

# PRIMER FOR JUVENILE COURT JUDGES:

A Trauma-Informed Approach  
to Judicial Decision-Making  
for Newcomer Immigrant Youth  
in Juvenile Justice Proceedings

*Prepared by:*

Center for Trauma Recovery and  
Juvenile Justice

National Center for Youth Law

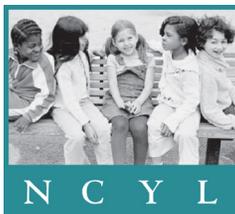
Refugee Trauma and  
Resilience Center

*In consultation with:*

National Council of  
Juvenile and Family Court Judges



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The University of Connecticut Center for Trauma Recovery and Juvenile Justice (CTRJJ) brings together national leaders from CUNY John Jay College of Criminal Justice, Fordham University, New York University, the University of Utah, and the National Center for Youth Law who work with traumatized youth involved in—or at risk for—the juvenile justice and law enforcement systems. CTRJJ works nationally with the National Child Traumatic Stress Network to enable systems, providers, and organizations to adopt, adapt, and deliver strengths-focused and evidence-based trauma specific interventions.

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The National Center for Youth Law (NCYL) is a non-profit law-firm that has fought to protect the rights of children and youth for over four decades. Headquartered in Oakland, California, NCYL leads high impact campaigns that weave together litigation, research, policy development, and technical assistance. As *Flores* co-counsel, NCYL represents the class of over 14,000 immigrant children in federal custody and is responsible for monitoring the Government's compliance with the *Flores* Settlement Agreement. NCYL also collaborates with public agencies to develop policies and practices that will better help them support immigrant children and families.

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The Refugee Trauma and Resilience Center (RTRC) at Boston Children's Hospital/Harvard Medical School is dedicated to understanding and promoting the healthy adjustment of refugee children and adolescents who have resettled in the United States. As a Treatment and Services Adaptation center within the National Child Traumatic Stress Network, the RTRC's central focus is to develop, adapt, evaluate, and disseminate models of care to advance the well-being of refugee children and families. In partnership with refugee communities, healthcare, and social service agencies, the RTRC builds prevention and intervention programs, conducts research, and develops resources to assist refugee families and their service providers.

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# EXECUTIVE SUMMARY

*This primer introduces key factors that juvenile court judges should consider in order to take a trauma-informed approach when “newcomer immigrant youth” come before them in juvenile justice cases. Created by attorneys and mental health experts on trauma, juvenile justice, and immigration, this primer is the product of the Center for Trauma and Juvenile Justice, the National Center for Youth Law, and the Refugee Trauma and Resilience Center, in consultation with the National Council of Juvenile and Family Court Judges.*

“Newcomer immigrant youth” refers to a subset of immigrant children, specifically, refugees, asylum seekers, and unaccompanied children. As newcomer immigrant youth travel to and arrive in the United States, they face significant adversity including violence, separation from loved ones, isolation, and acculturation challenges that are often traumatic (i.e., life threatening or life altering). These adverse experiences compound and exacerbate the negative effects of trauma experienced before migration to the United States.

As a result of their experiences, newcomer immigrant youth often live in survival mode in order to protect themselves and their families. Survival mode is a physical and mental adaptation that develops out of necessity to literally and emotionally survive. Youth do not choose to live in survival mode, it is an automatic adaptation. When in survival mode, youth may appear on-edge, distrustful, angry, impulsive, oppositional, or aggressive on the surface, but are really fearful, sad, or emotionally numb underneath. Ironically, chronically living in survival mode can reduce youths’ safety by leading them to engage in behaviors (“survival coping”) that increase conflict with peers and adults, interfere with learning and important decisions, isolate them from healthy relationships and make them vulnerable to exploitive relationships. All of these behaviors can ultimately bring them into contact with law enforcement and the juvenile justice system.

When newcomer immigrant youth come before the juvenile court, the judge may be the first adult who understands the impact that trauma has had on their lives. Fortunately, judges are in a position to assist these youth in taking the steps and accessing the resources necessary to break the vicious cycle caused by living in survival mode so that newcomer immigrant youth can thrive.

Because trauma is an almost universal experience for justice-involved youth, breaking the cycle of trauma and escaping survival mode is the key to true rehabilitation for all youth who are involved in the juvenile justice system.<sup>1</sup> It is critical that decision-makers, especially judges, are able to recognize the distinctive stressors and trauma that newcomer immigrant youth experience, and respond accordingly.

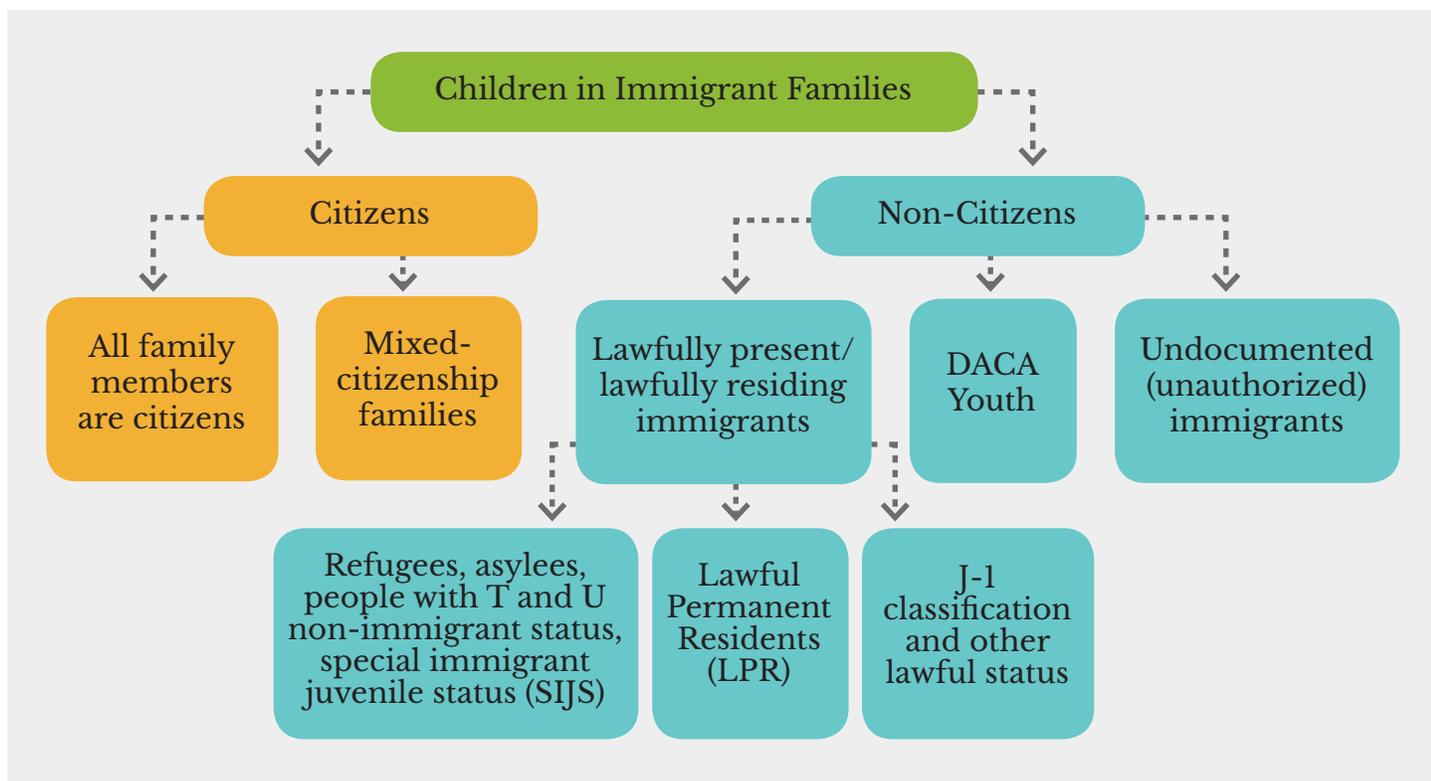
This primer is intended to assist judges in recognizing the behavioral, social, and educational challenges that many newcomer immigrant youth experience as a result of trauma and having to adopt survival coping as a way of life. Further, this primer provides guidance regarding the types of services and judicial orders that can best support these youths in successfully resolving the legal, educational, and psychosocial problems that have brought them before the juvenile court.

**To that end, this primer addresses the following topics:**

- How trauma impacts newcomer immigrant youth;
- How trauma exposure can lead to involvement in the juvenile justice system;
- How adjudication of delinquency may affect youths’ immigration status;
- What cultural considerations judges should be aware of with newcomer immigrant youth;
- How to help youths recover from trauma by recognizing and building resilience; and
- What judges can do to make trauma-informed decisions in cases with newcomer immigrant youth.

## 2: THE “NEWCOMER IMMIGRANT YOUTH” POPULATION DEFINED

Children and youth living in immigrant families are the fastest growing group of American children.<sup>2</sup> In the United States, one in four children live in immigrant families,<sup>3</sup> and 4.5 million U.S. citizen children live with at least one undocumented parent.<sup>4</sup> *Immigrant children* is a broad and overlapping category that describes both: (1) documentation status (documented or undocumented); and (2) the circumstances surrounding a youth’s entry into the country (accompanied or unaccompanied).



*Adapted from content by Ricky Choi, MD, MPH, and Julie M. Linton, MD.*

This primer focuses on a subset of immigrant children, specifically, refugee children, asylum seekers, and unaccompanied children, to whom we refer collectively as *newcomer immigrant youth*. These three groups of children generally experience high levels of trauma, as discussed in greater detail throughout.

## Refugee Children

Children who are “outside any country of [their] nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who 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 . . . .”<sup>5</sup>

## Asylum-Seeking Children

Children are eligible for asylum if they meet the definition of a refugee. Asylum seekers must show that they have a well-founded fear of persecution due to their race, religion, nationality, political opinion or membership in a particular social group and are unable or unwilling to seek protection from authorities in their home country.<sup>6</sup>

Unlike refugee children, asylum-seeking children do not have legal status upon arrival to a new country.

## Unaccompanied Children\*

Children who arrive at the border who “(A) [have] no lawful immigration status in the United States; (B) [have] not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”<sup>7</sup>

An Unaccompanied Alien Child (“UAC”) may be an asylum seeker. If she/he is not seeking asylum, she/he may be eligible for other forms of legal relief including Special Immigrant Juvenile Status (SIJS)<sup>8</sup>, a T-Visa<sup>9</sup>, or a U-Visa.<sup>10</sup>

\*Referred to as “Unaccompanied Alien Children” in statute

**See Appendix E** for a glossary of additional immigration terms.

# 3: CASE STUDIES

This primer highlights the stories of two newcomer immigrant youth: Frida, a girl who fled on her own from El Salvador seeking safety, and Musa, a Somali boy who immigrated to the United States with his family as a refugee. Their stories are based on true events.

## Frida

*Frida is a 16-year-old girl from El Salvador. She experienced severe physical and sexual abuse as a child, and her brother was murdered by local gang members when she was 15 years old. After she began receiving threats from the same gang, she fled to the United States by herself, fearing for her life.*

*Frida was initially detained at a shelter for unaccompanied minors. However, after a staff member observed her cutting her arms, Frida was transferred to a locked facility. Confined to her room for the majority of the day and given minimal schooling, Frida felt increasingly anxious and angry.*

*One day, after a facility guard used a racial epithet, Frida lashed out and hit the guard. She was charged with assault, adjudicated delinquent, and received a disposition to spend several months in a juvenile justice placement.*

## Musa

*Musa is a 12-year-old boy who was born in Somalia during the war and spent much of his early childhood in dangerous refugee camps.*

*At age seven, Musa and his family were granted refugee status and thereafter migrated to the United States. Facing intense acculturation and financial stress, Musa's family struggled to adjust to their new life.*

*Musa had difficulty concentrating in class and started getting into trouble at school. After he was arrested for a residential burglary, Musa was adjudicated delinquent and received a disposition to spend several months in a juvenile justice placement. After disclosing his adjudication on his application for citizenship, Musa's application was denied and he was deported back to Somalia.*

# 4: TRAUMA & NEWCOMER IMMIGRANT YOUTH

It is common for newcomer immigrant youth involved in the juvenile justice system to have experienced trauma throughout their lives. The juvenile court can play a crucial role by: (1) understanding the unique traumatic experiences of newcomer immigrant youth; (2) recognizing the extent to which newcomer immigrant youth's behavior reflects survival coping; and (3) providing these youth with access to services that prevent further involvement in the juvenile justice system by building resilience and reducing survival coping.

## Types of Trauma Experienced by Newcomer Immigrant Youth

Newcomer immigrant youth and families are vulnerable to many different types of trauma across their migration experience. Sequential traumatization is the experience of compound, prolonged trauma prior to, during, and after migration. Some traumas are unique to specific points of the migration process; others can occur at any point before, during, or after migration. The following list provides examples of trauma types that are characteristic of the sequence of events and circumstances that occur at specific migration points; however, this list is by no means exhaustive.

### Pre-Migration

Before leaving their country of origin, newcomer immigrant youth and their families often experience mass violence or other threats to survival, such as:

- War and conflict (direct and indirect exposure to physical and sexual violence);
- Lack of food, water, shelter, and medical care;
- Forced displacement;
- Gang violence and threats of violence or murder; and
- Traumatic grief related to the death of a caregiver or other important person.

### Frida

*Frida's father was an alcoholic who physically and sexually abused her and her brother. Throughout her childhood in El Salvador, Frida lived in a community that was located in MS-13 gang territory and therefore extremely dangerous. When Frida's brother refused to be recruited into the local MS-13 chapter, gang members threatened him and told him that they would kill him. He continued to resist their efforts at recruitment and ultimately, the gang members followed through on their threats and killed him.*

*Soon thereafter, a gang member began to approach Frida. He wanted Frida to be his girlfriend, but she refused. He told her that if she was ever seen with another man, she would be beaten and murdered. Frida was terrified and went into hiding in her home. Frida's mother reported the murder of her son and the threats to her daughter to the police, but the police did nothing. After two months in hiding, Frida fled to the United States by herself because she believed she would be killed if she stayed in El Salvador.*

## During Migration

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During the transition to a new residence, newcomer immigrant youth often experience additional traumas involving abuse, exploitation, and violence (both as a victim and as a witness), such as:

- Direct or indirect exposure to physical and sexual violence;
- Lack of food, water, shelter, and medical care;
- Human trafficking and financial exploitation;
- Sudden and prolonged separation from family and other protective caregivers (in some instances, forced separation);
- Hazardous travel (often long distance by foot or unsafe transportation); and
- Unsafe and harmful living conditions within refugee camps.

### Musa

*Due to the civil war in Somalia, Musa fled to Kenya with his mother and six siblings when he was one year old. His father was killed in Somalia. Musa lived with his family in many different Kenyan refugee camps until the age of seven. Life in the refugee camps was unsafe and difficult – Musa and his siblings would often get beaten up by older children and go for days without food. He also witnessed physical fights in the camps and people getting shot.*

*Despite the hardship, Musa remembers playing soccer with his siblings and having fun in the refugee camps. After six years in the refugee camp, Musa, his mother, stepfather, and six siblings were granted refugee status and approved to go to the United States.*

## Post-Migration

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Vulnerability to traumatic exposure is not reduced after migration. Rather, the post-migration period brings with it a number of continuing dangers and hardships that can keep youth and their families in a perpetual state of stress/survival. As newcomer immigrant youth and families attempt to adjust to the norms, customs, and traditions of a new country, they often face stressors such as:

- Extreme poverty;
- Discrimination/bullying/hate crimes based on one's identity (e.g., race, ethnicity, sexuality, religion, or native language);
- Separation from family members;
- Family violence; and
- Location in unsafe neighborhoods (e.g., drug exposure, community violence).

Unaccompanied children often have unique traumatic experiences layered on top of the trauma discussed above.

**See Appendix A for more information.**

## The Enduring Effects of Trauma

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Childhood traumatic experiences alter the brain's responses to stress. When faced with danger, the brain's alarm system reacts with a classic stress response (i.e., the fight, flight, or freeze response). This is an automatic survival reaction by the body in order to keep the youth safe.

In the immediate aftermath of a traumatic experience, the majority of youth will experience acute traumatic stress reactions; for some, these reactions lay down the foundation for chronically living in survival mode. Acute traumatic stress reactions may include:

- Hypervigilance (e.g., constantly looking out for danger, extreme distrust of others, difficulty concentrating, and isolation or withdrawal);
- Intrusive thoughts (e.g., “My life is over,” “I should have protected my family”);
- Recurrent memories or images of the traumatic experience(s);
- Difficulty regulating emotions (e.g., intense anger, guilt, grief, shame, terror, confusion);
- Becoming emotionally shut-down, numb, or dissociated;
- Avoidance of reminders of the trauma;
- Negative views of themselves as worthless or “damaged”; and
- Reenactment of trauma experiences (e.g., engagement in violence, sexual behavior).

When youth experience multiple or sequential traumas—as often is the case for newcomer immigrant youth—they are especially likely to have these acute reactions become a chronic way of living (i.e., survival coping). Survival coping involves using coping tactics that are defenses against severe danger, such as reacting impulsively or with aggression, running away, or shutting down psychologically. It is an automatic biological and psychological reaction that occurs in response to feeling unsafe, insecure, or threatened—even though the current circumstances may no longer involve trauma that actually poses a threat to survival.

These coping strategies might have been protective and/or adaptive in the context of past traumatic exposure, but can be harmful or maladaptive when carried out in response to everyday life stressors. Indeed, survival coping can lead to precisely the kinds of behaviors that bring youth in contact with law enforcement and juvenile justice, such as aggression, impulsivity, running away, or truancy. When newcomer immigrant youth have had to use survival coping to overcome traumatic experiences, they need to trust that they are safe and that the adults in their lives will protect them from harm in order to move out of survival mode.

In addition to considering the consequences of multiple or sequential traumas, judges should also consider what social science and neuroscience have revealed over the past few decades regarding adolescent brain development.

**See Appendix B for more information.**

### Recommended Resources

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- National Child Traumatic Stress Network, *Refugee Trauma*, available at <https://www.nctsn.org/what-is-child-trauma/trauma-types/refugee-trauma>.
- Julie M. Linton, Marsha Griffin & Alan J. Shapiro, *Detention of Immigrant Children*, Policy Statement, 139 PEDIATRICS 5 (2017).
- Joseph D. Hovey & Cheryl A. King, *Acculturative stress, depression and suicidal ideation among immigrant and second-generation Latino adolescents*, 35 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1183, 1996.

# 5: PATHWAYS FROM TRAUMA EXPOSURE TO JUVENILE JUSTICE INVOLVEMENT

Trauma exposure and survival coping are risk factors for involvement in the juvenile justice system. The pathways from traumatic stress to involvement in “delinquent” behaviors include: (1) core stressors in resettlement that trigger and intensify survival coping; (2) survival coping that leads to dysregulated behavior; and (3) survival coping that leads to emotional and behavioral shut down.

Factors that may act as indirect links between newcomer immigrant youth’s traumatic experiences and “delinquent” behaviors include core stressors in resettlement, parent trauma, and different cultural norms related to parental monitoring and disciplinary practices.

## Core Stressors in Resettlement Trigger Survival Coping

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The post-migration period brings a number of new hardships and/or continuing dangers for newcomer immigrant youth and families as they attempt to adjust to the norms, customs, and traditions of a new country. In addition to traumatic stress, newcomer immigrant youth often struggle with:

### Resettlement Stress

These are stressors that children and families experience as they try to make a new life for themselves. These stressors may include financial stressors, loss of community supports, transportation difficulties, housing instability, difficulties finding employment, and lack of access to resources.

### Acculturation Stress

These are stressors that children and families experience as they try to navigate between their new culture and their culture of origin. This can include problems trying to fit in at school, conflicts between children and parents over new and old cultural values, being unfamiliar with school routines and expectations, and having to consistently translate for family members who are not fluent in English.

### Isolation Stress

These are stressors that children and families experience as minorities in a new country. This can include loss of social status and support, feelings of loneliness, feelings of not “fitting in” with others, discrimination, and harassment.

Experiencing these core stressors in resettlement can “push” a youth to adopt certain behaviors as a way to survive the challenges they face, including financial stressors, family conflict, discrimination, and/or feelings of loneliness, alienation, and isolation. Thus, what may appear to be a callous indifference to the law or the rights and well-being of others, often is instead a desperate attempt to overcome the barriers and hurt that these core stressors can cause.<sup>11</sup>

## Operating in Survival Mode

Another common pathway to the juvenile justice system for traumatized youth is that living in survival mode interferes with their ability to self-regulate, leaving them susceptible to impulsive, avoidant, and addictive behaviors. Self-regulation is the ability to draw on one's own inner strengths and genuinely supportive relationships in order to channel motivation, manage distress, and think effectively. This important capacity is typically developed through young adulthood; however, the building blocks for self-regulation are severely undermined when the multiple traumas experienced by many newcomer immigrant youth result in chronic survival mode. (See Appendix B for more information on the neurodevelopment of regulatory capacities during childhood). Indeed, survival coping interrupts healthy planning, problem solving, and decision making because it involves reacting automatically rather than reflecting and making thoughtful choices.<sup>12</sup> In turn, this places youth at increased risk of involvement with the juvenile justice system.

Many traumatized youth operating in survival mode therefore act on impulse (e.g., fight, flight, or freeze) instead of using their full abilities to stop and use consequential thinking (i.e., problem-solving and decision-making based on an awareness of and accurate evaluation of consequences) before reacting. Youth who are impulsive as a result of living in chronic survival mode are at risk for involvement with law enforcement and juvenile justice for several reasons:

- Interpersonal difficulties, ranging from extreme isolation to enmeshment in dangerous or exploitive relationships;
- Relational problems in school, work, peer and family; and
- Behavioral challenges.

On the surface, survival coping behaviors (e.g., excessive suspiciousness, hostility, defiance, and disconnection from relationships) may appear to be motivated by a disregard for safety or for the law. However, these behaviors are actually attempts to cope with, or prevent, further traumatization and vulnerability; in fact, they are often a function of operating in survival mode. Consequently, helping youth to develop alternative ways of coping that build resilience rather than relying on reactivity is an essential part of recovery and rehabilitation.

For most youth, particularly adolescents, the appearance of “having it all together” and being in control of their emotions can be paramount. Thus, some traumatized youth rely on forms of survival coping that hide their fears and distress by emotionally and behaviorally disengaging. Youth whose survival coping takes this form may appear distant, disconnected, disinterested, and disengaged. Although these youth may not provoke others, the perceived absence of emotions or behaviors might lead observers to assume callousness, poor social competence, or amotivation. As a result, the systems they become involved with—schools, youth and family services, juvenile courts and justice—may come to view them as irredeemable, which can tragically lead to years or decades of incarceration.

### Frida

*The locked facility that Frida was transferred to was much worse than the shelter she had been in previously. She felt like she was in jail and didn't understand why she was there. “School” only lasted about three hours and then she had to spend the rest of her day confined to her cell. She watched other kids being provoked and harassed by guards.*

*Although she was generally quiet and kept to herself, the rage within her grew on a daily basis. One day when she heard the staff use a racial epithet, Frida lashed out and hit the staff member as hard as she could. Charges were filed against her and she had to appear in juvenile court.*

Of note, chronically disengaging from emotions and/or behaviors may leave some youth vulnerable to exhibiting more intense reactions to perceptions of threat. This increased vulnerability is the result of attempting to hide real feelings of fear in order to avoid further victimization. As such, they may shift from seeming indifferent and detached to exploding with rage and violence—toward themselves as well as toward others. When these youth do react to actual or perceived threat, it may be more difficult to recognize the association between their survival coping and their “reactive” behavior. This increases the likelihood that they will become labeled as incorrigible and dangerous, and subjected to more severe correctional sanctions and conditions (e.g., prison, seclusion, restraints, or psychiatric confinement).

## The Impact of Caregiver Trauma

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Oftentimes, newcomer immigrant parents and other caregivers have also experienced trauma prior to, during, and after migration, and have developed their own forms of survival coping. This is not to say that newcomer immigrant caregivers are not exceedingly resilient; their capacity to survive unfathomable circumstances and migrate to the United States in order to keep themselves and their children safe is remarkable. Yet, despite their best intentions, they too can have difficulty regulating emotions and behaviors when stuck in survival mode.

Empirical studies indicate that key risk factors for youth “delinquency” are a lack of parental monitoring/supervision and friendships with “delinquent” peers.<sup>13</sup> For some caregivers, their own survival coping might limit their ability to provide adequate supervision and monitoring of peer groups. Additionally, efforts to regulate emotions and regain stability in the post-migration environment might mean that a caregiver tries to avoid traumatic reminders by not talking about past experiences. This avoidance can be the result of traumatic stress and/or cultural factors. See Chapter 7 for more information on cultural considerations.

For some newcomer immigrant caregivers, their survival coping may be intensified by many other issues, such as:

- Traumatic loss and grief;
- Acculturation, isolation, or resettlement stressors;
- Disconnection and uncertainty about the well-being of loved ones in home country;
- Physical exhaustion and poor health;
- Disrupted attachment (if caregiver and child were separated);
- Concerns about their own immigration status; and
- The everyday process of surviving under extraordinary circumstances.

All of these factors make it more challenging for caregivers to provide their children with the security, attunement, and guidance needed to help them thrive. This does not mean, however, that caregiver trauma necessitates removal and alternative placement for newcomer immigrant youth. In fact, the research shows that separation from caregivers is a grave risk factor for psychological distress among newcomer immigrant youth.<sup>14</sup> With the proper supports, newcomer immigrant caregivers not only can heal from their own traumatic experiences but can also be instrumental in helping their children heal as well. Thus, engaging trusted community agencies that can support caregivers in managing their distress and reducing their children’s survival coping is a critical consideration for newcomer immigrant youth who come to the attention of the court.

**See Chapter 8: Cultural Considerations** for further perspectives on parental involvement as advocates and supporters of newcomer immigrant youth.

## Recommended Resources

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- Kristine Buffington, MSW et al., Nat'l Council of Juvenile & Family Ct. Judges, *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency* (2010), available at [http://www.ncjfcj.org/sites/default/files/trauma%20bulletin\\_1.pdf](http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf).
- Vanderbilt University, *Core Stressor Assessment Tool*, available at [https://redcap.tch.harvard.edu/redcap\\_edc/surveys/index.php?s=HRPDCPPA3H](https://redcap.tch.harvard.edu/redcap_edc/surveys/index.php?s=HRPDCPPA3H).
- Julian D. Ford et al., *Pathways from Traumatic Child Victimization to Delinquency: Implications for Juvenile and Permanency Court Proceedings and Decisions*, 57 JUVENILE & FAMILY CT. J. 13 (2006) available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1755-6988.2006.tb00111.x>.

# 6: TRAUMATIC STRESS WITHIN THE JUVENILE JUSTICE SYSTEM

For newcomer immigrant youth, involvement with the juvenile justice system can become yet another layer in their trauma histories. Awareness of how newcomer immigrant youth are being impacted and potentially re-traumatized by their current interactions with the system is critical to correctly assessing current behaviors and determining the most productive course forward for the youth.

For many newcomer immigrant youth, every aspect of the juvenile justice system includes multiple traumatic reminders and risks for re-traumatization. Examples include: being touched and/or searched, questioned, and shackled; experiencing loss of control and lack of voice in the overall process; and being separated from family and community. Each additional traumatic experience has the potential to increase disrupted attachments, vulnerability for negative outcomes, and hypervigilance to perceived danger.

Federal and state law and policy reflect the widely accepted position that children and communities are better off when children are not incarcerated.<sup>15</sup> A longstanding body of research has established that detaining children interferes with healthy development, exposes youth to abuse, undermines educational attainment, exacerbates pre-existing trauma, and puts children at greater risk of self-harm.<sup>16</sup>

In a 2013 report, the National Academy of Sciences detailed the many ways in which incarceration disrupts healthy development for adolescents.<sup>17</sup> For example, separation from adult caregivers, peer groups, and educational and work settings undermines youths' developmental processes and ability to gain skills needed to transition into adulthood.<sup>18</sup> Furthermore, education provided to youth in the juvenile justice system is often inadequate, which makes it harder for youth to succeed academically after being released.<sup>19</sup>

Juvenile detention and placement facilities also present significant physical safety risks, making it difficult for newcomer immigrant youth to feel safe enough to begin the process of healing or rehabilitation. The physical, sexual, and emotional abuse that children in the juvenile justice system are exposed to has been extensively documented and has resulted in consent decrees governing the conditions of confinement throughout the majority of states in the U.S.<sup>20</sup>

## Frida

*Frida was charged with assault and adjudicated delinquent by the juvenile court. Her disposition included secure confinement.*

*The juvenile hall environment was terrifying to Frida. The staff's use of physical restraints and routine strip searches triggered her memories of sexual abuse in El Salvador, and she felt constantly on edge.*

*She often found it hard to breathe and would get dizzy and nauseous. Frida's anxiety made it difficult for her to eat or sleep, and so the juvenile hall psychiatrist placed her on psychotropic medication. The medication made her gain weight and feel lethargic.*

The juvenile justice system is not designed to treat the mental health needs of youth. A 2010 nationwide census conducted by the U.S. Department of Justice found that only half the youth in the juvenile justice system are placed into facilities that provide mental health evaluations for all residents.<sup>21</sup> Furthermore, 88% of youth are detained in facilities in which mental health counselors are not licensed professionals.<sup>22</sup> The federal Office of Juvenile Justice and Delinquency Prevention found that juvenile detention facilities often respond to threats of self-harm in ways that further endanger youth, such as by placing them in isolation.<sup>23</sup> Studies have also shown that youth involvement with the juvenile justice system has a negative impact on long-term mental and physical health outcomes.<sup>24</sup>

For newcomer immigrant youth in particular, the difficulties faced in the juvenile justice system are further exacerbated by:

- Potential linguistic and cultural barriers;
- Challenges in attempting to understand an unfamiliar system;
- Lack of information about the well-being or location of family members; and
- Significant vulnerability to engaging with more antisocial peer groups in an effort to stay safe.

## Recommended Resources

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- Carlyn B. Dierkhising, Andrea Lane & Misaki N. Natsuaki, *Victims Behind Bars: A preliminary study of abuse during juvenile incarceration and post-release social and emotional functioning*, 20 PSYCHOLOGY, PUB. POL'Y & LAW 181 (2014), available at <http://psycnet.apa.org/record/2013-45451-001>.
- Barry Holman & Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers\\_of\\_detention.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf).
- National Juvenile Detention Center, *The Harms of Juvenile Detention*, available at <http://njdc.info/wp-content/uploads/2016/10/The-Harms-of-Juvenile-Detention.pdf>.
- Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, 139 PEDIATRICS 1 (2016), available at <http://pediatrics.aappublications.org/content/pediatrics/139/2/e20162624.full.pdf>.

# 7: LEGAL IMPLICATIONS OF INVOLVEMENT WITH THE JUVENILE JUSTICE SYSTEM ON IMMIGRATION STATUS

Regardless of a youth's immigration status, an adjudication of delinquency is a consequential decision that juvenile court judges make with significant implications on youth. For newcomer immigrant youth, this decision may result in significant and long-lasting consequences that juvenile court judges should be aware of.

Juvenile delinquency adjudications may cause adverse immigration consequences for immigrant youth in three main ways: (1) triggering conduct-based grounds of inadmissibility or deportability; (2) negatively impacting a discretionary decision of immigration relief; and (3) causing a minor to be held in secure immigration detention.<sup>25</sup>

## Background

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It is well-established that adjudications of juvenile delinquency are not “convictions” for purposes of immigration law.<sup>26</sup> Therefore, juvenile adjudications do not trigger conviction-based grounds of inadmissibility or deportability. However, these adjudications can still trigger serious immigration consequences. Depending on their immigration status, non-citizen children in delinquency proceedings may still be subject to inadmissibility and/or deportability.

Additionally, minors who are convicted in adult court will generally be considered to have convictions under immigration law.<sup>27</sup> Due to this distinction, keeping a case in juvenile court as opposed to adult court is critically important for non-citizen children.

## Grounds of Inadmissibility

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Grounds of inadmissibility apply to immigrants who have never been lawfully admitted into the United States and lawful permanent residents returning from abroad in certain circumstances.<sup>28</sup> This category includes individuals who enter into the United States without authorization and are apprehended in the interior of the country, as well as individuals who are detained upon crossing the border.<sup>29</sup> This category therefore includes unaccompanied minors who have not obtained immigration relief. An immigrant considered “inadmissible” is not eligible for certain kinds of immigration relief, such as asylum status or adjustment to become a lawful permanent resident, unless they qualify for a waiver.<sup>30</sup>

## Grounds of Deportability

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Grounds of deportability apply to immigrants who have been lawfully admitted into the United States, but have since been found to have committed an act that renders them removable from the country.<sup>31</sup> Any non-U.S. citizen who has been lawfully admitted into the United States is subject to grounds of deportability—including juveniles who have asylum status, SIJS, student visas, or lawful permanent residence.

## Conduct-Based Grounds

While juveniles are not subject to conviction-based grounds for removal, juveniles are still subject to conduct-based grounds for removal. These conduct-based grounds cover a range of conduct including fraud, prostitution,<sup>32</sup> drug addiction, and drug trafficking.<sup>33</sup> The following chart, drawn from materials created by the Immigrant Legal Resources Center and Kids in Need of Defense, demonstrates how these different conduct-based grounds may impact a non-citizen child’s immigration status.<sup>34</sup>

Delinquency Disposition	Immigration Penalty	Immigration Waiver Available?
<b>Drug Trafficking:</b> Sale, possession for sale, cultivation, manufacture, distribution, delivery, or other drug trafficking related offense	<ul style="list-style-type: none"> <li>Inadmissible (when DHS/ICE only has “reason to believe” the individual participated in drug trafficking)</li> </ul>	No waivers, except for the S, T, or U-Visa
<b>Drug Abuse/Addiction:</b> Repeated drug findings, finding of abuse, addiction to drugs	<ul style="list-style-type: none"> <li>Inadmissible</li> <li>Deportable (drug addict, abuser)</li> </ul>	Waivers may be available
<b>Behavior showing a physical or mental condition that poses a current threat to self or others:</b> Suicide attempt, torture, mayhem, repeated sexual offenses against younger children (predator), perhaps repeated alcohol offenses (showing alcoholism)	<ul style="list-style-type: none"> <li>Inadmissible (mental disability posing threat to self or others)</li> </ul>	Waivers may be available
<b>False Claim to U.S. Citizenship:</b> Use of false documents and fraud offenses relating to false claim to citizenship	<ul style="list-style-type: none"> <li>Inadmissible</li> <li>Deportable (false claim to US citizenship)</li> </ul>	No waivers, except for the U-Visa and SIJS
<b>Prostitution</b> (for the prostitute or pimp, not the customer)	<ul style="list-style-type: none"> <li>Inadmissible</li> </ul>	Waivers may be available
<b>Violations of protective or “no-contact” orders</b> designed to prevent repeated harassment, credible threats of violence, or bodily injury	<ul style="list-style-type: none"> <li>Deportable (where court finds violation of domestic violence protective order designed to prevent repeated harassment, credible threats of violence or bodily injury)</li> </ul>	Waivers may be available

Of these conduct-based grounds, the most problematic in terms of immigration consequences for a non-citizen child is drug trafficking.<sup>35</sup> The language of the Immigration and Nationality Act (“INA”) provides that “[a]ny alien who the consular officer or the Attorney General knows or has reason to believe—(i) is or has been an illicit trafficker in any controlled substance . . . , or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . . is inadmissible.”<sup>36</sup> The “reason to believe” standard does not require a conviction or an adjudication, just “reasonable, substantial, and probative evidence” that an individual has engaged in drug trafficking.<sup>37</sup> Previous courts have considered juvenile adjudications related to drugs to constitute sufficient evidence to support a “reason to believe.”<sup>38</sup>

As indicated in the chart, there are no waivers available to avoid the ground of inadmissibility related to drug trafficking, except for the S, T, and U Visas. See “Chapter 10: Immigration Consequences of Delinquency and Crimes,” created by Kids in Need of Defense, for detailed descriptions of the waivers available for each conduct-based ground.

## Negative Impact on Discretionary Forms of Relief

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Even when a juvenile adjudication does not trigger a conduct-based ground of inadmissibility or deportability, it may negatively impact an immigration judge or officer’s determination of a discretionary form of immigration relief. U.S. Citizenship & Immigration Services (USCIS) and the immigration court often have broad discretion to deny immigration relief.<sup>39</sup> This discretion is applicable when juveniles affirmatively apply for certain kinds of immigration relief (such as lawful permanent residence or asylum status) with USCIS, as well as when juveniles are in deportation proceedings and seek relief from removal.<sup>40</sup>

Discretionary forms of relief require immigration officers or judges to make a determination, based on all available evidence, as to whether the individual merits the requested relief. Courts have held that immigration judges may consider juvenile adjudications in these determinations. In *Wallace v. Gonzales*, the Second Circuit stated “[b]ecause the purpose of adjustment of status is to provide worthy aliens with special relief, we see no reason to prevent an [Immigration Judge] or the [Board of Immigration Appeals] from considering an applicant’s anti-social conduct—whether leading to a conviction, a Youthful Offender Adjudication, or no legal judgment whatsoever—as an adverse factor in evaluating an application for discretionary relief.”<sup>41</sup>

Additionally, obtaining an expungement of a juvenile adjudication does not generally eliminate the potential immigration consequences. Applications for lawful status often include questions that will elicit information about delinquency adjudications. For example, the current asylum application requires applicants to answer the question: “Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?”<sup>42</sup> For youth hoping to adjust from asylum or Special Immigrant Juvenile Status (“SIJS”) to lawful permanent residence, the application includes questions about any arrests, charges, detention, citations, fines, or imprisonment for breaking any law.<sup>43</sup> These applications require applicants to disclose their prior involvement with the juvenile delinquency court, which may endanger the favorable exercise of discretion by immigration officials. It is possible, however, that state confidentiality laws may allow for arguments that some or all information and documents from the juvenile delinquency case are confidential and cannot be shared with immigration authorities.<sup>44</sup>

In addition to considering the immigration consequences of an adjudication of delinquency, judges should also consider what social science and neuroscience have revealed over the past few decades regarding juvenile culpability and how this has affected Supreme Court jurisprudence.

**See Appendix C for more information.**

## Recommended Resources

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- Immigrant Legal Resource Center, *Immigration Consequence of Juvenile Delinquency*, available at [https://www.ilrc.org/sites/default/files/resources/juvenile\\_delinquency\\_cheat\\_sheet\\_ilrc\\_jan\\_2018\\_update\\_0.pdf](https://www.ilrc.org/sites/default/files/resources/juvenile_delinquency_cheat_sheet_ilrc_jan_2018_update_0.pdf).
- Kids in Need of Defense, *Chapter 10: Immigration Consequences of Delinquency and Crimes*, available at <https://supportkind.org/wp-content/uploads/2015/04/Chapter-10-Immigration-Consequences-of-Delinquency-and-Crimes.pdf>.
- Rebecca Phipps, *Starting Over: The Immigration Consequences of Juvenile Delinquency and Rehabilitation*, 40 N.Y.U. REV. L. & SOC. CHANGE 515, 526 (2016).

# 8: CULTURAL CONSIDERATIONS

Newcomer immigrant youth carry with them unique and varied cultural characteristics. For many youth, cultural identity plays an important role in helping to build strong self-esteem and cultivate a positive sense of community. By maintaining a connection to their culture through traditions, language, behaviors, beliefs, and values, children may build both individual resilience and a community network that will provide critical support.

As noted within the context of trauma and resilience, cultural characteristics should always be considered when attempting to better understand youths' current behaviors and interactions, craft effective interventions, and avoid potential pitfalls.

## Juvenile Justice Involvement Generally

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In other countries, court or tribunal engagement is often considered a last resort for addressing a child's problems. Many other informal resources are utilized before even considering approaching the judicial system. This includes extended family, tribal leaders, religious leaders, and/or other important figures within the community. Consequently, some families have a hard time understanding why and how their child's problems have led to court involvement.

## Fear of Government Involvement

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In addition, fear and mistrust of government and law enforcement is commonplace in other countries where corruption and abuses of power at the state or national level are widespread. Contact with these systems is often negative and exposes families to further risk of trauma. As a result, these systems are often perceived as harmful, unhelpful, and something to be avoided. This historical trauma makes it hard for families to productively engage with judicial systems when in the United States. Furthermore, payment is a prerequisite for a child's detention in some countries, and families might be concerned that their child's court involvement will require them to pay a great deal of money. In fact, payment might be required in the United States as well, depending on the state in which the youth is being adjudicated.

## Mental Health Services Stigma

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Although a judge's referral for a psychological assessment and/or mental health treatment is often critical to a youth's positive prognosis, judges should also consider the ways in which culture can impact engagement in behavioral health services.

Culture influences the entire help-seeking pathway, from problem identification to utilization of assistance.<sup>45</sup> In many cultures, mental illness is considered a taboo topic.<sup>46</sup> Fear of stigma, loss of status, and discrimination can be a significant barrier to engagement with mental health services.<sup>47</sup> In addition, formal sources of support are often unfamiliar to individuals coming from cultures characterized by a collective social system where the family is traditionally seen as the primary resource for help and coping.<sup>48</sup> Family problems are regarded as internal issues that only concern the family, without involvement from external supports, particularly the judicial system.<sup>49</sup> Similarly, some cultures believe that the needs of the individual are superseded by the family's obligations, needs, aspirations, and social ties.<sup>50</sup> This belief might diminish the family's receptivity to their child's participation in behavioral health services (e.g., a child's formal mental health diagnosis might be seen as lowering the families' social standing).

## Different Cultural Norms Related to Parenting

Newcomer immigrant caregivers face the challenging task of parenting their children in a new cultural context, which can increase the caregivers' feelings of disempowerment. Parenting skills that were valued and practiced in their home countries might not be socially or legally acceptable in the United States. As such, caregivers must learn to navigate parenting in a new cultural context while trying to preserve their cultural identity and roots.

Newcomer immigrant caregivers might inadvertently increase the risk of newcomer immigrant youth "delinquency" by: (1) engaging in parenting practices that might unintentionally harm the youth; and/or (2) providing mixed or confused messaging about the need for youth structure and discipline. Some newcomer immigrant families utilize discipline strategies and maintain expectations of their children that are inconsistent with strategies and expectations deemed acceptable within the United States. However, most newcomer immigrant caregivers do not receive support from practitioners around adapting parenting skills upon arrival to the United States. When caregivers are unsure of how to respond to normative behavior problems, or to their child's survival coping, such problems may escalate or may be left for a system response (e.g., school systems, justice system, or child welfare system).

This uncertainty about parental role is particularly concerning for newcomer immigrant families because these caregivers have often been disenfranchised in other ways, such as the inability to work and support their family. In addition, due to language barriers, caregivers often rely on youth to translate and communicate on their behalf. This can result in role-reversal and parentification of youth, which might increase the risk of caregiver-youth conflict. Such conflict can exacerbate stress responses, reduce the support needed for resiliency, and ultimately increase the risk of system involvement.

### Musa

*Musa's step-father and mother were devout Muslims and expected Musa to connect with his Muslim faith in a similar manner. In his family's eyes, Musa was expected to pray at the Mosque five times a day, attend Islamic school six times a week in addition to regular American schooling, interpret for his parents, and take care of his younger siblings. When Musa first arrived in the U.S., he obeyed and listened to his mother, but began to struggle to meet all of her expectations when he noticed his American friends living differently.*

*Musa's mom didn't understand what was happening to her son and became frustrated when he started getting into trouble. She couldn't discipline him because this is traditionally the role of the father in Somali culture and Musa's step-father barely communicated with him. She didn't reach out to others for support, such as a counselor or therapist, because she regarded Musa's behavior as a private family issue. Musa's mom was convinced that the reason her son was getting into trouble was because he was "possessed" by spirits. As a result, she took him to various Imams and spiritual leaders in the community where they read the Qur'an, prayed, and provided "cultural support" to him. In order to avoid conflict with his family, Musa spent more and more time away from home.*

## Parental Legal Status

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For some caregivers, engaging with the court is perceived as a potential threat to their own immigration status. If caregivers are undocumented, they may be less likely to engage with law enforcement or the court as advocates for their child. Therefore, newcomer immigrant youth may be at risk for moving deeper into the justice system, including to detention, if caregivers are undocumented and/or if caregivers find the system to be unwieldy, threatening, or a source of further traumatization.

## Cultural Validity of Mental Health Evaluation Tools

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Unfortunately, there are few trauma-informed, evidence-based mental health services for newcomer immigrant youth. The measures used in a standard, court-ordered psychological evaluation are often not validated for use with the culture or population from which a newcomer youth comes.

Judges should still order psychological assessments or referrals for behavioral health services for newcomer immigrant youth. However, assessment results might need to be interpreted with attention to an instrument's validity. In addition, referrals must take into account not only the extent to which recommended behavioral health services are trauma-informed, but also the extent to which they are culturally responsive.

### Recommended Resources

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- B. Heidi Ellis et al., *New Directions in Refugee Youth Mental Health Services: Overcoming Barriers to Engagement*, 4 J. CHILD & ADOLESCENT TRAUMA 69 (2011).
- Deborah L. Scuglik et al., *When the Poetry No Longer Rhymes: Mental Health Issues Among Somali Immigrants in the USA*, 44 TRANSCULTURAL PSYCHIATRY 581 (2007).
- Ana Mari Cauce et al., *Cultural and Contextual Influences in Mental Health Help Seeking: A Focus on Ethnic Minority Youth*, 70 J. CONSULTING & CLINICAL PSYCHOL. 44 (2002).

# 9: STRENGTHENING PROTECTIVE FACTORS & SUPPORTING RESILIENCE

Newcomer immigrant youth and families demonstrate profound strength and resilience in their ability to cope with and adapt to what are often completely unfamiliar environments in resettlement. Recognizing and building upon the protective factors already present in a young person's life may be particularly important for enabling youth to overcome survival coping and thereby improve outcomes among juvenile justice-involved newcomer immigrant youth.

## Background on Resilience

At its core, resilience entails the positive adjustment of individuals under conditions of significant adversity. Resiliency is developed through the influence of protective factors, which offset the influence of risk factors. Protective factors can be classified as either:

**Internal** | E.g., an individual's health, intellectual capacity, self-esteem, culture, and personality.

**External** | E.g., an individual's family, school, community.

Both types of factors can have a significant, positive impact on an individual's vulnerability to risk.

Studies have uncovered numerous protective processes that contribute to resilient outcomes for trauma-exposed children and families.<sup>51</sup> However, few studies explicitly focus on investigating protective factors among newcomer immigrant youth.<sup>52</sup>

For the general population of youth involved with the juvenile justice system, internal protective factors include initiative, high academic motivation, positive self-esteem, creativity, humor, hobbies/interests, positive outlook, and emotion regulation.<sup>53</sup>

External protective factors are abundant, reflecting the fact that children are nested within multiple systems (e.g., families, neighborhood, schools, etc.) that present myriad opportunities for positive intervention. For example:

Setting	Examples of External Protective Factors
Family	<ul style="list-style-type: none"><li>• Stable and secure relationships with caregivers</li><li>• Parental monitoring</li><li>• Family expectations of prosocial behavior</li><li>• Family involvement in a religious or spiritual practice</li><li>• Higher parent education</li><li>• Consistent parental employment</li></ul>
Community	<ul style="list-style-type: none"><li>• Relationships with supportive adults</li><li>• Positive peer relationships</li><li>• Access to healthcare and social services</li><li>• Neighborhood cohesion, and adequate housing</li></ul>
School	<ul style="list-style-type: none"><li>• Quality education</li><li>• Effective academic instruction</li><li>• School-wide behavior management</li><li>• Supportive leadership</li><li>• Dedicated and collegial staff</li></ul>

There are three themes that tend to define external protective factors across all systems: (1) caring relationships, (2) positive and high expectations, and (3) opportunities for meaningful participation.<sup>54</sup>

## Resilience in Newcomer Immigrant Youth

For newcomer immigrant youth and families, the sparse literature available suggests that similar internal and external protective factors are at play in promoting resiliency. However, it is critical for judges to consider cultural context in identifying risk/protective factors and determining which domains necessitate intervention. For example, the definitions of a “stable and secure relationship,” “parental monitoring,” and “higher parent education” are all inherently culturally informed. In addition, the emphasis on independence and initiative is strongly revered in individualistic cultures but not collectivistic ones.

The literature available highlights a number of unique protective factors that contribute to resilient outcomes for newcomer youth and families. These protective factors may include:

- Language acquisition for children who acquire new language skills quickly;
- Maintenance of cultural values and practice;
- Connectedness to prosocial organizations within one’s resettlement community;
- Social support accessed through ethnic communities or other community-based organizations;
- Access to religious institutions; and
- Safety and sense of belonging within the neighborhood and school context.

### Frida

*As Frida’s time in secure confinement continued, she felt herself withdrawing further and further. When she was allowed to use the phone, Frida called her mother in El Salvador, who encouraged her to stay positive and try to behave well.*

*While Frida had enjoyed going to school in El Salvador, the juvenile hall only offered a few hours of schooling each day and she had trouble following the teacher due to her extremely limited English.*

*To pass the time in class, Frida focused on writing poetry in Spanish about her family. She found that this helped her to process her emotions and mitigate her anxiety and depression.*

### Recommended Resources

- Mina Fazel et al., *Mental Health of Displaced and Refugee Children Resettled in High-Income Countries: Risk and Protective Factors*, 379 *THE LANCET* 266 (2012).
- Maryam Kia-Keating & B. Heidi Ellis, *Belonging and Connection to School in Resettlement: Young Refugees, School Belonging, and Psychosocial Adjustment*, 12 *CLINICAL CHILD PSYCHOL. & PSYCHIATRY* 29 (2007).
- Theresa Stichick Betancourt & Kashif Tanveer, *The Mental Health of Children Affected by Armed Conflict: Protective Processes and Pathways to Resilience*, 20 *INT’L REV. PSYCHIATRY* 317 (2008).
- Bonnie E. Carlson et al., *A Risk and Resilience Perspective on Unaccompanied Refugee Minors*, 57 *SOC. WORK* 259 (2012).

# 10: WHAT JUDGES CAN DO

Juvenile court judges have a unique role in the lives of newcomer immigrant youth involved in the juvenile justice system. By taking a trauma-informed approach, judges have the potential to intervene in the continuum of trauma experienced by these youth and activate the potential that they have to heal and thrive. Judges can begin by taking the following steps:

- 1 Ask yourself the right questions;
- 2 Support the youth in strengthening protective factors and promoting resilience;
- 3 Order trauma-informed and culturally relevant services;
- 4 Take steps to increase the youth's engagement with the court process;
- 5 Increase the capacity of courts to serve immigrant children and families.

## 1 Ask yourself questions that enable you to make trauma-informed, culturally-sensitive decisions:

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- “When formulating an impression of this youth, have I taken into account how she/he has had to cope to survive various forms of trauma experienced in the home country, en route to US, and once arrived?”
- “Have I considered the extent to which resettlement, acculturation, and isolation stressors might be contributing to the youth's involvement with the juvenile justice system?”
- “Have I taken into account cultural factors that might be impacting the caregiver's involvement in services?”
- “Have I considered the extent to which ongoing traumatic exposure, traumatic stress, and survival coping are playing a role in the youth's behavior?”
- “Have I sufficiently considered the trauma reminders (which are likely to trigger more survival coping) that may occur in the setting(s) in which I am considering placing this youth?”
- “Have I considered placements and services that will help this youth overcome traumatic stress reactions and relinquish survival coping strategies?”
- “Have I considered the impact that my decision may have on placing the youth at risk for further trauma or for exacerbating her/his survival coping?”
- “Have I considered the legal ramifications of my decisions on this youth's long-term prospects for immigration relief?”

## **2 Support the youth in strengthening protective factors and supporting resilience:**

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- Make efforts to identify the positive characteristics/abilities and relationships/supports in a youth's life;
- Point out the youth's positive characteristics and abilities, and make efforts to explain how developing those resilience factors will facilitate her/his ability to heal and thrive;
- Consider how the youth's positive characteristics and resources within his/her family, peer group, school, and community might be harnessed to strengthen the youth's resilience; and
- Consider how you can be a resilience resource for each youth by affirming their positive characteristics and cultural connections;
- Encouraging youth to use their strengths to achieve their goals and overcome survival coping.

## **3 Order trauma-informed and culturally relevant services:**

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- When including mental health services as part of an order, make every effort to specify that those services be delivered by a trauma-informed mental health professional and include trauma-specific, evidence-based treatments in the community that take into account the child's caregivers. Such treatments should be able to help the youth understand post-traumatic stress reactions, and how they can draw on their resilience resources to overcome survival coping.
  - Consider referrals to health and behavioral health services that specifically screen and assess for post-traumatic stress reactions and trauma history, and provide evidence-based treatments for PTSD.
- Make every effort to keep youth with their families and in their communities. Rule out placements and referrals that are likely to exacerbate the youth's post-traumatic stress reactions and trigger survival coping by causing further separation from family.
- If temporary out of home placement is necessary, consider the least restrictive alternative that supports resilience and does not re-traumatize or trigger post-traumatic stress reactions and survival coping for the youth.
- Consider declining to order transfers to adult criminal court or facilities where youth are at high risk for re-traumatization.

#### **4 Take steps to increase the youth's engagement with the court process:**

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- Clearly explain to the youth at each hearing what the purpose of the hearing is and what to expect. Provide an overview of what has already been decided in previous hearings and explain what is likely to come next at subsequent hearings.
- Inquire about whether the services ordered are actually being provided, and if so, whether they meet the needs of the youth. Also consider whether modifications to the order may be required to support the best interests of the child.
- Demonstrate your commitment to supporting the youth's positive efforts to rehabilitate by noting and commenting affirmatively in subsequent court appearances and evaluations about evidence that the youth is:
  - Drawing on and strengthening her/his positive characteristics and abilities;
  - Engaging responsibly in healthy and supportive relationships;
  - Making progress towards goals that are meaningful to the youth and family (e.g., getting or keeping a job, participating in family activities and cultural/religious activities/events, consistently attending school);
  - Acting so as to honor her/his and the family's/community's cultural values;
  - Making progress in services/treatments designed to overcome post-traumatic stress reactions; and
  - Identifying when she/he is relying on old survival coping tactics; replacing these tactics with strategies that support the well-being of the youth.

#### **5 Increase the capacity of courts to serve immigrant children and families:**

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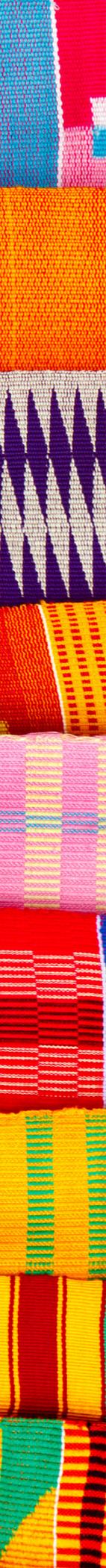
- Consider pulling together a committee focused on immigrant children that can evaluate:
  - The most effective and efficient way to increase the knowledge base of relevant stakeholders in the community that serve newcomer immigrant youth;
  - What services may be needed in the community that do not currently exist; and
  - How the relevant stakeholders can collaborate more effectively to serve newcomer immigrant youth.

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When judges understand survival coping in the face of past and ongoing traumatic stress, they can play an instrumental role in shifting the trajectory of a youth's life by making trauma-informed decisions. Using the information provided throughout this Primer, judges can arm themselves with critical context for understanding the distinctive experiences of newcomer immigrant youth.

We appreciate the time you took to review this resource. Moreover, we thank you for the important and challenging work you do every day to improve the lives of the children that appear in your courtroom.

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# APPENDIX A: UNIQUE EXPERIENCES OF UNACCOMPANIED MINORS

Although newcomer immigrant youth have many similar experiences, unaccompanied children face unique challenges by virtue of being separated from their families, traveling without their primary caregivers, being subjected to detention by the federal government, and having to acculturate while transitioning from being on their own to being with a caregiver.

## Family Separation

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Research shows that separation from parents is a grave risk factor for the psychological well-being of children and adolescents faced with multiple and cumulative stressors or living in adverse situations.<sup>55</sup>

For unaccompanied children, the absence of their parents or adult caregiver means that they are more likely to experience toxic stress and its consequent short and long-term effects. A toxic stress response can occur when a child experiences strong, frequent, and/or prolonged adversity without adequate adult support.<sup>56</sup> By increasing the level of stress hormones and negatively impacting the development of the brain, toxic stress is associated with increased rates of mental health issues, risky health behaviors, and physical conditions such as diabetes, cancer, PTSD, and heart disease.<sup>57</sup>

Unaccompanied children and adolescents are five times more likely than accompanied refugee minors to exhibit severe symptoms of anxiety, depression, and post-traumatic stress.<sup>58</sup> Without the presence of their parents or other trusted adults, children lose the protection and social support that helps them cope with the psychological effects of trauma and distress.<sup>59</sup> The absence of parents or a trusted adult is felt at every stage of a minor's migration—during the trip to the United States, apprehension at the border or in the interior, detention in government custody, and release to a placement (or deportation).

## Migration

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Children attempting to flee to the United States face long and perilous trips without their parents or adult caregivers. Often crossing several borders, children travel hundreds of miles by foot, by bus, or atop dangerous freight trains. They endure weeks or months without sufficient food or medical care, without safe sleeping spaces, a constant fear of discovery, and a complete dependency on others for survival. Studies show that the presence of parents and other family members during migration may reduce the extent to which children perceive these experiences as terrifying or traumatic.<sup>60</sup> Without this family “buffer,” children are left to cope on their own.

The majority of children fleeing to the United States have already experienced significant and protracted violence in their home countries including: physical attacks, abuse, kidnappings, and extortions from drug cartels and armed gangs.<sup>61</sup> Separation from parents places unaccompanied children at higher risks of experiencing additional traumatic events, such as physical or sexual assault, during the trip to the United States because of the absence of their parents' protection.<sup>62</sup> The most recent estimates indicate that between 60% and 80% of women and girls crossing into the United States from Mexico are raped during their journey.<sup>63</sup> These traumatic events compound children's previous traumatic experiences in their home countries.

## Detention

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The dangers and risks facing unaccompanied children do not end when they reach the United States. Once detained by Customs and Border Patrol (“CBP”), children are supposed to be screened and interviewed within 48 hours. Without parents or a trusted adult to help them throughout the screening process, few, if any, unaccompanied children understand their legal options. This may negatively impact their ability to obtain immigration relief, as they may choose to voluntarily depart the country instead of seeking asylum, may not know the pertinent information to provide in a credible fear interview, and may inadvertently share information that undermines their asylum claims. Children’s interviews are conducted by CBP officers who are not trained to detect or provide support for signs of abuse or trauma.<sup>64</sup> During these interviews, children may recount stories of the trauma and violence that they experienced in their home countries. Without subsequent familial or mental health support, the screening interviews may serve to re-traumatize these children. There have also been reports of widespread verbal, physical, and sexual abuse of minors by CBP agents during the detention and screening process.<sup>65</sup>

Once transferred to the custody of the Office of Refugee Resettlement (“ORR”), children may be detained for months or even years while they wait to be released to an adult sponsor. Warehoused in facilities ranging from shelters to juvenile halls, these children are confronted by language barriers, unfamiliar rules, and new cultural expectations. Their detachment from parents and family is further intensified by restricted communications; children are often limited to two 10-minute phone calls per week. Studies of detained unaccompanied immigrant children in the U.S. have found high rates of PTSD, anxiety, depression, suicidal ideation, and other behavioral problems.<sup>66</sup> Experts agree that even brief detention can cause psychological trauma and induce long-term mental health problems for children.<sup>67</sup> In addition to the psychological stress of being detained, children are often not kept informed about if and when they will be released to their families.

## Acculturation

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As mentioned earlier, acculturative stress occurs as children are thrust into an unfamiliar culture and society, different social structures, and new role patterns. For unaccompanied children, this may present differently than for immigrant children that arrive in the U.S. with their primary caregivers. Indeed, for this particular group, the migration experience “means the loss of the familiar: home, language, belongings, cultural milieu, social networks and social status—without the support of an intact family to buffer against those losses.”<sup>68</sup> Unaccompanied children also face a new set of challenges when they are released to adult caregivers who may or may not be the primary caregivers that raised them.

Due to prolonged separation, children may experience a lack of familiarity and connection with their caregivers. Having been accustomed to independently adapting and surviving in life-threatening circumstances, children may experience difficulty in transitioning back into a typical child-adult relationship. Research shows that the longer the separation they experienced, the less likely adolescents reported being able “to identify with their parents or being willing to conform to their rules at the time of reunification.”<sup>69</sup> Unaccompanied children who are subsequently reunited with their parents may feel competitive with siblings born in the United States for their parents’ affection and attention.<sup>70</sup> Children may also feel disappointed in how their reunions with their caregivers turn out, as compared to their fantasies and dreams about life in the United States.<sup>71</sup> Throughout this transition period, children are also subject to constant uncertainty over their immigration cases and potential deportation back to their home countries.

At the same time that children are being forced to integrate into the host society, they are also experiencing the disintegration and loss of the society that has been left behind.<sup>72</sup> This acculturation process can evoke acculturative stress, which may trigger depression, anxiety, feelings of marginalization and alienation, increased psychosomatic symptoms, and identity confusion.<sup>73</sup>

## APPENDIX B: SUPREME COURT JURISPRUDENCE

Over the past few decades, the Supreme Court has increasingly relied on social science and neuroscience research to support findings that juveniles are less culpable than adults and, therefore, entitled to different treatment in sentencing. In 2005, the Supreme Court held that the Eighth Amendment prohibits the death penalty for all juvenile offenders under the age of 18 in *Roper v. Simmons*.<sup>74</sup> Five years later, the Court held that the Eighth Amendment also prohibits a sentence of life without the possibility of parole for a child who committed a nonhomicide offense.<sup>75</sup> Citing social science research, these cases established that “children are constitutionally different from adults for purposes of sentencing.”<sup>76</sup> In *Graham*, the Court noted that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,” including “parts of the brain involved in behavior control.”<sup>77</sup>

In *Miller v. Alabama*, the Court built on *Roper* and *Graham* – noting that “[b]ecause juveniles have diminished culpability and greater prospects for reform . . . ‘they are less deserving of the most severe punishments.’”<sup>78</sup> The Court stated three significant differences that distinguished youth from adults for culpability purposes:

First, children have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk-taking. Second, children “are more vulnerable . . . to negative influences and outside pressures,” including from their family and peers; they have limited “contro[l] over their own environment” and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child’s character is not as “well formed” as an adult’s; his traits are “less fixed” and his actions less likely to be “evidence of irretrievabl[e] deprav[ity].”<sup>79</sup>

The Court emphasized that these “distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, *even when they commit terrible crimes*.”<sup>80</sup> Furthermore, the Court in *Miller* noted that the evidence presented “indicate[d] that the science and social science supporting *Roper*’s and *Graham*’s conclusions have become even stronger.”<sup>81</sup>

# APPENDIX C:

## ADOLESCENT BRAIN DEVELOPMENT

Advancements in developmental psychology and neuroscience continue to strengthen the Court’s conclusions in *Roper*, *Graham*, and *Miller*.<sup>82</sup> Research indicates that brain development continues throughout childhood, adolescence, and well into early adulthood.<sup>83</sup> Studies show that adolescents’ brains work differently from adults’ brains when they solve problems, make decisions, or confront danger. The amygdala, the region of the brain responsible for emotional responses such as fear and anxiety, develops early in life. However, the frontal cortex, the region of the brain responsible for executive functions such as planning, reasoning, and decision-making, develops much later.<sup>84</sup>

Research has identified several areas of significant change in brain development during adolescence. First, “reward-related regions of the brain and their neurocircuitry undergo particularly marked developmental changes,”<sup>85</sup> correlating with a “spike in risk-taking, reward-seeking, and peer-influenced behaviors among adolescents.”<sup>86</sup> Second, the brain eliminates unused synapses in a process called “synaptic pruning,” which improves neural connections throughout different regions of the brain and improves logical reasoning.<sup>87</sup> Third, the brain insulates neural pathways with a fatty tissue called myelin. This process, “myelination,” accelerates the transmission of neural signals and helps the different regions of the brain to communicate more effectively.<sup>88</sup> This “improved connectivity within the prefrontal cortex is important for higher order functions subserved by multiple prefrontal areas, including many aspects of executive function, such as response inhibition, planning ahead, weighing risks and rewards, and the simultaneous consideration of multiple sources of information.”<sup>89</sup> Finally, there is improved connection between the frontal cortex and the limbic system, which allows for better self-control and self-regulation.<sup>90</sup>

Viewed together, these changes explain why children are more vulnerable to engaging in risky behavior during adolescence. While sensation-seeking is high, self-regulation is still immature and developing over time. The brain regions that control “many aspects of social and emotional maturity, such as impulse control, risk avoidance, planning ahead, and coordination of emotion and cognition,” mature and develop throughout adolescence and early adulthood.<sup>91</sup> As discussed earlier, trauma can further impair these brain development processes.

### Recommended Resources

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- Brief for American Psychological Association et al. as *Amici Curiae*, *Miller v. Alabama*, 567 U.S. 460 (2012), available at <https://www.apa.org/about/offices/ogc/amicus/miller-hobbs.pdf>.
- Mariam Arain et al., *Maturation of the adolescent brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 452 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/pdf/ndt-9-449.pdf>.
- American Academy of Child & Adolescent Psychiatry, *Teen Brain: Behavior, Problem Solving, and Decision-Making*, available at [https://www.aacap.org/aacap/Families\\_and\\_Youth/Facts\\_for\\_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx](https://www.aacap.org/aacap/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx).

# APPENDIX D: GLOSSARY OF TRAUMA-RELATED TERMS

Term <sup>92</sup>	Definition
<b>Body's Alarm System</b>	The part of the brain that scans the environment for danger and prepares us to act. When triggered, the alarm system sets off a cascade of immediate physiological changes that prepare one to fight-flight-freeze in order to stay safe. This is a complex response that involves multiple areas of the brain, including the sympathetic nervous system, the prefrontal cortex, and the amygdala.
<b>Complex Trauma</b>	While not an official diagnosis, this term refers to exposure to multiple or prolonged forms of traumatic experiences and the wide-ranging, long-term impact of this exposure. Complex trauma disrupts normal child development and may lead to difficulties with attachment (e.g., ability to form trusting, meaningful relationships), managing emotions and behavior, and executive functioning (e.g., ability to focus attention, solve problems, plan, or pursue long-term goals).
<b>Posttraumatic Stress Disorder</b>	One of several mental health disorders often associated with trauma exposure. PTSD is characterized by problems in 4 areas: Re-Experiencing (e.g., flashbacks or nightmares of traumatic event); Avoidance of thoughts or reminders of past trauma; Negative Changes in Thought or Mood (e.g., persistent negative emotions, persistent or exaggerated negative beliefs about oneself, others, or the world); and Hyperarousal (angry outbursts, constantly "on guard" against potential threats). Some people may also experience Dissociation.
<b>Resilience</b>	Refers to the ability to adapt and function effectively despite exposure to trauma or other stressful life events. Even youth and families who face extraordinary stresses have the capacity for resilience.
<b>Survival Coping</b>	Refers to the management of stressful situations and responses to trauma reminders following a traumatic experience. Specifically, this involves coping strategies designed to relieve the anxiety brought on by feeling "victimized" while attempting to protect oneself. It includes behaviors such as hypervigilance (e.g., distrustful/on edge), aggression, hopelessness masked as indifference, and self-destructive behaviors (e.g., substance use, self-harm, eating disorders, unsafe sex). When unaddressed, it can become a chronic and default style of engaging others and addressing problems.
<b>Trauma</b>	Exposure to actual or threatened death, serious injury, or violence in one of the following ways: (1) Directly experienced; (2) Witnessed; (3) Learning that a loved one experienced trauma; or (4) Repeated or extreme exposure to aversive details of traumatic events (e.g., attorneys working with trauma survivors). Traumatic events can include, but are not limited to, physical abuse, sexual abuse, psychological abuse, loss of a loved one, exposure to domestic violence, exposure to community violence, sexual exploitation, and exposure to war or natural disaster.
<b>Trigger</b>	A reminder of a past traumatic event that sets off the body's alarm system, making people feel as if they are once again in imminent danger. A trigger can be anything connected to a traumatic event, including an event, situation, place, physical sensation, or even people. It need not be inherently threatening.

# APPENDIX E:

## GLOSSARY OF IMMIGRATION-RELATED TERMS

Term	Definition
<b>U.S. Citizenship and Immigration Services (USCIS)<sup>93</sup></b>	USCIS is an agency of the U.S. Department of Homeland Security (DHS) that oversees the country’s naturalization and immigration systems. USCIS is responsible for processing various immigrant petitions – including asylum and refugee applications, naturalization petitions, and SIJS and VAWA petitions – as well as making adjudicative decisions at service centers. USCIS service centers are located throughout the country.
<b>Office of Refugee Resettlement (ORR)<sup>94</sup></b>	ORR is a department within the U.S. Department of Health and Human Services, Administration for Children & Families. ORR is tasked with providing assistance and support to refugees, asylees, and unaccompanied children. If unaccompanied children are apprehended by Department of Homeland Security immigration officials, they must be transferred to ORR custody. ORR is required to place these children in the least restrictive setting possible while in federal custody.
<b>Removal (Deportation) Proceedings<sup>95</sup></b>	The process whereby an immigration judge determines whether an immigrant is removable from the United States and his or her eligibility for relief under the Immigration and Nationality Act (“INA”). If an immigrant is deported, they could be barred from returning to the U.S. for many years.
<b>Undocumented Immigrant</b>	A person who comes to live in a host country without legal documentation. Undocumented immigrants may have entered the United States without inspection and authorization from the U.S. government, or may have entered lawfully using a visa that has since expired or been revoked.
<b>Lawful Permanent Resident<sup>96</sup></b>  <b>(LPR, or “Green Card Holder”)</b>	A non-citizen who is lawfully authorized to live permanently in the United States. Lawful permanent residents are still citizens in their home countries, but possess many of the same rights as U.S. citizens. However, they cannot vote, and until gaining their U.S. citizen status, remain at risk of deportation if they violate certain federal or state laws.
<b>Adjustment of Status<sup>97</sup></b>	Adjustment of status is the process that people may use to apply for lawful permanent resident status while present in the United States. This means that people may obtain their LPR status without needing to return to their home country to complete visa processing.
<b>Naturalized U.S. Citizen<sup>98</sup></b>	Naturalization is the process through which a foreign citizen or national becomes a U.S. citizen. There are a few different pathways to citizenship. Generally, an immigrant must first be a lawful permanent resident for five years and demonstrate “good moral character” before applying for naturalization. In some cases, lawful permanent resident children can become citizens automatically if their parents naturalize before the child turns 18.

# ENDNOTES

1. See Kristine Buffington, MSW et al., Nat'l Council of Juvenile & Family Ct. Judges, *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency* (2010), available at [http://www.ncjfcj.org/sites/default/files/trauma%20bulletin\\_1.pdf](http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf).
2. Donald J. Hernandez et al., *Children in Immigrant Families: Looking to America's Future*, 22 SOC. POL'Y REP. 3 (2008).
3. *Id.*; Donald J. Hernandez & Wendy D. Cervantes, First Focus, *Children in Immigrant Families: Ensuring Opportunity for Every Child in America* (2011), available at <https://firstfocus.org/wp-content/uploads/2014/06/Children-in-Immigrant-Families-Ensuring-Opportunity-for-Every-Child-in-America.pdf>.
4. Randy Capps et al., Urban Institute, *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families* (2015), at 7, available at <https://www.urban.org/sites/default/files/alfresco/publication-exhibits/2000405/2000405-Implications-of-Immigration-Enforcement-Activities-for-the-Well-Being-of-Children-in-Immigrant-Families.pdf> (citing Jeffrey S. Passel et al., *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled*, PEW RESEARCH CENTER (Sept. 2014) available at <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/>.)
5. Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42) (2012).
6. See U.S. Citizenship and Immigration Services, *Form I-589, Application for Asylum and Withholding of Removal*, available at [https://www.uscis.gov/system/files\\_force/files/form/i-589.pdf?download=1](https://www.uscis.gov/system/files_force/files/form/i-589.pdf?download=1).
7. 6 U.S.C. § 279(g)(2) (2012).
8. Special Immigrant Juvenile Status ("SIJS") is a form of immigration relief for children who cannot be reunified with one or both parents due to abuse, neglect, or abandonment and it is not in their best interest to return to their home country. Children must be under 21, unmarried, and a juvenile court is required to make specific findings before children can apply. See INA, 8 U.S.C. § 1101(a)(27)(J) (2012); 8 CFR § 204.11 (2012).
9. T Nonimmigrant Status ("T-Visa") is a temporary form of immigration relief that allows victims of human trafficking to remain in the United States for up to four years if they have assisted law enforcement in an investigation or prosecution of human trafficking. Certain T-Visa recipients may be able to adjust their status and become lawful permanent residents. Certain family members, such as children under 18, may be eligible to become derivative U-Visa recipients if the primary petitioner's application is approved. See INA, 8 U.S.C. § 1101 (a)(15)(T) (2012); 8 C.F.R § 214.11(p) (2012).
10. U Nonimmigrant Status ("U-Visa") is a form of immigration relief for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Certain U-Visa recipients may be able to adjust their status and become lawful permanent residents. Certain family members, such as children under 18, may be eligible to become derivative U-Visa recipients if the primary petitioner's application is approved. See INA, 8 U.S.C. § 1101(a)(15)(U) (2012); 8 C.F.R § 245.24(b)(2)(i), (ii) (2012).
11. For information on core stressors in resettlement, see generally Theresa S. Betancourt et al., *We Left One War and Came to Another: Resource Loss, Acculturative Stress, and Caregiver-Child Relationships in Somali Refugee Families*, 21 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 114 (2015); B. Heidi Ellis et al., *Relation of Psychosocial Factors to Diverse Behaviors and Attitudes Among Somali Refugees*, 86 AM. J. ORTHOPSYCHIATRY 393 (2015); Alisa K. Lincoln et al., *The Impact of Acculturation Style and Acculturative Hassles on the Mental Health of Somali Adolescent Refugees*, 18 J. IMMIGRANT & MINORITY HEALTH 771 (2016); Diana D. Bennett & Patricia K. Kerig, *Investigating the Construct of Trauma-Related Acquired Callousness Among Delinquent Youth: Differences in Emotion Processing*, 27 J. TRAUMATIC STRESS 415 (2014).
12. See Julian D. Ford, *Treatment Implications of Altered Neurobiology, Affect Regulation and Information Processing Following Child Maltreatment*, 35 PSYCHIATRIC ANNALS 410 (2005).
13. See, e.g., Leslie D. Leve & Patricia Chamberlain, *Association with Delinquent Peers: Intervention Effects for Youth in the Juvenile Justice System*, 33 J. ABNORMAL CHILD PSYCHOL. 339 (2005).
14. Ilse Derluyn et al., *Post-traumatic Stress in Former Ugandan Child Soldiers*, 13 LANCET 861 (2004).

15. See Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5601 (1974); U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice & Delinquency Prevention, *Model Programs Guide*, available at <https://www.ojjdp.gov/mpg/>; U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice & Delinquency Prevention, *Report of the Attorney General's National Task Force on Children Exposed to Violence* (2012), available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.
16. See Barry Holman & Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers\\_of\\_detention.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf).
17. National Research Council, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH*, Washington, DC: The National Academies Press (2013).
18. *Id.* at 102.
19. See, e.g., Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems Into Effective Educational Systems – A Study of Juvenile Justice Schools in the South and the Nation* (2014), available at <https://www.southerneducation.org/getattachment/cf39e156-5992-4050-bd03-fb34cc5bf7e3/Just-Learning.aspx>; Justice Center, Council of State Governments, *Locked Out: Improving Educational Outcomes for Incarcerated Youth* (2015), available at <https://csgjusticecenter.org/youth/publications/locked-out-improving-educational-and-vocational-outcomes-for-incarcerated-youth/>; Legal Center for Youth Justice and Education, *Blueprint for Change: Education Success for Youth in the Juvenile Justice System* (2017), available at <https://www.jjeducationblueprint.org/> (providing resources for advocates to promote the educational success of youth in the juvenile justice system in their jurisdiction).
20. See Annie E. Casey Foundation, *No Place for Kids* (2011), available at <https://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>; Annie E. Casey Foundation, *Maltreatment of Youth in U.S. Juvenile Corrections Facilities* (2015), available at <https://www.aecf.org/m/resourcedoc/aecf-maltreatmentyouthuscorrections-2015.pdf>.
21. Andrea J. Sedlak & Karla S. MacPherson, U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice & Delinquency Prevention, *Youth's Needs and Services: Findings from the Survey of Youth in Residential Placement*, JUVENILE JUSTICE BULLETIN (Apr. 2010), at 8, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/227728.pdf>.
22. *Id.* at 9.
23. Lindsay M. Hayes, U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice & Delinquency Prevention, *Suicide Prevention in Juvenile Correction and Detention Facilities* (Mar. 1999), available at <https://www.ncjrs.gov/pdffiles1/Digitization/182764NCJRS.pdf>.
24. See American Academy of Pediatrics, *Studies Highlight Long Term Health Harms of Juvenile Justice System* (2017), available at <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/Studies-Highlight-Long-Term-Health-Harms-of-Juvenile-Justice-System.aspx> (citing Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, 139 PEDIATRICS 1 (2016), available at <http://pediatrics.aappublications.org/content/pediatrics/139/2/e20162624.full.pdf>).
25. Rebecca Phipps, *Starting Over: The Immigration Consequences of Juvenile Delinquency and Rehabilitation*, 40 N.Y.U. REV. L. & SOC. CHANGE 515, 526 (2016); see also Theo Liebmann, *Adverse Consequences and Constructive Opportunities for Immigrant Youth in Delinquency Proceedings*, 88 TEMP. L. REV. 869 (2016).
26. See *In re Devison*, 22 I. & N. Dec. 1362, 1373 (B.I.A. 2000) (citing *Matter of C.M.*, 5 I. & N. Dec. 27 (B.I.A. 1953)).
27. See Elizabeth M. Frankel, *Detention and Deportation with Inadequate Due Process: The Devastating Consequences of Juvenile Involvement with Law Enforcement for Immigrant Youth*, 3 DUKE F. L. & SOC. CHANGE 63, 94 (2011); *Garcia v. INS*, 239 F.3d 409, 413-14 (1st Cir. 2001) (“Once adjudicated by the state court, as either a juvenile or an adult, we are bound by that determination.”).
28. See INA, 8 U.S.C. § 1182(a) (2012); see also Immigrant Legal Resource Center, *Special Immigrant Juvenile Status* (2018), available at [https://www.ilrc.org/sites/default/files/sample-pdf/sijs-5th-2018-ch\\_01.pdf](https://www.ilrc.org/sites/default/files/sample-pdf/sijs-5th-2018-ch_01.pdf) (“While this area is complex, and each case must be individually researched and analyzed, there is a fairly simple way to visualize which grounds might apply in which circumstances. A noncitizen who wants to get something from the immigration authorities generally must be admissible. For example, if children want to be admitted at the border or obtain legal status, i.e., a green card, they generally will need to overcome the grounds of inadmissibility. *Issues about the grounds of inadmissibility are usually what will affect undocumented children and youth the most. By contrast, a noncitizen child or youth who has some lawful immigration status and is trying not to lose it will immediately face the grounds of deportation.*”) (emphasis in original).

29. See INA, 8 U.S.C. § 1325(a).
30. See INA, 8 U.S.C. § 1182(a) (listing the grounds of inadmissibility and waiver provisions).
31. See INA, 8 U.S.C. § 1227(a) (2012) (listing the grounds of deportability).
32. This list of conduct-based grounds of removal and inadmissibility is included in the Immigration and Nationality Act, which specifically uses the term “prostitution.” For that reason, we have used the term “prostitution” in this primer. However, under federal law, any commercial sex act with a minor under age 18 is defined as human trafficking, regardless of whether there is force, fraud or coercion. Trafficking Victims Protection Act, 22 U.S.C. § 7102 (2000). Therefore, the authors strongly discourage the use of the terms “prostitution” or “prostitute” as applied to children and youth because they imply consent and criminality where neither exists. Readers should note that approximately half of the states still permit the arrest and prosecution of children for prostitution and prostitution-related offenses. See Shared Hope International, Center for Justice & Advocacy, *National State Law Survey: Non-Criminalization of Juvenile Sex Trafficking Victims* (2018), available at [http://sharedhope.org/PICframe8/statesurveycharts/NSL\\_Survey\\_Non-CriminalizationofJuvenileSexTraffickingVictims.pdf](http://sharedhope.org/PICframe8/statesurveycharts/NSL_Survey_Non-CriminalizationofJuvenileSexTraffickingVictims.pdf); Shared Hope International, *Non-Criminalization of Juvenile Sex Trafficking Victims: JuST Response Policy Paper* (Jan. 2016), available at <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf>. In states that no longer criminalize minors for their exploitation, judges may still encounter children and youth with past criminal charges related to their exploitation. All young people who are sexually exploited and trafficked are victims and survivors, and should be treated as such.
33. For a list of all conduct-based grounds of removal and inadmissibility, see INA, 8 U.S.C. § 1182, 1227; Phipps, *supra* note 25, at 526.
34. See Immigrant Legal Resource Center, *Immigration Consequence of Juvenile Delinquency*, available at [https://www.ilrc.org/sites/default/files/resources/juvenile\\_delinquency\\_cheat\\_sheet\\_ilrc\\_jan\\_2018\\_update\\_0.pdf](https://www.ilrc.org/sites/default/files/resources/juvenile_delinquency_cheat_sheet_ilrc_jan_2018_update_0.pdf); Kids in Need of Defense, *Chapter 10: Immigration Consequences of Delinquency and Crimes*, available at <https://supportkind.org/wp-content/uploads/2015/04/Chapter-10-Immigration-Consequences-of-Delinquency-and-Crimes.pdf>.
35. *Id.* at 3.
36. INA, 8 U.S.C. § 1182(a)(2)(C) (2012).
37. *In re Rico*, 16 I. & N. Dec. 181, 184-86 (B.I.A. 1977).
38. Phipps, *supra* note 25 at 527 (citing *In re Rico*, 16 I. & N. Dec. at 185-86).
39. See 8 U.S.C. § 1229a(c)(4)(A) (stating that the burden is on the alien to show he or she “merits a favorable exercise of discretion” when applying for relief or protection from removal).
40. See 8 U.S.C. § 1229a(c)(4)(A).
41. *Wallace v. Gonzales*, 463 F.3d 135, 139 (2d Cir. 2006).
42. U.S. Citizenship and Immigration Services, *Form I-589, Application for Asylum and Withholding of Removal* (2017), available at [https://www.uscis.gov/system/files\\_force/files/form/i-589.pdf?download=1](https://www.uscis.gov/system/files_force/files/form/i-589.pdf?download=1).
43. U.S. Citizenship and Immigration Services, *Form I-485, Application to Register Permanent Residence or Adjust Status* (2017), available at [https://www.uscis.gov/system/files\\_force/files/form/i-485.pdf?download=1](https://www.uscis.gov/system/files_force/files/form/i-485.pdf?download=1).
44. See, e.g., Immigrant Legal Resource Center, *Practice Advisory: Confidentiality of Juvenile Records in California* (2016), available at [https://www.ilrc.org/sites/default/files/resources/confidentiality\\_of\\_juvenile\\_records\\_advisory\\_ilrc\\_4.21.16\\_final.pdf](https://www.ilrc.org/sites/default/files/resources/confidentiality_of_juvenile_records_advisory_ilrc_4.21.16_final.pdf).
45. Ana Mari Cauce et al., *Cultural and Contextual Influences in Mental Health Help Seeking: A Focus on Ethnic Minority Youth*, 70 J. CONSULTING & CLINICAL PSYCHOL. 44 (2002).
46. See Deborah L. Scuglik et al., *When the Poetry No Longer Rhymes: Mental Health Issues Among Somali Immigrants in the USA*, 44 TRANSCULTURAL PSYCHIATRY 581 (2007).
47. See Muna K. Ahmead, Ahmad A. Rahhal & John A. Baker, *The attitudes of mental health professionals towards patients with mental illness in an inpatient setting in Palestine*, 5 INT’L J. MENTAL HEALTH NURSING 19, 356-362 (2010); Cauce et al., *supra* note 45; Becky Leshem, Muhammad M. Haj-Yahia & Neil B. Guterman, *The characteristics of help seeking among Palestinian adolescents following exposure to community violence*, 49 CHILDREN & YOUTH SERV. REV. 1 (2015).
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