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

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Submitted By:

Center for the Human Rights of Children
Loyola University Chicago
25 E. Pearson St., Suite 800
Chicago, IL 60611 USA
(312) 915-6350 (T)
www.luc.edu/chrc
Contact: Katherine Kaufka Walts, JD
kkaufkawalts@luc.edu

The Young Center
for Immigrant Children’s Rights
at the University of Chicago
6020 South University Avenue
Chicago, IL 60637 USA
(773) 702-9560 (T)
www.TheYoungCenter.org
Contact: Maria Woltjen, JD
mwoltjen@uchicago.edu
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Written for the UN Committee on the Rights of the Child by Katherine Kaufka Walts, Center for the Human Rights of Children, Loyola University Chicago, and Maria Woltjen, the Young Center for Immigrant Children’s Rights.

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This report is submitted to the UN Committee on the Rights of the Child by the organizations named in the accompanying cover sheet.
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INTRODUCTION

This NGO Alternative Report is a response to the U.S. government’s (USG) periodic report to the UN Committee on the Rights of the Child (UNCRC) on its work to implement the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC). This NGO Alternative report is also a supplemental report to the Alternative Report submitted by ECPAT-USA.

The purpose of this report is to augment information provided in the alternative report submitted by ECPAT-USA, in order to emphasize the issue of the sale of children for the purpose of forced labor as defined under Articles 2-3 of the OPSC and labor trafficking under the U.S. Trafficking Victims Protection Act. Both the Center for the Human Rights of Children at Loyola University Chicago (CHRC) and the Young Center for Immigrant Children’s Rights at the University of Chicago (the Young Center), the authors of this report, collaborated with ECPAT-USA in developing their alternative report, and we are both signatories to the ECPAT-USA alternative report. The ECPAT-USA alternative report has provided excellent recommendations to improve the USG response to address commercial sexual exploitation of children. In authoring this report, we emphasize the importance of improving efforts to address both labor and sexual exploitation of children.

Organized by CHRC and the Young Center, this report is a collaborative effort of NGOs, academic centers, service providers, and advocates who work with or on behalf of children who are victims of sale for the purpose of forced labor or labor trafficking as defined by the UN Palermo Protocol, the UN CRC OPSC, and the Trafficking Victims Protection Act of the United States. We have used the following sources for the development of the report: The 2010 United States Government (USG) Report on the Implementation of the Optional Protocol to the Convention on the Rights of Children on the Sale of Children, Prostitution, Child Pornography (OPSC); published materials of the CHRC and the Young Center, NGO published reports, published academic reports and research, government reports, feedback presented during the National Conference on Child Trafficking and Exploitation in the United States hosted at Loyola University Chicago in September, 2010¹, and a working group meeting of NGOs working with trafficked and exploited youth in Chicago, Illinois in October 2011.

The Alternative Report confines itself to critiquing those issues that its contributors feel are most critical and about which we are most knowledgeable. It briefly addresses areas that we believe the U.S. is performing adequately.

This Alternative Report identifies gaps both in the U.S. government report and in actions the U.S. has taken to implement the OPSC, as related to the sale of children for the purpose of forced labor. We acknowledge that in contrast to children sold into prostitution, children sold for labor are often invisible—they may appear to be legally employed teenagers working part-

¹ Over 200 participants, representing public, private, academic, and NGO sectors from across the country attended the conference.
time jobs to earn some spending money. Recognizing the inherent challenges of identifying forced child labor, this report points out the obstacles faced by the USG, and offers comments on areas in which the U.S. government can do better to ensure that children are protected from the violations covered by the OPSC. We also want to note that two years have passed since the U.S. submitted its periodic report and that more progress has been made since its publishing.

At times, this Alternative Report uses the phrase “sale of children for the purpose of forced labor” interchangeably with “labor trafficking” and “forced labor or services.” The U.S. government law, the Trafficking Victims Protection Act, and its subsequent reauthorizations (referred to as the TVPA throughout this report) does not distinguish the trafficking of children for labor or services from the definition of sale of children for the purpose of forced labor under Articles 2 and 3 of the OPSC. The U.S. government states that the TVPA meets U.S. obligations under the Optional Protocol, as the labor trafficking statute does not require the element of “remuneration or any other consideration” included in the definition of “sale” in the Optional Protocol. As a result, the U.S. government states its implementation goes beyond the requirements of the Optional Protocol in many instances.

As a result, we recognize that sometimes the definitions of “labor trafficking,” “human trafficking,” and “sale of children for the purpose of forced labor” may overlap and that children can be trafficked without any element of sale occurring through the entire process, or can be sold at each stage of the trafficking process. In the absence of specific U.S. legislation which prohibits the sale of children and not only trafficking in children, we have made an effort to highlight examples of research, data, protection and prevention efforts that specifically address the definition of the sale of children for the purpose of forced labor as defined under the OPSC, including cases involving work or services that a child is forced to provide under threat or coercion and any slavery-like practices. However, the terms “human trafficking,” “labor trafficking,” and “sale of children for the purpose of forced labor” may be used interchangeably in cited material, excerpts from governmental and non-governmental reports, and research used to support our assertions.

This Alternative report uses the term “victim,” a legal term used to describe a wronged party. We recognize and respect the resiliency and perseverance of child survivors of human trafficking and exploitation.

This Alternative report describes many cases involving children from Fujian Province in China. It should be noted that children from all over the world are vulnerable to being sold for labor. We have worked with children sold for labor from Europe, Asia, Africa and Central America. The debt of $70-80,000 for Chinese children is clearly exorbitant, yet a debt of $3,000 is just as daunting for a child from Central America.

This Alternative Report includes several case examples to demonstrate our points. The names of survivors, as well as some cities or other identifying information, have been changed to protect the identity of survivors.
I. DATA

The USG report shows a notable lack of empirically-based research addressing sale of children for labor or labor trafficking of children within the United States. Furthermore, the statistical methods used and the cited number of victims in reports emphasize only victims involved in successful prosecutions or who have received visas as foreign national victims. This provides a very limited assessment of the scope of the potential population of survivors of trafficking and sale of children as defined under the OPSC, and indicators on the characteristics of the sale of children.

In a relatively recent report studying the data and research available on the topic of human trafficking in the United States, it was found that less than twenty percent of published journal articles on human trafficking were empirically-based. Information on the needs of trafficking victims and the services provided to them is limited to federal reports, non-peer-reviewed journals, manuals, fact sheets, published materials by advocacy organizations, and personal communications with direct service providers and trafficking survivors. Often, data on both the scope of the problem and the needs of survivors are “recycled” and taken as fact, without any analysis of the methodology used for the original study or investigation into the accuracy of the statistics or information provided.

As few methodologically rigorous, empirically-based research studies exist with respect to human trafficking in the U.S., even fewer studies relate to children specifically. This is due to a number of factors, including the lack of consistent data collection and tracking mechanisms across NGOs, government agencies (both state and federal), misconceptions about what human trafficking of children is, varying applications of legal definitions between law enforcement and non-governmental organizations, ideologically driven research, limited access to human trafficking survivors, and the inherent hidden nature of the crime.

Existing research on the subject of human trafficking or sale of children, while limited, is overwhelmingly focused on trafficking for sexual exploitation, and often excludes labor trafficking. For example, the report the USG cites - Biennial Comprehensive Research and Statistical Review and Analysis of Severe Forms of Trafficking, Sex Trafficking and Unlawful Commercial Sex Acts in the United States, prepared by the National Institute of Justice in the U.S. Department of Justice Bureau of Justice Statistics - focuses primarily on sexual exploitation. Additionally, studies often focus only on women and girls. They rarely distinguish between the two groups to address the distinct needs of children, nor the unique issues affecting boys who are sold for the purpose of forced labor or services. The USG report also refers to a 2008 report entitled, U.S. Law Enforcement and Forced Child Labor, under the “Coordination” section. However, this single USG report addressing forced child labor remains classified, and is not

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3 Id.
available for public review. Preliminary research indicates that foreign national children tend to be trafficked for labor more than sex trafficking.\(^5\)

Additionally, existing research addressing child trafficking and exploitation is being sponsored primarily by criminal justice and law enforcement agencies, including the Department of Justice and its various departments and programs addressing victims of crime. More research should be conducted from a child development, public health, and health and human services lens to provide a more comprehensive understanding of the phenomena.

Similarly, the USG report also fails to provide adequate information on data or research addressing victim services, including best practices for children as distinguished from adults. Additionally, there is little data or research exploring whether services for victims of labor trafficking should be distinguished from services for children who are victimized by sexual forms of exploitation. There is also a need for an expanded discussion on what mechanisms exist to ensure that children are not re-victimized throughout the protection system.

Concern for the scarcity of valid data is echoed by both scholars and practitioners in the field, who call for systematic, empirical, and methodologically rigorous research addressing all forms of child exploitation, including sale of children for forced labor, child prostitution, and child pornography and human trafficking in the United States.\(^6\)

II. IMPLEMENTATION

A. Law Enforcement and Laws

1. Labor Laws

As compared to child sexual exploitation, child labor is rarely discussed or addressed by law enforcement in the United States, particularly by local and state agencies. While several child labor trafficking cases have been successfully prosecuted by government officials, these cases are often facilitated by federal law enforcement agencies or units. Unlike sex trafficking, labor trafficking is often tied to formal economies and industries, which makes it more difficult to distinguish from “legitimate” work, particularly for local and state authorities. As a result, children forced to work as domestic servants, in factories, restaurants, and farms are often invisible. A 14 year-old boy working in a meatpacking factory may not automatically elicit suspicion to an outside observer. He may be working part-time or as part of a seasonal work force. A 14 year-old girl providing sexual services for money, however, is much more likely to be noticed, triggering an immediate intervention. Although it is more difficult for the USG to identify instances of the sale of children for labor, there are steps that should be taken to better

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investigate those industries and businesses that traditionally hire children and provide a way for children to seek assistance.

Certain labor sectors, particularly agriculture, should improve standards as applied to child labor to prevent egregious forms of child labor, including sale of children for the purpose of forced labor and labor trafficking. However, the agriculture industry lobbies against many necessary reforms to protect children, especially migrant children engaged in agricultural labor who comprise a significant population of children subject to forced labor in the United States.

Protecting child farmworkers from dangerous and exploitative work is the responsibility of law makers as well as the agencies charged with implementing the law, including the US Department of Labor and the Environmental Protection Agency (EPA). By providing children working in agriculture less protection than children working in other industries, and by poorly enforcing the protections they do have, the government is failing in its responsibility to safeguard the health, education and safety of child farmworkers. Some examples of this include:

- Outside of agriculture, the standard minimum age for work is 16. There are no similar restrictions protecting children working in agriculture. In agriculture, employers may hire children ages 14 and 15 to work unlimited hours outside of school. There is no parental consent requirement.
- The DOL Wage and Hour Division has too few investigators and therefore too little attention is devoted to child labor. Of those resources devoted to child labor, too little focus is placed on agriculture. As a result, growers have no reason to fear using children illegally.

2. Immigration Laws – Lack of Clarity and Application for Labor Trafficking or Sale of Children for the Purpose of Forced Labor

Currently, the U.S. government narrowly interprets the pertinent law relating to the sale of children, the Trafficking Victims Protection Act (“TVPA”). It is very difficult to establish eligibility for protection for a migrant child who has been sold (as defined by the OPSC), who is apprehended at a border, before the child has been delivered to the work site (See “Protection Section” of this report, page 14). In addition, U.S. immigration law does not consider children different from adults. A 14-year-old child must submit evidence and prove eligibility for protection the same as a 32-year-old adult. There are no special standards for children in immigration removal proceedings, and unlike all other legal arenas in which children are subjects of a legal proceeding, there is no statutory best interests standard. Lack of developmentally appropriate standards or procedures in immigration proceedings impact

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8 Id. At 72.
9 Id.
protections for all unaccompanied, non-US citizen children sold for the purpose of labor or sexual exploitation.

The 2000 TVPA was enacted to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are primarily women and children, to ensure just and effective punishment of traffickers, and to provide assistance for victims.”\(^{11}\) The TVPA applies only to severe forms of trafficking in persons,\(^{12}\) considered to be either (a) sex trafficking or (b) the “recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”\(^{13}\) The statute explicitly provides that coercion includes threats of harm, physical restraint, perceived threats, or the abuse of the legal system, and that at minimum, there is intent and purpose to subject an individual to various forms of forced labor. Perceived threats include using the victims' lack of knowledge of the U.S. legal system to frighten them into submission.\(^{14}\)

When invoked, the TVPA provides several protections under the law. These protections include eligibility for short term immigration relief, including parole and continued presence, and longer term immigration relief, including a T-nonimmigrant ("T Visa")\(^{15}\) which allows trafficking victims to stay in the United States if they would suffer "extreme hardship involving unusual and severe harm" if returned to their home country.\(^{16}\) They then may apply for lawful permanent resident status after three years, and U.S. citizenship five years after that.\(^{17}\) Eligibility for a T visa includes the following provisions:\(^{18}\)

\[(b) \text{Eligibility. Under section 101(a)(15)(T)(i) of the Act, and subject to section 214(n) of the Act, the Service may classify an alien, if otherwise admissible, as a T-1 nonimmigrant if the alien demonstrates that he or she: (1) Is or has been a victim of a severe form of trafficking in persons; (2) Is physically present in the United States, American Samoa, or at a port-of-entry thereto, on account of such trafficking in persons; [emphasis added]}\]

One issue that is extremely problematic is that the U.S. definition of labor trafficking does not distinguish children from adults.\(^{19}\) In order to qualify as a victim of a severe form of trafficking other than sex trafficking, a child must prove force, fraud or coercion. Prominent officials in the

\(^{11}\) TVPA § 7101(a).
\(^{12}\) TVPA § 7102(8)(a)-(b).
\(^{14}\) Id at 199.
\(^{17}\) TVPA 8 U.S.C. § 1101(a)(15)(T)(i). Child trafficking victims also are entitled to various benefits, including TANF, SSI, food stamps, Medicaid, and federal foster care. They also can bring a civil action against their traffickers. 18 U.S.C. § 1595.
\(^{19}\) It should be noted, however, that children under the age of 18 are not required to assist law enforcement agencies to obtain the protective visa.
U.S. Department of State\textsuperscript{20} have asserted that: “it’s severe trafficking if it involves a minor, because under our law a minor can’t give consent;”\textsuperscript{21} the issue isn’t whether or not the child consented to being sold, because “for a child it’s per se trafficking.”\textsuperscript{22} Though these comments “do not necessarily reflect Administration views,”\textsuperscript{23} they indicate that even within domestic law, there is a strong understanding that a child cannot consent to being sold in order to negate the act of the sale of children for labor.

In comparison to adults, children are generally recognized by law to be less mature and more susceptible to external pressures, and “[t]his is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.”\textsuperscript{24} Also, juveniles are presumed likely to have less ability to identify and evaluate their options.\textsuperscript{25} For example, a child may only be able to identify one option in a situation where an adult would be able to identify multiple options.\textsuperscript{26} Also, “because adolescents tend to discount the future and weigh more heavily the short-term risks and benefits, they may experience heightened pressure from the immediate coercion they face.”\textsuperscript{27}

For children, a consideration of the child’s background and circumstance is particularly relevant in determining whether the element of coercion is present. In most cases involving unaccompanied children transported to the United States for the purpose of labor, it is the parents, the primary authority figures, who make the agreement with the smugglers and who instruct—not ask—their children to comply with the arrangement.

B. Inter-Agency Coordination

The US government noted many high level coordination activities amongst various federal agencies in its report. While these efforts are commendable, there continues to be confusion between local, state, and federal law enforcement and child protection agencies regarding who has jurisdiction in many labor trafficking cases.

Case Example: “Irena”

“Irena” is 16 years old and from the Ukraine. She wanted the opportunity to earn extra money and travel, so she applied for a J-visa to allow her to work at a resort in northern Wisconsin for the summer. She arrived with approximately 10 other students from the Ukraine and other parts of Eastern Europe. Each student, including Irena, had to pay an upfront placement and travel fee

\textsuperscript{20} John R. Miller, former Ambassador-at-Large on International Slavery and director to the State Department’s Office to Monitor and Combat Trafficking in Persons, and Laura Lederer, then State Department’s Senior Advisor on Human Trafficking
\textsuperscript{22} Id.
\textsuperscript{23} Id.
\textsuperscript{24} \textit{Roper v. Simmons}, 543 U.S. 551, 569, 125 S. Ct. 1183, 1195, 161 L. Ed. 2d 1 (2005)
\textsuperscript{25} Criminal Justice, \textit{Immaturity, Culpability & Competency in Juveniles: A Study of L17 Cases}, SUMMER 2000, at 27
\textsuperscript{26} Id.
\textsuperscript{27} STATE OF CONNECTICUT, Appellee, v. Gabriel P. HEINEMANN, Appellant., 2007 WL 4868300 (Conn.), 7
of $2000 in exchange for their placement for their jobs. Irena was told she would be able to pay back the fee through summer employment, in addition to making an extra $2500 – 3000 (total $5000). When they arrived in Wisconsin, their documents, including their passports, were taken away by the resort staff. Irena and other students were taken to a hotel, and were told to clean the rooms, do the laundry, and do occasional cooking and wait staff work. They were working 10-12 hours a day, 7 days a week, with no breaks, and no opportunities to use a telephone or computer or leave the resort. The female students were constantly sexually harassed by their supervisors. The students were only paid $50-$75 each week, which was automatically deducted from their earnings to repay their placement “fee.”

When Irena and other students complained about their working conditions, they were told that if they left, they would lose their legal status and be deported. After two months, Irena ran away, and through the help of a local social service agency, took a bus to New York, where she reunited with a cousin who had emigrated to the U.S. several years ago. Irena’s cousin contacted local law enforcement authorities in New York about the situation. They suggested that she contact authorities in Wisconsin. When she contacted authorities in Wisconsin, they told her that because Irena was in New York, child protection authorities in New York had jurisdiction. When she contacted a different child protection office in New York, they told her to contact immigration authorities, whereby Irena gave up due to fear of deportation and punishment.

Federal agencies seeking to coordinate their actions are often hindered by incompatible procedures, processes, data and computer systems. Even if agencies agree to work together within a single mission statement, they are often still subject to organizational differences which can only be overcome through measured, strategic training and joint initiatives.

The USG report notes several training opportunities, conferences, task forces, and meetings to support its efforts to promote interagency coordination and capacity building. However, little mention is made of how these efforts translate to effective, meaningful policies and procedures for agencies. For example, are first responder agencies amending existing intake procedures and referral policies to reflect best practices gleaned at these trainings? Is follow-up being conducted to determine how interagency coordination is improved? Both public and private agencies, particularly first responders for children, can better work together to identify children who are being exploited and improve recovery services and protections.

C. Identification

While the USG has made notable changes and improved efforts to identify human trafficking victims, improvements still need to be made to better identify child victims. While both U.S. government and international organizations estimate that women and children comprise the largest percentage of human trafficking victims, children and youth currently represent the smallest victim class of human trafficking victims identified in the U.S. According to the U.S. Department of Justice (2010), between 2001 and 2010, only 304 foreign minors were successfully recognized by U.S. authorities as victims of trafficking, with 62% of these cases representing labor trafficking.

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While research is still limited, we do know that child trafficking victims often encounter at least one, if not several, systems that often fail to identify them as victims of child trafficking. These systems include local, state, and federal law enforcement, child welfare and child protection, education, and social service providers. In a study conducted by the International Organization for Adolescents analyzing pre- and post-training questionnaires from training sessions conducted with child protection officers between 2005-2007, affirmative responses to the question, “Do you think you have ever come across a victim of human trafficking?” increased over 200% after a single training was conducted. This indicates that child trafficking victims are encountering the child protection system, and that they are either not identified as such or misidentified.

While much more attention and training regarding child trafficking has been made available to first responders, there has been little effort to assess the quality and effectiveness of the training programs. Similar to the current gaps in research mentioned above, few training programs address the specific issues and needs of children.

III. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY

A. Reducing Demand

The USG report cites the enactment of statutes that prohibit the offenses covered by the OPSC. In addition, active efforts to enforce those prohibitions reduce demand for child labor and are further supported by efforts to reduce demand abroad. However, more can be done to address demand for child labor.

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) created a requirement that the Department of Labor’s (DOL) Bureau of International Labor Affairs (ILAB) “develop and make available to the public a list of goods from countries that [ILAB] has reason to believe are produced by forced labor or child labor in violation of international standards.” However, this list does not include products that are domestically produced, nor does it include goods that are produced by American companies producing goods in other countries. For example, there were recent allegations that Foxconn, one of Apple’s primary suppliers in China, hid underage employees in its factory prior to inspection by the Fair Labor Association.

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We recommend that the U.S. amend its current policies to provide greater accountability and standards applicable to domestic companies to ensure they are not supporting forced labor or child labor.

**B. Improving Screening Efforts**

The USDOL’s Wage and Hour Division is tasked with enforcing the child labor provisions of the Fair Labor Standards Act. In 2008, WHD:\(^{33}\)

- found 4,734 minors were illegally employed
- identified that 41% of child labor violation cases involved children working under hazardous conditions/environments or using prohibited equipment
- assessed $4.2 million in civil penalties against employers for child labor law violations
- cited five agricultural employers for hiring underage minors in North Carolina

While these efforts are notable, there is no mention of any protocols or procedures by the WHD to screen for child labor trafficking or sale of children for forced labor cases. For example, as a result of violating child labor laws, the Iowa attorney general’s office brought criminal action against kosher meat packing plant, Agriprocessors Inc.\(^{34}\) While it was known that minors were working in the meat packing plant, there were no known efforts to screen for child labor trafficking.

Additionally, while WHD cites that its “regional and local offices plan and undertake child labor compliance initiatives in a variety of industries,” there is no express disclosure of what these initiatives are or if these initiatives include compliance with the TVPA or OPSC.

**IV. PROHIBITION OF THE SALE OF CHILDREN AND VICTIM ASSISTANCE AT STATE LEVEL**

While the TVPA and its subsequent reauthorizations provide for federal prohibition of labor trafficking (and in some cases, the prohibition of the sale of children for the purpose of forced labor), efforts to prohibit these crimes by local governments and states are still deficient. Currently, there are three states that have failed to enact any laws against human trafficking or laws related to the sale of children: Massachusetts, West Virginia, and Wyoming. In addition, less than twenty states currently include victim assistance as part of their anti-trafficking statutes.

State-level advocacy to amend the definition of child abuse to include child trafficking has shown promise to improve identification and recovery services. For example, the Illinois Safe Children Act amends the definition of an abused child for child protection purposes, and includes all household members as possible perpetrators of abuse, not just a parent or qualified caretaker. The Illinois Department of Children and Family Services is currently working to create a new allegation of abuse entitled, “human trafficking.” Connecticut has created a “human

\(^{33}\) Id. at 32

trafficking” allegation for child protection hotline professionals, and requires consultation with a specialist in child trafficking. A new Florida child welfare policy specifies how child abuse hotline staff and investigators handle alleged child trafficking cases. Both New York and Illinois laws specifically state that local child welfare and protection agencies are required to serve referred child trafficking victims.

V. PROTECTION OF RIGHTS OF VICTIMS OF LABOR TRAFFICKING AND/OR SALE OF CHILDREN FOR PURPOSE OF FORCED LABOR

A. Unaccompanied Immigrant Children—Identifying Children Sold for Forced Labor

In fiscal year 2010, 8,207 unaccompanied immigrant children were taken into federal custody after being apprehended by federal immigration authorities. For FY 2012, the USG projects the number will double, to 16,000 children, most from Central America: Guatemala, Honduras and El Salvador. 35 In addition, an unknown number of unaccompanied children enter the United States without ever being apprehended. There are no statistics on the percentages or the number of unaccompanied immigrant children sold for labor. 36 During the period of time the child is in federal custody, it is often difficult to identify those children who are being sold for labor particularly because the children themselves may not know why they are here, or may have been instructed not to disclose information. In some cases, however, particularly for children from certain parts of the world, it is known that they are destined for labor trafficking, even if the children are not aware of all the details.

The current language in the USG human trafficking criminal statute and its supporting regulations requires that there be evidence that that the child was being trafficked, at minimum, for the purpose of subjection to labor or sex trafficking (emphasis added). Because such evidence is incredibly difficult for trafficked children to prove, many are denied the protections that would prevent them from being resold or otherwise harmed.

Sale of the Child for Labor—Unrelated Entities Acting in Concert to Benefit From Transfer of Children

In our experience, we have found that for incoming unaccompanied minors from China, it is most often parents who arrange for the sale of the child. The reasons vary and bad intention should not be presumed—the family may need the child’s earnings because a parent is ill or deceased. In some cases, the parents may believe they are providing an avenue to a better life for the child.

35 At the time of the writing of this report, the cause/causes for the dramatic increase in Central American children coming into the U.S. is unknown, though there is much speculation: better screening by border patrol agents, increased violence in Central America, new humanitarian law in Mexico that allows unaccompanied children to avoid deportation, two successive droughts in Central America, knowledge that US immigration officials will release children to family. See also Vera Institute of Justice, The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers, March 2012, p. 10.

The system by which children are sold is comprised of many components—individual actors who are unrelated, who sometimes never communicate, but without whom it would not be possible to place the child in the stream of commerce—if the restaurant did not hire undocumented children, the recruiter could not find families to send their children, and the transporter would have no one to ferry across borders. If the family did not receive remittances after the debt was paid, there would be no incentive to place the child in this situation—especially because first she must work to repay an exorbitant debt—after which she will continue to work and send money to the family. Following is a diagram of the components of the system—in some cases, entities handle more than one responsibility—this is a fluid model.
Protection—Just out of Reach

While the US government criminalizes the attempt to traffic, it does not offer parallel protections to children brought to US for the purpose of labor. These children are systematically placed in immigration removal proceedings where they are treated as offenders, and must defend themselves in adversarial removal proceedings. They are not provided with legal representation at government expense. If deported, some face the risk of being re-trafficked. Others are responsible for paying the debt owed to the transporters. Yet many of these children continue to be treated by government officials as children who are merely smuggled, and accused of being complicit in the arrangement. This is contrary to international principles as well as the children’s actual experience, yet these children continue to be treated as offenders instead of victims, violating their rights under the TVPA and OSPC.

The Young Center has worked with a number of unaccompanied children who are destined for forced labor. Most of the cases in this report involve children from China. It is important to point out, however, that children from all over the world are vulnerable to being sold for labor. The Young Center has worked with children from India who carry substantial debt. We have also worked with children from Central America whose debt may be lower—in the range of $3,000-$4,000—but the family has mortgaged a parcel of land and the child fears retribution if he cannot work to pay down the debt owed to a loan shark.

Most children who arrive in the U.S. from Fujian Province in China are encumbered by a significant debt, often between $70,000 - $80,000 USD. In many of these cases, the child is clearly being recruited, moved, transported, or provided, through the use of force, fraud, or coercion (including remuneration), for the purpose of debt bondage or peonage. However, protections for these children are systematically denied because the actual act of involuntary servitude, peonage, debt bondage or slavery has not yet occurred, because the children were apprehended at a border or point of entry and before they have begun to do any work. The regulations require the applicant to describe the victimization. For children apprehended at the border, however, there may be little, if any, information known by the child about the victimization she is destined for.

**Case Example: LiLi, a 17 year old girl**

*LiLi did not choose to come to the United States. Her family needed to pay off an outstanding debt, and arranged with the snakeheads to transport her to the United States to work. LiLi did not want to leave her family. LiLi was saddled with the existing family debt plus the cost of her passage to the United States: more than $80,000. LiLi experienced a harrowing journey to the United States which took more than three months; she was moved through numerous countries—China, Hong Kong, to France, Columbia, Ecuador, Guatemala, Mexico—and transferred from drop-house to drop-house by armed men. Her traffickers confiscated her travel documents and cell phone, and controlled outgoing calls. She was transported across much of Mexico hidden for days under the sleeping compartment of a vehicle.*

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37 8 C.F.R. § 214.11(f) and (f)(3).
When LiLi reached the Mexico-U.S. border and was instructed to cross, she was not provided adequate provisions or supplies, nor was she prepared for the risks and rigors of the journey. LiLi ultimately collapsed near a railroad track, where she was discovered by U.S. immigration authorities. She was seen by a doctor, and was subsequently transferred to federal custody.

LiLi is terrified of being sent back to China. When she talked about the experience, LiLi was very emotional and scared, especially when she talked about being turned over to the snakeheads, the journey from China to the U.S., and what might happen to her if she is sent back to China. LiLi was told by the snakeheads that if she is returned to China, the snakeheads will send her back to the U.S. again to repay the debt her parents incurred. LiLi believes that upon return to China, the snakeheads will quickly locate her and re-traffic her in order to recoup their fees. LiLi is also afraid that if she is sent back to China, she will be jailed and beaten by the Chinese police.

Children such as LiLi should be eligible for protection. They are targeted because of their age and vulnerability—in the eyes of the various actors involved in these transactions, their youth allows them to work hard for many years. Given the strong tradition of filial piety in China, these children do not have the choice to disregard their parents’ instructions. The snakeheads and their cohorts in Central America use threats, weapons and isolation to coerce the children across continents and multiple borders. They confiscate travel documents and money and the children feel helpless and trapped. In each and every case, these children state an explicit fear of return to China. The families also financially benefit from the transaction—once the debt is paid, the child is like the Golden Goose, she will continue to send money back home even after the debt is paid.

The debt owed to the snakeheads constitutes financial coercion which compels the child to remain in debt bondage or involuntary servitude. If the child fails to comply with the arrangement whereby she is to work 14-hour days, 6 day weeks to repay the debt of $80,000, she may be threatened by the snakeheads, or by her own family. In most cases, the child doesn’t fully comprehend what she has been committed to. Particularly for children for whom filial piety is part of their culture, it is inconceivable to say no, or to reject the plan proposed by the parent. The primary issue of contention in providing protections to children sold for labor or child trafficking is often consent—can a child consent to being sold into labor in exchange for which a debt will be paid and in the long-term, once the debt is paid off, the parent (adult caregiver) will receive continuing support in the form of remittances from the child?

The United Nation’s Toolkit to Combat Trafficking provides that “even if a child is not threatened, no force is used against him or her, or he or she is not coerced, abducted or deceived, the child cannot give consent to the act of trafficking for the purpose of exploitation. Moreover, even the custodian of the child cannot give consent to the trafficking act for the purpose of exploitation.” 38 In its “Guidelines on the Protection of Child Victims of Trafficking,” the United Nations distinguishes the definition for trafficking as applied to children versus

adults. For example, in the case of children, there is a broad list of what constitutes exploitation for the purposes of trafficking, including forced labor. The Guidelines reiterate that a child’s consent is irrelevant even if such consent was not obtained illicitly. The consent of a child is “irrelevant for legal purposes” and “the child’s consent cannot remove the child’s status as a victim.”

What Happens to Children Who Must Work Years to Pay the Debt - Harm to the Child over Time

In an article for the *New York Times Magazine*, author Alex Kotlowitz tells the story of Deng Chen, who was 14 years-old when his family sent him to the United States. Until he arrived in the U.S., Deng Chen didn’t fully comprehend the arrangement. He was smuggled from China, transported into the U.S., and placed in a drop house until his mother arranged to pay the debt through loan sharks in China. When Chen was released from the drop house, the first thing he did was call his mother: “In that conversation with his mother in October 1997, Chen learned of the debt his family now carried. His mother, he recalled, cried, telling him that he had to send money home or their lives would be in danger. It was a message she delivered to Chen repeatedly over the next four years.”

Deng Chen did what was expected of him—he worked a variety of jobs. He first worked for a garment factory, but needed more money so he dropped out of school and went to work at a buffet restaurant in Wildwood, N.J., where he could make $800 monthly. His first job was as dishwasher, but because of his small stature, he needed a crate to stand on. . . . There was nothing dramatic about this time, but rather a slow, grinding-away of the senses, of the soul, like dripping water that erodes the contours of a mountain. He was just a boy – the other workers called him “little brother” – who knew that if he didn’t send money home, his parents might be assaulted or, worse yet, killed. That is what he lived for – or rather against: to avoid such a calamity. So he worked 12- to-13-hour days with one day off each week. At each restaurant, the owner housed the employees, most of whom were undocumented, in crowded apartments, often five or six to a room. Initially, he didn’t complain. “You didn’t have much time to think” while working in the restaurants, Chen told me.

* * *

Chen found more permanent lodging at the Franciscan Center, a shelter for runaways, where he would live for a little more than a year. A few weeks into Chen’s stay, at 9:30 one night, Maureen Armstrong (the case manager) received a call at home from a staff member on duty. Chen, she was told, had unraveled. Armstrong rushed to the shelter and found Chen curled up in a fetal position on the floor of his room by his dresser. He was wailing like a wounded animal. The other

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39 Drawing from Article 3 of the *Palermo Protocol*, an annex to the *Convention Against Transnational Organized Crime*, the Guidelines include the following as forms of exploitation “prostitution. . . sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, the removal of organs, use of children associated with armed groups or forces, begging, illegal activities, sport and related activities, illicit adoption, early marriage or any other forms of exploitation.” See United Nations Children’s Fund, *Guidelines of the Protection of Child Victims of Trafficking*, Section 1, “Definitions” (September 2006), available at http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf.

40 Id.

41 Guidelines, Section 5.3.

42 Alex Kotlowitz, *The Smuggler’s Due*, New York Times Magazine, June 11, 2006 (a copy of this article is attached as Appendix A).
boys were standing in the hallway, frozen, trying to assure Chen that it would be O.K. She could
hear him, through the sobs, telling the others they were wrong, that it wasn’t going to be all
right. Armstrong got on the floor and held Chen, rocking him, urging him to take slow, deep
breaths. “I’ve been a good son – I’ve been a good son,” Chen sputtered, his nose running, his
chest heaving. “Why did they do this to me? My family, why’d they turn their back to me?” It
took Armstrong well past midnight to calm him.

* * *

At the Door, a refuge for wayward teenagers in New York City, the staff has in the last few years
seen an increasing number of teenagers from China who, like Chen, came to the U.S. on their
own. Hsin-Ping Wang, a Door counselor, says that some have come in because of suicidal
thoughts or because they are completely lost and have nowhere to turn. Most, she told me, are
under such pressure because of the debt that they have completely withdrawn; they remind her
of autistic kids. One 17-year-old boy came to see her and said nothing other than that he had
come to the U.S. with his older sister. Wang tried to coax his story out of him, but he remained
silent, and after the session, he told Wang that he felt better. She has had others who have spent
the time crying. “I think sometimes they just need someone to witness what’s happened to
them,” she said. Most, she told me, come to see her once and then never return, mostly because
of their frenzied work schedule but also because in the end there is little she can do for them.
They have a financial bargain to maintain, and they know the consequences if they don’t.43

Child Labor Law

The Young Center received a call from a woman in a small town in Illinois. She was very
worried about a girl her daughter had befriended, Fei Yan,44 a 16-year-old Chinese girl
working at the local Chinese restaurant. The girl was working long hours—12-hour shifts,
six days a week. She was living in an apartment with other restaurant workers, sharing a
bedroom with two adults. Fei Yan was paid in tips only. She said she was responsible for
paying her father’s debts as well as her own smuggling debt of $70,000. When the
woman met Fei Yan, she was in school and working after school and on weekends. Fei
Yan reported that she wanted to drop out of school and go to New York to work so that
she could earn more money to pay her father’s debt and her own debt.45

Children like Fei Yan are largely invisible. They work in small restaurants, and there is no system
in place to identify them, or offer protection. There are a myriad of laws intended to protect
children from exploitation, yet significant gaps remain. Often aid is only provided when a Good
Samaritan takes note of an unusual situation and tries to find assistance for the child.

Child workers in the U.S. are protected by two federal laws which are enforced by the
Department of Labor: The Fair Labor Standards Act (FLSA) and the Occupational Safety and
Health (OSH) Act.46 FLSA establishes minimum wage, overtime pay, recordkeeping, and youth
employment standards affecting employees in the private sector and in federal, state, and local

43 Id.
44 Pseudonyms are used throughout.
45 Call from suburban mother regarding Chinese girl.
government agencies.\textsuperscript{47} The FLSA and its associated regulations and child labor provisions are designed to protect the educational opportunities of youth and prohibit their employment in jobs under conditions detrimental to their health or safety.\textsuperscript{48} FLSA applies to all employees of enterprises “engaged in commerce or in the production of goods for commerce.”\textsuperscript{49} Specifically, this refers to businesses that make over $500,000, and have more employees than just the immediate family of the owner.\textsuperscript{50}

In order to pay off exorbitant smuggling debts, these children face years of work. FLSA and state laws in the U.S. generally restrict children from working for more than a certain amount of hours, when school is in and out of session. Combining limited working hours with minimum wages, it would take nearly 10 years for some children to pay off their debts. A 15-year-old child in Illinois would need to work for nearly 7.5 years, full-time, to pay off a $75,000 USD debt, a calculation which does not take taxes into account.\textsuperscript{51} This calculation assumes that the child will be lawfully employed by an employer who abides by state child labor laws, which is not the case for many children.

The following tables list the minimum wages in California, Florida, Illinois, and New York and the relevant hour limitations on child labor in these states:

<table>
<thead>
<tr>
<th>State</th>
<th>Minimum Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>$8.00</td>
</tr>
<tr>
<td>Florida</td>
<td>$7.25</td>
</tr>
<tr>
<td>Illinois</td>
<td>$8.00</td>
</tr>
<tr>
<td>New York</td>
<td>$7.25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State</th>
<th>School in session</th>
<th>School out of session</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>3 hours/school day</td>
<td>8 hours/day 40 hours/week</td>
</tr>
<tr>
<td></td>
<td>8 hours/non-school day</td>
<td>18 hours/week</td>
</tr>
<tr>
<td>Florida</td>
<td>3 hours/school day</td>
<td>8 hours/day 40 hours/week</td>
</tr>
<tr>
<td></td>
<td>8 hours/non-school day</td>
<td>15 hours/week</td>
</tr>
<tr>
<td>Illinois</td>
<td>3 hours/school day – cannot be in school</td>
<td>8 hours/day</td>
</tr>
</tbody>
</table>

\textsuperscript{48} 29 U.S.C. § 212; 29 C.F.R. § 570.2
\textsuperscript{50} 29 U.S.C. §203 (s) (1) and (2)
\textsuperscript{51} A constant minimum wage is used for calculation purposes.
\textsuperscript{52} CAL. LABOR CODE §1182.12 (Deering 2009)
\textsuperscript{53} FLA. STAT. §448.110 (2009)
\textsuperscript{54} 820 ILL. COMP. STAT. 105/4 (2009)
\textsuperscript{55} N.Y. LAB. LAW §652 (Consol. 2009)
\textsuperscript{56} CAL. LABOR CODE §1391 (Deering 2009)
\textsuperscript{57} FLA. STAT. §450.081 (2009)
and work for more than 8 hours
No limit on non-school day
24 hours/week

**New York**\(^{59}\)
3 hours/school day
8 hours/non-school day
18 hours/week
40 hours/week
6 days/week

<table>
<thead>
<tr>
<th>State</th>
<th>School in session</th>
<th>School out of session</th>
</tr>
</thead>
<tbody>
<tr>
<td>California(^{60})</td>
<td>4 hours/school day</td>
<td>8 hours/day</td>
</tr>
<tr>
<td></td>
<td>8 hours/non-school day</td>
<td>48 hours/week</td>
</tr>
<tr>
<td>Florida(^{61})</td>
<td>8 hours/school day</td>
<td>Unlimited</td>
</tr>
<tr>
<td></td>
<td>No limit/non-school day</td>
<td></td>
</tr>
<tr>
<td></td>
<td>30 hours/week</td>
<td></td>
</tr>
<tr>
<td>Illinois(^{62})</td>
<td>Persons aged 16+ are not minors for the purposes of child labor law</td>
<td></td>
</tr>
<tr>
<td>New York(^{63})</td>
<td>4 hours/school day</td>
<td>8 hours/day</td>
</tr>
<tr>
<td></td>
<td>8 hours/non-school day</td>
<td>48 hours/week</td>
</tr>
<tr>
<td></td>
<td>28 hours/week</td>
<td></td>
</tr>
</tbody>
</table>

Taking these laws into account, it becomes apparent that children with debts of $70-80,000 will spend the rest of their childhood, into young adulthood, working off the transportation debt agreed to by their parents, as well as continued payments to the family once the debt is paid.

Children who are forced to work during adolescence miss out on school and learning, impacting their lives beyond childhood. Research has linked part-time employment during adolescence to negative effects: psychological distress, lower academic achievement, higher rates of drug and alcohol use, and perhaps most important, lower academic achievement.\(^{64}\) The study relates the detrimental effects to *how much* the teenager works, not whether they work.\(^{65}\) The ultimate effect of the situation faced by these children—long hours of work, neglect to education and learning—is detrimental to the individual’s development.

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\(^{58}\) 820 ILL. COMP. STAT. 205/3 (2009)

\(^{59}\) N.Y. LAB. LAW §142 (Consol. 2009)

\(^{60}\) CAL. LABOR CODE §1391 (Deering 2009)

\(^{61}\) FLA. STAT. §450.081 (2009)

\(^{62}\) 820 ILL. COMP. STAT. 205/1 (2009)

\(^{63}\) N.Y. LAB. LAW §143 (2009)


\(^{65}\) Id.
Improving Inadequate Legal Protections for Children and Youth

The U.S. has some excellent laws designed to protect youth who are (1) trafficked, (2) subject to usurious debt, (3) subjected to involuntary servitude, or (4) working under illegal labor conditions. The U.S. should be commended for enacting and implementing these laws. This section will focus on one form of relief, Special Immigrant Juvenile Status (SIJS), a form of relief for children who have been abused, abandoned or neglected.66

The process for obtaining SIJS is complex and requires state and federal involvement:

1) The child has to be declared dependent by a state court;
2) The child takes the state court "predicate" order to the U.S. Citizenship and Immigration Services (USCIS);
3) The child applies for lawful permanent residency with either USCIS or to the immigration court through an adjustment of status application.

The required substantive determinations that need to be reached are:

1) The child was abused, abandoned or neglected;67
2) Reunification with one or both parents is not viable due to this abuse, abandonment or neglect;68 and
3) It is not in the child's best interest to return to his or her home country.69

Many children sent by their parents and sold for labor meet this three-part test. Some children have been abused, neglected or abandoned in the traditional sense. More often, however, the abuse, neglect or abandonment comes from the acts of the parents in the very plan and process of turning their child over to the snakeheads. For children from China, the parents' actions set their children off on a very dangerous journey and years of exploitation—as shown above.

The second factor—no viable reunification with a parent is present as well. The Chinese parents who send their children to the U.S. to earn money do not expect or intend that the child will return home while still a minor. Children fear deportation largely because they believe they will be re-trafficked to the U.S. or elsewhere. In other cases, the children fear the humiliation and anger of parents and family because of the failed labor arrangement.

At present, there is no system of protection or re-integration available to children or youth returned to China, particularly when they have left without government permission, and so we would argue that it is not in the child’s best interests to be returned to China.

Despite the obvious applicability of SIJS to children trafficked from China, there are many challenges and road blocks to obtaining this particular form of protection. In many jurisdictions, it is difficult to get the state court determination. Finding evidence to prove the substantive

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requirements is very difficult for children in this situation—they often have no documentation, know little about what happened in their home countries or who the primary snakeheads are, and don't know the whereabouts of any of those persons.

Protection from Unscrupulous Attorneys

A loophole in government agency procedures may allow (and in our experience, has allowed) attorneys representing the interest of traffickers or smugglers to represent children who are otherwise in the protective custody of the USG. These lawyers attempt contact soon after the children have been apprehended by immigration or criminal justice authorities, and claim to represent the children’s interests. The government agency charged with care and custody of unaccompanied immigrant children has stringent protections in place to prevent access to children by traffickers. These attorneys often show up in court and submit papers on the child’s behalf. These attorneys have been known to then notify the smugglers and traffickers that the child has been released, thereby triggering the debt collection and in some cases, threats against the family and child.

Once released, these children often go unrepresented because the attorney has achieved the trafficker or smuggler’s objective, namely to secure the child’s release. Tragically, some of these children receive in absentia orders of removal because the attorneys abandon the case. The following examples illustrate the insidiousness of the trafficker/smuggler attorney relationship for unaccompanied children.

Case example 1: In a case involving a girl from India, after the government denied the sponsorship application of an unrelated single man, the man hired a private attorney to appear on the girl’s behalf in Immigration Court. When the attorney showed up in Immigration Court and announced his intention to represent the girl, the Immigration Judge asked the Young Center Child Advocate to investigate the situation. The Child Advocate contacted the man and learned that in fact, he had applied to sponsor a number of unaccompanied children from India. The attorney, unwitting though he claimed to be, acknowledged that he had not been hired by the girl’s family, and offered to withdraw. The child advocate then coordinated with the legal services NGO to arrange pro bono legal representation.

Case Example 2: When he arrived at the shelter, it was clear to his case manager that Xie Min, a 16-year-old boy from China, had a mental disability. When a Young Center Child Advocate was assigned, she learned that while living in foster care, Xie had participated in his asylum hearing pro se and without any adult to accompany him. The Child Advocate obtained a transcript of the immigration proceeding in which the boy had given nonsensical answers to the government attorney’s questions; relief was denied. The Child Advocate contacted the attorney of record who had filed a notice of appeal. The attorney told her that his only goal had been to get the boy released from custody and that he had no plans to prepare an appellate brief, which was due the next day. The

70 Since 2004, the Lutheran Immigration and Refugee Services has partnered nationally with the Office of Refugee Resettlement to make best interest recommendations on reunification and release to sponsors. In cases in which there are concerns about the child’s safety or well being with a prospective sponsor, the assigned LIRS child welfare specialist makes recommendations regarding further assessments of the sponsor, alternative placement and/or safety plans.
Child Advocate contacted the local legal services provider which found pro bono counsel to prepare and file pleadings to reopen the case, which motion was granted.

It is a clear conflict of interest for an attorney retained by a smuggler or trafficker to represent an unaccompanied immigrant child, since the trafficker/smuggler has a vested interest in securing the child’s release and conveyance to the pre-destined labor site. This practice has been most common in cases involving children from China and India. We urge the government to improve procedures specific to minors, and to prevent disclosure of information to an attorney whom the child and/or family have not hired.

VI. CONCLUSION AND RECOMMENDATIONS

As noted in the ECPAT-USA Alternative Report, we commend the enactment of strong laws and actions to protect the rights of child victims and prosecute offenders of the OPSC and TVPA. These efforts include the following:

1. **William Wilberforce Trafficking Reauthorization Act (2008 TVPRA).** In 2008, the President of the United States signed into law the William Wilberforce Reauthorization Act, providing increased protections for children at risk of being trafficked.
   a. **Affirmative Asylum.** The 2008 TVPRA provides an avenue for unaccompanied immigrant children to apply for asylum through an affirmative process (an interview with an asylum officer) instead of first being required to apply through an adversarial court hearing.
   b. **Repatriation Pilot.** The 2008 TVPRA provides for development of a safe repatriation pilot program through which USG agencies and NGOs will develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality.
   c. **Child Advocates.** The 2008 TVPRA provides for the appointment of Child Advocates (guardians) for vulnerable unaccompanied immigrant children. The USG has implemented one program and pending legislation would allow Child Advocates to be appointed for unaccompanied immigrant children throughout the country.

2. **School Attendance.** In his State of the Union address, on January U.S. President Obama called for every state to require students to stay in school until they turn 18. Some states currently allow students to drop out of school and go to work when they are 16.

Recognizing this progress as well as the inherent challenges in the continuing task, this report has highlighted several areas where more attention and effort are required.

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71 A 2001 Office of Inspector General’s Report to the Department of Justice stated that although non-Chinese minors were not represented by attorneys, most of the Chinese children were represented by attorneys. [http://www.usdoj.gov/oig/reports/INS/e0109/chapter4.htm](http://www.usdoj.gov/oig/reports/INS/e0109/chapter4.htm) (last viewed on Sept. 26, 2008)
Recommendations

1. **Ratify the Convention on the Rights of the Child (CRC).** The United States Government should take prompt action to ratify the Convention on the Rights of the Child as one of the main instruments for creating a protective environment for all children. Many of the tenets of the CRC came from U.S. law and fit with existing state child protection principles.

2. **Improve quality and scope of data collection and research.** Conduct more research and program monitoring utilizing child development, public health, and health and human services lens to provide more comprehensive indicators on the extent and characteristics of the sale of children, child prostitution and child pornography, indicators addressing prevention measures, and indicators on assistance to victims. Ensure research priorities include both the sale of children for the purpose of forced labor and sexual exploitation and that one not be prioritized over the other.

3. **Improve labor standards as applied to child labor to prevent egregious forms of child labor, including sale of children for the purpose of forced labor and labor trafficking.** Conduct investigations of work sites that traditionally hire children: restaurants, child care, nail salons, landscaping companies, child care and farms/agriculture.

4. **Improve protections for children entering the United States for the purpose of labor trafficking and provide clarity as to how these cases should be treated under the OPSC and TVPA.** For children arriving from parts of the world known for debt-labor exploitation (for example, Fujian Province, in China), offer children the opportunity to apply for protection. Provide all unaccompanied children with access to attorneys paid for by the government, as well as guardians (Child Advocates) whose role is to advocate for the child’s best interests.

5. **Incorporate a best interests standard into the Immigration and Nationality Act.** For children under the age of 18, U.S. law should incorporate the best interests standard, requiring that all decision makers, including immigration judges, asylum officers and immigration authorities consider the child’s best interests in rendering decisions.

6. **Improve Inter-Agency Coordination among local, state, and federal agencies, emphasizing those that work with children, including child protection/child welfare, education, and juvenile justice systems.** Improve training programs addressing the specific issues and needs of children, including interviewing techniques, service requirements, policies regarding custody, guardianship, and family reunification, and rights of children.

7. **Ensure prevention and protection efforts to address both labor and sexual exploitation of children.** Establish a hot-line that can accept collect calls and text messages from children who want help.
8. **Apply a “systemic” approach addressing child exploitation versus creating prevention and protection programs addressing each as a distinct issue.** Improve the capacity of existing systems serving children and families, including child welfare/child protection, education, and juvenile justice, to create prevention initiatives, and improve identification and recovery services for children impacted by both labor or sexual exploitation.

We strive for a world in which no child, whether in the United States or abroad, is commercially exploited for labor or sex. As members of civil society in the United States and as critical stakeholders in this enormous endeavor, we look forward to further progress and to help guide the UNCRC and ultimately U.S. policy makers toward the next steps needed to protect children from exploitation of all forms.
CHAPTER 4: THE IMMIGRANT

THE SMUGGLERS’ DUE

DENG CHEN’S PARENTS SENT HIM TO AMERICA WHEN HE WAS JUST 14 IN THE HOPE OF GIVING HIM A BETTER LIFE. HE SPENT THE NEXT FOUR YEARS PAYING FOR THEIR DECISION.

BY ALEX KOTLOWITZ

I was introduced to Deng Chen through an attorney who had helped him with some legal matters. Her specialty is trafficking, and when I told her I was doing some research on human smuggling and its victims, she cautioned me to be careful about using the word “victim” and, more to the point, not to confuse trafficking, which involves coercion, with smuggling, which is by choice. But then she told me about Chen, who at age 14 was sent by his parents to this country from China, by himself, with the assistance of smugglers; over the next four years, Chen worked to pay off a smuggling debt of $45,000, plus interest.

Deng Chen and I first got together this past winter in a room he was renting in Flushing, Queens. The third-floor apartment had been partitioned, so that every room, except the kitchen, was occupied; there were eight people living there, all Chinese, some documented, some not. On a later visit, the holders of the apartment’s lease would chastise Chen for bringing a stranger there, but on this occasion no one was around, so we sat on the floor of his spartan room, leaned against his bed and talked for nearly five hours.

There was not much to distract us. On a desk in one corner sat a portable computer, a gift from an older woman who helped him along the way. His rather meager wardrobe fit on three small shelves, on top of which, beside a small bamboo plant, sat framed snapshots of his mother and father, whom he hadn’t seen in eight years, and by his tele-

Illustrations By Vania Zouravliov
vision was a bottle of plum wine that he drinks to help him sleep.

Chen, who is now 23, is of slender build. His dress is unobtrusive: on this occasion, he wore jeans, a white collared shirt and Timberland boots. With his soft features, he could pass for a teenager, but his purposefulness is of someone well beyond his years. He is most animated talking about politics; he reads The New York Times online every day and purchases a copy of the Hong Kong-based Sing Tao Daily. His supervisor at the New York Asian Women’s Center, where he worked, laughingly told me: “He likes to share his view on society and politics. A lot. A whole lot.” Chen can also be restless and fidgety, and often I would notice one of his feet tap-dancing as he spoke, keeping rhythm to the vicissitudes of his journey.

Sometimes during our visits together, it felt as if he would rather be somewhere else, and indeed, on a couple of occasions he would cut our interview short, telling me he needed to be somewhere or meet someone. But periodically he would say something so utterly frank and yet deadpan that it would take me awhile to realize what he was imparting. As we talked on this particular afternoon, he applied tissues to his nose, which was bleeding. He told me that the previous day he had outpatient surgery to repair a damaged septum. It wasn’t a big deal, he assured me, though he seemed in some discomfort. I asked him how he was able to pay for the procedure, and he explained that he had health insurance from his job assisting Asian-American women who were victims of domestic abuse. He then volunteered that he had been instructed by the hospital that he needed to have someone pick him up after the surgery. He told me that he had no one to call, and so he paid $20 to an acquaintance, someone he barely knew, to come get him.

As I got to know Chen over the following months, it became apparent that this moment symbolized something larger: his utter loneliness. He once told me that when he had time off from work, he would occasionally stroll to the nearby park, where he would toss a rubber ball against a concrete wall. A solitary figure having a catch with himself. He didn’t tell me this to elicit my pity. Rather, he was matter-of-factly explaining what he did with his spare time. It is who he is. Even though others view him as a template for success, Chen sees himself as not belonging, as someone precariously walking the shoreline, an anonymous young man who could easily drift into the currents without anyone taking notice. He told me at one point: “I just don’t like people. Unless it’s absolutely necessary, I just want to be left alone.” But I don’t believe it’s that simple.

Immigration to America from China has happened in steps. First, the Cantonese came from Guangdong Province, and they were followed by professionals and businessmen, mostly from Taiwan and Hong Kong. In the 80’s, another wave of migrants began, this time from Fujian Province, a mountainous region that sits along the southeast coast of China. The Fujianese being a seafaring people, it seemed only natural that their first means of emigration would be by boat, and in 1993 when the freighter Golden Venture ran aground off the beaches of Queens, their journey became front-page news. What went relatively unnoticed in the coverage afterward is that of the nearly 300 men and women on board the Golden Venture, about 10 of them were under 18, traveling on their own.

In the intervening decade, the smuggling of humans from China has continued, though no one is certain of the numbers; estimates, though elusive, range anywhere from 10,000 to 50,000 a year. Some things have changed. The smugglers — known as “snakeheads” — have become more sophisticated and considerably more expensive. Though many Fujianese still come by freighter or by fishing boat, many now also arrive by plane bearing false papers; moreover, they often land — by boat or plane — first in Canada, the Caribbean or Central America. Immigration and Customs Enforcement reports that in recent months 50 to 100 Chinese each week have been taken into custody trying to cross the Mexican border.

The snakeheads, who in the 1980’s had a Mafia-style presence in New York’s Chinatown, often publicly beating and kidnapping those who fell behind in their payments, now apply much of their muscle back home in China, threatening and, if it serves their purposes, physically punishing family members of those who have fallen behind in their installments. For those on the Golden Venture, their travels cost roughly $30,000; the snakeheads reportedly now charge upward of $70,000.

As the cost has gone up, the number of years it takes to pay off the debt has risen as well. In the early 1990’s, some could repay the smugglers in two years; it now takes twice as long. “A lot of Americans have a hard time understanding it,” says Ko-lin Chin, a professor at the School of Criminal Justice at Rutgers University in Newark. “But put yourself in their shoes.” If they remain in China, Chin says, they will earn perhaps $200 a month. If they come to the United States, they can earn $2,000 a month working at a restaurant. Once the debt is paid off, most continue to send money home and often help to pay the way for another family member to come to the U.S. Fujianese families with sons or daughters in the U.S. also achieve a certain status. Peter Kwong, a professor of Asian-American studies at Hunter College, has written extensively on human smuggling from China and has visited Fujian. Kwong told me that during his stay in the villages there, residents would show us that so and so has a two-story house. “Look at them,” they’d say, “they have a son in America.” The sobriquet for families with members in the U.S. roughly translates to “relatives of a beautiful country.”

Another thing that has changed is that it appears that more children — mostly teenagers — are coming into the U.S. by themselves, without an adult. (This seems to be true of children from other countries too; in 2005, 7,787 unaccompanied minors trying to enter this country were detained by immigration authorities, up 26 percent from the previous year.) For many, their parents have arranged for them to connect with a relative here, but sometimes it is a distant family member who often has no interest in watching after a teenager. They are sent here to work, in the hope that they will be able to send money back home or that they will find a better life. While the numbers aren’t necessarily large, they appear to have grown since the early 90’s; about six years ago, a former shelter director told me, immigration authorities took into custody several hundred Chinese children coming over the borders and through the airports. (In a one-week period this April, at least seven children from China trying to enter this country were taken into custody by immigration authorities.) These numbers, of course, don’t include all those who get in undetected, like Chen. Chen’s story is a fairly typical one — except for the outcome. Chen’s case, in fact, has pushed some to rethink our definition of human trafficking.

The details of his story were provided to me by Chen, and where I could, I confirmed them with contemporaneous accounts he gave to people along the way or with documentation, including letters he wrote, school records, notes made by staff members during his stay at a runaway shelter and receipts for the money he sent back to China. I also spoke with other young people who had made similar journeys as well as social-service providers who work with those children. Through Chen, his parents, who are in China, declined to talk with me.

Chen grew up in a rural village in Fujian and is the third of three children; he has a brother and sister. He is unsure why his parents were able to have more than one child, though China’s enforcement of its family-planning policy has been more vigilantly enforced in some areas than in others. He says that his parents were neither poor nor well off. His father worked at a local food store, which he eventually purchased from the owner, and his mother labored at a brick factory.

He comes from a family that clearly valued education. His brother went to college in Beijing, and Chen’s parents sent him to live with a family friend in a nearby town for two years so that he might attend a more prestigious school and, they hoped, follow his brother to the university. Chen says that he narrowly missed qualifying for a top-notch

Alex Kotlowitz is a regular contributor to the magazine. His last article was about a Kurdish immigrant fighting deportation.

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Illustrations by Vanja Zouravelov
secondary school and so continued his education in his village. His mother frequently talked to Chen of going to the U.S., where she insisted he would have more opportunities and where he could help his family financially. She told Chen that she worried he would end up leading a miserable life if he were to stay in China.

On a fall day in 1997, Chen says, his mother came to his school and told his teacher that something urgent had come up and that she needed to take him out of class. Chen, who was 14 at the time, remembers his instructor, a tall elderly man, arguing with his mother. "He looked at me," Chen recalls. "Maybe he knew what was going to happen." But his mother insisted, and Chen got into a van with his mother and a driver. His mother told him that he was going to the United States and that he would be accompanied by a woman who, it turns out, would pose as his mother. His real mother had packed Chen’s clothes in a small suitcase, and she whispered to him that she had sewn $300 in American currency into a pair of his underwear. That was it. No photos. No notes. No mementos of any kind. Just a long, tearful hug at the airport. "Be a good boy," the mother told her son.

Chen was given false papers for the trip, and at a stopover in Shenyang, he met with a man introduced as "the boss," who alerted Chen to things he might be asked by U.S. customs agents, like the color of American taxis, and then drilled Chen on his new identity. His fiction was that he and his "mother" had returned to China from the U.S. to bury his grandmother and to sell some properties. He never had to answer customs officials, though. Instead, the woman accompanying him did all the talking. They traveled via Seoul, South Korea, where they spent a week holed up in a motel room watching movies, then to Los Angeles and on to New York, where, Chen recalls, they were met by two men, one of whom held his photograph. They quickly hustled Chen and the woman into a car, and they were driven to a basement apartment somewhere in New York.

That same day, he was put on the phone with his mother and was instructed to tell her that he had arrived in New York and that he was O.K. This is typically how the snakeheads work. Chen's family then made their payment of $45,000, money they borrowed from loan sharks, who are usually closely tied to the smugglers. After two or three days, once the payment went through, Chen was released and dropped off on East Broadway in Chinatown, which is the heart of the Fujianese community in New York. He asked passers-by for help in purchasing a phone card and went to call his mother.

DURING ONE OF my visits to Chinatown, I spent time with Steven Wong, who runs the Lin Zexu Foundation of U.S.A., which despite its lofty-sounding title is a shoestring operation run out of a two-room basement office off a short street. Wong is a square-jawed, compact man who at 51 has a small paunch. He smokes Marlboros nonstop, filling the windowless office with a haze, which gives the place a film-noir quality. Wong told me that he first became active in the Fujianese community to fight drugs (Lin Zexu was a 19th-century Chinese official who led a campaign against opium, which ignited the Opium Wars with Britain). Before long, however, human smuggling became a much more lucrative and brutal trade and one
that Wong considered a much bigger threat to his community. James Goldman, a former special agent with the Immigration and Naturalization Service who because of his tenacious pursuit of the snakeheads was called "the mongoose," told me that in the mid-1990's the smugglers were so out in the open that everyone knew the address of one of the gangs on East Broadway. The snakeheads regularly extorted money from undocumented workers, on top of the money they already owed. In one case, Goldman and fellow agents discovered a group of young Chinese men chained to an apartment wall where they awaited ransom payments from family members.

Wong has worked as an interpreter for the police and immigration agents (he introduced me to Goldman), but he is probably best described as a fixer, someone to whom people in the Fujianese community come to have their problems solved. During one afternoon I spent with him, there was a steady flow of people, of whom brought small offerings of food so that by the end of the day Wong's desk was lined with half-filled cups of tea and half-eaten pastries. A well-dressed middle-aged woman groused to Wong that a dentist had extracted a healthy tooth. Wong promised her that he would call the dentist, though when she left he told me there really wasn't much he could do. (All these conversations were in the Fujianese dialect, so Wong translated.) The weeping sister of a woman who had recently been murdered in Brooklyn pleaded with Wong to help put pressure on the police to solve the crime. Wong assured her that he would try to get the press involved.

Many of the people who come to see Wong — if not most — have complaints about the smugglers. One restaurateur dressed in a black leather jacket accused snakeheads of trying to extort extra money out of his employees. A young fresh-faced woman, her hair pulled back in a ponytail, came in with a document from immigration informing her that she had missed the deadline to get fingerprinted and so was no longer eligible to apply for political asylum. She told Wong that she still owed tens of thousands of dollars to the snakeheads. "If she's re patriated, her entire family will be in a jam," Wong told me later. Wong made a call and quickly calculated there was little he could do for her. "She'll probably go underground," he told me as she left his office. But it was the story told by the first person I met that stayed with me the most. He was a stoop-shouldered man in his 40's with a weathered face. I had walked in at the end of the conversation, and Wong was clearly giving instructions, to which the man nodded in agreement. When he left, I asked what was about. Wong told me that the man's brother had come over from Fujian six months earlier and had quickly fallen behind in his debt. As a result, the snakeheads had exacted revenge, brutally assaulting the brother's wife and 12-year-old son, both of whom were still in China. Wong had been pleading with the man to have his brother come see him.

When Wong first learned of the assault, he had a friend in China videotape the two in the hospital, as well as the home where they had been attacked. After the brother-in-law left his office, Wong offered to show me the tape. It begins with a closeup of the sister-in-law, her head completely shaved, the hospital sheets bloodied. She has three long slash marks across her face and one along her neck, as if the assailant, who apparently attacked with a meat cleaver, was aiming to decapitate her. She appears to be unconscious. The boy has two long, crisscrossing slash marks on the back of his shaved head; Wong speculated that the assailant slashed at him as he tried to flee. The video of the home is no less gruesome. The intruder used a ladder to enter the second floor flat, where the floor, the wall and even the ceiling are splattered with blood. "Cold-blooded," Wong said.

Goldman, the former I.N.S. agent, told me that the strategy of the snakeheads has been rather simple: "You have to pay, and if you don't pay, there will be a problem."

In that conversation with his mother in October 1997, Chen learned of the debt his family now carried. His mother, he recalled, cried, telling him that he had to send money home or their lives would be in danger. It was a message she delivered to Chen repeatedly over the next four years. Many Fujianese borrow the smuggling fee from family and friends, some of whom have already carved out a life in the U.S. But others, like Chen's family, rely on loan sharks, who can and will exact revenge if debtors fall behind.

Chen told his mother that he didn't know where to go. She instructed him to ask around for the employment agencies, and as soon as he hung up, he found his way to Eldridge Street, lugging his suitcase behind him. The sidewalks are crowded here nowadays, mostly with young men smoking cigarettes, sitting on the stoops and chatting on cellphones, waiting to catch one of a half-dozen or so buses lined up across the street; the buses advertise their destinations: Hartford, Allentown/Bethlehem, Northampton. When the distance grows, the destination becomes less specific: Ohio, Michigan, Maryland, Tennessee. The employment agencies are cramped single-room storefronts; the employees work behind a sheet of Plexiglas that is covered with scraps of paper organized by area codes and giving the positions available and the wages offered. For $30 or $40, the agency will connect job seekers with one of these positions, most of which are at Chinese restaurants run by Fujianese.

In one three-story building alone, there are five agencies, two on the first floor and three on the second. It was here where Chen sees his first went; he was barely able to see over the counters and was told that he was too young. According to medical records at the time, he was 5-foot-3 and weighed 100 pounds. He was a wispy boy.

He then trudged to Seward Park, where he spent the next three nights sleeping on a bench, one hand resting on his suitcase to make sure no one took it and his head resting on a rolled-up jacket. Chen returned to the employment agencies only to be turned away again. Dejected, he plopped onto the black metal steps on the second landing, his head in his hand. A middle-aged man approached. Chen was surprised when the man sought to his father. The man was from Chen's village and had recognized him. He offered to let Chen sleep on the floor of the room he rented and found him a job at a local garment factory cutting loose threads from shirts. Chen earned about two cents for each piece of clothing he trimmed and later found a bed in an apartment with eight other, mostly undocumented, Fujianese. The women at the factory, upon hearing Chen's story, would speak scornfully of his mother, calling her "coldhearted." How could she send him over here on his own? Chen soon became angry himself.

Chen was determined to continue his education, and so he persuaded an older man at the factory to act as his guardian. Three months into his stay, on Jan. 9, 1998, according to school records, he enrolled at PS 56, the local junior high school. Chen says that he would often nod off in class, exhausted from the late nights cutting threads and then returning to an apartment where the men, who worked in the restaurants, stayed up late playing mah-jongg and listening to music.

Chen became downcast and contemplated taking his own life, but he remembered a story that circulated in his village about an entire family who had been murdered because the son in America got considerably behind in his payments to the smugglers. And in his regular phone conver-
sations with his mother, she would often burst into tears, relating to Chen the threats from the loan sharks because he wasn’t sending enough money; she urged him to quit school so he could earn more. Chen sent most of his pay home, and remembers one week having to scrounge for change in his apartment to buy a dozen eggs and rice, which he subsisted on for a week.

Chen needed to make more than the $400 to $500 a month he was earning at the garment factory, so he persuaded one of the employment agencies to send him to a job at a Chinese buffet restaurant in Wildwood, N.J., where he could make $800 monthly. He dropped out of school (after just a few months) and stayed in Wildwood for nearly a year, longer than he remained at any other restaurant. His first job was as dishwasher, but because of his small stature, he needed a crate to stand on. It was, he says, the worst of a long list of places he worked.

There was nothing dramatic about this time, but rather a slow, grinding-away of the senses, of the soul, like dripping water that erodes the contours of a mountain. He was just a boy — the other workers called him “little brother” — who knew that if he didn’t send money home, his parents might be assaulted or, worse yet, killed. That is what he lived for — or rather against: to avoid such a calamity. So he worked 12- to 13-hour days with one day off each week. At each restaurant, the owner housed the employees, most of whom were undocumented, in crowded apartments, often five or six to a room. Since meals were also provided, Chen was able to live home almost his full paycheck. He kept many of the remittance receipts; the first is for $800, but they soon reflect his new earnings with amounts averaging $2,000. He traveled as far as Augusta, Ga., and Franklin, Va., and worked in some places, like Poughkeepsie, N.Y., more than once. Sometimes, Chen told me, he would last only a week or even a day at a new job. Maybe it didn’t pay as advertised. Or the owner just needed him to fill in for someone who was ill. Or Chen would try to pass himself off as a cook, since they made more money, and his ruse would quickly be discovered. One time, in Columbus, Ohio, the owner came to pick him up at the bus station, took a look at him and drove away. Chen called to plead with him and was told, No, you’re too young. He remembers one restaurant owner who retrieved him at the bus station and then made a short stop at a brothel, where the young Chen waited for his new boss amid Asian girls in lingerie. “Oh, it smelled so good,” he told me, laughing.

The loneliness was the worst, he said, on the long bus rides. It was there that all his worries would accumulate and that he would try to make sense of his parents’ decision to send him here. “I hated them,” he said. “I felt like my mom only cared about money, that she cared more about money than me.” He would speak to his mother regularly and assure her that everything was O.K. He didn’t want her to worry. “After a while, we didn’t have much to talk about,” he said. “I told her my life had improved.” Soon their once-lengthy conversations became short updates, rarely lasting more than five minutes.

Chen realized that one of the best restaurant jobs was taking orders over the phone, so he taught himself rudimentary English with a paperback book called “Practical English for Chinese Restaurants.” He practiced with the boss’s daughter in a town in West Virginia: she took a liking to Chen, and on one of his days off, they went on a date to McDonald’s. Toward the end, Chen made as much as $2,900 a month as a manager.

For Chen, the three and a half years he spent in the restaurants run together. Technically, he could have quit at any point along the way, but he knew the repercussions for his family. “It’s slavery because the children don’t have a choice,” says Susan Krehbiel, director of children’s services for the Lutheran Immigration and Refugee Service. They are pressured, Krehbiel adds, “by both fear and a sense of honor. They’re caught up in a transnational network that is so beyond their understanding, and they’re clearly just a small piece in a much larger drama that they have no control of.” In the mid-90’s, Krehbiel’s agency put a moratorium on placing Chinese children in foster care because the snakeheads tracked down the foster parents in an effort to get the children back to work.

At the Door, a refuge for wayward teenagers in New York City, the staff has in the last few years seen an increasing number of teenagers from China who, like Chen, came to the U.S. on their own. Hsin-Ping Wang, a Door counselor, says that some have come in because of suicidal thoughts or because they are completely lost and have nowhere to turn. Most, she told me, are under such pressure because of the debt that they have completely withdrawn; they remind her of autistic kids. One 17-year-old boy came to see her and said nothing other than that he had come to the U.S. with his older sister. Wang tried to coax his story out of him, but he remained silent, and after the session, he told Wang that he felt better. She has had others who have spent the time crying. “I think sometimes they just need someone to witness what’s happened to them,” she said. Most, she told me, come to see her once and then never return, mostly because of their frenzied work schedule but also because in the end there is little she can do for them. They have a financial bargain to maintain, and they know the consequences if they don’t.

If there is any way to measure the impact of these years on Chen, it is in taking a look at what happened immediately afterward, once his debt was paid off. “You didn’t have much time to think” while working in the restaurants, Chen told me. The experience didn’t fully sink in until it was behind him.

In January 2001, he returned to New York and enrolled himself at Liberty High School, where he performed well, achieving an 85 average. During that year, he continued to work, in a restaurant in Manhattan, to pay off the remainder of his debt. (By the summer, he had roughly $6,000 remaining, and so he traveled again, to work in West Virginia.) A teacher with whom Chen had shared his story arranged to have Chen move to Buffalo in January 2002; there, an immigration attorney offered to assist him in obtaining legal status. Chen lived in constant fear that he would be deported to China, where he might face imprisonment for leaving the country illegally and where he would bring shame to his family.

There is some dispute about what happens to those who are repatriated to China, in part because there have been so few. Last year, 540 Chinese were returned; 39,000 Chinese in the United States are currently under orders of removal, however, and the U.S. government is now trying to get the Chinese government to issue them travel documents. A Department of Homeland Security spokesman told me, “We have no reports of people who have been sent back to China being persecuted.” Others, though, are not so sanguine. Two years ago, Richard Posner, a judge on the U.S. Court of Appeals for the Seventh Circuit, vacated a deportation order for a Chinese youth because the immigration judge did not consider the evidence — numerous human rights reports from both U.S. and British organizations — that the asylum seeker might well be sent to jail or a labor camp if returned to China. Posner was concerned that the Chinese youth might be tortured upon his return, though he also conceded that “the treatment of repatriated Chinese by their government is to a considerable extent a mystery.” Indeed, one Chinese legal scholar I spoke with, Daniel Yu, said that while there is a law on the books in China that calls for a short jail sentence if a person leaves the country illegally, more than likely whatever punishment there might be is at the discretion of local officials.

In Buffalo, Chen unknowingly wandered into the protective arms of four women: a congressman’s wife, a high-
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school teacher, a counselor at a runaway shelter for young men and an immigration attorney. Each saw the same drive and melancholy in Chen and so reached out to help him. The congresswoman's wife, Pat LaFalce, became the closest. She met Chen in his early days in Buffalo when he briefly stayed at a refugee center where she volunteered. "He was always on edge," she told me. "He always reminded me of a jack-in-the-box because he couldn't sit still." At a college basketball game to which LaFalce had taken Chen, he first opened up to her about his journey, and he shared with her that he didn't understand why his parents sent him away and on his own. "Why, why, why?" he would sing. "My maternal instincts kicked in," she told me, and from that point on, LaFalce did what she could to help Chen gain his footing.

LaFalce took Chen on outings, got him glasses and enrolled him in Grover Cleveland High School. At the school, Mary Claire Kosek, who taught English as a second language, remembered him as being restless about life. "He worked so hard," she recalls. "He was unstoppable." Chen entered midway through the school year and insisted on catching up on the work he had missed. "Sometimes," she said, "he would just put his head down, and I'd ask him what's wrong? He wouldn't say anything. You could just see it in his eyes. Sometimes he was just so sad. I mean so sad."

Chen found more permanent lodging at the Franciscan Center, a shelter for runaways, where he would live for a little more than a year. In the early months, the staff worried about him. He seemed unable to relax and kept to himself. The other boys interpreted Chen's distance as snobbery; Chen would sometimes chastise them for watching television and not studying, and he rarely joined them at the movies or in the park. They would confront him: Why did he think he was better than them? they would ask. But it was his inability to slow down and his low spirits that most concerned Maureen Armstrong, a case manager who is now the home's assistant director. A few weeks into Chen's stay, at 9:30 one night, Armstrong received a call at home from a staff member on duty. Chen, she was told, had unraveled. Armstrong rushed to the shelter and found Chen curled up in a fetal position on the floor of his room by his dresser. He was wailing like a wounded animal. The other boys were standing in the hallway, frozen, trying to assure Chen that it would be O.K. She could hear him, through the sobs, telling the others they were wrong, that it wasn't going to be all right. Armstrong got on the floor and held Chen, rocking him, urging him to take slow, deep breaths. "I've been a good son — I've been a good son," Chen sputtered, his nose running, his chest heaving. "Why did they do this to me? I hate them for making me be alone. My family, why'd they turn their back to me?" It took

Armstrong well past midnight to calm him.

The experience unnerved Armstrong. "I've been doing this for 30 years," she said, "and I can tell you what I saw that night shook me to my core. The only thing I could tell him was that his parents meant well, and somewhere down the road it'll make sense. Your parents will explain it someday."

After that, if Chen had a particularly hard day, usually because he was stressed about his efforts to obtain legal status, Armstrong would have him sleep on the couch in the downstairs living room so that a staff member could keep an eye on him. The other boys, too, now felt that they understood Chen better, and they set aside a room in the house where he could do his homework. On weekdays they often agreed to do his chores so he could study. He would do their chores on the weekends in return. What most weight on Chen was his future, whether he might be returned to China. Anne Doeberl, who at the time was an attorney at the International Institute of Buffalo, which provides services to refugees and new immigrants, at first didn't know what to do with Chen's case or if he even had one. Political asylum didn't appear to be an option, since he couldn't make the claim that he had been persecuted in China. Another consideration was Special Immigrant Juvenile status, which applies to children who enter the country by themselves and who can't return to their families, usually because of abuse or abandonment. But you need to be under 18, and Chen was about to celebrate his 19th birthday. Doeberl considered telling Chen to disappear, to go underground; she feared that alerting the authorities to his existence would get him deported.

The final option was a T-Visa, which was so new it was untested; it was meant for victims of trafficking. During the 1990's, Congress became alarmed at the large numbers of women from the old Soviet bloc who were being brought into this country as prostitutes, usually against their will, and so Congress passed the Trafficking Victims Protection Act of 2000, which included relief for those who had been subjected to sexual or labor exploitation.

Doeberl thought she could make a strong argument that Chen, because of his youth, had not come here of his volition and that once here was in debt bondage, forced to work because of the threats to his family. What undoubtedly helped Chen's case is that he held on to many of the receipts for the money sent back to his family and that he held on to his immunization forms when he was briefly enrolled in junior high school in Chinatown. It was evidence that he entered this country at age 14. Since Chen's case, I've learned of two other Fujianese emigrés, both girls, both sent to this country under similar circumstances, who have received T-Visas. (Only 652 T-Visas have been issued.) Suzanne Tomatore, the lawyer for one of those girls, told me that until she met Chen, who had come to her for assistance renewing his work permit, and heard his story, she
would have considered his situation smuggling. "It's one of those things where you know something wrong happened," said Tomatore, who is the director of the Immigrant Women and Children Project at the New York City Bar Association. "The biggest factor is that a child doesn't have the capacity to make that decision" to emigrate. Tomatore said that, in fact, before she met Chen, a youngster who had a similar story approached her for help, and she went back and forth about how best to assist him. In the end, he was too terrified of the snakeheads — he was still paying off his debt — to fully cooperate and eventually drifted away. With his T-Visa, Chen would be eligible to become a permanent resident, the first such step toward citizenship.

Chen graduated seventh in his class at Grover Cleveland and won a couple of small scholarships to attend the University at Buffalo, where he completed his freshman year. Then, suddenly, he decided to return to New York City. He says it was in part because he missed being around other Chinese, but he had some Chinese friends in Buffalo, including for a while a Chinese girlfriend. He once asked her why he felt compelled to keep moving. "It's just life," he said. "You have to survive."

Pat LaFalcce remembers getting a call from Chen, asking if she could pick him up at a restaurant where he was working part time. When she got there, he had a suitcase, and she realized this was it, he was on the go again. Chen asked her to drop him off at the house of a friend, and she did, leaving him on the stoop of his friend's house, where he sat to wait for his ride to the bus terminal. For a moment, LaFalcce sat in the car looking at Chen. "His expression turned very dark," she remembers. "His eyes were darting back and forth, back and forth. Just for a minute I thought about getting out of the car and telling him he was a wonderful example, but I thought, 'It's just going to make him very uncomfortable. I knew I might not see him again. So I just kind of waved, and he kind of waved back.'" Chen talks of LaFalcce, who, when he entered college, gave him the computer he saw in his room, as one of the most important people in his life, but with the exception of a couple of phone calls and e-mail messages, he has not been in touch. Chen has learned not to look back.

DURING MY LAST visit with Chen, we walked to the park where he would occasionally come to have a catch with himself. We sat on a bench, the late-afternoon March sun warming us. Chen seemed preoccupied. At one point, he rested his head on the bench's cement support, his eyes closed, his mind elsewhere. He told me that he was trying to arrange to have his parents come to the U.S., which as a trafficking victim he is permitted to do. He wasn't sure if they would choose to stay or just visit, but he was clearly looking forward to seeing them again. In conversation, he told me he had come to forgive them. He had come to understand their actions this way; they had honored him by sending him to the U.S.; they had put their trust in him. What if, he said, he had come here and didn't work? What if he was lazy? What if he joined the gangs? They thought enough of him, he told me, to send him on his own, knowing that it was on his shoulders to earn enough money to repay the smugglers' debt. "They trusted me," he said. It seemed only natural that a child would look for ways to explain that which didn't make sense, especially when it comes to the people he loves most.

But it wasn't this revelation that most surprised me that afternoon. Rather, it was the news that he had left his job at the New York Asian Women's Center, where he had been for nearly a year and where his supervisor had told me she treasured his uncanny ability to connect with the clients. "It was too depressing," Chen told me. One incident in particular had unsettled him. The teenage son of a woman staying at the center's shelter had been acting out, and Chen was appointed to ask him to leave. The boy was apparently depressed and angry, and Chen talked with him on one of their Fujianese dialect; a co-worker of Chen's remembers the boy bursting into tears. Chen saw himself in that boy, and he told me that he did all he could to keep from crying himself. He also said that the job didn't

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pay enough and that he needed to earn money to pay his parents’ way here. It was then that he mentioned that he planned to return to restaurant work. He figured he could make good money there since his expenses would be kept to a minimum.

Chen, I had come to learn, can be hard on himself. Once, walking through his neighborhood in Flushing, he told me: “I feel like I’m in between, that I’m stuck in the middle. I don’t feel like I’m like a peasant who came to the United States to work in the restaurants. And I don’t feel like one of those people who are really smart and can interact with regular Americans. The reality is, I started late. I have too many problems that distract me. My loneliness. I don’t have a support network. That’s the main problem, I feel lonely.”

Trying to boost his spirits, I said, “You’ve had a remarkable life.” To which Chen replied: “I prefer not to have it. I wish I was still a child. I wouldn’t have to think very much.”

The last time I spoke with Chen, he was in Pennsylvania working at a restaurant. While we were on the phone, he asked me if I could go on the Internet to find the phone number for the admissions office at Stony Brook University. He told me that he wanted to inquire about financial aid. A week back on the restaurant circuit, and Chen was thinking about his next move.

ANSWERS TO PUZZLES
OF JUNE 4, 2006

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