



Implementation of a Law to Protect Trafficking Victims Has Become a Public Safety Issue

By Joseph J. Kolb

This is the first in a series of reports on the issues surrounding the placement of thousands of unaccompanied children from Central America in communities across the United States.

Key Points

- More than 80 percent of unaccompanied alien children (UACs) arriving illegally from Central America have been placed with sponsors who are living in the United States illegally.
- Monitoring by the federal Office of Refugee Resettlement (ORR), which is responsible for placing the UACs, is impotent and virtually non-existent. A recent telephone follow-up program yielded contact with only 56 percent of children placed with sponsors.
- Communities where UACs have been placed have seen a rise in violence associated with MS-13, a transnational gang rooted in El Salvador. According to law enforcement agencies and community representatives, the newly arrived UACs are being recruited and threatened into joining the gang.
- Silence from federal lawmakers on the consequences of implementation the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) has been deafening.
- The record of mismanagement of the TVPRA placements by ORR generates concerns that the impending wave of Syrian refugees will be handled with the same strategy, exacerbating the homeland security risk.
- A whistle blower confirms UACs are placed with criminal sponsors.
- A congressional staffer says efforts have been made to amend the TVPRA in consideration of the prevailing reality of the crisis, but have been stymied.

Introduction

The implementation of the law in place to protect unaccompanied minors coming to the United States, especially from Central America, from abuse and human trafficking has created problems for the children and for the communities in which they are placed. The UACs are often placed with sponsors who are in the United States illegally, with virtually no post-placement oversight by the federal government, exposing both the children and communities to increasingly profound waves of gang violence while perpetuating the illegal immigrant population.

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Implementation of TVPRA Reunites Kids with Illegally Resident Parents

The William Wilberforce Trafficking Victims Reauthorization Protection Act of 2008 was a well-intentioned attempt to protect immigrant children from exploitation, but it actually applies to very few of the more than 200,000 unaccompanied minors that have crossed the southwest border from the Northern Triangle countries of Central America since 2013.¹ Most of these kids are not victims of trafficking, but came to the United States voluntarily with the assistance of a human smuggler, and with the intent of being reunited with a parent or family member.

According to the Associated Press, with information obtained through a Freedom of Information Act request from the U.S. Department of Health and Human Services, between February 2014 and September 2015, 56,000 (80 percent) of the children were placed with sponsors illegally in the United States and an additional 700 were placed with sponsors in deportation proceedings.² Only 4,900 were placed with sponsors legally in the country.

The TVPRA calls for the HHS secretary to have the children promptly placed in the least restrictive setting that is in their best physical and emotional interest. This is the loophole HHS uses to place children with designated sponsors illegally in the United States. The law only refers to checking the sponsors' immigration status, not acting upon it. The perception by ORR is that regardless of immigration status, placing the children with a parent is the preferred solution. The AP report found that more than 50 percent of the children were placed with parents.

"Parents are parents, regardless of immigration status," Mark Weber, spokesman for the DHHS, told the author.

HHS Performs No Meaningful Monitoring after Placement

The policy of placing illegally arriving children with illegal residents is dubious enough, but the follow-up performed by HHS is even less confidence-instilling. Some 30 days after a child is placed with a sponsor, ORR simply makes a phone call to see how things are going. In the first quarter of fiscal year 2016, only 56 percent of children and 88 percent of sponsors participated in the follow-up call, with the remainder declining to participate with minimal consequences. An official with the Brentwood School District on Long Island told the author that follow-up is very difficult because some of these children are shuffled between residences after they are placed with a sponsor, unbeknownst to ORR. The reasons range from financial hardship to behavioral issues to enticement to join and live with gang members.

"While our custody of a UC ends upon release to a sponsor, our commitment to providing resources, connecting children to services, and protecting vulnerable children from abuse or exploitation does not end. Given these post-release calls are an additional step recently put into place to further ensure child wellbeing and safety, we are reviewing the data available from these calls to determine if additional policies or procedures should be implemented throughout the sponsor assessment and release process," Weber told the author.

These follow-ups were the result of the lack of monitoring of these children once they are placed, thousands of whom have joined MS-13, either through coercion and threats or voluntarily, for protection. It is this behavior that eludes ORR since, as Weber told the author, once they are placed they are no longer ORR's concern. The child may resurface at an immigration court hearing, where final determination can take as long as five years, or when they have committed a crime. And even in that case, deportation is not always an option since many communities around the country do not actively cooperate with Immigration and Customs Enforcement (ICE), or even obstruct enforcement, such as by not complying with ICE detainers.

Federal Placement Policy Incentivizes Illegal Migration

One congressional staffer, who declined to be identified, told the author that the current policy exploits a humanitarian law to manufacture additional reasons for illegal immigrants to remain in the country instead of being returned home. And it creates a huge demand for more minors to flood across the U.S. border to take advantage of it. In some cases, these unaccompanied minors should not qualify for the protections of this law because not only were they not trafficked, they were placed with their parents or legal guardians, which by definition means they are no longer unaccompanied.

The Obama administration and welfare advocates have professed that UACs are attempting to escape gang violence in Central America, and many have been. But there is also an awareness of the current policies that will enable them to stay for an indefinite period. The author's understanding, after seeing Border Patrol intel reports, news media accounts, and results of interviews by some of my colleagues, is that there was not so much awareness of DACA as just the fact that they would be released with a court date far in the future. According to one intel report, something like 90 percent of the UACs and family arrivals interviewed said they were coming because they heard they would be released with a "permiso" which is the slang for Notice to Appear in immigration court, which is de facto permission to stay pending the conclusion of deportation proceedings. This has resulted in a massive advertising campaign throughout Central America attempting to stem the migration north by saying that their hopes for admission to the United States based on this interpretation of the law is risky.

Pedro Sanchez, Consul at the El Salvadoran Consulate in New York City, acknowledges that many children from his country hedge their bets on this interpretation.

"People continue to send their children with this misunderstanding," Sanchez told the author.

While the administration may applaud ORR's efforts at placing these children rapidly, the children are being placed with sponsors who are only lightly vetted and barely followed up on to ensure the children's safety. This has resulted in thousands of these children being placed in Texas, Maryland, Virginia, and New York only to fall prey to the violent grasp of the MS-13 gang, and putting many of these communities in the grip of violence they have never experienced before.

On a broad scale, a 2015 Texas Department of Public Safety report said that the influx of UACs into the state, particularly in the Houston metro area, has had a direct influence on gang violence, causing the agency to elevate the gang from a Tier 2 to a Tier 1 gang.³ The report says that since 2011 the number of MS-13 members encountered by U.S. Border Patrol has increased each year, accelerating in 2014 and coinciding with increased illegal migration from Central America during the same period. "Although a large number of MS-13 members have been captured along the border, it is likely many more have successfully crossed into Texas and remain hidden from law enforcement. Gang members from Guatemala, Honduras, and El Salvador could be destined for locations in Texas with large Central American communities."

This assessment became prophetic not only in Texas, but as far north as Brentwood, N.Y., where just this past September two teenage girls and a 34-year-old African-American male were brutally murdered. In addition, authorities unearthed the remains of two male teens who had been missing since last spring. Suffolk County, N.Y., police have alleged these crimes were perpetrated by MS-13. The gang is responsible for some 30 homicides on Long Island since 2010.⁴ In recent weeks officials have arrested 35 gang members for various crimes.

Lawmakers who were contacted about the interpretation of the TVPRA and the violent fallout playing out on American streets have balked at commenting, most even failing to respond to the question, such as Rep. Mike McCaul (R-Texas), chairman of the House Homeland Security Committee; Rep. Peter King (R-N.Y.), also of the House Homeland Security Committee; and Martha McSally (R-Ariz.) of the Border and Maritime Security sub-committee. This unwillingness to address the issue further raises concerns there is tacit approval by these members of Congress for the ORR to endorse using illegal immigrants as sponsors under a federal policy that creates a disturbing precedent.

Erica Boynton of Brentwood, N.Y., whose 15-year-old son Christopher Hamilton was shot dead in the street as part of an MS-13 initiation in 2009, told the author that lawmakers are consumed with the prospect of terrorist groups such as ISIS coming to America, but sees a different threat that is actually occurring in Brentwood. "The terrorists," referring to MS-13, "are already here and nobody is paying attention."

Not only is the infusion of UACs without any alert or ability to prepare psychosocial resources for children already exposed to unspeakably violent cultures a disservice to American communities, but the prevailing policy also violates the premise of the TVPRA to provide the children with safe environments. Countless times they fall victim to MS-13 intimidation.

This policy of endorsing the use of illegal alien sponsors is fraught with numerous complications and risks, including the lack of accountability for bad outcomes, poor compliance with the law, and implicit endorsement of the sponsor's illegal presence. This swells the ranks of an already unmanageable illegal immigrant population, contributing to crime and social instability.

In 2015, a whistleblower made the startling revelation to members of Congress that 3,400 sponsors out of 29,000 listed in a UAC database at the time had criminal convictions, including re-entry after deportation, DUI, burglary, distribution of narcotics, domestic violence, homicide, child molestation, and sexual assault.⁵

Implications for Other Asylum Seekers

While the national dialogue on refugees relates to those coming from Syria and the dubious vetting process that is in place, in a way the handling of the Central American UACs may have already established the precedent for how contemporary asylum seekers are processed. Consider that a refugee who is under 18 may pass the evaluation by the federal government screeners (refugees are actually screened by USCIS, not ORR) that they have no criminal or terrorist ties, but once they are placed with a sponsor there is virtually no follow up. If they are placed with someone who is in the United States illegally, the prospect of their complying with the law as it relates to the minor is remote, because it would expose their own indiscretion. And the government has no idea as to the impact of this because nobody is watching.

Thousands of UACs have been recruited into MS-13 unbeknownst to ORR or even ICE, that is until they commit a crime. More crimes have been committed by UACs-turned-gang-members than those recent arrivals who may have been radicalized by ISIS.

Despite these glaring revelations there has been little response from lawmakers. Given the national dialogue and concern with ISIS, ignoring what is currently unfolding with the resettlement of Central American UACs could have even greater consequences if the projected number of young Syrian refugees or other asylum seekers are permitted to enter the United States.

Congressional Action Needed

Congress overwhelmingly passed this law when UACs were merely an inconvenient issue and not a humanitarian crisis. Given the fact that the majority of these children do not fit the requirement in the law for being unaccompanied or trafficked, the question then arises whether Congress should amend or even repeal the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

Congress should definitely amend the law, says the congressional staffer who requested anonymity. The U.S. House of Representatives has already acted. In 2014, at the height of the border surge, the House approved a supplemental border-funding bill that also closed the loopholes in the 2008 law. The Senate refused to consider it. Similar language in the Protection of Children Act was approved by the House Judiciary Committee in March.

The staffer went on to say that the goal of the law is to provide young trafficking victims with safety and stability in the United States while combating their traffickers. Placing these young persons with illegal immigrants who might be deported to their home countries fails to provide such stability. And their lack of lawful immigration status might prevent adequate vetting of those with whom the UACs are placed, which puts these children at additional risk.

A larger issue is the relative indifference of the U.S. government to Latin American issues; they are overshadowed by the potential threat of ISIS, which enables the deafening silence from lawmakers and even the media.

This policy is a slippery slope to other homeland security concerns in light of the pending Syrian refugee arrivals and the increase in asylum seekers coming to the United States. The federal government maintains that proper vetting is being carried out, but observers say otherwise. After the author repeatedly asked ORR spokesman Mark Weber if minor Syrian refugees could be placed with illegal immigrants, as the Central Americans were, his implied answer was “yes.”

Said Weber:

Syrian refugees of all ages undergo extensive screening by the State Department and Department of Homeland Security before they are allowed to enter the United States. As previously noted, children that are placed in our care are first apprehended and screened by the Department of Homeland Security. Each child referred to the Office of Refugee Resettlement (ORR) from U.S. Department of Homeland Security receives a comprehensive evaluation that includes criminal

history, prior acts of violence, and gang involvement. ORR does not release children considered to be a threat to the community. ORR also uses enhanced safety protocols when determining whether to release a child to a qualified sponsor. There is a robust pre-screening process for potential sponsors that require extensive background checks and, in some cases, mandatory home studies, before a child is released to the sponsor. Based on the law and the court's interpretation of the law — the first preference for placement would be with a parent of the child. If a parent is not available, the preference is for placement with the child's legal guardian, and then to various adult family members.

For communities like Brentwood that have been victimized by the lax management, supervision, and enforcement of federal law in the placement of Central American UACs, there is concern that once Syrian refugees start arriving in the United States en masse, they, too, will be drawn to Brentwood and its four mosques, a madrassa, and the highest Muslim population in Suffolk County. Concerns have already been expressed about the policies resulting in the placement or nurturing of Islamic extremists in the middle of their community.

End Notes

¹ [“United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016: Statement by Secretary Johnson on Southwest Border Security”](#), U.S. Customs and Border protection, October 18, 2016.

² Amy Taxin, [“AP Exclusive: Immigrant kids sent to adults lacking status”](#), Associated Press, April 19, 2016.

³ [“Texas Gang Threat Assessment”](#), Texas Joint Crime Information Center Intelligence & Counterterrorism Division, Texas Department of Public Safety, August 2015.

⁴ Frank Eltman and Claudia Torrens, [“MS-13 gang suspected in deaths of 4 students”](#), *Albany Times Union*, October 2, 2016.

⁵ Caroline May, [“Whistle blower: Many unaccompanied migrant children placed in care of criminals”](#), Breitbart.com, November 27, 2015.