

Meeting the Legal Needs of
**Child Trafficking
Victims:** *An Introduction for Children's
Attorneys & Advocates*



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Primary Authors:

Eva Klain & Amanda Kloer

Contributing Authors:

Diane Eason

Irena Lieberman

Carol Smolenski

Robin Thompson



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(312) 988-6101
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Preface

The American Bar Association is pleased to provide you with *Meeting the Legal Needs of Child Trafficking Victims: An Introduction for Children's Attorneys & Advocates*, which we hope will serve as an important and timely resource for you in your practice representing child trafficking victims. This publication was developed pursuant to a generous grant from the ABA Enterprise Fund, as part of a collaborative effort by several ABA entities aiming to provide attorneys with leadership and training to better represent victims of human trafficking.*

Children under the age of 18 are victims of human trafficking at alarming rates in the United States. Child trafficking victims often initially present as victims of other crimes, and may be victims of multiple crimes, including trafficking. While many of the legal remedies available to adult victims of human trafficking are also available to children, the legal needs of, and remedies available to, child victims can be distinct. As a result, it is imperative that attorneys who represent child victims of crime are able to identify if their clients are trafficking victims as well and be familiar with the range of legal remedies available to them and the relevant resources in their communities.

Like other cases involving child clients, child trafficking cases are often complex and multi-dimensional. This guide serves as an overview of the unique issues and remedies that often present in such cases, and it is not intended to be comprehensive. We have included references to many other resources on related topics throughout.

Through this guide, we hope to support your efforts to serve a very vulnerable population in desperate need of high-quality legal assistance. We applaud you for the heroic work that you do on their behalf.

Regards,

Eva Klain and Amanda Kloer

American Bar Association Civil Legal Remedies for Human Trafficking Victims Project

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*The ABA Enterprise Fund collaborating entities are the Commission on Domestic Violence, Commission on Immigration, Rule of Law Initiative, Center on Pro Bono, Commission on Youth at Risk, Section of Individual Rights and Responsibilities, and the Center for Human Rights.

Author Biographies

Eva Klain is Director of the ABA Center on Children and the Law's Child and Adolescent Health Projects, where she examines legal responses to the health and developmental needs of infants and toddlers, teen pregnancy, statutory rape, domestic trafficking of children for sexual exploitation and other issues. She has published several monographs, manuals and a bench book on criminal prosecution issues, including monographs on the prostitution of children and child sex tourism and the criminal justice system response to child pornography. Eva previously worked on criminal child abuse issues for the National Center for Prosecution of Child Abuse and spent a year working with the High Court of Prague to improve the Czech Republic's response to child maltreatment. Eva received her Bachelor of Arts degree from Cornell University in 1986 and her law degree, *cum laude*, from Georgetown University in 1989.

Amanda Kloer is the Project Coordinator for the ABA Commission on Domestic Violence National Leadership and Training on Civil Legal Assistance for Human Trafficking Victims Project and the Legal Assistance for Lesbian, Gay, Bisexual and Transgender Victims of Domestic Violence. Amanda has been advocating for sexually exploited women and children for six years, including founding and leading a local grassroots advocacy organization in 2004 and working with at-risk street youth in Tanzania and Zanzibar in 2005. Prior to joining the Commission, Amanda conducted research and developed educational outreach materials on international and domestic sex trafficking for Shared Hope International. She has participated in the creation of several documentary films about sex trafficking, as well as co-authored several reports on human trafficking. Amanda received a BA *cum laude* from Elon University in International Studies and Social Justice Theory.

Contributors

Diane Eason is a 2002 *cum laude* graduate of California Western School of Law. After graduation, Diane was a fellow at the Center for Human Rights and Constitutional Law in Los Angeles, California where she worked on impact litigation on behalf of immigrants, including the ongoing *Reno v. Flores* litigation on the rights of detained unaccompanied children. Most recently Diane served as the Unaccompanied Children's Pro Bono Coordinator for the South Texas Pro Bono Asylum Project (ProBAR) in Harlingen, Texas, a project of the American Bar Association, the State Bar of Texas, and American Immigration Lawyers Association.

Irena Lieberman is the Director of the ABA Commission on Immigration, which promotes due process rights for immigrants and refugees. Irena has edited and overseen the development of several ABA publications, including *Standards for the Custody, Placement, and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*. Irena has extensive experience litigating complex gender-based asylum cases, serving as co-counsel for oral arguments before the BIA in *Matter of Adeniji*. Appearing often as a presenter at both international and local venues, she has spoken on topics such as domestic violence and political asylum, the trafficking of women and girls, credibility and evidence in gender-based claims, and remedies for women fleeing gender apartheid in Afghanistan. Irena's media appearances include CNN World Report, Radio Free Europe, Arts & Entertainment, the Washington Times, Interpreter Releases, the UN Chronicle, and the Washington, D.C., Legal Times. Publications to which Irena has contributed include *Women for Afghan Women: Shattering Myths and Claiming the Future* (edited by Sunita Mehta, October 2002, Palgrave

Macmillan), and the American Bar Association's Section of Individual Rights and Responsibilities' Human Rights Magazine.

Carol Smolenski has worked in the field of children's rights for sixteen years. She was liaison to the United Nations for various NGOs. In 1996 she chaired the children's rights caucus for the U.N. Conference on Human Settlements in Istanbul, Turkey. Carol has a BA degree from Rutgers University, a Masters Degree from Hunter College and an M.Phil. degree from Columbia University. She is a recognized expert on the issue of commercial sexual exploitation of children in numerous venues ranging from the United States Senate, to the United Nations, to the New York City Council.

Robin Hassler Thompson, M.A., J.D., of Robin H. Thompson & Associates, is the Co-Director and a consultant to the "Protections for Child Victims of Trafficking Project" of the Florida Immigrant Advocacy Center. In addition to this project, she regularly consults with a wide range of clients including universities and state and national public policy and human rights advocacy groups. She has directed numerous statewide domestic violence and anti-trafficking projects in Florida, lectures extensively and has written for both national and international publications. Robin is also co-founder of International Justice Connections, Inc., a non-profit social justice advocacy organization and is a liaison to the ABA's Commission on Domestic Violence. Prior to beginning her work on human trafficking, she served as the Executive Director for the Florida Governor's Task Force on Domestic and Sexual Violence from 1993-98 and on the National Advisory Council on Violence Against Women.

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Introduction

What Will I Learn From This Guide?

The objectives of this guide are to enable you, as an attorney or advocate, to:

- ▶ Recognize that child victims of other crimes may also be victims of trafficking;
- ▶ Identify the key legal issues, remedies and causes of action available to child victims of trafficking and commercial sexual exploitation; and
- ▶ Locate and use existing in-depth resources on the issues addressed in this guide.

It is important for attorneys to understand that judges, law enforcement, child protective services, and other agencies may not view an adolescent who meets the legal definition of a child trafficking victim as such. This is especially common with child victims of domestic commercial sexual exploitation. In many cases, the children may not view themselves as trafficking victims. For this reason, it is important for you as an attorney to assess a case with a full understanding of the remedies available under all applicable laws—both traditional sexual exploitation laws and more recent human trafficking statutes—in order to discern the most appropriate remedies for your client.

The Need for Competent Legal Representation in Civil Law Matters Involving Child Trafficking

Children and teens under age 18 are a large portion of trafficking victims, comprising nearly one-half (49%) of trafficking victims globally.¹ According to a study on *The Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico*, approximately 33% of unaccompanied minors over age 10 fall victim to sexual exploitation. Approximately 20% of the children identified in the study were trafficked within the U.S. by well-established prostitution networks and were frequently required to repay their trafficking debts through commercial pornography and prostitution.² Determining how many unaccompanied children enter or are present in the U.S. every year is a difficult task, but the U.S. government detains approximately 7,000 to 9,000 unaccompanied children each year,³ which reflects only a portion of the unaccompanied children that enter the U.S. annually.⁴

¹ *Assessment of US Government Activities to Combat Trafficking in Persons* (United States Department of State, 2005), available at <http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf>.

² Richard J. Estes & Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico* (University of Pennsylvania 2001), available at http://www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf.

³ Olga Byrne, Vera Inst. of Justice, *Unaccompanied Children in the United States: A Literature Review* (April 2008), available at http://www.vera.org/publication_pdf/478_884.pdf.

⁴ *Id.* at 31.

As a Child’s Attorney/Advocate, Why Should I Learn About Human Trafficking?

We believe that there is much to be gained from attorneys working with children to develop a greater understanding of the nature of child trafficking and the possible remedies available to their trafficked clients. Serving a child client through the human trafficking lens in addition to other possible crimes to determine victim status increases the likelihood of fully addressing the client’s needs. Many child trafficking victims have access to the same legal remedies as adult victims. However, it is also essential for attorneys to understand what additional remedies may be available to their clients as a result of their status as minors. Additionally, children’s attorneys who develop a knowledge base in child trafficking will be able to provide more comprehensive and appropriate legal services to their trafficked clients.

Commercial Sexual Exploitation of Children

While commercial sexual exploitation of children is often used as a synonym for child trafficking, it is important to recognize that this is one form of child trafficking. Commercial sexual exploitation of children, however, can be used appropriately as a synonym for child sex trafficking, since all minors under the age of 18 are considered sex trafficking victims if they are engaged in commercial sexual activity of any kind. Commercial sexual activity occurs when anything of value is exchanged for a sexual act.

CHAPTER ONE

What is Child Trafficking?

What is Child Trafficking?

Human trafficking of both children and adults involves a pattern of power and control used to extract labor or services, often, but not always, for financial or material gain. U.S. law, through the Trafficking Victims Protection Act (TVPA), defines “severe forms of trafficking” as:

Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁵ (emphasis added)

Children induced to perform commercial sexual acts are therefore, by virtue of their minority, victims of severe forms of trafficking under the TVPA. Children in labor trafficking situations, on the other hand, must have been subject to force, fraud or coercion in order to be considered trafficking victims.⁶

Prior to the enactment of the TVPA, child sexual exploitation through prostitution was primarily addressed on the federal level through the White-Slave Traffic Act, currently known as the Mann

Act.⁷ Section 2421 of Title 18 prohibits the transportation of an individual in interstate or foreign commerce with the intent that the person engage in prostitution or an unlawful sexual act. While this section applies to minors, more directly applicable is § 2423, which prohibits interstate transportation of a minor with the intent that the minor engage in criminal sexual activity. This section also addresses child sex tourism.⁸

How Do I Identify Child Trafficking Victims Among My Clients?

Trafficking of children involves the recruitment, transport, harboring or receipt of children for the purpose of exploitation. Child trafficking can take various forms, including but not limited to:

- ▶ Trafficking for commercial sexual exploitation, including sex tourism;
- ▶ Forced labor (sweatshops, agriculture, etc.);
- ▶ Domestic servitude or slavery;
- ▶ Illegal international adoption;
- ▶ Trafficking for early and/or servile marriage;
- ▶ Recruitment as child soldiers; or
- ▶ Some combination of the above (i.e., domestic servitude that includes sexual exploitation).

⁵ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 (8) (Thomson Reuters/West 2003).

⁶ It is important to note that state law may also define child trafficking, which may or may not comport with the federal law. Check your own state definitions of child trafficking, which may differ from the federal definition.

⁷ Mann Act of 1910, enactment repealed & provisions contained in 18 U.S.C. § 2421 et seq. (Thomson Reuters/West 2003).

⁸ 18 U.S.C. § 2423 (2007).

Some forms of child trafficking are hidden—such as production of pornography⁹ or sexual performances—while others such as prostitution are closely tied to life on the streets.¹⁰ While child labor trafficking is sometimes very visible in other countries, it can remain hidden in the U.S. in factories and agricultural work settings. The common characteristic of trafficked children, however, is not the visibility or invisibility of their situation or the form of their trafficking, but rather the exploitation they experience. It is also important to note that children may be victims of more than one form of trafficking at the same time.

Case Study

Neelam came to the U.S. when she was sixteen to live with her aunt and uncle in Boston.¹¹ Her aunt had promised Neelam’s parents she would send Neelam to school. However, Neelam’s aunt told her that she would be pulled out of school and shamefully sent back to India if she didn’t cook and clean for the family from the time she got home from school until well past midnight. Neelam obeyed her aunt for awhile, but she was so tired she eventually asked to go back to India. Neelam’s uncle then raped her and sold her to a co-worker for sex. He told Neelam that she could never return to India now that she was a “street woman” and would have to stay in the U.S. and work for them. Neelam knew it would cause her family shame if they knew she had “become” a prostitute. Neelam was a victim of both child labor trafficking and child sex trafficking.

Unfortunately, child victims of crime are not rare. Child trafficking victims are often victims of related or concurrent crimes, or may appear to be a victim of a crime other than trafficking. Some crimes that are commonly concurrent with child trafficking, or which child trafficking may initially appear to be are:

- Domestic violence
- Child abuse or neglect
- Child sexual abuse
- Child pornography
- Child labor violations

It is important to screen your client especially carefully for trafficking if you determine one of these crimes has been committed, since they are often interrelated or concurrent. *Figure 1* depicts the overlap of some commonly co-occurring crimes with child trafficking.



Fig. 1 Crimes That May Co-Occur with Child Trafficking

⁹ It is important to keep in mind that child pornography is an image of child sexual abuse. If an individual sexually abuses a child and creates a video or photo image of that abuse, that individual has engaged in production of child pornography, but not necessarily child trafficking. When the child has been recruited, transported, harbored, or received and some commercial element is introduced in the production of that child pornography, then that individual has also engaged in child trafficking. The analysis of whether trafficking occurred would be at the point of production of that image, not necessarily the distribution of the image. The victim may be entitled to trafficking remedies for the actual sexual act (production) and separate remedies for distribution of the image under child pornography statutes.

¹⁰ See Eva J. Klain, Nat’l Ctr. for Missing & Exploited Children. *Prostitution of Children and Child Sex-Tourism: An Analysis of Domestic and International Responses* (1999), available at http://www.missingkids.com/missingkids/servlet/ResourceServlet?LanguageCountry=en_US&PageId=754

¹¹ Throughout this guide, names and identifying details have been altered to preserve confidentiality.

Case Study

Grant is a 13-year-old U.S. citizen and was living with his stepfather Mike since his mother died three years ago.¹² Grant revealed to his school guidance counselor that his stepfather was sexually abusing him. At first, the abuse was only from Mike, but then Mike recruited Grant to come to a party his friends were having, and Mike's friends abused Grant as well. Mike convinced Grant that if he didn't have sex with Mike's friends when they came over, Grant would be kicked out of the house and forced to live on the streets. Upon asking some additional questions, you determine that Mike's friends were buying him alcohol, cigarettes, and concert tickets in exchange for abusing Grant at the parties. Because his stepfather was paid in goods of value, Grant is a victim of child sexual abuse and child trafficking.

These interrelated crimes can also cause a child to be particularly vulnerable to child sex trafficking, even if the two crimes did not occur at the same time.

Case Study

José was very scared of his father while growing up.¹³ José's father would shout at his mother and beat her often in front of José and his little brother. Once, when José tried to protect his mother, his father threatened to beat him and his little brother. The day José turned 15, he ran away from home, hoping to go to the United States, find a job and eventually bring his mother and brother from Honduras to save them from his father. José met Raul, who said he would take him to Arizona and give him a good job working in a restaurant. When José got there, Raul told him he owed \$30,000 for his transportation from Honduras, which he would have to pay back before he could keep any money. When José tried to run away, Raul told him he would be deported and his dad would beat him up for failing. The crime of domestic violence made José vulnerable to becoming a victim of child trafficking.

¹²See *supra* note 11.

¹³See *supra* note 11.

Commonalities in Child Trafficking Victims

Child trafficking victims, like other child victims, come from many backgrounds and include both boys and girls across a wide range of ages. Children are trafficked to the U.S. from all regions of the world and represent a variety of different races, ethnic groups and religions. They may be brought to the U.S. legally or smuggled in. Internationally trafficked children, especially adolescents, may be lured overseas to the U.S. through the promise of work or school and the opportunity to send money back to their families. Children are also vulnerable to kidnappers, pimps, and professional brokers. Some children are sold to traffickers by their families, who may or may not have an understanding of what will happen to the child. U.S. citizen children may also be trafficked within the U.S., and come from multiple racial groups and socio-economic backgrounds.

Runaways: Many youth, especially U.S. citizen children trafficked within the U.S., run away from problems at home and may be exploited as a result of emotional vulnerability, homelessness and the need to survive. Youth who run away from home and engage in “survival sex”¹⁴ often find themselves vulnerable to pimps and traffickers involved in prostitution networks. According to a study by Richard Estes and Neil Alan Weiner, approximately 55% of girls living on the street engage in formal prostitution.¹⁵ This means that a child client who has been homeless or living on the street for any amount of time has a great likelihood of having been sexually exploited or trafficked.

Commercial sexual exploitation of children exposes them to increased victimization (beatings, rape and sometimes murder); increased involvement with delinquent activities and the juvenile justice system;¹⁶ increased risk for a wide variety of medical problems and health-compromising behaviors such as high rates of pregnancy, sexually transmitted diseases including HIV infection, depression, and risk of suicide; and increased rates of alcohol and substance abuse.¹⁷

Case Study

Gina ran away from home when she was 13 because her mother, a crystal meth addict, would alternately go into violent rages and be absent from the house for days.¹⁸ She took the bus from her small hometown in California to Los Angeles, hoping to become an actress. When she got off the bus, she sat in the station for hours wondering what to do. Gina was approached by a man named Carlos who was a little older, but very nice to her. He told Gina she was beautiful and invited her to stay with him while she looked for acting jobs. Carlos bought Gina clothes and food and told her he would marry her when she was 18 and they would be a family. A couple of weeks later, Carlos told Gina they had run out of money, and she would have to prostitute herself to support them. Gina did what Carlos asked because she loved him and she believed they would have a good life together one day. Gina became vulnerable to sex trafficking after running away from home.

¹⁴“Survival sex” is the exchange of sexual activities for food, money, drugs, shelter or other items of value. There is some debate as to whether or not minors who engage in survival sex without a pimp or trafficker meet the legal definition of a trafficking victim, since the exploitation lacks an embettered third party to be prosecuted for the crime of trafficking.

¹⁵Estes & Weiner, *supra* note 2.

¹⁶*See, e.g.,* Finkelhor, Cross & Cantor, *How the Justice System Responds to Juvenile Victims: A Comprehensive Model*, Juv. Just. Bull., December 2005.

¹⁷Klain, *supra* note 6.

¹⁸Klain, *supra* note 10.

Child trafficking victims forced into prostitution can suffer especially serious, lifelong consequences that affect their physical, psychological, spiritual, and social development. Children who are trafficked for sexual purposes have often suffered previous physical, psychological, or sexual abuse. The resulting trauma may affect the relationship a child client is able to forge with her attorney. It is important to be mindful of any lack of trust in adults or an exaggerated need to please.

Criminal Activities: Older victims may have engaged in delinquent or criminal activity, which causes others, including law enforcement officials, to view them more as offenders than victims. These acts may not appear related to the victim's trafficked status (misdemeanor theft, driving without a license, etc.), but may be the result of it. Lawyers representing the youth in these related cases need to advocate for their clients and show how the youth's status as a trafficking victim precipitated the commission of the alleged juvenile criminal act(s) or status offenses. In addition, trafficked youth often have a distrust of adults, even those who may be attempting to help them. These are all important characteristics to remember when representing child trafficking victims, because they will have an effect on the child's ability to relate to the attorney and other adults who are in a position to help them.

Vulnerability and Dependence on Adults:

One reason children are especially vulnerable to trafficking is their physical, emotional, and financial dependence on adults. Physically, adults hold positions of authority and control over children's daily lives. Children are also trusting of the adults who are supposed to take care of them; they do not have a choice of who those caregivers are. Children have a great emotional dependence on adults and a need for affection and attention from parents and others, which can be exploited by traffickers. When children and teens are denied love and emotional support from family members,

they seek that affirmation from outside. Pimps may present themselves as an adoring boyfriend, win a child's trust and then coerce the child into prostitution. Child victims are also intentionally deceived by traffickers based on their emotional naiveté. Traffickers may exploit a child's desire to earn money to support his or her family in order to deceive that child into a situation of labor or sex trafficking. The victim may feel an allegiance to parents or family who are dependent on her for the money she provides. Traffickers often obtain information on the child's family during the early stages of trafficking which is later used to threaten the child. The trafficked child may feel the need to maintain absolute obedience to the trafficker from fear of reprisal or harm to him/herself or family.

Children are also financially dependent on adults. Child trafficking victims may be reluctant to leave or seek services because, despite their dire circumstances, their basic needs are being met. This reluctance is compounded when victims don't speak the language or understand the culture, when they don't understand their legal rights or have no legal status in the U.S., and when they have no other way of supporting themselves. Financial dependence is one significant reason child trafficking victims may be unwilling or unable to seek legal assistance.

These dependencies are amplified for children with disabilities, putting them at even greater risk for trafficking. Children with physical disabilities are more physically dependent on someone else to take care of them. Children with learning disabilities may be more vulnerable to manipulation because they lack the emotional or communication skills to understand and resist exploitation. Social isolation as a result of a disability may also lead to a greater need for acceptance and approval outside the home. Furthermore, many developmental disabilities can be hard to detect, which can impact representation as well as referrals to other services.

Adolescent Defiance and Peer Pressure:

Adolescence is a time filled with significant physical, psychological, and social development that can make a minor more susceptible to trafficking. Older youth are more susceptible to labor trafficking, since they are capable of performing physical labor and higher mental function tasks, like working in a restaurant. They are also more likely to run away from home and end up on the streets, thereby exposing them to potential sexual exploitation.

Adolescent defiance and rebelliousness may also lead to children developing a new peer group and having new experiences. This may involve exposure to drugs and alcohol or sexual activity. Traffickers can take advantage of defiance in adolescents by giving them tastes of the forbidden, adult world in exchange for their exploitation. Victims may be less likely to seek services if other members of their peer group are in trafficking or other abusive situations they regard as acceptable.

Case Study

Trina was excited to meet Damien on the first day of high school.¹⁹ He was a senior, and she was flattered he paid so much attention to her. Trina had drunk a little alcohol previously, but her brother told her cocaine was the best drug, and she revealed to Damien that she was curious. Damien invited Trina to a party where he convinced her to try cocaine for the first time. Damien and Trina used cocaine together regularly until Trina was addicted. One day, Damien told Trina they had run out of money for cocaine, and that she would need to prostitute herself to earn more money. Damien kept all the money Trina earned and provided her with enough cocaine to keep her addicted. Trina didn't know how to stop or get help for her addiction. Damien used Trina's curiosity about drugs to coerce her into a trafficking situation.

Screening for Child Trafficking

Clients who are victims of crimes other than or in addition to trafficking may display signs of trafficking victimization. Some signs that may indicate trafficking offenses include:

- Unexplained absences from school (truancy);
- References to frequent travel to other cities or locations;
- Physical signs of abuse such as bruises or other trauma, withdrawn behavior or fear;
- Lack of access to own identification documents;
- Symptoms or signs of drug use or addiction;
- References to sexual situations or knowledge of commercial sex industry beyond age-appropriate norms;
- Significantly older “boyfriend/girlfriend”;
- Significant or sudden increase in high cost possessions.

In screening your clients, an additional issue that may arise is determining whether the client actually is a minor who might be entitled to additional benefits or services or who qualifies for additional legal remedies. Often the lack of documentation for foreign-born trafficking victims makes such a determination problematic. In addition, there may be a need to review any differences or gaps between the age of consent laws in federal and state jurisdictions. A client who may not be eligible for legal remedies based on age under a state law that sets the age of consent at 16 may be eligible as the victim of a federal trafficking offense, for which the age of consent is 18.

¹⁹See *supra* note 11.

Interview Questions

The following questions may be useful in screening your clients for child trafficking.²⁰ Depending on the age of your client, use language that is developmentally and age appropriate. Direct, concrete questions are best when questioning young children who have difficulty understanding abstract questions.

- Were you offered a job?
- Were you told to do anything you did not want to do?
- Did anyone promise you something if you did? Who made the promises?
- Were you paid? Did you get to keep the money?
- Were you ever hurt?
- Did anyone ever say he or she would hurt you, your friends or your family?
- Were you ever afraid? If yes, why?
- Were you able to talk to your family or friends?
- Where did you sleep? Did you sleep in the same place every night?
- Did you travel to different places?
- What did you do during the day (or, for younger children, “when the sun was out”)?
- What did you do at night?
- Where did you eat? How many times a day did you eat?
- Did you ever see a doctor?

The following additional questions may be useful for foreign-born clients, internationally trafficked clients, or clients who are not U.S. citizens or legal residents:

- How did you come to the United States?
- Do you have any papers that you used to come into the country?
- When did you last see your papers?
- Did you come to the United States alone? Who did you come with?

In interviewing a potentially trafficked child, you must use several of the same considerations as you would when interviewing child victims of other crimes. For more general information on interviewing children, please see Chapter 4. However, there are some special considerations for interviewing a child trafficking victim.

Establishing Trust: The establishment of trust is the most important element in a relationship with a trafficking victim. Trafficking victims will likely lack trust in authority figures, especially if you share characteristics (age, race, ethnicity, gender, appearance) with their traffickers. It is important that you explain who you are, your role, and the purpose of the interview to help them understand that you are working on their behalf. Child trafficking victims often experience a great deal of shame and self-blame and may decline to answer questions or modify answers to gain approval, as

²⁰Based on sample questions from Katherine Kaufka, *T Nonimmigrant Visas and Protection and Relief for Victims of Human Trafficking: A Practitioners Guide*, Immigration Briefings, September 2006, at 1.

many have learned that pleasing adults is the only way to survive. Children should be assured that there are no wrong answers and encouraged to tell the truth, while you acknowledge that telling the truth may be painful. Limiting the number of adults present and ensuring that the child understands s/he can terminate the interview are some of the ways you can empower the child during the interview process.

Assessing Competency: Through your interaction with your client, you can also assess his or her competency. While judges make competency determinations, children as young as three can be deemed competent to testify about their experiences. As most trafficking victims are older, the significant question is whether the child is able to perceive, recall and relate facts accurately, understand the obligation to tell the truth, and understand the difference between truth and falsehood. These can be tested against objective facts.

Working with an Interpreter: Ideally the interview should be conducted directly in the child's native language; however, when this is not possible a qualified interpreter should be provided²¹ who is both linguistically and culturally competent.²² A

culturally competent interpreter can not only make the child more comfortable but also offer helpful information on cultural values, lifestyles, social environment, and nonverbal cues as to comfort level and comprehension.²³ The child should be comfortable with the interpreter's background (country, ethnic, social or political group)²⁴ as well as the interpreter's gender and age.²⁵ At the same time, the interpreter should be screened to ensure s/he is an independent third party with no connection to the potential trafficker(s).²⁶ The interpreter should also be screened to ensure s/he will be neutral and unbiased in his/her interpretation given the likely subject matter of the interview and the child's background.²⁷ Neither family and friends of the child, nor other trafficking victims, should be used as interpreters.²⁸

The interpreter should be trained on human trafficking, interviewing children and appropriate terminology for children, as well as sensitized to the private and traumatic nature of the material they will likely be interpreting.²⁹ Interpreters should be trained not to show shock, dismay or other strong emotional reactions as children are easily influenced

²¹See UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, available at http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf (last visited April 13, 2009).

²²See U.S. Department of Health and Human Services, *Resources: Identifying and Interacting with Victims of Human Trafficking*, available at http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_social/identify_victims.html, (last visited April 13, 2009).

²³See Julie C Macdonald, Lutheran Immigration & Refugee Serv., *Working with Refugee and Immigrant Children: Issues of Culture, Law and Development* (1998).

²⁴*Id.*

²⁵See Florida Coalition Against Domestic Violence, *Human Trafficking Service Provider Manual for Certified Domestic Violence Centers*, available at <http://www.fcadv.org/downloads/legal/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf> (last visited September 4, 2008), which along with many other such guides, recommends interpreters of the same sex.

²⁶See UNICEF, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, available at http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf, (last visited September 4, 2008), which lists a variety of safeguards needed to protect child trafficking victims when interpreters are involved.

²⁷See International Organization for Migration, *Handbook on Direct Assistance for Victims of Trafficking*, Appendix I (IOM 2007), which recommends screening for biases against the child's background as well as the activities the child was forced to engage in.

²⁸See Florida Coalition Against Domestic Violence, *supra* note 25. This is important to protect against connections to traffickers as well as the child's comfort level sharing traumatic and self-perceived shameful events with individuals they know personally.

²⁹See International Organization for Migration, *supra* note 27, at Appendix I, which includes additional recommendations for training and sensitizing volunteers.

by adult reactions.³⁰ Finally, the interpreter must clearly understand that all information discussed during the interview is confidential and the importance of confidentiality not just for the attorney-client privilege, but also for the safety of the child when traffickers are involved.³¹

Reducing Trauma: Often the trauma experienced by child victims of trafficking stays with them for the rest of their lives. It is important to acknowledge the difficulty a child might have in talking about his or her experiences. Keep in mind the effect your questions, tone of voice and responses to your client's answers might have. Try not to be judgmental and allow the child to express emotions, which may make it easier for your client to tell you the specifics of his or her victimization.

³⁰UNICEF, *Let's Talk, Developing Effective Communication with Child Victims of Abuse and Human Trafficking* (September 2004).

³¹World Health Organization, *Ethical and Safety Recommendations for Interviewing Trafficked Women* (2003).

CHAPTER TWO

Legal Remedies for Child Trafficking Victims

Litigating on Behalf of Child Trafficking Victims

Once you identify a trafficking victim among your clients, you may choose to take the case yourself or refer the client to another attorney depending on a variety of factors, including limited resources and expertise. The following is an introductory roadmap for the remedies that may be available to your client should you decide to take the case.

There are several causes of action available to trafficked children. However, not all of them may be appropriate in every case. In assessing what causes of action might be available to a child victim of trafficking, it is important to consider:

- The form of trafficking involved (domestic servitude, sexual exploitation, etc.);
- Which state criminal statutes apply in the case;
- Which federal statutes, including those addressing sexual exploitation, may apply; and
- The immigration status of the trafficked child.

Attorneys should also keep in mind the practical considerations associated with child victims of trafficking in determining which causes of action are appropriate to pursue. Even if a specific remedy is available, is it in the client's best interests? In conducting a front-end assessment or "reality check," it is important to consider:

- What are the obstacles to pursuing a claim?
- What are the practical considerations (what does it mean for and to the client)?

- Are there any assets to pursue?
- What debtor protection laws apply in the state or in this case?
- What if the potential defendants have no known assets? Can another third party be held liable?

It is crucial to advise the client about the potential negatives of civil litigation. It can be time-consuming and drag on well past the time that the client just wants to move on. It can be arduous, particularly during the discovery phase, requiring that the client provide ever greater levels of detail about his or her story. It can be frightening to face the trafficker across the litigation table, in a deposition, or during trial, and it may increase the risk to the victim's safety. All of these aspects need to be discussed with the client before considering whether to pursue a civil cause of action at all.

If litigation is the client's chosen route, causes of action exist at the federal and state levels, and in any given case, a different combination of these may be appropriate. Just like any complex civil litigation, strategy and timing are essential to effective representation. This chapter is not intended to be a comprehensive exploration of those issues. Several other extensive, more appropriate resources are available to assist you if you decide to litigate a case on behalf of a victim of trafficking. See Chapter 4 for information regarding some of these resources.

Please note that most of these claims may be brought in the same lawsuit. It is not necessary to file, for example, one case for wages and another

for assault. One single case might have a dozen or more different causes of action. Some of the statutes of limitation for these causes of action run fast, however, so it is best to determine if your client is eligible for this range of remedies.

The Trafficking Victims Protection Reauthorization Act and State Law Trafficking Claims

The Trafficking Victims Protection Reauthorization Act of 2003 provides a specific mechanism to allow many trafficking victims to file civil lawsuits.³²

The claim must allege one of three kinds of harm: (1) forced labor, (2) trafficking into servitude, or (3) sex trafficking of minors or by force, fraud or coercion.³³ The 2003 TVPRA does not specify remedies but permits victims of forced labor, trafficking into servitude or sex trafficking to seek damages generally. Punitive damages in such cases can be extensive, so this claim may provide a valuable opportunity for compensation if the underlying elements of the claim are all present. As of the writing of this guide (Summer 2009), there is no statute of limitations for filing a claim under the 2003 TVPRA.

Additionally, the TVPRA provides for victim assistance in the United States by making victims of severe forms of trafficking eligible for federally funded or administered health and other social services as if they were refugees, mandating federal protections for victims of trafficking and their families when applicable, outlining protections from removal such as T nonimmigrant status for certain trafficking victims who cooperate with law enforcement, and allowing T nonimmigrant status holders to adjust to permanent resident status. It also created new crimes for activities related to human

trafficking, including sex trafficking of children, and specifically amended and created sentencing guidelines to provide greater sentences in trafficking cases.

While the TVPRA criminal provisions primarily address international trafficking, amendments to the provisions requiring interstate transport in sex trafficking of children enable prosecution on behalf of more domestic trafficking victims. The TVPRA of 2003 amended 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud or coercion) to no longer require that the child be transported, but also includes recruiting, enticing, harboring, transporting, providing, or obtaining the minor victim to engage in a commercial sex act.³⁴

Other federal civil remedies that may apply to child trafficking victims include actions under 18 U.S.C. § 2255. Section 2255 actions are available to child victims of federal crimes under eleven separate penal statutes related to child sexual exploitation, and they apply to many of the Mann Act and other child sexual abuse prohibitions. Any victim who suffers personal injury as a result of these offenses may sue in a U.S. District Court to recover actual damages and costs, including reasonable attorney's fees, with a presumptive minimum damage amount of \$50,000. The time of injury is not limited to the victim's minority, so that personal damages resulting from the exploitation that do not manifest until adulthood can be pursued. For foreign trafficking victims, however, one obstacle to pursuing this cause of action has been the ability of the District Court to dismiss the action under the doctrine of *forum non conveniens*.³⁵

In addition to federal claims, you may want to explore state anti-trafficking laws in your jurisdiction. As of the writing of this guide (Summer

³²Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Pub. L. No. 108-193, 117 Stat. 2875.

³³18 U.S.C. § 1595 (2006).

³⁴Trafficking Victims Protection Reauthorization Act, *supra* note 32.

³⁵*See, e.g., Martinez v. White*, 492 F. Supp. 2d 1186 (N.D. Cal. 2007).

2009), forty-two states have criminal code anti-trafficking provisions.³⁶ Some states, including California, Connecticut and Florida, may also provide benefits and services for human trafficking victims while federal TVPA claims are pending, and some have created causes of action for a civil case to recover penalties, actual damages, and statutory damages.³⁷ For more information, please see Chapter 4.

Racketeer Influenced and Corrupt Organizations Act (RICO)

The Racketeer Influenced and Corrupt Organizations Act (RICO) makes it a crime to participate in an “enterprise” that “affects” interstate commerce and involves a “pattern of” racketeering.³⁸ An increasing number of prostitution and sex trafficking networks are being prosecuted under the RICO statute. RICO includes civil remedy provisions under 18 U.S.C. § 1694, which allows for an injured party to seek threefold damages suffered as a result of the RICO violation as well as costs including reasonable attorney fees. The statute specifically addresses injuries to business or property.

Civil or Criminal Forfeiture

Defendants may be subject to civil or criminal forfeiture of any property used or intended to be used to commit or promote commission of any offense. The Protection of Children from Sexual Predators Act includes certain sexual exploitation and Mann Act offenses under both 18 U.S.C. § 2253

(criminal forfeiture for offenses against minors) and § 2254 (civil forfeiture).

Forfeiture may include loss of property or businesses used as fronts for prostitution enterprises, or any property traceable to gross profits or other proceeds. The Mann Act also allows victims of sexual abuse, sexual exploitation, and Mann Act violations to recover actual damages and the cost of any lawsuit (including reasonable attorney fees).³⁹

State criminal statutes may include forfeiture provisions as well, and will often specify how the assets acquired may be used. In some circumstances, forfeiture funds may be available to your client.

Restitution as Part of Sentencing

A federal sentencing court can order restitution for a victim as part of sentencing.⁴⁰ When a defendant is convicted of a crime that includes a scheme, conspiracy or pattern of criminal activity as an element of the offense—which child trafficking can be argued to include—the court can order restitution for losses resulting from any conduct that was part of that scheme, conspiracy or pattern of criminal activity.

18 U.S.C. § 2259 specifically provides *mandatory* restitution as part of a criminal sentence imposed for sexual exploitation and other abuses of children. The defendant can be directed to repay the victim the full amount of the victim’s losses, which may include:

³⁶Polaris Project, *U.S. Policy Alert on Human Trafficking* (April 2009), <http://www.polarisproject.org/images//4-13-09%20state%20policy%20alert-final.pdf> (last visited April 17, 2009).

³⁷To find out more about the available state remedies in your jurisdiction, see Center for Women Policy Studies, US PACT [Policy Advocacy to Combat Trafficking], *State Laws/Map of the United States*, http://www.centerwomenpolicy.org/programs/trafficking/map/default_flash.asp (last visited September 22, 2008).

³⁸18 U.S.C. § 1962 (2007).

³⁹Pub.L.No. 105-314, § 605, 112 Stat. 2974 (1998).

⁴⁰See 18 U.S.C. § 3663 (2007) and 18 U.S.C. § 3663A (2007).

- Medical services related to physical, psychiatric or psychological care;
- Physical or occupational therapy;
- Transportation, temporary housing and child care expenses;
- Lost income;
- Attorney fees and other costs;
- Any other losses suffered as a proximate result of the offense.

Restitution to child victims of trafficking is often part of sentencing in state as well as federal court. For example, under the New Jersey human trafficking statute, victim restitution can be ordered for the greater of the gross income or value of the victim's labor or services or the value of that labor or service as determined, in the case of child victims, by the laws regulating child labor.⁴¹

When there is a state criminal case, it is important to develop and maintain regular contact and interaction with the criminal prosecutor (and crime victim compensation and services personnel) in your client's case. Prosecutors can recommend that a defendant's sentence include payment of a victim's medical or counseling expenses.

Victim Assistance Services

Encourage your client to take advantage of, and help him or her access, victim-assistance services available through the criminal court. Often, such services include access to a victim compensation fund. Check whether your state has specifically added human trafficking to the list of offenses that entitle victims to compensation. For example, Iowa has added trafficking to its victim compensation provisions.⁴²

In addition, explore whether your client may qualify for state-provided services related to trafficking. Some states, like New Mexico, may specify benefits and services for human trafficking victims until the victim qualifies for services and benefits through the federal TVPA.⁴³ In the case of child victims in New Mexico, these services include general assistance, and benefits as determined by the state Children, Youth and Families Department.

Employment Law and Labor Claims

Child trafficking victims are often forced or otherwise coerced into slave labor, including sweatshops. Some of the most famous trafficking cases in the U.S. involve sweatshops where victims were working around the clock, seven days a week, with limited or no payment of wages and regular sexual harassment or rape by their supervisors. In some cases, state and federal employment law protections may provide victims with much-needed economic resources, in addition to penalizing the trafficker financially. Child labor laws may also apply in various jurisdictions. For more information on trafficking and employment law in general, please see Chapter 4 of this guide.

Intentional Torts: Assault and Battery

In many intersection cases, there has been battery, assault, or sexual assault. One strategy in a lawsuit may be to include these intentional torts as claims within the lawsuit, for at least three reasons. First, the harms were done, and including them more fully captures the harm done to the victim than a case that only seeks payment of wages. Second, these claims can yield significant damages for physical and emotional harm and punitive damages. Third, this may be the best option for sex trafficking cases or

⁴¹N.J. Stat. Ann. § 2C:13-8 (Thomson/West 2008).

⁴²Iowa Code Ann. § 915.80 - 915.94 (Thomson/West 2008).

⁴³N.M. Stat. Ann. § 30-4-3.2 (Thomson/West 2008).

more subtle cases of labor trafficking when it may not be possible to recover wages.

The statute of limitations for intentional torts varies by state. Therefore, these claims must be monitored carefully so that they are not lost.

Civil Protection Orders

Civil protection orders (CPOs) for victims of domestic violence are available in every state, and jurisdictions have begun to enact statutes creating CPOs specifically for victims of sexual assault and stalking.⁴⁴ Many jurisdictions extend CPOs to teen petitioners, and where this is not the case, adults can often petition on a child's behalf as next friend.

The CPO may be a valuable tool, especially in the short term, to assist with some of your client's immediate needs and to facilitate future legal actions. The majority of states have "catch-all" provisions in their CPO statutes that can be used for relief above and beyond the basic "stay-away" provisions. This can be extremely useful when the trafficker has control of your client's passport or immigration documents, or if your client left important documents behind, like a birth certificate. Clients also may have fled in fear and simply left behind personal items that are not replaceable (phone book, gifts, items with sentimental value). Where possible, the CPO should seek the return of any of those items, especially anything that could make the client's immigration or other civil case easier.

Immigration Remedies

There are a variety of immigration remedies that may be available to child victims of human trafficking who are non-U.S. citizen (and generally non-LPR⁴⁵) victims. The remedy crafted specifically for trafficking victims is the T visa; the remedy specifically for minors is the Special Immigrant Juvenile (SIJ) visa. Other options include the Violence Against Women Act (VAWA) self-petition, VAWA cancellation of removal, the U visa for victims of crime, and asylum. There are other forms of permission to remain in the U.S., such as "continued presence" (for trafficking victims assisting a law enforcement agency with the investigation or prosecution of a trafficking case) or the S visa (sometimes called the "snitch visa" for victims or witnesses assisting law enforcement with the investigation or prosecution of organized crime), but these do not confer long-term legal status. These options are initiated by the government and may enable your client to remain in the U.S. temporarily while a case is being pursued against a trafficker. Depending on the particular facts of your client's situation, he or she may be eligible for several of these options. In most cases, it is possible for your client to pursue multiple remedies concurrently. For more resources on immigration remedies available to child victims, please see Chapter 4.

T Visa: The Trafficking Victims Protection Act (TVPA) of 2000⁴⁶ provided an avenue for lawful immigration status for trafficking victims. Adult applicants must prove that they are:

⁴⁴For additional information about civil protection order statutes, see the Statutory Summary Charts section of the ABA Commission on Domestic Violence website, at www.abanet.org/domviol (last visited September 9, 2008).

⁴⁵Victims who are lawful permanent residents ("LPRs") generally do not need any further immigration remedies that are specific to their victimization; they will be eligible for U.S. citizenship within three to five years and can apply independently. However, if the client may have obtained her status fraudulently (perhaps due to the abuse) or if she has family members in her home country that she would like to bring to the U.S., she may need to renounce her LPR status and apply for one of the remedies described here to correct the fraud or to more expeditiously bring the family members to the U.S.

⁴⁶TVPA, *supra* note 5.

- 1 A victim of a severe form of trafficking in persons;⁴⁷
- 2 Physically present in the U.S. on account of the trafficking;
- 3 Cooperating or have cooperated—or made reasonable efforts to cooperate— with law enforcement in the investigation of the trafficking; and
- 4 Are likely to suffer extreme hardship if removed.

The T visa provides legal immigration status, a four-year work permit and the opportunity to apply for lawful permanent residence. Victims under the age of 21 may include their spouse, children, parents and/or unmarried siblings.⁴⁸ The T visa may be superior to other immigration options for two reasons. First, T visa recipients also are eligible for a wide range of specialized social services and benefits. Second, minors are not subject to the cooperation requirement to get a visa but may need to at the adjustment of status stage. For more information about filing T visas for both adults and minors, refer to the list of resources in Chapter 4.

Special Immigrant Juvenile Status: As discussed throughout, many child victims of trafficking have suffered some form of abuse, abandonment, or neglect by their families prior to or in connection to being trafficked. For these children, return to their families may not be a safe option. Foreign-born children without immigration status who should not be returned to their families due to abuse, abandonment or neglect may be eligible for the Special Immigrant Juvenile (SIJ) visa. If granted, the SIJ visa provides a path to legal permanent residency⁴⁹ in the U.S.

To be considered for the SIJ visa, the applicant must satisfy the following requirements⁵⁰:

- 1 Be declared dependent on and continue to be dependent on a “juvenile court;”⁵¹
- 2 Be deemed eligible for long-term foster care⁵² due to abuse, abandonment or neglect;⁵³
- 3 Have been the subject of judicial or administrative proceedings in which it was determined that it is not in the child’s best interest to be returned to the country of nationality or last habitual residence;

⁴⁷Defined as “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (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.” 22 U.S.C. § 7102(8).

⁴⁸8 U.S.C. § 1101(a)(15)(T)(ii).

⁴⁹Children receiving legal permanent residency (LPR) status through the SIJ process may not submit beneficiary applications for LPR status for their parents. Accordingly, parents may seek to prevent their child from applying for SIJ status or children may feel guilty about “cutting off” their parents’ opportunity to adjust status.

⁵⁰8 U.S.C. § 1101(a)(27)(J) (2006); 8 C.F.R. § 204.11 (2008).

⁵¹“Juvenile court” is defined at 8 C.F.R. § 204.11(a) as a “court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” This varies state to state but may include, among other things, a family court, probate court, delinquency proceedings, or dependency proceedings.

⁵²8 C.F.R. § 204.11(d)(2)(ii) defines “eligible for long-term foster care” to mean “that a determination has been made by the juvenile court that family reunification is no longer a viable option.” The statute does not require that the child actually be placed in long-term foster care.

⁵³There is no SIJ statutory definition for abuse, abandonment or SIJ neglect. Instead, state law for the juvenile court with jurisdiction over the child applies.

- 4 Be under the age of 21⁵⁴ when the SIJ visa is approved; and
- 5 Be unmarried.

For children in federal custody, “specific consent” from the federal government⁵⁵ may be required before a state “juvenile court” can take jurisdiction over the child.⁵⁶

For additional information on SIJ status, see Chapter 4 of this guide for a listing of state-specific manuals that provide extensive explanations on federal eligibility requirements, applicable state laws, juvenile court proceedings, and the immigration process for the SIJ visa and adjustment of status to legal permanent residency.

VAWA Self-Petition: In the normal course of events, a U.S. citizen or lawful permanent resident (LPR) may petition for a spouse or child to gain lawful permanent residency. However, in abusive situations, the abuser often refuses (or “forgets”) to complete (or even begin) this process, because he is aware that gaining immigration status removes one of the child’s sources of vulnerability and dependence.

The Violence Against Women Act of 1994 (amended in 2000, and again in 2005)⁵⁷ recognized this problem and provided a route for abused spouses and children to petition for themselves and not be reliant upon the abuser to file the petition. The child must show that:

- 1 the abuser is a U.S. citizen or LPR;
- 2 there was physical or emotional abuse;
- 3 the child resided with the abuser; and
- 4 the petitioner is a person of good moral character.

An approved petition will generally lead to an employment authorization document (or “work permit”) where relevant, limited eligibility for federally-funded public benefits, and eventual (in some cases more immediate) eligibility to adjust to LPR status and then citizenship. Adult petitioners can include their children as derivative beneficiaries, and there are provisions relating to self-petitions based on the abuse of one’s children.⁵⁸ The government is not permitted to divulge information about a petition to an abuser, and the government cannot rely solely on information from the abuser in taking action against a victim. There are several excellent resources that detail this well-established remedy. See the list of resources in Chapter 4.

VAWA Cancellation of Removal: For victims who are in removal (also known as “deportation”) proceedings, a special remedy called “VAWA cancellation of removal” may be their best option. The “cancellation” refers to cancellation of the removal proceedings and the granting of lawful permanent residence for the child. This remedy

⁵⁴Many states do not allow for juvenile court jurisdiction up to the 21st birthday. Since the juvenile court must have continuing jurisdiction when the application for SIJ status is adjudicated, state laws may cut off eligibility for SIJ status to a child before s/he turns 21 if the child will not be under the jurisdiction of a juvenile court at the time the SIJ application is adjudicated.

⁵⁵Currently, from the Department of Homeland Security.

⁵⁶Pending litigation (*Perez-Olano v. Gonzalez*, No. 05-03604) may affect when specific consent is required, and anyone considering SIJ status for a child in federal custody should contact an attorney with recent SIJ experience for the latest update before initiating or completing state juvenile court proceedings.

⁵⁷Violence Against Women Act, P.L. 103-322, 108 Stat. 1902 (1994), *amended by* the Battered Immigrant Women Protection Act, P.L. 106-386, 114 Stat. 1518 (2000), and the Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-62, 119 Stat. 1990 (2005)

⁵⁸A self-petitioner whose petition is based on abuse to one’s children must show that he/she entered into a good faith marriage with the abuser, i.e., not entered into solely for immigration purposes.

is less commonly used than others because denial leads to deportation. A non-abused parent can file for cancellation as the parent of an abused child. A child cannot be included in an abused parent's application, but can apply for cancellation directly if s/he was also abused (note that several studies show that witnessing abuse of the parent causes injury to the child). Alternatively, once the parent's application is approved, children can be granted parole that will last until the child is granted lawful permanent residency through another process (for example, the parent can file a family-based petition for the child). There are several excellent resources that detail these well-established remedies. See Chapter 4.

U Visa: A U visa is a special visa for victims of certain criminal activities—including human trafficking—who cooperate with law enforcement in the investigation or prosecution of those crimes. The visa lasts for four years and comes with a work permit. As with the T visa, victims under the age of 21 may include their parents, spouse, and/or unmarried siblings under the age of 21.⁵⁹ Unlike all of the other immigration remedies discussed here, a U visa petitioner *must* submit a “certification” from law enforcement. This is a new remedy; the regulations were recently published as of the publication of this guide, so there are many unanswered questions. Practitioners may need to devote considerable time to convincing law enforcement to set up a certification process. Unlike the T visa, the U visa does not require a showing of hardship upon removal. Approved U visa holders may be eligible to become lawful permanent residents after three years, as mentioned above. Applicants can include their spouse and/or child(ren), and minor victims can also include their parents and unmarried siblings.

Asylum: Asylum may be available for someone who is “outside his or her country of nationality who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁶⁰ A child who fears severe ostracism or physical harm from his or her family or community as the result of being trafficked into prostitution, for example, might be eligible for asylum. Abuse directed at your client because of race, religion or ethnicity presents another potential ground for asylum. These grounds may all exist within the same case. Please see Chapter 4 for additional information.

Litigation Practice Pointers

Reducing Trauma: Some practices to reduce re-victimization and trauma during the litigation process include:

- Avoid repeated interviews by various professionals involved in the criminal and civil cases involving your client;
- Request that your client be interviewed by a trained forensic specialist such as those associated with Child Advocacy Centers;
- Evaluate your client's ability to testify in front of the defendant and court;
- Assess whether your client's testimony could be given by closed-circuit television or video recording, depending on relevant statutes and provisions;
- Discuss your client's rights as a crime victim;
- Help your client prepare a victim impact statement for use during sentencing;

⁵⁹As with the T visa, victims 21 and over may include their spouse and/or parents on their applications. Victims under the age of 21 may include their parents, spouse, and/or unmarried siblings under the age of 21. 8 U.S.C. §1101(a)(15)(U)(ii) (2006).

⁶⁰8 U.S.C. § 1101(a)(42)(A) (2006).

- Consider motions for protective orders that may prevent improper questioning or bullying of your client as a witness;
- Explore whether your state authorizes orders of protection sought by parents to prevent contact with their child by the offender.⁶¹

If your client is involved in a federal court proceeding as a victim, an array of child victim protections designed to help reduce trauma are authorized by federal law.⁶² These include testifying with the support of an adult attendant, use of closed-circuit television testimony, appointment of a guardian *ad litem*, and various privacy and confidentiality provisions.

Client Credibility: A related concern may be the credibility of your client. Many child victims do not come forward because they fear reprisal from their trafficker; some have concerns that, due to their juvenile record, their allegations will not be believed. Trafficked youth may be noncompliant and unwilling to access services or actively assist with their cases. They are often streetwise and resistant to adult intervention. Explore the use of rape-shield statutes to protect your client and limit questioning about past sexual behavior.

Concurrent Criminal Case: The existence of a criminal case may require that your civil action be stayed, once filed. For example, the TVPRA of 2005 specifically states that a civil matter based on similar facts to a criminal proceeding *shall* be stayed.⁶³ Other claims can be at the discretion of the court. Because an admission or finding of guilt in a criminal case is admissible in a civil case, it is usually to your advantage to stay the proceedings until the criminal case is concluded. If, however, the case is moving forward slowly, and your client is

in urgent need of compensation, it may be possible to proceed with at least some of her claims. Keep in close contact with the law enforcement officials working on the criminal case so that the civil case does not inadvertently disrupt their case in ways that are preventable.

Filing Multiple Claims: As noted above, most of these claims can be filed within the same lawsuit. (This is true of any claim with a private right of action.) As long as you can include in the pleadings sufficient factual allegations to withstand a motion for summary judgment, you can include the claims. Consider a broad mix to cover the different kinds of damages available to your client and to ensure that if one part of your case is weak, a claim is alleged that will play to the strengths of your case.

There may be strategic reasons, however, to include some claims but not others. For instance, you may strongly want a jury trial if you believe jurors would be sympathetic to a child trafficking case and if you are seeking punitive damages. However, if your client is an immigrant, and you fear your jury may be biased as a result, then a bench trial would be preferable. Another consideration is whether you want to litigate in state or federal court. Think about your jury pool, the previous rulings of the judges who might preside over the case, and the time and expense of federal litigation versus state litigation. You can include state and federal claims in one case, but if you file in state court and include a federal claim, the defendant(s) can remove the case to federal court anyway.

Diplomatic Immunity: Unfortunately, when a trafficker is a diplomat, diplomatic immunity provisions may impact a client's ability to pursue certain remedies. The basic rule is that diplomats have full civil and criminal immunity under the

⁶¹See, e.g., Minn Stat Ann. § 609.3232 (West 2008).

⁶²18 U.S.C. § 3509 (2007); see also U.S. Attorney General Guidelines for Victim and Witness Assistance, Article VI, Guidelines for Child Victims and Child Witnesses (May 2005), <http://www.usdoj.gov/olp/final.pdf>.

⁶³18 U.S.C. § 1595(b)(1) (2006).

Vienna Convention on Diplomatic Relations, *if* they raise immunity as an affirmative defense. This basic rule may not apply, however, if the trafficking situation involved commercial activities, such as the diplomat running a catering business from his or her home.⁶⁴ It is also vital to realize that not everyone who calls themselves a diplomat is entitled to immunity. There are much lower levels of protection for non-diplomatic embassy and consular staff, for example. Inquiries can be made at the Department of State Office of Protocol to ascertain if the diplomat is immune, but the only certain way to find this out is to sue the diplomat and see what proof is offered as an affirmative defense. The Department of State can request that the trafficker's home country rescind or waive immunity, but that is a very long process and unlikely to be successful in all but the most egregious cases. Significant media attention may be required to prompt the State Department to act. However, the prospect of media attention or reports to the government that employs the diplomat can sometimes encourage a diplomat to agree to a settlement. These cases are difficult and require a careful analysis of the politics of the situation.

⁶⁴Many advocates contend that hiring a domestic servant also constitutes a commercial activity. A suit brought under the Vienna Convention disagreed with that view, although a suit brought under the Foreign Sovereign Immunities Act *did* recognize domestic work as a commercial activity. *Compare Tabion v. Mufti*, 73 F.3d 535 (4th Cir. 1996), *with Park v. Shin*, 313 F.3d 1138 (9th Cir. 2002). The arguments for the commercial activities exception to apply are arguably weaker in the context of an intersections case where there is not likely to be any formal hiring process or contractual employment relationship.

CHAPTER THREE

Community-Based Responses to Child Trafficking

Child trafficking civil claims will almost always require many systems, service providers and other attorneys to work together. This includes criminal prosecutors, guardians *ad litem*, immigration attorneys, child protective services, medical and mental health service providers, and anti-trafficking NGOs. This system of collaboration will not only ensure comprehensive services for your client, it may also increase your client's cooperation in the case.

Working with Parallel Criminal Prosecutions: State and Federal

In all trafficking cases, especially those involving minors, it is essential to help ensure that the best interests of your client are being addressed, and that your client's wishes are being heard. In most cases, this will require you to work collaboratively with criminal investigators by closely monitoring the progress of the case, facilitating communication with investigators and prosecutors, and advocating on behalf of your client when he or she is a witness for the prosecution as a victim in the case. It is important that you discuss your client's options so that s/he understands the full implications of working or not working with law enforcement.

Ascertain whether your jurisdiction participates in any multidisciplinary efforts that include law enforcement, service providers, NGOs or others who may have contact with your client. Police

departments that receive specialized training in jurisdictions where services are available for youth victimized by trafficking or sexual exploitation arrest adults at higher levels for offenses against juveniles. Also, your client may find it easier to work with law enforcement, whether federal or state, with the support of appropriate service providers and victim advocates. The suggestions for reducing trauma to your client listed above can be useful when working with prosecutors and law enforcement on state and federal levels.

During a criminal case, it is sometimes possible for the court to appoint a guardian *ad litem* (GAL) to protect the child victim from improper questioning, intimidation by the defendant, and the potential trauma of the courtroom experience. The role of the GAL is to ensure the victim is treated with respect by protecting the victim's legal interests. Some states such as Florida have passed statutes to mandate that a GAL be appointed in "any criminal proceeding if the minor is a victim of or witness to child abuse, neglect or if the minor is a victim of a sexual offense."⁶⁵ If you are not appointed as that GAL, or if a separate GAL is not appointed, as an attorney for the child you are still likely to be in the best position to assert your client's interests and desires in the context of the court proceeding. You should seek court authority to play that role.

It is also important to closely monitor what criminal charges are being pursued so that you can explore potential civil remedies attached to those

⁶⁵Fla. Stat. Ann. § 914.17 (West 2008).

crimes under the various statutes. Commonly co-occurring crimes (i.e., those crimes often occurring simultaneously with trafficking) include:

Intra-familial sex crimes, which may be brought under incest or rape statutes. Child protective services will likely be involved in these cases unless there is a non-offending parent who retains custody. Check whether your state has passed statutes that include criminal liability of parents for permitting their children to engage in prostitution or failing to prevent their victimization;

State prostitution of children offenses, including patronizing a prostituted child, soliciting, pimping, pandering, procuring for prostitution, profiting from or promoting prostitution;

Trafficking-related federal charges, including any Mann Act offenses;

State or federal child pornography charges, including forcing performance in pornography or memorializing abuse through photographs or images for later gratification. Traffickers may use the pornography to threaten, blackmail, control and/or humiliate the victim. They may also take photographs of sexual acts to exchange through pedophile networks or to sell online. Explore state and federal remedies under child pornography statutes. Florida, for instance, provides a cause of action to victims of child pornography for “actual damages such person sustained and the cost of the suit, including reasonable attorney’s fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$150,000.”⁶⁶ In addition, to prevent further exploitation for monetary gain, a Florida victim can ask the Office of the Attorney General to pursue a claim on his or her behalf, and all damages obtained go to the victim while the OAG can seek attorney fees and costs;⁶⁷

Charges related to gang activity, including drug trafficking. Gangs are increasingly involved in the trafficking of youth because sex trafficking can be highly profitable and therefore attractive to criminal networks. Federal charges under the Racketeer Influenced and Corrupt Organizations Act (RICO) may provide the victim with potential civil remedies.

It is also important to track any charges that may have been brought against your client through juvenile or adult court. These charges may be related to the trafficking or not. While victims of trafficking should be treated solely as victims, often the law enforcement response is to arrest and detain domestically trafficked youth as leverage to provide needed services and remove children from the streets. Or, law enforcement may not understand that the child is a victim of trafficking and may arrest him or her for commission of a crime. This can create tremendous obstacles for your client because it may limit his or her ability to access court-based victim services, and some shelters refuse to accept youth with pending criminal charges. You should be prepared to work with the child’s public defender to explain his or her situation so that charges can be dismissed.

Working with Child Protective Services

Human trafficking poses significant challenges to the nation’s child protection systems for a number of reasons. Many in these systems have not been trained to recognize and respond to human trafficking. Additionally, the current system of child protection may stress family reunification or notification to family when a child enters the system. While this is understandable and good in cases where human trafficking is not present, it can be very dangerous if the child is trafficked.

⁶⁶Fla. Stat. Ann. § 847.01357 (West 2008).

⁶⁷Fla. Stat. Ann. § 847.01357(5) (West 2008).

For instance, when a child protective investigator removes a child from an abusive situation, he or she must find an alternative placement for that child. This can be with relatives – but if the relatives are allied with the traffickers this can be extremely dangerous for the child, who will likely be harmed or forced to flee with the trafficker.

An untrained child welfare worker may not understand this danger if he or she does not see that the child has been trafficked. Therefore, it is important that an attorney understand that those in the state’s child protection system—including judges and others in the court system—may not have recognized that your client is a victim of trafficking. This means that the attorney’s advocacy on behalf of that client will by necessity include education of agency staff and other child protection officials on human trafficking.

A child may come to the attention of Child Protective Services in a number of ways. A report might be called into the child abuse hotline where the hotline counselor may suspect human trafficking and immediately call out a child protective investigator. Or, a child protective investigator, in the course of investigating a case where the alleged maltreatment is not human trafficking but a related matter such as child sexual abuse or neglect, may detect the signs of human trafficking and call law enforcement. Years after a child enters the child protection system, a community based care provider that is providing counseling or residential services for a minor might discover that the child had been trafficked. A law enforcement officer also might call a child abuse hotline if police conduct a raid and suspect minors are present.

Attorneys representing children will be required to work with the state’s child protection system at every turn. This could mean assisting with

obtaining social services, including child welfare agency family foster care, for the client (see below), applying for immigration status, advocating for a certain placement (for example, with relatives) or services, or representation during a dependency proceeding. In Florida, the Florida Immigrant Advocacy Center, with funding from the State Department of Children and Families, is in the process of training all those involved with family safety and child protection on human trafficking. They have also drafted official operating procedures for the Hotline, Child Protective Services, Refugee Services and Community Based Care Agencies on how to recognize and respond to human trafficking as well as other foundational documents and guides.

Coordinated Community Response: Obtaining Social Services for Your Client

Obtaining services and benefits for child victims of domestic trafficking often involves child protective services or state victim witness assistance programs. For foreign-born trafficking victims without immigration status, the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) provides certification letters that allow them to gain access to federally funded benefits and services. Child and teen victims do not need certification, but simply receive an eligibility letter⁶⁸ so they can get benefits. These provisions were created by the Trafficking Victims Protection Act (TVPA). However, these letters do not apply to domestic trafficking victims, who are eligible for different services and benefits than foreign-born victims under the TVPA.

A specialized foster care program called the Unaccompanied Refugee Minor (URM) program is designed to place international child victims

⁶⁸For additional information on the eligibility letter process, see U.S. Dep’t of Health & Hum. Svcs, Admin. for Child. & Fam., *Minor Victims of Trafficking: Eligibility for Refugee Benefits*, http://www.acf.hhs.gov/trafficking/about/eligibility_child_victims.pdf.

of trafficking with families who understand their cultural background and speak their language. Therapeutic placements for children with special needs are also available. The program provides medical and mental health services, education, case management, independent living skills, job training and career counseling, legal assistance and ongoing family tracing when possible. Some services are also available to minor dependent children of victims of severe forms of trafficking or potential victims of trafficking.

Services that your client may need include:⁶⁹

Housing: This is often the greatest need for domestic trafficking victims. As discussed previously, shelters may not accept trafficking victims, may not provide the specialized services your client may need, or may not provide sufficient protection from contact by the offender.

Medical and/or dental health care: Explore what services are provided through child protective services and whether your client is eligible for Medicaid or sCHIP (state Child Health Insurance Program). Identify any Title V clinics or free clinics in your area.

Mental health services: Mental health services are essential to helping your client recover from her victimization. Explore what services may be available in your jurisdiction and whether any court-based services are appropriate for your client.

Crisis intervention: Your client may need immediate crisis services. The trauma experienced by child trafficking victims may not manifest immediately, and a crisis may occur at various times. Ensuring that your client is aware of what crisis intervention services, such as suicide prevention, exist in your area is essential.

Protection: Explore what level of protection may be available to your client to protect him or her from intimidation, harassment or contact by the trafficker.

Education: Determine whether your client's educational rights have been violated in any way and what you can do to help re-establish your client in an appropriate school setting.

Life skills: As with education, a child victim of trafficking likely does not have sufficient life skills to live independently as an adult. In addition to any family resources that may exist, explore what independent living services (possibly through CPS) may be available to your client.

Court orientation: As discussed in the section on reducing trauma, testifying in a courtroom in the presence of a trafficker can be traumatic for a victim. It may be helpful to provide your client with an orientation to the court and courtroom in order to lessen any anxiety or apprehension associated with attending court hearings.

Drug treatment: Substance abuse is often used to control or entice a trafficking victim. Many youth fall victim to traffickers while living on the streets, where substance abuse may be prevalent. Your client may also use drugs or alcohol to self-medicate to deal with the exploitation. Drug treatment services are therefore essential in helping your client re-establish stability and health. Explore what services are available, including Alcoholics Anonymous or Narcotics Anonymous meetings in your area or more intensive residential treatment options.

Other services: Other services that may be beneficial for your client may include: translation services and/or English for Speakers of Other Languages (ESOL) classes, job placement, safety

⁶⁹Heather J. Clawson et al., *Needs Assessment for Service Providers and Trafficking Victims* (Caliber & Associates, 2004).

planning, and immigration remedies. Not only will attaining the appropriate services assist your client in building a life after trafficking, it may make talking with the client and identifying the facts of the case easier.

It is important to note that this list is not exhaustive of the services a child victim of trafficking may need. A client's fear of retaliation or fear of family being harmed may prevent him or her from seeking services. Other common barriers your client may face in accessing services include:

- Lack of knowledge about available services;
- Fear of deportation;
- Lack of social support;
- Lack of trust in the system;
- Language, cultural and/or religious differences;
- Lack of knowledge about victims rights;
- Feelings of shame;
- General fear;
- Inability to identify oneself as a victim;
- Culturally inappropriate services; and
- Lack of transportation.

Working Effectively with Anti-Trafficking NGOs

Many jurisdictions host non-governmental organizations (NGOs) that provide services to victims of trafficking. Such groups may provide outreach on the street or in the community; provide services to identified victims; and work for policy

and practice changes that improve the community response to trafficking victims. These organizations can also provide an important language and cultural bridge between you and your client. Internationally trafficked victims often feel most comfortable speaking with someone who knows their language literally and figuratively. These organizations can be an invaluable resource and support to you as you try to secure services for your client.

As providers of specialized services for trafficking victims, NGOs or community-based organizations (CBOs) should be contacted as soon as you determine your client is a victim of trafficking, unless he or she already has made contact with an organization.⁷⁰ It is very important that CBOs/NGOs not be perceived by the trafficking victim as an arm of the government, especially law enforcement. They can be most effective if victims feel confident that contact with the CBO will not be part of the investigative process.

It has been the experience of many NGOs and CBOs that it may take weeks or months of support and services to a trafficked victim before the victim is ready to provide valuable information to law enforcement agents investigating their case or to their civil attorneys. However, the services of an experienced NGO can mean the difference between having a cooperative victim and one who is still too overwhelmed and affected by the trafficking experience to fully participate in the investigation and prosecution of the crime against them. NGOs with experience navigating the relationship between law enforcement agents and trafficking victims can be especially helpful.

⁷⁰In New York City, a consortium of NGOs together with law enforcement agents established CRT: Community Response to Trafficking. Their *Guidelines for Responding to Trafficking in Persons in New York City* provides detailed information about what steps to take depending on how a trafficking victim is identified.

CHAPTER FOUR

Resources for Attorneys & Advocates

This guide is meant to serve as a basic introduction to the variety of issues you will encounter and need to be aware of when assisting child victims of human trafficking. Comprehensive resources relating to the topics outlined in this guide already exist and are constantly being updated to reflect changes in law. We hope the following information will be useful to you in locating these additional resources.

Additional Resources

Additional resources are available at www.abanet.org/domviol/tip.

National Organizations

There are many local and national organizations that have resources for attorneys representing human trafficking and domestic violence victims. Some of these organizations are:

- ASISTA: www.asistaonline.org
- The ABA Center on Children and the Law: www.abanet.org/child
- Center for Women Policy Studies, US PACT [Policy Advocacy to Combat Trafficking], National Institute on State Policy on Trafficking of Women and Girls: <http://www.centerwomenpolicy.org/programs/trafficking/default.asp>
- Child Advocacy Centers: www.nationalcac.org
- Childtrafficking.org: www.childtrafficking.org
- ECPAT International: www.ecpat.org
- ECPAT-USA: www.ecpat-usa.org
- Humantrafficking.org: www.humantrafficking.org
- The Immigrant Legal Resource Center: www.ilrc.org
- The Legal Aid Foundation of Los Angeles: www.lafla.org
- UNICEF: www.unicef.org
- U.S. Committee for Refugees and Immigrants: www.refugees.org
- U.S. Committee for Refugees & Immigrants, Special Immigrant Juvenile Status Resources: www.refugees.org/article.aspx?id=1559&subm=75&area=Participate&ssm=118
- U.S. Committee for Refugees and Immigrants, National Children's Center Resource Library: www.refugees.org/article.aspx?id=1556&subm=75&area=Participate&ssm=118
- U.S. Department of Health & Human Services, Administration for Children & Families, Campaign to Rescue & Restore Victims of Human Trafficking: www.acf.hhs.gov/trafficking/
- The U.S. State Department Office to Monitor and Combat Trafficking in Persons: www.state.gov/g/tip

Print Manuals

Ayuda, Inc., *Assisting Battered Immigrants and Their Children to File Immigration Claims Under the Violence Against Women Act: A Manual for Immigration and Domestic Violence Attorneys and Advocates* (5th Ed.), available upon request at <http://www.ayuda.com/pages/page.cfm?id=41&pid=6&eid=11>

Jean Bruggeman & Elizabeth Keyes, Amer. Bar Ass'n, *Meeting the Legal Needs of Human Trafficking Victims: An Introduction for Domestic Violence Attorneys & Advocates* (2008), available upon request at <http://www.abanet.org/domviol>

Center for Applied Legal Studies, Georgetown University Law Center, *Asylum Case Research Guide*, <http://www.ll.georgetown.edu/guides/CALSAsylumLawResearchGuide.cfm>

Wendy Susan Deaton & Michael Hertica, *Developmental Considerations in Forensic Interviews with Adolescents*, 6(1) APSAC Advisor 5 (1993).

Regina Germain, Amer. Immigr. Law. Ass'n, *Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure* (4th Ed.) (2005).

Donna M. Hughes, *Hiding in Plain Sight: A Practical Guide to Identifying Victims of Trafficking in the U.S.* (2003), http://www.uri.edu/artsci/wms/hughes/hiding_in_plain_sight.pdf.

Immigrant Legal Resource Center and the Catholic Legal Immigration Network, Inc., *The VAWA Manual: Immigration Relief for Abused Immigrants* (5th Ed.) (2008), available for purchase at <http://www.cliniclegal.org/Publications/GuidesHandbooks.html>

Kathleen Kim & Dan Werner, Legal Aid Found. of L.A., *Civil Litigation on Behalf of Victims of Trafficking* (2nd Ed.) (Mar. 2005), <http://www.lafla.org/clientservices/specialprojects/VictimsTrfficking0405.pdf>.

New York City Community Response to Trafficking Project, *Guidelines for Responding to Trafficking in Persons in New York City*, http://www.antislavery.org.au/resources/pdf/NYC_CRTGuidelines.pdf.

U.S. Conference of Catholic Bishops, Migration and Refugee Services, and Lutheran Immigration and Refugee Service, *Child Trafficking Victims' Routes to Federal Benefits*, <http://www.usccb.org/mrs/childtraf-beneroutes032406.pdf>

U.S. Conference of Catholic Bishops, Migration and Refugee Services, Catholic Legal Immigration Network and the Legal Aid Foundation of Los Angeles, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking* (Nov. 2004), <http://www.cliniclegal.org/Publications/Freepublications/HumanTrafficking.pdf>

U.S. Attorney General Guidelines for Victim and Witness Assistance, Article VI, Guidelines for Child Victims and Child Witnesses (May 2005), <http://www.usdoj.gov/olp/final.pdf>

U.S. Dep't of Health & Hum. Svcs, Admin. for Child. & Fam., *Identifying and Interacting with Victims of Human Trafficking*, http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_social/identify_victims.pdf.

Anne Graffam Walker, ABA Ctr. on Child. & the Law, *Handbook on Questioning Children: A Linguistic Perspective* (2d ed.) (1999).

D. Whitcomb et al., Nat'l Inst. of Just., *When the Victim is a Child: Issues for Judges and Prosecutors* (2d ed.) (1992).

State Manuals Addressing Special Immigrant Juvenile Status

All 50 States: U.S. Department of Health & Human Services, Administration for Children & Families, Child Welfare Information Gateway, *Online Resources for State Child Welfare Law and Policy* (October 2007), www.childwelfare.gov/systemwide/laws_policies/statutes/resources.pdf.

California: Sally Kinoshita & Katherine Brady, Immigrant Legal Resource Center, *Special Immigrant Juvenile Status, For Children Under Juvenile Court Jurisdiction* (January 2005), www.ilrc.org/resources/sijs/2005%20SIJS%20manual%20complete.pdf.

Sally Kinoshita & Katherine Brady, Immigrant Legal Resource Center, *Immigration Benchbook For Juvenile and Family Court Judges* (January 2005), www.ilrc.org/resources/sijs/2005%20SIJS%20benchbook.pdf.

Los Angeles County, California: Public Counsel Law Center, *Special Immigrant Juvenile Status Manual* (updated September 2006).

Florida: Wendi J. Adelson, Immigrant Children's Legal Services Partnership & The Children and Youth Law Clinic University of Miami School of Law, *Special Immigrant Juvenile Status in Florida, A Guide for Judges, Lawyers, and Child Advocates* (June 2007), www.cahr.fsu.edu/SIJManual.pdf.

Cook County, Illinois: National Immigrant Justice Center, *Special Immigrant Juvenile Status In Illinois: A Guide for Pro Bono Attorneys* (June 2007), www.immigrantjustice.org/component/option,com_docman/Itemid,0/task,doc_download/gid,5/.

New York: Ragini Shah, Columbia Law School, *Special Immigrant Juvenile Status: Background and Eligibility* (Revised January 18, 2005), www.refugees.org/uploadedFiles/Participate/National_Center/Resource_Library/Columbia%20University%20Manual.doc.

Texas: Janet M. Heppard & Anne Chandler, *Immigrant Issues Affecting Children in Foster Care*, State Bar of Texas 32nd Annual Advanced Family Law Course, Ch. 56.2 (2006).



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