

Alone In America

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Javier is 15 years old and deeply in debt to his smuggler. "I came here because I am poor and I want to buy some land for my parents" he says, rubbing his hands together nervously as he sits in the library of a detention facility for immigrant youth in California. "They are old and cannot work ... I am paying debt. It is rising every day. But what can I do? Nothing. I am here."

Two months ago, Javier and his parents promised a smuggler from their hometown in Guatemala that they would pay him \$4000, with interest, if he would transport Javier to North Carolina, where the boy's brother lives. There, he planned to work for a few years to and save enough money to buy his parents a little piece of land. That dream ended in Arizona ten weeks after he left home, when Javier was arrested in an immigration raid on a house where he was staying.

Every year, thousands of youth like Javier risk their lives to come to the United States alone. Our nation's most vulnerable immigrants, when they are arrested, find themselves thrown into a confusing immigration system that simultaneously embraces and rejects the idea of child welfare, a system that treats them as something between child and adult, victim and criminal.

Across the country, the number of youth in detention is rising, and the vast majority never has access to legal representation. Many are housed in facilities hours from legal service providers, and states like Texas and Arizona have only one full-time staff attorney for the hundreds of minors detained there. There is also growing evidence that some children who have been labeled as unaccompanied in actuality have been forcibly separated from their parents by Border Patrol, a practice that has alarmed some lawmakers and calls into question whether funds are being used improperly by the two federal agencies charged with the protection of these children.

A Growing Phenomenon

In the past four years, the number of unaccompanied children taken into custody by immigration officials has increased by nearly 30 percent, from 4,600 in 2000 to 6,200 in 2004, and is expected to surpass 7,000 this year.

While the increase in apprehensions of children can partially be attributed to the new emphasis on border security and immigration enforcement after 9/11, the Office of Refugee Resettlement (ORR), a federal agency charged with the care, custody and placement of unaccompanied children through its Unaccompanied Children's Services, also points to deteriorating socioeconomic conditions in the children's countries of origin. Over three quarters of the unaccompanied children

arrested last year came from Central America, a region where children are often mired in a cycle of crushing poverty, violent homes, and forced conscription into street gangs.

According to the ORR, most unaccompanied youth in their custody are Central American males between the ages of 15 and 17, although children of all ages and from most regions of the world can be found in the agency's care.

Alex is from Honduras, the poorest country in Central America according to the Economic Commission on Latin America, with 79 percent of its population living in poverty. The Office of Refugee Resettlement granted interviews with Alex and other youth for this article under the condition that their names be changed and their locations not be revealed.

At 18 years old, Alex is soft-spoken yet direct, with carefully coiffed hair and a hint of a mustache. He wears two gold chains around his neck, one with a dolphin charm, another with a heart that says, "I love mom."

When he was 10 years old, his father was stabbed to death by two of Alex's uncles. Alex found the body.

"They killed my father to rob him of the money he had made from selling a cow. For this reason they killed him," he said softly.

Although everybody in his town knew who had killed his father, nobody, not even Alex's grandmother, dared to turn them in. People were afraid of his uncles, who were drug users, and did not trust the authorities to investigate the crime and bring them to justice.

With his mother living in the United States and his grandmother unable to work, Alex was forced to quit school and start working on farms, making bricks, building houses -- anything he could to support himself and his three younger brothers. But his uncles were still hanging around, and Alex wanted to turn them in to the authorities. His family refused.

His uncles started threatening to kill him, a pattern that continued for several years. By the time Alex was 16, he was determined to leave Honduras. His destination was Houston, where his mother lives. In order to get there, he would have to travel over 2,000 miles and cross three borders illegally.

Alex's experience was harrowing. "I saw things I had never seen before. I saw criminals robbing a kid, and then they shot him right here," he said, pointing to his chin. "I saw a woman being raped on a train." He also spent several days without food.

"A lot of these kids are at death's door" when they reach the U.S., says Martha Rickey, an attorney with Arizona's Florence Project, an organization that provides free legal services to children in detention.

Alex's hellish journey ended in May 2003, three months after he left Honduras. He was arrested by Border Patrol shortly after crossing the Rio Grande in an inflatable boat in south Texas. He was transported in handcuffs to an adult jail, where he was

held for 10 days before being sent to an ORR-run shelter for unaccompanied children in Chicago.

Conditions in Detention Improving

On any given day there are approximately 700 children in ORR custody. The agency has a 920-bed capacity, and contracts with 34 facilities spread out across the country, ranging from shelters, secure facilities and foster care to housing for children with histories of mental health disorders.

Under the former Immigration and Naturalization Service, children were often detained in jails along with violent juvenile or adult offenders for months at a time, according to 2002 reports by Amnesty International and the Women's Commission for Immigrant and Refugee Children. They also were routinely handcuffed, strip-searched, and denied legal representation, in violation of the Flores vs. Reno settlement, a 1998 agreement that set the standards for juvenile immigrants in detention.

Conditions for children started improving in 2003, when INS functions were absorbed into the newly created Department of Homeland Security and the responsibility for unaccompanied immigrant children was transferred to the Office of Refugee Resettlement. Now, when unaccompanied children are arrested by Border Patrol or other immigration authorities, they must be referred to the ORR within 72 hours.

The ORR, which is housed within the U.S. Department of Health and Human Services, has sought to adopt a child-welfare model for youth in detention. According to Maureen Dunn, the director of Unaccompanied Children's Services at the ORR, the agency opts to place youth in the least restrictive environment available, and when possible, to reunite them with family members pending resolution of their cases. The agency asserts that it has decreased the percentage of children in jail-like, secure facilities by 78 percent. Today, three to four percent of children are in secure facilities.

Most non-secure detention centers have English and computer classes, as well as space for recreation. "Some of [the children] have played for the first time in their lives" at these facilities, says Dunn.

Lawyers and advocates agree that conditions have greatly improved since 2003. "We have found quite a bit of improvement" in the facilities charged with caring for detained children," says Joanne Kelsey of the Women's Commission for Immigrant and Refugee Children, an advocacy group that monitors conditions within the facilities. Martha Rickey agrees. "The facilities are very well run. ... ORR has really gone out of their way to look after the best interest of the children," she said.

While the ORR says that the average stay for children in detention is around 45-60 days, in reality the length of a child's stay depends on a variety of factors, including the child's country of origin and whether he or she has a suitable family member to be reunited with, one willing to sponsor him or her through the lengthy legal process of applying for asylum.

A Mess in Texas

The rising number of detained children has placed a strain on legal service providers across the nation, who are scrambling to identify those children that have been trafficked or have strong cases for asylum, and to provide them with adequate representation.

Nowhere is this more evident than in Texas, which has only one full-time staff attorney for the nearly 500 children currently in detention in cities as spread out as Houston, Harlingen, El Paso and San Antonio.

Some say this situation is undermining the child welfare model that the ORR has sought to create for unaccompanied children. "At this point, we don't even have the resources to identify if kids have a claim," said Natalia Walter, a collaborating attorney with the International Rescue Committee in Texas.

Sister Liliane Alam, the executive director of Las Americas, an organization in El Paso that provides free representation to detained children, says that her organization has been struggling to keep up with cases since the number of children in detention suddenly doubled -- from 50 to 100 children -- in June 2004. "We are all overwhelmed by the situation," she says. "There is a real need in El Paso -- we need pro bono lawyers, we need law students."

The frustration about the lack of resources is echoed across the Southwest. Martha Rickey is the only free legal services provider for the approximately 130 children currently detained in Arizona.

"With as many kids as we see in Phoenix, there are only so many attorneys [who can do pro bono work]," she said. "There are a huge number of kids who never get hearings or fall through the cracks."

Another exacerbating factor is that many facilities are located hours from groups that can provide legal representation. One of the biggest detention centers in Texas is located in Harlingen, a seven-hour drive from Houston. Other facilities are located in rural Indiana and Georgia.

"A lot of times you have kids that are way outside the city, and you're asking a lawyer to spend hours during their day commuting" said Yolanda Eisenstein, Legal Director of the Child Immigrant Project at the Human Rights Initiative in Dallas.

According to the ORR, approximately 40 percent of children return to their country of origin, either voluntarily or by court order. Of those who remain, a very small number go on to obtain asylum, although there are no statistics that segregate the data by age. Those that are released to their family members pending immigration hearings are given court dates, but without legal representation, it is unlikely that a child will show up to his or her hearing. While the actual numbers of those who actually make it to court are not tracked or reported, according to Maureen Dunn, it is possible that as many as 65 percent of children are no-shows.

A new D.C.-based organization, called the National Center for Immigrant and Refugee Children, seeks to reduce that figure dramatically. The Center, which was started with funding from the actress and U.N. Goodwill Ambassador Angelina

Jolie intends to match unaccompanied children who have been released from detention with volunteer attorneys from around the country.

Adriana Ysern, who is a senior program officer at the Center, says that they have started training pro bono attorneys in Houston and Dallas on how to represent children in those areas. Nevertheless, some say that, in the long-term, the only solution is to fund full-time attorneys in areas with the most detained youth. According to Natalia Walter, "There aren't enough pro bono attorneys who are willing to go to Harlingen or El Paso. Each case can take a couple of hundred hours, and it's hard to commit pro bono attorneys for long periods of time."

Splitting up Families

Adding further strain to this already overloaded system is a growing trend of Border Patrol agents forcibly separating family members who are arrested when crossing the border together, placing the child into ORR custody as unaccompanied and sending the parent to a separate detention center, which is often located hours away. Critics call this practice the "manufacturing of unaccompanied children."

While DHS defends these actions as appropriate given the lack of family detention facilities, others say that separating children from their parents can take great psychological and physical tolls.

Lynette Engelhardt Stott, Director of Government Relations at Lutheran Immigrant and Refugee Services (LIRS), which has field coordinators at some of the detention facilities, recalled a case of a nursing infant being separated from her mother, whose milk dried up. The two were eventually deported.

According to attorney Martha Rickey, in Arizona this practice is "routine -- there are no family shelters here, and children are almost immediately separated from their families."

Both Engelhardt Stott and Rickey say that children are rarely allowed to see their parents -- about once every other week, and are often emotionally needy.

"Because they're taken away from their parent forcibly, they need almost constant one-on-one care," Engelhardt Stott said.

In contrast to other unaccompanied children in detention, children who have been separated from family members have their cases tied to those of their relatives. Most adults, who immigration officials do not believe have a credible fear of persecution, are placed into expedited removal, allowing them to be immediately deported -- without a further hearing.

This means that detained youth are not allowed to be released into foster care or into the custody of other relatives, and are held pending the removal of their family member.

This has raised questions about possible misappropriation of funds earmarked by Congress for Unaccompanied Children's Services. Under the Homeland Security Act, the program, whose budget for 2005 is \$54 million dollars, is to provide care only for those children who have entered the country without a parent a guardian.

"ORR's mandate is unaccompanied children, not children who have been rendered unaccompanied solely by DHS action," said Chris Nugent, a Washington, D.C. lawyer who represents unaccompanied children.

Nugent estimates that 1 percent of all children in ORR custody -- about 750 a year -- are children who have a family member in detention.

Maureen Dunn, division director of the Unaccompanied Children's Services of ORR, asserted that her agency often is not informed when children in their care have been separated from their families. "Since October," she said, "we've had 90 children so far that have parents who are detained" in Phoenix alone. "We only find out later when the shelter staff talk to the kids." Engelhardt Stott says it may take weeks before LIRS knows a child has a parent in a separate facility.

However, Manny Van Pelt, a spokesman for Immigration and Customs Enforcement, disputed that claim, and said that every child arrives at an ORR facility with a file that states whether they entered with a guardian, and where that guardian is held.

The controversy recently grabbed the attention of lawmakers at a hearing of a House appropriations committee, when California Representative Lucille Roybal-Allard questioned Dr. Wade Horn, the Assistant Secretary for Children and Families, on the issue.

Transcripts from the hearing indicate that although DHS and ORR have discussed the issue, there has not been a resolution. Responding to questioning from the Representative, Dr. Horn replied "[W]e're aware of the issue, and we're currently in discussion with DHS, working to endeavor to resolve that issue."

In the meantime, attorneys are lobbying for the creation of more family detention centers. Currently there is only one such center located in Berks County, Pennsylvania. Until that happens, though, attorneys have to add these cases to their already huge loads.

"At this point, all we can do is count [separated children] and notice that they are there," said Martha Rickey. "We have very limited resources."

Immigration Law: Minor Troubles

Still, immigration attorneys and advocates say that the greatest challenge to protecting unaccompanied youth is that current U.S. immigration law does not distinguish between children and adults. The majority of children are forced to navigate a complicated and confusing legal system on their own, one that holds them to the same standards as adults.

According to the American Immigration Lawyers Association, only 10 percent of unaccompanied children are represented in court hearings. This is partially because immigration law does not require that children have access to either court-appointed guardians or attorneys, which stands in stark contrast to legislation covering juveniles in general.

"The concept of 'best interests of the child' does not apply in immigration law," said Lisa Frydman, an attorney with San Francisco-based Legal Services for Children.

Unaccompanied children have few options for immigration relief beyond asylum (in which a person has to prove fear of persecution based on race, religion, political opinion or membership in a social group or nationality) and Special Immigrant Juvenile Status (which is conferred upon immigrant children who can prove abandonment, neglect or abuse). Although some Central American youth are able to obtain asylum based on their involvement in gangs, the decision as to whether a youth's involvement in a gang counts as membership in a particular 'social group' depends on the individual interpretation of the judge overseeing the case.

For the past four years, a congressional bill known as the Unaccompanied Child Protection Act has sought to remedy some of the problems facing unaccompanied minors, guaranteeing them the right to legal representation and expanding their access to foster care. First introduced in 2001 by Senator Diane Feinstein of California, the bill has never garnered the support necessary to become law. Scott Gerber, a spokesman for the Senator, is optimistic about its chances for passing this session. "We have a lot of good, solid bipartisan support," said Gerber.

Javier's Nightmare

When he realized that he did not have a strong case for asylum, Javier, the Guatemalan youth who arrived in debt to his smugglers, decided to risk an uncertain future in his country.

"I want to stay in the United States, but what do I do about the debt? The lawyer says that I cannot stay here," he said, his voice tinged with frustration. "What I can do is ask for deportation, and then pay the debt in Guatemala."

He said that he would work in one of the sweatshops in Guatemala City, making pants or shoes. When asked how long he thought it would take him to repay the debt, he shrugged. "A single dollar is a lot of money," he replied.

According to immigrant youth advocates, this is a common scenario. "There is a lot of anxiety for them," says Beth Daigneault, a paralegal for the Florida Immigrant Advocacy Center. "They realize with frustration that the only option is to return to their country."

Alex's Dream

Alex, the Honduran boy whose father was murdered by his uncles, is one of the few youth to make it through the asylum system successfully. After 11 months in detention in Chicago, he found a lawyer who would represent him and was confident that she could win asylum for him based on a credible fear that he would be killed if he returned to Honduras. His court hearings took place in July 2004.

"Going to court was quite an experience for me, because I had never been to court before," he said. "I just decided, if they deport me, fine. If I stay, fine. I didn't have anything to lose anymore."

Eventually, the judge granted Alex asylum. Today, he is living with a foster family

in Massachusetts and attending high school, but the adjustment hasn't been easy for him. Accustomed to living on his own and working since he was 10 years old, he chafes a bit at living in a structured environment.

"They're used to being adults," says Carmen Quezada, Alex's social worker. "Here we're giving them the opportunity to be kids again, but it's complicated. ... I tell him, 'This is a very structured country. For everything there is a law and a process, and if you want to achieve good things, you have to have patience and get them little by little.'"

Alex's journey -- from Honduras, where his youth was violently interrupted, to the U.S., where the immigration system treated him alternately as a child in need of help or as an adult lawbreaker -- mirrors the journeys of the thousands of youth arriving to our nation every year. In the daily drama of waiting out bureaucratic movements that will decide their fate, the heaviest burdens on these youths -- impoverished relatives, psychological trauma, debt to smugglers -- are temporarily forgotten. But they are never far away.

Given their youth and all that they have been through, the dreams that 18-year-old Alex and others far younger than him have for their lives in the U.S. seem both modest and heartbreaking. Now that he has asylum, Alex is impatient to work and support his family.

"What I most want is to work and help my brothers in Honduras, for them to go to school. I want them to have everything I didn't have," he said quietly. "I have a very strong love for them because I raised them since I was 10 years old."

Amanda Levinson is an independent journalist in Somerville, Massachusetts who researches domestic and international immigration policy.

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