

**Understanding the Significance of a Minor's Trauma History in Family Court Rulings:
Implications for Cases of Immigrant Children and Youth**

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Many immigrant children involved in family court proceedings are survivors of traumatic events that often include domestic violence, sexual assault, human trafficking, child abuse, abandonment, or neglect. Immigrant children may have experienced trauma in their home country, during their journey to the United States, or in the course of their resettlement and adaptation to life in the United States. Understanding the history of traumatic events an immigrant child has experienced is a crucial component of the information state family and juvenile court judges need when considering the immigrant child's best interests or determinations with regard to the custody, care, placements, support, protection orders, and the range of services that the child before the court may need.

Experiencing or witnessing abuse as a minor affects the child's health and wellbeing,¹ and may affect their neurocognitive development, intellectual functioning and development, and physical actions.² Research indicates that the physical development of the human brain is negatively affected when a child or adolescent experiences maltreatment or violence, particularly when such trauma is long-term or continuing.³ Experiencing or witnessing abuse⁴ has a negative effect on the brain's frontal lobes, which are the most important brain areas regarding executive functions. This leads to children or adolescents who experience trauma being developmentally behind children or adolescents of the same age without a history of trauma. As these children attain safety, get the help and support from caring adults and professionals, and grow up, they need additional time and space to heal from their impairments and developmental delays.⁵

**Recent Neuroscience Research Shows that Brain Development Continues
Into the Mid-20s.**

¹ English, D. J., Marshall, D. B., & Stewart, A. J., *Effects of family violence on child behavior and health during early childhood*, Journal of Family Violence, 18(1) (2003); Huth-Bocks, A. C., Levendosky, A. A., & Semel, M. A., *The Direct and Indirect Effects of Domestic Violence on Young Children's Intellectual Functioning*, Journal of Family Violence, 16, 269–290 (2001); Osofsky, J., *Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention*, Clinical Child and Family Psychology Review (2003).

² See V. Felitti, et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 Am. J. Preventive Med. 245 (1998).

³ See generally, Michael Carolan, Jessica Jones, Giselle Hass, Archi Pyati, & Carole Warshaw, *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*, United States Dep't of Justice Executive Office for Immigration Review Board of Immigration Appeals (2016) (amicus brief submitted to the Department of Justice that discusses the research documenting effects of trauma on the brain development of minors, particularly in immigrant minors). Available at <http://niwaplibrary.wcl.american.edu/pubs/niwap-bia-amicus-child-brain-development/>

⁴ First Impressions: Exposure to Violence and a Child's Developing Brain (15 minutes) featuring Dr. Bruce Perry, senior fellow of the Child Trauma Academy in Houston, Texas, and Dr. Linda Chamberlain, founding director, Alaska Family Violence Prevention Project, available at <http://www.youtube.com/watch?v=brVOYtNMmKk>.

⁵ Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, The Judges' Journal, Volume 53, Number 3, Summer 2014 available at <https://www.scribd.com/document/236052648/Judges-Journal-2014-Domestic-Violence-Impact-on-Children-Neuroscience>. See also Lynn Hecht Schafran for the National Judicial College, "How Neuroscience Informs the Best Interests of a Child, Domestic Violence, Developing Brains and the Lifespan: New Knowledge from Neuroscience" (2016) available at <http://www.judges.org/neuroscience-informs-best-interests-child/>

Since the late 1990s, scientists have had increased access to techniques such as magnetic resonance imaging (MRI) in order to conduct research on the brain's development throughout life. In so doing, scientists have been able to "map out the course of changes in brain structure between childhood and adulthood, describe age differences in brain activity during this period of development, and, to a more modest degree, link findings on the changing morphology and functioning of the brain to age differences in behavior."⁶

The conclusions of this research indicate that the biological development of the human brain continue beyond the age of 18, into an individual's mid- or late-20s. This development is particularly evident in the frontal lobes, which are the areas of the brain related to memory, executive functioning, and cognition.⁷ For example, the corpus callosum, a specific part of the brain structure that connects regions of the brain responsible for regulating various aspects of cognitive functioning, continues to develop until an individual reaches approximately 29 years of age.⁸ The hippocampus, a portion of the brain related to memory, also continues to develop into adulthood.⁹ Furthermore, research indicates that myelination, a process of the brain described as "a sort of insulation of the neural circuitry" goes on "well into the second decade of life and perhaps beyond."¹⁰ Finally, the maturity and growth of the prefrontal cortex occurs in "long developmental trajectories" and in phases "between birth and 2 years, 7 - 9 years, during adolescence, and continue[s] into the third decade of life."¹¹

It is important to note that many of these regions of the brain are associated with "higher-order, complex skills such as decision-making, executive function and inhibition."¹² For instance, improved connectivity within the prefrontal cortex during an individual's late teens and early 20s results in better orientation towards the future generally, and towards planning skills more specifically.¹³ The increase in brain connectivity achieved through maturity allows for greater emotional regulation and impulse control.¹⁴ Although simpler executive functioning processes may mature by age 16, "performance on especially challenging tasks, which may require more efficient activation, continues to improve in late adolescence."¹⁵ In particular, research suggests that working memory "continued to develop into young-adulthood."¹⁶ And,

⁶ L. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 *Developmental Rev.* 78 (2008); see also S. Blakemore, *Imaging Brain Development: The Adolescent Brain*, 61 *NeuroImage*, 397 (2012) (explaining that "it is only in the past 15 years or so ... that research has revealed a great deal about the development of the living human brain across the lifespan" and stating that "advances in neuroimaging methods ... have revolutionized what we know about how the human brain develops").

⁷ See, e.g., P. Pechtel & D. Pizzagalli, *Effects of early life stress on cognitive and affective function: An integrated review of human literature*, 214 *Psychopharmacology* 55 (2010) (stating, "[h]igher-order structures that contain complex, association sites develop very late in the brain's trajectory."); L. Steinberg, *Cognitive and affective development in adolescence*, 9 *Trends in Cognitive Sciences* 69 (2005) ("there is growing evidence that maturational brain processes are continuing well through adolescence"); S. Blakemore & S. Choudhury, *Development of the Adolescent Brain: Implications For Executive Function and Social Cognition*, *Journal of Child Psychology and Psychiatry* 47:3/4 (2006) ("Recent MRI studies indicate that the time at which the brain reaches maturity may be much later than the end of adolescence.") (citation omitted).

⁸ *Id.*

⁹ *Id.*

¹⁰ Steinberg, *A Social Neuroscience Perspective*, *supra* note 5.

¹¹ Pechtel and Pizzagalli, *supra* note 20 (citations omitted); see also M. Huizinga et al., *Age-related Change in Executive Function: Developmental Trends and a Latent Variable Analysis*, *Neuropsychologia* 44, at 2031 (2006) (referencing "[n]europhysiological studies showing that that anatomical development of [prefrontal cortex] areas only reaches maturity in young-adulthood").

¹² Pechtel and Pizzagalli, *supra* note 6.

¹³ Steinberg, *A Social Neuroscience Perspective*, *supra* note 5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Huizinga, *supra* note 24, at 2030 (Note that adulthood in this study is defined as 21-years-old); see also B. Luna, *Developmental Changes in Cognitive Control Through Adolescence*, 37 *Advances in Child*

"psychosocial maturation," or "the development of abilities that require the coordination of affect and cognition," does not take place until the mid-20s.¹⁷

Delays in brain development caused by childhood trauma

The increased understanding of the process of human brain development has important implications for understanding the social science relating to domestic violence, child abuse, trauma, and victim-based immigration relief, including asylum claims. First, the science demonstrates that, full neurobiological maturation to adulthood does not take place until, at best, the early 20s. Second, the fact that the brain remains in development from childhood into the early 20s demonstrates why the developmental delays caused by childhood exposure to trauma discussed below are so significant for immigrant children arriving in the United States. Combined, the evidence supports the conclusion that maturation into adulthood for immigrant children will necessarily be delayed. As a result, court orders issued at any stage of a child or adolescent trauma survivors' life are extremely helpful. As long as the court has jurisdiction over the child or adolescent under state law, including for individuals in their late adolescence, courts can issue beneficial orders that provide security, support, and the healing environment necessary for child and adolescent trauma survivors to thrive as they move into adulthood.

Minors who have witnessed or experienced abuse often suffer from:

- Post-traumatic stress disorder;¹⁸
- Profound sense of helplessness;
- Hypervigilance;
- Low self-esteem; and
- Behavioral problems¹⁹
- Self-medicating with street drugs
- Aggression
- Delinquency
- Adult criminal acts²⁰
- Bullying²¹

Development and Behavior 233 (2009) (explaining that "precision" for working memory "continue[s] to improve after adolescence" into the early 20s).

¹⁷ Steinberg, *A Social Neuroscience Perspective*, *supra* note 19 (see Figure 1); *see also* Steinberg & Cauffman, *Are adolescents less mature than adults? Minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop"*, 64 *American Psychologist*, 583 (2009) (noting "significant differences" in psychosocial maturity "between the 16-17-year-olds and those 22 and older, and between the 18-21-year-olds and those 26 and older").

¹⁸ Kolbo, J.R., & Engelman, D., *Children Who Witness Domestic Violence: A Review of Empirical Literature*, *Journal of Interpersonal Violence*, Vol. 11.2, 281-293 (1996); Rossman BBR, Bingham RD, Emde RN: *Symptomatology and Adaptive Functioning for Children Exposed to Normative Stressors, Dog Attack, and Parental Violence*, *J Am Acad Child Adolesc Psychiatry*, 36:1089-1097 (1998); Dutton, M., Greene, B., Kaltman, S., Roesch, D., Zeffiro, T., & Krause, E., *Intimate Partner Violence, PTSD, and Adverse Health Outcomes*, *Journal of Interpersonal Violence*, 21, 955-968 (2006).

¹⁹ Moore, T.R & Pepler, D.J. *Correlates of Adjustment in Children at Risk*, In G. W. Holden, R. A. Geffner, & E. N. Jouriles (Eds.), *Children exposed to marital violence: Theory, research, and applied issues* American Psychological Association, 157-184 (1998); Cox, C. E., Kotch, J. B., & Everson, M. D. *A Longitudinal Study of Modifying Influences in the Relationship Between Domestic Violence and Child Maltreatment*, *Journal of Family Violence*, 18(1), 5-17(2003).

²⁰ Widom 1989 CS Widom, C.S., *Child Abuse, Neglect, and Violent Criminal Behavior*, *Criminology*, 27, 251-272 (1989).

²¹ Steinberg, L., *Youth Violence: Do Caregivers and Families Make a Difference?* *National Institute of Justice Journal*, April, 30-38 (2000) (NCJ 181732); Farrington, D.P. *Understanding and Preventing Bullying*, *Crime and Justice* 17, 381-458 (1993); Baldry, A. C., *Bullying in Schools and Exposure to Domestic Violence*, *Child Abuse and Neglect*, 27, 713-732 (2003).

Immigrant children are especially susceptible to childhood trauma

Immigrant children and adolescents often qualify for immigration relief under the Violence Against Women Act (VAWA self-petitions, U visas), the Trafficking Victim's Protection Act (T visas), Special Immigrant Juvenile Status (SIJS) and asylum laws. Children filing for these immigration protections will be required, as part of their immigration case application, to remember, retell, and thus, relive the trauma they suffered from witnessing and/or having been subjected to abuse and criminal acts including child abuse, sexual assault, and domestic violence.²² The retelling of the abuse they suffered is required to develop their immigration case affidavit that is the most important piece of evidence in the child's immigration case. Having to relive and retell their trauma history exacerbates underlying problems related to their experience with abuse.

Many immigrant children have to retell their trauma stories multiple times. They may need to tell their stories to: their immigration attorney developing the affidavit; to a state court judge if the child needs or is seeking SIJS predicate orders, a U visa certification, or help from state family or juvenile court judges; immigration adjudicators who may issue requests for further evidence in the child's immigration case; or immigration judges presiding over the child's removal proceedings. For immigrant children applying for immigration benefits, having to relive the trauma that they experienced in their home country and/or in the United States delays the rehabilitation process. Research has found that among recent immigrant children, 32% had clinical symptoms of PTSD and 16% has symptoms of depression.²³

Immigrant children, especially immigrant girls, are at an increased risk of sexual assault. High school aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers.²⁴ Immigrant girls are legally and socially vulnerable to recurring sexual assault due to factors associated with 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:²⁵

²² To assist adult victims of domestic and sexual violence applying filing VAWA self-petitions and U visas NIWAP developed a trauma informed interview tool that uses evidence-based research tools to inquire about victim's abuse histories and trauma experiences. See Mary Ann Dutton, Krisztina Szabo, Rocio Molina, Maria Jose Fletcher, Mercedes V. Lorduy, Edna Yang, and Leslye Orloff, *Trauma Informed Structured Interview Questionnaires for Immigration Cases (SIQI)* (2013) available at <http://niwaplibrary.wcl.american.edu/pubs/trauma-informed-siqi/> (Trauma informed interview tool developed for to help prepare VAWA self-petition and U visa immigration cases and to support victims retelling their trauma histories); Meaghan Fitzpatrick and Leslye E. Orloff, How to Prepare Your Case Through a Trauma Informed Approach: Tips on Using the Trauma Informed Structured Interview Questionnaires for Family Court Cases (SIQI) (July 23, 2015) available at <http://niwaplibrary.wcl.american.edu/pubs/siqi-for-family-lawyers-7-23-15/> (Discussing how to use the SIQI to do trauma informed interviewing of immigrant victims involved in family court cases); and Krisztina Szabo, Rocio Molina, Maria Jose Fletcher, Mercedes V. Lorduy, Edna Yang, Mary Ann Dutton, and Leslye Orloff, *Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma Informed Approach* (2013) available at <http://niwaplibrary.wcl.american.edu/pubs/tool-trauma-informed-approach/> (Explaining how the trauma informed approach works in the context of immigrant survivors immigration cases and is an approach that simultaneously improves case outcomes and supports victim's healing)

²³ L. Jaycox et al., *Violence Exposure, Posttraumatic Stress Disorder, and Depressive Symptoms Among Recent Immigrant Schoolchildren*, 41 J. Am. Acad. Child & Adolescent Psychiatry 1104 (2002).

²⁴ Michele R. Decker, Anita Raj, & Jay G. Silverman, *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, (2007)

²⁵ Penelope K. Trickett, Jennie G. Noll, and Frank W. Putnam, *The Impact of Sexual Abuse on Female Development: Lessons From a Multigenerational, Longitudinal Research Study Development and Psychopathology* 23 (2011), 453-476

- Cognitive deficits, depression, dissociation, and/or persistent posttraumatic stress disorder;
- Severe anxiety known as hypothalamic–pituitary–adrenal attenuation;
- High rates of obesity;
 - 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;²⁶
- 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;²⁷ and
- Teen motherhood which is further complicated by premature deliveries, offspring who are at increased risk for child maltreatment and overall mal-development

The Violence Against Women Act and Supreme Court Case Law

It is important for family court judges to consider the psychological and neurobiological research as it applies to victims of trauma when dealing with such individuals. 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.²⁸ 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.”²⁹ The Court has also held that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”³⁰

Additionally, based on scientific evidence regarding the effects of trauma on minors, Congress decided in the Violence Against Women Act (VAWA) to give child victims of battering, sexual assault, incest, and/or extreme cruelty until the age of 25 to file a VAWA self-petition.³¹ The legislative history of these VAWA 2005 amendments explains that this provisions help “child abuse and incest victims who would have qualified to self-petition as the minor children of U.S. citizens or permanent residents can file the petition until the aliens attain the age of 25. This allows child abuse victims time to escape their abusive homes, secure their safety, access services and support that they may need, and address the trauma of their abuse.”³²

²⁶ The National Child Traumatic Stress Network, *Effects of Complex Trauma*, available at <http://www.nctsn.org/trauma-types/complex-trauma/effects-of-complex-trauma#q2>; Center for Substance Abuse Treatment (US). Trauma-Informed Care in Behavioral Health Services. Rockville (MD): Substance Abuse and Mental Health Services Administration (US). 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Available at <http://www.ncbi.nlm.nih.gov/books/NBK207201/>

²⁷ Silvern, L., Karyl, J., Waelde, et al, *Retrospective Reports of Parental Partner Abuse: Relationships to Depression Trauma Symptoms and Self-Esteem Among College Students*, *Journal of Family Violence*, 10, 177-202, (1995); Langhinrichsen-Rohling, J., Schlee, K., Monson, C., Ehrensaft, M., & Heyman, R.,

What’s Love Got to Do With It? Perceptions of Marital Positivity in H-to-W Aggressive, Distressed, and Happy Marriages, *Journal of Family Violence*, 13, 197-212, (1998).

²⁸ Carolan, et al. at 7.

²⁹ *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

³⁰ *Graham v. Florida*, 560 U.S. 48, 68 (2010).

³¹ VAWA 2005, Pub. L. No. 109-162, § 805(c) (Jan. 5, 2006).

³² 151 Cong. Rec. E2605 (2005); H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 117.

Again in VAWA 2013, Congress explicitly deemed 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.³³ If an individual faces trauma in his or her youth, cognitive development can be delayed even further, and it is indispensable that family courts recognize the effects of trauma when dealing with older teens and young adults.

Courts Can Play an Important Role Setting Traumatized Immigrant Children and Youth on a Path of Healing and Support That Can Help Them Thrive

Symptoms of childhood trauma may surface in custody, protection order, guardianship, juvenile delinquency, or dependency cases, and can help state court judges identify children and adolescent victims of abuse and sexual assault. 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 and/or sexual assault provides the court with the opportunity to assist immigrant minors with history of trauma in accessing stability, treatment, safety, and relief from abuse. 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 state court findings for U and T visa 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, and health care needs including victims’ services and public benefits to help the minor process the trauma and begin to heal.

Family courts have the opportunity to intervene and mitigate the harms of abuse against minors.³⁴ How courts intervene can make the difference between a child merely surviving or thriving.³⁵ Courts can provide comprehensive orders and make formal records of abuse that are necessary or helpful to the child’s immigration application when children who are eligible under United States immigration laws to file for immigration protections under VAWA, the TVPA, SIJS, or other form of immigration relief the child qualifies to receive. Linking children to resources who can explore and help children file immigration relief applications expands the support an immigrant traumatized child can access. Which forms of federal, state, and locally funded services and public benefits an individual immigrant child is eligible to receive varies by state and the type of immigration relief the child will receive.³⁶ As the child moves through the

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

³⁴ Janet Carter, *Domestic Violence, Child Abuse, and Youth Violence: Strategies for Prevention and Early Intervention* (Family Violence Prevention Fund) (2000) available at <http://www.mincava.umn.edu/link/documents/fvpf2/fvpf2.shtml>

³⁵ Linda Burgess Chamberlain, PhD, MPH, *The Amazing Brain: Trauma and the Potential for Healing* available at <http://preventchildabuse.org/wp-content/uploads/2016/10/Trauma-and-the-Potential-for-Healing-KEYNOTE-THE-BRAIN-EXPLAINS-Linda-Chamberlain.pdf> (Provides an overview of how trauma affects the brain development of children and youth, discusses the actions that can be taken to make a difference, highlights how intervention at all ages improves outcomes for children and youth and provides links to excellent resources on the latest research and supportive strategies)

³⁶ For further information on benefits eligibility by immigration status: <http://niwaplibrary.wcl.american.edu/pubs/pb-bchcrd-pubbenefits/>; <http://niwaplibrary.wcl.american.edu/pubs/public-benefits-flow-charts/>; <http://niwaplibrary.wcl.american.edu/pubs/chart-va-wa-t-u-sijs-daca/>

immigration relief application process, they become eligible for a broader range of state and federal public benefits that can contribute to their recovery from trauma:

- Economic opportunity;
- Healthcare;
- Mentors and role models;
- Organized community programs for youth and families;
- School environment that promotes prevention; and
- Adult family members who are nurturing and provide consistent, structured supervision.

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. Immigrant children and all children who have suffered traumatic events will benefit greatly from court's issuing orders designed to help children heal and to stabilize their lives. The research on brain development and trauma underscores the need for issuing court orders in cases of children with abuse and trauma histories for as long as and up to the age (18 to 21 years) that the court continues to have the jurisdiction to do so.