

Children from the Border

in the Hudson Valley

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Almost sixty thousand unaccompanied children crossed the southern border of the US and were arrested by immigration between October 2013 and June 2014. Sixty thousand minors is a record number and has caused a humanitarian crisis such that neither the government nor the NGOs have been able to tend to such an enormous number of children, mostly of Mexican, Guatemalan, Hondurian or Salvadorian origin. How is this crisis felt in the Hudson Valley? What are the residences that give these children refuge in our state? What legal resources do they have access to, aside from deportation?

“I didn’t want him to come over” is the first thing that Felipe says, an immigrant from San Luis del Petén, Guatemala, when he talks about his 17 year old son Gelber, who arrived six months ago in Kingston, NY to escape the violence of his home country and be with his father. “I told my son: don’t come, here in the US nothing is for free. But he came looking for me” says Felipe.

“Back home, I had no way to move forward in life” explains Gelber who looked after goats to make a living. “I wanted to study but couldn’t because school was two hours away,” continues Gelber. Violence, however, was the main reason behind his journey. “Strange armed people come into homes, we don’t know them. They come ask for money and if you don’t give them any, they kill you. My dad’s cousin was recently killed this way, and a cousin of mine was threatened and he fled to another village” he recounts.

So Gelber and his older brother looked at a map, wrote the route they would follow down on a notebook, and took a bus from Guatemala to Mexico. Both crossed the border to the US with a group of sixteen other people that they met on their way through Mexico, where they had to endure many dangers, including an armed robbery by a band of the Zetas drug cartel.

Two hours after having entered the US, the brothers

were arrested in Texas and separated; Daniel, 22 years old, was quickly deported to Guatemala, while Gelber, 17, was placed in a shelter for minors run by Catholic Charities in Houston. The legal process minors go through at the border is different than that of adults, thanks to the Trafficking Victims Protection Act of the year 2000, which was later expanded in 2008 to include foreign minors at the border, signed by president Bush and ratified by president Obama in 2013.

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According to this law, within 72 hours of the arrest, the office of Customs and Border Protection must transfer custody of the minors detained to the Department of Health and Human Services, which in turn and through the Office of Refugee Resettlement, must reunite the children with their parents or relatives.

But Felipe didn’t know that Gelber had come looking for him. “After, I found out after”, recalls Felipe, “at one in the morning I received a call from immigration and they asked me if I knew that my son was here. I was afraid of being deported but I knew that the police couldn’t do anything to me; as long as you don’t do anything wrong, they can’t do anything to you, a friend had told me.” Ten days later, Gelber arrived in Albany by plane where his father went to pick him up. In New York State only, over four thousand minors were reunited with their families between January and July of this year.

The Shelters

Between the Hudson Valley, New York City and Long Island, there are around sixteen shelters with different capacities where minors detained at the border are sent while the search for a family member or friend to sponsor them is carried out. Two of these shelters opened their doors in the Hudson Valley during the last few months; one located in Kingston and the other one in Poughkeepsie, with a joint capacity for housing about thirty children between 12 and 18 years of age.

Some of these shelters also function as juvenile detention centers, although the groups are kept separate. Such is the case of Lincoln Hall, in Westchester County, which has a capacity to house 184 child male immigrants between the ages of 12 and 18 who spend an average of 25 days there. What do they do during that time? Gabriela Pragman, coordinator of quality control in this institution, states that “as soon as they arrive, they get health screenings, they are given shots and their academic education is evaluated to place them at the proper level in school. Each morning they are given English, swimming, soccer, computer science, carpentry or cooking lessons. All the children who leave the shelter leave with their shots and a note card to enroll in school directly.” But let’s not forget that despite the humanitarian treatment they receive, the children are in removal (deportation) proceedings.

How do they obtain legal help? As part of the regulations for unaccompanied alien children (UAC), these children must receive a presentation called Know Your Rights within the first week of their arrival. In New York State, this presentation is given by a group of lawyers through Catholic Charities where they explain various possibilities and interview each of the minors, who sometimes receive free legal advice.

Children and sponsors are given a pamphlet which explains that depending on each individual case, the minor in question may be eligible to apply for a legal immigration status for a juvenile visa (SIJS), for refugee status, for a T visa, for a U visa, for protection under the Violence Against Women Act, or for family petitions which may grant them access to a permanent residence permit. On the other hand, there is the possibility of an order of expulsion or voluntary exit. Each of

these alternatives, especially those related to remaining in the country, require consulting with a qualified lawyer.

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Resources

Immigration lawyer Miryam Antúnez de Mayolo recommends paying close attention to the document that non-Mexican foreigners receive after crossing the border illegally, named notice to appear, in court. “The problem”, says Antúnez de Mayolo, “is that many people think that the notice to appear document is a permit to enter the country. It is actually the document that initiates the deportation process. Keeping that paper is very important because it is not only a way to have a proof of the case, but also a way to request a change in jurisdiction after moving to another state, especially now that many of the people entering have certain circumstances that allow them to request certain benefits, such as asylum. The worst thing that can be done is to ignore or throw away any document that an immigration officer gives you. Not showing up to court is to renounce to the right of due process.”

Gerardo Gutierrez, a lawyer specializing in immigration and family law, says that “it is impossible to classify all the incoming children as refugees given that refugees ask for asylum, and it is highly improbable that the government will grant asylum to everyone.” Additionally, Gutierrez explains that obtaining a juvenile visa is a very expensive and complicated process given that those under 21 years of age must present their case first before their local family court, and then before an immigration court. “In family court, it is necessary to prove that the minor has been abandoned by one of his parents. The minor must not be married and must show proof of his nationality, among other requirements. If a minor has been abandoned by a parent, a petition for legal custody can be made. The family court looks over the case and if the judge rules that the child is abandoned, he

issues a sentence called order of special findings. With this sentence, the minor can then appear before immigration court and request legal residency because it would be too detrimental for him or her to return to his or her home country. The final result depends on the background and evidence that are provided to the court. It is a legal process for minors who are here, with or without a pending deportation. It is an interesting loophole in the legal system, but because so many minors are arriving, the system cannot meet such large demand” concluded Gutierrez.

Emma Kreyche, coordinator of the Worker’s Justice Center of New York, can attest to the limited resources available in our region, having seen dozens of cases in Kingston alone. She says that she has “been looking for legal assistance services since February and it has been very difficult.” Of course there are private lawyers available, but as Kreyche puts it, most people cannot pay the seven to ten thousand dollars that a private lawyer may charge. Another problem, according to Kreyche, is that “many of the family lawyers don’t know the immigration system and many of the immigration lawyers don’t know how to deal with family law. That is why we are trying to organize a training session for family and immigration lawyers.” She adds that the undocumented children “not only need legal help, but also other types of aid such as mental health services” due to the traumatic situations they have been through.

In August, the non-profit organization, Catholic Charities, announced that they were expanding their services and hiring more lawyers and legal aids to be able to serve 500 child immigrants that live in shelters throughout New York State.

Gelber thought many things before coming to this country. “I thought it was prettier than this. I didn’t know anything about Kingston.” Now he has friends from Honduras, Guatemala and Mexico at school where he will return to in September to continue to learn English. He dreams of getting his bachelor’s degree in any field. Meanwhile, he and his father don’t know what will happen. “Only God knows”, father and son agree.