

June 3, 2019

United States House of Representatives
Washington, D.C. 20515

Re: Vote “YES” on Amendment X and Amendment Y to H.R. 6 to Remove Discretionary Bars to Relief Based on Juvenile Adjudications and Alleged Gang Affiliation

Dear Representative,

The undersigned organizations recommend a “YES” vote on Rep. X’s amendments to H.R. 6, the Dream and Promise Act of 2019, which is expected to be considered on the House floor as early as Tuesday, June 4, 2019. As the House moves to finally codify protections for immigrant youth who have known no other home than home than the United States, members are uniquely positioned to fight back against the false narrative that has emerged around immigrant youth in recent years.

Unfortunately, the version of H.R. 6 passed out of the House Judiciary Committee added many new - and unprecedented - grounds of exclusion for people who apply for Dream Act relief, including discretionary bars for those who have juvenile delinquency adjudications (which are not convictions and should not carry the consequences of such) and those who the government labels as participating in gang offenses. These discretionary bars have not been included in the Senate’s version of the Dream Act, S. 874.

Rep. X’s amendments would remove these two discretionary bars.

Juvenile Adjudications

The juvenile court was created 125 years ago in recognition that youth should be treated differently than adults. With the study of adolescent development and neuroscience over the past two decades, we have learned that youth, even into their late teens, do not have the same ability as adults to make mature decisions.¹ Engaging in reckless behavior during adolescence is socially normative behavior. While crimes peak around late adolescence, they begin a steep decline into adulthood.² All youth, including immigrant youth, should be held accountable in developmentally appropriate ways and those consequences should not follow them into adulthood.

While the bar on the basis of juvenile adjudications is discretionary, it must be viewed in the context of our current political climate and the statistics on youth who come into contact with the juvenile justice system. We have seen a trend from the current administration to target and criminalize immigrant youth and youth of color.³ Youth crime is at a 30-year low,⁴ but youth and communities of color are still paying the price for damaging and ineffective policies that emerged in the 1990s that severely criminalized youth behavior. Between 2003 and 2013, the rate of youth committed to juvenile facilities after an adjudication of delinquency fell by 47 percent.⁵ Despite this drop, youth of color remain far more likely to be committed than white youth.⁶ Latinx youth are 65 percent more likely to be detained or committed than their white

peers, according to data from the Department of Justice collected in October 2015.⁷ Black youth are five times more likely to be detained or committed compared to white youth.⁸ And while disaggregated data on Asian Pacific Islanders is scarce, one study of the California Youth Authority in 2002 found that Cambodian and Laotian youth were incarcerated at 4 and 9 times the rate that would be expected by their respective populations.⁹ Vietnamese and Laotian youth had the second and third highest arrest rates in Richmond in 2000 after African American youth.¹⁰ This data represents a disproportionate and harsh impact on youth of color, and a bar to relief under the Act on the basis of a juvenile adjudication would create a double punishment for immigrant youth.

Even though the bill limits the consideration of juvenile adjudications to those that result in a disposition ordering placement in a secure facility, this does not mean it is limited to only the most serious offenses. **In fact, most youth committed to the juvenile system are there for low-level offenses, including technical violations and status offense violations, such as truancy, running away, or violating curfew.**¹¹

Lastly, this bill may come into conflict with state sealing and confidentiality laws that are in place to protect youth from the stigma of criminality and help with their rehabilitation and treatment. When a case is sealed, the case is considered never to have occurred under state law. For example, California Welfare & Institutions Code § 781(a) provides that once juvenile records are sealed, “the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed.” Under this law, applicants may be forced to “unseal” records protected under state law because there is no legal provision that supports the state’s interest in keeping the records sealed for federal immigration purposes.

Alleged Gang Affiliation

As part of the administration’s campaign to target and criminalize immigrant youth, there has also been an increase in targeting immigrant youth for alleged gang involvement.¹² Per Immigration and Custom Enforcement’s (“ICE”) policy, “a person can be identified as a gang member if they meet two or more criteria, including . . . frequenting an area notorious for gangs and wearing gang apparel.”¹³ As a result, immigrant youth are now being targeted by law enforcement for simply wearing a particular soccer jersey or writing the area code of their home country.¹⁴ A 2017 survey of immigration attorneys who have represented clients accused of gang affiliation in immigration proceedings revealed that, in some cases, no evidence of gang affiliation is even put forward. Rather, allegations are made directly by the immigration agency through the form of notes or social media pictures showing the young person wearing a particular item of clothing.¹⁵ From California,¹⁶ to Ohio,¹⁷ to New York,¹⁸ federal law enforcement officers have led mass raids under the guise of taking down dangerous gangs. Yet, according to ICE’s own admission, during raids they have gone after people who not only are not members of gangs, but also people who pose no public safety risk.¹⁹

There is a growing body of scholarship linking gang policing to over-policing, profile-based policing, and racial profiling.²⁰ ICE often relies on a massive architecture of gang units, databases, and stop and frisk practices to surveil and gain information about youth suspected of being in gangs. Data mining of social media sites and intensive policing are part and parcel of

surveillance of youth of color to establish gang affiliation. Additionally, these suppression-style tactics have done little to reduce gang activity.

As introduced, the legislation diminishes the impact of evidence acquired from federal and state gang databases to establish gang membership. This particular safeguard is insufficient for two reasons: (1) database information will not be entirely excluded from consideration; and (2) it ignores the vast architecture that ICE now uses to claim gang affiliation. ICE often accesses state, city, and regional gang databases to create target lists for enforcement or immigration benefit vetting purposes. Homeland Security Investigations (“HSI”) or other Department of Homeland Security (“DHS”) agencies generate an evidentiary packet that it submits in immigration court or to U.S. Citizenship and Immigration Services to establish gang affiliation. Immigration courts (which are not Article 3 courts) and DHS agencies largely defer to HSI and DHS evidence of gang profiling, and it is difficult to overcome their findings, especially in the context of discretionary waiver. **We, therefore, fear the judicial review provisions will fail to mitigate against initial findings by the administrative adjudicatory bodies.**

Adding a bar to relief under the Act based on gang affiliation would also punish youth for activity that in itself breaks no laws. Further, it risks punishing youth who may have had no true gang affiliation and were denied due process to prove their case. In either case, such a bar would be counter to all principles of basic fairness.

Conclusion

For these reasons, we urge you to vote “YES” on **Rep. X’s** amendments. Rather than pitting kids against one another and promoting a narrative of the “good immigrant” versus the “bad immigrant,” these amendments ensure that all immigrant youth who have only known the United States as home no longer have to live in fear of an uncertain future. The juvenile justice system recognizes that young people are different than adults and treats them as such. We urge Congress to do the same.

If you have questions, please contact Rachel Marshall, Federal Policy Counsel for the Campaign for Youth Justice, at 202-558-3580 Ext. 1571 or RMarshall@cfyj.org

Sincerely,

[SIGNATORIES]

¹ BRIAN EVANS, CAMPAIGN FOR YOUTH JUSTICE, ADOLESCENT BRAIN DEVELOPMENT (Dec. 10, 2018), available at http://www.campaignforyouthjustice.org/images/factsheets/Adolescent_Brain_Development_FINAL.pdf.

² Terrie E. Moffitt, *Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOL. REV. 674-75, 685-686 (1993); Terrie E. Moffitt, *Natural Histories of Delinquency*, in *Cross-National Longitudinal Research on Human Development and Criminal Behavior* 3-4,7, 29 (Elmar G.M. Weitekamp & Hans-Jürgen Kerner eds., 1994); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 343 (1992); U.S. Dept. of Justice, *Statistical Briefing Book*, <https://www.ojjdp.gov/ojstatbb/crime/index.html> (last visited Apr. 29, 2019) (statistics showing that arrests for both serious violent crimes and property crimes peak in late adolescence).

³ *What You Need to Know About the Violent Animals of MS-13*, THE WHITE HOUSE, May 21, 2018), <https://www.whitehouse.gov/articles/need-know-violent-animals-ms-13/>.

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- ⁴ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Arrest Rate Trends*, OJJDP STATISTICAL BRIEFING BOOK (Dec. 6, 2017), https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201.
- ⁵ Joshua Rovner, *Youth Commitments and Arrests*, THE SENTENCING PROJECT (Apr. 1, 2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/>.
- ⁶ *Id.*
- ⁷ *Latino Disparities in Youth Incarceration*, THE SENTENCING PROJECT (Oct. 12, 2017), <https://www.sentencingproject.org/publications/latino-disparities-youth-incarceration/>.
- ⁸ *Black Disparities in Youth Incarceration*, THE SENTENCING PROJECT (Sept. 12, 2017), <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>.
- ⁹ Katrina Dizon Mariategue, *Southeast Asian Americans and the School-to-Prison-to-Deportation Pipeline*, SOUTHEAST ASIA RESOURCE ACTION CENTER (Apr. 15, 2018), <https://www.searac.org/resource-hub/immigration/resources-toolkits-immigration/southeast-asian-americans-and-the-school-to-prison-to-deportation-pipeline/>.
- ¹⁰ *Id.*
- ¹¹ Press Release, Wendy Sawyer, Prison Policy Initiative, Youth Confinement: The Whole Pie (Feb. 27, 2018), available at <https://www.prisonpolicy.org/reports/youth2018.html>.
- ¹² LAILA L. HLOSS AND RACHEL PRANDINI, DEPORTATION BY ANY MEANS NECESSARY: HOW IMMIGRATION OFFICIALS ARE LABELING YOUTH AS GANG MEMBERS (2018), available at https://www.ilrc.org/sites/default/files/resources/deport_by_any_means_nec-20180521.pdf (finding that immigration officials across the Department of Homeland Security are falsely accusing immigrant youth of gang involvement; that immigrant youth with prior gang involvement are being denied immigration benefits, even when there is evidence of rehabilitation and community involvement; and that immigration law provides no clear definition on what constitutes gang involvement); Marie Holper and Claire Valentin, *Boston Has a Secret Point System That Turns Normal Teenage Behavior Into Gang Membership*, ACLU (Nov. 21, 2018), <https://www.aclu.org/blog/immigrants-rights/boston-police-has-secret-point-system-turns-normal-teenage-behavior-gang> (“In Massachusetts, law enforcement officials labeled him a gang member not because he was arrested for gang violence or suspected of engaging in it. Rather they labeled him that way because he was the victim of an assault at school. The crime committed against him cost him eight points. He was “verified” when he was seen leaving school with other supposedly “verified” gang members.”); F.E., *There’s No Evidence I’m in a Gang — Because I’m Not. But I’ve Been Locked Up for Two Months for Gang Membership.*, ACLU (Aug. 15, 2017), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/theres-no-evidence-im-gang-because-im-not-ive> (explaining that the author was accused of belonging to a gang based on a doodle found in his notebook and people he said hi to school).
- ¹³ First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief at 10, *Saravia v. Sessions*, Case No. 17-cv-03615-VC. (N.D. Cal. 2017), available at https://www.aclunc.org/docs/20170811-first_amended_petition.pdf [hereinafter First Amended Petition].
- ¹⁴ Stephen Kang, *The Trump Administration Is Detaining Immigrant Kids for Gang Membership Without Evidence. So We Sued.*, ACLU (Aug. 14, 2017, 2:00 PM), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/trump-administration-detaining-immigrant-kids>.
- ¹⁵ HLOSS AND PRANDINI, *supra* note 12 at 10.
- ¹⁶ Joel Rubin, *ICE Arrests Hundreds of Immigrants in ‘Sanctuary Cities’ Around the Nation, California*, LA TIMES (Sep. 28, 2017), <https://www.latimes.com/local/lanow/la-me-ice-raids-sanctuary-20170928-story.html>.
- ¹⁷ Lily Moore-Eissenberg and Hailey Fuchs, *Activists Rush to Provide Aid for Those Detained in ICE Raid*, TOLEDO BLADE (June 8, 2018), <https://www.toledoblade.com/local/2018/06/07/Activists-rush-to-provide-aid-for-those-detained-in-ICE-raid.html>.
- ¹⁸ Alice Speri, *The Largest Gang Raid in NYC History Swept Up Dozens of Young People Who Weren’t in Gangs*, THE INTERCEPT (Apr. 25, 2019), <https://theintercept.com/2019/04/25/bronx-120-report-mass-gang-prosecution-rico/>.
- ¹⁹ Julianne Hing, *ICE Admits Gang Operations Are Designed to Lock Up Immigrants*, THE NATION (Nov. 20, 2017), <https://www.thenation.com/article/ice-admits-gang-operations-are-designed-to-lock-up-immigrants/>.
- ²⁰ K. Babe Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, 5 UNIV. DENVER CRIM. LAW REV. 1 (2015).