

Human Trafficking, Illegal Immigrants and HIV/AIDS: Personal Rights, Public Protection

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Abstract

Human trafficking or “modern day slavery” has been the subject of increasing media and public policy attention. This single case study is an illustration of the complex policy and practice issues involving immigration, human trafficking, and HIV/AIDS. HIV/AIDS and other infectious diseases create ethical, legal, and economic dilemmas for health care practitioners serving undocumented immigrants. This paper provides an overview of policies impacting immigrants with HIV/AIDS, the Trafficking Victims Protection Act (TVPA) of 2000, and potential “real life” implications of these policies. Suggestions for policy and practice that may provide both individual justice and protection of the larger society are offered. Health education, both domestic and on a global level, has potential to reduce the risks to both individuals and community public health.

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Marisol is a beautiful young woman with large brown eyes and shiny black hair flowing past her waist. To most people, she is the picture of good health. Marisol and her young son, Sergio, are both infected with AIDS. Marisol became aware of her HIV+ status when Sergio was extremely ill at birth. When the baby was discovered to be HIV positive, Marisol was tested and found to have AIDS. Sergio was fortunate to have been born a United States citizen and is eligible for government benefits including health care, access to medications, and government disability checks. Marisol, an undocumented or illegal immigrant, is not so lucky.

Marisol was brought across the border by “Uncle Ned” who promised her a well-paid job at a California resort. Marisol believed she had an opportunity to escape the poverty and family violence in her home country. She had her first child at age 14 after being raped by a relative. That child, Serena, remains in her home country. Marisol had only planned to stay in the United States for a short time. Hopeful that she could save money from her resort job, Marisol believed she could return to her country and use her earnings for a new start. Instead of the

promised job at a glamorous resort, Marisol found herself forced into prostitution with most of her earnings going to “Uncle Ned.” Her dreams of a “new start” have been shattered by finding herself a single mother with living with AIDS. After becoming aware that she and her son were infected with AIDS, Marisol felt little choice but to remain. “If you think it is bad having AIDS here, you should see what it is like in my country.”

When Marisol first came to the attention of health care workers, she was living in a small, neat apartment with her baby son. Every month, Marisol and Sergio traveled more than 100 miles for Sergio’s medical appointments, accompanied by “Uncle Ned.” There was no pediatrician treating children with AIDS closer to her home in a small, rural community. The trip was a challenge as Sergio was often ill. Marisol did not speak English and relied on “Uncle Ned” to provide information and translation services to medical providers who assumed he was her husband or boyfriend. Marisol received her own medical care and medications through a local clinic where she was not required to provide documentation of her immigration status. She worried that she would be deported or that she

would become too ill to continue to care for her son. "Uncle Ned" warned her that she would be arrested and separated from Sergio if her immigration status was known.

Marisol is probably one of hundreds of undocumented sex workers infected with AIDS. This single case study is an illustration of the complex policy and practice issues involving immigration, human trafficking, and HIV/AIDS. HIV/AIDS and other infectious diseases create ethical, legal, and economic dilemmas for health care practitioners serving undocumented immigrants.

Immigration and HIV/AIDS

The United States is ambivalent about treatment of undocumented persons with HIV/AIDS. Public policies tend to be contradictory and are in a continuous state of change. In the current political climate of uncertainty for undocumented persons, fear of deportation and lack of access to health care may be increasing concerns.

Human groups in all societies have tended to maintain security and cultural identity through labeling other groups as different, deviant, or dangerous. Freud (as cited in Petkrova, 2006) was one of the first to recognize the human desire to categorize people into categories of "own" and "alien." Persons perceived as "alien" or different from the dominant culture might encounter a range of public and reactions from sympathy to xenophobia. These range of emotions and attitudes are reflected in social policies and practices. The events of September 11, 2001 are believed to have escalated United States citizens' fear and hostility towards "outsiders."

Recent federal policy changes have impacted immigrants in the United States. These include the Personal Responsibility and Work Opportunity Act of 1996 and The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pendelton, 2004). In general, these policies have made access to legal immigration status and public benefits more challenging for undocumented immigrants. Immigration policies traditionally attempt to

protect United States citizens by limiting or denying entrance to immigrants with potential health, dependency, or criminal risks. Immigrants with HIV/AIDS may encounter increased public and policy hostility, as fear of AIDS may contribute to additional discrimination. Immigration policies currently consider being HIV positive as grounds for inadmissibility to those attempting to enter the United States. Any non-citizen entering the United States is asked if "you have a communicable disease of public significance" (Gavagan & Brodyaga, 1998; Lambda Legal and Immigration Equality, 2005; Pendelton, 2004). Persons applying for permanent immigration must undergo health screening including an HIV test. HIV positive applicants will be denied unless granted an HIV waiver. In order to qualify for HIV waivers, applicants must show: (1) danger to public health is minimal; (2) possibility of the spread of infection is minimal; (3) no United States government agency will incur expense because of admission (Lambda Legal and Immigration Equality, 2005, p. 5).

Immigrants with HIV/AIDS may apply for HIV waivers if they are relatives of United States citizens and can meet conditions of "public charge" requirements. The "public charge" test requires that potential permanent immigrants demonstrate that they are not likely to become dependent on government benefits in the future. The average costs for HIV/AIDS medications alone are \$10,000-\$15,000 per person per year in the United States (Eckenfels, 2002; Kaplan, Tomaszewski, & Gorin, 2004). Due to the expense of HIV treatments and related health care costs, many immigrants without considerable financial resources or private health insurance will not be allowed to legally enter the United States. It is important to note that it is extremely unlikely for an immigrant to be deported from the United States based on HIV positive status, thus, the challenge is to avoid health screenings prior to entering the United States. Illegal immigrants already in the United States are more likely to be deported based on their illegal presence in the country as opposed to their HIV status. Immigrants entering the United States illegally are eligible for emergency medical services, including services

related to pregnancy and delivery. Children born in the United States are considered legal citizens and are eligible for government benefits, regardless of the immigration or health status of parents (Cosman, 2005). The average lifetime cost to treat an HIV+ infant in the U.S. is between \$46,170-\$102,675 (Sansom, Jamieson, Farnham, Bulterys, & Fowler, 2003). Despite the restrictive policies, immigrants, including illegal immigrants, are eligible for public health care benefits and AIDS medications through Aids Drug Assistance Program (ADAP) (Kaplan, Tomaszewski, & Gorin, 2004). HIV positive immigrants, including those with legal immigration status may not be allowed to return to the United States in the event they leave the country. HIV waivers may be denied if the applicant has criminal charges or is not "of good moral character" (U.S. Department of Citizenship and Immigration, 2006).

Human Trafficking

Human trafficking or "modern human slavery" is an issue of increasing media and public policy attention. Although it is believed that human trafficking in some form has always existed, there were no specific United States policies on human trafficking prior to 1994 (Hopper, 2004). Human trafficking is almost always related to immigration, with trafficking victims initially making conscious decisions to enter other countries illegally. "Push factors" including poverty, gender-based discrimination, and community violence likely contribute to the potential victims' willingness to engage in risky migration practices. "Pull factors" include global labor needs and a market for illegal workers (Chuang, 2004). Many trafficking victims are lured into illegal immigration with promises of legitimate work opportunities (Bales & Lize, 2005; Coonan, 2004; Dougherty, 2006; Hopper, 2004).

Estimates of the numbers of victims are extremely variable. The U.S. Department of State estimated that between the years 2004-2005, 600,000 to 800,000 victims of human trafficking crossed international borders with between 14,500 and 17,500 coming into the United States (U. S. Department of State, 2005). Others have estimated that as many as 100,000

people are trafficked into the United States each year (Richard, 2000). It is generally believed that human trafficking numbers are underestimated (Hopper, 2004; Loff & Sanghera, 2004). High percentages of these victims are reportedly women and children, although the specific characteristics of victims, as well as the numbers of victims remain unknown (Bales, 2005; Hopper, 2004; Webber & Shirk, 2005). Moral, political, and fiscal motivations may distort reported human trafficking demographics in favor of groups supported by public sympathy and public funding targets (Loff & Sanghera, 2004). There are some difficulties identifying potential numbers of victims and disagreement as to the accuracy of the numbers, types of victims, and potential solutions. Many advocates see trafficking as human rights or more specifically, women's rights concerns. Women and girls are believed to be vulnerable to both human trafficking and HIV/AIDS given their traditionally subordinate position in societies (Chuang, 2004; Perkins, 2004). Involvement in the commercial sex industry is considered to be an important potential source of HIV transmission, especially among migrant laborers (Maxwell, Cravioto, Galvan, Ramirez, Wallisch, & Spence; 2005).

Although many believe human trafficking is related to organized crime and often connected to both other criminal activities and legitimate businesses, others believe this is overestimated (Feingold, 2005). There is some evidence that victims, traffickers, and customers are usually within the same ethnic group, with many traffickers recent immigrants themselves (Bales, 2005). Traffickers may be highly respected members of the ethnic communities where victims are recruited, often trusted friends or even family members of potential victims (Bales, 2005; Loff & Sanghera, 2004; Stolz, 2005).

In response to efforts of unlikely coalitions of feminists, fundamentalist Christians, non-profit service providers, liberal and conservative politicians, The Trafficking Victims and Protection Act (TVPA) was passed in 2000 as a global attempt to reduce human trafficking (Stolz, 2005). President George W. Bush, in an

emotional 2003 “Rescuing Women and Children from Slavery” speech to the United Nations, announced a \$50 million initiative to combat human trafficking around the world (U.S Department of Homeland Security, 2005). According to the Trafficking Victims Protection Act (TVPA), trafficking is defined as: (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of fraud, force, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (Trafficking Victims Protection Act of 2000).

The Trafficking Victims and Protection Act (TVPA) was designed to protect victims and to increase prosecutions against traffickers. Included in TVPA are provisions that allow illegal immigrants access to legal status and government benefits. Qualified trafficking victims may apply for “T visas” allowing them to remain in the United States and to receive federal government benefits. Requirements include agreement that victims cooperate with federal law enforcement in the prosecution of traffickers (Bales, 2005; Chuang, 2004; Webber & Shirk, 2005). T-visas allow many potential benefits not available to other illegal immigrants, including waiver of health screening requirement and HIV tests, protection against criminal prosecution for trafficking related offenses, and waiver of the “public charge” expectations. Qualified victims may petition to have family members admitted to the United States. United States anti-trafficking policies include attempts to encourage other countries to comply with anti-trafficking efforts by threatening lack of fiscal support to non-compliant countries (Stolz, 2005).

T-visa programs have been criticized by some as “free green cards” with potential for abuse and fraud (Allen, 2004). Other groups have expressed concerns that illegal immigrants may exploit the policies and use “the trafficking defense” to avoid criminal prosecution for unauthorized immigration and prostitution

(Chuang, 2004). Despite these concerns about potential misuse of the program, actual utilization remains extremely low (Webber & Shirk, 2005). From 2001-2005, only 752 trafficking victims applied and 491 received T-visas (p. 1). It is believed that these numbers represent less than 1% of all trafficking victims (Chuang, 2004). The reasons for underrepresentation are not well understood. Some believe the emphasis on criminal justice needs to prosecute traffickers as opposed to victim needs and protections are factors. Victims may risk retaliation from traffickers, risk deportation by officials unfamiliar with policies, and face continued stigmatization.

Although policies are sympathetic to undocumented persons working in the sex industry, cultural stigma against illegal immigrants and prostitutions are realities for trafficking victims, both in the United States and in their home countries (Stuckman, 2006). Despite current emphasis on victim protection as opposed to old “victim blaming” policies and practices, there is evidence that reality falls short of ideology. Trafficking victims, given their limited education, work options, and historical trauma, may be vulnerable to “secondary trafficking” (Chuang, 2004). Trafficking victims may be among the most vulnerable and disadvantaged persons in society, likely to have experienced poverty, trauma, and desperation prior to trafficking (Bales, 2005; Coonan, 2004; Schuckman, 2006). Previous experiences, limited education, lack of fluency in host language and culture may cause victims to avoid seeking or utilizing help. Some researchers have noted correlations and similarities to victims of domestic violence including self blame, shame, lack of emotional and social support as factors (Gavagan & Brodyaga, 1998; Hopper, 2004). Because most victims are in the United States illegally, fear of deportation may be valid concern. Even for victims who are willing to come forward and cooperate with law enforcement, the process of applying for benefits and protections can be very long, stressful, and potentially risky. Despite protections, victims may be charged with crimes, including prostitution, and face incarceration or deportation (Bales & Lize, 2005; Pendleton,

2004; Webber & Shirk, 2005). Despite the high amounts of money provided to combat the problem of human trafficking, little change has occurred in terms of prosecutions of traffickers or protections for victims (Chuang, 2004).

An Unsuccessful Intervention

Marisol was identified as a potential “trafficking victim” by a trusted health care worker. The worker convinced Marisol that she might be able to obtain legal immigration status, public benefits, and even be reunified with her daughter, Serena, under the TVPA policies. Marisol reluctantly agreed to cooperate with law enforcement against “Uncle Ned,” resulting in greater alienation from her family of origin, as well as the local community. “Uncle Ned” was highly respected by Marisol’s family and peers. Her willingness to work with U.S. law enforcement was perceived by many as a betrayal. Programs, shelters, and legal resources specific to trafficking victims were limited or non-existent in the small rural community where Marisol and Sergio had been residing. Marisol’s worker made arrangements for Marisol to and Sergio to be placed in a shelter/advocacy program for victims of domestic violence. Life in the shelter failed to provide Marisol and Sergio with support and security. Once again perceived as an “other,” Marisol was shunned by the other residents. Few spoke her language, and many labeled her a “whore.” Separated from what she had perceived as support and special treatment from “Uncle Ned,” Marisol became increasingly lonely and afraid. She felt little in common with her housemates, many of whom had mental health and substance abuse problems. Sergio was exposed to viral infections and subjected to minor injuries from other children in the shelter. Marisol decided her best option was to run away. Given her lack of resources, education, and skills, Marisol soon found herself dependent on a man who put her back to work as a prostitute. She now keeps her HIV status hidden and avoids interactions with social service agencies or health care providers. Marisol is pregnant again, but her fears, previous experiences, and now, her current captor, keep her from accessing prenatal care or treatment for HIV/AIDS. Her lack of access to health care and

information puts others, including her unborn child, at high risk of contracting HIV/AIDS.

Potential Solutions/Ethical Dilemmas

Public health has a tradition of protecting communities from communicable diseases. An ongoing dilemma is the need to balance person rights with the need for protection of the larger society. A difficult question for even the most committed advocates of HIV/AIDS immigrants and trafficking victims is how to achieve this balance. Some communicable diseases including drug-resistant tuberculosis, malaria, and polio are believed to be on the increase in the United States due to the presence of illegal immigrants (Pelner, 2005). The possibility of HIV/AIDS infected sex workers with to potential spread the disease to others including their own unborn children has ethical, medical, and financial implications. There is a need to consider the risk factors in planning successful interventions that might protect both individuals and the larger society.

It is known that certain policy interventions, including tighter border controls and the legalization of prostitution fail to reduce the incidence of human trafficking. More restrictive immigration laws and the legalization of prostitution may actually provide greater opportunities for traffickers (Chuang, 2005; Dougherty, 2006; Webber & Shirk, 2005).

Persons desperate to escape lack of opportunities or violence in their home countries are much more vulnerable when their presence and activities are hidden.

At the most basic level, interventions can begin with provision of information about human trafficking and more specifically, HIV/AIDS risks and prevention. Some programs, including prevention efforts in Korea, have demonstrated effectiveness through public information (Schuckman, 2006). Potential victims and professionals likely to come in contact with potential victims are provided with information about human trafficking, cautioning about potential risks. On a domestic level, health care providers, shelter workers, and law enforcement personnel likely to encounter trafficking victims

need training in how to recognize and assist victims (Maxell, Cravioto, Galvan, Ramirez, Wallisch, & Spense, 2005; Webber & Shirk, 2005). Knowledgeable and resourceful professionals might help trafficking victims access legal, health, and social support systems. Connection to resources is not only essential for individual victims, but for the protection of society, including potential unborn children of trafficking victims. On a global level, potential trafficking victims can be provided with information in their home countries that may help lessen vulnerability to exploitation. Human rights, as well as individual needs, are public health concerns (de Carvalho, Ayres, Paiva, Franca, Gravato, Lacerda, Negra et al., 2006).

Empowerment models allow for the development of interventions based on stated needs and desires of those impacted versus the agendas of organizations providing care. Some note that “rescue efforts” are not likely to be successful if a holistic approach including specialized shelter, case management, legal and practice services are not provided. Effective interventions need to consider the actual wants and needs of trafficking victims. Care should be taken to avoid further exploitation and trauma by promoting organizational agendas with little input from trafficking victims themselves (Davies, 2004). Cultural and language barriers may impair advocacy efforts, thus need to be addressed in intervention strategies (Gavagan & Brodyaga, 1998). Legal representation is essential, given the complexity of laws and policies, as well as discretion within systems. Services and advocacy may be limited in rural areas, resulting in a need for creative networking and information sharing (Chuang, 2004).

Current policies have been criticized as not meeting the needs of victims or public health, focusing on short term crisis interventions that are not likely to solve complex problems (Chuang, 2005; Stolz, 2005). There is a lack of attention to the social and economic conditions throughout the world that leave people vulnerable to trafficking. Immigration policies contribute to potential for exploitation by

disallowing legal means for better opportunities. There is a need to look at root causes, including supply and demand factors that contribute to high numbers of trafficking victims (Chuang, 2005, Naim, 2005). The current policies do not look at push and pull factors that make people vulnerable to trafficking, including employment opportunities, high potential for profit for those involved in trafficking. Neither employers utilizing trafficking victims or traffickers face serious penalties. Little has been done to address the gender, racial, and economic oppression that makes the situation possible to begin with (Stolz, 2005). While health education may provide some protection for trafficking victims and potential victims, there is a need for macro level interventions and changes in public policies.

Conclusions

Marisol desperately and knowingly entered the United States illegally in hopes of better opportunities and to escape abuse in her home country. Attempts to “rescue” her did not consider Marisol’s needs, wants, or long term remedies to her initial problem, leaving her in an abusive situation with limited opportunities. The lack of effective interventions have resulted in a situation where Marisol’s current and future American citizen children are at much greater risk of HIV/AIDS infection, as well as Marisol’s sexual partners. The fiscal, social, and emotional costs to Marisol, her children, and society at large, are enormous. Current policies and practices in regards to trafficking victims do little to remedy the root circumstances of the problem. “Crisis” centered interventions emphasizing criminal justice system needs while neglecting vulnerable victims are not likely to have an impact on human trafficking. The best interests of individuals, human rights, or public protection are not served under existing programs. There is a need to look at larger issues including economic inequities, gender and racial discrimination, if there is to be any real reduction in human trafficking. Existing policies do little for victims, public protection, or vulnerable groups and may actually contribute to public health risks.

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Acknowledgements

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