TRAUMA INFORMED LEGAL CARE: A PARADIGM SHIFT IN PROVIDING LEGAL SERVICES TO UNACCOMPANIED IMMIGRANT CHILDREN

Katie Chadliev & Stacy Newman[†]

TABLE OF CONTENTS

[†] Student attorneys in the Thomas and Mack Immigration Clinic at the William S. Boyd School of Law. Many thanks to Professor Fatma Marouf for her fearless leadership of the Clinic and her invaluable contributions to this article, which started out as a project for her immigration class.

INTRODUCTION

Historically, the United States has been a popular destination country for international immigrants, and the topic of immigration tends to be controversial in the American political landscape. In the summer of 2014, however, a special group of immigrants dominated the national conversation: unaccompanied children from Latin America.[1] Headlines from national news outlines reported on the vitriolic issue of how the U.S. should respond to the perceived increase in unaccompanied children crossing the border. President Obama addressed the issue, stating that although the actual number of children crossing the border was at an all-time low,[2] he would still implement a program to provide unaccompanied migrant children representation through the creation and funding of AmeriCorps.[3] Created in June of 2014, the organization is funded by two million dollars in grants and "provide[s] one-hundred lawyers and paralegals in twenty-eight states" to represent unaccompanied immigrants "under the age of sixteen in removal proceedings."[4]

Providing legal representation in a system where there is no right to counsel is an important first step,[5] but the challenges of representing unaccompanied child immigrants demands a multidisciplinary approach. Recently, the rise of "Trauma-Informed Care" (TIC) in the medical and social services field has revolutionized services for children, and its

---

[1] PETER J. MEYER ET AL., CONG. RESEARCH SERV., UNACCOMPANIED CHILDREN FROM CENTRAL AMERICA: FOREIGN POLICY CONSIDERATIONS, 1 (2016), http://trac.syr.edu/Immi gration/library/P10211.pdf; *see e.g.* Sonia Nazario, *The Children of the Drug Wars: A Refugee, Not an Immigration Crisis*, N.Y. TIMES (July 11, 2014), https://www.nytimes.com/2 014/07/13/opinion/sunday/a-refugee-crisis-not-an-immigration-crisis.html; Lauren Fox, *Anti-Immigrant Hate Coming From Everyday Americans*, U.S. NEWS (July 24, 2014), http://www.usnews.com/news/articles/2014/07/24/anti-immigrant-hate-coming-from-everyday-americans.

[2] President Barak Obama, Remarks by the President in Address to the Nation on Immigration (Nov. 20, 2014).

[3] Erin B. Corcoran, Getting Kids Out of Harm's Way: The United States' Obligation to Operationalize the Best Interest of the Child Principle for Unaccompanied Minors, 47 CONN. L. REV. ONLINE 1, 5 (2014).

[4] *Id*.

[5] A recent survey of similarly-situated immigrants in removal proceedings revealed that immigrants with legal representation enjoyed odds fifteen times greater than immigrants without representation. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 2 (2015). Recently, New York became the first state to provide all immigrants in removal proceedings with an attorney. *New York State Becomes First in Nation to Provide Lawyers for All Immigrants Detained and Facing Deportation*, VERA INST. JUST., https://www.vera.org/newsroom/press-releases/new-york-state-becomes-first-in-the-nation-to-provide-lawyers-for-all-immigrants-detained-and-facing-deportation (Apr. 7, 2017).

philosophy and methods are directly transferrable to those engaged in "legal care." [6] Through a wedding of TIC and zealous legal representation, a child's journey through the legal system need not be as traumatic as the journey to the United States.

I. BACKGROUND OF LATIN AMERICAN IMMIGRATION

The United States is often referred to as "a nation of immigrants,"[7] and according to the Migration Policy Institute, the U.S. is the number one destination for immigrants. [8] In fact, according to the Census Bureau, the percentage of the United States population that is foreign born has been on the rise since the 1970s and reached 12.9% in 2010.[9] The Census Bureau also reports that the majority of foreign born people in America are from Mexico and Central America.[10]

The top Latin American source countries for immigration to the United States are Mexico, El Salvador, and Guatemala,[11] all countries with high levels of political and economic insecurity. [12] Many explanations are circulated for the high number of immigrants from these countries, and each source country has different "push" factors. However, a few themes seem to emerge from every analysis: dangerous or economically disadvantageous conditions in the home country, the

---

[6] Carly B. Dierkhising, et al., *Trauma-Informed Justice Roundtable: Current Issues and New Directions in Creating Trauma-Informed Juvenile Justice Systems*, NAT'L CHILD TRAUMATIC STRESS NETWORK (Aug. 2013), http://www.nctsn.org/sites/default/files/assets/pdfs/jj_trauma_brief_introduction_final.pdf.

[7] *See*, *e.g.*, Kay Deaux, *A Nation of Immigrants: Living Our Legacy*, 62 J. SOC. ISSUES 633, 634 (2006). This phrase was popularized by John F. Kennedy's book of the same name. *Id.*; JOHN F. KENNEDY, A NATION OF IMMIGRANTS (1959).

[8] *Top 25 Destinations of International Migrants*, MIGRATION POL'Y INST. (2015), http://www.migrationpolicy.org/programs/data-hub/international-migration-statistics.

[9] Steven A. Camarota, Ctr. for Immigration Studies, Immigrants in the United States: A Profile of America's Foreign-Born Population 9 (2012), http://cis.org/sites/cis.org/files/articles/2012/immigrants-in-the-united-states-2012.pdf; *The Foreign–Born Population in the United States*, U.S. Census Bureau 3, https://www.census.gov/newsroom/pdf/cspan_fb_slides.pdf (last visited Mar. 18, 2017).

[10] *The Foreign–Born Population in the United States*, *supra* note 9, at 6; CAMAROTA, *supra* note 9, at 16.

[11] Jie Zong & Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (Apr. 14, 2016), http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states.

[12] *See* U.S. CONFERENCE OF CATHOLIC BISHOPS, MISSION TO CENTRAL AMERICA: THE FLIGHT OF UNACCOMPANIED CHILDREN TO THE UNITED STATES 2, 8 (Nov. 2013), http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf; Jie Zong & Jeanne Batalova, *Central American Immigrants in the United States*, MIGRATION POL'Y INST. (Sept. 2, 2015), http://www.migrationpolicy.org/article/central-american-immigrants-united-states.

goal of family reunification, and relative proximity to the United States.[13]

Although Latin American immigration to the United States has been on the rise for decades, the summer of 2014 highlighted a perceived surge of unaccompanied immigrant children.[14] The issue came to the forefront of American news when townspeople in Arizona and California gathered to protest and turn away buses of immigrant children.[15] In California, the buses were leaving overcrowded Texas detention centers and the children were in the care of older relatives, but in Arizona, the buses transported unaccompanied immigrant children exclusively.[16] Arizona protestors bearing signs with phrases like, "no open borders" and blocking buses full of children provoked outrage and added a new wrinkle to the immigration debate:[17] how should the United States deal with unaccompanied children crossing the border?

Following the tumultuous events in 2014, the American Immigration Council released a report addressing children arriving at the U.S. border.[18] As the report indicates, the United States Code defines an unaccompanied child immigrant as someone who:

> (A) has no lawful immigration status in the United States; (B) has 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.[19]

The vast majority of children meeting these qualifications are from Mexico, Guatemala, Honduras, and El Salvador —which mirrors

---

[13] U.S. CONFERENCE OF CATHOLIC BISHOPS, *supra* note 12; *see also* Gordon H. Hanson & Craig McIntosh, *Birth Rates and Border Crossings: Latin American Migration to the US, Canada, Spain, and the UK*, 122 ECON. J. 707, 708–09, 716 (2012); Jesus Rios & Steve Crabtree, *One in Four Latin Americans Wishes to Emigrate*, GALLUP (Jan. 21, 2008), http://www.gallup.com/poll/103837/one-four-latin-americans-wishes-emigrate.aspx.

[14] PETER J. MEYER ET AL., *supra* note 1.

[15] Michael Martinez et al, *Growing Protests Over Where to Shelter Immigrant Children Hits Arizona*, CNN (July 16, 2014), http://www.cnn.com/2014/07/15/us/arizona-immigrant-children/; Michael Martinez & Holly Yan, *Showdown: California Town Turns Away Buses of Detained Immigrants*, CNN (last updated July 3, 2014), http://www.cnn.com/2014/07/02/us/california-immigrant-transfers/.

[16] *See* sources cited *supra* note 15.

[17] *See* Martinez et al., *supra* note 15. Some protestors also distributed flyers which read "[w]e are being invaded!" *Id.*

[18] AM. IMMIGR. COUNCIL, A GUIDE TO CHILDREN ARRIVING AT THE BORDER: LAWS, POLICIES AND RESPONSES 1 (2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/a_guide_to_children_arriving_at_the_border_and_the_laws_and_policies_governing_our_response.pdf.

[19] 6 U.S.C. § 279(g)(2) (2012); AMERICAN IMMIGRATION COUNCIL, *supra* note 18.

patterns of Latin American immigration to the U.S. generally.[20]

Guatemala, Honduras and El Salvador are referred to as "The Northern Triangle," and are infamous for high rates of violence and political corruption.[21] In a study conducted by the United Nations High Commissioner for Refugees, 70% of unaccompanied children fleeing one of these countries cited at least one of the following factors as their reason for leaving: "violence in society, abuse in the home, deprivation and social exclusion, family reunification" or better opportunities generally.[22]

In November of 2014, the U.S. State Department and the U.S Department of Homeland Security (DHS) launched efforts to intercept unaccompanied children traveling through El Salvador, Guatemala, and Honduras before they even reached the American border.[23] The program has two major purposes, one being "to provide a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to the United States" and the other to "allow certain parents who are lawfully present in the United States to request access to the U.S. Refugee Admissions Program for their children still in one of these three countries."[24] When processing the children at the Latin American offices, DHS also has an opportunity to assess the children and determine if they are eligible for refugee status.[25] If family reunification through refugee status seems unlikely, DHS also has the power to "parole" the children into the United States for limited amounts of time, or encourage the children to return to their homes in Latin America.[26] However, if unaccompanied immigrant children manage to

---

[20] AMERICAN IMMIGRATION COUNCIL, supra note 18. See generally David G. Gutierrez, Immigration: An Historic Overview of Latino Immigration and the Demographic Transformation of the United States, NAT'L PARK SERV., https://www.nps.gov//heritageinitiatives/latino/latinothemestudy/pdfs/immigration_web_final.pdf (last visited Mar. 19, 2017) (discussing the history of immigration from Mexico, Guatemala, Honduras, and El Salvador).

[21] HUMANITARIAN IMPACT, OTHER SITUATIONS OF VIOLENCE IN THE NORTHERN TRIANGLE OF CENTRAL AMERICA 1, 4 (2014), http://www.centerforhumanrights.org/PFS_Petition/Ex13_ACAPS_CANT_ConditionsRpt073114.pdf.

[22] U.N. High Comm'r on Refugees, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection 23 (Mar. 13, 2014), http://www.refworld.org/docid/532180c24.html.

[23] U.S. Dep't State & U.S. Dep't Homeland Sec., In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala and Honduras With Parents Lawfully Present in the United States (2014), https://2009-2017.state.gov/j/prm/releases/factsheets/2014/234067.htm.

[24] *Id.*

[25] *Id.*

[26] *See id.*

evade DHS interception in a Latin American country and continue with their journey to the United States, they face a great number of hazards.[27]

A. Trauma and Immigration

It has become commonplace in American politics to discuss immigration in an aggressive, dehumanizing way. [28] Many states' legislatures have enacted laws that discriminate against immigrants.[29] This political posture ignores the fact that the people who are coming to this country face stressful and traumatic events on their journey.[30] Many immigrants "may experience a profound or incapacitating sense of loss, disassociation, flashbacks or nightmares about separation from the homeland or family of origin that may be consistent with the symptoms of Post Traumatic Stress Disorder (PTSD)."[31] Anti-immigrant laws and

---

[27] *See supra* Section I(B).

[28] *See*, *e.g.*, Cassie Spodak & Eugene Scott, *Christie: Track Immigrants Like FedEx Packages*, CNN (Aug. 31, 2015), http://www.cnn.com/2015/08/29/politics/chris-christie-fedex-packages/ (discussing Chris Christie's comments about tracking immigrants like FedEx packages); Raul A. Reyes, *Sorry Jeb, 'Anchor Babies' is a Slur*, CNN (Aug. 21, 2015), http://www.cnn.com/2015/08/21/opinions/reyes-anchor-babies-slur/ (discussing Jeb Bush's use of the term "anchor babies"); Valerie Richardson, *Donald Trump's comments on illegal immigrants divide 2016 GOP hopefuls*, WASHINGTON TIMES (July 5, 2015), http://www.washingtontimes.com/news/2015/jul/5/donald-trump-comments-on-illegal-immigrants-divide (discussing President Trump's controversial campaign statements that immigrants from Mexico were "bringing drugs . . . crime. They're rapists and some, I assume, are good people.").

[29] One example is Arizona's Senate Bill 1070, which allows for police to require immigration status when arresting or detaining someone if there is a "reasonable suspicion" they are not in this country legally. S. B. 1070 49th Leg., 2nd Reg. Sess. (Ariz. 2010) [hereinafter S.B. 1070]; *see* Lisa Lopez Levers & Debra Hyatt-Burkhart, *Immigration Reform and the Potential for Psychosocial Trauma: The Missing Link of Lived Human Experience,* ANALYSES OF SOC. ISSUES AND PUB. POL'Y 68, 68 (2012). More recently, many states have attempted to pass bills rejecting Syrian Refugees. *See* Pratheepan Gulasekaram & Karthick Ramakirshman, *The Law is Clear: States Cannot Reject Syrian Refugees*, WASH. POST (Nov. 19, 2015) https://www.washingtonpost.com/postevery thing/wp/2015/11/19/the-law-is-clear-states-cannot-reject-syrian-refugees/. Many republican candidates in elections also seem to be relaying on anti-immigration and anti-refugee stances to help boost votes in the primary, most notable of these was President Donald Trump. *See, e.g.*, Russell Berman, *Donald Trump's Call to Ban Muslim Immigrants*, ATLANTIC, (Dec. 7, 2015) http://www.theatlantic.com/politics/archive/2015/12/donald-trumps-call-to-ban-muslim-immigrants/419298/.

[30] Levers & Hyatt-Butkhart, *supra* note 29, at 68–69.

[31] *Id.* at 70 (quoting Nancy L. Beckerman & Lynn Corbett, *Immigration and Families: Treating Acculturative Stress From a Systemic Framework*, 35, FAM. THERAPY 63, 66 (2008)).

pressure to assimilate only intensify this trauma.[32] This has led to the characterization of a four-stage cycle of immigrant trauma: "(1) pre-migration trauma, (2) in-transit trauma, (3) resettlement trauma, and (4) trauma of general postmigration living conditions."[33] While those who come into the country both legally and illegally experience immigrant trauma, the symptoms are much more severe in those that enter illegally.[34]

The first stage is pre-migration trauma. This form of trauma is created from the anxiety an immigrant experiences before leaving behind his or her homeland, coupled with the stress of learning a new language and custom of living.[35] Fear of seeking even basic services upon arrival in the new world can fill immigrants with dread.[36] The second stage is trauma during transit. This trauma is created through the mode of leaving, the circumstances under which the migration occurs, and the exposure to certain events during the migration.[37] The third stage is resettlement trauma. This trauma comes from experiences in countries in which immigrants may temporarily rest.[38] Often these areas are overcrowded, lack proper provisions, and in the case of forced migration, only intensify stressors.[39] The last stage of immigrant trauma is post-migration. This trauma is created from poor employment opportunities, inadequate living conditions, and a lack of social networks.[40]

There are a number of barriers to treating immigrant trauma, the most obvious being the language barrier.[41] Not all mental health professionals are bilingual, and even if they are it may not be the language an immigrant speaks. While the option to use a translator is always available, certain nuances and cultural connotations may be lost in translation.[42] Another barrier is the shame an immigrant may feel

---

[32] *See* Levers & Hyatt-Burkhart, *supra* note 30, at 71–72; Sylvia Romero & Melissa Romero Williams, *The Impact of Immigration Legislation to Latino Families: Implications for Social Work*, 14 ADVANCES IN SOC. WORK 229, 233 (2013).

[33] Levers & Hyatt-Burkhart, *supra* note 29, at 71 (citing RoseMarie Perez Foster, *When Immigration is Trauma: Guidelines for the Individual and Family Clinician*, 71 AM. J. ORTHOPSYCHIATRY 152, 155 (2001)).

[34] *Id.*

[35] RoseMarie Perez Foster, When Immigration is Trauma: Guidelines for the Individual and Family Clinician, 71 AM. J. ORTHOPSYCHIATRY 152, 155 (2001).

[36] *Id.*

[37] *See*, *e.g.*, *id.* at 155. For example, individuals traveling to North American from Central or South American are often exposed to sexual assault and forced labor. *Id.*

[38] *Id.* at 156.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 154, 165.

[42] *See id.* at 160–61.

retelling the horrifying experiences they faced in their journey—especially to a complete stranger.[43] Pressure to assimilate into a foreign culture to receive care only exacerbates the trauma, and a clinician's cultural bias may also become an issue.[44] A healthcare services provider may view experiences and language through their own cultural lens, not being able to fully grasp the trauma that an immigrant has gone through in order to reach his or her new country.[45]

Treating immigrant trauma can be achieved through common cognitive and psychiatric treatment.[46] This includes testing and evaluation of cognitive activity, affect, and behavior.[47] Evaluating the cognitive sphere includes examining the language differences and connotations for the patient.[48] Clinicians should be ready to perform an assessment in either the native or second language, as there is debate about which is more regressive.[49] The clinican should analyze the affective sphere for emotional response: Does the patient seem distant in response to traumatic questioning? Are they showing signs of any psychological defenses? It is also important to take into account cultural differences during this evaluation.[50] Finally, the clinician evaluates the behavioral sphere. Again, cultural differences must be taken into account.[51] An individual may grow frustrated by the language barrier, or frightened of sharing personal experiences with a stranger.[52] Once a full evaluation is conducted, the mental health professional can decide on the best choice of treatment.

B. Special Hazards for Unaccompanied Children

Crossing the border from south of the United States is a dangerous proposition for adults, and even more so for children. This journey is so dangerous that the U.S. Customs and Border Patrol (CPB) launched a campaign called the "Dangers Awareness Campaign" in 2014 to educate

---

[43] *Id.* at 156.

[44] *See id.* at 156, 159–60.

[45] *See id.* at 159–60, 167. For examples of immigrant trauma, *see infra* Section II(B).

[46] *See* Foster, *supra* note 35, at 159–62; Robert D. Friedberg et al., *Cognitive-Behavioral Therapy for Immigrant Youth: The Essentials*, *in* PSYCHOTHERAPY FOR IMMIGRANT YOUTH 29–31, 40 (2016).

[47] *See* Friedberg et al., *supra* note 46, at 164–66.

[48] *See* Foster, *supra* note 35, at 161–62, 164–65.

[49] *Id.* at 161.

[50] *Id.* at 165.

[51] *Id.*

[52] *Id.* at 165–66.

Spanish speakers on how treacherous such a crossing can be.[53] The Commissioner of CBP especially warned of the dangers of crossing for unaccompanied children, citing "coyotes and transnational criminal organizations," and the fact that children "can be subjected to robbery, violence, sexual assault, sex trafficking or forced labor."[54]

"Coyotes," slang for people hired to smuggle people across the border, have a reputation for being unscrupulous and naturally pose a greater risk to children than they do to adults.[55] In the case of unaccompanied children immigrants, these smugglers often extract a fee from relatives before agreeing to transport a child.[56] However, it is difficult for children to know whether they are dealing with a smuggler who truly intends to take them to the U.S. border, or whether they are dealing with a criminal syndicate who intends to kidnap them to extort ransom.[57] The demarcations between criminal gangs, coyotes, and human traffickers are fluid in this area, and children traveling alone have little choice in who they travel with.[58]

Children who manage to avoid contact with smugglers, criminal syndicates, or other unsavory adults still face a great number of transportation challenges. One of the most famous is "La Bestia," a colloquial term for the trains in Mexico immigrants use to traverse the land.[59] Immigrants ride atop the cargo trains for long periods of time, and changes in speed, derailments, or even falling asleep all pose lethal threats to these riders.[60] The popularity of riding the rails to America has also attracted criminal syndicates to the route, and the trains

---

[53] U.S. DEP'T HOMELAND SEC., CBP COMMISSIONER DISCUSSES DANGERS OF CROSSING U.S. BORDER, AWARENESS CAMPAIGN, July 2, 2014, https://www.cbp.gov/newsroom/national-media-release/cbp-commissioner-discusses-dangers-crossing-us-border-awareness.

[54] *Id.*

[55] *See* Camilo Vargas, *Coyotes: Ten Things to Remember About Smugglers*, LATINO USA (Sep. 12, 2014), http://latinousa.org/2014/09/12/smugglers/; KIDS IN NEED OF DEFENSE, THE TIME IS NOW: UNDERSTANDING AND ADDRESSING THE PROTECTION OF IMMIGRANT CHILDREN WHO COME ALONE TO THE UNITED STATES 26 (2013), https://supportkind.org/wp-content/uploads/2013/02/TimeIsNow-KIND-Feb-2013.pdf.

[56] *See, e.g.*, Sarah Stillman, *Where are the Children?*, NEW YORKER (Apr. 27, 2015), http://www.newyorker.com/magazine/2015/04/27/where-are-the-children.

[57] Rodrigo Dominquez Villegas, *Central America Migrants and "La Bestia": The Route, Dangers, and Government Response,* MIGRATION POL'Y INST. (2014), http://www.migrationpolicy.org/article/central-american-migrants-and-%E2%80%9Cla-bestia%E2%80%9D-route-dangers-and-government-responses; *see* P.J. Tobia, *No Country for Lost Kids*, PBS NEWSHOUR, (June 20, 2014), http://www.pbs.org/newshour/updates/country-lost-kids/.

[58] *See* Tobia, *supra* note 57.

[59] *See* sources cited, *supra* note 57.

[60] *Id.*

provide easy targets for kidnapping, sexual assaults, and even murder.[61]

Supposing that children make it across the American border alive, the U.S. presents more challenges the children must overcome. To avoid being immediately deported back across the border, the child can apply for asylum, but grants of asylum are subject to a high standard of proof.[62] The child must establish he or she is a refugee under 8 U.S.C. Section 1101(a)(42)(a) and that "race, religion, nationality, membership in a particular social group, or political opinion" is a major reason for persecution. [63] While their application is pending, unaccompanied children are put into foster care or they must wait in family detention centers at the border.[64] If detained, children are often put in "emergency shelters" which have been described as "icebox-cold cells" with little access to medical care while DHS attempts to find any available sponsor within the United States while they await their hearing.[65]

Another option children have is to apply for a special immigrant juvenile status (SIJS) exemption. SIJS allows for a child to stay in the United States if "a state court find[s] that the child has been abused, neglected, and abandoned" and DHS determines "that it is in the best interest of the child not to be returned to his or her home country but to remain permanently in the United States."[66]

Getting certified as a victim of trafficking is another way for children to get status, but this is also a difficult route. To qualify for a trafficking visa, or T visa, the applicant must prove that they were a victim of a "severe form of trafficking," they have complied with the authorities in the investigation or prosecution of the trafficker, and that the child would suffer "extreme hardship involving unusual and severe harm" if removed from the United States.[67] There is one exception for children under 15, who are not required to cooperate with law

---

[61] Villegas, *supra* note 57.

[62] 8 U.S.C. § 1158(a)–(b) (2012).

[63] *Id.* § 1158(b)(1)(B). To qualify as a refugee, the child must establish that he or she has suffered persecution, or have a "well-founded fear" that they will suffer persecution because of that child's "race, religion, nationality, membership in a particular social group, or political opinion." § 1101(a)(42)(A).

[64] *Unaccompanied Immigrant Children*, NAT'L IMMIGRANT JUST. CTR. (2014), https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2016-11/NIJC%20Policy%20Brief%20%20Unaccompanied%20Immigrant%20Children%20FINAL%20Winter%202014.pdf.

[65] Corcoran, *supra* note 3, at 4; *Unaccompanied Immigrant Children*, *supra* note 64.

[66] Corcoran, *supra* note 3, at 11 (citing 8 U.S.C. § 1101(a)(27)(J)(i-iii) (2006)). SIJS was signed into law over twenty-five years ago by George H.W. Bush. Jessica R. Pulitzer, *Fear and Failing in Family Court: Special Immigrant Juvenile Status and the State Court Problem*, 21 CARDOZO J. L. & GENDER 201, 211 (2014).

[67] 8 C.F.R. § 214.11(d) (2016).

enforcement efforts to punish the trafficker.[68] Although not technically required, T visa applicants are "strongly encouraged" to obtain certification from a law enforcement agency that they were a victim of trafficking.[69] If a child is able to obtain a T visa, he or she must wait three years, among other things, to apply to become a legal permanent resident.[70]

For children who are tragically the victims of crimes while in the United States, the U visa is one last possible route towards status.[71] Congress created the U visa to encourage undocumented people to come forward about crimes and cooperate with law enforcement.[72] To qualify for a U visa, a child must prove they were a "victim of qualifying criminal activity," prove they have suffered "substantial physical or mental abuse" as a result of the crime, have information about the crime to provide to law enforcement, and have been "helpful," or are "likely to be helpful" to law enforcement seeking to prosecute the crime.[73] Similar to the T visa, there is an exception for children under 16, who can have a "parent, guardian, or next friend" provide the information about the crime to law enforcement.[74] If granted a U–visa, a child must wait three years before they can apply to become a legal permanent resident.[75]

Unfortunately, many children do not receive legal representation, making it impossible to fight for these kinds of legal protections, or proper services and care while they are waiting.[76] Research shows that "children who have experienced trauma, fear, separation from family and isolation are subject to a variety of psychological stressors and mental health challenges. . . . [S]ome develop anxiety, depression, post-

---

[68] § 214.11(h)(3).

[69] U.S. CITIZENSHIP & IMMIGRATION SERVS., VICTIMS OF HUMAN TRAFFICKING: T NONIMMIGRANT STATUS (2011), https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.

[70] § 245.23(a); U.S. CITIZENSHIP & IMMIGRATION SERVS., GREEN CARD FOR A VICTIM OF TRAFFICKING (T NONIMMIGRANT) (2015), https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.

[71] § 214.14(14)(b)(4); U.S. CITIZENSHIP & IMMIGRATION SERVS., VICTIMS OF CRIMINAL ACTIVITY: U NONIMMIGRANT STATUS (2016), https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status [hereinafter VICTIMS OF CRIMINAL ACTIVITY].

[72] § 214.14(14)(b)(4); VICTIMS OF CRIMINAL ACTIVITY, *supra* note 71.

[73] § 214.14(14).

[74] § 214.14(b)(2)–(3); VICTIMS OF CRIMINAL ACTIVITY, *supra* note 71.

[75] § 214.14(g)(2)(i); *V*ICTIMS OF CRIMINAL ACTIVITY, *supra* note 71.

[76] Jerry Markon, *Can a 3-Year Old Represent Herself in Immigration Court? This Judge Thinks So*, WASH. POST (March 5, 2016), https://www.washingtonpost.com/world/national-security/can-a-3-year-old-represent-herself-in-immigration-court-this-judge-thinks-so/2016/03/03/5be59a32-db25-11e5-925f-1d10062cc82d_story.html.

traumatic stress disorder (PTSD) or other conditions."[77] Given the amount of hardships faced by unaccompanied children undergoing migration from Latin American to the United States, it is clear that a careful and empathic approach must be taken when representing them in legal matters. Every lawyer seeking to undertake representation of such a child should familiarize themselves with the principles of trauma informed care, and attempt to incorporate the principles into their legal practice in every way possible.

II. GENESIS OF TRAUMA–INFORMED CARE

Trauma–Informed Care (TIC) originated in medical and social science fields, and according to the National Council for Behavioral Health, "[a]ddressing trauma is now the expectation, not the exception, in behavioral health systems."[78] TIC represents a paradigm shift in the medical and social sciences field, where a person's trauma history is taken into account and factored into the services and treatment provided to that person.[79] A widely shared definition of TIC is:

> Trauma-Informed Care is a strengths-based framework that is grounded in an understanding of and responsiveness to the impact of trauma, that emphasizes physical, psychological, and emotional safety for both providers and survivors, and that creates opportunities for survivors to rebuild a sense of control and empowerment.[80]

Rather than focusing solely on a biological illness or the present behavior and environment of a person, TIC considers traumatic incidents in the person's past that may be affecting how an illness or social problem is manifesting itself.[81]

A. Trauma-Informed Care in Other Fields

TIC is currently being utilized in a number of different fields. These fields include medicine, psychiatry, and social welfare.[82] Implementing

---

[77] Lorna Collier, *Helping Immigrant Children Heal*, 47 AM. PSYCHOL. ASS'N 58, 60 (2015).

[78] *Trauma-Informed Care*, NAT'L COUNCIL FOR BEHAVIORAL HEALTH, http://www.thenationalcouncil.org/areas-of-expertise/trauma-informed-behavioral-healthcare/ (last visited Jan. 26, 2017).

[79] *See* A. Bremness & Wanda Polzin*, Letter to the Editor*, *in* 23 J. CANADIAN ACAD. CHILD & ADOLESCENT PSYCHIATRY 86, 86 (2014).

[80] Elizabeth K. Hopper et al., *Shelter from the Storm: Trauma-Informed Care in Homelessness Services Settings*, 2 OPEN HEALTH SERVS. & POL'Y J. 131, 133 (2009).

[81] Kevin Huckshorn & Janice L. LeBel, *Trauma-Informed Care*, *in* MODERN COMMUNITY MENTAL HEALTH 62, 65 (Kenneth R. Yeager et al. eds. 2013).

[82] *See id.* at 79.

trauma–informed services and training in these areas have produced noticeable benefits for the individuals affected.[83] Each field has created a model or system to help victims and patients process trauma while using their services,[84] and legal professionals can learn much from these examples.

1. PEDIATRIC MEDICINE

In the medical field, children are exposed to a great number of traumatic events. Children are diagnosed with diseases that require painful procedures as treatment, and one in four children receives medical care for an injury that includes visits to the emergency room or hospitalization per year.[85] To help patients and families deal with traumatic stress, a model for assessing and treating pediatric medical traumatic stress (PMTS) has been created.[86] The model has three phases: 1) "peritrauma," 2) "early, ongoing, and evolving responses," and 3) "longer-term PMTS."[87] The PMTS model focuses not only on what may or may not meet the criteria for a psychiatric diagnosis, such as post-traumatic stress disorder (PTSD), but the experience as a whole, including preexisting factors, time, and duration.[88] Phase one of the model looks at the preexisting factors and the characteristics of the event (illness or injury).[89] Family and community support as a preexisting factor can help predict the coping skills and adjustment time.[90] Objective characteristics such as the severity of the illness and how intense the treatment may be are additional aspects.[91] To be considered trauma, engendering factors such as "life threat, and/or the likelihood of an event evoking fear, horror, and helplessness" are evaluated.[92]

Phase II of the model looks at ongoing challenges of the condition

---

[83] *See* The Substance Abuse and Mental Health Services Administration (SAMHSA), *A Treatment Improvement Protocol: Trauma-Informed Care*, *in Behavioral Health Services*, U.S. DEP'T HEALTH & HUM. SERVS., 32 (2014).

[84] *Id.* at 137–38.

[85] Sarah A. Ostrowski et al., The Impact of Caregiver Distress on the Longitudinal Development of Child Acute Post-traumatic Stress Disorder Symptoms in Pediatric Injury Victims, 36 J. PEDIATRIC PSYCHOL. 806, 806 (2011); Anne E. Kazak et al., An Integrative Model of Pediatric Medical Traumatic Stress, 31 J. PEDIATRIC PSYCHOL. 343, 344 (2006).

[86] Kazak et al., *supra* note 82, at 343–44.

[87] *Id.* at 343–44.

[88] See id.

[89] *Id.* at 344–45.

[90] *Id.* at 345.

[91] See id.

[92] *Id.*

and treatment for both patients and families.[93] For example, for a child with cancer who experienced a number of invasive procedures and negative side effects the memories of these experiences may be just as upsetting as the initial experience of receiving the diagnosis.[94] During this time, medical care providers are actively identifying and treating symptoms of PMTS.[95] Phase III addresses longer-term PMTS.[96] Traumatic events stemming from the initial condition will not always appear in a linear fashion, nor will they follow a set timeline.[97] An event that occurs years later may trigger the symptoms to reemerge.[98] Studies of pediatric cancer survivors show that the rates of post-traumatic stress symptoms are higher in young adults who survived cancer as children than child survivors.[99] This indicates that the "after" is key in the long-term healing process.[100] Survivors need access to services long after the initial illness is no longer active.[101]

In order for the PMTS model to be successful, a focus on trauma informed practice and intervention is needed from medical health providers from the start.[102] This includes: "the opportunity for direct care, assessment, and intervention at the time of the trauma."[103] Not only is trauma-informed medical practice beneficial to the patient, but it also helps strengthen family-centered care.[104] The focus on both parent and child improves outcomes for patients by giving them a strong support system.[105] Both the American Academy of Pediatrics' Committee on hospital care and the Institute for Family-Centered Care encourage trauma-informed medical practice for this reason.[106]

2. FIRST RESPONDER SYSTEM

First responders are exposed to victims of traumatic events daily. Law enforcement, firefighters, and emergency medical service providers

---

93 *Id.* at 345–46.

94 *Id.* at 346.

95 *Id.*

96 *Id.*

97 *Id.* at 346–47.

98 *Id.* at 344.

99 *Id.* at 348 (collecting studies on "assessment and intervention approaches" that factor in a child's developmental stage over time).

100 *See id.* at 346.

101 *Id.*

102 *Id.* at 348–49.

103 *Id.* at 349–50.

104 *Id.* at 349.

105 *Id.* at 349–50.

106 *Id.* at 349.

have the responsibility to act quickly while addressing each individual situation with care.[107] Medical personnel providing proper care can dramatically decrease the impact of trauma later on.[108] For example, the proper dose of morphine to a burn victim has been found to be inversely associated with post-traumatic stress symptoms even six months later.[109]

Unfortunately, many first responders are not properly trained to deal with certain types of trauma.[110] For example, few police officers have the proper training to fully address the psychological needs of a child experiencing a traumatic event.[111] However, a number of programs indicate that with proper support and training police officers can "decrease children's exposure to further upsetting incidents, provide them with containment and structure, and make referrals to providers within the course of their regular activities."[112] One model program is the Child Development Community Policing (CD-CP) program created by the Yale Child Study Center and the New Haven, Connecticut, Department of Police Service.[113] Through the program, law enforcement and mental health providers work "side by side" to act early when there is a child exposed to trauma.[114]

3. DOMESTIC VIOLENCE

Victims of domestic violence may experience trauma from physical, mental, and/or emotional abuse.[115] This "trauma can stem from an isolated incident, from repeated incidents over a lifetime, or from a

---

[107] Susan J. Ko et al., Creating Trauma-Informed Systems: Child Welfare, Education, First Responders, Health Care, Juvenile Justice, 39 PROFESSIONAL PSYCHOL.: RESEARCH & PRACTICE 396, 399 (2008).

[108] *Id.* at 399–400.

[109] Saxe et al., *Relationship Between Acute Morphine and the Course of PTSD in Children With Burns*, 40 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 915, 919 (2001); Kazak et al., *supra* note 85, at 349.

[110] Ko et al., *supra* note 107, at 399.

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Effects of Domestic Violence*, JOYFUL HEART FOUND., http://www.joyfulheartfoundation.org/learn/domestic-violence/effects-domestic-violence (last visited Mar. 22, 2017); *see also* Tina de Benedictis, et.al, *Domestic Violence and Abuse: Types, Signs, Symptoms,* AM. ACAD. OF EXPERTS IN TRAUMATIC STRESS (2014), http://www.aaets.org/article144.htm.

pattern of ongoing violence."[116] Because of the sensitive nature and individual needs of each victim, professionals responding to domestic violence must be properly trained on how to handle each case.[117] The National Center on Domestic Violence, Trauma & Mental Health has created a trauma-informed approach to domestic advocacy. [118] There are five core components to this approach:

> (1) providing survivors with information about the traumatic effects of abuse; (2) adapting programs and services to meet survivors' trauma- and mental health-related needs; (3) creating opportunities for survivors to discuss their responses to trauma; (4) offering resources and referrals to survivors; and (5) [professionals] reflecting on [their] own and [their] programs' practice.[119]

Despite this approach, there is currently a gap with regard to trauma-informed practice and reality in the field of domestic violence advocacy.[120] For example, in a 2010 survey of Ohio's domestic violence programs, "over 90% of respondents responded that most or all adults and children who experience domestic violence have a traumatic experience that impacts their thoughts, feelings, or behaviors."[121] In the same survey, "only 14% of respondents from Ohio's domestic violence programs stated that they felt that all staff and volunteers in their organizations had a working understanding of trauma reactions and regularly incorporate that knowledge into their service provision."[122]

B. Trauma-Informed Care in the Legal Industry

Traumatic experiences can "[c]hallenge a person's capacity for recovery . . . [p]ose significant barriers to accessing services," and

---

[116] U.S. Dep't of Just., Office on Violence Against Women, The Importance of Understanding Trauma-Informed Care and Self-Care for Victim Service Providers (2014), http://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers.

[117] *Id.*

[118] *Creating Trauma-Informed Services: Tipsheet Series,* NAT'L CENT. ON DOMESTIC VIOLENCE, TRAUMA & MENTAL HEALTH (2012), http://nationalcenterdvtraumamh.org/wp-content/uploads/2012/01/Tipsheet_TI-DV-Advocacy_NCDVTMH_Aug2011.pdf.

[119] *Id*.

[120] *See*, *e.g.*, Sonia D. Ferencik & Rachel Ramierz-Hommond, Ohio Domestic Violence Network, Trauma-Informed Care: Best Practices and Protocols for Ohio's Domestic Violence Programs, at X (2013), http://mha.ohio.gov/Portals/0/assets/Initiatives/TIC/Domestic%20Violence/TraumaInformed%20Care%20Best%20Pratices%20and%20Protocols%20for%20Domestic%20Violence%20Programs.pdf.

[121] *Id.*

[122] *Id*.

"[r]esult in an increased risk of interacting with the criminal justice system."[123] This link between trauma and involvement in the criminal justice system has motivated legal professionals to think of ways to better understand the relationship between trauma and the law, and attempt to address trauma throughout representation.

TIC is useful in many aspects within the legal industry, and it is beginning to become the standard in the juvenile justice system.[124] From the courtroom to incarceration, many legal professions have begun to apply trauma-informed care aspects throughout their practice.[125] Many individuals within the system have been exposed to trauma and may face a number of challenges within the legal system.[126] Frequently, individuals may not even recognize the trauma they have endured, as one trauma survivor stated,

> I was in the mental health system for 14 years before somebody thought to ask me if I'd been hit, kicked, punched, slapped, or knocked out. When they asked those kinds of questions, I said, 'Oh yeah, sure.' But when they asked if I'd been abused, I said, 'No.' It was just my life.[127]

Applying the proper, trauma-informed practice and care to the legal industry can help prevent individuals such as this from spending years exposed to stimuli that only exacerbate their trauma.

1. IN THE COURTROOM

One way trauma-informed care is being applied is through judges, and "[m]any judges have come to recognize that acknowledging and understanding the impact of trauma on court participants may lead to more successful interactions and outcomes."[128] Trauma often causes a change in behavior on both a physical and mental level, by 1) an increase in "conventional risk factors such as smoking, excessive drinking,

---

[123] *Essential Components of Trauma-Informed Judicial Practice,* SUBSTANCE ABUSE AND MENTAL HEALTH SERV. ADMIN. (Aug. 19, 2015), http://www.samhsa.gov/gains-center/trauma-training-criminal-justice-professionals.

[124] *See* Carly B. Dierkhising, et al., *Trauma-Informed Justice Roundtable: Current Issues and New Directions in Creating Trauma-Informed Juvenile Justice Systems*, NATIONAL CHILD TRAUMATIC STRESS NETWORK 1 (2013), http://www.nctsn.org/sites/default/files/assets/pdfs/jj_trauma_brief_introduction_final.pdf.

[125] *See id*.

[126] *See, e.g. id.* (discussing legal challenges and trauma facing those going through the juvenile justice system).

[127] Substance Abuse and Mental Health Serv. Admin., Essential Components of Trauma-Informed Judicial Practice 3 (2013), https://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf.

[128] *Id.* at Introduction.

overeating, self-injury, and engaging in risky sex," and 2) "childhood trauma affects the developing brain and body, causing deregulation of the stress response."[129]

Often these behaviors lead to altercations with the law and many who end up in front of a judge may still be in a harmful environment or relationship.[130] As such, it is important for judges to be mindful of re-traumatization and triggers. Even things as simple as "inspecting personal items" or "sudden room changes" can serve as a trigger.[131] With trauma-informed procedures in place, the court "can play a major role in minimizing triggers, stabilizing offenders, reducing critical incidents, deescalating situations, and avoiding restraint, seclusion or other measures that may repeat aspects of past abuse."[132] While many may argue that these procedures are in place to ensure the safety of court employees,[133] many others feel that they are unnecessary for safety purposes. For example, one criminal court judge stated:

> I deal with sexually violent persons. These men have at least two convictions each for either adult violent rapes or child molestation. I don't have any problems with security. I don't have one person that has to come into court in shackles, not one, because I give them respect. I call them by their names. It starts there.[134]

Similarly, the trauma–informed approach for judges places an emphasis on courtroom communication.[135] Simply rephrasing an order can help build trust and confidence in an individual that has been traumatized.[136] For example, instead of stating, "I'm sending you for a mental health evaluation" a judge might say, "I'd like to refer you to a doctor who can help us better understand how to support you."[137] This helps combat the assumption that a traumatized individual may make

---

[129] *Id.* at 2; *see also Understanding Effects of Maltreatment on Brain Development*, CHILD WELFARE INFO. GATEWAY 1, 9 (Apr. 2015), https://www.childwelfare.gov/pubPDFs/brain_development.pdf.

[130] Substance Abuse and Mental Health Services Administration, *supra* note 127, at 2.

[131] *Id.*

[132] Niki A. Miller & Lisa M. Najavits, *Creating Trauma-Informed Correctional Care: A Balance of Goals and Environment,* 3 EUR. J. PSCYHOTRAUMATOLOGY (Mar. 30, 2012), http://www.tandfonline.com/doi/pdf/10.3402/ejpt.v3i0.17246.

[133] *Id.*

[134] SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *supra* note 127, at 4.

[135] *Id.* at 9.

[136] *See id.* at 4.

[137] *Id.*

about his mental health, such as thinking "there is something wrong with me."[138]

2. CORRECTIONAL FACILITIES

Within correctional facilities, trauma-informed practice can increase an inmate's ability to benefit from programs and lower rates of recidivism. One way trauma-informed practice within correctional facilities encourages this is by taking into account gender differences between male and female prisoners.[139] For example, "[f]or women offenders, sexual violence, defined as the combined prevalence of adult and child sexual abuse and assault, is by far the most commonly reported type of traumatic experience."[140] This type of trauma creates "disorientation and disconnection" that makes it difficult to engage and benefit from rehabilitation programs.[141] However, "some women express a feeling of safety and relief during intake at women's prisons."[142] Being separated from violent partners and other traumatic ongoing events allows many women the chance to begin to identify "their trauma symptoms and triggers."[143]

Men, on the other hand, report their most common trauma as watching "someone being killed or seriously injured."[144] Exposure to trauma at an early age is associated with not only increased victimization, but also violence amongst men in prison.[145] And while some women reported feeling safer once in prison, male inmates face a dramatic increase in the risk of sexual assault once they enter prison.[146] This increased risk can trigger aggression and other negative behaviors, and male prisons give much less attention to trauma than in female prisons.[147]

By being trained to know the differences between how the average male and female react to trauma, correctional facility staff members and other legal professionals can identify the issues a victim is facing in an expedient manner.[148] This knowledge allows for better allocation of

---

[138] *Id.*
[139] Miller & Najavits, *supra* note 132.
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *See id.*
[148] *See id.*

resources and can help reduce critical incidents. For example, women are more likely to turn to "internalizing self-harm," such as eating disorders, while men are more likely to externalize their destructive behaviors through substance abuse and violence.[149] With this knowledge, correctional facility staff may opt for treatment for women that focuses on empowerment, while treatment for men may focus on "emphasize feelings, [and] relationships."[150] Recognizing the cause, symptoms, and proper treatment for trauma allows for the staff to increase the chance of successful rehabilitation.[151]

III. TRAUMA-INFORMED CARE FOR UNACCOMPANIED CHILDREN

A. For Attorneys

Trauma-informed care can become a great tool for an attorney to provide the best representation to clients who have undertaken a journey to the U.S. as an unaccompanied child. Children respond to trauma differently,[152] and it is important for an attorney to keep that in mind when building a case. Two overarching factors to keep in mind when providing trauma-informed representation to a minor client are: 1) understanding the child's development level; and 2) and establishing trust with the client.[153]

In order to effectively provide counsel, an attorney must be able to determine the developmental level of his or her client beyond just chronological age. Many factors effect this, including but not limited to: cognitive abilities, academic achievement, pediatric records, and trauma history.[154] Children experiencing high levels of trauma are much more likely to have low self-esteem and act out in aggression.[155] This may make it difficult to establish trust.[156] In order to properly counsel and

---

[149] *Id.*

[150] *Id.*

[151] *Id.* at 5.

[152] *Children and Trauma: Update for Mental Health Professionals*, AMER. PSYCHOL. ASS'N PRESIDENTIAL TASK FORCE ON POSTTRAUMATIC STRESS DISORDER AND TRAUMA IN CHILD. AND ADOLESCENTS 1–2 (2008), http://www.apa.org/pi/families/resources/children-trauma-update.aspx [hereinafter *Children and Trauma*].

[153] Laruen Girard Adams & Maisley Paxton, *Counseling Children and Youth in Times of Crisis: Tips to Achieve Success and Avoid Pitfalls*, ABA SEC. LITIG. 2, https://apps.americanbar.org/litigation/committees/childrights/docs/CounselingChildrenandYouth.pdf (last visited Mar. 22, 2017).

[154] *Id.* at 2–4.

[155] *Id.* at 4; *see also Trauma Responses in Children*, S. EASTERN CTR. AGAINST SEXUAL ASSAULT & FAM. VIOLENCE, http://www.secasa.com.au/pages/trauma-responses-in-children/ (last updated May 15, 2015) (discussing aggression and low self-esteem in children who have been sexually assaulted).

[156] Adams & Paxton, *supra* note 153, at 4.

develop strategies an attorney must take into account the trauma their client may have been exposed.[157]

> If you are a child welfare lawyer representing children, parents, or the child welfare agency, understanding how traumatic experiences may impact your clients will help you frame your advocacy. Understanding children and their parents' histories of exposure to potentially traumatic life events and how those events have impacted the client's functioning—in school, in interactions with other people, and as parents—can be critical to framing your approach in the case. Evidence of the client's trauma history and any compromised functioning that may have resulted from that trauma is critical to integrate into your advocacy.[158]

Studies show that about fifty percent of court-involved children experience some sort of traumatic stress symptoms, if not PTSD itself.[159] The chance of trauma becoming a challenge when representing an unaccompanied child is very high,[160] and as a result, attorneys need to be prepared to recognize behaviors that stem from trauma. Often these children will show irritability or anger, have trouble concentrating, and have extreme emotional reactions.[161] By taking the trauma-informed approached, an attorney will be much more successful at building a relationship with the child, and in the end, increase the chances of a

---

[157] *Id.* at 5.

[158] Frank E. Vandervort, *Using Screening and Assessment Evidence of Trauma in Child Welfare Cases*, 34 CHILD. L. PRAC. 5, http://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/polyvictimization/using-screening-and-assessment-evidence-of-trauma-in-child-welfa.html.

[159] Adams & Paxton, *supra* note 153, at 3–4; *see also* William Arroyo, *PTSD in Children and Adolescents in the Juvenile Justice System*, *in* PTSD IN CHILDREN AND ADOLESCENTS 63 (Spencer Eth ed., 2001) ("The rates for PTSD among incarcerated youth from the four studies range from a low of 24% to a high of 48.9%." (citations omitted)); Robyn S. Igelman et al., *Best Practices for Serving Traumatized Children and Families*, 59 Juv. & Fam. Ct. J. 35, 36 (2008) ("While estimates of prevalence vary, surveys indicate there is considerable trauma exposure among children. For instance, the Child Welfare League of America reported that in 2004, 872,088 children were abused or neglected. Of those with substantiated abuse, 62.4% were neglected, 17.5% were physically abused, and 9.7% were sexually abused." (citation omitted)); Karen M. Abram et al., *Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, 61 ARCH GEN PSYCHIATRY 403, 405 (2004) ("Table 1 shows that 92.5% of the sample had experienced at least 1 trauma.").

[160] *See* sources cited *supra* note 159.

[161] *Posttraumatic Stress Disorder (PTSD)*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY, https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Posttraumatic-Stress-Disorder-PTSD-070.aspx (last updated Oct. 2013); *see also* Adams & Paxton, *supra* note 153, at 3–4.

positive outcome by being able to properly advocate for all of the child's needs.[162]

When designing a particular TIC system for any setting, the following themes are also helpful to keep in mind: 1) understand potential sources of trauma for your population; 2) provide physical and emotional safety in each step of the process; 3) provide opportunities for the victim to assert control over situations where appropriate; and 4) stay focused on the future and build on the victim's strengths rather than weaknesses.[163]

1. UNDERSTANDING TRAUMA

The first step is to define trauma and take steps to ensure the service provider is aware of certain types of trauma inherent to the population being served.[164] The American Psychiatric Association defines "traumatic events" as those that involve either direct threat of death, severe bodily injury, or psychological injuries that the victim finds extremely distressing.[165] This is a highly fluid definition and can be easily adapted for any number of populations. For example, while the hazards of PTSD are commonly raised for veterans of war,[166] it is important to also recognize that PTSD can occur among children in the foster-care system.[167] Through knowledge of the different types of trauma people may have endured, service providers can better anticipate how to tailor a TIC program that works for that individual.

When representing unaccompanied children attempting to enter the United States, attorneys and their staff should recognize the possibility that these children may have suffered a wide range of trauma. As discussed earlier, children can face threats of death or severe bodily harm either by the treacherous nature of the journey itself or threats of bodily harm by members of criminal organizations.[168] Children making the journey from Latin America can also suffer psychological injuries throughout their travels, either from people they encounter or simply the stressful nature of the journey itself.[169] Adults also face these potential

---

[162] Adams & Paxton, *supra* note 153, at 4.

[163] Hopper et al., *supra* note 80, at 132–33.

[164] *Id.* at 83.

[165] *See Children and Trauma*, *supra* note 152.

[166] *See* Robert J. Ursano et al., *Trauma-Informed Care for Primary Care: The Lessons of War*, 157 ANNALS OF INTERNAL MEDICINE 905, 905 (2012).

[167] Samantha Schilling et al., *Medical Management and Trauma-Informed Care for Children in Foster Care*, 45 CURRENT PROBLEMS IN PEDIATRIC AND ADOLESCENT HEALTH CARE 298 (2015).

[168] *See infra* Section 2(B).

[169] Collier, *supra* note 77, at 61–62.

sources of trauma when making the journey, but children are particularly vulnerable to finding these situations extremely distressing.[170] When undertaking to represent such a child, a full appreciation for the type of trauma endured requires knowledge regarding the route the child took, the person(s) they traveled with, if any, and the obstacles they encountered along the way.

Symptoms of trauma among unaccompanied migrant children vary from age to age. Younger children may be more frightened and difficult to comfort.[171] Older children most likely will be more aggressive.[172] Gender also plays a role; boys tend to share less than girls, but both list somatic symptoms.[173] Some children say that when they think about their experience they feel physical pain in their "tummy" or heart.[174] Many have issues sleeping at night.[175] Treatment is often difficult due to cultural and language barriers and trust issues.[176] Many come from cultures that stigmatize mental health issues, making them even less likely to speak to a stranger about what they have gone through.[177]

An awareness of trauma in a child's background is doubly important when representing that child because trauma can sometimes produce responses outsiders may regard as "abnormal" in the absence of specialized knowledge or training.[178] For example, it is a common saying that trauma provokes "normal reactions to abnormal events."[179] Common emotions in reaction to trauma range from apathy to anger, numbness to confusion.[180] Furthermore, other common symptoms such as a racing heartbeat, difficulty concentrating, and muscle tension may make a child appear less reliable when recounting stories or serve as a barrier against

---

[170] *See* Amanda Levinson, *Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions,* MIGRATION POL'Y INST., (Jan. 24, 2011), http://www.migrationpolicy.org/article/unaccompanied-immigrant-children-growing-phenomenon-few-easy-solutions.

[171] Collier, *supra* note 77, at 61.

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] *Id.* at 61-62.

[177] *Id.*

[178] *See Emotional and Psychological Trauma*, HELPGUIDE http://www.helpguide.org/articles/ptsd-trauma/emotional-and-psychological-trauma.htm (last visited Feb. 28, 2017).

[179] *Id.*

[180] *See* Adams & Paxton, *supra* note 153, at 3–4; *see also* Stuart L. Lustig, *Symptoms of Trauma Among Political Asylum Applicants: Don't Be Fooled!*, 31 HASTINGS INT'L COM. L. REV. 725, 726 (2008).

receiving a full narrative.[181] Thus, when a client's testimony is especially important, such as an asylum application for a child immigrant to the U.S., an awareness of trauma and its manifestations will lead to more understanding and ultimately better representation.

2. FOSTERING A SENSE OF SAFETY

A child's journey from Latin America to the U.S. can be fraught with hazard, and arriving in America unaccompanied can destabilize a child's sense of safety. Furthermore, they may have already been dealing with a lack of safety in their home country, and the journey may have compounded the sense of danger. When implementing a TIC system for unaccompanied children, attorneys should take care to imbue the environment and client meetings with a sense of safety. For example, a trauma-informed environment of care should be clean, well-maintained, calming, and not overly crowded.[182] Staff should also take care to avoid aggressive body language or behavior, and recognize minor clients may prefer speaking with a certain gender over another due to their past history of trauma. The more safe a child feels, the more likely they are to openly share their experiences, and their journey through the legal system can be constructive rather than destructive.

3. OPPORTUNITIES FOR CONTROL

A common element of trauma is a lack of control, and it is likely that a child with a history of trauma feels they can control very little.[183] Social science experts have defined control as "a learned, generalized expectation that outcomes are contingent on one's choice and actions."[184] In other words, the more closely aligned a child's expectations are with what actually happens, the greater his or her sense of personal control is. A TIC system can help children regain some amount of control when it is responsive to a child's expectations.[185]

In some sense, the realm of law is particularly ill-suited to give children this sense of control – after all, the law is not contingent on the *child's* choice or actions. The law takes control out of the hands of children and places into the hands of attorneys, judges, and legal doctrine. However, there are some areas in which an attorney can give their minor clients a sense of control. For example, the ethical

---

[181] *See* Adams & Paxton, *supra* note 153, at 3–4; Lusting, *supra* note 180.

[182] Yeager et al., *supra* note 81, at 66–67.

[183] Huckshorn & LeBel, *supra* note 80, at 133.

[184] Catherine E. Ross & Beckett A. Broh, *The Roles of Self-Esteem and the Sense of Personal Control in the Academic Achievement Process*, 73 SOC. EDUC. 270, 272 (2000).

[185] *See, e.g.*, *id.*

obligations of attorneys already provide an excellent model for giving clients a sense of control in their legal matters. Under Model Rule 1.4, attorneys are already under an ethical obligation to "reasonably consult with the client about the means by which the client's objectives are to be accomplished."[186] In the context of unaccompanied children, this means attorneys must assess their client's goals and explain to them any reasonable means, if any, they are to be achieved. This process gives children the opportunity to engage in their representation and gives the attorney a chance to manage expectations.

4. STRENGTH-BASED APPROACH

A TIC system and philosophy works best when the members focus on strengths rather than deficits, and a strength-based approach also represents a way the legal system can be a transformative experience. The main idea behind a strength-based approach is to help the victim build resiliency and focus on the future.[187] A good way of shifting from traditional theories of care is to discard the question, "what's wrong with you?" and instead replace it with "what happened to you?" or even, "what's right with you?" [188] Building resilience takes time, but by directing children to both inner resources (like strengths and skills) and outer resources (like organizations or even their attorneys) a child's journey through the legal system can help them heal from his or her past trauma.

Attorneys for unaccompanied immigrant children seeking to incorporate a strength-based approach into a new or existing TIC system should explore opportunities that allow their clients to build resiliency. Attorneys are in a better situation than others to become familiar with the strengths of their clients, and if an attorney feels they are incapable of providing these kinds of services, he or she can always look into getting the child in touch with a social worker. The most important part of this element of a TIC system is to ensure that the child leaves the representation with a network of resources they can utilize to build on their strengths and keep them moving forward in a positive direction.

---

[186] Model Rules of Prof'l Conduct r. 1.4(2) (Am. Bar Ass'n 2009).

[187] *Advanced Social Work Practice in Trauma*, COUNCIL ON SOC. WORK EDUC. 10 (2012), http://www.cswe.org/getattachment/Publications-and-multimedia/CSWE-Full-Circle-(1)/Newsletters-Archive/CSWE-Full-Circle-November-2012/Resources-for-Members/TraumabrochurefinalforWeb.pdf.aspx.

[188] Pamela Woll, Workshop Handout, *A Strength-Based Approach Toward Trauma-Informed Treatment and Recovery Support for Women*, MICH. INST. FOR PREVENTION AND TREATMENT EDUC. (2011), http://www.mi-pte.org/sudppps2011/Woll-HandoutTraumaAndWomen.pdf.

B. At the Border

The current immigration system does not take into account the traumatic events that unaccompanied minors face on their journey to the United States. Upon arrival the children are not met with trained healthcare specialist nor are they exposed to a compassionate system looking out for their best interest.[189] Since 2009, under the Trafficking Victims Protections Reauthorization Act, U.S. CBP is responsible for interviewing and screening unaccompanied minors upon their arrival.[190] Customs and Border Protection is required to screen each child to determine if he or she is "unable to make independent decisions, is a victim of trafficking, or fears persecution in his home country. If none of these apply, CBP will immediately send the child back to Mexico or Canada through a process called 'voluntary return.'"[191] This process does not always equate to the best interest of the child, and as NGO Appleseed stated, it "translates into less searching inquiries regarding any danger they are in and what legal rights they may have."[192] In response to the increase in unaccompanied minors at the border the Department of Justice "committed to sending more immigration judges" in order to "expedite removal proceedings for the children," indicating that what is best for the children is not a real priority.[193]

This initial contact at the border is especially important for children from contiguous countries. Children from Mexico and Canada can be deported by CBP directly after the initial interview.[194] Just as trauma-informed training is a helpful tool for attorneys when representing

---

[189] Betsy Cavendish & Maru Cortazar, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, APPLESEED NETWORK 33–34 (2011), http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf.

[190] *Id.* at 6.

[191] AMERICAN IMMIGRATION COUNCIL, A GUIDE TO CHILDREN ARRIVING AT THE BORDER: LAWS, POLICIES AND RESPONSES 7, (June 26, 2015), http://immigrationpolicy.org/special-reports/guide-children-arriving-border-laws-policies-and-responses. This process varies depending on what country the child is from. Children from non-contiguous countries (countries that do not have a border with the United States) must be transferred to Health and Human Services (HHS) within seventy-two hours. *Id.* These children are placed in standard removal proceedings. Children from contiguous countries (countries that have a border with the United States) can be sent back to Mexico or Canada through voluntary return if the CBP officer does not believe they meet one of the three standards. *Id.*

[192] *Id.* (citing Appleseed, Letter to congressional Research Service (on file with American Immigration council), May 23, 2014).

[193] *See* U.S. Customs and Border Protection, CBP Address Humanitarian Challenges of Unaccompanied Child Migrants (Nov. 3, 2016), http://www.cbp.gov/border-security/humanitarian-challenges.

[194] AMERICAN IMMIGRATION COUNCIL, *supra* note 191, at 7.

children, it can also assist CBP agents better understand why a child may respond a certain way.[195] Not every traumatized child will respond the same way to questions, and many may be closed off or scared to answer honestly. Agents must take into account various factors such as gender and age.[196] Older children may respond aggressively when interviewed, a symptom of trauma that an agent may ignore.[197] The same symptoms of trauma that may create a barrier between an attorney and child may also become an issue during the initial interview.[198] These trauma symptoms may lead an agent to believe that a child is fabricating a story or hiding important information. If an agent is not properly trained, or only has the goal of deportation in mind, an already traumatized child seeking refugee may be removed unjustly. CBP agents are responsible for making life or death decisions for thousands of unaccompanied minor children and without trauma-informed training, they are unable to make reliable and thoughtful decisions.

1. THE WAITING PERIOD

Children from noncontiguous countries, such as El Salvador and Honduras, are transferred to the Department of Health and Human Services, under the Office of Refugee Resettlement (ORR), to be screened for trafficking, and from there are sent to any qualified guardian that may be found.[199] It is also federally required that these children receive mental and physical health screenings.[200] Unfortunately, the system often fails to provide the children adequate care while in the hands of the ORR or after their release.[201] It is rare for any medical or mental health care services to be arranged for these children.[202] Their guardians can request for medical records, but there is no formal system of communication between the ORR and any other health care providers.[203] This creates a delay, not only in care, but also in the identification and

---

[195] *See supra* Section III(A).

[196] *See* Adams & Paxton, *supra* note 153, at 3–4.

[197] *See supra* Section III(A).

[198] *See supra* Section III(A). These symptoms include a racing heartbeat, difficulty concentrating, and muscle tension that an agent may interrupt as lying or trying to hide something.

[199] AMERICAN IMMIGRATION COUNCIL, *supra* note 191, at 7, 9.

[200] Kimberly A. Ciaccia and Rita Marie John, *Unaccompanied Immigrant Minors: Where to Begin*, 30 J. PEDIATRIC HEALTH CARE, 231, at 232 (May/June 2016).

[201] *Id.*

[202] *Id.*

[203] *Id.*

diagnosis of any underlying issues.[204] These gaps in the system only serve to exacerbate any trauma the child may be suffering.

In order to create a system that actively helps children through their trauma, more communication between the ORR and any future healthcare providers is needed. Fear of deportation and distrust of an unfriendly system makes many children and their guardians afraid to seek outside help.[205] A new system of care that considers trauma must be put in its place. This system must address both short term and long term goals and needs, much like the pediatric medical traumatic stress model does within medicine.[206] The pediatric traumatic stress model takes into account not only the trauma at the time of the event, but also preexisting conditions and duration.[207] Taking on a "big picture" approach in treating the trauma of unaccompanied minors will allow the ORR to properly care for their needs and health.

2. IMMIGRATION COURT

Children are not entitled to legal representation within the immigration court system.[208] However, even without representation, immigration court judges may not be sympathetic to their plight; recently, one longtime immigration judged asserted that children as young as three are able to properly defend themselves in immigration court.[209] The lack of legal aid within the maze of immigration law can make traumatized children feel anxious and afraid.

An immigration judge trained on trauma informed care can help alleviate the stress and pain an unaccompanied child goes through within the system. Just as in a criminal court setting, time spent in immigration court can have lasting effect. A judge and all court officials should be careful not to re-traumatize a child.[210] A positive experience may actually serve to lessen the trauma and create a basis for a healthy life in the future.[211] An immigration judge should choose their words carefully and phrase statements in a way that make it clear they are truly thinking about what is in the best interest of the child, and not just politics.

---

[204] *Id.*

[205] *Id.* at 232.

[206] *See supra* Section II(A)(i).

[207] *See supra* text accompanying note 88.

[208] AMERICAN IMMIGRATION COUNCIL, *supra* note 191, at 5.

[209] Markon, *supra* note 76.

[210] *See supra* Section II(B)(i).

[211] *See* Creating Trauma-Informed Services: Tipsheet Series, *supra* note 118, at 4.

CONCLUSION AND FURTHER RESOURCES

Trauma–informed care can turn a child's journey through the legal system into a positive experience that helps them deal with and move past their past trauma. Trauma–informed care can also help fill gaps in domestic law and international law regarding children. For example, the United Nations Convention on the Rights of the Rights of the Child (CRC) states: "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."[212] Article 3 of the CRC states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."[213] The "best interests of the child" framework focuses on the individual child and the facts that surround each case.[214] TIC helps to realize the full potential of the child and provide holistic representation.

While the justice AmeriCorps program represents a wonderful resource that helps children obtain legal representation, more individualized knowledge of TIC would serve these advocates well. Many psychologists are able to help through the National Child Traumatic Stress Network (NCTSN). The NCTSN was created by Congress in 2000, and is funded by the Substance Abuse and Mental Health Services Administration through the Center for Mental Health Services. [215] NCTSN helps provide funding for staff training and increasing access to services for children.[216]

Frequently, it is local efforts that are the most helpful. In Miami, Etiony Aldarondo has worked to create a human-rights based Immigrant Children Affirmative Network (ICAN) to assist unaccompanied migrant children in receiving legal, social, advocacy and mental health

---

[212] Convention on the Rights of the Child, pmbl, Nov. 20, 1989, 1577 U.N.T.S. 3, 45 [hereinafter CRC]. It is important to note that while the United States has signed the treaty in 1995, it has not ratified it. Nicholas R. Bednar & Margaret Penland, *Asylum's Interpretative Impasse: Interpreting "Persecution" and "Particular Social Group" Using International Human Rights Law*, 26 MINN. J. INT'L L. 145, 170–71 (2017). The United States is not required to enforce the treaty, but cannot enact legislation contrary to the Convention. Curtis A. Bradley, *Unratified Treaties, Domestic Politics, and the U.S. Constitution*, 48 HARV. INT'L L. J. 307, 307–08 (2007).

[213] CRC, *supra* note 212, art. 3.

[214] Jessica R. Pulitzer, Note, *Fear and Failing in Family Court: Special Immigration Juvenile Status and the State Court Problem*, 21 CARDOZO J. L. & GENDER 201, 210 (2015).

[215] *The History of the NCTSN*, THE NATIONAL CHILD TRAUMATIC STRESS NETWORK, http://www.nctsn.org/about-us/history-of-the-nctsn (last visited Feb. 28, 2017).

[216] *Id.*

services.[217] The mix of psychology graduate students and community leaders have trained the staff at the shelters to become more child-centered.[218] A similar group called PATHS to Resilience exists in Boston.[219] The group focuses on helping the children overcome the trauma they have experienced and develop safe connections with others.[220] While these resources are helpful to attorneys representing unaccompanied children, they are no replacement for an attorney's dedication to implementing trauma-informed care.

---

[217] Collier, *supra* note 77, at 62. Etiony Aldarondo is the associate dean for research at the School of Education and Human Development at the University of Miami. *Id.*

[218] *Id.*

[219] *Id.*

[220] *Id.*