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SUBMITTED INPUT

An NGO input to the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences regarding the Role of Organized Criminal Groups

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The Center for the Human Rights of Children at Loyola University Chicago School of Law was established in 2007 to pursue interdisciplinary research, outreach, education, and advocacy to address critical and complex issues affecting children and youth, locally and globally. The signatories to this input are national and international organizations that provide a range of services related to victims of contemporary forms of slavery, including human trafficking. These services include direct legal services, social services, advocacy, research and scholarship.



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I. Introduction

The Center for the Human Rights of Children (CHRC), in collaboration with signatory organizations, submits this input in response to the call for submissions made by the Special Rapporteur's Report on the Role of Organized Criminal Groups with regard to Contemporary Forms of Slavery to inform the forthcoming report to the 76th session of the General Assembly. This input will focus upon the role of organized criminal groups with regard to child labor trafficking (forced labor), and specifically, forced criminality as a form of forced labor.¹ We provide input on cases both in the interior of the United States, and also regionally along the migrant corridor between Central America (Honduras, Guatemala, El Salvador), Mexico, and the United States Southern border, one of the busiest migrant corridors in the world. In this submission, we address issues involving both US citizen victims as well as migrant children. The United States anti-trafficking legislation, or the Trafficking Victims Protection Act (TVPA) and its subsequent reauthorizations (TVPRA), address contemporary forms of slavery under the Palermo Protocol and UN CRC Optional Protocol on the Sale of Children, including crimes of forced labor and involuntary servitude. Thus, we use the terms "contemporary forms of slavery," "labor trafficking" and "forced labor" interchangeably throughout this input.²

Children are uniquely vulnerable, due to their age, development, and dependence on adults for their safety and well-being. Despite this vulnerability, child trafficking victims in the U.S. are often treated in the same manner as adults, without any additional protections in place to account for their unique needs. The lack of child-appropriate protection is particularly problematic for child victims of labor trafficking, especially forced criminality. Forced criminality generally involves the use of force, fraud, or coercion to compel children to commit criminal activities including (but not limited to) drug smuggling, drug production, benefit fraud, theft, begging, prostitution, and other criminal acts.³ Children in the US, both migrant children and US citizens, boys and girls, who are victims of forced criminality are treated inconsistently by the US legal system, with some offered protection as victims of crime (e.g., child prostitution), and others treated as perpetrators of crime (e.g., children forced to smuggle drugs across the border). Perpetrators of child labor trafficking and forced criminality in the US and throughout the region are often organized criminal groups, as defined by the UN.⁴

This report addresses key questions regarding organized criminal groups and contemporary forms of modern slavery. The input focuses on 1) providing evidence of organized criminal groups and

¹ 18 U.S.C. §1589.

² US government law, the Trafficking Victims Protection Act, and its subsequent reauthorizations (referred to as the "TVPA" and "TVPRA" throughout this report) *do not* distinguish the trafficking of children for labor or services from the definition of the sale of children for the purpose of forced labor under Articles 2 and 3 of the Optional Protocol on the Sale of Children (OPSC). The US government asserts that the TVPA and TVPRA meet U.S. obligations under the OPSC, as the statutes addressing labor trafficking do not require the element of "remuneration or any other consideration" included in the definition of "sale" in the Optional Protocol, and uses the term "labor trafficking" throughout its report.

³ Vicky Brotherton, "Victim or Criminal? Trafficking for Forced Criminal Exploitation in Europe," *RACE in Europe*, 1, 2014, <https://www.antislavery.org/wp-content/uploads/2017/01/Criminal-or-victim-UK.pdf>

⁴ United Nations Convention Against Transnational Organized Crime, Article 2; Elzbieta Gozdziaik & Micah Bump, "Victims No Longer: Research on Child Survivors of Trafficking for Sexual and Labor Exploitation in the United States," 2005, 12-14.

the nature and extent to which they are involved in child trafficking and forced criminality, both domestically and internationally, 2) the US legislative framework regarding forced labor and forced criminality, and 3) the challenges child victims' advocates face in obtaining protections for both migrants and citizens.

II. Nature of Organized Criminal Groups Engaging in Child Labor Trafficking and Forced Criminality

Organized criminal groups are significantly involved in child labor trafficking in the US, particularly in cases of forced criminality. In addition to larger organized criminal groups such as gangs and cartels,⁵ extended family units also perpetrate child labor trafficking.⁶ These criminal groups operate both domestically and internationally.

We have had multiple cases of minors trafficked by gangs in Central America and cartels in Mexico. Typically, recruitment of minors begins around the age of 12 or 13, and can continue through adolescence. This is also the reason why many clients have been sent from home by their parents to come to the U.S. alone. When the harassment surrounding gang recruitment gets severe and chronic, the child is sent away from the country of origin. We primarily see children trafficked as mules to move illegal goods by gangs or as look-outs during murders, theft, or drug deals. Minors report high levels of threats to their family. Threats, violence, and harassment can continue once they seek safety in the U.S., where gangs often have satellite networks.

-International Rescue Committee (2021)

Mr. and Mrs. Baicu, were convicted with others for smuggling a Romanian minor and other individuals into the US for the purpose of forcing them to work as beggars in New York and later Maryland. The minor was also forced to do domestic work. If she refused any demands, she was beaten and she and her family in Romania were threatened.⁷

Organized criminal groups exploit and traffic children for both legal and illicit activities within the US and throughout the Central American-Mexico-US migratory corridor. Child labor trafficking is often seen in the agriculture industry,⁸ sales crews,⁹ domestic work,¹⁰ and the service industry,

⁵ "The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States," *Polaris*, 2017, 18, <https://polarisproject.org/wp-content/uploads/2019/09/Polaris-Typology-of-Modern-Slavery-1.pdf>; Laura T. Murphy, "Labor and Sex Trafficking Among Homeless Youth," *Loyola University New Orleans*, 2016, 4, <https://static1.squarespace.com/static/5887a2a61b631bfbb1ad83a/t/5a7490fdc8302508d6b76f1c/1517588734590/Labor+and+Sex+Trafficking+Among+Homeless+Youth.pdf>.

⁶ Katie Linn, "Familial Trafficking," *Exploit No More*, March 5, 2016, <https://www.exploittenomore.org/blog/typologies-familial-trafficking>.

⁷ *US v. Baicu*, (E.D.N.Y., 2007) (complaint).

⁸ "About Human Trafficking," *U.S. Department of State*, accessed April 9, 2021, <https://www.state.gov/human-trafficking-about-human-trafficking/>.

⁹ "Knocking on Your Door Sales Crews," *Polaris*, 2019, <https://polarisproject.org/wp-content/uploads/2019/09/Knocking-on-Your-Door-Sales-Crews.pdf>.

¹⁰ Katherine Kaufka Walts, "Child Labor Trafficking in the United States: A Hidden Crime," *Social Inclusion* 5, no. 2, (2017): 61; doi: 10.17645/si.v5i2.914.

such as hair salons¹¹ and restaurants.¹² Specifically in regard to forced criminality, victims are usually involved in prostitution or the drug trade.¹³

“Diego” a teenager, was abducted by members of a cartel (his traffickers) in Mexico. He was brought by the cartel just South of the US/Mexico border, and upon arrival he was kept in a bodega, and was beaten and tortured. Threatened by the cartel with continued torture if he failed to obey them, he made several trips carrying drugs across the US border and back, closely watched at all times by cartel members. He was eventually apprehended by Customs and Border Protection (CBP) on suspicion of drug trafficking. He remained in DHS custody misidentified as an adult, until he engaged in a suicide attempt and self-injurious behavior, which led to the discovery that he was in fact, a minor. He was moved to Office of Refugee Resettlement (ORR) custody, and later identified as a victim of human trafficking.

-Advocating for Opportunity (2021)

For children who are forced to commit criminal activities for their traffickers (organized criminal enterprises), there is a much greater chance they will be labeled by law enforcement as adults, criminals, or children in “conflict with the law,” which may include criminal or petty crimes as well as status offenses, such as truancy.¹⁴ Children of color (migrant and US citizen) are particularly vulnerable to this dehumanizing practice. Once thus labeled, a child may be placed in a restrictive detention setting, further victimizing the child and preventing identification as a victim of trafficking.¹⁵

A minor, “Jesus,” was abducted in Mexico by armed men who took him to a warehouse and told him they “owned” him. The men told him they were cartel, knew where his family lived, and would kill him and his family if he did not obey them. He was forced to carry drugs across the US border and through the desert for several days in a large group, accompanied by armed members of the cartel who continued to threaten him. The group was told to wait at a particular spot for someone to pick them up, but CBP encountered them first. Jesus was arrested, fingerprinted, and taken to jail. He repeatedly told US officials that he was a minor, but they did not believe him, and listed him under the wrong name and the wrong birthdate. He was charged as an adult and sentenced to prison. He remained in prison until an immigration attorney identified him as a minor, and succeeded in obtaining a T visa and humanitarian relief for Jesus.

-Advocating for Opportunity, Ohio (2021)

¹¹ Marcia Eugenio, “Preventing Stolen Childhoods: How the Department of Labor is Combating Child Labor Trafficking,” *Council on Foreign Relations*, January 29, 2021, <https://www.cfr.org/blog/preventing-stolen-childhoods-how-us-department-labor-combating-child-labor-trafficking>.

¹² Rissa Shaw, “Owners of Local Restaurant Charged in Labor-Trafficking Probe Re-Arrested,” *KWTX*, June 1, 2018, <https://www.kwtx.com/content/news/Deputies-health-department-workers-serve-warrant-at-local-restaurant-484292581.html>.

¹³ Murphy, “Labor and Sex Trafficking Among Homeless Youth,” 4. Additional case examples are provided in the appendix.

¹⁴ “Children in Conflict with the Law,” *UNICEF*, 2006, https://www.unicef.org/chinese/protection/files/Conflict_with_the_Law.pdf.

¹⁵ “The Importance of Criminal Record Relief,” *Polaris*, March 20, 2019. <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/>.

Furthermore, criminal groups often target and recruit children to perform criminal activities with a greater exposure to law enforcement, such as transporting drugs across the border, as a means to protect the traffickers from criminal liability themselves.¹⁶ As a result, child victims may have lengthy criminal records before being identified as a trafficking victim.¹⁷ Thus, the US legal system not only fails to protect the victims, but also further harms the victims by treating them as perpetrators. This failure to identify is more common for boys,¹⁸ particularly boys of color (both US citizen and migrant), who are inappropriately viewed and treated as willing gang members rather than victims.¹⁹

While the involvement of larger organized criminal groups increases the misidentification of forced criminality victims as perpetrators, (organized) familial trafficking is more concealed because the relationship obscures the coercion, and the child may not self-identify as a victim.²⁰

“Melinda” was one of six teenage girls smuggled from Honduras to the US by her two aunts and eight other defendants, and subsequently trafficked to work at a nightclub, selling drinks and flirting and dancing with customers. She was not allowed to go to school, and was kept imprisoned in an apartment near the cantina. She had a quota of how much money she had to make each night and week, with a total \$20,000 USD debt. If she did not make the quota, she was punished and abused, and her family in Honduras was threatened.²¹ Melinda was originally reluctant to cooperate with US authorities because of loyalty to her family.

-US v. Medrano

III. U.S. Legislative Framework for Child Labor Trafficking and Forced Criminality

In the US, “human trafficking,” has been codified under the Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent reauthorizations in 2003, 2005, 2008, 2013, and 2018

¹⁶ “Female Victims of Trafficking for Sexual Exploitation as Defendants: A Case Law Analysis,” *Human Trafficking and Migrant Smuggling Section of UNODC*, 2020, https://www.unodc.org/documents/human-trafficking/2020/final_Female_victims_of_trafficking_for_sexual_exploitation_as_defendants.pdf.

¹⁷ Beth Jacobs, “Impact of Criminal Arrest and Detention on Survivors of Human Trafficking,” *National Survivor Network Members Survey*, August 2016, https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSN_Vacate-Survey-2018.pdf; Stephanie Richard, “Arrest is Not the Answer” *Coalition to Abolish Slavery and Trafficking*, January 2016, https://www.castla.org/wp-content/themes/castla/assets/files/CAST_Arrest_is_Not_the_Answer_Jan_2016.pdf. In this study, the average number of arrests a trafficking victim had as a result of the exploitation was 15 arrests. However, this average hides the extent of the problem for individual victims. For example, “Susan” was arrested 38 times in 8 years, “Carla” was convicted of 52 offenses, and “Penny” was arrested 42 times in 9 years.

¹⁸ Eric Beasley, “Overlooking Men and Boys in Forced Criminality at the Border: A Content Analysis of Human Trafficking Training and Awareness Materials,” *Master’s Theses*, 2018, <https://repository.usfca.edu/cgi/viewcontent.cgi?article=2150&context=thes>.

¹⁹ Cristina Rizen, “Are Juveniles Gang Members Victims of Labor Trafficking?” *Children’s Legal Rights Journal* 35, no. 2 (2015) https://healtrafficking.org/wp-content/uploads/2020/01/Are-Juvenile-Gang-Members-Victims-of-Labor-Trafficking_.pdf.

²⁰ Familial Trafficking, *Guardian Group*, accessed Apr. 19, 2021, <https://guardiangroup.org/familial-trafficking/>; Murphy, “Labor and Sex Trafficking Among Homeless Youth,” 39.

²¹ US v. Medrano, (D.N.J. July 2005), https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2011/united_states_v._medrano.html

(TVPPRA). The policy intentions of the TVPPA, in parallel to the UN Palermo Protocol, are to protect victims, to prosecute perpetrators, and to prevent both labor and sex trafficking of all persons, including citizens and foreign nationals. The TVPPA created new crimes to help prosecute perpetrators, including “forced labor” and “trafficking with respect to peonage, slavery, involuntary servitude, or forced labor.”²² These new statutes attempt to expand anti-slavery statutes, particularly involuntary servitude,²³ and cover additional tactics perpetrators use to coerce individuals to perform labor or services.

The penal code under the TVPPA also recognizes that trafficking victims forced to commit crimes should not be punished.²⁴ However, the non-punishment principle is only applied when a child who has been arrested or charged with a crime is identified as a labor trafficking victim, unfortunately, there are a number of barriers to identification, including an overall lack of prioritization of child labor trafficking cases.²⁵ Moreover, child victims of labor trafficking must prove statutory elements of force, fraud, and coercion, whereas child victims of sex trafficking do not.

IV. Challenges for Victims and Survivors of Child Labor Trafficking and Forced Criminality in Obtaining Protections to which They are Legally Entitled

There are two significant barriers for child victims to receive protection: 1) children engaged in forced criminality are frequently misidentified as perpetrators not victims, and are subsequently punished contrary to international human rights laws and norms that explicitly provide for protecting child trafficking victims forced to commit criminal activities,²⁶ and 2) the protections available to child victims of labor trafficking or forced labor are not child-centric, and as such do not account for the unique needs of children.²⁷

To access protection in the criminal justice or immigration system, a child victim of labor trafficking has the same burden of proof as an adult trafficking victim—a showing of force, fraud,

²² These new crimes also include “sex trafficking of children, or by force, fraud or coercion.”

²³ 18 U.S.C. §1584.

²⁴ 34 U.S.C. §20709(c). The TVPPA requires the Department of Justice to provide training for law enforcement officers regarding the fact that victims of trafficking may commit crimes as a result of the human trafficking, and that these individuals should not be arrested, charged, or prosecuted because they are victims.

²⁵ The US State Department has stated that forced criminality is an under-identified aspect of labor trafficking. “The Use of Forced Criminality: Victims Hidden Behind the Crime,” *United States Department of State, Office to Monitor and Combat Trafficking in Persons*, June 2014, <https://2009-2017.state.gov/documents/organization/233938.pdf>; Freedom Network USA, “Child Trafficking for Labor in the United States,” 2015, 2-3, <https://freedomnetworkusa.org/app/uploads/2016/12/HT-and-Child-Labor.pdf>.

²⁶ Conference of the Parties to the UN Convention Against Transnational Organized Crime Res. 10/3, at 13(g), Effective Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2020); Maria Grazia Giammarinaro, The Importance of Implementing the Non-Punishment Provision: The Obligation to Protect Victims, United Nations Human Rights Special Procedures, <https://www.ohchr.org/Documents/Issues/Trafficking/Non-Punishment-Paper.pdf>.

²⁷ G.A. Res. 44/25, Convention on the Rights of the Child, at Article 37 (Nov. 20, 1989); G.A. Res. 54/263, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, at Article 8 (May 25, 2000).

or coercion—with no regard for the developmental differences between children and adults.²⁸ This directly contrasts to the Palermo Protocol and US statutory guidelines for victims of child sex trafficking, who do *not* have to prove “force, fraud, or coercion.”²⁹ There is a presumption that these children cannot consent to their exploitation, due to their age and development. However, the same standard does not apply to child victims of labor trafficking, including victims of forced criminality, even though prostitution is arguably another form of forced criminality.

Moreover, the US legal system fails to account for the power and authority difference between children and adults.³⁰ Specifically, children are more likely to do what an adult says because they do not think they have any other option. Additionally, because of a child’s vulnerability and age the child may be dependent on their trafficker, especially if the trafficker is a caretaker or family member.³¹ Organized criminal groups have an additional power dynamic in that they are able to threaten not only the child victim, but also the child’s family.

One minor ran away from the gang who was trafficking him in Mexico to join family in the U.S. While in the U.S., the family received threatening calls, saw suspicious cars driving by, and people watching their house. The family in Mexico also received threats.
-International Rescue Committee (2021)

Additionally, while US federal anti-trafficking laws provide a definition of forced labor that should encompass forced criminality, the definition and the non-punishment principle are inconsistently and arbitrarily applied across US governmental agencies and courts.³² Child victims of forced criminality in particular are often not provided protection under the definition of forced labor.³³

In our capacity as interdisciplinary experts on child trafficking, we routinely provide expert assessments and reports in response to individual cases of migrant children who have been initially denied protection in the form of a (T) visa as a victim of human trafficking. In most of these cases, the US Department of Health and Human Services, Office of Trafficking in Persons (OTIP) has recognized the child as a victim of human trafficking and provided a “Letter of Eligibility,”³⁴ allowing the child to access short-term humanitarian benefits. Between 2018 and 2019, OTIP

²⁸ Katherine Kaufka Walts, et al., “Center for the Human Rights of Children’s Input for the 2021 Trafficking in Persons Report,” (2021), 4.

²⁹ Katherine Kaufka Walts, Maria Woltjen, and Kelly Albinak Cribbs, “Alternative Report: An NGO Response to the Periodic Report of the United States of America to the UN Committee on the Rights of the Child Concerning the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,” July 1, 2016, 12.

³⁰ Debra Wolfe, et al., “Human Trafficking Prevalence and Child Welfare Risk Factors among Homeless Youth,” Field Center, January 2018, 37. <https://www.covenanthouse.org/sites/default/files/inline-files/Field%20Center%20Full%20Report%20on%20Human%20Trafficking%20Prevalence.pdf>.

³¹ “Child Trafficking for Labor in the United States,” *Freedom Network USA*, 2015, 3, <https://freedomnetworkusa.org/app/uploads/2016/12/HT-and-Child-Labor.pdf>.

³² Katherine Kaufka Walts et al., “Trafficking in Persons Report,” 4.

³³ *Id.*

³⁴ A letter of eligibility is a determination by the Office of Trafficking in Persons that a child foreign national is or may be a victim of human trafficking, allowing the child to apply for the same services provided to refugees. “Eligibility Letters,” *Office of Trafficking in Persons*, (last reviewed Oct. 30, 2020), <https://www.acf.hhs.gov/otip/victim-assistance/eligibility-letters>.

nearly doubled the number of eligibility letters issued to children from 466 to 892 approvals.³⁵ Conversely, the US Department of Homeland Security, US Citizenship and Immigration Services (USCIS) routinely denies applications for a T or U visa for victims of labor trafficking (over 45% of T Visa requests denied in the first quarter of 2019), applying a much narrower interpretation of who qualifies as a labor trafficking victim.³⁶

*USCIS denied a T visa to a Mexican boy forced to work by cartels; he was summarily returned to Mexico by CBP officers despite telling them of his fear of return and both the State Department and Mexican consulate claiming he was trafficked.*³⁷

-Refugees International

Child victims of forced criminality face additional hurdles due to their criminal records. In the US, a criminal record has long term consequences on an individual's ability to attain employment, stable housing, and education.³⁸ Without access to stable housing and education child survivors of forced labor return to vulnerable situations with an increased risk of being re-trafficked. The lack of protections provided to children who are victims of forced criminality violate principles of international law, such as a child's inherent right to life, survival and development and to be free from torture.³⁹

V. Conclusion and Recommendations

While the TVPA provides expansive protection for child sex trafficking victims, the protections afforded to child labor trafficking victims pale in comparison. Furthermore, children who are forced to commit crimes, particularly in the drug trade of organized criminal groups, are frequently misidentified by stakeholders and are treated as perpetrators, not victims. In order to protect child labor trafficking victims, particularly those forced to commit crimes, we respectfully submit the following recommendations:

First, US anti-trafficking laws should be amended to explicitly recognize forced criminality as a form of child labor trafficking.

Second, the US government should require every stakeholder who is likely to interact with children to receive training on labor trafficking and forced criminality as a form of forced labor/human trafficking. This should include immigration judges, juvenile and family court judges, agents with Customs Border Patrol, the Federal Bureau of Investigation, and Immigrations and Customs

³⁵ "Certification and Eligibility Letters Issued," *Office on Trafficking in Persons*, published December 26, 2017, <https://www.acf.hhs.gov/otip/data/resource/lettersissued> (but note that the number of eligible adults decreased between 2018 to 2019 from 412 to 311).

³⁶ Yael Schacher, "Abused, Blamed, and Refused Protection Denied to Women and Children Trafficked Over the Southern Border, Refugees International," May 21, 2019, <https://www.refugeesinternational.org/reports/2019/5/21/abused-blamed-and-refused-protection-denied-to-women-and-children-trafficked-over-the-us-southern-border>.

³⁷ Administrative Appeals Office, U.S. Citizenship and Immigration Services, "Matter of P-H-D," 2019, https://www.uscis.gov/sites/default/files/err/D12%20-%20Application%20for%20T%20Nonimmigrant%20Status/Decisions_Issued_in_2018/JUL052018_01D12101.pdf.

³⁸ "The Importance of Criminal Record Relief for Human Trafficking Survivors," Polaris, March 20, 2019, <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/>

³⁹ Convention on the Rights of the Child, 1989.

Enforcement, and NGOs receiving federal funding to identify and protect victim of human trafficking.

Third, the US government should apply equal protections to both child sex trafficking and labor trafficking victims, including victims of forced criminality. The requirement of fraud, force, or coercion should be removed from the labor trafficking definition for children. The US government should encourage states to protect victims of child forced criminality from being penalized for criminal acts they commit as part of their trafficking. Where a victim is not identified until after the accumulation of a criminal record, states should allow for the expungement of these records.

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Appendix A: Additional Case Encounters from Organizational Partners

Administrative Appeals Office (AAO), U.S. Citizenship and Immigration Services, “Matter of S-A-R-M, Appeal of Vermont Service Center Decision,” 2019, https://www.uscis.gov/sites/default/files/err/D12%20-%20Application%20for%20T%20Nonimmigrant%20Status/Decisions_Issued_in_2019/MAR132019_01D12101.pdf.

S-A-R-M- left El Salvador in 2016 to avoid recruitment by a gang, whose members had threatened him on his way to school and outside of his church. He traveled by bus through Guatemala until he reached northern Mexico, where he was taken captive by armed men and kept starving and sleepless in a boarded-up house for several days. He was then beaten and threatened with a gun to his head until he agreed to carry a backpack across the river. Once on the U.S. side, his captors took the backpack and abandoned S-A-R-M-. Border Patrol agents found, questioned, and detained him, and then released him to the Office of Refugee Resettlement, which in turn released him to his sister; she brought him to an attorney who helped him apply for a T visa in early 2017. USCIS responded to the T visa application with a “Request for More Evidence” (RFE), a practice that became common by mid-2017 and which significantly prolongs adjudication. The RFE in this case was also typical of cases considered by mid-2017, in that it claimed S-A-R-M-’s story (as told in an affidavit submitted with the T visa application) did not match the summarized notes of his initial questioning by the Border Patrol (as taken down on CBP’s form I-213). CBP’s form stated that S-A-R-M- said his mother “made the arrangements for his entry to the United States,” whereas S-A-R-M- specifically claimed in his T visa application that he had left El Salvador without telling his family. In his reply to the RFE, S-A-R-M- stated that CBP’s form was inaccurate. S-A-R-M- said CBP never asked him if he used a smuggler or whether he had been trafficked, and that he only mentioned his mother in response to a question about who took care of and supported him in El Salvador. In March 13, 2019, USCIS’s Administrative Appeals Office determined that there was no record of the complete questions and answers during the CBP interview or whether the interview was conducted in Spanish or with an interpreter. The AAO instead found that the available record established that S-A-R-M- was indeed a victim of trafficking. Nonetheless, the AAO denied S-A-R-M- a trafficking visa on the grounds that he “was physically present in the United States because he was fleeing gangs in El Salvador and not on account of his trafficking”—in short, because he was a victim twice over. Though the AAO accepted that he “suffered emotional and physical harm” as a result of the trafficking that brought him to the United States, S-A-R-M-’s statements indicating that he did not wish to return to El Salvador “because of his fear of gangs there” actually damaged his case. The AAO determined that the applicant’s fear of return, rather than his need for continued trauma-related services, was the real reason for his unwillingness to return—and thus, his presence in the United States was not due to trafficking. AAO officials came to this conclusion even though the applicant had to mention his fear of return to help demonstrate he would face extreme hardship if he were returned to El Salvador (the final requirement for the T visa application).

-Refugees International

Administrative Appeals Office, U.S. Citizenship and Immigration Services, “Matter of J-F-A-H, Appeal of Vermont Service Center Decision,” 2019, https://www.uscis.gov/sites/default/files/err/D12%20-%20Application%20for%20T%20Nonimmigrant%20Status/Decisions_Issued_in_2019/APR022019_02D12101.pdf.

The AAO also denied a visa to a Guatemalan child who had been held by members of the Gulf cartel, a major Mexican criminal organization.

-Refugees International

Administrative Appeals Office, U.S. Citizenship and Immigration Services, “Matter of M-J-R-S,” Appeal of Vermont Service Center Decision, 2019, https://www.uscis.gov/sites/default/files/err/D12%20-%20Application%20for%20T%20Nonimmigrant%20Status/Decisions_Issued_in_2019/APR022019_01D12101.pdf.

USCIS’s AAO denied relief to a Honduran child it conceded “faced challenging circumstances by three [unconnected] groups of smugglers, who forced him to perform chores, threatened him, and held him while extorting his parents for money.” This boy was receiving trafficking survivor services through the Office of Refugee Resettlement when he was rejected for a T visa.

-Refugees International

Appendix B: Annotation of Most Relevant Research and Case Examples

Human Trafficking in the United States

“The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States,” *Polaris*, 2017, <https://polarisproject.org/wp-content/uploads/2019/09/Polaris-Typology-of-Modern-Slavery-1.pdf>.

This report provides a comprehensive analysis of trafficking in the U.S. based on cases of human trafficking received by the U.S. National Human Trafficking Hotline and Textline operated by Polaris. The report analyzed over 32,000 cases of trafficking in the U.S. and identifies the 25 most common forms of trafficking in the United States. For each form of trafficking the report identifies the trafficker profile, the victim profile, how victims are recruited, and the methods of control used by traffickers.

“The Typology of Modern Slavery: Visual Summary,” *Polaris*, 2017, <https://polarisproject.org/wp-content/uploads/2017/03/Typology-of-Modern-Slavery-Summary.pdf>.

This is a visual summary of the Polaris report discussed above. This summary notes the limitations of the study, that the cases analyzed were not a random sample and did not include structured interviews. Cases required a victim to self-identify and have access to a phone and the hotline numbers, which likely impacts the types of cases identified.

Child Labor Trafficking in the United States

Marcia Eugenio, “Preventing Stolen Childhoods: How the Department of Labor is Combating Child Labor,” *Trafficking, Council on Foreign Relations*, January 29, 2021, <https://www.cfr.org/blog/preventing-stolen-childhoods-how-us-department-labor-combating-child-labor-trafficking>.

This blog post mentions a labor trafficking case where a 9-year-old child was brought into the U.S. and forced to provide services in a hair salon. The post notes that the traffickers ran the hair salon and was part of an organized criminal group.

Kaufka Walts, Katherine, “Child Labor Trafficking in the United States: A Hidden Crime,” *Social Inclusion* 5, no. 2, (2017): 59-68; doi: 10.17645/si.v5i2.914.

This article discusses child labor trafficking in the U.S. both in the past and the present, including information on both U.S. citizens and children who are not citizens. It provides examples of cases of child labor within the U.S. and addresses the limitations in U.S. law regarding child labor trafficking, specifically that child labor trafficking is overlooked due to a heightened focus on sex trafficking.

Murphy, Laura. “Labor and Sex Trafficking Among Homeless Youth.” *Loyola University New Orleans*. 2016. <https://static1.squarespace.com/static/5887a2a61b631bfbbbc1ad83a/t/5a7490fdc8302508d6b76f1c/1517588734590/Labor+and+Sex+Trafficking+Among+Homeless+Youth.pdf>.

This study interviewed over 600 homeless youth to determine whether they had ever been trafficked for sex or labor due to an increased recognition that homeless youth are among

the most vulnerable population for traffickers. The study found 20% of the youth were victims of trafficking and that nearly 10% of all interviewed homeless youth experienced some form of labor trafficking. Furthermore, over 80% of those trafficked for labor were forced into drug dealing, with sales being the next most common. The study also notes that the forced drug dealing occurred through both family coercion and threats of violence, such as through gangs.

The report also provides numerous statements from homeless youth who were forced into the drug trade because it was what the family did or because they were part of a gang (which they had initially joined as a means of survival because they were homeless and did not have basic necessities, and then were homeless at the time of the interview as a result of trying to escape the gang). For example:

One young man told [interviewers]: “I feel like it was my family business, you know. Like, my family’s always, you know, been on that side of things, right? You know, so it was just my time, you know.... Like, I didn’t have a, you know, I didn’t have other choices.” Another respondent said, “I felt that my family just thought I had a duty to do something.” Still another claimed, “I could never say no to my family.” (p. 30).

[Another] young man told [interviewers] he first joined a gang for personal protection, but instead he found that they forced him to sell drugs for them: “[It was] fully forced. Because at first, I just wanted to have friends to back me up, you know. A little bit of money in my pocket. But then it got serious to where you do what he says or you’ll be hurt.” (p. 31).

“Knocking on Your Door Sales Crews,” *Polaris*, 2019, <https://polarisproject.org/wp-content/uploads/2019/09/Knocking-on-Your-Door-Sales-Crews.pdf>.

This report focuses on labor trafficking in the form of traveling sales crews, noting that sales crews are the second most common form of labor trafficking, and provides case examples from the National Human Trafficking hotline. According to the report, sales crews almost exclusively recruit US citizens. Additionally, 34% of sales crew cases reported to the hotline involved children. Furthermore, in one of the case examples provided, the victim was cited for solicitation, but her crew leader refused to let her respond to the citation and kept all the paperwork. As a result, the victim felt obligated to stay with the crew to protect her from the potential arrest warrant.

Shaw, Rissa. “Owners of Local Restaurant Charged in Labor-Trafficking Probe Re-Arrested.” *KWTX*. June 1, 2018. <https://www.kwtx.com/content/news/Deputies-health-department-workers-serve-warrant-at-local-restaurant-484292581.html>.

This is a news report on a labor trafficking situation at a restaurant in Texas, where a husband, wife, and third person were arrested for engaging in organized crime and human trafficking. 17 people were identified as victims, including undocumented children as young as 7. They were forced to work at the restaurant six days a week and complete chores for the couple on their day off.

Wolfe, Debra, Johanna Greeson, Sarah Wasch, and Daniel Treglia, “Human Trafficking Prevalence and Child Welfare Risk Factors among Homeless Youth.” *Field Center*. January 2018. <https://www.covenanthouse.org/sites/default/files/inline-files/Field%20Center%20Full%20Report%20on%20Human%20Trafficking%20Prevalence.pdf>.

This study surveyed nearly 300 homeless youth to examine the relationship between homeless youth and human trafficking. 20% of the youth were identified as victims of trafficking and 6% of the total youth were victims of labor trafficking. The study found that most labor trafficking victims involved in the drug trade were forced or coerced into the trafficking by family members, as the drug operations were a family affair. The study further notes that while there was a lack of overt force or coercion, the youth were unable to refuse due to the adult’s power or relationship over the youth.

Forced Criminality in the United States

Beasley, Eric. “Overlooking Men and Boys in Forced Criminality at the Border: A Content Analysis of Human Trafficking Training and Awareness Materials.” *Master’s Theses*. 2018. <https://repository.usfca.edu/cgi/viewcontent.cgi?article=2150&context=thes>.

This paper examines how gender biases impact who is identified as a human trafficking victim, specifically a victim of forced criminality. The paper analyzes training and awareness materials from the Department of Homeland Security (DHS) by identifying how frequently various terms occur and in what capacity. The paper finds that male victims of forced criminality, specifically within the drug trade, are overlooked by DHS and that most often males are associated in the training and awareness materials as perpetrators. Further, the author finds that forced criminality is not specifically identified in the materials and only 2 of the 37 DHS training and awareness materials clearly stated that victims of forced criminality should be protected.

“The Importance of Criminal Record Relief for Human Trafficking Survivors,” *Polaris Project*, March 20, 2019. <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/>.

This blog post discusses the impact of having a criminal record for victims of human trafficking and references a study (see below Jacobs, Beth) finding that 91% of trafficking victims were arrested. The post also provides the experience of a survivor who spoke about how her criminal record kept her from moving on after her trafficking experience. The survivor was able to vacate her record after 20 years and 6 months, but the process to do so was in itself traumatizing.

Jacobs, Beth. “Impact of Criminal Arrest and Detention on Survivors of Human Trafficking.” *National Survivor Network Members Survey*. August 2016. <https://nationalsurvivor-network.org/wp-content/uploads/2019/08/NSNVacate-Survey-2018.pdf>.

This survey analyzes the responses of 130 human trafficking survivors regarding whether they had been arrested and what the long-term impacts of the arrests were. 90% of the survivors reported being arrested and over 40% reported being arrested 9 times or more.

The survey also found that over 50% of the survivors were first trafficked as a minor and nearly half of the survivors were first arrested as a minor, making it clear that juvenile trafficking victims are just as likely to be arrested as adult trafficking victims. As a result of the criminal records, over 70% had problems finding employment and over 55% identified the record as a barrier to housing, and 75% of the survivors had not been able to vacate any of their trafficking related convictions.

Richard, Stephanie. "Arrest is Not the Answer." *Coalition to Abolish Slavery and Trafficking*. January 2016. https://www.castla.org/wp-content/themes/castla/assets/files/CAST_Arrest_is_Not_the_Answer_Jan_2016.pdf.

This report analyzes data from the Coalition to Abolish Slavery and Trafficking (CAST) and provides personal stories of victims of trafficking with arrests and convictions. The report finds that victims of trafficking are 7 times more likely to be arrested directly due to their trafficking than for an activity not related to their trafficking. Furthermore, the report finds that arresting victims is used as a means to separate them from their traffickers, but is ineffective and has unintended, but severe consequences. The report finds that survivors with arrests and criminal records face education, occupation, financial, and psychological barriers to moving past their trafficking experience.

Rizen, Cristina. "Are Juveniles Gang Members Victims of Labor Trafficking?" *Children's Legal Rights Journal* 35, no. 2. 2015: 163-176. https://healtrafficking.org/wp-content/uploads/2020/01/Are-Juvenile-Gang-Members-Victims-of-Labor-Trafficking_.pdf.

This article discusses juveniles adjudicated as delinquent in the context of labor trafficking. The author notes that juveniles engaged in gang related criminal activity may share a number of similarities with sex trafficking victims and/or child soldiers. These similarities suggest that gang members may be labor trafficking victims rather than willing recruits. As such, the article argues that courts should delay adjudication until the minor's situation and potential for being a trafficking victim could be determined.