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**UNITED STATES DEPARTMENT OF JUSTICE**  
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**  
**BOARD OF IMMIGRATION APPEALS**

**In the Matter of:**

**ROSA MARISOL AVELAR OLIVA,**

In removal proceedings

**File No.: A 212-990-972**

**PROPOSED BRIEF OF *AMICI CURIAE* NATIONAL IMMIGRANT WOMEN'S  
ADVOCACY PROJECT, TAHIRIH JUSTICE CENTER, FAMILY VIOLENCE  
APPELLATE PROJECT, FAMILY VIOLENCE LAW CENTER, INDIANA  
COALITION AGAINST DOMESTIC VIOLENCE, LEGAL VOICE, NORTH  
CAROLINA COALITION AGAINST DOMESTIC VIOLENCE, SAFE HARBOR  
LEGAL PROGRAM, SANDERS COUNTY COALITION FOR FAMILIES, AND  
PROFESSOR LAURIE COOK HEFFRON IN SUPPORT OF RESPONDENT**

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## **I. STATEMENT OF INTEREST OF *AMICI CURIAE***

*Amici* are national, state, and local nonprofit organizations and social science professors who collectively work with and advocate for survivors of rape, sexual assault, human trafficking, gender-based violence and domestic violence, with a particular focus on the experiences of immigrant women and girls. *Amici* are committed to ensuring that these survivors receive fair and trauma-informed treatment by the courts that preserves their dignity and promotes their safety by acknowledging how trauma affects survivors' physical, mental, and emotional well-being. *Amici* have first-hand knowledge of the legal standards and/or social science research that applies in asylum matters, as well as the dynamics of gender-based violence in the intra-familial and trafficking contexts.

## **II. INTRODUCTION**

*Amici* submit this brief to address dangerous misconceptions regarding the effects of severe trauma, including childhood rape, sexual abuse, trafficking, and gender-based violence on a victim's testimony and perceived credibility. The Immigration Judge in this case denied the victim's application for asylum based solely on an adverse credibility determination, which in turn was based on a handful of perceived "inconsistencies" that are readily explained by and consistent with scientific and social scientific research regarding the effects of trauma on the neurobiological development of adolescent victims. The impact of the trauma suffered during childhood and adolescence extends well into adulthood, affecting victims' testimony, particularly when court testimony requires victims to recall, describe, and in the process re-live the trauma of the abuse. The Immigration Judge's analysis reflects a fundamental misunderstanding of the nature and life-altering consequences of childhood rape, sexual abuse, and trafficking, as well as the neurodevelopmental consequences of such trauma.

As discussed below, research shows that childhood trauma can have a profound and lasting impact on a victim's neurobiological development. Childhood and adolescence comprise especially vulnerable periods of brain development, as that is when key areas of the brain responsible for memory, reasoning, decision-making, and planning begin to develop. When a



child or adolescent suffers severe trauma during these developmentally sensitive periods, it can impair the development of those key brain regions and permanently affect the victim's ability to recall information, particularly regarding the details of the abuse suffered, and/or the victim's ability to engage in higher-level reasoning. As a result, the victim can exhibit difficulty in making rational and reasoned decisions or plans later in life. Further, these developmental consequences directly impact both a victim's demeanor when required to testify, and ability to recall detailed information about the trauma suffered during testimony.

For all of these reasons, it is imperative that immigration judges employ the appropriate "totality of the circumstances" standard when making credibility determinations, which must include consideration of how the psychological and neurobiological developmental effects of trauma impact the demeanor and content of a witness's testimony. *Amici* urge the Board to vacate the adverse credibility determination of the Immigration Judge below and remand this matter with instructions to the Immigration Court to consider this well-established body of research in its evaluation on the merits of Ms. Avelar's applications for asylum under INA § 208, withholding of removal under INA § 241(b)(3)(B), and protection under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(c) and 1208.17.

### **III. FACTUAL BACKGROUND**

Respondent Ms. Avelar's brief to the Board, filed January 24, 2018, sets forth the relevant facts regarding Respondent's applications for asylum and withholding of removal under the INA and for protection under the Convention Against Torture, and summarizes the key portions of the Immigration Judge's adverse credibility determination and order below. *Amici* adopt the recitation of the facts as set forth in Respondent's brief.

#### IV. ARGUMENT

##### A. In Assessing an Asylum Applicant's Credibility under the "Totality of the Circumstances," an Immigration Judge Must Consider the Psychological and Developmental Effects of Trauma.

In evaluating an individual's application for asylum or protection from removal under the Convention Against Torture, the Immigration Judge must assess whether the testimony of the applicant is credible. INA § 240(c)(4)(B). In doing so, the Court considers "the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements, ... the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of an applicant's claim, or any other relevant factor." INA § 240(c)(4)(C).

As multiple circuit courts have recognized, this "totality of the circumstances" assessment must consider the psychological effects of trauma on the demeanor and content of a witness's testimony.<sup>1</sup> For example, in *Ilunga v. Holder*, the Fourth Circuit vacated the BIA's

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<sup>1</sup> See, e.g., *Ilunga v. Holder*, 777 F.3d 199 (4th Cir. 2015); *Zubeda v. Ashcroft*, 333 F.3d 463 (3d Cir. 2003); *Singh v. Gonzales*, 403 F.3d 1081, 1091 (9th Cir. 2005) (finding that, while victims of repeated physical or sexual abuse may remember the gist of their experiences, they often confuse the details of particular incidents, including the time or dates of particular assaults and which specific actions occurred on which specific occasion) (citing Deborah Davis & William C. Follette, *Foibles of Witness Memory for Traumatic/High Profile Events*, 66 J. Air L. & Com. 1421, 1514-15 (2001)); *Marouf v. Lynch*, 811 F.3d 174, 185 (6th Cir. 2016) ("An inability to accurately recall the date when a traumatic event occurred is not particularly probative of a witness's credibility when alleging traumatic persecution, because such traumatic persecution itself may cause the witness difficulty in recalling details of the incident."); *Longwe v. Keisler*, 251 F. App'x 718, 720 (2d Cir. 2007) (finding that, although applicant failed to provide a specific date for her alleged rape, her credibility was not undermined and there was nothing in the record to support the IJ's speculation that "one normally doesn't forget" the date of such a "traumatic event."); *Fiadjoe v. Att'y Gen.*, 411 F.3d 135, 154 (3d Cir. 2005) ("Women who have been subject to domestic or sexual abuse may be psychologically traumatized. Trauma ... may have a significant impact on the ability to present testimony.") (citing INS Guidelines entitled "Consideration for Asylum Officers in Adjudicating Asylum Claims from Women" and finding (Continued...))

decision affirming an Immigration Judge's denial of asylum on the basis of an adverse credibility determination against a Congolese man who had been tortured due to his political opinions. 777 F.3d 199 (4th Cir. 2015). Mr. Ilunga had spent more than a month in a Congolese prison enduring daily torture at the hands of the prison guards, including stabbings, electrical shocks, whippings, and rape. *Id.* at 204. The Immigration Judge found that Mr. Ilunga was not credible due to supposedly inconsistent statements about the location of his torture and the Immigration Judge's observation that Mr. Ilunga appeared hesitant and uncomfortable answering some questions. *Id.* at 205-06.

In vacating and remanding the BIA's affirmance of the Immigration Judge's order, the Court emphasized that "[f]or the BIA to dismiss the potential impact of such torture on Mr. Ilunga's testimonial disposition is unsettling." *Ilunga*, 777 F.3d at 212. As the Court explained, "[i]n the context of a credibility determination, one should expect moderate PTSD to influence the content of testimony at times, in addition to testimonial demeanor.... ***The agency's totality of the circumstances analysis should take into account the inherent instability of memories that are naturally misshapen by time and disfigured by trauma.***" *Id.* at 212 n.4.

Similarly, in *Zubeda v. Ashcroft*, the Third Circuit cautioned against placing too much weight on inconsistencies between an asylum affidavit and subsequent testimony at a hearing before an Immigration Judge. 333 F.3d 463 (3d Cir. 2003). Ms. Zubeda was a Congolese woman who had been gang raped by a group of ten soldiers in front of her father and brother; when the soldiers were done with her, they decapitated her father and brother with machetes in front of her. *Id.* at 467. She was then taken to a military camp where she was again sexually abused and forced to clean and cook for the soldiers before she was finally able to escape. *Id.* In finding that Ms. Zubeda was not credible, the Immigration Judge cited to inconsistencies

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that the guidelines are as applicable to IJ credibility determinations as they are to an Asylum Officer's credibility determination).

between Ms. Zubeda's testimony and her written asylum application, which the Immigration Judge believed undermined Ms. Zubeda's credibility. *Id.* at 470.

The Court criticized the BIA's acceptance of the Immigration Judge's adverse credibility ruling without question, advocating caution against placing too much weight on such inconsistencies because they may be due to "*numerous factors that might make it difficult for an alien to articulate his/her circumstances with the degree of consistency one might expect* from someone who is neither burdened with the language difficulties, nor haunted by the traumatic memories, that may hamper communication between a government agent in an asylum interview and an asylum seeker." *Zubeda*, 333 F.3d at 476. The Court emphasized that "[t]his is particularly true when we consider that such an alien may have tried to suppress the very memories and details that have suddenly become so important to establishing his/her claim." *Id.* at 476-77.

As with the horrific treatment endured by the asylum applicants in *Ilunga* and *Zubeda*, the ongoing rape, sexual abuse, and trafficking of a young girl held hostage between the ages of 11 to 13 constitute severe trauma that an immigration judge must consider under the "totality of the circumstances" in assessing the credibility of an asylum applicant.

**B. Childhood Rape and Sexual Abuse Can Significantly Impact a Witness's Demeanor and Ability to Recall Information While Testifying.**

The trauma of childhood rape and sexual abuse, including in this case multiple instances of rape and sexual assault occurring monthly over a two-year period, persists long after the abuse has ended. Among other consequences, such trauma can directly and detrimentally affect the demeanor of a testifying witness, as well as the witness's ability to recall information. An immigration judge must understand these effects in order to fairly assess the credibility of a testifying victim.

**1. Testifying forces victims of childhood rape and sexual abuse to re-live that abuse, which can adversely impact demeanor.**

The process of testifying in court can be extremely traumatic for victims of childhood rape and sexual abuse, so much so that delivery of testimony may be accurately described as constituting “further victimization.” See Christine L. Brannon, *The Trauma of Testifying in Court for Child Victims of Sexual Assault v. The Accused’s Right to Confrontation*, 18 Law & Psychol. Rev. 439, 349 (1994). This is particularly true when children suffer multiple instances of repeated and systematic rape and sexual assault over a period of years, as occurred in this case. For adults, the experience of testifying about sexual abuse can be just as traumatic, because it forces the victim to “relive the crime mentally and emotionally, leading some to feel as though the sexual assault is recurring.” Meg Garvin et al., *Allowing Adult Sexual Assault Victims to Testify at Trial via Live Video Technology*, Nat’l Crime Victim Law Institute, Violence Against Women Bulletin at 1-2 (Sept. 2011) (internal quotation marks and brackets omitted). These findings regarding testimony by sexual assault victims in state courts apply with equal force to the difficulty that asylum applicants face in testifying about the rapes and sexual abuse they have suffered. The high stakes in an asylum matter, which include potential deportation and return to a location where the abuse occurred and where the abuser remains, causes stress that can also exacerbate these effects on a witness’s demeanor during testimony.

The impact on a witness’s demeanor can take various forms. For example, it can result in vague testimony or a witness whose affect is misinterpreted as evasive due to the victim’s desire to avoid or stop a flood of unpleasant and invasive memories of the abuse. Alternatively, it can result in a withdrawn or detached witness due to the abuse victim’s tendency to dissociate from memories of the abuse (as discussed *infra*). The fragmented memories that result from a testifying victim’s tendency to dissociate can also create the appearance of inconsistency in the victim’s testimony. Whatever the specific effects on demeanor, the re-traumatization caused by testifying must be taken into account when evaluating the testimony of a victim of childhood rape and sexual abuse.

**2. Victims of childhood sexual abuse tend to dissociate from the instances of abuse, which results in fragmented memories.**

In order to survive repeated rapes and sexual abuse, children learn to dissociate as a means of coping with the psychological and emotional pain that results from such extensive childhood trauma. See Eileen L. Zurbriggen and Jennifer J. Freyd, *The Link Between Sexual Abuse and Risky Sexual Behavior: The Role of Dissociative Tendencies, Information-Processing Effects, and Consensual Sex Decision Mechanisms* (2004). Dissociation is defined as “a lack of normal integration of thoughts, feelings, and experiences into the stream of consciousness and memory.” *Id.* at 727. This tendency to dissociate has consistently been linked to a history of traumatic victimization. See *id.* at 137.

Dissociation functions as a defense mechanism to protect children from being psychologically overwhelmed by an abusive event or events. See Jennie G. Noll, et.al, *Revictimization and Self-Harm in Females Who Experienced Childhood Sexual Abuse: Results from a Prospective Study*, 18 J. Interpersonal Violence 1452, 1455 (2003). When a child victim dissociates, their memories of the traumatic event may become fragmented and improperly assimilated with other memories. See *id.* This can impede the victim’s ability to fully realize and deal with the traumatic experience. See *id.* Other long-term effects include denial and repression of rape and sexual abuse, experiencing amnesia concerning parts of one’s childhood, negating the effects and impact of rape and sexual abuse, and feeling that one should forget about the abuse. See Melissa Hall and Joshua Hall, *The Long-Term Effects of Childhood Sexual Abuse: Counseling Implications*, American Counseling Association (2011), [https://www.counseling.org/docs/disaster-and-trauma\\_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf?sfvrsn=2\\_](https://www.counseling.org/docs/disaster-and-trauma_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf?sfvrsn=2_) (last visited Feb. 15, 2018).

When the abuser is someone the child depends on for survival, there is an even greater likelihood of social conflict. See Zurbriggen and Freyd at 138. In order to preserve the attachment to their caregivers, which is vital to survival, the child often exhibits numbing, amnesia, and dissociation. See *id.* at 138-139. Studies have shown that physical and sexual

abuse perpetrated by caregivers is associated with an even higher instance of memory impairment than abuse by non-caregivers. *See id.* at 140. As a result, a victim’s testimony may present as fragmented, disjointed, or otherwise nonlinear.

Given this data, a survivor like Ms. Avelar who suffered multiple and frequent instances of rape and sexual assault from ages 11 to 13 is especially prone to dissociate and to form fragmented memories. Those fragmented memories would translate into fragmented testimony, which may contribute to the appearance of inconsistency. For example, the Immigration Judge found a purported inconsistency between the credible fear interview and Ms. Avelar’s live testimony in the description of the injury she suffered during her encounters with Mr. Oliva. The immigration officer’s notes regarding the credible fear interview describe Ms. Avelar’s physical injuries resulting from the sexual assaults as a “bruise,” and in her testimony before the Immigration Judge, Ms. Avelar herself insisted that the encounters left red marks, but not true bruises. I.J. at 13; Tr. at 138. To the extent this constitutes an inconsistency, the inconsistency could easily be the result of the protective psychological mechanism of disassociation, causing fragmented memories which are characteristic of someone who has survived young adolescent rape and sexual abuse like Ms. Avelar—and especially one who had been abused by her caregiver cousin, Mr. Oliva. *See* Tr. at 43-44.

**C. Childhood Trafficking, Like Other Forms of Severe Childhood Trauma, Can Also Impact a Witness’s Ability to Testify.**

Human trafficking, at its most basic level, is defined by the Trafficking Victims Protection Act of 2000 (“TVPA”) as “the recruitment, harboring, transporting, supplying, or obtaining a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude or slavery.” 22 U.S.C. §§7101-7112 (2012). Thus, under the TVPA, Ms. Avelar was a victim of trafficking at the hands of her mother’s cousin Mr. Oliva. Mr. Oliva lured Ms. Avelar away from home to live with him and his family in a distant city with promises of an education and a better life, Tr. at 44; Decl. ¶ 5, but instead forced her into

involuntary servitude that included long hours of domestic work and laboring to produce goods for his commercial enterprise. Tr. at 47-51; Decl. ¶ 9.

The forced labor, augmented by sexual abuse, of Ms. Avelar by Mr. Oliva forced Ms. Avelar to live under conditions that constitute human trafficking under U.S. law. The legislative history of the TVPA demonstrates that it was enacted for this precise reason, as human trafficking is considered “[o]ne of the most disturbing human rights violations of our time . . . [i.e.,] trafficking of human beings, particularly that of women and children, for purposes of sexual exploitation and forced labor.” See 146 Cong. Rec. S10199 (daily ed. Oct. 11, 2000) (statement of Sen. Santorum). Similarly, Senator Patrick Leahy described human trafficking as “plainly abhorrent.” *Id.* at S10183 (statement of Sen. Leahy). And Representative David Pryce has described the real harms suffered by trafficked victims: “no matter how they are taken, trafficking victims are universally subject to cruel mental and physical abuse, including beatings, rape, starvation, forced drug use, confinement and seclusion. Many victims suffer mental breakdowns and are exposed to sexually transmitted diseases. Ultimately, many cannot survive these harsh conditions.” See 146 Cong. Rec. H9030 (daily ed. Oct. 6, 2000) (statement of Rep. Pryce).

Such treatment of a child by her caregiver cousin is just as vile and abhorrent wherever in the world it occurs. And as in Ms. Avelar’s case, such treatment can contribute to facts that can form a basis for gender-based asylum for survivors of childhood rape and sexual assault.

As with childhood sexual abuse, the experiences associated with childhood trafficking can lead to lasting psychological challenges for survivors. See Yvonne Rafferty, *The Impact of Trafficking on Children: Psychological and Social Policy Perspectives*, 2 Child Development Perspectives 13, 14 (2008). In addition to the physical and emotional trauma associated with removal from their families, homes, and communities, trafficked children must also endure subsequent encounters that involve substantial harm through physical, emotional, and sexual abuse. *Id.*



**1. Victims who were trafficked as children can exhibit impaired rational thinking skills later in life.**

Research has found that “[t]he stresses of the trafficking situation is almost guaranteed to create dissonance between thoughts, feelings, and behavior that can greatly reduce flexible coping and rational decisions that could be expected of people in free conditions.” T. K. Logan et al., *Understanding Human Trafficking in the United States*, 10 *Trauma, Violence, & Abuse* 3, 16 (January 2009). Further, a victim’s attempt to adapt to a human trafficking situation often “involve[s] behavioral and cognitive strategies, and both the circumstances and the coping strategies used for survival may affect short-term as well as long-term health and mental health conditions.” *Id.* at 26. Given their inability to control the maltreatment they face, and given the frequency of that maltreatment, victims of human trafficking experience a “high level of fear” in their situations. *Id.* at 15. “The fear is complex in that it can be a composite of all these specific[] [fears] rather than a fear of one event”; accordingly, “[f]ear can impose serious constraints on thinking and decision making.” *Id.*

This means that the decision-making process of survivors like Ms. Avelar might not always be perceived by others as perfectly rational. This includes decisions that victims make in efforts to find safety and to prevent reoccurrence of abuse. Indeed, one of the inconsistencies the Immigration Judge cited to support the adverse credibility determination against Ms. Avelar was that she decided to move back home to live with her mother, despite purportedly admitting that she believed she would have been safe from Mr. Oliva if she and her children had continued to live with her husband Jose Miguel. I.J. at 14. From a safety perspective, this is not necessarily an irrational choice, as Ms. Avelar may have believed that her mother could offer her safety as well. Judges who have received training on domestic violence and sexual assault victimization, and who are informed by the social science research on trauma and the difficulties victims face in finding safe harbor from abusive family members, would have likely found Ms. Avelar’s testimony to be consistent with that of abuse survivors.

Another purported inconsistency cited by the Immigration Judge was that Ms. Avelar testified about having to work in Guatemala and Mexico to make enough money to cross the border, but did not take her children with her because she did not have enough money. I.J. at 14; Tr. at 103. It is not at all irrational for a trauma survivor like Ms. Avelar to choose to flee by herself, leaving her children behind because she does not want to subject them to the perils of a journey that could cause them harm similar to what she suffered at the hands of Mr. Oliva, especially when she did not know how long it would take for her to raise the funds to cross the border to the U.S. Alternately, if this behavior was to be perceived by the court as irrational, her behavior can be explained by her reduced ability to make rational decisions as a result of the trauma she suffered from her childhood abuse and mistreatment.

**2. The neurobiological effects of childhood trafficking coincide with the neurobiological effects of other severe childhood trauma.**

Although the research on the neurobiological effects specifically of childhood trafficking is still somewhat limited, “[f]indings suggest that developmental theory, and particularly complex trauma theory [ ] may provide a useful theoretical framework to guide our understanding of how trafficking affects children.” Rafferty, *The Impact of Trafficking on Children* at 14. As with other forms of complex trauma, “one of the most frequently noted components of the human trafficking experiences is the high level of fear victims feel in the situation ... the kinds of fears that have been documented for prisoners of war, kidnap or torture victims.” Logan, et al. at 15. Like the effects of Ms. Avelar’s childhood rapes and sexual abuse, her experience being trafficked has contributed to severe trauma that impacts her demeanor as a witness and her ability to recall information while testifying. These are all circumstances that the Immigration Judge should have taken into account, but failed to consider, when assessing Ms. Avelar’s credibility.

**D. Childhood Trauma Impairs Brain Development in Key Regions Responsible for Memory, Reasoning, and Planning.**

The science of brain development likewise demands attention to the way trauma affects a

victim's ability to form and recall memories. Complex trauma exposure refers to the experience in early childhood of chronic, developmentally adverse traumatic events, typically of an interpersonal nature, occurring within the child's caregiving system. These exposures include sexual, emotional, and physical abuse. *Neuropsychological Assessment in Clinical Evaluation of Children and Adolescents with Complex Trauma*, 1 J. Child & Adolescent Trauma 163, 178 (2008). As a result of child-onset trauma, the brain becomes poorly developed and functionally disorganized, rendering the child less able to intellectually, verbally, or emotionally respond to normal experiences, let alone traumatic ones. Richard L. Gaskill and Bruce D. Perry, *Child Sexual Abuse, Traumatic Experiences, and Their Impact on the Developing Brain*, Handbook of Child Sexual Abuse: Identification, Assessment, and Treatment (2012). It is now beyond dispute that trauma during childhood can delay normal cognitive and emotional development. See Michael D. De Bellis and Abigail Zisk, *The Biological Effects of Childhood Trauma*, 23 Child & Adolescent Psychiatric Clinics of N. Am. 185, 186 (Apr. 2014). It is unknown whether the neurological and physiological changes that result from abuse and trauma during childhood and adolescence can ever be repaired or overcome. See Joan A. Reid & Shayne Jones, *Exploited Vulnerability: Legal and Psychological Perspectives on Child Sex Trafficking Victims*, 6 Victims and Offenders 207, 218 (2011). Anatomical and functional imaging studies of the brain, however, "suggest that this effect is long lasting and in some instances probably permanent." *Id.*

- 1. Childhood trauma impairs the development of the hippocampus, the region of the brain responsible for memory.**

Trauma often induces neurobiologic disruptions in the normal development of the brain's memory systems. See Basel A. van der Kolk, *The Neurobiology of Childhood Trauma and Abuse*, 12 J. Child & Adolescent Psychiatric Clinics of N. America 293, 298 (2003). In particular, the hippocampus plays a significant role in an individual's capacity to recall specific life events consciously. *Id.* at 305. Researchers have found abnormalities in regions of the hippocampus of women who had been sexually abused as children. *Id.* at 306. Those women exhibited neuropsychological abnormalities that are associated with impaired hippocampal

functioning, such as difficulty learning from negative experiences. *Id.* Using PET scanning, researchers in other studies have also found evidence of functional deficits in the hippocampus in women with a history of childhood sexual abuse: specifically, they found a significant reduction in the activity of the hippocampus during a verbal memory task. Debra Niehoff, *Invisible Scars: The Neurobiological Consequences of Child Abuse*, 56 DePaul L. Rev. 847, 862 (2007). Because the hippocampus is known to play a critical role in memory storage and retrieval, as well as in the regulation of stress responses, its effect on a witness's ability to recall information during testimony is self-evident. *See id.*

Indeed, damage to the hippocampus can result in a variety of memory deficits. Stress-related atrophy of the hippocampus may play a prominent role in this memory dysfunction, as well as in amnesia regarding the factual details of the precipitating trauma. *See Niehoff, Invisible Scars* at 855-56. Thus, a victim of childhood rape and sexual abuse who is forced to testify about that abuse is likely to experience difficulty in retrieving specific details of past events, or retrieving those details in exactly the same way each time.

**2. Childhood trauma impairs the development of the frontal lobe of the cerebral cortex, the region of the brain responsible for reasoning, decision-making, and planning.**

Right before puberty, adolescent brains experience a growth spurt that occurs mainly in the frontal lobe. *See* U.S. Dep't of Health and Human Services, Children's Bureau, *Understanding the Effects of Maltreatment on Brain Development* at 3, Child Welfare Information Gateway (2015), [https://www.childwelfare.gov/pubPDFs/brain\\_development.pdf#page=5&view=Effects of maltreatment on brain development](https://www.childwelfare.gov/pubPDFs/brain_development.pdf#page=5&view=Effects%20of%20maltreatment%20on%20brain%20development) (last visited Feb. 16, 2018). Studies using MRI techniques show that the brain continues to grow and develop into young adulthood – at least to the mid-twenties. *Id.* Because adolescents' frontal lobes are not yet mature, they are less able than typical adults to reason and think logically. *Id.* Adolescents who suffer complex trauma during this developmentally sensitive period can develop long-term and potentially permanent problems thinking clearly, reasoning, or problem solving. For example,

they may be unable to plan ahead, anticipate the future, and act accordingly. See The National Child Traumatic Stress Network, *Impact of Complex Trauma*, <http://www.nctsn.org/trauma-types/complex-trauma> (last visited Feb. 16, 2018). That is because “[w]hen their bodies and minds have learned to be in chronic stress response mode, they may have trouble thinking a problem through calmly and considering multiple alternatives.” *Id.* As a result, childhood trauma survivors are prone to display irrational responses to situations that might be irrelevant, unproductive, or even harmful in a given context. Gaskill and Perry, *Child Sexual Abuse, Traumatic Experiences, and Their Impact on the Developing Brain* at 33.

**3. Victims who were sexually abused in early adolescence are especially vulnerable to impairment of brain development.**

Adolescence is a particularly sensitive period for brain development, and sexual abuse during this period is associated with a host of neuropsychological and neurocognitive consequences. See, e.g., U.S. Dep’t of Health and Human Services, *Understanding the Effects of Maltreatment on Brain Development* (noting that adolescent brains experience a growth spurt that occurs mainly in the frontal lobe right before puberty); Susan L. Andersen et al., *Preliminary Evidence for Sensitive Periods in the Effect of Childhood Sexual Abuse on Regional Brain Development*, 20 J. Neuropsychiatry & Clinical Neurosciences 3 (Summer 2008). Emerging research suggests that the size of the hippocampus is strongly related to childhood sexual abuse occurring between ages 11 and 13. Andersen, *Preliminary Evidence for Sensitive Periods* at 298 (“Hippocampal volume was most strongly related first to abuse reportedly occurring between ages 3 and 5 years old, and second to abuse between 11 and 13 years old.”)

Ms. Avelar’s childhood captivity and sexual abuse coincided precisely with this neurodevelopmentally vulnerable period: from the ages of 11 to 13, she was regularly raped, mistreated, and forced to work long hours in Mr. Oliva’s house as a domestic slave. Tr. at 47-48, 53; Decl. ¶¶ 11-12. Accordingly, the effect of this severe and prolonged trauma on her brain’s memory center is highly likely to be significant. The underdevelopment or impaired development of the memory region of her brain could very well result in testimony that is

unclear, nonlinear, or even inconsistent. Because this neurodevelopmental issue has a direct and substantive impact on Ms. Avelar's ability to recall information when testifying, the Immigration Judge should have taken this into account when assessing her credibility.

**E. The Immigration Judge Failed to Consider the Neurobiological Effects of Ms. Avelar's Childhood Sexual Abuse and Trafficking in Finding that She Was Not Credible.**

**1. The Immigration Judge's credibility analysis is completely inconsistent with well-established social science research explaining the neurobiological effects of severe trauma like child sexual abuse and trafficking.**

As set forth *supra*, the Immigration Judge's adverse credibility determination is completely inconsistent with the established scientific understanding of how childhood trauma impacts the development of the child's brain, and how it later affects the victim's ability to recall and engage with those painful memories as an adult. The Immigration Judge's decision also directly contravenes guidance issued by the U.S. Department of State to assist asylum officers, which emphasizes the fact that victims of rape and sexual abuse may have difficulty speaking about their abuse due to trauma and/or cultural factors, and that failure to take these factors into account "may cause negative credibility findings." U.S. Department of State, *Guidelines, Office of International Affairs, Immigration and Naturalization Service, Regarding Adjudicating Asylum Cases on the Basis of Gender* (May 26, 1996), <https://www.state.gov/s/l/65633.htm> (last visited Feb. 16, 2018).

The Immigration Judge cited a handful of inconsistencies that could easily be explained with more fulsome reference to the factual record. But even without the more complete factual context, the "inconsistencies" should have been evaluated in light of the well-established scientific and social scientific research showing the impact of severe trauma on the development of key regions of the brain responsible for memory and decision making. Nowhere does the Immigration Judge's order acknowledge the effect of trauma on Ms. Avelar's testimony, much less on the underlying neurodevelopmental issues that might affect Ms. Avelar's testimony. In

cases such as Ms. Avelar’s, “the coupling of [childhood sexual abuse] and youthfulness, each having a corresponding neurological vulnerability, merge to create critical mitigating factors that a just society should not ignore.” Reid and Jones, *Exploited Vulnerability* at 218. The Immigration Judge ignored those critical mitigating factors here, and for that reason, the Board should vacate the Immigration Judge’s adverse credibility determination against Ms. Avelar and remand with instructions to take these mitigating factors into account in evaluating the merits of Ms. Avelar’s applications for asylum and withholding of removal under the INA and for protection under the Convention Against Torture.

**2. The Immigration Judge’s credibility analysis relied on false assumptions about the effects of childhood rape, sexual abuse and trafficking and how a victim should behave.**

Further, the Immigration Judge clearly relied on false and alarming assumptions about how a victim of childhood rape, sexual abuse, and trafficking should behave in finding that Ms. Avelar was not credible. In another case involving repeated instances of rape during confinement, the Fifth Circuit warned against reliance on “*incorrect and irrational assumptions about human behavior* and especially the behavior of people from foreign cultures.” *Mwembie v. Gonzales*, 443 F. 3d 405, 413 (5th Cir. 2006) (finding that the Immigration Judge’s assumptions regarding “a victim’s ability to remember phone numbers, about all aliens’ behavior in saying good-bye to their families before fleeing, or about the ‘incomprehensible’ brutality of the persecutors”—which included raping Ms. Mwembie on a daily basis while in prison—were “not rational.”) The Board should not endorse or allow such dangerous misconceptions to control whether victims of childhood rape, sexual abuse, and trafficking can secure protection under the immigration laws of the United States and the Convention Against Torture.

**a. Victims of childhood rape and sexual abuse often remain silent about what they endured out of shame and fear of retaliation.**

The Immigration Judge found it not credible that Ms. Avelar did not share the accounts of her rape and sexual abuse with Mr. Oliva’s wife or her family, and that she did not volunteer this information during her credible fear interview. I.J. at 13-14. But as at least two circuit courts

have recognized, women often delay reporting sexual abuse, and the failure to disclose the details of that abuse at the first opportunity does not necessarily reflect negatively on their credibility. *See, e.g., Paramasamy v. Ashcroft*, 295 F.3d 1047, 1053 (9th Cir. 2002) (noting that “there is often delayed reporting of sexual abuse,” and holding that the applicant’s failure to “spontaneously reveal the details” of that abuse in her asylum interview did not support an adverse credibility finding); *Juarez-Lopez v. Gonzales*, 235 Fed. Appx. 361 (7th Cir. 2007) (remanding a case in which the applicant did not disclose in her application that she had been raped, concluding that an adverse credibility finding should not be based on an applicant’s “understandable reluctance to divulge information about her rapes.”).

Additionally, as widely-accepted research shows, such behavior is very common for victims in Ms. Avelar’s situation. When faced with the trauma of sexual abuse, children can become inundated with a mixture of emotions including shame, fear, and guilt. The added confusion of being abused by a caregiver can leave a child feeling completely alone. It is not uncommon for victims to remain silent and hide emotions about the childhood sexual abuse they have endured. Even though “[adolescents] and young adults have the highest rates of rape and other sexual assaults of any age group,” they are much less likely to come forward about incidents of violence. Miriam Kaufman, *Care of Adolescent Sexual Assault Victim*, American Academy of Pediatrics Committee on Adolescence, 122 *Pediatrics* 462, 462 (2008), <http://pediatrics.aappublications.org/content/pediatrics/122/2/462.full.pdf> (last visited Feb. 16, 2018).

One of the main reasons children remain silent about sexual abuse is fear of further violence. Research shows that most children fail to report the sexual violence they experience at home because they fear reprisals by their perpetrators, especially in communities and families that subscribe to rigid social norms regarding masculinity, femininity, and family honor. *See* Paulo Sergino Pinheiro, *World Report on Violence Against Children*, at 55 (2006). In the context of such social constructs, girls who disclose sexual violence risk not being believed, or being blamed and potentially beaten and killed. *See id.* In societies where patriarchal notions of



family “honor” are valued above girls’ human rights and wellbeing, an incident of rape or sexual violence can lead to ostracism of the victim, further violence, and even death at the hands of her family. *See id.* at 10. Regardless of how much the children fear and hate the sexual violence they experience, they lack a safe place to make their experiences known, and thus suffer in silence. *See id.* at 81.

Another aggravating factor in the persistence of silence regarding childhood abuse is the lack of support from the other family members. In many cases, family members who should protect the abused child are similarly silent when the violence is perpetrated by a spouse, other family member, or a more powerful member of society (such as an employer, a police officer, or community leader). *See* Pinheiro, *World Report on Violence Against Children*, at 10. Persistent social acceptance of violence against children is a major factor in its perpetuation. *Id.* at 10. The shame, secrecy, and denial associated with familial sexual violence against children fosters a pervasive culture of silence, where children cannot speak about sexual abuse they have suffered, adults do not speak about the risk of sexual violence in the home, and adults do not know what to do or say if they suspect someone they know is sexually abusing a child. *Id.* at 55.

This is particularly true in El Salvador, where there is a pervasive culture of male social dominance. *See* UNHCR – The UN Refugee Agency, *Women on the Run, First-hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* at 38 (2015). Further, there is no meaningful recourse for victims of childhood sexual abuse in El Salvador. When such abuse is reported, state institutions often fail to effectively investigate and prosecute cases, due to lack of training, insufficient resources to carry out an investigation or prosecution, and sometimes even the intentional mishandling of cases by police, prosecutors, and judges. *See* Kids in Need of Defense (KIND), *Neither Security Nor Justice: Sexual and Gender-based Violence and Gang Violence in El Salvador, Honduras, and Guatemala*, (2017), [https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice\\_SGBV-Gang-Report-FINAL.pdf](https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice_SGBV-Gang-Report-FINAL.pdf) (last visited Feb. 16, 2017). While the Immigration Judge was presented with expert testimony on this topic by two experts, and found both experts to be credible, she

apparently dismissed their application of those opinions to Ms. Avelar's case because the experts had not verified the information they reviewed from Ms. Avelar's application. I.J. at 11, 12, 15. In effect, it appears that the Immigration Judge failed to give this pertinent and credible expert testimony any weight at all.

Ms. Avelar's experiences as a child exemplify these principles. When Ms. Avelar was sent to live with Mr. Oliva, she was completely deprived of contact with the outside world. The only other adult she had contact with was Mr. Oliva's wife, and she was abusive towards Ms. Avelar as well. Tr. at 49; Decl. at ¶ 11. If Ms. Avelar had ventured to disclose the rape and sexual abuse to Mr. Oliva's wife, she would have likely risked retaliation. *See* Tr. at 81-82. In any event, disclosing the abuse to Mr. Oliva's wife would not likely have improved Ms. Avelar's situation. It is no coincidence that Mr. Oliva's wife failed to assist her in any manner throughout the two years of rape and sexual abuse that she suffered. Consistent with the social conditions in El Salvador, Mr. Oliva's wife was likely either accepting of—and thereby complicit in—the sexual abuse, or afraid to disclose it for fear of retaliation herself. The pervasive culture of male dominance in El Salvador added to the guarantee that Ms. Avelar lacked any safe avenue to share her distress or request assistance.

The Immigration Judge took issue with the fact that Ms. Avelar did not express emotion or show any physical signs of harm either during or after her harrowing two years at Mr. Oliva's house. However, based on current, well-established social science, Ms. Avelar behaved as expected. After Ms. Avelar escaped from Mr. Oliva's house at age 13, her feelings of fear, shame, and guilt persisted. Tr. at 116; Decl. ¶ 16. Rather than risk intensification of her own suffering by disclosing the rape and sexual abuse, Ms. Avelar reasonably remained silent and internalized her fear and guilt. As is common with victims of childhood rape and sexual abuse, Ms. Avelar sought to repress the fragmented memories of her trauma. Tr. at 54; Decl. ¶ 16. Accordingly, it would not have been inconsistent with research findings for her to have refrained from relating these traumatic experiences to her family members in order to avoid re-living that trauma. The combination of these factors serves to explain why Ms. Avelar kept her suffering to

herself and subsequently may have an imperfect memory of all that transpired. This also sheds light on why Ms. Avelar did not volunteer information about these traumatic events in her life when she was not specifically asked about them during her credible fear interview, especially considering that the immigration officer repeatedly cautioned her to answer only the questions being asked. Tr. at 107.

**b. Victims of childhood rape and sexual abuse often display an inability to properly assess risks and make decisions accordingly.**

In finding that Ms. Avelar was not credible, the Immigration Judge also questioned her decision to walk alone in her mother's neighborhood. This finding demonstrates a failure to consider well-established studies showing that this type of behavior is not uncommon for survivors of childhood rape and sexual abuse.

It can be difficult for victims of childhood rape and sexual abuse to properly assess risks. See Zurbriggen and Freyd, *The Link Between Sexual Abuse and Risky Sexual Behavior* at 149. They are likely to make uninformed decisions about danger due to their impaired problem-solving skills. See Noll, et al., *Revictimization and Self-Harm in Females Who Experienced Childhood Sexual Abuse* at 1455. Victims who adopt dissociation as the primary defense strategy in adolescence may be less able to engage in self-protection when physically threatened. *Id.* at 1466. It can lead to greater vulnerability to re-victimization because the use of dissociation prevents victims from engaging in self-protective measures. *Id.* at 1455. Research on early trauma indicates that childhood rape and sexual abuse can lead to long-term dysregulation in the function of biological stress responses and explains why victims of rape and sexual abuse are at an elevated risk for re-victimization. Jennie G. Noll and John H. Grych, *Read-React-Respond: An Integrative Model for Understanding Sexual Revictimization*, American Psychological Association (2011).

Cognitive mechanisms that aid in general assessment of reality are likely to be damaged by any long term experience of childhood rape and sexual abuse. See Zurbriggen and Freyd at

148. Because it is commonplace for perpetrators to lie and distort reality, the normal process by which a child learns to distinguish reality from fantasy may be unfocused, resulting in a hampered ability to assess reality. *Id.* at 148. A victim who is experiencing avoidant symptoms may be prone to making inaccurate or uninformed decisions regarding potential danger because the trauma has been denied, minimized, or otherwise not fully integrated. Noll et.al, *Revictimization and Self-Harm in Females Who Experienced Childhood Sexual Abuse* at 1455. Valid intuitions may be brushed aside and risks may be assessed improperly. Zurbriggen and Freyd at 149.

The imminent threat of harm engages a powerful biological response designed to avoid or combat the threat; if this system is functioning normally, then accurate appraisal of threat is likely to promote effective coping efforts. Grych, *Read-React-Respond* at 3. However, if these physiological processes are disrupted or dysregulated, sexual threats instead may impair cognitive processes such as attention, problem-solving, memory, and decision making and lead to ineffective behavioral responses. *Id.*

The years of rape and sexual abuse that Mr. Oliva inflicted on Ms. Avelar likely contributed to Ms. Avelar's inability to properly assess risks and reality. Ms. Avelar spent years attempting to forget the trauma of her past. Decl. ¶ 16, 23. A victim who is experiencing avoidant symptoms, like Ms. Avelar, is prone to making inaccurate or uninformed decisions regarding potential danger because the trauma has been minimized and improperly assimilated with other memories. In assuming otherwise, the Immigration Judge's adverse credibility determination ignored a relevant and important circumstance.

**c. The injuries suffered by victims of rape, sexual abuse, or trafficking are not always obvious or visible.**

The Immigration Judge found it "implausible" that Ms. Avelar "never expressed any emotion or showed any physical sign of harm or distress," such as visible bruising or injury, "such that no one would be aware that she had suffered harm from any of her encounters with [Mr. Oliva.]" I.J. at 14. The Immigration Judge also found it "implausible" that Ms. Avelar

“never expressed any emotion or showed any physical sign of harm or distress so that no one would ever be aware that she was suffering.” *Id.* These circumstances, in the Immigration Judge’s estimation, weighed against Ms. Avelar’s credibility. *Id.* In essence, the Immigration Judge refused to believe that a child victim of rape could have suffered multiple rapes without bruising. Here, again, the Immigration Judge’s assumptions regarding how rape, sexual abuse, and trafficking victims ought to appear and behave are both incorrect and dangerous.

Rape does not always include signs of physical injury that would be obvious or visible to an outsider. The World Health Organization has specifically denounced the myth that rape always leaves obvious signs of injury: “Because most rapes do not involve a significant amount of force there may be no physical injuries. Just because a person has no physical injuries does not mean they were not raped. Only approximately one-third of rape victims sustain visible physical injuries.” World Health Organization, *Guidelines for Medico-Legal Care for Victims of Sexual Violence* at 11 (2003), <http://apps.who.int/iris/bitstream/10665/42788/1/924154628X.pdf> (last visited Feb. 16, 2018); see also Gunilla Krantz and Claudia Garcia-Moreno, *Violence Against Women*, 59 *J. Epidemiology & Community Health* 818, 820 (2005) (“There is also an assumption that rape leaves obvious signs of injury, which is often not the case. Only around one third of rape victims sustain visible physical injuries.”).

The observation that no one ever noticed Ms. Avelar’s suffering does not negate the fact that she was suffering immensely. As she herself explained, “perhaps the bruises were not showing it, but the pain was inside, and it’s a pain that I cannot let go of.” Tr. at 116. The physical harm she suffered was extensive, even if it was not visible to others. For example, she testified that after the rapes she endured as a child, “I would bleed out of my private parts into where I was sleeping, and I felt a lot of pain. In fact, one time I even touched myself down there and I realized that it was blood.” Tr. at 82. She also testified that, another time, “[Mr. Oliva] used his finger to penetrate me, and he made me bleed a lot, and since I had never had relations, I, I, felt bad and I bled a lot.” Tr. at 80, 115. As an adult, Ms. Avelar also suffered injury when Mr. Oliva threatened, harassed, and attempted to rape her: she testified that she felt pain where

he grabbed her, and described how she would “[go] into a fenced are and ... stay[] there for 30 minutes crying.” Tr. at 60; *see also* Tr. at 51, 80-82, 114-16, 131, 137-38.

These adverse physical and emotional consequences clearly constitute injuries, even if they were not outwardly obvious or visible. For the Immigration Judge to dismiss these clear descriptions of injury on the basis of her own subjective assumptions is both clearly erroneous and patently unjust.

**d. Victims of human trafficking do not turn to their captors for help to escape from the trafficking situation.**

In addition to placing undue emphasis on visible injury, the Immigration Judge incorrectly assumed that when Ms. Avelar was held captive in Mr. Oliva’s house, someone in Ms. Avelar’s vicinity—*i.e.*, Mr. Oliva’s wife—would have been attentive to her suffering and would have responded in a helpful manner. But the facts demonstrate that this was clearly not the case. Mr. Oliva’s wife also physically abused Ms. Avelar, such as grabbing her by her hair and throwing her to the floor. Tr. at 49; Decl. at ¶ 11. Mr. Oliva’s wife also participated in other maltreatment of Ms. Avelar, such as withholding food from her, calling her worthless, and hitting her. Tr. at 49; Decl. ¶ 11. And as Ms. Avelar herself testified, she was afraid of Mr. Oliva’s wife and believed that she would punish Ms. Avelar for making any accusations of rape or sexual abuse against Mr. Oliva. Tr. at 53, 81-82.

Moreover, Mr. Oliva’s wife would very likely be considered one of Ms. Avelar’s traffickers under the TVPA, which defines human trafficking as “the recruitment, harboring, transporting, supplying, or obtaining a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude or slavery.” 22 U.S.C. §§ 7101-7112 (2012). Mr. Oliva’s wife was complicit in keeping Ms. Avelar locked in the house, disconnecting the phone when the family left the house, and forcing Ms. Avelar to work long hours cleaning the house and burning CDs for Mr. Oliva’s commercial enterprise. Tr. at 48; Decl. ¶ 9. As research shows, isolation is a tactic used by traffickers to control victims: “by isolating victims, the controller is essentially reducing resistance attempts and increasing the

dependence of the victim on the trafficker.” Logan et al., *Understanding Human Trafficking* at 14. It is an “incorrect and irrational assumption about human behavior” to expect that a trafficking victim like Ms. Avelar would turn to one of her captors to save her from the very situation from which the captors profit. To allow the Immigration Judge’s reasoning to stand would impose a near-impossible requirement on asylum-seekers who are survivors of trafficking, rape, sexual assault, and other victims for whom the facts of their persecution include being held hostage.

## V. CONCLUSION

*Amici* urge the Board to seriously consider the social science findings presented herein to vacate the adverse credibility determination of the Immigration Judge below, and to remand this matter with direction to the Immigration Court to consider this body of research in its evaluation on the merits of Ms. Avelar’s applications for asylum and withholding of removal under the INA and for protection under the Convention Against Torture.

Dated: 2/16/18

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