

## Understanding the Significance of a Minor's Trauma History in Family Court Rulings<sup>1</sup>

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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 to decide the best placement, care plan, and services to be ordered for the child.

Experiencing or witnessing abuse as a minor affects the child's health and wellbeing,<sup>2</sup> 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 faces maltreatment or violence, particularly when such trauma is long-term or continuing.<sup>3</sup> 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.

Minors who have witnessed or experienced abuse often also suffer from:

- Post-traumatic stress disorder;<sup>4</sup>
- Profound sense of helplessness;

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<sup>2</sup> 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).<sup>3</sup> 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 effects of trauma in minors, particularly in immigrant minors).

<sup>3</sup> 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 effects of trauma in minors, particularly in immigrant minors).

<sup>4</sup> 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).

- Hypervigilance;
- Feelings of shame;
- Low self-esteem; and
- Behavioral problems<sup>5</sup>
  - Self-medicating with street drugs
  - Aggression
  - Delinquency
  - Adult criminal acts<sup>6</sup>
  - Bullying<sup>7</sup>

Immigrant children often face additional obstacles related to their immigration claims that exacerbate underlying problems related to their experience with abuse. For instance, many children applying for asylum have to relive the trauma that they experienced in their home country, which delays the rehabilitation process. Furthermore, a survey of school-children who were recent immigrants determined that 32% had clinical symptoms of Post Traumatic Stress Disorder (PTSD) and 16% has symptoms of depression.<sup>8</sup> Many trauma survivors also experience a sense of shame from actions they were forced to take to survive or to protect their loved ones. Children particularly feel shame, as they tend to blame themselves for their traumatic experiences. This feeling of shame can manifest itself through an unwillingness to confide in or share with the authorities their traumatic experiences. This behavior can be mistaken as being dishonest, uncooperative, or resistant.

In addition, 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.<sup>9</sup> 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:<sup>10</sup>

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

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<sup>5</sup> 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).

<sup>6</sup> Widom 1989 CS Widom, C.S., *Child Abuse, Neglect, and Violent Criminal Behavior*, *Criminology*, 27, 251–272 (1989).

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> Michele R. Decker, Anita Raj, & Jay G. Silverman, *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, (2007)

<sup>10</sup>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

- 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;<sup>11</sup>
- 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;<sup>12</sup> and
- Teen motherhood which is further complicated by premature deliveries, offspring who are at increased risk for child maltreatment and overall mal-development

These symptoms may surface in juvenile delinquency or dependency cases and can help state court judges identify 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 sexual assault provides the court with the opportunity to assist immigrant minors with history of trauma in accessing stability 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 findings or certifications needed as part of the 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 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.<sup>13</sup> 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

<sup>11</sup> 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/>

<sup>12</sup> 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).

<sup>13</sup> Carolan, et al. at 7.

more understandable among the youth.”<sup>14</sup> The Court has also held that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”<sup>15</sup> 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 a VAWA self-petition.<sup>16</sup> 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.<sup>17</sup> 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 well dealing with older teens and young adults.

Family court judges often preside over custody, protection order, dependency, and delinquency matters involving immigrant children many of whom may be older immigrant teens and young adults. For these children and young adults 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.<sup>18</sup> 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,”<sup>19</sup> 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 against minors. Providing comprehensive orders and making formal records of abuse that are necessary or helpful to the immigration application and allow a minor to access immigration relief improves the minor’s access to a wide array of service and support that help children heal and thrive.<sup>20</sup> This includes providing minors with access to economic opportunity, healthcare access, role models and mentors, organized community programs for youth and families, school environments that promote prevention, and having adult family members who are nurturing and provide consistent, structured supervision.

<sup>14</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

<sup>15</sup> *Graham v. Florida*, 560 U.S. 48, 68 (2010).

<sup>16</sup> VAWA 2005, Pub. L. No. 109-162, § 805(c) (Jan. 5, 2006).

<sup>17</sup> 42 U.S.C. § 13925(a)(45) (defining “youth” as a “person who is 11 to 24 years old.”).

<sup>18</sup> 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).

<sup>19</sup> *Id.*

<sup>20</sup> 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>

For these reasons, the best interests of immigrant children requires 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. United States immigration laws contain several forms of immigration relief that particularly benefit immigrant children who have suffered abuse.

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.<sup>21</sup> Congress authorized state court judges to play a special role in two types of immigration cases involving immigrant children who have been victims of abuse, abandonment, neglect, domestic violence, or other violent crimes: the U 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.<sup>22</sup> Congress also required state court involvement in the issuance of state court findings in cases of immigrant children filing for SIJS.<sup>23</sup> Judges are encouraged to become knowledgeable about the immigration laws and benefits available for immigrant child survivors of abuse because of the indispensable role they play in facilitating immigration relief for immigrant children who have suffered trauma.<sup>24</sup>

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<sup>21</sup> Department of Homeland Security, "Protections for Immigrant Victims" (2017), available at <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>. See also National Immigrant Women's Advocacy Project, "The Department of Homeland Security's Interactive Infographic on Protections for Immigrant Victims (2017), available at <http://library.niwap.org/wp-content/uploads/DHS-Protections1.6-links-121516.pdf>.

<sup>22</sup> See Leslye Orloff, Alisha Lineswala, Benish Anver, Karen Dryhurst, and Lucia Macias, *U Visa Certification Toolkit for Federal, State, and Local Judges, Commissioners, and Magistrates*, National Immigrant Women's Advocacy Project (April 2015), available at <http://library.niwap.org/wp-content/uploads/2015/IMM-Tkit-UVisaCertification-02.03.14.pdf>.

<sup>23</sup> See National Immigrant Women's Advocacy Project, "Special Immigrant Juvenile Status," available at <http://niwaplibrary.wcl.american.edu/topic/immigration/sijs/>

<sup>24</sup> See National Immigrant Women's Advocacy Project, "Training Manual for Courts," available at <http://niwaplibrary.wcl.american.edu/manual/judicial-training-manual/>