

Falling Short on Follow-Through: Assessing and Alleviating Implementation Gaps in U.S. Trafficking Policy for Foreign National Child and Youth Trafficking Survivors

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This paper identifies four areas where policy does not reach child trafficking survivors, and provides recommendations on how the U.S. government can amend policies and practices to ensure it does not fall short on protecting foreign national child survivors of human trafficking.

In 2000, the U.S. Congress passed the Trafficking Victims Protection Act (TVPA), the first comprehensive federal law to address human trafficking. Along with its six subsequent reauthorizations¹, iterations of the TVPA have yielded the creation of numerous federal offices, the allocation of billions of dollars across the Department of Justice, the Department of Labor, the Department of State, the Department of Homeland Security, and the Department of Health and Human Services for robust and wholistic trafficking prevention efforts, the institution of a T visa for eligible foreign national survivors of trafficking, a temporary immigration designation called “Continued Presence,” and many more mechanisms for the protection of survivors, the prevention of trafficking, and the prosecution of perpetrators. The TVPA and its reauthorizations have been joined by other pieces of legislation with provisions on trafficking, including the Justice for Victims of Trafficking Act of 2015. In the time since the initial passage of the TVPA, the U.S. government has also been prolific in establishing bodies and action plans, across governmental sectors, to carry out the prevention, protection, and prosecutorial devices outlined in the legislation. Today, there are three offices within the executive branch that are the most substantially funded to directly engage in anti-trafficking work: the Office for Victims of Crime at the Department of Justice (OVC), the Office on Trafficking in Persons at the Department of Health and Human Services (OTIP), and the Office to Monitor and Combat Trafficking in Persons at the Department of State (TIP). While much of the law and policy put forth over the past two decades have

¹ Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386 [H.R. 3244], 28 October 2000; Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Public Law 108-193 [H.R. 2620], 19 December 2003; Trafficking Victims Protection Reauthorization Act of 2005, Public Law 109-164 [H.R. 972], 10 January 2006; The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457 [H.R. 7311], 23 December 2008; Violence Against Women Reauthorization Act of 2013 – Title XII – Trafficking Victims Protection (TVPRA 2013), Public Law 113-114, [S.47], 7 March 2013; Trafficking Victims Protection Reauthorization Act of 2017 (TVPRA 2017), Public Law 115-427 [S.1862], 9 January 2019

undoubtedly impacted the lives of child and youth trafficking survivors positively, some critical provisions enshrined in the law do not always extend to the day-to-day experience of survivors and the people who support them.

The Trafficking Victim Assistance Program (TVAP) through the Department of Health and Human Services (HHS) occupies one of the many grants allocated by the TVPA, and is currently administered by the U.S. Committee for Refugees and Immigrants through approximately 200 sub-grantees around the country. TVAP provides trauma-informed, person-centered comprehensive case management services for foreign national survivors of trafficking and their family members while they are seeking certification for the benefits to which they may be entitled by the U.S. government. Yet administrative, bureaucratic, and logistical barriers often prevent survivors from accessing the benefits to which they are legally entitled. USCRI is therefore well positioned to analyze federal policy, place it in the context of the lived experience of survivors so as to identify gaps in its implementation, and ultimately, aid in closing those gaps to protect trafficking survivors to the fullest extent that our robust anti-trafficking policies allow. This paper identifies four areas where policy does not reach child trafficking survivors, and provides recommendations on how the U.S. government can amend policies and practices to ensure it does not fall short on protecting foreign national child survivors of human trafficking.

Definitions

Because the most prevalent population TVAP engages with are foreign national children and youth survivors of trafficking, we chose to focus this paper on the distinct policies, and consequent gaps, by which that population are most affected. A “child” in this context denotes an individual who is not more than 18 years of age (also referred to as “minor” or “juvenile”), whereas “youth” refers to individuals in late childhood or early adolescence.² Foreign national survivors of trafficking are individuals who were trafficked across a U.S. border, who were trafficked in their home country, or who were non-American citizens trafficked within the continental United States.³ The TVPA of 2000 defines a “Severe Form of Trafficking in Persons” as sex trafficking and/or labor trafficking. Sex trafficking denotes “*the recruitment, harboring, transportation, provision, obtaining, soliciting, or patronizing of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person forced to perform such an act is under the age of 18 years.*”⁴ Labor trafficking is defined as “*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,*”⁵ with no caveat for persons under the age of 18. While the majority of American child survivors have typically experienced sex trafficking⁶, most foreign national children experience labor trafficking.⁷ Additionally, some of the children and youth within this population fall into the

² U.S. Committee for Refugees and Immigrants – Trafficking Victims Assistance Program. (2021). *Trauma-Informed Case Management with Foreign National Children and Youth Survivors of Trafficking*. 3. <https://refugees.org/wp-content/uploads/2021/06/Trauma-Informed-Care-Toolkit.pdf>

³ *Ibid*, 2.

⁴ Victims of Trafficking and Violence Protection Act of 2000 (TVPA 2000), Public Law 106-386 [H.R. 3244], 28 October 2000

⁵ *Ibid*.

⁶ U.S. Department of State. (2021). *Trafficking in Persons Report*. 587. <https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf>

⁷ *Ibid*.

category of Unaccompanied Migrant Children (UC), meaning they are in the United States without a parent or legal guardian. UCs who are survivors of trafficking are afforded particular benefits under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008).

Gap 1: Policy explicitly states that law enforcement officials, including Border Patrol, shall be trained in identifying and screening for all potential trafficking survivors, particularly children and youth. Data and analysis indicate that this training is either not comprehensive enough, and/or attendance is not enforced.

The reauthorized version of the TVPRA of 2003 and the TVPRA of 2008 make clear that Department of Homeland Security officials, specifically “border guards”⁸ and “immigration officials”⁹ and federal, state and local law enforcement officials¹⁰ will be provided training to improve identification and protection of trafficking survivors, including juveniles. To date, at least 38 states and the District of Columbia have passed laws that require certain public agencies and some private businesses to train staff to appropriately recognize, report or respond to human trafficking survivors and crimes.¹¹ However, multiple factors indicate that there is not large scale federal or state enforcement of such trainings, and that many of the government developed trainings attempting to teach law enforcement to identify signs of human trafficking, as well as how to interact with survivors in a trauma-informed capacity, do not cover the broad spectrum of human trafficking circumstances, nor appear robust enough to make a significant impression on the individuals who partake in them.

Strangely enough, the 2021 TIP report from the State Department lauded funding allocated by the Department of Justice to conduct training to organizations dealing with trafficking, and presented that HHS delivered trainings to more than 50,000 federal grantees and health and human service professionals. Nowhere in the TIP report were figures about law enforcement training, which is likely due to that data not being collected. Neither OVC nor OTIP have the integral information about how many federal law enforcement officers have partaken in trainings. In a survey conducted by academics from Northeastern University in 2010 of more than 3,000 U.S. municipal, county and state law enforcement agencies, less than one-fifth of respondents had conducted any sort of training about human trafficking.¹² Of the respondents who had, 47% only used brief, in-service training modules or provided specialized training to one or two officers. While this data is not exactly current, anecdotal evidence from service providers validates the general lack of knowledge law enforcement agents possess about human trafficking, despite more states having mandated it to date.

⁸ TVPRA 2003, Public Law 108-193 [H.R. 2620], 19 December 2003

⁹ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law 110-457 [H.R. 7311], 23 December 2008

¹⁰ *Ibid.*

¹¹ National Conference of State Legislatures. (2022). *Human Trafficking State Laws*. <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx>

¹² Farrell, A., McDevitt, J., & Fahy, S. (2010). Identifying Human Trafficking Victims: Where are all the victims? *American Society of Criminology*, 9(2), 201-233.

The TVPA puts significant focus on foreign national survivors of trafficking, as legal provisions greatly differ for that population than domestic survivors. It would translate then that trainings for federal, state, and local law enforcement officers would also give focus to foreign national survivors. In one Florida Department of Law Enforcement trafficking identification training, for example, there is only a single mention of how to interact with a foreign national survivor of trafficking, and no information about the unique population of foreign national children.¹³ Being able to identify and appropriately interact with a foreign national survivor of trafficking differs greatly from doing the same with a domestic survivor – in addition to a potential language barrier, foreign nationals might have a greater distrust or fear of law enforcement because of immigration and legal status concerns. Children and youth foreign national survivors, even more so than adults, must be treated in a specialized capacity that might not be intuitive to law enforcement officials. Many child and youth foreign national survivors have experienced significant trauma, not just with their experience of being trafficked, but perhaps over the course of their migration journey, being separated from their families, or due to adverse experiences in their home countries.¹⁴ Though this population is not monolithic, and each survivor has her/his own experience, it is crucial for law enforcement training modules to deliver information specific to the unique circumstance of being a child, a foreign national, and a survivor of trafficking.

Even in contexts where trainings are mandated, as well as substantively comprehensive, there is an issue of prioritization and will. Some trainings, including the aforementioned Florida state law enforcement training, as well as a Customs and Border Protection (CBP) training open to the public, are easy to fudge, and simply require clicking through slides to complete. Even if trainings do have marginal interactivity, the amount of information, nuance, and empathy necessary to grasp what survivors are experiencing, to understand how to speak to them, to look for specific details that might indicate a trafficking situation, and particularly know what a foreign national child needs or is entitled to by law in a certain situation, takes much more than an hour-long course to retain.

Gap 2: Foreign national child and youth survivors of trafficking that meet certain criteria are eligible for benefits and services to the same extent as refugees according to 22 U.S.C. § 7105 (b)(1)(A)¹⁵, yet multitudinous barriers often make receiving them an arduous, if not impossible, process.

It is true that accessing benefits from the U.S. government as a refugee, an asylee, or even as an American citizen can be challenging due to long backlogs, bureaucratic slowdowns, and large amounts of paperwork. Yet for foreign national child and youth trafficking survivors, the obstacles loom beyond administrative and bureaucratic issues. Once a survivor is identified and referred to the Office on Trafficking in Persons (OTIP), the Office decides whether or not there is enough credible information that the child or youth has experienced forced labor or commercial sex trafficking. If OTIP determines there is enough evidence right away, it provides the survivor with an “Eligibility Letter” which grants them benefits to the same extent as a

¹³ Florida Department of Law Enforcement (2020). *Identify and Investigate Human Trafficking*. [Online Training].

http://www.fdle.state.fl.us/Media/BPDTraining/IDHumanTrafficking/index.html#/lessons/-SOwPsTw-VhAEI11QUPXWYJghQJQbY_N

¹⁴ U.S. Committee for Refugees and Immigrants – Trafficking Victims Assistance Program (2021).

¹⁵ [22 U.S.C. § 7105 \(b\)\(1\)\(A\) 2020](#).

refugee.¹⁶ This eligibility letter does not expire. If OTIP requires more information, it issues the survivor an “Interim Assistance Letter,” which allows the survivor to apply for benefits for 120 days while OTIP reviews the case¹⁷. If there does not seem to be sufficient evidence of trafficking, the individual will receive a denial.

Once issued either the Interim or Eligibility Letter, the individual can be referred to a case manager (through TVAP, for example) who helps begin the process of applying for a non-work social security number (SSN), which is needed before the application for benefits, including federal benefits like SNAP and TANF, can begin. In order to get approved for a non-work SSN, various items are needed, including a birth certificate, and a photo ID (for example a state ID, non-expired passport, or school ID). This presents a problem, as many survivors don’t have access to their birth certificates, or any type of formal photo identification after they have escaped or been released from their trafficking situation. To mitigate this, a Program Instruction released by OTIP in 2019¹⁸ amended the documentation needed just to an Eligibility or Interim Assistance Letter, and a document from an appropriate government entity explaining the need for an SSN. However, according to case managers, many local Social Security offices have still not received this new instruction, and continue to ask for the original documentation that the survivor does not possess. Case managers have also reported an increase in outright denials of non-work SSNs this year, even for children and youth with an Eligibility Letter. A denial in this regard requires a reapplication, and another visit to a Social Security office, for which appointments are very difficult to secure due to COVID-19 and general staff shortages. Because of the myriad of issues, case managers must regularly elevate questions to the federal Social Security Administration to troubleshoot, which significantly lengthens the process yet again, and oftentimes the case managers end up providing relevant training to local Social Security officers themselves.

Gap 3: The TVPRA of 2008 dictates that child and youth survivors of trafficking must have access to safe care placements.¹⁹ Sometimes, safety is not guaranteed.

The systems of caring for unaccompanied, neglected, abused, or trafficked children are complex, teetering between individual state and federal authority, and when documentation comes into the mix, the situation complicates even more. For trafficked foreign national children who may be either unaccompanied in the United States, or with family members, finding care placements that can provide them with safety from harm and potential re-trafficking and also tend to their specific psychological needs, can be a challenge.

Unaccompanied child and youth trafficking survivors are typically placed initially in the care of the Office of Refugee Resettlement (ORR). Then, those who have received their Eligibility Letter are able to apply for the

¹⁶ Office of Refugee Resettlement, an Office of the Administration for Children and Families (n.d.) *Fact Sheet: Victim Assistance*. U.S. Department of Health and Human Services. <https://www.acf.hhs.gov/orr/fact-sheet/fact-sheet-victim-assistance-english>

¹⁷ Office on Trafficking in Persons, an Office of the Administration for Children and Families (n.d.). *How Child Eligibility is Determined*. U.S. Department of Health and Human Services. <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/determining-child-eligibility>

¹⁸ Office on Trafficking in Persons, an Office of the Administration for Children and Families. (2019). *Non-Work Social Security Number Cards for Foreign National Minor Victims of a Severe Form of Trafficking in Persons*. [Program Instruction]. U.S. Department of Health and Human Services https://www.acf.hhs.gov/sites/default/files/documents/otip/pi_non_work_social_security_number_cards.pdf#:~:text=The%20Trafficking%20Victims%20Protection%20Act%20of%202000%20%28TVPa%29,a%20non-work%20social%20security%20number%20%28SSN%29%20identification%20card.

¹⁹ [8 U.S.C. § 1232 \(c\)\(1\) 2008](#).

Unaccompanied Refugee Minor program (URM). URM ensures that its population receives the full range of assistance, care, and services available to all foster children in a particular state by “establishing legal authority to act in place of a child’s unavailable parent(s).”²⁰ Priority is reunification with family, if possible, yet otherwise an alternative permanent placement plan is created typically in the form of foster care.²¹ The URM program places individuals with foster families that have undergone rigorous training on how to relate to and care for refugee and immigrant children and youth specifically.²² Research indicates that the majority of individuals that go through URM graduate high school, obtain employment, and have a positive outlook for the future.²³ Unfortunately, URM has a limited number of placements between 200-300 every year. For context, there were 673 children and youth foreign national survivors that were issued Eligibility Letters in the U.S. in 2020.²⁴ There are a few potential reasons that child and youth foreign national trafficking survivors are not unilaterally accepted into the URM program, aside from there being great need from other populations. URM is generally reticent to take youth who are imminently turning 18 due to age restrictions,²⁵ which rules out a portion of the youth survivor population. Additionally, while there has not been broad research conducted on this subject, case managers have reported that some URM foster families are apprehensive about taking in older boys who were trafficked by gangs due to a perceived risk of violent behavior.

Because of the limited number of URM placements, states will often automatically defer to child welfare placements, where child and youth survivors are placed with foster families that might not have experience or training to deal with individuals who have experienced anything akin to trafficking, or might not have adequate language skills. In these cases, some survivors resort to running away, where they risk being picked up by law enforcement. To make matters worse, survivors who were in the care of ORR prior to being placed in the welfare system are not placed back in an ORR shelter if they run away from their placement, or if the placement devolves.

Children and youth survivors who are in the country with a family member, legal guardian, or have a distant family member in the country, are not considered unaccompanied and also experience a host of problems finding a safe and secure care placement. While the child welfare system suggests²⁶ that it is in the best interest of a child to remain with a family member if possible, in some circumstances, the survivor’s family member or guardian is the one that trafficked them in the first place.²⁷ They could also potentially be re-

²⁰ Office of Refugee Resettlement, an Office of the Administration for Children and Families. (2021). *About Unaccompanied Refugee Minor Program*. (Program Description). U.S. Department of Health and Human Services. <https://www.acf.hhs.gov/orr/programs/urm/about>

²¹ *Ibid*.

²² Carr, B. (2011). Examining the Reality of Foreign National Child Victims of Human Trafficking in the United States. *Washington University Journal of Law & Policy* 37 (2011), 190. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1530&context=articles>

²³ Evans, K., Pardue-Kim, M., Crea, T. M., Coleman, L., Diebold, K., & Underwood, D. (2019). Outcomes for Youth Served by the Unaccompanied Refugee Minor Foster Care Program: A Pilot Study. *Child Welfare*, 96(6), 87–106. <https://www.jstor.org/stable/48623637>

²⁴ U.S. Department of State. (2021). *Trafficking in Persons Report*. 588. <https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf>

²⁵ Office of Refugee Resettlement, an Office of the Administration for Children and Families. (2016). *ORR Guide to Eligibility, Placement, and Services for Unaccompanied Refugee Minors (URM): Section 1*. (Policy Guidance). U.S. Department of Health and Human Services. <https://www.acf.hhs.gov/orr/policy-guidance/orr-guide-eligibility-placement-and-services-unaccompanied-refugee-minors-urm>

²⁶ Children’s Bureau, An Office of the Administration of Children and Families. (2020). *Determining the Best Interests of the Child*. 2. U.S. Department of Health and Human Services. https://www.childwelfare.gov/pubPDFs/best_interest.pdf

²⁷ **2021 Case Example:** A child was living in a state foster care placement after being identified in a trafficking scheme. The child’s mother in their home country had “sold” the child to another individual for the purpose of coming to the US and forcing the child to work. While the child was taken out of the custody of the individual, state child welfare wanted to pursue reunification with the mother (and

trafficked by a new guardian, typically taking the form of labor trafficking. Unfortunately, Child Protective Services (CPS), the body tasked to investigate allegations of abuse or neglect of children in state systems, seem to rarely identify labor trafficking as neglect or abuse and therefore will not remove a child from that environment,²⁸ although it varies by state.

Gap 4: While federal policy grants asylum seekers and U visa applicants employment authorization while awaiting processing, foreign national youth trafficking survivors must wait until their visa is processed, which can take up to two years.

For some child and youth foreign national trafficking survivors, needing to work to support him/herself and family were factors that led them into trafficking situations initially. For many survivors, this need persists after they have made it out of their trafficking circumstance, and the benefits they are afforded sometimes do not fully cover the breadth of the financial need their family requires. Securing an Employment Authorization Document (EAD) is the only way for them to work legally. Unfortunately for youth trafficking survivors, like adults, the timeframe for receiving an EAD is long, since survivors must wait until they not only have an Eligibility Letter, but have also managed to secure a nonimmigrant 'T' visa, a process with an average wait time of 18.6 months²⁹. Alternatively, under section 208(d)(2) of the Immigration and Nationality Act (INA)³⁰, an applicant for asylum is eligible for employment authorization 180 days after their asylum application is submitted. In June of 2021, an update to the U.S. Citizenship and Immigration Services' (USCIS) policy manual was released which announced that USCIS would exercise its discretion to issue EADs to individuals with pending U visa applications³¹. U visas are available for noncitizens who have been victims of certain crimes, including trafficking. Since trafficking survivors have a designated visa, they typically don't apply for U visas, since there is a greater number of applicants. However, if foreign national trafficking survivors are technically eligible for asylum, and a U visa, it is illogical that they would not also be able to receive an EAD within the same timeframe as these other applicants. The prolonged time period youth foreign national survivors must wait to be able to legally work has the potential to place them in hazardous conditions working illegally, where threats of deportation and vulnerability to re-trafficking are high.

consequentially deportation) in the home country, despite the mother's involvement in the scheme and a foster placement already in place.

²⁸ **2022 Case Example:** A child disclosed that their caregivers were not allowing them to attend school, instead were pressured to work full time in a factory and take care of younger children in the home. Faced physical abuse if they did not comply. A CPS report was made on child's behalf by a case manager, and CPS denied opening an investigation for the case: "Based on the information provided, a report for investigation is not being accepted regarding [the client] because the concerns do not rise to the level of reasonable cause to suspect harm."

²⁹ U.S. Department of State. (2021). *Trafficking in Persons Report*. 588. <https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf>

³⁰ [8 C.F.R. § 274a.12\(c\)\(8\) 2020](#).

³¹ U.S. Citizenship and Immigration Services (2021). *Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners*. (Policy Letter). U.S. Department of Homeland Security. <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf>

Recommendations to policymakers:

- The Department of Justice and Department of Homeland Security must take steps to enforce mandatory attendance from all relevant law enforcement officials to robust, trauma-informed trainings that instruct officials on how to identify child and youth foreign national survivors of trafficking, how to appropriately interact with them, and to which benefits and services they are lawfully entitled. Additionally, all 50 states must mandate and enforce attendance to similar trainings specific to state and local contexts. All trainings must require an interactive element to eliminate skating through without retention, and must be specific and comprehensive enough to ensure all critical information is received.
- The Social Security Administration must work with the Office on Trafficking in Persons to issue a non-work SSN to a child or youth survivor in a timely manner, similar to the timeline of Eligibility Letter receipt.
- Trainings on benefits and services for foreign national trafficking survivors of all ages must be mandatory for all state and local Social Security officials.
- The Unaccompanied Refugee Minor program must be expanded to have placements to accommodate all eligible foreign national child and youth trafficking survivors.
- Applicants for T visas should be eligible for their Employment Authorization Documents (EADs) within 180 days of submitting their T visa application, akin to the process for asylum seekers.