U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Office of the Chief Clerk

July 11, 2016

Michael Carolan, Esq.
Crowell & Morning LLP
On Behalf of: National Immigrant Woman's
Advocacy Project
1001 Pennsylvania Avenue, N.W.
Washington DC, 20004

Re: Amicus Invitation No. 16-06-09
[redacted] A [redacted]

Dear Amici:

The Board of Immigration Appeals received on July 7, 2016, your request for extension of time in which to file your amicus curiae brief. Your request is hereby granted as follows:

Your brief and two copies should be submitted to the Board, no later than **August 11, 2016.** In addition please attach a copy of this letter to the front of your brief.

Respectfully,

Rebecca Noguera
Appeals Examiner
Information Management Team

cc: Kathleen Zapata, Acting Chief
OPLA/ICE Headquarters
Potomac Center North
500 12th Street, S.W., MS 5900
Washington, DC 20536

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New York, NY 10278

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Office of the Chief Clerk

August 9, 2016

Michael Carolan, Esq.
Crowell & Morning LLP
On Behalf of: National Immigrant Woman's
Advocacy Project
1001 Pennsylvania Avenue, N.W.
Washington DC, 20004

Re: Amicus Invitation No. 16-06-09
[redacted] A [redacted]

Dear Amici:

The Board of Immigration Appeals received on August 3, 2016, your second request for extension of time in which to file your amicus curiae brief. Your request is hereby granted as follows:

Your brief and two copies should be submitted to the Board, no later than **September 1, 2016.** In addition please attach a copy of this letter to the front of your brief.

Respectfully,
Rebecca Noguera
Rebecca Noguera
Appeals Examiner
Information Management Team

cc: Ronald Lapid, Acting Chief
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Amici curiae and counsel for *amici curiae*

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of **Amicus Invitation No. 16-06-09**	

JOINT REQUEST TO APPEAR AS *AMICI CURIAE*

Pursuant to Amicus Invitation No. 16-06-09 and Board of Immigration Appeals Practice Manual Chapter 2.10, the National Women's Advocacy Project ("NIWAP"), the Lutheran Immigration and Refugee Service ("LIRS"), Dr. Giselle Hass, Tahirih Justice Center ("TJC"), and National Center on Domestic Violence, Trauma & Mental Health ("NCDVTMH") hereby respectfully request permission from the Board of Immigration Appeals ("Board" or "BIA") to appear as *amici curiae* and leave to file the accompanying brief in response to Amicus Invitation No. 16-06-09. The Board may grant permission to *amicus curiae* to appear, on a case-by-case basis, if the public interest will be served thereby.[1]

On June 9, 2016, the Board issued Amicus Invitation No. 16-06-09, which presented the following issues:

1. An asylum application may be considered after the 1-year filing deadline if the alien can establish "extraordinary circumstances." Section 208(a)(2)(D) of the Immigration and Nationality Act. One such extraordinary circumstance is if the alien is under a legal disability during the 1-year period after arrival (e.g., the alien was an unaccompanied minor) as long as the alien filed the application within a reasonable period given those circumstances. 8 C.F.R. § 1208.4(a)(5)(ii). The Act and regulations do not define "minor." How should this term be defined?

2. Are there any circumstances when being under 21 years of age (even if not a minor) would constitute an extraordinary circumstance exempting someone from the 1-year deadline?

3. Matter of T-M-H & S-W-C, 25 I &N Dec. 193 (BIA 2010) sets out a framework for understanding a "reasonable period" after a "changed circumstance" excusing the 1-year filing deadline. What are the factors for consideration to determine a "reasonable period" after an alien ceases being excused on the basis of age?[2]

The undersigned parties hereby seek to appear as *amici curiae* to address the first issue presented by Amicus Invitation No. 16-06-09, focusing on how the term "minor" should be

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[1] 8 C.F.R. § 1292.1(d).

[2] Amicus Invitation No. 16-06-09.

defined and understood by the Board in light of the substantial body of recent research concerning the neurobiological, cognitive, and psychological development of children and adolescents. This brief will focus on the significant and deleterious effect trauma and maltreatment have on that development, including the impact of impaired development on the readiness of child migrants to file asylum applications.

NIWAP, LIRS, Dr. Hass, TJC, and NCDVTMH are well suited to provide insight to the Board concerning the questions raised in Amicus Invitation No. 16-06-09.

The National Immigrant Women's Advocacy Project is a non-profit public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws, policies and practices to improve legal rights, services and assistance to immigrant women, children and immigrant victims of domestic violence, sexual assault, stalking, human trafficking, and other crimes. NIWAP is a national resource center offering technical assistance and training to assist a wide range of professionals – including attorneys, advocates, immigration judges, the Board of Immigration Appeals judges and staff, state court judges, police, sheriffs, prosecutors, Department of Homeland Security (DHS) adjudication and enforcement staff – who work with and/or whose work affects immigrant women, children, and immigrant crime victims. Additionally, NIWAP Director Leslye E. Orloff has been closely involved with the enactment of Violence Against Women Act ("VAWA") legislation, including the VAWA self-petition provisions in 1994, the T and U visas in 2000, VAWA confidentiality protections in 1996, and the VAWA reauthorizations in 2000, 2005 and 2013, and has published legal and social science research articles on domestic violence experienced by immigrant women and children.

Founded in 1939, Lutheran Immigration and Refugee Service is nationally recognized for its leadership with and for refugees, asylum seekers, unaccompanied children, migrants in

detention, families fractured by migration, and other vulnerable populations. LIRS serves migrants and refugees through over 60 grassroots, legal, and social service partners nationwide.

Dr. Hass earned a Doctorate in Clinical Psychology from Nova Southeastern University in 1992. She is licensed to practice in Virginia and the District of Columbia, and is a Diplomate of the Board of Assessment Psychology. For the past 25 years, she has worked as a forensic expert in family and immigration law for local and national attorneys, non-profit and government agencies. Her expertise is in child abuse and neglect, intimate partner violence, cross- and multi-cultural mental health, attachment, and psychological assessment. She is currently an Adjunct Professor of Law at Georgetown University Law Center, Center for Applied Legal Studies. She is a Board member of ASISTA Immigration Assistance. Since 2000, Dr. Hass has worked in federally funded research projects regarding culturally competent interventions for immigrant women in abusive relationships and the legal and policy aspects of domestic violence. Findings from a large scale project generated several of her articles and motivated Congress to include immigration relief in the Violence Against Women Act of 1994.

The Tahirih Justice Center assists hundreds of immigrant women and children each year who have suffered sexual and domestic violence as they apply for asylum and other legal protection. Specifically, TJC has subject-matter expertise in the impact of sexual and domestic violence on immigrant children seeking asylum in the United States that bears directly on the question of the one-year filing deadline and traumatized children's readiness to apply.

The National Center on Domestic Violence, Trauma & Mental Health is a national federally funded resource center with expertise on issues related to the intersection of trauma, domestic violence, mental health, substance use, addiction, and psychiatric disability. NCDVTMH provides consultation on these issues to national and state policymakers, legal

professionals, mental health and substance abuse providers, and domestic violence advocates across the country. NCDVTMH's expertise includes how exposure to trauma, including violence in the home, affects children and adolescent development. From our work in this area, we know that domestic violence and other forms of abuse can have a lasting effect on the development of both children and adolescents and the ways that they interact with the world, including their ability to effectively interact with legal and administrative systems. For children and adolescents exposed to violence, reestablishing physical and emotional safety can take years. Often, these young people experience a range of traumatic experiences as they are fleeing violence in their home country, all of which can affect their development in complex ways for many years.

As outlined above, the undersigned parties have expertise in working with immigrant child and youth survivors of child abuse and neglect, domestic and sexual violence, and other traumatic experiences, relationships with mental health professionals and organizations, and an understanding of the challenges and issues facing child trauma survivors eligible to file for asylum in the United States, making them well-suited to act as *amicus curiae* in the pending matter. NIWAP, LIRS, Dr. Hass, TJC, and NCDVTMH therefore request leave to appear in this matter at *amici curiae* and to file the accompanying brief.

Respectfully submitted,

Date: September 1, 2016

Michael Carolan
Pro Bono counsel for National Immigrant Women's Advocacy Project

Jessica Jones
Lutheran Immigration and Refugee Service

Dr. Giselle Hass

Archi Pyati
Tahirih Justice Center

Dr. Carole Warshaw
National Center on Domestic Violence, Trauman & Mental Health

Amici curiae and counsel for *amici curiae*

Respectfully submitted,

Date: September 1, 2016

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Amici curiae and counsel for *amici curiae*

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of **Amicus Invitation No. 16-06-09**	

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

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae 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 have expertise in asylum matters, working with immigrant child and youth survivors of child abuse and neglect, domestic and sexual violence, and other traumatic experiences, have developed relationships with mental health professionals and organizations, and have an understanding of the challenges and issues facing child trauma survivors eligible to file for asylum in the United States. *Amici curiae* respectfully submit this brief to provide the Board information and perspective on certain issues presented in Amicus Invitation No. 16-06-09 informed by their experience and expertise.

SUMMARY OF ARGUMENT

Children and adolescents who arrive in the United States and seek asylum are a unique population. Such children and adolescents have been subject to persecution in their home countries on account of one or more immutable or social characteristics and have a well-founded fear of returning to their home country due to such persecution. For the overwhelming majority, the persecution suffered by the child or adolescent has taken the form of violence – either through physical violence the child or adolescent suffered themselves or through exposure to violence against family, friends, or others within their social group. When children experience either of these forms of traumatic events, the result is the traumatization of the child and the effects of such experience of or exposure to violence and trauma are far ranging.

Recent research into the development of the human brain demonstrates that certain aspects of cognitive function and psychosocial and emotional development continue past the traditional ages at which society recognizes "adulthood" in a person. Indeed, it is now acknowledged that certain aspects of human cognition continue development into the mid-20s.

Thus, the baseline demarcation between "youth" and "adulthood" has grown much more nuanced. Indeed, the U.S. Supreme Court has recognized the social and neuroscience that illuminates the differences between adult and adolescent brains and federal policymakers and immigration authorities have acknowledged that individuals in their early 20s should be treated as "youth" and not as adults.

Even more significantly, a substantial body of psychological and physiological research shows that childhood or adolescent exposure to trauma and/or violence negatively impacts cognitive, social, and biological development. Moreover, neurobiological studies show that the impact of trauma is not just measured by diagnoses of post-traumatic stress disorder ("PTSD") or other psychiatric diagnoses; in fact, research indicates that the physical development of the human brain is negatively impacted when a child or adolescent faces maltreatment or violence, particularly when such trauma is long-term or continuing. The endogenous chemicals that stimulate the emotional centers of the brain and the "fight or flight" response have a counter effect on the frontal lobes, reducing activity in those lobes, which are the most important brain areas regarding executive functions. In essence, child trauma survivors' brain development and abilities will be developmentally behind children or adolescents of the same age without such a history of trauma, and these difficulties will have long-lasting impacts. Accordingly, asylum applicants who arrive in the United States as children or adolescents are much more likely to suffer from harms, both psychologically and physiologically, that result from the trauma they experienced, and therefore are more likely to be developmentally immature for their ages. This developmental immaturity may impact their ability to seek asylum and the amount of time they need to file asylum applications.

Child trauma victims' executive functioning has been found to suffer impairments in development. Child victims who escape trauma-producing homes and environments, as they attain safety and grow, will need the space and time to heal from their delays and impairments. But filing for asylum requires children and all other asylum applicants to go through a process that requires the victim to re-experience trauma by retelling the history of the abuse they suffered at least twice – in the written application for asylum and in their asylum interview. Child victims whose cases end up before an immigration judge must retell the history of the abuse suffered a third time. This process is painful even for adult victims and is much more difficult, emotionally harmful, and traumatic for child victims, compounding the negative effects already suffered. In fact, one of the hallmark symptoms of PTSD is avoidance of reminders of past traumas. These children, with immature and impaired executive functioning, are being asked to do what goes against their instincts. Mature adults with good executive functioning might recognize that in the long run, it is better to go through this unpleasant experience. But such deferral of reward requires a properly functioning, mature frontal lobe.

The question of who should be treated as a "minor" for purposes of adjudication of asylum claims is important. For those who arrived in the United States as a child or adolescent, the difference between being treated as a "minor" or an "adult" can mean the difference between – based on identical facts – a child being provided a full and fair opportunity to pursue and win asylum at an appropriate age versus facing re-traumatization and a diminished likelihood of success. In recognition of the recent scientific research showing that children and adolescents continue to biologically and psychologically develop into their mid-20s, and in light of the unique nature of the population at issue with respect to asylum applications who have suffered trauma in their childhood or adolescence, the undersigned *amici* propose that the Board define

the term "minor" in 8 C.F.R. § 1208.4(a)(5)(ii), at a minimum, as any individual who has not yet reached the age of twenty-one (21).

BACKGROUND

The Immigration and Nationality Act ("Act") generally provides that an alien may apply for asylum within the United States "within 1 year after the date of the alien's arrival in the United States."[1] An application not filed within one year after the date of the alien's arrival, however, may be considered "if the alien demonstrates . . . either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within" the one-year period.[2]

The Department of Justice ("Department") promulgated regulations to clarify the meanings of "changed circumstances" and "extraordinary circumstances" for purposes of the Act's exception to the 1-year filing limitations period.[3] In pertinent part, those regulations provide that the term "extraordinary circumstances" may include "(ii) Legal disability (e.g., the applicant was an unaccompanied minor or suffered from a mental impairment) during the 1-year period after arrival."[4]

In promulgating 8 C.F.R. § 1208.4(a)(5)(ii), the Department specifically noted the flexibility inherent in Section 208(a)(2)(D) of the Act, stating that in its "view, such a general definition [of 'extraordinary circumstances'] provides guidance to decision makers while

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1 8 U.S.C. § 1158(a)(2)(B).

2 *Id.* § 1158(a)(2)(D).

3 *See* 8 C.F.R. § 1208.4.

4 *Id.*, § 1208.4(a)(5)(ii). Significantly, although the Act does not define "minor," it defines "child" to include individuals up to age 21. 8 U.S.C. § 1101(b)(1).

offering more flexibility than a definition by example would."[5] In the final rule, the Department preserved flexibility by adding a non-exhaustive list of examples to illustrate the definition of extraordinary circumstances, including "[l]egal disability (e.g., the applicant was an unaccompanied minor or suffered from a mental impairment) during the first year after arrival."[6] The Department explained that "the list is not all-inclusive, and it is recognized that there are many other circumstances that might apply if the applicant is able to show that but for such circumstances the application would have been filed within the first year of the alien's arrival in the United States."[7]

Once an asylum application has been filed, whether under extraordinary circumstances, changed circumstances, or within a year of entry, the same elements of proof are required to win an asylum case. Under the Act, in order to be granted asylum an individual must be physically present in the United States and must meet the definition of a "refugee" under the Refugee Act. Thus, to be granted asylum, an applicant must be able to establish that he or she "is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[8]

ARGUMENT

In the last twenty years, researchers and scientists using new technologies have learned that the adolescent brain is not fully developed by age 18 and that, in fact, significant and

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5 62 Fed. Reg. 444, 447 (Jan. 3, 1997).

6 62 Fed. Reg. 10312, 10339 (Mar. 6, 1997).

7 *Id.* at 10316.

8 8 U.S.C. § 1101(a)(42)(A).

important development continues into the mid-20s. This research reports on age-related brain development findings for typical children who have not suffered or witnessed abuse or violence. Researchers have also learned that exposure to violence and trauma during childhood and/or adolescence has significant and negative psychological and neurobiological impacts. As the population of asylum seekers who arrived in the United States a children or adolescents is uniquely vulnerable to having been exposed to violence and trauma, there is little doubt that, psychologically and biologically, the average asylum seeker lags behind his or her cohort with regard to the cognitive, psychosocial, and executive functioning treated as part-and-parcel of adulthood.

I. The Board Should Consider Psychological and Neurobiological Data in Determining the Definition of "Minor" for 8 C.F.R. § 1208.4(a)(5)(ii).

As a threshold matter, the Board should consider the biological and social scientific research discussed below in defining the term "minor" for 8 C.F.R. § 1208.4(a)(5)(ii). Both the U.S. Supreme Court and federal policy makers, including the U.S. Congress in the Violence Against Women Act ("VAWA") and its reauthorizations, have recently applied such research to questions of the maturity of children and adolescents in their interactions with legal procedures. The Board should do the same by recognizing that research supports extending the definition of "minor" to include individuals at least up to 21 years of age.

The U.S. Supreme Court approach is notable. In three separate cases within the past 11 years, the Court has cited and relied upon social science research submitted from *amici* to inform its determinations of juvenile competence and responsibility. In *Roper v. Simmons*, the Court explained: "[A]s any parent knows and as the scientific and sociological studies respondent and his amici tend to confirm, '[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 young.'"[9] Similarly, in *Graham v. Florida*, the Court stated explicitly that "[d]evelopments in psychology and brain science continue to show ***fundamental differences between juvenile and adult minds***."[10] Finally, in *Miller v. Alabama*, the Court quoted the amicus curiae brief of the American Psychological Association to explain that, "[t]he evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger" and that "'an ever growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court's conclusions.'"[11]

Federal policy makers and immigration authorities have likewise looked to social and biological science to inform their determination of the age at which children impacted by trauma are treated as adults. A particularly pertinent example is found in the VAWA legislation. In 2005, based on early evidence of the emerging body of scientific findings discussed in detail below, Congress decided to give all victims of child abuse, child sexual assault, and forms of abuse and neglect that constitute battering or extreme cruelty up until the age of 25 to file the child's VAWA self-petition.[12] Such VAWA self-petitioning allows immigrant children who suffer battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident partner of step-parent the ability petition for lawful permanent residency without the knowledge

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[9] 543 U.S. 551, 569 (2005).

[10] 560 U.S. 48, 68 (2010) (emphasis added).

[11] 567 U.S. ___, 132 S. Ct. 2455, 2464 at n. 5 (2012).

[12] VAWA 2005, Pub. L. No. 109-162, § 805(c) (Jan. 5, 2006) (amending Immigration and Nationality Act § 204(a)(1)(D), codified at 8 U.S.C. § 1154).

or cooperation of their abusive parent, step-parent, or adoptive parent.[13] In adopting this provision, Congress explained in VAWA's bi-partisan House Committee report that:

> This section ensures that immigrant children who are victims of incest and child abuse get full access to VAWA protections . . . provides that alien child abuse and incest victims who would have qualified to self-petition as the minor children of U.S. Citizens and 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.[14]

In other words, this extension of time was specifically provided to childhood victims of abuse and trauma out of recognition of the impact that the trauma of victimization had on the ability of children find their way to safety, heal, learn about their eligibility for and to file their VAWA self-petitioning case.

Significantly, the U.S. Citizenship and Immigration Services ("USCIS") has acknowledged that the abuse children experience while they are under the age of 21 directly impacts their ability to file victim-based immigration cases before the child turns age 21. For example, when USCIS implemented the VAWA 2005 amendments extending the deadline for children to file VAWA self-petitions through the date on which the child turns 25, USCIS noted the "continued eligibility for certain individuals to file a VAWA self-petition as a child after attaining age 21, but before attaining age 25, if the individual can demonstrate that the abuse was at least one central reason for the filing delay," and specifically directed that "[t]he adjudicating

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[13] *See generally* J. Lin and C. O'Brien, *Immigration Relief for Child Sexual Assault Survivors*, In Leslye Orloff, et al. Empowering Survivors: Legal Right of Immigrant Victims of Sexual Assault (2014), http://library.niwap.org/wp-content/uploads/2015/IMM-Man-Ch8-ImmReliefChildSexualAssaultSurvivors.pdf.

[14] 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 116-117 (discussing language ultimately enacted and codified at 8 U.S.C. § 1154).

officer ***will evaluate*** each claim . . . taking into account ***the totality of the circumstance leading to the delay in filing*** and the full history of battery or extreme cruelty in the case."[15]

The approach Congress took in VAWA 2005 was based on information that was coming to light both in research about the impact of trauma on children's ability to find their way to escape abusive homes, find safety, healing, strength, courage, support, and often treatment they need to be able to come forward and file a violence based immigration case.[16] Since that time, as described below, the quantity of scientific research about the effect of trauma experienced and witnessed on the development of children's brains from very young ages through adolescence has expanded exponentially. Based on the expanding research both in biological science and the social sciences as to the detrimental effects of violence on children, in the 2013 reauthorization of VAWA, Congress explicitly recognized that, in the context of children and adolescents who suffer the effects of violence and persecution, individuals up to the age of 24 should be considered "youth," not adults, for purposes of services to victims of abuse under VAWA.[17] With this expanded definition, Congress built upon the work it began in the 2005 reauthorization with regard to immigrant victims by extending its recognition of the special needs of youth victims to all VAWA grant programs and services.

The Board should follow the Court and Congress in applying the lessons of recent scientific research to the definition of "minor." As discussed below, recent research has shown

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[15] USCIS Policy Memorandum, *Continued Eligibility for Child VAWA Self-Petitioners After Attaining Age 21: Revisions to Adjudicator's Field Manual (AFM) Chapter 21.14 (AFM Update AD07-02)*, PM-602-0048 (Sept. 6, 2011) (emphasis added).

[16] *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).

[17] 42 U.S.C. § 13925(a)(45) (defining "youth" as "a person who is 11 to 24 years old.").

that significant aspects of brain development continue into an individual's mid-20s, and that the development of children who suffer trauma may be further delayed. Taking this research into account, the Board should define "minor" to include individuals, at a minimum, up to age 21.[18]

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

Beginning in the late 1990s, the "growing accessibility and declining cost" of magnetic resonance imaging (MRI), among other techniques, permitted scientists to begin 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."[19] This research supports the conclusion that the biological development of the human brain – particularly the frontal lobes, which are related to cognition, memory, and executive functioning – continues beyond the age of 18 and into the mid- or late-20s.[20]

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[18] We note briefly that the research cited in this brief would be relevant to a broader consideration of "extraordinary circumstances" excusing asylum applicants from the one-year deadline, but we do not belabor the point because it would be beyond the scope of Amicus Invitation No. 16-06-09.

[19] 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").

[20] *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).

For instance, the corpus callosum, the brain structure that connects the brain regions that regulate various aspects of cognitive functioning, continues developing until about 29 years of age.[21] Similarly, the hippocampus, a portion of the brain related to memory, continues to develop into adulthood.[22] Research also shows that myelination, a process described as "a sort of insulation of the neural circuitry" for the brain "is ongoing well into the second decade of life and perhaps beyond."[23] Finally, the growth and maturity of the prefrontal cortex occurs in "long developmental trajectories" and in spurts "between birth and 2 years, 7 – 9 years, during adolescence, and continue[s] into the third decade of life."[24]

Significantly, many of these areas of the brain "are linked to higher-order, complex skills such as decision-making, executive function and inhibition."[25] For example, the "[i]mproved connectivity within the prefrontal cortex" leads to improvement through age 18 and the early 20s with regard to orientation towards the future and planning skills, respectively.[26] The increased connectivity achieved with maturity leads to greater emotional regulation, and impulse control.[27] While "basic" processing for executive functions may mature around 16, "performance on especially challenging tasks, which may require more efficient activation, continues to improve

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[21] *Id.*

[22] *Id.*

[23] Steinberg, *A Social Neuroscience Perspective*, *supra* note 19.

[24] 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").

[25] Pechtel and Pitzzagalli, *supra* note 20.

[26] Steinberg, *A Social Neuroscience Perspective*, *supra* note 19.

[27] *Id.*

in late adolescence."[28] Particularly, studies indicate that working memory "continued to develop into young-adulthood."[29] Finally, "psychosocial maturation," or "the development of abilities that require the coordination of affect and cognition," does not occur until the mid-20s.[30]

The increased understanding of the process for development of the human brain 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, neurobiologically, full 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 asylum-seeking children arriving in the United States. Combined, the evidence supports the conclusion that maturation into adulthood for asylum-seeking immigrant children will necessarily be delayed and that it makes sense to define the term "minor" to include individuals, at a minimum, up to the age of 21.

III. Asylum Seekers Who Have Been Exposed to Violence and Trauma As Children or Adolescents Are Likely to be Developmentally Delayed.

A. Asylum-Seeking Children, Including Those Who Arrive in the U.S. as Unaccompanied Children or Adolescents, Are Victims of Trauma.

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[28] *Id.*

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

[30] 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").

Most or all children who seek asylum in the United States are victims of some trauma. By definition, a child seeking asylum has left an unsafe environment. Many have left behind war, political violence, forced labor, persecution, domestic violence, sexual assault, child abuse, gang violence, or other traumatic events and circumstances to seek a safe haven in the United States.[31] Prior to migration, many unaccompanied children in particular "are likely to have experienced threats or persecution, either directly or against loved ones, and to have witnessed and/or engaged in violence."[32] Indeed, surveys have found that as many as 25% of unaccompanied child migrants had experienced "[e]xtreme traumatic events, such as having witnessed the killing of parents, living on the streets, or being kidnapped and living with rebels," and that nearly two-thirds had experienced four or more distinct traumatic events.[33] Others have noted that refugees and immigrants who enter the United States as families display high levels of trauma-related disorders, and that many immigrant families have endured traumatic events in their home countries.[34]

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[31] *See* K. Perreira, *Painful Passage: Traumatic Experiences and Post-Traumatic Stress among Immigrant Latino Adolescents and their Primary Caregivers*, 47 International Migration Rev. 976 (2013); *see also* U.N. High Comm. for Refugees Report, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014) [hereinafter UNHCR Report]; National Child Traumatic Stress Network, *Unaccompanied Migrant Children* (2014), http://www.nctsn.org/sites/default/files/assets/pdfs/um_children.pdf.

[32] C. Baily, *The Psychosocial Context and Mental Health Needs of Unaccompanied Children in the United States Immigration Proceedings*, 13 Graduate Student J. of Psych. 4 (2011) (citations omitted).

[33] J. Huemer et al., *Mental Health Issues in Unaccompanied Refugee Minors*, Child and Adolescent Psychiatry and Mental Health 3 (2009).

[34] Plaintiff's Exhibits in Support of Motion to Enforce Settlement and for Appointment of Special Master at 95, Declaration of Licensed Clinical Social Worker Jessica Gorelick, *Flores v. Johnson*, No. CV 85-4544 DMG (AGRx), available at http://www.centerforhumanrights.org/PDFs/2016_MTE_Exhibit_Part1.pdf ("I found that all of the mothers and children for whom I completed psychological evaluations were suffering from high levels of anxiety and depression. Additionally, most of the mothers also met the criteria for Post-traumatic Stress (Continued...)

Not surprisingly, the home countries of asylum-seeking children often have high rates of gang violence and homicide.[35] Thus, children and adolescents entering the United States have often fled their homes for fear of gangs, cartels, or other armed criminals.[36] Many of these children have been threatened that if they did not join a gang, they would be killed,[37] but many have also been abused by police who suspected gang membership.[38] Similarly, refugee children may flee to the United States to avoid forced recruitment by military and paramilitary organizations, or to avoid coercion into prostitution, forced labor, or human trafficking.[39]

In recent years, as the Board is no doubt aware, the increase of gang violence, gender-based violence, and poverty in some Central American countries has caused an influx of immigrant children crossing the southern U.S. border and children seeking asylum in the U.S.[40] The geographical region known as the "Northern Triangle," consisting of Guatemala, El Salvador, and Honduras, in particular, has extremely high rates of violence against women and

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Disorder (PTSD). All of these families disclosed life threatening, traumatic experiences in their home countries, which caused them to flee. Many of the mothers also revealed that they had experienced childhood abuse, as well as intimate partner violence. This abuse almost always included regular experiences of rape. In families where the mothers had experienced intimate partner violence, the children had nearly always witnessed this violence and, in several families, the children had also been directly physically and emotionally abused.").

[35] American Immigration Council, *A Guide to Children Arriving at the Border: Laws, Policies and Responses* (2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/a_guide_to_children_arriving_at_the_border_and_the_laws_and_policies_governing_our_response.pdf.

[36] *Id.*

[37] L. Collier, *Helping Immigrant Children Heal*, 46 Monitor on Psych. 58 (2015).

[38] American Immigration Council, *supra* note 35.

[39] Baily, *supra* note 32; DHS Blue Campaign, *Human Trafficking 101*, https://www.dhs.gov/sites/default/files/publications/bc-inf-ht101-blue-campaign-human-trafficking-101.pdf.

[40] UNHCR Report, *supra* note 31.

girls.[41] El Salvador has the highest rate of femicide in the world, Guatemala the third highest, and Honduras the seventh.[42] Women and girls living in countries with high levels of violence against women are more frequently attacked in public, including gang and intimate partner violence.[43] Women and girls in these countries are also victims of physical and sexual assaults, child abuse, trafficking, economic crimes, and emotional violence, often with the local government unwilling or unable to help.[44]

As outlined by the science discussed below, these traumas not only create the basis for child victims' claims for asylum, they cause developmental delays, making it more difficult for the child to successfully meet strict filing deadlines and apply for asylum.

B. The Stress of Home-Country Persecution Negatively Impacts Children and Adolescents Both Psychologically and Neurobiologically.

The violence and trauma to which asylum applicants are subject in their home countries manifests itself both psychologically and neurobiologically. Psychologically, social science research shows that many immigrant children suffer from mental health conditions derived from their pre-migration experiences. Neuroscience goes further, revealing the specific brain processes that interrupt the development of psychosocial and neurocognitive capacities when traumatic experiences happen to a developing brain. An article published for state court judges by the National Council of Juvenile and Family Court Judges described this issue in the context

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[41] *Id.*; UNICEF, *Broken Dreams: Central American Children's Dangerous Journey to the United States* (Aug. 2016), http://www.unicef.org/media/files/UNICEF_Child_Alert_Central_America_2016_report_final.pdf.

[42] M. Nowak, *Femicide: A Global Problem*, SMALL ARMS SURVEY 3 Figure 2 (2012).

[43] *Id.* at 4.

[44] UNHCR Report, *supra* note 31, at 30-38.

of understanding the impact of domestic violence trauma: "Social science tells us *what* exposure to domestic violence does to children's development and behavior. Neuroscience tells us *why*."[45] For example, it is widely acknowledged that unaccompanied refugee children in the U.S. have exhibited disproportionately high levels of PTSD[46] and that individuals with PTSD often display physiological changes to brain systems.[47]

Overall, the science is clear: traumatic stress, abuse, neglect, chaos, and other adverse childhood experiences alter a child's brain resulting in enduring emotional, behavioral, cognitive, social and physical problems. Abundant studies from diverse fields (developmental and clinical psychology, psychiatry, education, child welfare, psychophysiological) have documented that these noxious experiences cause abnormal organization and functioning of important neurobiological systems and compromise functional capacities mediated by those systems.[48] Specifically, a growing body of research has identified that exposure to violence and trauma negatively impacts the development of emotional and cognitive faculties, including executive functioning, in children and adolescents.[49] The article published by the National Council of Juvenile and Family Court Judges summarizes the scientific research as follows: "[i]n an

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[45] L. Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 THE JUDGES' JOURNAL 32 (2014) (emphasis in the original).

[46] Huemer et al., *supra* note 33.

[47] Pechtel and Pitzzagalli, *supra* note 20.

[48] *See, e.g.*, J. Scott, et al., *A Quantitative Meta-Analysis of Neurocognitive Functioning in Posttraumatic Stress Disorder*, 141 Psych. Bulletin 105 (2015).

[49] V. Vasilevski & A. Tucker, *Wide-Ranging Cognitive Deficits in Adolescents Following Early Life Maltreatment*, 30 Neuropsychology 239 (2016) (finding that "the maltreated group showed significant impairments on measures of executive function and attention, working memory, learning, visuospatial function and visual processing speed.").

unpredictable, tension-filled, violent environment where the stress is inescapable, [stress] becomes toxic, unleashing a storm of neurochemicals that result in 'embedded stress.'"[50]

With respect to neurobiology, recent research shows that childhood maltreatment and trauma causes myriad cognitive difficulties. For example, some research regarding the development of the hippocampus, a structure closely associated with memory, anxiety-related behavior, and emotional regulation, indicates that exposure to stress shrinks or hampers growth of the hippocampus.[51] This developmental alteration thus explains some of the memory difficulties of people who have experienced significant trauma. Childhood and adolescent exposure to trauma also has been negatively correlated to the growth of the corpus collosum – the brain structure that connects the brain regions that regulate various aspects of cognitive functioning.[52] Thus, not surprisingly, adolescents with histories of severe maltreatment have shown "significant impairments on measures of executive function and attention, working memory, learning, visuospatial function, and visual processing speed."[53] Notably, executive function is an umbrella term that refers to "the goal-oriented control functions" of the prefrontal cortex, such as planning, organization, and regulation of cognition and behavior.[54] Thus, deficits in executive function "have the potential to significantly impair adaptive, social, emotional, and

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[50] Schafran, *supra* note 45.

[51] *Id.*

[52] Pechtel and Pizzagalli, *supra* note 20 ("In both non-human and human research, exposure to [early life stress] has been associated with decreases in corpus collosum size.").

[53] Vasilevski & Tucker, *supra* note 49.

[54] J. Best et al., *Executive Functions after Age 5: Changes and Correlates*, 29 Developmental Rev. 180 (2009).

academic functioning, explaining many of the typical difficulties seen in maltreated adolescents."[55]

With respect to the social science, numerous studies support the conclusion that a large number of immigrant children suffer from diagnosable mental health conditions, especially PTSD and depression. For example, one study of high school-aged Cambodian refugees found that, four years after leaving Cambodia, half of the students had developed PTSD, and depressive symptoms were also common.[56] Similarly, a recent survey of immigrant children (not limited to asylum seekers) found that 32% had clinical symptoms of PTSD and 16% had symptoms of depression.[57] PTSD has been linked to memory deficits, extreme sensitivity and dysfunctional arousal, attention problems, and disruptions in goal-based attention.[58] Even interpersonal traumatic experiences such as bullying have been found to render "significant direct effects on increased PTSD symptoms and significant direct and indirect negative effects on perceptual reasoning, processing speed, and working memory."[59]

Of course, children who suffer traumas may experience cognitive difficulties even if they never develop diagnosable mental illnesses. Several studies have explored outcomes for individuals with diagnosable mental health disorders as well as individuals who were exposed to

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[55] Vasilevski & Tucker, *supra* note 49.

[56] J.D. Kinzie et al., *The Psychiatric Effects of Massive Trauma on Cambodian Children*, 25 J. Am. Acad. of Child Psychiatry 370 (1986).

[57] 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).

[58] Scott, *supra* note 48.

[59] I. Kira et al., *Does Bullying Victimization Suppress IQ? The Effects of Bullying Victimization on IQ in Iraqi and African American Adolescents: A Traumatology Perspective*, 23 Journal of Aggression, Maltreatment & Trauma 431 (2014).

trauma in early life but who do not exhibit clinical symptoms of disorders. In one such study, a group of maltreated youth and a group of maltreated youth who had been diagnosed with PTSD both performed significantly worse on "IQ, [a]cademic [a]chievement, and nearly all of the neurocognitive [d]omains than controls."[60] Likewise, an analysis of data from groups of children whose exposure to trauma had been continuous or had occurred at different points revealed that "[c]hildren maltreated in multiple developmental periods had more externalizing and internalizing problems and lower IQ scores than children maltreated in only one developmental period."[61] That is, children exposed to continuing or repeated traumas – including the types of trauma suffered by children who qualify to seek asylum – had even worse outcomes than children whose maltreatment was isolated. Additionally, a study measuring cognitive flexibility and executive function in one cohort of childhood trauma victims showed that both physical abuse and physical neglect are associated with diminished cognitive flexibility.[62] A similar study of children exposed to violence and trauma concluded that "[l]ower overall executive functioning was identified in maltreated adolescents regardless of PTSD diagnosis," (with certain measures rating even poorer for children with PTSD).[63]

Being separated from caregiving parents, family members, and/or guardians can also worsen the trauma impacts. For instance, a study of students who had fled Cambodia as children

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[60] M. De Bellis et al., *Neuropsychological Findings in Pediatric Maltreatment: Relationship of PTSD, Dissociative Symptoms, and Abuse/Neglect Indices to Neurocognitive Outcomes*, 18 Child Maltreatment 171 (2013).

[61] S. Jaffee & A. Maikovich-Fong, *Effects of Chronic Maltreatment Timing on Children's Behavior and Cognitive Abilities*, 52 J. Child Psych. & Psychiatry 184 (2011).

[62] M. Spann et al., *Childhood Abuse and Neglect and Cognitive Flexibility in Adolescents*, 18 Child Neuropsychology 182 (2012).

[63] B. Kavanaugh & K. Holler, *Executive, Emotional, and Language Functioning Following Childhood Maltreatment and the Influence of Pediatric PTSD*, 7 J. of Child & Adolescent Trauma 121 (2014).

during the Khmer Rouge regime found that "[p]sychiatric effects were more common and more severe when the students did not reside with a family member."[64] In a similar vein, a recent discussion of research specifically related to unaccompanied children, one study noted that a "[l]ack of parental support, which can provide an important regulating influence following traumatic exposure, may place unaccompanied children at particular risk for developing psychopathology."[65] Likewise, a study of Iraqi refugees found that, in general, symptoms of traumatic stress and depression were greater for youth who experienced more potentially traumatic events, but that "[y]outh endorsed higher levels of depression symptoms when they reported less supportive relationships, regardless of the amount of traumatic event exposure."[66]

In sum, research shows that, both psychologically and neurologically, child trauma victims are often developmentally delayed in terms of emotional development, memory, cognition and executive function – all of which may create difficulties in seeking asylum. The research also shows the need of a supportive and nurturing interpersonal network to minimize the impact and heal from the psychological consequences of such traumatic past. For this reason, children and adolescents who arrive in the United States need access to time to heal, similar to that which Congress provided to VAWA self-petitioning immigrant child survivors of battering

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[64] Kinzie, *supra* note 56.

[65] Baily, *supra* note 32 (citing S. Lustig et al., *Review of Child and Adolescent Refugee Mental Health*, J. Am. Adad. Of Child & Adolescent Psychiatry 24 (2004)).

[66] C. Trentacosta et al., *Potentially Traumatic Events and Mental Health Problems Among Children of Iraqi Refugees: The Roles of Relationships with Parents and Feelings About School*, 86 Am. J. of Orthopsychiatry 384 (2016).

or extreme cruelty – time to be able to "secure their safety, access services and support that they may need and address the trauma of their abuse."[67]

C. Trauma-Related Developmental Problems Likely Interferes with Asylum Seeking.

The developmental delays and functional interruptions associated with trauma are likely to hinder asylum seekers' efforts to navigate the immigration process. Children need to recount their history of trauma, explain their fear to return home, provide the evidentiary requirements to fulfill the burden of proof without proper knowledge of the legal and cultural context of the process. This is already a challenge for adult individuals without the vulnerabilities of developmental immaturity and trauma. Given child trauma sufferers' cognitive delays, it is likely that the immigration case procedures are incomprehensible, and they would be unable to recollect relevant facts. Moreover, previous experiences of victimization and persecution may lead them to distrust officials, and executive function impairments may interfere with their ability to follow through with those assisting them with their asylum case and immigration case deadlines and appearances if children are required to litigate their asylum case before they have had time to heal.

Undoubtedly, applying for asylum presents substantial challenges. Among other things, the asylum applicant may not be able to communicate effectively with officials and service providers, the process may be confusing, and officials may be intimidating.[68] These challenges are worsened where the applicant's development has been delayed by the harms caused by

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[67] 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 116-117 (discussing language ultimately enacted and codified at 8 U.S.C. § 1154).

[68] D. Silove et al., *Policies of Deterrence and the Mental Health of Asylum Seekers*, 284 J. Am. Med. Assn. 604 (2000).

trauma. For example, language and memory processing centers, which are affected by trauma and PTSD,[69] are essential to communicating with government officials and immigration judges about the need for asylum.[70] Similarly, difficulties with cognitive processing and capacity for linear analysis due to emotional and interference and neurobiological abnormalities may render a complex process impossible to understand.[71]

One of the most significant issues that arises from childhood and adolescent exposure to trauma and stress is the negative impact such exposure has on executive functioning, both cognitively and physiologically. Research has shown the importance of executive function in social interactions and goal-oriented behaviors, including planning and organization.[72] Navigation of the asylum-seeking process requires such goal-oriented behaviors in the context of emotionally arousing memories, so limitations of executive function caused by the developmental immaturity and interference of emotional dysregulation can affect the ability of a young person whose life experiences and fears of persecution would result in being granted asylum limiting the child victims' ability to successfully identify and perform the tasks necessary to apply for asylum.[73]

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[69] Vasilevski & Tucker, *supra* note 49; Kavanaugh & Holler, *supra* note 63.

[70] Some researchers have specifically highlighted the difficulty immigrant children who have been victims of trauma may experience in learning English, finding that, although further research is needed, exposure to trauma prior to entering the United States may impact a child's ability to become proficient in English. I. Kaplan et al., *Cognitive Assessment of Refugee Children: Effects of Trauma and New Language Acquisition*, 53 Transcultural Psychiatry 81 (2015).

[71] Silove et al., *supra* note 68.

[72] Best, *supra* note 54.

[73] Silove, *supra* note 68.

The symptoms of PTSD may also impair individuals' abilities to appropriately respond to questions or correctly remember facts.[74] In many cases, asylum seekers have fled circumstances where government officials have perpetrated or been complicit in the traumatic events that drove them from their home countries, leading to suspicion or distrust of the U.S. government officials with whom they may interact while seeking asylum.[75] One of the hallmark symptoms of PTSD is avoidance of reminders of past traumas,[76] which may prevent a traumatized child from initiating the asylum process. These concerns become more severe for young asylum seekers who, due to immaturity and the neurobiological consequences of trauma, have limited abilities to deal with threats, regulate their own intense feelings, or respond appropriately to situations that are highly emotional.

These problems are all the more significant given that these impairments are not simply due to psychological fear and anxiety, but neurobiological impairments that fundamentally alter the structure of the brain.[77] In short, there is nothing an asylum-seeking child may be able to do in order to control or address these impairments. Child asylum seekers need time to heal and grow and fully develop before being required to file and litigate their asylum claims. Setting required filing deadlines too soon for child asylum seekers will have the effect of denying asylum to many traumatized immigrant children with legitimate asylum claims that they would

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[74] *Id.*

[75] *Id.*

[76] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* ("DSM-V") 271 (2013).

[77] Scott, *supra* note 48.

win if they were not forced by early deadlines to file and litigate their asylum claims before their brains are fully developed to undertake an examination of such distressing experiences.

D. Continuing Trauma Exacerbates Stress Reactions and Compounds Difficulties for Asylum-Seeking Children and Adolescents.

As is widely acknowledged, the process of entering the United States and applying for asylum likely entails continuing trauma for immigrant children.[78] Among other things, the process of immigrating to the United States for child asylum seekers often includes suffering additional traumatic events during the journey, including rape, sexual assault, and physical assault, which continue and augment the cycle of trauma.[79] Children arrive in the United States without support, have difficulty acculturating upon arrival, or may have negative interactions with the immigration system.[80]

This continuing trauma, which builds upon on the violence exposure, stress, and trauma of home country persecution, may worsen mental health and cognitive outcomes and increase the degree of difficulty immigrant child trauma survivors will have in navigating their asylum case process. An analysis of data from groups of children whose exposure to trauma had been continuous or had occurred at different points revealed that "[c]hildren maltreated in multiple developmental periods had more externalizing and internalizing problems and lower IQ scores than children maltreated in only one developmental period."[81] That is, children exposed to

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[78] Silove, *supra* note 68.

[79] *Id.*; National Child Traumatic Stress Network, *Unaccompanied Migrant Children*, *supra*, note 31.

[80] Silove, *supra* note 68.

[81] S. Jaffee & A. Maikovich-Fong, *Effects of Chronic Maltreatment Timing on Children's Behavior and Cognitive Abilities*, 52 J. Child Psych. & Psychiatry 184 (2011).

continuing or repeated traumas had even worse outcomes than children whose maltreatment was isolated.

One study noted that as many as 29% of immigrant adolescents, even those who were not seeking asylum, experienced trauma in the journey.[82] Similarly, in a survey of recent immigrant schoolchildren, subjects "reported high levels of violence exposure, both personal victimization and witnessing violence, in the previous year and in their lifetimes."[83] A different survey revealed "growing evidence that salient post-immigration stress facing asylum seekers adds to the effect of previous trauma in creating a risk of ongoing posttraumatic stress disorder and other psychiatric symptoms," explaining, "there is at least *prima facie* evidence of substantial psychological morbidity among asylum groups residing in several recipient countries."[84]

In fact, the process of seeking asylum itself often creates additional anxiety for asylum seekers, who, among other things, are forced to relive home country violence and trauma in specific detail and describe the extreme fear of repatriation. Beyond these issues, "[s]alient ongoing stressors identified across several studies [also] included delays in the processing of refugee applications, conflict with immigration officials, having no access to a work permit, unemployment, separation from family, and loneliness and boredom."[85]

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[82] Perreira, *supra* note 31.

[83] Jaycox, *supra* note 57.

[84] Silove, *supra* note 68 (italics added).

[85] *Id.*

Relatedly, studies of child or adolescent courtroom testimony suggest that it involves further trauma exposure.[86] Where children recount events in which they were victimized, they experience the same feelings of horror, anxiety, and fear they experienced with the original event, which may interfere with memory and retrieval.[87] The experience of such distressing emotions and confusing thoughts may exacerbate mental health conditions and decrease the likelihood of successful completion of the process. The typical response to such re-traumatization is avoidance of anything related to the original trauma,[88] which may decrease the likelihood that a traumatized adolescent would apply for as asylum within the first year after entering the United States.

Not surprisingly, the more a child or adolescent is exposed to violence, trauma, and/or stress, the more significant the potential effects.[89] Therefore, if exposure to traumatic experiences continues for longer or includes additional stressful events, its impact on the behavioral and neurobiological outcomes of the asylum-seeking child may be more severe. The resulting difficulties with the asylum-seeking process may, in turn, be more greatly amplified.

In sum, immigrant children and adolescents who suffered trauma need the time for healing, recovery and restoration to healthy function through therapeutic experiences including living in a stable, predictable, safe, and nurturing environment. They need time to reestablish

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[86] L. Sas, *The Interaction Between Children's Developmental Capabilities and the Courtroom Environment*, http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr02_6/rr02_6.pdf.

[87] *Id.*

[88] National Child Traumatic Stress Network, *Age-Related Reactions to a Traumatic Event*, http://www.nctsn.org/nctsn_assets/pdfs/age_related_reactions.pdf.

[89] R. Anda et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood: A convergence of Evidence from Neurobiology and Epidemiology*, 256 European Archives of Psychiatry and Clinical Neuroscience 174 (2006).

their lives in a safe, caregiving environment in which they can return to the activities proper of childhood which were interrupted by the traumatic experiences and migration. They need new emotionally protective and healthy relational interactions that can initiate a surge of healthy neural activity. They should not be encumbered by the reminders of the trauma until they are emotionally stable and strong enough, both emotionally and neurobiologically, to process those experiences in the safety of their new circumstances.

CONCLUSION

In light of the precedent and science outlined above, the Board should define the term "minor" in 8 C.F.R. § 1208.4(a)(5)(ii), at a minimum, as any individual who has not yet reached the age of twenty-one (21).