, transit and destination . . .", *Id.*, and "[c]orruption among foreign law enforcement authorities continues to undermine the efforts by governments to investigate, prosecute, and convict traffickers." Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA of 2003) § 2(5), P.L. 108-193, 117 Stat. 2875 (2011).

23 Adult victims have an additional requirement in order to qualify for a T visa. *See* INA § 101(3), 8 U.S.C. § 1101; Form I-914 (to establish T Nonimmigrant status, one must also demonstrate compliance with "any reasonable request for assistance in a Federal, State, or local [law enforcement] investigation or prosecution of acts of [trafficking in persons] . . . unless you are under 18 years old").

24 The term "severe forms of trafficking in persons" is defined as either "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 "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." *See* TVPA 22 U.S.C. § 7102.

25 Physical presence is defined as one who "is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking." INA § 101(a)(15)(T)(i)(II).

26 *Id.* at § 101(a)(15)(T)(i)(IV). A multitude of factors are considered on a case-by-case basis when determining whether extreme hardship exists, including personal information about applicant and his/her circumstances and in certain cases, evidence regarding the conditions in the applicant's home country. *See* 8 C.F.R. § 214.11(i).

27 *See* 8 C.F.R. § 214.11(c) (declaring otherwise eligible aliens inadmissible "if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons").

28 Victims of human trafficking may also be eligible to apply for a U visa. 8 U.S.C. § 1101(a)(15)(U)(i)-1101(a)(15)(U)(iii) (2011). To be eligible for a U visa, the Secretary of Homeland Security must determine that an alien has undergone "substantial physical or mental abuse as a result of [being] a victim of criminal activity" (including human trafficking); "possesses information concerning [such] activity;" and has been, is being, or is likely to be helpful to law enforcement in investigating or prosecuting the activity; and the criminal activity occurred in the United States, including Indian country and military installations. *Id.*

trafficking victims the right to live and work in the United States for three years.[29] A T visa also provides child victims of human trafficking the opportunity to bring certain family members to the United States.[30] After three years, or when the prosecution or investigation into the trafficking incident is complete, whichever is sooner, a T visa holder may apply for legal permanent residence.[31] Foreign national children who qualify to apply for a T visa face complex and long legal processes, and they should be provided with access to an immigration attorney as soon as possible. This attorney should be part of the child's case team and must be consulted with as the child's case proceeds within the juvenile and family court system. Communication between the juvenile and family court process and the immigration process is essential; failure to communicate could result in unintended harm to the child in one process or the other.[32]

In addition to providing a path for victims to remain safely in the United States, the TVPA also tries to address the plight of children in the commercial sex industry. The TVPA makes it a crime to cause a person under 18 years old to engage in a commercial sex act.[33] The TVPA also makes it a crime to "benefit financially or by receiving anything of value, from participation in a venture which has engaged" in this conduct.[34] The TVPA defines categories of victims to which specified benefits and protections are given. One of these categories is for individuals under 18 who have been induced to perform a commercial sex act and thus are considered victims of a severe form of trafficking.[35] No force, fraud, or coercion is required; if the commercial sex act is induced and the individual performing the act is under 18, the individual is a victim, not a criminal or a prostitute. Although this federal approach was welcomed by many human trafficking advocates,[36] the TVPA did nothing to change the reality

29 *See* TVPRA of 2008 § 201(a)(1)(C).

30 *See id.* § 205(b); INA 8 U.S.C. § 1229b(b)(6) to (A)(i); and I-914(A) (allowing the principal applicant for a T visa, like Lily, to file either concurrently or after the grant of the T visa for a qualifying family member). If the T visa holder is under the age of 21, the qualifying family members include a spouse, unmarried children under the age of 21, parents, or unmarried siblings under 18 years of age.

31 *See also* TVPA 22 U.S.C. § 7105; Violence Against Women & Dep't of Justice Reauthorization Act of 2005, § 804-805, Pub. L. 109-162 (2006) (codified as amended at 8 U.S.C. § 1255(l) *et seq.*) (Westlaw 2009) (defining eligibility for permanent residency as being at the discretion of the Secretary of Homeland Security when a person has been (a) physically present in the United States for a continuous period of at least three years since the date of admission as a non-immigrant, or "for a continuous period during the investigation or prosecution of acts of trafficking," after the investigation or prosecution is complete; (b) "throughout such period, [has] been a person of good moral character"; and (c) "during such period, has complied with any reasonable request for assistance in the investigation or prosecution" of trafficking; "the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States"; or the person was "younger than eighteen years of age at the time of the victimization.").

32 For example, in Lily's case individuals within the juvenile and family court system had enrolled her into a set of benefits based on the belief that she was a legal permanent resident. However, Lily's legal permanent residency was fraudulent. At one point in the process, Lily was advised to use her fraudulent legal permanent resident card to enroll in a federal benefits program. Luckily this advice was brought up during a case team meeting in which representatives of the Human Trafficking Clinic were present. The law students were able to explain the potential harm this could cause to Lily's immigration case, and this advice was no longer given and an alternative solution was identified. For further discussion of this issue *see infra* Part IV text.

33 *See* TVPA 22 U.S.C. § 7109, 18 U.S.C. § 1591(a).

34 *Id.*

35 *Id.* at § 7102.

36 *See, e.g.*, Lanny A. Breuer, Asst. Atty. Gen., U.S. Dep't of Justice, Remarks at the Trafficking Victims Protection Act Tenth Anniversary Event (Oct. 29, 2010), *available at* http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101029.html (hailing the TVPA as "a landmark piece of legislation" that "dramatically expanded

that most prostitution cases are prosecuted at the state level,[37] leaving many children caught between being viewed as a victim of trafficking under federal law and a prostitute under state law.[38]

To close the gap between federal and state approaches regarding the sex trafficking of children, several states have enacted "Safe Harbor" laws.[39] As of early 2011, only a handful of states had passed such legislation[40] which, while varying in detail from state to state, usually contains the following: (1) decriminalization of prostitution for minors; (2) diverting prostituted minors from delinquency proceedings; (3) providing specialized or regular services for prostituted minors; and (4) reclassifying minors as victims or sexually exploited children.[41] As more states pass Safe Harbor legislation, juvenile and family court systems around the country

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our ability to hold human traffickers, and especially child sex traffickers, criminally accountable"); *The Trafficking Victims Protection Act Imposes Stiff Penalties on Pimps, Johns*, STREETLIGHT PHX, *available at* http://streetlightphx.com/tag/child-prostitution/ (remarking that the TVPA "gave hope for the first time in federal law to persons who are coerced into the sex trades or manual labor as virtual slaves").

37 Moira Heiges, Note, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428 (Dec. 2009) (discussing the history of state prostitution enforcement and the "substantial inconsistencies between victim-centered federal policies on the one hand and prostitute-targeted local enforcement practices on the other").

38 Under many state laws, minors can be found guilty of prostitution. Some states, such as Michigan, impose a minimum age at which a minor can be found guilty of prostitution. *See, e.g.*, MICH. COMP. LAWS § 750.448 (LexisNexis 2011) (persons 16 or older can be found guilty of prostitution). Other states have broad prostitution statutes that, in the absence of a safe harbor or similar law, apply to adults and minors with equal force. *See*, *e.g.*, VA. CODE ANN. § 18.2-346 (LexisNexis 2011) (any person who exchanges sex for money or its equivalent shall be guilty of prostitution); FLA. STAT. § 796.07(2)(e)(LexisNexis 2011) (making it generally unlawful to, among other things, engage in prostitution). For a general discussion of the tension between state prostitution laws that criminalize child trafficking victims and federal policies that seek to protect them, *see* Wendi J. Adelson, *Child Prostitute or Victim of Trafficking*, U. OF ST. THOMAS L. J., Vol. 6:1 (2008); Tanner, *supra* note 14; Heiges, *supra* note 37.

39 In addition to Safe Harbor laws, over 40 states also have human trafficking laws, which for the most part mirror the criminal provisions of the TVPA. U.S. DEP't OF JUSTICE, REPORT ON THE TENTH ANNIVERSARY OF THE TRAFFICKING VICTIMS PROTECTION ACT 10 (Oct. 29, 2010), *available at* http://www.justice.gov/crt/about/crm/trafficking_newsletter/tvpaanniversaryreport.pdf. (As of October 2010, 44 states have passed criminal anti-trafficking statutes, many of which are based on model statutes. *See* U.S. DEP't OF JUSTICE, MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE (2004), *available at* http://www.csg.org/knowledgecenter/docs/pubsafety/ModelStateAnti-TraffickingCriminalStatute.pdf and POLARIS PROJECT, MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION TO COMBAT HUMAN TRAFFICKING (3rd ed. 2010), *available at* http://www.polarisproject.org. These model laws are easier for states to adopt than Safe Harbor laws. To pass an effective Safe Harbor law each state has to evaluate its criminal justice system, child protection system, and juvenile court system in order to find the best solutions for supporting trafficked children, rather than simply incorporating a model criminal law.

40 Connecticut (Safe Harbor for Exploited Children Act, Conn. 2010 Pub. Acts No. 115, 2010 Conn. Adv. Legis. Serv. 115 (LexisNexis)); Georgia (2011 Ga. Laws 54, 2011 Ga. Adv. Legis. Serv. 54 (LexisNexis); Illinois (Safe Children Act, 2009 Ill. Laws 1464, 2009 Ill. Adv. Legis. Serv. 1464 (LexisNexis)); New York (Safe Harbour for Exploited Children Act of 2008, 2010 N.Y. Consol. Laws Soc. Serv. § 447-a, et al. (LexisNexis); Tennessee (2011 Tenn. Pub. Acts 377, 2011 Tenn. Adv. Legis. Serv. 377 (LexisNexis)); and Washington (2010 Wash. Ch. 289, 2010 Wash. Adv. Legis. Serv. 289 (LexisNexis)). As of July 7, 2011, California's Child Commerce, Exploitation & Sexual Slavery (ACCESS) Act of 2011 (Assem. B. 12 2011-12 Gen. Assem., Reg. Sess. (Ca. 2011)), which expressly recasts trafficked children as victims rather than prostitutes, was passed by the legislature and was awaiting the governor's signature. Other states, such as Minnesota (H.B. 556, 2011-2012 Leg., 87th Sess. (Minn. 2011)) and Massachusetts (S.B. 55, 187th Gen. Ct., 2011 Reg. Sess. (Mass. 2011)), are considering proposed safe harbor bills. Notably, in a landmark case, the Texas Supreme Court issued an opinion embodying the spirit of the Safe Harbor laws, finding that "[c]hildren are the victims, not the perpetrators, of child prostitution," and holding that, because the age of consent in Texas is 14 years old, children 13 and younger cannot be tried for prostitution. *In re* B.W., 313 S.W.3d 818, 826 (Tex. 2010).

41 *See generally* POLARIS PROJECT, OVERVIEW OF STATE LEGISLATIVE POLICY TO ADDRESS THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN—STATE "SAFE HARBOR" LAWS, *available at* http://www.polarisproject.org.

will grapple with how best to serve victims of sex trafficking. Ideally experts from juvenile and family court systems would be key participants as states and municipalities work to identify ways to protect victims of sex trafficking.

III. FEDERAL BENEFITS FOR CHILD HUMAN TRAFFICKING VICTIMS

Foreign national children who are victims of human trafficking are eligible for a number of federal benefits.[42] These benefits were created for foreign national child victims of trafficking since, unlike U.S. citizens and legal permanent residents, undocumented individuals are usually ineligible for federal, state, or local government benefits.[43] These federal benefits may be in addition to, or may overlap with, state benefits for children in the juvenile and family court system. At times this web of benefits can create complexities and confusion for individuals who are not used to working with human trafficking victims. Foreign national child victims of human trafficking may receive federal benefits in connection with their trafficking in a variety of settings, from receiving assistance through a case manager who is funded by the U.S. Department of Health and Human Services (DHHS) to being enrolled in a federal foster care program.

Foreign national children who are victims of human trafficking in the United States qualify for assistance provided through the DHHS Office of Refugee Resettlement Anti-Trafficking in Persons Division (ORR).[44] Any individual may apply for this assistance on behalf of the trafficked child by filling out a two-page form that asks for basic information about the child's exploitation in the United States.[45] Applying for this type of assistance does not require the involvement of law enforcement or immigration officials. A foreign national child who is found by ORR to be a victim of human trafficking will receive an eligibility letter. This letter qualifies the child for the following benefits: housing and shelter assistance, food assistance, income assistance, employment assistance, English language training, health care assistance, mental health services, and services (social, legal, health, and psychological) offered specifically

42 *See infra* notes 45-46. *See also* U.S. Dep't of Health & Human Serv., Child Victims of Human Trafficking (Nov. 2009), *available at* http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_social/child-victims.pdf (stating that eligible child victims "may access medical screenings, Temporary Assistance for Needy Families (TANF), Medicaid, State Children's Health Insurance Programs (SCHIP), Substance Abuse and Mental Health Services Administration (SAMHSA) Programs, Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and public housing programs."); U.S. Dep't of Health & Human Serv., HHS Child Victims of Human Trafficking, *available at* http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_social/child_of_victims.pdf (discussing eligibility of child victims for T visas and the Unaccompanied Refugee Minors program).

43 Undocumented persons are generally ineligible for federal, state, and local public benefits (with very few exceptions, such as emergency care). 8 U.S.C. § 1611 (2011); 8 U.S.C. § 1621 (2011).

44 TVPA 22 U.S.C. § 7105; TVPRA of 2008 § 212(a)(2). *See also* U.S. Dep't of Health & Human Serv., About Human Trafficking, *available at* http://www.acf.hhs.gov/trafficking/about/index.html#wwd ("[Anti-Trafficking in Persons] funds comprehensive support services to victims of human trafficking through a per capita services contract designed to centralize services while maintaining a high level of care for victims of human trafficking.").

45 U.S. Dep't of Health & Human Serv., Request for Assistance for Child Victims of Human Trafficking, *available at* http://www.acf.hhs.gov/trafficking/about/ATIP_Request_Assistance_Child_Victims_Trafficking.pdf.

to torture victims.[46] Children awaiting the ORR decision who are suspected to be child trafficking victims may also receive these services on an interim basis pending the ORR's final eligibility determination if there is credible evidence that the child suffered a severe form of trafficking.[47]

Lily was eligible for both state and federal benefits, she had an eligibility letter from ORR, and she was receiving state benefits from the child welfare system. In cases like these in which both state and federal benefits are available for human trafficking victims, there can be an overwhelming number of professionals providing advice and support to the victim. For example, in Lily's case after she was identified as a trafficking victim, a lawyer and another social worker were added to her case team. At that point, Lily's case team included a guardian ad litem, a social worker for the foster care placement, a social worker for federal trafficking benefits, a lawyer from the Human Trafficking Clinic, a state department of human services caseworker, a court appointed special advocate, her foster parents, and a representative from a student advocacy center. Each of these individuals had expertise in particular aspects of Lily's case, but sometimes their interests seemed to be in conflict.[48] The juvenile and family court system professionals at the table were not familiar with the myriad federal immigration issues facing Lily. Similarly, the professionals who work on human trafficking cases were not accustomed to dealing with the concerns, procedures, and approaches of the juvenile and family court system. To serve Lily effectively, individuals from both systems must be aware of the variety of issues facing these children and must maintain open lines of communication.

Lily entered the state foster care program through a referral based on child abuse and neglect, but child human trafficking victims may be placed in federal foster care based solely on their trafficking experiences. Foreign national children may receive federal benefits as victims of human trafficking within federal foster care programs.[49] If a child is first identified as a human trafficking victim rather than a child abuse and neglect victim, the child may be referred[50] to federal foster care through the Unaccompanied Refugee Minor Program (URM Program).[51]

46 TVPA 22 U.S.C. § 7105. *See also* U.S. Dep't of Health & Human Serv., *supra* note 9.

47 TVPRA of 2008 § 212 (providing that suspected child victims of severe trafficking may receive assistance under the TVPRA for 90 days with a possible 30-day extension).

48 Often the conflicts were more an issue of misunderstanding or lack of communication. *See supra* note 32 for a description of one such issue.

49 *See infra* notes 50-57. *See also* U.S. Dep't of Health & Human Serv., Child Victims of Human Trafficking, *supra* note 42 (explaining that eligible unaccompanied child trafficking victims may be placed in foster care and provided both the full range of services available to other foster children and the specialized services necessary to help them adapt to their new lives and recover from their prior victimization).

50 Ideally, an unaccompanied foreign national child victim of human trafficking would be automatically identified as such and be provided assistance as a victim and referred to the Unaccompanied Refugee Minor Program. Unfortunately, many victims are not identified as victims and instead are categorized as aliens in the United States without permission or charged with some type of criminal act (i.e. prostitution, truancy, curfew violations). *See supra* Part I text and accompanying notes 11-19.

51 INA § 412, 8 U.S.C. § 1522(d)(2)(B)(2011). To qualify as an unaccompanied minor a child must be less than 18 years old (unless otherwise provided in the resettlement state's child welfare plan); have entered the country unaccompanied by and not destined to a parent, close relative willing or able to care for the child, or custodial adult; and have no parent residing in the United States. 45 C.F.R. § 400.111 (2011). Eligibility extends to unaccompanied minors who are refugees, entrants, asylees, and trafficking victims. U.S. Dep't of Health & Human Serv., Unaccompanied Refugee Minors, *available at* http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_refugee_minors.htm.

A number of states assist foreign national child victims through these programs.[52] Children in the URM Program have access to a range of benefits including housing,[53] a caseworker,[54] medical care,[55] and therapeutic services.[56] Children in this program often have access to an attorney.[57]

A foreign national child victim of human trafficking may also be found in a separate federal program run by ORR within the Division of Unaccompanied Children's Services (DUCS). A child in DUCS is considered to be in federal custody and may be held in a detention facility.[58] Other unaccompanied children,[59] not just human trafficking victims, are in the DUCS program. A child may be placed in the DUCS program without the child's experience as a trafficking victim being identified during intake or ever.[60] A child in a DUCS placement does not have access to the same level of benefits as a child in the URM Program.[61]

52 In addition to the District of Columbia, the following states support, or have supported, the URM Program: Arizona, Florida, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington. CHAD C. HADDAL, CONG. RESEARCH SERV., RL 34414, UNACCOMPANIED REFUGEE MINORS 10 (Mar. 14, 2008).

53 The TVPA provides victims of trafficking with an array of benefits and services to the same extent as refugees are provided, regardless of the victim's immigration status. § 7105. These victims are therefore entitled to foster care management payments, which include room, board, and clothing. 45 C.F.R. § 400.116(a). Victims are placed in licensed foster care homes through the URM Program, according to the individual child's needs. *See* U.S. DEP't OF HEALTH & HUMAN SERV., UNACCOMPANIED REFUGEE MINORS, http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_refugee_minors.htm (last visited Feb. 25, 2011).

54 The URM Program provides victims with an array of assistance, including "intensive case management by social workers." *Id*.

55 The TVPA necessitates that victims of trafficking "receive necessary medical care and other assistance." § 7105. Moreover, the Refugee Resettlement Program's child welfare services allow victims of trafficking access to medical assistance. 45 C.F.R. § 400.116(a).

56 The URM Program allows victims access to mental health services. HADDAL, *supra* note 52. The U.S. Department of State further advises the government to provide trafficking victims with "psycho-social counseling, and assistance in integrating back into their original community or into a new community so that they can rebuild their lives." U.S. DEP't OF STATE, TRAFFICKING IN PERSONS REPORT 2007 37 (2007).

57 Legal services are not provided by the TVPA, nor does the URM Program provide them. However, once a victim is assigned a social worker, the social worker should then arrange for pro bono attorneys to help with the child's case. The child will also be represented in dependency proceedings by a court appointed attorney or guardian ad litem. *See* U.S.C.C.B. MIGRATION AND REFUGEE SERV. AND LUTHERAN IMMIGRATION AND REFUGEE SERV., FREQUENTLY ASKED QUESTIONS ABOUT SERV. TO TRAFFICKED CHILDREN (March 2011).

58 Almost all unaccompanied children in immigration proceedings are in the custody of the federal government through the DUCS program. Although children in DUCS are in removal proceedings, many of these children do not have any legal representation. Approximately 60% of all children in immigration proceedings don't have an attorney. *Halfway Home: Unaccompanied Children in Immigration Custody*, Women's Refugee Commission, Orrick Herrington & Sutcliffe, LLP (Feb. 2009) *available at:* www.womenscommission.org/docs/halfway_home.pdf.

59 For enrollment in the DUCS program, a foreign national child is considered to be unaccompanied if the child "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 is available to provide care and physical custody." Homeland Security Act of 2002, 6 U.S.C.A. § 462 (2008).

60 In order to increase the identification of victims of trafficking within children in the DUCS program, all children in the DUCS program should have access to legal representation. Unfortunately, many children within DUCS do not have an attorney. *See supra* note 58.

61 Children in the DUCS's jurisdiction are housed at ORR-approved facilities, including detention centers, that provide basic services, including education, heath care, food, recreation, vocational training, mental health services, and housing, as well as legal and case management services. However, unlike their URM Program counterparts, DUCS minors are not eligible for the state-provided child welfare services available to other foster care children in the states in which they are housed. U.S. DEP't OF HEALTH & HUMAN SERV., DIVISIONS,

IV. SPECIAL CONCERNS IN CASES INVOLVING CHILD HUMAN TRAFFICKING VICTIMS

For juvenile or family courts to take custody of a child, the court must be provided evidence that the child is indeed a child.[62] However, determining the identity and age of a foreign national human trafficking victim can be quite complex. These children may possess fraudulent identity documents or may not possess any identity documents at all. Due to cultural approaches in documenting childbirth and age[63] or simply because of the exploitation by the trafficker, a child may not know his or her date of birth. Establishing the age and identity of trafficking victims can be complex for juvenile and family court systems. In many cases within the Human Trafficking Clinic clients do not know their date of birth or their full name, and in some situations they do not know either and only go by a nickname or a family name.[64] In recognition of these difficulties, the 2008 reauthorization of the TVPA instructed DHHS in consultation with DHS to devise age determination procedures for children in DHS custody, including trafficking victims.[65] In determining age, a wide variety of evidence is sought including documents, individual statements, information from other government agencies, and information from medical age determination procedures.[66] Relevant documentation includes both government-issued documents[67] and documentation that shows a date of birth.[68] Statements by individuals who have personal and credible knowledge of the child's age can provide relevant information; this includes statements by the foreign national child as

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available at http://www.acf.hhs.gov/programs/orr/about/divisions.htm#3; Haddal, *supra* note 52; Nat'l Conf. of State Legislators, Unaccompanied Immigrant and Refugee Minors (Aug. 11, 2005), *available at* http://www.ncsl.org/IssuesReserch/Immigration/UnaccompaniedImmigrantandRefugeeMinors/tabid/13128/Default.aspx. Housing these children in detention centers is far from ideal because many are commingled with delinquent populations and are subjected to handcuffing, shackling, and are forced to wear prison garb. Halfway Home, *supra* note 58.

62 The age at which a child can be adjudicated a minor varies by jurisdiction. For example, in Michigan, the court must take jurisdiction before a child is 18 years old but may retain jurisdiction until the child turns 20 years old. Mich. Comp. Laws § 712A.2a(1) (LexisNexis 2011).

63 In many countries, millions of births are wholly unregistered, making age determination difficult, if not impossible. *See* UNICEF, Fact Sheet: Birth Registration, *available at* http://www.unicef.org/newsline/2003/03fsbirthregistration.htm (stating that in 2000, 50 million births were unregistered (40% of births worldwide) and almost all were from "poor, marginalized or displaced families or from countries where systems of registration are not in place or functional." Many of the unregistered children were from South Asia, sub-Saharan Africa, the Middle East, and North Africa). UNICEF, Information Sheet: Birth Registration (stating that 70% of the 5 million children born in Nigeria are not registered and have no birth certificate); UNICEF, Unregistered Children: The Right to a Formal Identity, *available at* http://www.unicef.org/sowc06/profiles/unregistered.php.

64 In one extreme case in the Human Trafficking Clinic, the child knew nothing about himself. He had been with the trafficker since he was an infant and his identity was completely fraudulent. To this day, we do not know his date of birth, his country of origin, or his parentage.

65 TVPRA of 2008 § 235(b)(4). As of the writing of this article no such age determination procedures have been devised.

66 U.S. Dep't of Health & Human Serv., Program Instructions: Age Determination of Aliens in the Custody of HHS and DHS, Log No. 09-02 (Sept. 15, 2010), *available at* http://www.acf.hhs.gov/programs/orr/whatsnew/ORR_Program_Instructions_on_Age_Determination_of_UAC.pdf.

67 *Id.* ("If the alien in question is not in possession of original documentation or if the authenticity of the original documentation is in question, government officials of the alien's home country must be consulted in order to verify the validity of the documentation").

68 For example, baptismal certificates, school records, and medical records could be used. *Id.*

well.[69] Other government agencies, federal, state, local, or foreign, may have relevant information to assist in determining age.[70] Finally, as a last resort, medical age determination procedures can be used.[71] A federal age determination did not occur in Lily's case because she was not in federal custody. Since juvenile and family court systems will encounter cases in which there is no federal determination of age, it is important that these potential age issues are acknowledged and appropriate victim-centered procedures[72] are put in place to determine age when it is unknown or ambiguous.

Foreign national child victims of human trafficking in the juvenile and family court system may have a variety of immigration statuses, from undocumented to legal permanent resident and anywhere in between.[73] These statuses have requirements[74] that must be met and complied with for the child to be able to remain in the United States.[75] The juvenile and family court system must be aware of the immigration issues facing the child victim. Ideally this awareness would come from an attorney with expertise in human trafficking cases representing the child and working with the child's case team. In Lily's case, the advice of the attorney from the Human Trafficking Clinic was essential to protect Lily's ability to apply for immigration relief. Lily's trafficker forced her to live in the United States under a false identity and a false immigration status. Lily was undocumented and did not qualify for federal benefits; however, she had paperwork in a different name that stated she was a legal permanent resident and thus entitled to apply for a variety of state and federal benefits.[76] After she was rescued, members of Lily's case team advised her to continue to use the fraudulent documents created for her by the trafficker to access certain federal benefits. They advised this because Lily desperately needed these benefits and services, and they were not aware of the severe immigration consequences Lily might face if she fraudulently obtained them.[77] Since Lily had student attorneys from the

69 However, "generally an alien's uncorroborated declaration regarding age is not used as the sole basis for an age determination." *Id*.

70 *Id*.

71 If the medical results are ambiguous, debatable, or borderline, the results should be interpreted in favor of determining the foreign national a minor. *Id*.

72 For example, in the federal approach, until an age determination is made, a foreign national is treated as a minor and is entitled to all services provided to Unaccompanied Alien Children who are in DHHS care and custody. *Id*. This presumption is necessary to protect foreign national child victims of human trafficking and should be incorporated into state-level age determinations of foreign national children.

73 For example, these children may have continued presence status or T nonimmigrant status. Individuals qualify for continued presence if (i) they have been identified as a victim of a severe form of human trafficking, and (ii) if they are a potential witness in the investigation or prosecution of the trafficker. Continued presence allows someone to live and work in the United States for one year. TVPA, 22 U.S.C. § 7105(b)(1)(E).

74 *See* INA § 212 and INA § 237 for the grounds of inadmissibility and deportability.

75 All of the possible issues relating to these statuses are beyond the scope of this article. It is essential for foreign national children within the juvenile and family court system to have access to an immigration attorney and for that attorney to be part of the team supporting the child within the juvenile and family court process.

76 Permanent residents have access to certain federal and state benefits that are unavailable to undocumented persons (though their eligibility may also depend on other factors as well, including date of entry, length of U.S. residency, military service, employment history, and state discretion). These benefits include eligibility for Social Security income, Medicaid, Temporary Assistance to Needy Families, and food stamps. 8 U.S.C. § 1612 (2011); 8 U.S.C. § 1613 (2011). *See also* Ruth Ellen Wasem, Cong. Research Serv., RL33809, Noncitizen Eligibility for Federal Assistance: Policy Overview and Trends 4-5 (July 24, 2009). Undocumented persons are generally ineligible for government benefits. *See supra* note 43.

77 INA § 212(a)(6)(C) (making a person who commits fraud to obtain a federal benefit under the INA generally inadmissible).

Human Trafficking Clinic as part of her case team, the law students were able to advise against this route, but also to help Lily obtain the needed support through the federal benefits and services provided to victims of human trafficking. With a support team that included members from both the state and federal systems, Lily's needs were identified and the appropriate resources were found to support her without risking her immigration claim.

V. CONCLUSION

To combat human trafficking in the United States effectively, juvenile and family court systems must actively participate in identifying and protecting victims of human trafficking. For cases involving both the federal human trafficking system and state juvenile and family court systems, care must be taken to balance all of the issues and needs of the child victims. Juvenile and family court systems must establish identification and referral mechanisms for victims within their systems and should assist in state approaches to decriminalize and protect child sex trafficking victims. By raising awareness and creating victim-centered approaches and procedures, cases like Lily's can be the norm rather than the exception.