

Appendix E

Understanding the Significance of a Minor's Trauma History in Family Court Rulings¹²

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Many immigrant children involved in family court proceedings are survivors of traumatic events such as domestic violence, sexual assault, human trafficking, child abuse, abandonment, or neglect. Immigrant children may have experienced trauma in their home country, throughout their journey to the United States, or during the resettlement and adaptation to life in the United States. Understanding the history of traumatic events is a crucial component for state family court judges who are responsible under state best interests laws for deciding in whose custody a child will reside, guardianship of children, and placement of children who have suffered trauma. A child's trauma history also impacts the court's development of care plans and issuance of court orders regarding services that are to be provided to the child to facilitate healing of child trauma survivors. Knowledge of the effects that abuse and violent environments have on children is imperative for judges and court personnel as it improves understanding of the needs of child trauma victims and is essential in cases of children present in homes where domestic violence is occurring, children and youth who have experienced child abuse and sexual assault, and child sex and labor trafficking victims. In domestic violence cases, violence experienced or witnessed by children has traumatic effects on children.

All of these forms of abuse and trauma impact children's cognitive and psychological development with long-term impacts that if not addressed can result in challenges in their adult lives. Courts have the opportunity to devise and implement trauma-informed, culturally-sensitive, safety enhancing, and developmentally appropriate placements, custody decrees, treatment and care-plans for children and youth who have suffered traumatic events. When courts understand the impact of trauma on child development they can issue orders that support immigrant children's and all trauma survivor children's great potential for resilience and help them overcome challenging trauma histories. For immigrant children courts can help child trauma survivors adapt to the changes in identity, familial, and social environment and opportunities that life in the U.S. presents.³

I. General Overview of the Effects of Trauma on Children

Experiencing or witnessing abuse as a minor affects the child's health and wellbeing,⁴ and may affect their neurocognitive development, intellectual functioning and development, and physical actions. Research indicates that the physical development of the human brain is negatively affected when a child or adolescent

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² This publication was developed based upon an Amicus Brief to the Board of Immigration Appeals: Developmental and Psychological Effects of Trauma on Immigrant Minors NO. 16-06-09 (July 11, 2016) written by Crowell and Moring with input from the authors of this publication. See Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 (2016), <http://niwaplibrary.wcl.american.edu/pubs/final-amicus-brief-niwap-et-al-stamped/>.

³ *Vulnerable But Not Broken: Psychological Challenges and Resilience Pathways Among Unaccompanied Children from Central America*, IMMIGRATION PSYCHOLOGICAL WORKING GROUP, 2018, <https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken>.

⁴ Diana J. English, David B. Marshall & Angela J. Stewart, *Effects of Family Violence on Child Behavior and Health During Early Childhood*, 18 J. FAM. VIOLENCE 43 (2003); Alissa C. Huth-Bocks, Alytia A. Levendosky & Michael A. Semel, *The Direct and Indirect Effects of Domestic Violence on Young Children's Intellectual Functioning*, 16 J. FAM. VIOLENCE 269 (2001); Joy D. Osofsky, *Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention*, 6 CLINICAL CHILD & FAM. PSYCHOL. REV. 161 (2003).

faces maltreatment or violence, particularly when such trauma is long-term or continuing.⁵ For instance, experiencing or witnessing abuse has a negative effect on the brain's frontal lobes, which are the most important brain areas regarding executive functions. As such, children or adolescents who experience trauma will be developmentally behind children or adolescents of the same age without a history of trauma. As these children attain safety and grow up, they need additional time and space to heal from their impairments and developmental delays.

II. How On-Going Abuse & Trauma Effects Children

The main effects of trauma and abuse experienced by children are:

- Post-traumatic stress disorder;⁶
- Profound sense of helplessness;
- Hypervigilance;
- Low self-esteem; and
- Behavioral problems⁷
 - Self-medicating with street drugs
 - Aggression
 - Delinquency
 - Adult criminal acts⁸
 - Bullying⁹

Research shows that exposure to violence and trauma during childhood and adolescence has significant and negative psychological and neurobiological impacts on the child's development.¹⁰ One of the most significant issues that arises from childhood and adolescent exposure to abuse, trauma, and stress is the negative impact of such exposure on the executive functioning, both cognitively and physiologically.¹¹ Negative effects on the executive function can cause delay a child's social interactions,

⁵ Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 (2016), <http://niwaplibrary.wcl.american.edu/pubs/final-amicus-brief-niwap-et-al-stamped/> (amicus brief submitted to the Department of Justice that discusses the effects of trauma in minors, particularly in immigrant minors).

⁶ Jerome R. Kolbo, Eleanor H. Blakely & David Engelman, *Children Who Witness Domestic Violence: A Review of Empirical Literature*, 11 J. INTERPERSONAL VIOLENCE 281 (1996); B.B. Robbie Rossman, Richard D. Bingham & Robert N. Emde, *Symptomatology and Adaptive Functioning for Children Exposed to Normative Stressors, Dog Attack, and Parental Violence*, 36 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 1089 (1998); Mary Ann Dutton et al., *Intimate Partner Violence, PTSD, and Adverse Health Outcomes*, 21 J. INTERPERSONAL VIOLENCE 955 (2006).

⁷ Timothy E. Moore & Debra J. Pepler, *Correlates of Adjustment in Children at Risk*, 157-84 (G.W. Holden, R.A. Geffner & E.N. Jouriles eds., 1998); Christine E. Cox, Jonathan B. Kotch & Mark D. Everson, *A Longitudinal Study of Modifying Influences in the Relationship Between Domestic Violence and Child Maltreatment*, 18 J. FAM. VIOLENCE 5 (2003).

⁸ Cathy Spatz Widom, *Child Abuse, Neglect, and Violent Criminal Behavior*, 27 CRIMINOLOGY 251 (1989).

⁹ Laurence Steinberg, *Youth Violence: Do Parents and Families Make a Difference?* NAT'L INST. JUST. J. (April 2000) at 30; David P. Farrington, *Understanding and Preventing Bullying*, 17 CRIME AND JUSTICE 381(1993); Anna C. Baldry, *Bullying in Schools and Exposure to Domestic Violence*, 27 CHILD ABUSE & NEGLECT 713-32 (2003).

¹⁰ Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 (2016), <http://niwaplibrary.wcl.american.edu/pubs/final-amicus-brief-niwap-et-al-stamped/>.

¹¹ Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 (2016), <http://niwaplibrary.wcl.american.edu/pubs/final-amicus-brief-niwap-et-al-stamped/> (describing the executive functioning to be a set of cognitive processes that control behavior).

goal-oriented behaviors, planning, and organizing.¹² Many child trauma survivors and child witnesses of abuse cope by distancing themselves psychologically from the trauma through the behaviors of numbing and avoidance not only in childhood but well into adulthood.¹³

Research has found that there are both physical and mental impacts on detained children and child witnesses of violence, including higher levels of anxiety, depression, suicide attempts, and regression in childhood development.¹⁴ Results of the childhood regression includes decline in language development, impaired cognitive abilities, bed wetting (as a child and adult), decreased eating, sleep disturbances, social withdrawal, and aggression.¹⁵ Furthermore, children who experience significant amounts of trauma have difficulties with memory retrieval, which should be heavily considered by judge's in family court proceedings and domestic violence cases where a testifying child is involved and/or their credibility could be at issue. Childhood and adolescent exposure to trauma has also been negatively correlated to the growth of the "corpus callosum" which is the brain structure that connects the brain regions that regulate various aspects of cognitive functioning.¹⁶

III. Impact of Sexual Assault and Other Factors that Effect Children Cognitively and Developmentally

Immigrant children often face additional obstacles related to their immigration claims that exacerbate underlying problems related to their experience with abuse. For instance, immigrant children, especially immigrant girls, are at an increased risk of sexual assault which heightens the psychological and cognitive impact of trauma on children and adolescents. High school aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers.¹⁷ Immigrant girls are legally and socially vulnerable to recurring sexual assault due to factors associated with their victimization in their home countries and/or their immigration status such as increased isolation, language barriers to reporting, and the break-up and restructuring of families during the immigration process. The severe impact of sexual abuse of minors commonly manifests itself physically through:¹⁸

- Cognitive deficits, depression, dissociation, and/or persistent posttraumatic stress disorder;
- Severe anxiety known as hypothalamic–pituitary–adrenal attenuation;
- High rates of obesity;

¹² Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 (2016), <http://niwaplibrary.wcl.american.edu/pubs/final-amicus-brief-niwap-et-al-stamped/>.

¹³ Bruce D. Perry, Childhood Trauma, the Neurobiology of Adaption and "Use Dependent" Development of the Brain: How "States" Become "Traits," pg. 28, Winter 1995, [https://doi.org/10.1002/1097-0355\(199524\)16:4<271::AID-IMHJ2280160404>3.0.CO;2-B](https://doi.org/10.1002/1097-0355(199524)16:4<271::AID-IMHJ2280160404>3.0.CO;2-B).

¹⁴ Von Werthern M, Robjant K, Chui Z, Schon R, Ottisova L., *The Impact of Immigration Detention on Mental Health: A Systematic Review*, AMERICAN ACADEMY OF PEDIATRICS DETENTION OF IMMIGRANT CHILDREN, pg. 55 - 57, 2018.

¹⁵ Von Werthern M, Robjant K, Chui Z, Schon R, Ottisova L., *The Impact of Immigration Detention on Mental Health: A Systematic Review*, AMERICAN ACADEMY OF PEDIATRICS DETENTION OF IMMIGRANT CHILDREN, pg. 55 - 57, 2018.

¹⁶ Pia Petchel, Diego A. Pizzagalli, *Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature*, PSYCHOPHARMACOLOGY (BERL.), 2011, doi: 10.1007/s00213-010-2009-2.

¹⁷ Michele R. Decker, Anita Raj & Jay G. Silverman, *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 VIOLENCE AGAINST WOMEN 498 (2007).

¹⁸ Penelope K. Trickett, Jennie G. Noll & Frank W. Putnam, *The Impact of Sexual Abuse on Female Development: Lessons From a Multigenerational, Longitudinal Research Study*, 23 DEV. & PSYCHOPATHOLOGY 453 (2011).

- Chronic health complaints such as headaches or stomach aches. As victims' mature problems can become chronic conditions disorders leading to gastrointestinal, cardiovascular, respiratory, muscular-skeletal, dermatological, and/or urological problems;¹⁹
- Early onsets of puberty, maladaptive sexual development, sexual re-victimization;
- Dropping out of high school;
- Drug and alcohol abuse;
- Experience dating and domestic violence in relationships;²⁰ and
- Teen motherhood, which is further complicated by premature deliveries, offspring who are at increased risk for child maltreatment and overall maldevelopment

Immigrant children eligible for humanitarian immigration relief in the United States related to their victimization²¹ face a number of additional obstacles and often times experience the effects of violence and trauma in a more severe manner compared to adults. They are more vulnerable and are unable to process their traumatic events to the same extent that adults may be able to because children do not have fully developed brains. Areas of the brain that develop later include areas that are linked to higher-order, complex skills such as decision-making function and inhibition, as well as emotional regulation, future and planning skills, and impulse control.²²

Effects of trauma on humanitarian relief-seeking and asylum-seeking children can have far-reaching and devastating psychiatric consequences which trigger anxiety, helplessness, and hypervigilance not only as a child but as they grow as an adult.²³ Immigrant children who experienced violence and trauma and who are applying for immigration relief have to retell their trauma stories in their immigration case affidavits and those in removal proceedings have to retell their stories again to the immigration judge, often without the assistance of counsel. Children seeking immigration relief as a result relive the trauma that they experienced in their home country, which delays the rehabilitation process. Furthermore, a survey of schoolchildren, who were recent immigrants or asylum seekers, determined that 32% had clinical symptoms of Post-Traumatic Stress Disorder (PTSD) and 16% has symptoms of depression.²⁴ The asylum application process in particular is such that it requires an individual to recount experiences of past trauma and potentially confront potential future fears of persecution. In such instances, children “rely less on

¹⁹ The Nat'l Child Traumatic Stress Network, *Impact of Complex Trauma*, <http://www.nctsn.org/trauma-types/complex-trauma/effects-of-complex-trauma#q2>; CTR. FOR SUBSTANCE ABUSE TREATMENT (US), TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES, TREATMENT IMPROVEMENT PROTOCOL (TIP) SER. NO. 57 (2014), <https://www.ncbi.nlm.nih.gov/books/NBK207201/>.

²⁰ Louise Silvern et al, *Retrospective Reports of Parental Partner Abuse: Relationships to Depression Trauma Symptoms and Self-Esteem Among College Students*, 10 J. FAM. VIOLENCE 177 (1995); Jennifer Langhinrichsen-Rohling et al., *What's Love Got to Do With It? Perceptions of Marital Positivity in H-to-W Aggressive, Distressed, and Happy Marriages*, 13 J. FAM. VIOLENCE 197 (1998).

²¹ There are a number of forms of immigration relief that children and youth who have suffered various forms of crime victimization, abuse or trauma qualify to receive under U.S. immigration laws. See, Department of Homeland Security Interactive Infographic on Protection for Immigrant Victims (2017) <https://niwaplibrary.wcl.american.edu/pubs/infographic-on-protections-for-immigrant-victims>; <https://niwaplibrary.wcl.american.edu/pubs/judges-immigration-relief-tool>; <https://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimimmrights10-11-13>;

²² Pia Petchel, Diego A. Pizzagalli, *Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature*, PSYCHOPHARMACOLOGY (BERL.), 2011, doi: 10.1007/s00213-010-2009-2.

²³ J. Kolbo et al., *Children Who Witness Domestic Violence: A Review of Empirical Literature*, 11 J. INTERPERSONAL VIOLENCE 281, 1996; B.B. Robbie Rossman et al., *Symptomatology and Adaptive Functioning for Children Exposed to Normative Stressors, Dog Attack, and Parental Violence*, 36 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 1089, 1998; M.Dutton et al., *Intimate Partner Violence, PTSD, and Adverse Health Outcomes*, 21 J. INTERPERSONAL VIOLENCE 955, 2006.

²⁴ Lisa H. Jaycox et al., *Violence Exposure, Posttraumatic Stress Disorder, and Depressive Symptoms Among Recent Immigrant Schoolchildren*, 41 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1104 (2002).

intellectual capabilities and more on feelings,” often failing to make sound decisions because the “emotional significance of the decision greatly influences the adolescent.”²⁵

Similarly, children who are “unaccompanied minors”²⁶ have a very high risk of exposure to trauma and PTSD. More times than not, they have experiences of pre-migration poverty and post-migration experiences of violence and abuse. One additional factor that adds to the psychological effects for unaccompanied minors is the stress of the migration process itself, involving loss of home, familiar environments, friends, social networks, and customs.²⁷ The lack of family support services places children at greater risk during the family reunification process even if it is with a parent, another relative, or a family-friend and increases the risk of family conflict and homelessness. In the context of this emotional vulnerability and family fragility, the chances of these children completing basic education and graduating decreases, impacting their access to employment and overall stability. Separations, traumatic events, and hindered access to essential resources such as emotional support, schooling, safe neighborhoods, and opportunities for normative peer activities can all have an impact on unaccompanied children’s adjustment.²⁸ Developmental models of risk, resilience, and psychopathology often adopt a systemic framework with factors at different levels of proximity to the child interacting with one another, for example, family, school, community influences, and government policies.²⁹ Additionally, potential stressors and supportive factors have a differential impact on children depending on the age at which they occur.³⁰ A child’s manifestations of distress can also vary based on the child’s age, developmental level, the severity and nature of the abuse suffered, and whether the traumas suffered occurred over a period of time.³¹

Another challenging intersection with the effects of trauma and abuse in children include, detention of a child. Prolonged detentions are shown to exacerbate trauma in children and that children who are detained for longer periods of time are 10 times more likely to develop post-traumatic stress disorder.³² The American Psychiatric Association recommends the maximum period for detaining a child should be no more than 20 days. The research links trauma of childhood detention to lasting adverse outcomes including: increased risk of mental health, anxiety, depression, and post-traumatic stress disorder. The migration-related and post-migration stressors can produce demoralization, grief, loneliness, loss of dignity, and feelings of helplessness as normal syndromes of distress that impede

²⁵ B.J. Casey, Rebecca M. Jones, and Todd A. Hare, *The Adolescent Brain*, 1124 ANNALS N.Y. ACAD. SCI. 111, 126, 2008.

²⁶ Add the legal immigration law definition of unaccompanied minor here if I recall correctly it is not what a family law judge would expect.

²⁷ *Vulnerable But Not Broken: Psychological Challenges and Resilience Pathways Among Unaccompanied Children from Central America*, IMMIGRATION PSYCHOLOGICAL WORKING GROUP, 2018, <https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken>.

²⁸ *Vulnerable But Not Broken: Psychological Challenges and Resilience Pathways Among Unaccompanied Children from Central America*, IMMIGRATION PSYCHOLOGICAL WORKING GROUP, 2018, <https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken>.

²⁹ *Vulnerable But Not Broken: Psychological Challenges and Resilience Pathways Among Unaccompanied Children from Central America*, IMMIGRATION PSYCHOLOGICAL WORKING GROUP, pg. 54, 2018, <https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken>.

³⁰ *Vulnerable But Not Broken: Psychological Challenges and Resilience Pathways Among Unaccompanied Children from Central America*, IMMIGRATION PSYCHOLOGICAL WORKING GROUP, pg. 54, 2018, <https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken>.

³¹ *Vulnerable But Not Broken: Psychological Challenges and Resilience Pathways Among Unaccompanied Children from Central America*, IMMIGRATION PSYCHOLOGICAL WORKING GROUP, pg. 54, 2018, <https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken>; WEBPAGE: *Significance of Trauma History on Minors*, District of Columbia Superior Court – Family Court Interdisciplinary Conference, NIWAP, <https://niwaplibrary.wcl.american.edu/significance-of-trauma-history-of-minors>. (Discussing the particular harms caused by continued exposure to trauma and abuse over time).

³² Julie M. Linton, Marsha Griffin, Alan Shapiro, *Policy Statement: Detention of Immigrant Children*, AMERICAN ACADEMY OF PEDIATRICS, April 2017, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

refugees from living healthy and productive lives.³³ Additionally, children who have been detained are much more likely to experience toxic stress, which is shown to cause delays with the physical development of the brain and the child; leading to development delays and potentially affecting the child's future performance in school.³⁴

IV. Symptoms of Juvenile Delinquency & Family Court Proceedings

These symptoms listed above surface in juvenile delinquency, dependency, and contested custody cases and can serve as a helpful guide for state court judges to identify child victims of abuse, sexual assault, human trafficking, and trauma resulting from living in a home where domestic violence is being perpetrated. Family courts are often the first to encounter minors with unreported or untreated trauma. Awareness of signs that a minor has been a victim of child abuse, sexual assault, or human trafficking provides the court with the opportunity to assist immigrant minors with history of trauma in accessing stability, safety, healing, support, and relief from abuse, including immigration relief. In state family court, the minor's trauma history may affect:

- Best interests of the child determination, including the best placement or custody arrangement for that child considering the importance of placing the minor with a non-abusive parent, family member, guardian, or other safe placement;
- Minor's immigration options including findings or certifications needed as part of the child's immigration application;
- Minor's communication with and demeanor in court; and
- Minor's need for therapy, treatment & health care needs including victims' services & public benefits to help the minor process the trauma and begin to heal.

It is important for family court judges to consider the psychological and neurobiological research as it applies to victims of trauma when addressing the needs of and helping child trauma survivors. The Supreme Court of the United States and federal policy makers have used the emerging scientific research to address questions regarding the maturity of children and adolescents to increase the age until which an individual ought to be considered a minor.³⁵ The Supreme Court has found that "a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the youth."³⁶ The Court has also held that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."³⁷

Furthermore, based on scientific evidence regarding the effects of trauma on minors, Congress decided in the Violence Against Women Act to give all minor victims of abuse until the age of 25 to file

³³ *Comments in Response to Proposed Rulemaking: Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied Alien Children*, AMERICAN PSYCHIATRIC ASSOCIATION, at 2 (Nov. 6, 2018).

³⁴ Megan J. Wolff, *Fact Sheet: The Impact of Family Detention on Children*, AMERICAN PSYCHIATRIC ASSOCIATION, 2018, http://psychhistory.weill.cornell.edu/pdf/Family_Detention_Sheet.pdf; Julie M. Linton, Marsha Griffin, Alan J. Shapiro, *Detention of Immigrant Children*, AMERICAN PSYCHIATRIC ASSOCIATION, <https://pediatrics.aappublications.org/content/pediatrics/129/1/e224.full.pdf>.

³⁵ Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 at 7 (2016), <http://niwaplibrary.wcl.american.edu/pubs/niwap-bia-amicus-child-brain-development/>.

³⁶ *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

³⁷ *Graham v. Florida*, 560 U.S. 48, 68 (2010).

their VAWA self-petitions.³⁸ Congress also deemed explicitly that victims of abuse up to the age of 24 would be considered “youth,” not adults, in order to obtain the benefits outlined in VAWA.³⁹ If an individual faces trauma in his or her youth, cognitive development can be delayed even further, and it is vital that family courts recognize the effects of trauma both in cases involving younger children and in cases involving older teens and young adults.

Family court judges often preside over custody, protection order, divorce, guardianship, dependency, and delinquency matters involving immigrant children many of whom may be older immigrant teens and young adults. For these children and young adults the ways in which trauma impacts their brain development and maturation continues into early adulthood. Even for individuals who have not suffered trauma, recent neuroscience research shows that brain development continues into the mid-twenties. Biological developments of the human brain, particularly in the frontal lobes where cognitive, memory-related, and executive functioning takes place, continue into an individual’s mid- or late-twenties.⁴⁰ Many of the areas of the brain that develop at a later age are “linked to higher-order, complex skills such as decision-making function and inhibition,”⁴¹ in addition to emotional regulation, future and planning skills, and impulse control. The trauma that minors suffer takes a toll on their mental health and cognitive functioning, and delays the normal maturation process beyond the age of majority. For children who have suffered trauma the extent of these delays are longer.

Family courts have the opportunity to intervene and mitigate the harms of abuse, sexual assault, trafficking and other crime victimization experienced by minors. Providing comprehensive detailed court orders and findings that serve as formal records of documenting the abuse and victimization suffered by the child are very helpful to children in their immigration application process. Such findings are best practice and should be made by state family court judges in all cases involving non-citizen child victims whom the court has found suffered trauma. These findings can help immigrant child victims in a number of ways and should be made as part of or in addition to the two forms of required findings or certifications that a child must obtain as a prerequisite to filing for immigration relief under the Special Immigrant Juvenile Status⁴² (SIJS) or U visa programs.⁴³ Detailed court orders documenting abuse and victimization, SIJS findings, U visa certifications and T visa declarations by state court judges are necessary or helpful to the child’s immigration application and allow a minor to access humanitarian forms of immigration relief which improves the minor’s access to a wide array of service and support that help children heal and thrive.⁴⁴ This includes providing minors with access to housing, healthcare, post-secondary educational grants and loans, driver’s licenses, legal work authorization, and a range of other state or federal publicly funded benefits and

³⁸ VAWA 2005, Pub. L. No. 109-162, § 805(c) (2006).

³⁹ 42 U.S.C. § 13925(a)(45) (defining “youth” as a “person who is 11 to 24 years old”).

⁴⁰ See, e.g., Pia Pechtel & Diego A. Pizzagalli, *Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature*, 214 *PSYCHOPHARMACOLOGY* 55 (2011).

⁴¹ Pia Pechtel & Diego A. Pizzagalli, *Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature*, 214 *PSYCHOPHARMACOLOGY* 55 (2011).

⁴² WEBPAGE: *Special Immigrant Juvenile Status Bench Book Table of Contents*, NIWAP, <https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents> (detailing information on Special Immigrant Juvenile Status and best practices for state court orders).

⁴³ For more information on U visa certification and T visa declarations by state court judges see: Leslye Orloff, Alina Husain, Benish Anver, Sylvie Sheng, *U Visa Quick Reference for Judges*, NIWAP, (Oct. 14, 2020), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-judges>; Sylvie Sheng, Leslye Orloff, *T Visa Quick Reference Guide for Judges*, NIWAP, (Oct. 14, 2020), <https://niwaplibrary.wcl.american.edu/pubs/t-visa-quick-reference-guide-judges>; Sylvie Sheng, Alina Husain, Alisha Lineswala, Benish Anver, Karen Dryhurst, Lucia Marcias, Leslye Orloff, *U Visa Certification and T Visa Declaration Toolkit for Federal, State, and Local Judges, Commissioners, Magistrates, and Other Judicial Officials*, NIWAP, (Aug. 12, 2020), <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2020>.

⁴⁴ JANET CARTER, DOMESTIC VIOLENCE, CHILD ABUSE, AND YOUTH VIOLENCE: STRATEGIES FOR PREVENTION AND EARLY INTERVENTION (Family Violence Prevention Fund 2000).

services. Children who have filed for immigration relief gain over time enhanced economic opportunity, healthcare access, and safety which results in immigrant children having more access to role models and mentors, organized community programs for youth and families, and better outcomes in school.⁴⁵ Judges can craft court orders that place children in environments that promote healing and resilience and provide children healing from trauma homes with adults who are nurturing and provide consistent, structured supervision.

For these reasons, the best interests of immigrant children require courts to exercise jurisdiction in family court cases over children of all ages including immigrant youth close to the age of majority. Court orders that decide custody, child support, or placement, issue protection orders, and otherwise direct care of children that further the child's best interest, are of great assistance to all children who have suffered trauma, including immigrant children. This approach is consistent with and promotes access to the several forms of immigration relief contained in United States immigration laws that particularly benefit immigrant children who have suffered abuse.

V. DHS Protections for Immigrant Victims

In 2017, the U.S. Department of Homeland Security (DHS) developed and distributed an Infographic entitled "Protections for Immigrant Victims" that provides a brief overview and links to DHS materials on the major forms of immigration relief available for immigrant children who have suffered child abuse, abandonment, neglect, or having been victims or witnesses of domestic violence.⁴⁶ Congress authorized state court judges to play a special role in three types of immigration cases involving immigrant children who have been victims of abuse, abandonment, neglect, domestic violence, sexual assault, stalking, human trafficking or other violent crimes: the U Visa, the T visa, and Special Immigrant Juvenile Status (SIJS). Congress authorized state courts to sign U visa certifications that are a prerequisite to a crime victims filing for U visa immigration relief and to sign T visa declarations which provide very helpful evidence to child and adult victims of human sex and labor trafficking.⁴⁷ Congress also required state court involvement in the issuance of state court findings in cases of immigrant children filing for SIJS.⁴⁸ Judges are encouraged to become knowledgeable about the immigration laws and benefits available for immigrant children who are survivors of abuse, neglect, abandonment, domestic violence, sexual assault, sex trafficking, labor trafficking, stalking and other crime because of the indispensable role judges play in facilitating access to immigration relief for immigrant children who have suffered trauma.⁴⁹

⁴⁵ WEBPAGE: *Significance of Trauma History on Minors*, NIWAP, <https://niwaplibrary.wcl.american.edu/significance-of-trauma-history-of-minors>.

⁴⁶ DEPARTMENT OF HOMELAND SECURITY, PROTECTIONS FOR IMMIGRANT VICTIMS (2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/>. See also *The Department of Homeland Security's Interactive Infographic on Protections for Immigrant Victims*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/> (last visited Mar. 29, 2017).

⁴⁷ See LESLYE ORLOFF, ALISHA LINESWALA, BENISH ANVER, KAREN DRYHURST & LUCIA MACIAS, U VISA CERTIFICATION TOOLKIT FOR FEDERAL, STATE, AND LOCAL JUDGES, COMMISSIONERS, MAGISTRATES AND OTHER JUDICIAL OFFICERS (last updated 2017), <http://library.niwap.org/wp-content/uploads/2015/IMM-Tkit-UVisaCertification-02.03.14.pdf>.

⁴⁸ See *Special Immigrant Juvenile Status*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/topic/immigration/sijs/> (last visited Mar. 29, 2018).

⁴⁹ See *Training Manual for Courts*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/manual/judicial-training-manual/> (last visited Mar. 29, 2018).