

UN GUIDELINES FOR DETERMINING BEST INTERESTS OF CHILD

<https://www.unhcr.org/us/media/unhcr-guidelines-determining-best-interests-child>

Young Center's report:

<https://www.theyoungcenter.org/migrant-child-labor-exploitation-and-trafficking-in-the-united-states>

<https://www.dol.gov/agencies/whd/data/child-labor>

<https://www.washingtonpost.com/style/2024/11/26/shen-yun-dance-group-lawsuit-explained/>

Washington Post article, By [Herb Scribner](#), November 26, 2024

**“What to know about Shen Yun and the child labor accusations**

The dance and music group was accused of forced labor and trafficking in a new lawsuit Monday”,

# Migrant child labor exploitation and trafficking in the United States: Recommendations for keeping young people safe

by Ivón Padilla-Rodríguez, Assistant Professor of History, University of Illinois-Chicago

## EXECUTIVE SUMMARY

Rights violations unaccompanied youth face at the border—detention and family separation, in particular—have been major subjects of national political discourse for at least a decade. But since 2022, national media outlets have expanded upon the localized reporting by revealing to the wider public that some migrant youth also suffer from dangerous labor exploitation across the United States. In describing which government agencies are complicit in the “chain of willful ignorance” driving the growth of migrant child labor, the *New York Times* focused mainly on the shortcomings of the Office of Refugee Resettlement (ORR)’s sponsor vetting program and the Department of Labor’s capacity to investigate and hold corporations accountable (Dreier, 2023a).

The reasons migrant youth are exploited once in the U.S., however, are multidimensional and require a holistic response. Migrant child labor is the product of multi-system failures that have been decades in the making. Migrant young people come to the U.S. from

around the globe, seeking to reunite with family, to find safety and to work to support themselves and their families. They are forced to leave their home countries because of political and economic instability that are the result of legacies of foreign intervention, anti-Indigenous violence, lopsided multinational economic agreements, extreme poverty, and the rapid acceleration of climate change. Restrictive immigration policies make young people vulnerable to abuse and exploitation because they do not allow children to migrate through safe and lawful channels alongside their families. When forced to migrate unaccompanied, youth often have no choice but to indebt themselves to sophisticated smuggling networks to seek safety in the United States. Immigration and border enforcement policies dating back to at least the 1970s are responsible for creating and incentivizing this lucrative yet illicit market in which organized crime and smuggling networks take advantage of vulnerable migrants. Once inside the U.S., decades-old loopholes in federal child labor law, employers’ willingness to hire newly arrived children for dangerous and exploitative work, and the failure to invest significantly in the ability to investigate, deter, and punish child labor violations at the federal and state level, enable the exploitation of noncitizen children.

Without legal status, a more straightforward path to work authorization, guaranteed access to counsel or access to most public benefits, young people do not have the confidence to report abuse to the authorities. Nor do they have the social, economic, or legal support that would reduce their financial need. In the absence of these support systems, migrant youth's desperation and vulnerability to exploitation, debt bondage and abuse deepen.

## THE YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS

For the last 20 years, the Young Center for Immigrant Children's Rights has served as independent Child Advocate for thousands of unaccompanied immigrant children in federal custody. We have heard the stories of migrant youth, why they come to the U.S., who they seek to live with upon arrival, and what they hope for their lives. We have advocated for their wishes and best interests to be prioritized, and pushed for the funding needed to support their safe integration into communities. Our experience, coupled with that of other experts in child rights, health, and development, and the conclusions of social science research, have helped us to formulate a set of interventions and recommendations that can help protect unaccompanied immigrant youth from exploitation upon release from federal custody. For a deeper analysis of the history of migrant child labor, please see the full report at [www.youngcenter.org](http://www.youngcenter.org).

## INTERVENTIONS THAT CAN HELP PROTECT MIGRANT YOUTH FROM EXPLOITATION

### *Keeping Families Together*

Restrictive border policies—particularly those that result in family separation—are one of the main factors that makes youth vulnerable to labor exploitation. Many organizations and advocates have proposed border solutions which are humane and orderly, and which would reduce the incidence of family separation. Until there is enough political will to move away from militarized border management focused on deterrence, such policies will continue to place migrant youth at risk for exploitation on both sides of the border.



*When border policies prevent families from seeking asylum together, the entire family faces greater instability, poverty, and danger which exacerbate individual family members need to work.*



Even small changes, however, could help keep children safer. Policies and practices which recognize that it is in children's best interest to remain in the care of a trusted adult, rather than being separated and sent into federal custody alone, prevent trauma and reduce a child's vulnerability. Many children arrive at the border in the care of relatives who may not be their parent or legal guardian but with whom they have a safe, trusting relationship. When unaccompanied children are separated from family members who they trust—which is the current practice of U.S. Customs and Border Protection officials—they often become less safe. When that family member is then detained or deported, the child may no longer have a trusted adult to live with while applying for protection; they may also lose access to the adult who has critical information about their case. Government initiatives to verify family relationships in real time and keep children with trusted kin instead of separating them and detaining them reduce children's vulnerability and risk for exploitation.

### *Ending Congregate Care and Avoiding Prolonged Government Custody*

Many migrant children end up in federal custody after having been separated from trusted adults and family members by U.S. border policies. Under the *Flores* Settlement Agreement and the TVPRA, the government must place children in the "least restrictive setting" in that child's best interests. Even with this mandate, too often children spend weeks to months in large, congregate care shelters despite a wealth of evidence that large-scale, institutionalized placements undermine children's safety and development. Furthermore, many facilities are based in resource-poor communities with

limited access to affordable medical, legal and social service providers. The ORR system has a long wait list for family-based placements (long-term foster care), leaving many children eligible for a less restrictive placement stuck in congregate care. Young people separated from family or other trusted adult and placed in congregate care become more vulnerable to future exploitation.

### **Referring Vulnerable Children to Child Advocates**

The Trafficking Victims Protection Reauthorization Act (TVPRA 2008) codified the role of Child Advocates specifically to assist child trafficking victims and other vulnerable unaccompanied children. The TVPRA calls for the appointment of Child Advocates while the child is still in custody to focus on the needs of the child, not the immigration system. Child advocates offer a trusted relationship where concerns raised in the course of conversations can be flagged, and where the child's experiences or behaviors contextualized for other actors in the immigration system. Within this role, the Child Advocate can help children get access to specialized services while still in custody, or sometimes, once they are placed with a sponsor in the community. They can also make recommendations to legal service providers representing the child and to immigration judges evaluating their claims.

### **Ensuring Every Child Has Counsel**

Because immigration proceedings are categorized as civil proceedings rather than criminal ones, the government has determined that most immigrants, including unaccompanied immigrant children, do not have a right to government-funded counsel despite their loss of liberty, separation from family, and risk of deportation. Generally, non-profit organizations must raise private funds to provide direct representation to unaccompanied children and the demand for that service far exceeds supply. This lack of access to counsel means that unaccompanied children of any age—including infants—must prove to the government that they have a right to remain in the United States, while the U.S. government can use its myriad resources to argue against the child. As a result, many children's claims for protection are never heard. This reality is further compounded by the lack of a federal best interest standard to guide officials' decision-making in children's cases. Instead, ICE attorneys and immigration judges are free to act in whatever



*Early immigration deterrence strategies and the closing off of legal paths for entry led to the explosion of the human smuggling industry, ultimately creating the conditions necessary to make migrant teens vulnerable to exploitation and trafficking at the hands of unscrupulous employers in the late-twentieth century.*

*Padilla-Rodríguez, 2023.*

manner is expedient for the system, rather than for the child in front of them. For instance, an immigration judge may order a child's removal (repatriation) even when presented with uncontroverted evidence that the child will be unsafe upon return because the child was unable to prove their eligibility for protection under complex federal laws.

Children's lack of representation undermines due process, silences children's valid claims for protection, and puts untold numbers of children in harm's way. Ensuring every immigrant child had government-funded counsel would reduce children's vulnerability. Attorneys who are free to determine the scope of their representation can guide children through the immigration process and can identify rights violations, such as exploitation and trafficking while in custody or after release.

### **Improving PRS and Expanding Access to Benefits and Community Resources**

Years of research have shown that poverty alleviation programs that provide food, housing, cash assistance, and medical care improve children's well-being, reduce the risk of child welfare system involvement, and address racial inequality (Minoff, 2021; Anderson et. al., 2023; Shrivastava & Patel, 2023). Research

on migrant youth integration and support services conclude emphatically that their access to necessary services are inadequate. Young people who live in rural towns or whose first language is an Indigenous language are doubly disadvantaged when trying to access services like healthcare and housing assistance. And yet, their lack of legal status means they are ineligible for the very federal programs, like Medicaid, that could reduce the need to work. Access to public benefits improves children's overall educational, health, and employment outcomes—to the benefit of youth, their families, and communities (NASEM, 2019).

Research on post-release services (PRS) suggests that while PRS are necessary for children released from ORR custody, they have often shown to be insufficient in achieving the TVPRA's mandate due to long wait lists, as well as linguistic, financial, and geographic barriers to access (Roth & Grace, 2020; Young Center staff, 2023).

Existent obstacles to accessing community and social service supports could be alleviated in part by effective PRS case management. PRS case management which is locally rooted, culturally competent, and child-centered can make a difference. Providers who are meaningfully invested in the child's success and well-being are actively involved in the development of creative solutions for individual migrant children. In the same way that Child Advocates build trust with migrant children and take seriously their desires and aspirations, effective PRS case management honors young people's right to self-determination and empowers them to advocate for themselves (Young Center staff, 2024).

## **Facilitating Access to Safe, Appropriate Work**

Exploitation often arises when people have few options. All immigrants applying for asylum face a Congressionally-mandated waiting period of 180 days to access a work permit which would allow them to work legally. Immigrant youth applying for asylum or other forms of legal relief face the same restrictions. Young people who need to work even without authorization often are paid below minimum wage, face wage theft, and unsafe working conditions or hours (Martinez, 2016; Sexsmith, 2017; Canizales, 2014 and 2023; Oladipo, 2023; Dreier, 2023b). Filing for a work permit also requires a lawyer, further reducing access to legal work for immigrant youth. Congress could reduce or remove the waiting period for work permits and increase funding for their timely processing. Empirical research has shown that delays in work authorization for refugees negatively impacts their ability to support themselves and their communities, costing the economy millions of dollars a year (Hainmueller, Hangartner, & Lawrence, 2016; Evans and Fitzgerald, 2017; Marbach, Hainmueller, & Hangartner, 2018; Clemens, 2022).

Recent advances in domestic child welfare best practices further reinforce what decades of empirical research have already made clear: that prioritizing familial integrity and providing families with the benefits and programs they need to thrive are essential to safeguarding children's well-being. Ensuring that kids have access to the resources they need can help them remain in their homes safely (Minoff, 2021; Anderson et. al., 2023; Shrivastava & Patel, 2023). These are the approaches that have proven to be the most effective at alleviating the risk factors that precede children's exploitation.

## RECOMMENDATIONS

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- 1.** Restore full access to asylum and allow families to seek protection together. Congress must reject policies which limit the ability of individuals and families to access their right to apply for asylum.
- 2.** Invest in additional research and better record-keeping on all child labor exploitation and trafficking, disaggregated by type of trafficking, age, and legal status. Congress must support better data collection on labor trafficking and exploitation.
- 3.** Offer faster, more efficient access to work permits for immigrant youth who are old enough to work in regulated industries under U.S. labor laws. Congress should remove or reduce the waiting period for Employment Authorization Documents (EADs) which allow youth old enough to work to seek out safe, appropriate employment and not fall victim to labor exploitation. Right now, many young people do not have access to attorneys who can file this paperwork for them, and even if they do, they are subject to the 180-day waiting period, which can stretch to much longer due to backlogs at USCIS. USCIS should strengthen the Special Immigrant Juvenile Status (SIJS) deferred action policy by issuing a Notice of Proposed Rulemaking codifying protections from removal for SIJS youth and creating an employment authorization category for them.
- 4.** Congress and the Department of Labor must work together to stop child labor and hold violators accountable. DOL must update regulations regarding child labor, which have not been meaningfully revised since the 1970s. The Fair Labor Standards Act grants DOL broad authority to set and police limits regarding the employment of children, including in occupations deemed to be hazardous. Further, Congress must support the work of Wage and Hour through adequate appropriations, and must increase employer penalties for violations. It must also raise federal standards for the agricultural sector. In addition, DOL can choose to deploy targeted child labor investigations in states that have weakened child labor laws. Congress and DOL must ensure companies—not children and their families—face consequences for violating the law.
- 5.** Congress must support the Office of Refugee Resettlement's efforts to keep families together and reject policies which rely on heightened investigations and surveillance of immigrant families. While ORR's sponsor vetting protocols are important, children's time in government custody is not neutral; policies which lead to excessive vetting, mandatory home studies, heightened screening based on zip code or country of origin delay children's release to family and should only be required when there is clear evidence of risk. Congress must support policies which keep families together or reunify them quickly to avoid traumatic separations and time in government custody that can make immigrant children vulnerable to exploitation.
- 6.** Expand funding for children's access to legal representation, child advocates, and post release services. Unaccompanied immigrant children must have robust legal representation at government expense from the moment of apprehension, in U.S. Customs and Border Protection custody, and throughout their immigration proceedings. Child advocates should be available for all children who need them, ensuring that immigrant youth have a trusted adult to turn to for help. Post release services should be offered to all unaccompanied children, but should be voluntary, allowing providers to build trust with families. Providers must be trained to meet the needs of this population, and funding could be provided to employ peer support methods to help families benefit from these services.
- 7.** Facilitate prompt access to refugee benefits and other public benefits for unaccompanied children and their families. ORR provides funding to state governments, resettlement agencies, and other nonprofit community-based organizations to provide benefits and services to refugee families which could be extended to unaccompanied immigrant children. States can also extend non-ORR-funded benefits, such as health coverage, nutrition assistance, and income support to these children and their families. The provision of basic benefits to these families would help reduce the financial pressures migrant youth face.

# MIGRANT CHILD LABOR EXPLOITATION AND TRAFFICKING IN THE UNITED STATES

by Ivón Padilla-Rodríguez, Assistant Professor of History, University of Illinois-Chicago

## Introduction

Rights violations unaccompanied youth face at the border—detention and family separation, in particular—have been major subjects of national political discourse for at least a decade. But in late February 2023, the *New York Times* expanded upon the localized reporting already being done in the last few years (Frontline, 2018; Sanchez, 2020; Rosenberg et. al., 2022; Tumin, 2022) by revealing to the wider public that some migrant youth also suffer from dangerous labor exploitation across the United States. In describing which government agencies are complicit in the “chain of willful ignorance” driving the growth of migrant child labor, the *New York Times* focused mainly on the shortcomings of the Office of Refugee Resettlement (ORR)’s sponsor vetting program and the Department of Labor’s capacity to investigate and hold corporations accountable (Dreier, 2023a).

The reasons migrant youth experience compounded vulnerabilities and dire economic circumstances, however, are multidimensional and require an informed, holistic response. Migrant child labor is the product of multi-system failures that have been decades in the making. The problem is neither a “new economy of exploitation,” nor is it defined by the failures of a single or even a couple institutions. In reality, it is a constellation of policies—namely immigration, border enforcement, labor, and public benefits policies—that are at the crux of this issue. Restrictive immigration and border enforcement policies make children vulnerable to abuse and exploitation because they don’t allow children to migrate through safe and lawful channels alongside their families. When forced to migrate unaccompanied through increasingly remote crossing points along the border, youth have no other choice but to indebted themselves to increasingly sophisticated smuggling networks to seek safety and survival in the United States. Immigration and border enforcement policies dating back to at least the 1970s are responsible for creating and incentivizing this lucrative yet illicit market in which organized crime and smuggling networks are able to thrive and take advantage of vulnerable migrants. Once inside the U.S., decades-old loopholes in federal child labor law as well as a longstanding failure to invest significantly in the ability to investigate, deter, and punish child labor violations at the federal and state level, enable the exploitation of noncitizen children.

Without legal status, opportunities to migrate safely alongside one’s family, a more straightforward path to work authorization, guaranteed access to counsel or a child advocate and access to most public benefits, children do not have the confidence to report abuse to the proper authorities nor do they have the social, economic, or legal support that would lessen or eradicate their financial need. In the absence of these support systems, migrant youth’s desperation and vulnerability to debt bondage and abuse deepen. Proposed solutions that have little to do with the root causes and economic realities driving this problem ultimately ignore what the long history of migrant child labor exploitation in the U.S. reveals: the central role played by U.S. immigration policies in creating the conditions that deliver migrant youth to harm and exacerbate their precarity.

Important advances in domestic child welfare best practices further expose the failures and contradictions embedded in the U.S.’ treatment of migrant youth. When the federal government incentivized states to reduce

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their reliance on congregate care through the passage of the 2018 Families First Prevention Services Act, the law acknowledged that children’s removal from their families is harmful to their health and that their well-being is best served by keeping them safely in their homes (HHS, 2018). But solutions to migrant child labor that advocate for increased scrutiny and surveillance of sponsors and communities, which would mean keeping unaccompanied youth in congregate care for longer periods of time, are not only incompatible with recent advances in best practices but they also further harm children’s health (Children’s Defense Fund et. al., 2020). In some cases, they may even exacerbate and mirror the precursors to trafficking long established in trafficking research, like the fact that traffickers target children in, or those who have run away from, foster or congregate care precisely because they are not getting their familial, emotional, and basic needs met (Smith, Healy Vardaman, & Snow, 2009; Finklea, Fernandes-Alcantara, & Siskin, 2015; Children’s Defense Fund et. al., 2020; HHS, 2023; Young Center staff, 2023). Advances in domestic child welfare practices acknowledge that helping children remain safely with their families with the resources they need to survive, are far more effective at mitigating poor children’s vulnerabilities than subjecting them or their families and communities to heightened surveillance (Roberts, 2022).

### **Executive Summary of Major Findings**

This report arrives at a number of conclusions concerning the longstanding nature of migrant child labor exploitation in the U.S. The most important findings are twofold. First, this report argues that the intergenerational impacts of genocidal war and foreign intervention, as well as punitive border enforcement since the 1970s and the exploitative aims of profit-driven employers, are the foremost culprits in the creation of this problem and its root causes. Migrant children, especially Indigenous Guatemalan teens, need to work because of political and economic instability in their home countries that are the result of legacies of foreign intervention, anti-Indigenous violence, lopsided multinational economic agreements, extreme poverty, and the rapid acceleration of climate change. The long history of the origins of modern migrant child labor exploitation in the U.S. reveals that late-twentieth century immigration deterrence strategies, the closing off of legal paths to entry, and employers’ willingness to hire newly arrived children for dangerous and exploitative work created the conditions necessary to make migrant teens vulnerable to exploitation and trafficking. Secondly, the report concludes that the federal government is dismissive of trafficking claims when the victim “consented” to being smuggled across the border. But distinguishing labor trafficking from smuggling is not easy because the line between compulsion and choice among this population is often blurry. Increasingly, Indigenous migrant youth make ostensibly “voluntary” choices to migrate but are in fact compelled by powerful structural circumstances.

In terms of the prevalence of labor trafficking among this population, the report acknowledges that while prevalence estimates vary widely because accurate statistics on contemporary human trafficking are extremely difficult to calculate, available data suggests that noncitizens are disproportionately represented among labor trafficking cases while U.S. citizens are disproportionately represented among sex trafficking cases. To cite just one body of evidence, the eligibility letters issued to foreign national children by the Department of Health and Human Services (HHS) in fiscal year 2021 reveal that most of those letters (68%) were issued for labor trafficking victims (Department of State, 2022). The number of HHS eligibility letters issued for labor trafficking would likely be much higher if the federal government took seriously the trafficking claims



of migrants who paid for smuggling services and then ended up in a situation of coercive labor exploitation once inside the U.S.

When it comes to trafficking precursors, the literature has established a comprehensive list of risk factors, vulnerabilities, and infrastructural factors that make youth vulnerable to exploitation. They include, young age, child welfare system involvement, debt, recent migration or relocation, and high rates of houseless or runaway youth. While research that focuses on risk factors has mainly focused on sex trafficking, and therefore U.S. citizens, interviews with social service providers and legal advocates reveal that when it comes to noncitizen children, the combination of their young ages and lack of legal status represent especially important risk factors making them vulnerable to abuse and exploitation.

In terms of trafficker profiles, the literature is clear that there is no single type of trafficker and cautions that published profiles of traffickers are exploratory and not a complete picture. But recently published data from the National Human Trafficking Hotline suggest that employers constitute one important exploiter demographic. In fact, in 2021, labor trafficking tips submitted to the National Human Trafficking Hotline (93% of which concerned recent migration and 5% of which explicitly dealt with unaccompanied youth) revealed that the majority of victims (83%) with a known relationship to their trafficker identified employers as the persons responsible for exploiting their labor (Polaris, 2022). Legal practitioners and child welfare experts have identified unrelated adults as another potential risk profile.

The final section of this report offers several recommendations to address and prevent migrant child labor exploitation in the U.S. First, it emphasizes the pressing need to restore access to asylum and reject policies that limit the ability of children to seek protection with their families so they can exercise their right to apply for asylum and other forms of legal relief. Importantly, it also argues that the government must offer more efficient access to work permits for young people old enough to work safely in regulated industries while ensuring that Congress and the Department of Labor work together to stop and deter exploitative child labor. In terms of sponsor vetting, it recommends that government agencies collaborate to keep families together and reject policies that rely on the surveillance of migrant families and communities. Finally, it recommends the government expand children's access to legal representation, child advocates, post release services, and refugee or public benefits. These recommendations ultimately highlight the urgent need to acknowledge migrant children's agency, aspirations, and the distinct cultural contexts from which they arrive, as well as their need for support and care.

## **Labor Exploitation, Trafficking, and Smuggling: Relevant Laws, Definitions, and Distinctions**

### *Domestic Anti-Child Labor and Anti-Trafficking Laws*

In the U.S., three federal laws govern the labor and occupational safety of workers of all ages: the 1938 Fair Labor Standards Act (FLSA), the 1970 Occupational Safety and Health Act (OSHA), the 2000 Trafficking Victims Protection Act (TVPA) and its reauthorizations (TVPRA) over the years since 2003, but especially the 2008 reauthorization. Under the FLSA, there are different standards for agricultural and nonagricultural work. And while some state child labor laws are inconsistent with the protections outlined in the FLSA, whichever law is more restrictive applies, whether state or federal. (Department of Labor, n.d.; Maki, 2010). In spite of this requirement, since 2021, 28 state legislators have introduced proposals to modify state child labor laws to create standards lower than the FLSA or standards that do not exceed the FLSA. Twelve of these proposals have been enacted as of February 2024 (Mast, 2024). Recently, states like Florida, Kentucky, Indiana, New Jersey, Missouri, and West Virginia have introduced bills that would remove maximum hours guidelines for teens, eliminate meal or rest breaks, eliminate work permit requirements, or weaken protections against hazardous work (Mast, 2024; Lockhart, 2024; Ukenye, 2024). According to the Economic Policy Institute, efforts to create state standards that are weaker than federal statutes represent “an intentional tactic to generate pressure for subsequently lowering federal standards, reflecting long-standing interests of some industry groups” (Mast, 2024). To give just one example of this, when the Ohio Senate introduced Senate Bill 30 to allow teens between

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the ages of 14 and 15 to work until 9 p.m. during the school year with their parents’ permission, which is later than the federal standard allows for, the proposal was accompanied by a companion measure urging Congress to amend its own laws to match the changes proposed by SB30 (Venhuizen, 2023; Dawes, 2023; Mast, 2024).

Under federal child labor provisions, the minimum age for employment in non-agricultural occupations is 18 for hazardous occupations; 16 for employment in non-hazardous occupations; and 14 for a limited set of occupations, with restrictions on work conditions and hours, particularly during the school year. Those aged 14 and 15 are strictly prohibited from working in manufacturing, mining, occupations that involve power-driven machinery (including food processors and cutters), warehousing, and construction, among other occupations. The employment of 16 and 17-year-olds is additionally prohibited in the following industries with limited exceptions: explosives manufacturing, mining, roofing, and power-driven meat-processing (Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C §. 201 et seq., Martinez, 2015; Donovan & Shimabukuro, 2016). In contrast, 16-year-olds in the agricultural industry can perform any job, including hazardous ones, with no restrictions on hours of work. Those who are 14 years old can be employed in non-hazardous agricultural jobs outside of school hours and youth of any age can work in non-hazardous agricultural employment for unlimited hours outside of school if they have parental consent and when certain conditions are met (Donovan & Shimabukuro, 2016). While the FLSA authorizes the Secretary of Labor to conduct workplace inspections to investigate child labor violations in workplaces, there were only 810 inspectors in the Department of Labor’s Wage and Hour Division to oversee 165 million workers across the U.S. in fiscal year 2022 (Costa & Martin, 2023).

OSHA establishes standards for safety in workplaces and authorizes the enforcement of those standards. The safety and health hazards of working in meatpacking plants and slaughterhouses, for example, are addressed in OSHA standards. Although OSHA’s safety and health regulations apply to workers of all ages (OSHA, 1999) and require various hazard control measures and safety standards, meat processing facilities in several states have been illegally employing dozens of migrant youth to work with dangerous chemicals and machinery (Department of Labor, 2023). Recent coverage of migrant child labor in slaughterhouses has documented, for instance, the stories of Guatemalan teenagers who have suffered serious injuries and death while working in poultry plants (Oladipo, 2023; Dreier, 2023b).

Finally, the TVPA, the nation’s first federal anti-trafficking statute, defines labor trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor 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). Importantly, the 2008 TVPRA codified special protections for unaccompanied children suspected of being trafficking victims. When the William Wilberforce Trafficking Victims Protection Reauthorization Act was first introduced in the fall of 2007 as H.R. 3887, testimony by the Director of Refugee Programs with the U.S. Conference of Bishops acknowledged at the House Judiciary Committee that because “children are perhaps the most vulnerable groups of victims of trafficking,” they merit special attention and protection via child-centered principles that prioritize their best interest, immediate safe haven, family reunification, and the development of their self-sufficiency (Combatting Modern Slavery, 2007). The law directed HHS to ensure that all unaccompanied children in its care receive legal orientation presentations and that “to the greatest extent possible,” are provided legal counsel.

## Independent Child Advocates

The law also enabled HHS to appoint Child Advocates to the most vulnerable children to promote the child's "best interest," a standard not defined in the TVPRA but which generally includes respecting the child's views, their identity, preserving family unity, the child's safety, and their rights to health, education, and protection (United Nations, 2013). Child Advocates are appointed to migrant children in custody who: are potential victims of trafficking or who have experienced other harms that make them eligible to apply for protection from removal; are very young or non-verbal children; have disabilities or complex medical issues; are pregnant or parenting; speak less common languages including Indigenous children; have experienced prolonged detention; were separated from their parent at the border; and those who are at risk of turning 18 and aging out of ORR custody. While detained, these children are separated from family. Child Advocates accompany children in custody and advocate for safe, non-restrictive placements; health, educational, and social services that advance their well-being; prompt reunification with family; and access to legal representation. Child Advocates develop and file best interests determinations (BIDs) with any decision maker involved in the child's case, including immigration judges and asylum officers.

Upon appointment, a Child Advocate meets with a child to learn their story and their expectations and aspirations for the future. That includes whether the child has anyone or anything to return to in home country. With this information, Child Advocates submit recommendations to anyone making decisions that impact that child, with the goal of prioritizing the child's best interests (Young Center, n.d.).

Unlike other actors in a child's immigration journey, the Child Advocate's sole responsibility is to champion the child's best interests: their wishes, their safety, and their rights to family integrity, liberty, development, and to maintain their identity. Currently, Child Advocates are provided by the Young Center for Immigrant Children's Rights, which uses a model in which bilingual volunteers meet weekly with an individual child. Their work is supervised by staff, both attorneys and social workers, who direct all advocacy for the child. The volunteer model provides children with a consistent, dedicated presence. They are also trained in a child-rights model of advocacy. A former Child Advocate noted that, because Child Advocates are child-centered and child-led, children will often share more information about their experiences and lives with Child Advocates than with other adults (Young Center staff, 2024).

This relationship can also help children themselves to understand their experiences in a different light. A former Child Advocate noted, "one thing that was tricky was that children may not see their past experiences as trafficking or exploitation" (Young Center staff, 2024). In multiple cases, Child Advocates have been appointed to children who did not understand their individual situation to be one of trafficking. For example, one child was made to do certain things by the adults around her, but she did not identify those actions as exploitation. It was hard for her to speak about many things she had experienced, but over time, she began to trust her Child Advocate, and elements of her experience became clearer. As a result, the Child Advocate recommended that HHS provide the child with an Office of Trafficking in Persons (OTIP) letter and that the legal service provider file for a Trafficking Visa. The child won her immigration case and was provided with Trafficking Victim Assistance Program services once reunified with family in the community—including access to services that were critical for addressing past harm and helping to protect against the risk of future harm.

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Because the Child Advocate's role is to focus on the best interests of that child, they are often the only actor within a complex web of interlocutors who can learn enough about the different aspects of a child's situation to elevate the child's wishes or needs to service providers and immigration officials. A Child Advocate can also empower a young person to examine their story from new angles; helping them to understand which behaviors are safe and which are unsafe; speaking up for their needs; and discerning their options, particularly while they are separated from family members who would otherwise take on this role. Because Child Advocates often continue to engage with the child for several months after they are released from custody and reunified with a trusted family member or adult, they are also one of the few actors who has a consistent and continuous relationship with the child at a particularly critical time in their immigration proceedings.

### *International Laws and Protocols Concerning Children's Rights*

Internationally, three laws and protocols articulate the rights of children and governments' obligations to protect them from severe forms of child labor exploitation. These laws include: the United Nations' (UN) Convention on the Rights of the Child (CRC), the Palermo Protocol, and the International Labour Organization's (ILO) Convention Covering the Prohibition and Immediate Elimination of the Worst Forms of Child Labor. Although the U.S. has not ratified the UN Convention on the Rights of the Child, its widespread ratification elsewhere points to the international human rights communities' acknowledgement of the unique rights owed to youth. Article 3 of the CRC asserts that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Article 32 of the CRC identifies children's right to be protected from labor exploitation while Article 28 recognizes children's right to a free education (UN, 1989).

The Palermo Protocol was established to prevent and combat human trafficking, particularly among women and children. Article 3 of the Protocol defines trafficking by utilizing the same "force, fraud, and coercion" standard outlined in the TVPA. Importantly, however, subparagraph (b) of Article 3 makes clear that consent is irrelevant in determining whether a child has been trafficked (UN, 2014). Finally, Article 3 of the ILO's child labor convention defines "the worst forms of child labor" as the "sale and trafficking of minors through debt bondage, serfdom, and forced or compulsory labor." Work is considered among the worst forms of child labor when it is likely to harm the health, safety, or morals of young people (ILO, 1999).

### *Exploitation Versus Trafficking Versus Smuggling: Important Distinctions and Definitional Challenges*

Research has treated the term "child labor," generally, as an umbrella term that refers to unlawful work performed by young people under a certain age, usually between the ages of 14 and 16 (Owens et. al., 2014; Gail, 2020). "Child labor exploitation" is meant to describe instances in which children are not only working in contradiction of the law but also when employers deny children rights to fair compensation, working hours, and conditions, such that the work is harmful to the child's health, development, or education (Owens et. al., 2014; Gail, 2020). These definitions likely do not distinguish between *migrant* child labor and *migrant* child labor exploitation because enforcement of the FLSA, including its child labor provisions, is generally carried out without regard to legal status (Department of Labor, 2008; ACLU, 2009).

It is important to note that child labor exploitation also occurs in legally sanctioned work, particularly in the agricultural industry, which has long benefitted from legal exemptions and loopholes as well as lax enforcement (Human Rights Watch, 2010; Wurth, 2023). The lack of stringent legal protections in the agricultural industry, which employs a majority "Hispanic origin" workforce, have put agricultural child workers at risk of serious injury and death, as they are disproportionately represented in injury and fatality statistics (Government Accountability Office, 2018; Gold et. al., 2022). In short, child workers perform dangerous and educationally disruptive work in both legally sanctioned industries and those outlawed or limited by the law.

Child labor exploitation turns into trafficking when the work is extracted through the use of fraud, force, or coercion. Scholarly literature on the topic, legal statutes, and court cases concerning involuntary servitude have defined “force,” in part, to mean the use of any form of physical force to control victims (Kozminski, 1988; TVPA, 2000; Gail, 2020; Department of State, 2022). The passage of the TVPA expanded previous interpretations of “coercion” to include not only physical harm but also compulsion through psychological and financial harm (TVPA 2000; Kaufka Walts, 2017; Shacher, 2019; Gail, 2020; Department of State, 2022). These tactics may include psychological manipulation, deceit, financial exploitation, and abuse of the legal system (Kaufka Walts, 2017). In the case of migrant youth, exploitation has most commonly turned into trafficking through the presence of debt bondage (via smuggling debt), confinement, and the threat of arrest and deportation (Uehling, 2008; Kaufka Walts, 2017).

There is a consensus among anti-trafficking organizations and legal practitioners that a combination of factors must be present for a situation of exploitation to rise to the level of labor trafficking. The National Human Trafficking Hotline uses a model it calls “Action-Means-Purpose” (AMP) to determine what labor trafficking is and isn’t. According to the AMP model, federal law recognizes an incident of exploitation as trafficking if the perpetrator takes an action *and* employs a means through force, fraud, or coercion for the specific purpose of compelling an individual into an act of labor (Polaris, 2023). The AMP model can be helpful for distinguishing between cases of exploitation and trafficking because, according to Department of Homeland Security (DHS) regulations, individuals who apply for a T visa must prove that they were recruited, harbored, or transported for the purpose of involuntary servitude and that they are physically present in the U.S. “on account” of trafficking. A review of decisions issued by U.S. Citizenship and Immigration Services’ (USCIS) Administrative Appeals Office between 2017 and 2019 revealed that USCIS has been dismissive of trafficking claims, however, when individuals hired someone to smuggle them into the U.S. (Schacher, 2019).

Human smuggling generally refers to the business of transporting people unlawfully across an international border. In distinguishing smuggling from trafficking, smuggling is ordinarily considered a “one-time incident” in which those who are smuggled do not continue their relationship with smugglers whereas trafficking can include the “one-time incident” of smuggling and the relationship between the trafficker and the trafficked individual(s) continues. Trafficking in the most general sense need not involve physical movement of a person while smuggling is meant to refer to an act that is “always transnational” (Office on Trafficking in Persons, 2017). Yet another distinction that is made between the terms is that someone who is smuggled is seen as a violator of the law while a person who becomes trafficked is seen as a victim of a crime by the law (Kaufka Walts & French, 2011).

While government agencies and some research on human smuggling further distinguish smuggling from trafficking by noting that human smuggling does not involve coercion because prospective migrants “consent” to the service (Office on Trafficking in Persons, 2017; Polaris, 2021), there are countless cases of human smuggling that have involved fraud, force, or coercion and have risen to the level of trafficking. But recent studies have demonstrated that T visa denial rates have increased dramatically in recent years and that the Administrative Appeals Office (AAO) continues to be dismissive of victims’ trafficking claims if they were smuggled into the U.S. (Dahlstrom & Gowayed, 2022). One recent AAO non-precedent decision determined that a Mexican national, who asserted he was a victim of a severe form of trafficking because his smugglers ended up subjecting him to forced labor, determined that the “account shows that the smugglers transported and harbored him for the purpose of carrying out and completing their smuggling agreement... Although the Applicant correctly noted that trafficking can arise during a smuggling operation, the evidence did not support such a conclusion” (USCIS, 2023).

Dismissing trafficking claims as not involving coercion or force because a noncitizen made the decision to be smuggled across the border is contrary to the best practices suggested by the United Nations Office on Drugs and Crime (UNODC). In a 2018 issue paper, UNODC argued that “actual exploitation is the most compelling evidence of the intent to exploit.” And that because trafficking is such a complex and clandestine crime that

utilizes “new and evolving forms of exploitation... states should ensure that their definition of trafficking ‘can capture all forms of exploitation... encountered in practice” (UNODC, 2018).

**“They come to the U.S. to work because they need to work. And they need to work because of political and economic instability in their home countries.”**

Distinguishing labor trafficking from human smuggling and exploitation, therefore, is not always easy in practice. Complicating the matter is the fact that the lines distinguishing compulsion and choice among this population are not always clear. They are often blurry as poor and increasingly Indigenous migrant youth make ostensibly “voluntary” choices to migrate but are in fact compelled by powerful structural circumstances. In other words, youth who see few avenues for safety or economic mobility in their countries of origin make a “choice” to engage in labor migration because there are few, if any, alternatives for them to secure physical safety or economic survival in their home communities. They come to the U.S. to work because they need to work. And they need to work because of political and economic instability in their home countries—especially in the case of Maya-speaking Guatemalan youth—that are the result of the intergenerational impacts of war, foreign intervention, lopsided multinational economic agreements, transnational gangs, and poverty (Heidbrink, 2019; Canizales & O’Connor, 2021).

In addition, the increased demand for human smuggling, which will get further discussion in subsequent sections of this report, and increased price tag associated with smuggling have given rise to a form of “debt-driven migration” that is highly coercive. In studies about the migration of Indigenous Guatemalan youth researchers have found that in order for Mam and K’iche’ youth to reach the U.S., they are increasingly turning to unregulated or loosely regulated institutions to finance their migration in the absence of safe and legal pathways for entry. In a 2019 study, nearly 90 percent of the fifty Guatemalan youth research participants incurred debt to fund their migration. Their lending institutions ensured the children’s high-interest loans were paid back via the use of weekly verbal notices, threats to foreclose on a family’s plot of land, and death threats against family members. Research demonstrates that debt itself is “powerfully coercive” and that the reality of debt-driven or debt-financed migration challenges the neat binary that presumes migration is either only forced or only voluntary (Heidbrink, 2019).

The overlap between compulsion and choice raises important questions in attempts to distinguish exploitation and smuggling from trafficking, including: if debt migration is increasingly common among poor children’s migratory experiences due to the increased demand and price-point of smuggling, does the mere presence of debt imply the presence of trafficking? However coercive that debt is, neither legal practitioners nor the law view the presence of debt *on its own* as evidence of trafficking. Older teens who earn wages in dangerous industries, send money home and pay down migration debt are not necessarily considered trafficked under the TVPA or in the eyes of advocates. They are, however, seen as being forced to make impossible choices and operate in a “fundamentally unjust system” that “[penalizes them] for the realities of their existence”—realities that are structurally and historically rooted in legacies of foreign intervention, anti-Indigenous violence, and discriminatory policies (Young Center staff, 2023).

## **The Long History of Migrant Child Labor Exploitation in the U.S.**

Migrant child labor exploitation in the U.S. is not new. The era of mass migration in the late-nineteenth and early-twentieth centuries saw millions of child migrants arrive to the U.S. from Europe, Mexico, and Asia who ended up working in a diversity of industries once inside the U.S. These young people sometimes had their labor migration facilitated by smugglers who doubled as labor recruiters. Others entered by passing through Ellis and Angel Island or the U.S.-Mexico border. Although the 1938 FLSA “banned” child labor nationwide, the law included a broad exemption for work in agriculture, where mostly Mexican and African

**“Migrants of all ages and genders were recruited in northern Mexican border cities, charged rapidly inflating and interest-laden smuggling prices, and then delivered across the border in cramped buses, trailers, rental trucks, and camper vans without proper ventilation, heat, or food. Some of these trips turned fatal just as they do today.”**

American children toiled. Throughout the twentieth century migrant youth labored in both legally sanctioned jobs and work deemed illegal by the law, especially in agriculture, food processing, manufacturing, and domestic work (Padilla-Rodríguez, 2020 and 2022b).

The 1964 case in *U.S. v. Shackney* is likely the first documented instance and attempted prosecution of what today would be considered the labor trafficking of migrant youth from Latin America. The case concerned the involuntary servitude and debt bondage of a Mexican couple and their five children on a Connecticut chicken farm owned by David Shackney. The family obtained no more than \$10 in cash throughout their two-year stay on the farm because Shackney garnished their earnings to dissolve the inflated debt owed to him. After being convicted of involuntary servitude, a federal appeals court in 1964 absolved Shackney of wrongdoing by claiming that psychological coercion induced by the threat of deportation did not reach the level of involuntary servitude—a problem remedied by the establishment of the 2000 TVPA.

Several changes to post-1965 U.S. immigration policy increased the prevalence of migrant child labor exploitation and trafficking, particularly on farms. The 1965 Immigration Act’s imposition of numerical restrictions on Latin American immigration, the termination of the Bracero Program, and the narrowness of the 1980 Refugee Act’s protections closed off legal pathways for entry into the U.S. and made undocumented entry the only option for millions of Mexicans and Central Americans in the late-twentieth century (Padilla-Rodríguez, 2022a). Local law enforcement in Texas estimated that in 1975, one out of every six undocumented migrants who crossed the border every minute was a child (El Paso Times, 1975). And while the majority of the undocumented youth who came to the U.S. in the 1970s were from Mexico, in the 80s and 90s, growing numbers of Central American youth began to join them because of the U.S.-backed civil wars and anti-Indigenous violence in their countries. By the mid- to late-1980s, growing numbers of Indigenous migrants, including older Mexican and Central American teens, were recruited to work in inhumane conditions, particularly on farms (Padilla-Rodríguez, 2020).

These were the same years when the U.S.-Mexico border became increasingly deadly to cross without authorization. Prior to the Border Patrol’s formal institutionalization of its 1994 “Prevention Through Deterrence” strategy, the U.S. began to significantly militarize the southwestern border in practice beginning in the 1970s. The government’s combination of increased border militarization and decreased legal pathways for entry contributed to the growth of the human smuggling enterprise, which in turn, exacerbated migrant children’s vulnerabilities to abuse, exploitation, and trafficking. By 1975, over 70% of migrants, including unaccompanied youth, purchased the services of a smuggler, which cost on average, between \$450 and \$1,500 in the late 1970s. In the 1990s, those numbers rose to between \$2,000 and \$5,000 for Central Americans. Migrants of all ages and genders were recruited in northern Mexican border cities, charged rapidly inflating and interest-laden smuggling prices, and then delivered across the border in cramped buses, trailers, rental trucks, and camper vans without proper ventilation, heat, or food. Some of these trips turned fatal just as they do today (Padilla-Rodríguez, 2023).

Impoverished migrants who could not afford the growing costs of smuggling services—especially unaccompanied children—had no choice but to “consent” to arrangements in which smugglers transported them directly to

worksites inside the U.S., mainly on remote farms where labor law enforcement and community support were nearly nonexistent, so migrants could work off their smuggling debts. On these remote worksites, migrants, including teenagers, were forced to work long hours for very little to no pay. Employers garnished their earnings to pay down arbitrarily inflated smuggling debts after their arrival. Migrants in these situations were sometimes denied food, schooling, and medical attention. And when they bravely spoke out against their exploitation, they were intimidated into subservience with violence and threats of deportation. In 1980, estimates suggested that anywhere between 10,000 and 100,000 migrants were trafficked into the U.S. every year (Connor, 1982; Padilla-Rodríguez, 2020).

The history of the origins of modern migrant child labor exploitation and trafficking ultimately reveals the central role played by punitive border enforcement in incentivizing a lucrative smuggling industry that has been around for decades. Early immigration deterrence strategies and the closing off of legal paths for entry led to the explosion of the human smuggling industry, ultimately creating the conditions necessary to make migrant teens vulnerable to exploitation and trafficking at the hands of unscrupulous employers in the late-twentieth century.

### Contemporary Migrant Child Labor and Trafficking: Prevalence Estimates and Trends

Accurate statistics on contemporary human trafficking are difficult to calculate. There are several reasons for this. Among them is that trafficking is a clandestine enterprise in which traffickers closely guard their victims and isolate them from potential community and legal support. Because migrants possess liminal or precarious legal statuses, their fear of deportation prevent them from having the confidence to report abuse or exploitation, making identification extremely difficult not only for the purposes of community support or prosecution but also for the purposes of research. In addition, the disagreements and confusion over what constitutes trafficking versus what constitutes exploitation or smuggling also make it incredibly difficult to produce rigorous and reliable studies on the topic (Zhang, 2012; NIJ, 2013).

On the basis of available data, scholars and practitioners ultimately conclude that prevalence estimates vary and that there are discrepancies between governmental agency reporting and NGO reporting, some of which can be explained by regional differentiations as well as differences in methodology (Kafka Walts, 2017). The UN has concluded that prevalence data “are not definitive and may be distorted, given the... visibility of some forms of exploitation over others” (UNODC, n.d.). Indeed, even modest improvements in data collection have mainly focused on child sexual exploitation, which continues to command the majority of attention from stakeholders in spite of the enormous uptick in child labor violations in the last five years (Clawson et. al., 2016; Letsie et. al., 2021; Department of Labor, 2023). When it comes to law enforcement, what they associate with human trafficking is primarily sex trafficking, which partially explains why sex trafficking investigations outnumber those of labor trafficking (Owens et. al., 2014; Kaufka Walts, 2017; Gibbs et. al., 2018). Other researchers have found that law enforcement were frequently unfamiliar with protective labor regulations and felt they did not have the “infrastructure” necessary to identify incidents of labor trafficking (NIJ, 2013).

In spite of the difficulties in determining affirmatively the prevalence of labor trafficking, let alone its prevalence among noncitizen youth, a variety of government offices and nonprofits have published helpful estimates on the topic that can be used as starting points to understand the scope of the issue. In the early 2000s, government estimates released by the U.S. Attorney General’s office and the Department of State suggested that between 14,500 and 20,000 people were trafficked into the U.S. every year (U.S. Attorney General, 2006; Clawson, Layne, & Small, 2006). These numbers were arrived at after reducing the 50,000 trafficking victims a year estimate initially cited by the TVPA (Clawson, Layne, & Small, 2006).

Data from local, multi-county, and national studies that have disaggregated for citizenship status suggest that noncitizens are disproportionately represented among labor trafficking cases while U.S. citizens are disproportionately represented among sex trafficking cases (Banks & Kyckelhahn, 2011; Owens et. al.,



**“The trafficking literature has, in general, determined that there is no single type of trafficker and that they can technically include family members, spouses, friends, members of organized crime, diplomats, and employers.”**

2014; Finklea, Fernandes-Alcantara, & Siskin, 2015; Koegler et. al., 2019; Polaris, 2021). Further evidence of this trend can be found in the proportion of eligibility letters issued to children by HHS. In fiscal year 2021, HHS issued 1,200 eligibility letters to foreign national children who experienced human trafficking. Of the 1,143 foreign national children certified in fiscal year 2021, 25 percent were sex trafficking victims, 68 percent were labor trafficking victims, 6 percent were victims of both labor and sex trafficking, and the rest suffered a form of trafficking unknown to HHS (Department of State, 2022).

Journalists, academic and human rights researchers have documented the presence of migrant child labor in a variety of work sites including agriculture, food processing, food packaging, manufacturing, construction, roofing, domestic service, restaurants, and retail work across twenty states (Martinez 2015; Sexsmith, 2017, Frontline 2018; Sanchez, 2020; Diaz-Strong, 2021 and 2022; Rosenberg, Cooke, & Schneyer, 2022; Levenson, 2023; Dreier 2023a; Canizales, 2023). Trends among these various workplaces are usually gendered and determined by the strengths of local economies. For example, one national multi-county trafficking study found that most of those who had been trafficked into agricultural work were men or boys while those trafficked into domestic service were mainly women or girls (Owens et. al., 2014). Interviews with Young Center staff and published research point to employment trends based on various industries’ presence in particular localities. For instance, migrant youth labor in the U.S. Southwest—particularly in California and Texas—tends to be concentrated in agriculture, food packaging, manufacturing, landscaping, service, and domestic work (Oscar Mondragon, 2004; Abdelnasser Eid Youssef Ibrahim, 2006; Canizales, 2023; Young Center staff, 2023). In midwestern cities, interviews, journalistic reporting, and academic research have pointed to migrant youth’s presence as workers mostly in agriculture, manufacturing, construction, roofing, and the service industry (Frontline, 2018; Sanchez, 2020; Diaz-Strong, 2021 and 2022; Young Center staff, 2023). In northeastern cities, incidents of migrant child labor exploitation have been reported in agriculture, construction, and the service industry (Garcia-Botello et. al., 2004; Jefferies 2014; Martinez 2015; Sexsmith 2017). Between 2017 and 2020, agricultural and domestic work sites were consistently the top two locations reported upon nationally in labor trafficking tips submitted to the National Human Trafficking Hotline (Polaris, 2021).

The trafficking literature has, in general, determined that there is no single type of trafficker and that they can technically include family members, spouses, friends, members of organized crime, diplomats, and employers (Kaufka Walts & French, 2011; Farrell, et. al., 2024). When it comes to migrant youth, available data suggests that employers and unrelated adults represent the most important risk profiles among unaccompanied children’s potential exploiters. Interviews with Young Center staff reveal that most unaccompanied children whose cases they’ve encountered got released safely to sponsors who did not exploit them. However, among cases where concerns were raised, they mainly concerned Category 3 sponsors, who consist of unrelated adults (Young Center staff, 2023). In sum, the available literature supports that policy choices would be best applied to address root causes rather than higher scrutiny of parents, legal guardians, and family members.

**Risk Factors and Root Causes: The Factors that Put Migrant Children at Risk of Exploitation**

Research on trafficking, in addition to interviews with child welfare advocates, have identified a series of risk factors, vulnerabilities, infrastructural factors that represent potential precursors to trafficking. These risk factors and vulnerabilities include: young age, child welfare system involvement, debt, disability, recent migration or relocation, and high rates of houseless or runaway youth (Polaris, 2021; Koegler et. al., 2019;

**“The main reasons migrant youth aspire to work pre-migration are poverty, familial obligation, and personal survival.”**

Smith, et. al., 2009). Trafficking studies have concluded that “child welfare system involvement, particularly when children are placed in non-family settings, is in and of itself one of the biggest risk factors for trafficking” (Children’s Defense Fund et. al., 2020). Traffickers recruit youth inside and outside shelters and group homes, making institutionalized and non-family settings “prime targets” for recruitment (Smith, Healy Vardaman, & Snow, 2009; Finklea, Fernandes-Alcantara, & Siskin, 2015). The presence of an international airport, interstate highway connections, high poverty rates, poor educational systems, and large immigration populations also make up common social and infrastructural factors in trafficking incidents (Koegler et. al., 2019). Finally, Young Center staff emphasize that other red flags or precursors to migrant child labor trafficking, specifically, involve youth who live with their employer; when employers have access to the young person’s documentation or passport; and when employers control the young person’s wages (Young Center staff, 2023).

A group of academics and journalists have produced in-depth qualitative data regarding Mexican and Central American migrant child labor that further make clear the root causes of youth labor migration. These studies reveal that migrant youth from Latin America arrive in the U.S. with prior experience as workers and internal migrants in their home countries (Sexsmith, 2017; Diaz-Strong, 2020; Canizales, 2021). In Latin America, young people between the ages of 13 and 17 are of working age (Martinez, 2016; Canizales, 2021). Both pre- and post-migration, Mexican and Central American youth have expectations to enter employment and explicitly state a desire to work, sometimes at ages as young as 8 (Martinez, 2015 and 2016; Canizales, 2014, 2015, and 2023; Young Center staff, 2023). These young people conceived of their potential economic contributions to their families as honorable and obligatory (Martinez, 2015 and 2016).

The main reasons migrant youth aspire to work pre-migration are poverty, familial obligation, and personal survival (Martinez, 2016; Sexsmith, 2017; Heidbrink, 2019; Diaz-Strong, 2020; Canizales, 2014, 2021, and 2023). Authors of localized studies describe the children’s migration as strategic economic choices (Canizales, 2021) and as a familial survival strategies (Heidbrink, 2019). Put simply, these youth migrate to “lift themselves and their families out of poverty” (Diaz-Strong, 2020). In studies about unaccompanied youth workers, their remittances paid for basic necessities like food, utilities, the costs of medical attention, and siblings’ schooling expenses in Mexico and Central America (Martinez, 2016; Canizales, 2023).

These findings, in particular, highlight the urgent need to acknowledge that children who arrive to the U.S. from places like Guatemala, Honduras, and Mexico adhere to different cultural norms and understandings of “childhood” than those widely accepted in the U.S. Indigenous and nonindigenous youth from Latin America arrive to the U.S. with previous work and migration experiences, culturally specific commitments to their kin, and their own desires and aspirations. To portray unaccompanied youth as defenseless victims misrepresents their lived experiences and strips them of their agency and right to self-determination. The older children among this demographic hope to work in safe and appropriate jobs to provide for their families and secure their own survival, well-being, and self-sufficiency. Depicting these young workers as victims without agency also runs the risk of producing harmful consequences by criminalizing or over-policing their families who are believed to be responsible for their children’s exploitation.

Unaccompanied youth were not only responsible for supporting their left-behind families but also, for paying their own rent and expenses in their new households (Martinez, 2016; Canizales, 2021). Because the sponsors who receive them in the U.S. are also often undocumented, precariously employed, exploited and vulnerable themselves, migrant youth find it nearly impossible to obtain economic independence because they have so many people to care for (Fordham, 2015; Grace & Roth, 2020; Young Center staff, 2023). In addition to sending money home and paying for their living expenses in the U.S., migrant children also have to pay down

***“Without legal status or work authorization, migrant children do not have the confidence to report economic abuse, threats, the withholding of needs or wants, and forced isolation (the most frequent methods of abuse reported to the hotline) to the appropriate authorities.”***

sizeable migration debts. Central American youth have arrived to California recently with anywhere between \$3,000 to \$11,000 in debt (Heidbrink, 2019; Canizales, 2021).

This smuggling debt is what produces situations of debt bondage. In nearly all the available localized studies, wage theft or a significant delay in wage payment were present. In cases of wage theft, migrant youth sometimes had their wages garnished to pay down their migration debt, the interest on that debt, or the (inflated) cost of food and other supplies (Martinez, 2016; Sexsmith, 2017; Canizales, 2014 and 2023). When undocumented youth have demanded payment for their labor in both the recent and distant past, their employers used physical force to subdue them into compliance (Padilla-Rodríguez, 2020; Diaz-Strong, 2020).

When findings from these in-depth qualitative studies about migrant child labor are paired with data from the National Human Trafficking Hotline as well as research and reporting on the consequences of border enforcement and the destruction of asylum access, it becomes clear that legal status and young age, in combination, represent especially consequential risk factors among migrant youth for abuse and exploitation. In 2021, the top reported risk factor to the National Human Trafficking Hotline was recent migration or relocation, with 93% of the calls for labor trafficking having to do with recent migration while 5% of the calls for labor trafficking specifically dealt with unaccompanied refugee youth, constituting the second most reported risk factor (Polaris, 2022). Data from the hotline aligns with practitioner’s beliefs that “youth is [itself] a risk factor” (Young Center staff and partners, 2023). Without legal status or work authorization, migrant children do not have the confidence to report economic abuse, threats, the withholding of needs or wants, and forced isolation (the most frequent methods of abuse reported to the hotline) to the appropriate authorities (Polaris, 2022).

A growing body of contemporary social scientific literature has identified that closing off legal avenues for entry and the increased militarization of the southwestern border have increased demand for human smuggling as the only alternative for poor and vulnerable migrants, including unaccompanied children, to seek entry into the U.S. Researchers agree that border enforcement has had little effect in reducing undocumented immigration and that it has redirected migrants to riskier crossing sites. This hardening of the border pushed migrants into hostile territory, thereby increasing demand for and the cost of smugglers’ services (Massey, 2016). This is the case no matter when border militarization and prevention through deterrence are said to have originated—whether during the 1970s (Dunn, 1996; Padilla-Rodríguez, 2020 and 2022); after 1986, when the Immigration Reform and Control Act’s budgetary investment in border enforcement made circular migration less common (Massey, 2016; Minian, 2018); or 1994, when the Border Patrol formalized its Prevention Through Deterrence policy to deliberately funnel border-crossers into the desert (Border Patrol, 1994; De León, 2015; Parker & Dudley, 2023). As a result of this punitive approach to border enforcement, over 7,000 migrant deaths have been recorded at the border since the late 1990s, with fiscal year 2022 being the deadliest on record (NNiRR, 2020; Isacson, 2022).

The clandestine nature of smuggling has historically and contemporaneously made migrants vulnerable to abuse and exploitation, including labor exploitation, kidnapping, extortion, and trafficking in some instances. A recent study determined that Prevention Through Deterrence “created an increasingly lucrative [illegal] market for human smuggling” that is now controlled by “sophisticated criminal organizations” that demand exorbitant fees from migrants (Asmann & Dudley, 2023). Restrictive policies that aimed to prevent unauthorized border-

crossings or limit asylum access like the Migrant Protection Protocols (MPP) and Title 42 created a bottleneck along the border where migrants were forced to congregate as they determined if they were eligible for asylum, exposing them to extreme harm. Attorneys claimed that this bottleneck “essentially [handed organized crime groups] victims” and created “gold rushes” for smugglers (O’Toole, 2020; Gottesdiener, 2020; Asmann & Dudley, 2023). As was the case in the past, punitive border enforcement and the closing off of legal avenues for entry incentivized human smuggling and drove up its price to reach between \$10,000 and \$13,000. Impoverished migrants who could not pay these enormous sums continued to use their modest assets as collateral to pay smuggling networks (Asmann & Dudley, 2023). The assumption of interest-laden debts then had the potential for creating situations of coercive debt bondage.

The government’s response to unauthorized migration and the rise of human smuggling since the 1960s has consistently focused, in part, on smuggler prosecution—a tactic that has deflected attention from how U.S. policies have been responsible for creating the illicit market that has enabled smuggling and organized crime to flourish. Since at least the 1970s, the government has masked its own responsibility for migrant harm behind a rhetoric of protection. The U.S. government has for decades claimed to pursue anti-smuggling and anti-trafficking efforts, in the form of smuggler prosecution and restrictive immigration policy, to “protect and rescue” migrants (Padilla-Rodríguez, 2022a and 2023). The Biden Administration’s Homeland Security Secretary employed this language in his defense of Title 42, saying the authority was exercised “to protect migrants themselves” (Mayorkas, 2021).

In reality, policies like MPP and Title 42, as well as the more recent rule requiring appointments via the CBP One application, forced migrant families to self-separate and send their children to seek safety in the U.S. unaccompanied (Young Center, 2023; Sanchez, 2023). Policies that have limited access to asylum have also made migrant children and parents “easy prey” for criminal groups in northern Mexico (O’Toole, 2020). Human Rights First tracked over 13,000 instances of murder, kidnapping, and rape on asylum-seekers at the border because of Title 42 and MPP (Neusner et. al., 2022). Since May 2023, the organization has documented over 1,300 reports of torture, kidnapping, rape, and other attacks on asylum seekers stranded in Mexico as a result of the Biden Administration’s “asylum ban” (Human Rights First, 2023).

When border policies prevent families from seeking asylum together, the entire family faces greater instability, poverty, and danger which exacerbate individual family members’ need to work. Children who manage to cross the border successfully must then face detention, adversarial proceedings, no guarantee of counsel or a best interests child advocate, a protracted wait for work authorization, and no access to most public benefits as a result of the legal status requirements built into the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Minoff et. al., 2021). In combination, all of these policies increase the risk of exploitation by forcing children to (1) migrate unaccompanied and face U.S. law enforcement officials alone, without the support and care of family members or legal advocates in some cases; (2) work despite a fear of deportation, thereby eliminating their confidence to report abuse; and (3) survive without economic or social support, intensifying their poverty and deepening their debt.

## **Interventions That Can Help Protect Migrant Youth From Exploitation**

### *Keeping Families Together*

As discussed, restrictive border policies—particularly those that result in family separation—are one of the main factors that makes youth vulnerable to labor exploitation. Many organizations and advocates have proposed border solutions which are humane and orderly, and which would reduce the incidence of family separation. Until there is enough political will to move away from militarized border management focused on deterrence, such policies will continue to place migrant youth at risk for exploitation on both sides of the border.

**“Government initiatives to verify family relationships in real time and keep children with trusted kin instead of separating them and detaining them reduce children’s vulnerability and risk for exploitation.”**

Even small changes, however, could help. Policies and practices which recognize that it is in children’s best interest to remain in the care of a trusted adult, rather than being separated and sent into federal custody alone, prevent trauma and reduce a child’s vulnerability. Many children arrive at the border in the care of relatives who may not be their parent or legal guardian but with whom they have a safe, trusting relationship. When unaccompanied children are separated from family members who they trust—which is the current practice of U.S. Customs and Border Protection officials—they often become less safe. When that family member is then detained or deported, the child may no longer have a trusted adult to live with while applying for protection; they may also lose access to the adult who has critical information about their case. Government initiatives to verify family relationships in real time and keep children with trusted kin instead of separating them and detaining them reduce children’s vulnerability and risk for exploitation.

*Ending Congregate Care and Avoiding Prolonged Government Custody*

Some children are trafficked from home country for their labor, while others are exploited after arriving in the country. Many children end up in federal custody after having been separated from trusted adults and family members by U.S. border policies. Under the *Flores* Settlement Agreement and the TVPRA, the government must place children in the “least restrictive setting” in that child’s best interests. Even with this mandate, too often children spend weeks to months in large, congregate care shelters despite a wealth of evidence that large-scale, institutionalized placements undermine children’s safety and development. Furthermore, many facilities are based in resource-poor communities with limited access to affordable medical, legal and social service providers. The ORR system has a long wait list for family-based placements (long-term foster care), leaving many children eligible for a less restrictive placement stuck in congregate care. While they may not have been at risk for trafficking at the front end of their journey, children separated from family or other trusted adult and placed in congregate care become more vulnerable to future exploitation.

*Referring Vulnerable Children to Child Advocates*

The 2008 TVPRA codified the role of Child Advocates specifically to assist child trafficking victims and other vulnerable unaccompanied children (TVPRA 2008). The TVPRA calls for the appointment of Child Advocates while the child is still in custody to focus on the needs of the child, not the immigration system. Child Advocates offer a trusted relationship where concerns raised in the course of conversations can be flagged, and where the child’s experiences or behaviors contextualized for other actors in the immigration system. Within this role, the Child Advocate can help children get access to specialized services while still in custody, or sometimes, once they are placed with a sponsor in the community. They can also make recommendations to legal service providers representing the child and to immigration judges evaluating their claims. While not all children will confide in a Child Advocate, many recognize that their role is to help the child’s voice be heard, which can ultimately reduce their vulnerability.

*Ensuring Every Child Has Counsel*

Because immigration proceedings are categorized as civil proceedings rather than criminal ones, the government has determined that most immigrants, including unaccompanied immigrant children, do not have a right to government-funded counsel despite their loss of liberty, separation from family, and risk of deportation. The government funds lawyers to provide “know your rights” presentations to unaccompanied children in custody

**“Research on migrant youth integration and support services conclude emphatically that their access to necessary services are inadequate. Young people who live in rural towns or whose first language is an Indigenous language are doubly disadvantaged when trying to access services like healthcare and housing assistance.”**

and to screen them for eligibility for protection. Generally, non-profit organizations must raise private funds to provide direct representation to unaccompanied children and the demand for that service far exceeds supply. This lack of access to counsel means that unaccompanied children of any age—including infants—must prove to the government that they have a right to remain in the United States, while the U.S. government can use its myriad resources to argue against the child. As a result, many children’s claims for protection are never heard. This reality is further compounded by the lack of a federal best interest standard to guide officials’ decision-making in children’s cases. Instead, ICE attorneys and immigration judges are free to act in whatever manner is expedient for the system, rather than for the child in front of them. For instance, an immigration judge may order a child’s removal (repatriation) even when presented with uncontroverted evidence that the child will be unsafe upon return because the child was unable to prove their eligibility for protection under complex federal laws.

Children’s lack of representation undermines due process, silences children’s valid claims for protection, and puts untold numbers of children in harm’s way. Ensuring every immigrant child had government-funded counsel would reduce children’s vulnerability. Attorneys who are free to determine the scope of their representation can guide children through the immigration process and can identify rights violations, such as exploitation and trafficking while in custody or after release. They often work in teams with social workers and can get to know the child in the course of their efforts to represent them. Without counsel, few children would have the opportunity to challenge their exploitation, let alone achieve any sort of protection as a result of the crimes committed against them by unscrupulous employers or traffickers.

*Improving PRS and Expanding Access to Benefits and Community Resources*

Years of research have shown that poverty alleviation programs that provide food, housing, cash assistance, and medical care improve children’s well-being, reduce the risk of child welfare system involvement, and address racial inequality (Minoff, 2021; Anderson et. al., 2023; Shrivastava & Patel, 2023). Research on migrant youth integration and support services conclude emphatically that their access to necessary services are inadequate. Young people who live in rural towns or whose first language is an Indigenous language are doubly disadvantaged when trying to access services like healthcare and housing assistance. And yet, their lack of legal status means they are ineligible for the very federal programs, like Medicaid, that could reduce their need to work (Roth & Grace, 2020; Minoff et. al., 2021). Access to public benefits improves children’s overall educational, health, and employment outcomes—to the benefit of youth, their families, and communities (NASEM, 2019).

Research on post-release services (PRS) suggests that while PRS are necessary for children released from ORR custody, they have often shown to be insufficient in achieving the TVPRA’s mandate due to long wait lists, as well as linguistic, financial, and geographic barriers to access (Roth & Grace, 2020; Young Center staff, 2023). Receipt of these services often requires access to transportation to travel to appointments and financial resources to pay for fees associated with referrals.

Existent obstacles to accessing community and social service supports could be alleviated in part by effective PRS case management. PRS case management which is locally rooted, culturally competent, and child-centered can make a difference. Providers who are meaningfully invested in the child's success and well-being are actively involved in the development of creative solutions for individual migrant children. In the same way that Child Advocates build trust with migrant children and take seriously their desires and aspirations, effective PRS case management honors young people's right to self-determination and empowers them to advocate for themselves. Effective PRS case management is also timely and continuous. Timely PRS case management addresses urgent needs as quickly as possible and avoids the consequences of aging out of age-specific services and programs by shortening the gap between release from ORR and first contact with a PRS worker (Young Center staff, 2024).

### *Facilitating Access to Safe, Appropriate Work*

Exploitation often arises when people have few options. All immigrants applying for asylum face a Congressionally-mandated waiting period of 180 days to access a work permit which would allow them to work legally (8 C.F.R. § 208.7). Immigrant youth applying for asylum or other forms of legal relief face the same restrictions. This includes young people who obtained a Special Immigrant Juvenile visa, which is a critical form of protection for migrant youth. They were unable to obtain a work permit for much longer due to visa number caps that created a long backlog (USCIS, 2024). Young people who need to work even without authorization often are paid below minimum wage, face wage theft, and unsafe working conditions or hours (Martinez, 2016; Sexsmith, 2017; Canizales, 2014 and 2023; Oladipo, 2023; Dreier, 2023b). Filing for a work permit also requires a lawyer, further reducing access to legal work for immigrant youth. Congress could reduce or remove the waiting period for work permits and increase funding for their timely processing (Human Rights Watch and Seton Hall Law, 2013; Ocasio-Cortez et. al., 2023; Canizales, 2023; Orozco, 2023). Empirical research has shown that delays in work authorization for refugees negatively impact their ability to support themselves and their communities, costing the economy millions of dollars a year (Hainmueller, Hangartner, & Lawrence, 2016; Evans and Fitzgerald, 2017; Marbach, Hainmueller, & Hangartner, 2018; Clemens, 2022).

Recent advances in domestic child welfare best practices further reinforce what decades of empirical research have already made clear: that prioritizing familial integrity and providing families with the benefits and programs they need to thrive are essential to safeguarding children's well-being. Ensuring that kids have access to the resources they need can help them remain in their homes safely (Minoff, 2021; Anderson et. al., 2023; Shrivastava & Patel, 2023). These are the approaches that have proven to be the most effective at alleviating the risk factors that precede children's exploitation.

## **Recommendations**

On the basis of the interdisciplinary research laid out in this report as well as interviews conducted with child welfare professionals and legal advocates, this report makes the following recommendations:

1. Restore full access to asylum and allow families to seek protection together. Congress must reject policies which limit the ability of individuals and families to access their right to apply for asylum.

2. Invest in additional research and better record-keeping on all child labor exploitation and trafficking, disaggregated by type of trafficking, age, and legal status. Congress must support better data collection on labor trafficking and exploitation.
3. Offer faster, more efficient access to work permits for immigrant youth who are old enough to work in regulated industries under U.S. labor laws. Congress should remove or reduce the waiting period for Employment Authorization Documents (EADs) which allow youth old enough to work to seek out safe, appropriate employment and not fall victim to labor exploitation. Right now, many young people do not have access to attorneys who can file this paperwork for them, and even if they do, they are subject to the 180-day waiting period, which can stretch to much longer due to backlogs at USCIS. USCIS should also strengthen the Special Immigrant Juvenile Status (SIJS) deferred action policy by issuing a Notice of Proposed Rulemaking codifying protections from removal for SIJS youth and creating an employment authorization category for them.
4. Congress and the Department of labor must work together to stop child labor and hold violators accountable. DOL must update regulations regarding child labor, which have not been meaningfully revised since the 1970s. The Fair Labor Standards Act grants DOL broad authority to set and police limits regarding the employment of children, including in occupations deemed to be hazardous. Further, Congress must support the work of Wage and Hour through adequate appropriations, and must increase employer penalties for violations. It must also raise federal standards for the agricultural sector. Congress and DOL must ensure companies—not children and their families—face consequences for violating the law.
5. Congress must support the Office of Refugee Resettlement's efforts to keep families together and reject policies which rely on heightened investigations and surveillance of immigrant families. While ORR's sponsor vetting protocols are important, children's time in government custody is not neutral; policies which lead to excessive vetting, mandatory home studies, heightened screening based on zip code or country of origin delay children's release to family and should only be required when there is clear evidence of risk. Congress must support policies which keep families together or reunify them quickly to avoid traumatic separations and time in government custody that can make immigrant children vulnerable to exploitation.
6. Expand children's access to legal representation, child advocates, and post release services. Unaccompanied immigrant children must have robust legal representation at government expense from the moment of apprehension, in U.S. Customs and Border Protection custody, and throughout their immigration proceedings. Child advocates should be available for all children who need them, ensuring that immigrant youth have a trusted adult to turn to for help. Post release services should be offered to all unaccompanied children, but should be voluntary, allowing providers to build trust with families. Providers must be trained to meet the needs of this population, and funding could be provided to employ peer support methods to help families benefit from these services.
7. Facilitate prompt access to refugee benefits and other public benefits for unaccompanied children and their families. ORR provides funding to state governments, resettlement agencies, and other nonprofit community-based organizations to provide benefits and services to refugee families which could be extended



to unaccompanied immigrant children. States can also extend non-ORR-funded benefits, such as health coverage, nutrition assistance, and income support to these children and their families. The provision of basic benefits to these families would help reduce the financial pressures migrant youth face.

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