

NATIONAL JUVENILE JUSTICE NETWORK

Policy Platform

SUPPORTING IMMIGRANT YOUTH CAUGHT IN THE CROSSHAIRS OF THE JUSTICE SYSTEM

August 2018

Executive Summary

Out of the estimated 11.1 million noncitizen immigrants living in America today, approximately one million are children under 18 years old.¹ Many of these youth have come to this country fleeing violence and oppression, carry complex emotional burdens from trauma, and face basic language barriers.² As national anti-immigrant rhetoric has escalated to the point of associating immigrants with animals and infestation³ and equating [immigrant youth](#) with gang members, these youthful immigrants have often become caught in the crosshairs of the justice system. Rather than being supported to develop into successful adults, immigrant youth are more often being targeted for arrest, detention, and deportation.

As immigrant youth engage with the school and youth justice systems in this country, it is incumbent upon us to treat these youth – as we aspire to treat all youth in the United States – equitably, with dignity, and in a way that supports positive youth development and the rehabilitative goals of the youth justice system. Supporting immigrant youth has become increasingly more difficult, however, as federal, state, and local jurisdictions have adopted laws and policies that are threatening to immigrant youth and their families and fail to humanely support them. These include policies that promote local cooperation with federal immigration authorities, facilitate the deportation of immigrant youth and families, fail to protect the confidentiality of young people’s school and justice records, increase harm to immigrant youth involved in the justice system, and fail to provide trauma informed, culturally and linguistically competent services for immigrant youth. While some of these policies negatively impact all youth, they can have profound consequences for immigrant youth, including higher risk of detention and the possibility of deportation. All these policies further serve to traumatize and

instill fear in immigrant youth, impeding their ability to follow through on the services that will lead them on the path to positive youth development.

Recommendations

NJJN makes the following recommendations to support policies that uplift all families and further best practices for positive youth development for all youth, regardless of immigration status.

- 1) Do not entangle local and state law enforcement, youth justice, and school officials with federal immigration enforcement and encourage laws and policies that support immigrant youth.
- 2) Do not use gang databases and, where used, do not share them with federal authorities.
- 3) Safeguard students with policies that prohibit federal immigration authorities from entering schools, require warrants or other court documents to review student records, and discourage the use of school resource officers for the handling routine disciplinary matters.
- 4) Protect the confidentiality of all youth in the justice system, including immigrant youth.
- 5) Avoid detaining youth, including immigrant youth.
- 6) Use an immigration lens when reviewing current and proposed youth justice policies. Consider the possibility that children and/or adults that care for them may be immigrants and take actions that support their healthy development, rather than further traumatizing or harming them.
- 7) Ensure youth in the juvenile justice system have access to defense counsel that understand the immigration consequences of juvenile justice system involvement and, where necessary, access to immigration attorneys.

Acknowledgements

The National Juvenile Justice Network (NJJN) leads a movement of state-based youth justice reform organizations and alumni of its [Youth Justice Leadership Institute \(YJLI\)](#) to fight for a youth justice system that treats youth and families with equity, dignity and humanity. Founded in 2005, NJJN is currently comprised of 51 organizations and 50 Leadership alumni across [42 states](#) and the District of Columbia.

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NJJN takes full responsibility for the content of this policy platform.

DETAILED BACKGROUND AND RECOMMENDATIONS

Below we have detailed areas of concern for immigrant youth caught in the crosshairs of the justice system and provide detailed recommendations for supporting them. We outline three main areas of harm that can befall immigrant youth and make recommendations to mitigate and/or eliminate those harms.

- I. State and local collaboration with Federal immigration enforcement
 - A. Law enforcement
 - B. Gang databases
 - C. Schools
- II. Youth justice system involvement
 - A. Decrease detention
 - B. Support the needs of immigrant youth
 - C. Confidentiality
 - D. Access to counsel
- III. Zero tolerance policies
 - A. Emerging adults
 - B. Well-being of youth and families

I. State and Local Collaboration with Federal Immigration Enforcement Puts Immigrant Youth at Increased Risk

Through a complex web of formal programs and informal practices, the U.S. Department of Homeland Security's interests have been woven into many state and local criminal justice systems practices.⁴ These programs generally operate with little transparency or accountability. As local law enforcement, youth justice system, and school system authorities connect and cooperate with federal immigration authorities, we harm the trust of immigrant youth in – and create a culture of fear around -- these public officials and institutions. Broken trust and fear can prevent these youth and their families from cooperating with the police in solving crimes, from reporting crimes – sometimes against themselves or their families, from actively participating in school, and from fully taking advantage of needed services. Additionally, the involvement of federal immigration authorities in non-immigration related issues places youth at greater risk of lengthier detention (in youth justice or immigration detention facilities) should they be arrested, diminishes their ability to attain a pathway to legal status, and places them at greater risk of deportation.

A. Discourage States and Localities from Unfettered Cooperation with Federal Immigration Authorities

The federal government uses several formal and informal programs to promote local cooperation with federal immigration authorities. Below are some of the key programs and NJJN's concerns with them.

Secure Communities Program (S-Comm)

S-Comm is a federal immigration enforcement program implemented by U.S. Immigration and Customs Enforcement (ICE) in which state and local law enforcement provide ICE with the fingerprints of arrested individuals – including youth.⁵ ICE checks the fingerprints against their civil immigration database and may ask jails or detention facilities to hold individuals past the time they would normally be released – called an immigration detainer or ICE hold.⁶

Detainers placed on youth may result in long detention in the juvenile justice system, as well as placement in secure immigration detention facilities, which can be very far from their families and communities.⁷ Additionally, immigration detainers have been found by several federal courts to be unconstitutional and law enforcement agencies that comply may be found liable for unlawful detention.⁸

Criminal Alien Program (CAP)

The goal of CAP is the identification of noncitizens that are incarcerated and initiation of deportation proceedings against them.⁹ Through CAP, ICE officers may ask probation and detention staff for information regarding noncitizen youth, gain access to those youth in detention facilities, and ask for an ICE hold on them to facilitate their transfer to ICE for deportation proceedings.¹⁰ This program can derail the rehabilitative efforts of juvenile justice staff by eroding the critical trust between them and the youth in their charge.

287(g) Agreements

ICE enters into 287(g) agreements with state and local law enforcement to deputize officers to perform immigration related functions, including investigating a person's immigration status, accessing ICE databases, and issuing immigration detainers.¹¹ By the end of March 2018, ICE had entered into 287(g) agreements with 76 jurisdictions that deputized 1800 officers in 20 states – a 24 percent increase from 2017.¹² While to date these agreements have been with law enforcement who administer jails and not juvenile detention facilities, they can increase fear in the local community by conflating local deputies with ICE officials. This program jeopardizes public safety by decreasing the likelihood that immigrants will report crimes, cooperate in law enforcement investigations, or cooperate with youth justice officials if their child is involved in the system.¹³ Additionally, 287(g) agreements can be costly for local and state jurisdictions with startup, daily operating, and maintenance fees totaling millions of dollars.¹⁴

Informal Collaboration

Informal collaboration takes place in many jurisdictions in several ways, including ICE agents accompanying police officers, participating in traffic checkpoints, and acting as interpreters for local law enforcement.¹⁵ Additionally, some jail officials give lists of foreign-born arrestees to ICE¹⁶ and some juvenile probation officers elicit information from youth and report it to ICE.¹⁷

Collaboration Recommendation

To safeguard youth, families and communities, discourage state and local entanglement with federal immigration officials, through immigration detainers, CAP cooperation, 287(g) agreements, or other informal processes such as notifying immigration officials about suspected immigrant youth. Encourage your jurisdiction to stop honoring ICE detainers and to end all programs to cooperate with ICE or CBP. One example of a supportive state policy is the California Values Act ([SB 54](#)) passed in 2017. This Act bars immigration holds and 287 (g) contracts and places limits on transfers to ICE, among other provisions.¹⁸

B. Do Not Use Gang Databases

Although evidence suggests that immigrants are less likely to be involved in gangs than youth who are citizens,¹⁹ the practice of public officials labelling young immigrants as gang members has grown dramatically across the country, heightening anti-immigrant feelings.²⁰ Much of this focus has been on one gang in particular, MS-13, which the White House has frequently referred to as “animals.”²¹ Described as the “New Red Scare,” officials are using flimsy allegations of gang membership, including anything from wearing a particular t-shirt to doodles in a notebook, as a way to target individuals and put them at great risk for deportation.²² In some cases, gang allegations have even been fabricated by ICE officials.²³

Not only do gang allegations make individuals a higher priority for deportation and the target of a raid, it can also result in youth being denied a pathway to legal status or protection against deportation, and it can keep them from being released from detention pending resolution of their immigration case, which can take years.²⁴ Gang allegations are also serving as the justification for fast-track deportation practices of recently arrived youth, many of whom arrive as [unaccompanied minors](#), are summarily accused of gang affiliation, and then transported to a detention center.²⁵

A common source of information and tracking of alleged gang affiliation by law enforcement are gang databases.²⁶ Depending on the jurisdiction, youth can be placed on a gang database by law enforcement, school police, school security, and school staff, based on mere suspicion of gang involvement, such as having a particular hairstyle or jewelry.²⁷ Since officials disparately target and scrutinize the behavior of black and brown youth,²⁸ immigrants of color face a greater risk

of being labeled as gang members.²⁹ In fact, black people and Latinx people constitute a disproportionate number of the individuals on gang databases.³⁰

Gang databases have been criticized not only for having vague criteria for designating someone as a gang member, but for their lack of oversight, review, and transparency.³¹ Because law enforcement agencies often create gang databases for intelligence purposes, the information in the database need not be tied to a youth's arrest, conviction, or even an investigation.³² Many youth are unaware that they have been placed on a gang database unless they wind up in court, and once they find out, there generally is no process for removal.³³ All of these issues have made gang databases notoriously unreliable.³⁴

Despite their flaws, many jurisdictions are sharing their gang databases with ICE.³⁵ And ICE stores gang information through various case management systems, such as ICEGangs and the Enforcement Integrated Database (EID), which it then shares with some local law enforcement agencies.³⁶ An ICE spokesperson noted that individuals in their system can be identified as gang members merely by meeting two of eight criteria, which include wearing gang clothing or frequenting places known for gang activity.³⁷

Gang Database Recommendations

NJJN recommends that gang databases not be used.

For those states that already have gang databases, NJJN recommends implementing protections such as those detailed below, while they work to change this practice:

- Only place youth on local law enforcement databases, not statewide or federal databases.
- Block federal law enforcement access to state and local gang databases.
- Provide strong penalties for sharing gang database information outside of the local and state law enforcement community.
- Provide a review and appeal process for youth to challenge inclusion in the gang database.
- Provide notification to youth that they are on a gang database and information on how they can file a petition with the court to be removed. Youth should be provided with legal counsel to assist them with this process.
- Provide oversight of the database by a state agency outside of law enforcement, such as the state's Department of Justice, which is now done in California. This agency should develop regulations governing the use, operation, and oversight of

any gang database and conduct periodic audits.

See California's legislation, [AB 90](#), passed in 2017 for further ideas on ways to address gang database problems.

C. Reduce School Risks

Immigrant youth face multiple harms due to school system collaboration with the Department of Homeland Security, including infringements on their right to attend school and disparate treatment and outcomes from school resource officer interventions in school-based incidents.

The Right to Attend School

In *Plyler v. Doe*, the United States Supreme Court struck down a Texas law requiring undocumented children to pay public school tuition on the grounds that it violated the Equal Protection Clause of the Fourteenth Amendment. The Court found that there was no national policy that would support the denial of an education to these immigrant children and further emphasized the importance of an education to all children as follows:³⁸

Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life. The inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause.³⁹

A 2014 Dear Colleague letter and fact sheet from the U.S. Departments of Education and Justice stated that public schools cannot deny education to undocumented youth and cannot ask about children's or parents' immigration status or require parents to show driver's licenses or other state-issued identification.⁴⁰ There is some concern that this policy will be undermined based on the U.S. Education Secretary's testimony before the House Committee on Education and the Workforce in May 2018, in which she stated that individual schools could determine whether to report children or families they believe to be undocumented to ICE.⁴¹

If schools question children about their immigration status or are believed to be working in concert with ICE, it will likely have a chilling effect on school registration and attendance and restrict the right of immigrant children to a public education. In order to protect students, some school districts, such as Broward County, have adopted policies requiring federal agents seeking information about students or access to them to produce a warrant or other court document that the district's attorney must first review.⁴² Students are also protected by the federal [Family Educational Rights and Privacy Act \(FERPA\)](#), which only permits schools to share student information in very narrow circumstances, such as in connection with a student engaged in a crime of violence or a sex offense.⁴³ Finally, it is official [ICE policy](#) to avoid carrying out

enforcement actions at locations it has deemed “sensitive,” such as schools, except under limited circumstances.⁴⁴

Unequal Outcomes from School Resource Officer (SRO) Interventions

Since youth of color are far more likely to have police contact than white youth due to policing practices,⁴⁵ noncitizen youth of color face great danger of having an arrest be the beginning of their deportation process. School disciplinary practices that utilize school-based law enforcement, such as school resource officers (SROs), can be especially risky for immigrant youth. When handled by SROs, even minor incidents are more likely to result in an arrest,⁴⁶ and this information could then be sent to ICE with devastating consequences for immigrant youth, including immigration detention and deportation.

In some schools, SROs have been even more aggressive. In the case of a 15-year-old Tucson student, after being taken to the assistant school principal’s office on suspicion of having stolen a piece of school property, the SRO questioned him about his immigration status. This led the SRO to handcuff the student and drive him to a Border Patrol agent who transferred him to ICE custody.⁴⁷ Finally, in some localities, school issues can place the whole family at risk. In Phoenix, Arizona, SROs can make home visits to speak with the parents of truant youths. While there, they can ask the youth and their family for their citizenship papers.⁴⁸

School Risk Recommendations

- Prohibit schools from asking about the immigration status of children or parents and from alerting ICE to children or families that they think may be undocumented.
- Prohibit ICE from entering schools and encourage schools to adopt policies stating that federal agents seeking information about students or access to them must produce a warrant or other court document that the school district's attorney must first review.
- Encourage school officials to reduce and eventually eliminate the use of SROs or other law enforcement to handle routine disciplinary matters by instituting practices that improve school climate such as restorative justice, trauma-responsive counseling and positive behavior and supports (see NJJN’s policy platform, [“Safe and Effective School Disciplinary Policies and Practices”](#)).
- For schools that utilize SROs, ensure that there are strong memoranda of understanding in place that severely limit the behavior for which SROs can make an arrest. (See NJJN’s policy platform, [“Safe and Effective School Disciplinary Policies and Practices”](#)).

II. Involvement with the Youth Justice System puts Immigrant Youth at Increased Risk

The youth justice system was developed at the turn of the twentieth century because of the understanding that youth were different from adults – they were still developing and were capable of change when rehabilitative principles were applied. Our youth justice systems should continue to strive to have policies and programs that ensure the healthy development and equitable treatment of all youth. Immigrant youth should not be siloed and treated differently. Unfortunately, immigrant youth can face significant hurdles to receiving rehabilitative services in the youth justice system and, instead, often face many dangers by entering the system.⁴⁹ These dangers include greater risk of confinement than other youth, subjection to dangerous conditions in immigration detention, harm to their juvenile case, harm to their ability to gain legal status, and risk of immigration detention or deportation.⁵⁰

- Danger of prolonged juvenile detention and/or immigration detention
When suspected undocumented youth are reported to Immigration and Customs Enforcement (ICE), youth who would otherwise have been released after arrest and/or charging may instead be unnecessarily detained. This can involve prolonged confinement in juvenile detention or in immigration detention facilities far from their families.⁵¹
- Dangerous conditions in immigration detention
Immigration detention facilities can be unsafe and unhealthy places for youth. In one example, a Virginia immigration detention facility holding allegedly gang-involved youth awaiting immigration determinations is the subject of a federal civil rights lawsuit and is under state investigation. The suit claims horrific abuse, including youth being strapped naked to chairs with bags placed over their heads, beaten while handcuffed, and locked up for long periods in solitary confinement— some left nude and shivering in concrete cells.⁵² This treatment is part of a recurring theme found in immigration detention centers of inadequate health care, contaminated food, and physical and sexual assault.⁵³
- Harm to juvenile delinquency case
Immigrant youth in the juvenile justice system may also face significant harm to their juvenile delinquency cases if they are confined in immigration detention facilities. The local government often continues the delinquency proceedings without the youth present. These youth then may unknowingly receive warrants for their failure to appear and violations of probation.⁵⁴
- Harm to immigration legalization case and possible deportation
While delinquency is treated differently than criminal convictions under immigration law, certain delinquency adjudications, or the conduct on which they are based, can still

be used to prevent youth from maintaining or gaining legal status.⁵⁵ Ultimately, youth are at increased risk of deportation.⁵⁶

Given these harsh consequences, it is especially important for justice systems to use an immigration lens when reviewing current and proposed youth justice policies. Justice system officials should be sensitive to the fear and trauma that immigrant youth and their families may be experiencing, the impact it may have on their actions, and how best to work with these youth without causing further harm to them or their families. Below we detail ways to protect immigrant youth in the youth justice system from harm and affirmatively support them and their families instead.

A. Avoid Unnecessary Detention

An important goal for all youth justice systems should be to reduce the unnecessary detention of youth. When youth are confined in detention centers pending trial, they are pulled out of school and many experience worsening mental health conditions.⁵⁷ Youth who have been detained are also more likely to drop out of school and become involved in the criminal justice system.⁵⁸ For immigrant youth, the consequences can be even more severe because youth who are detained have a greater risk of being referred to ICE for immigration detention and possible deportation.⁵⁹

Many jurisdictions detain youth believed to be undocumented when they would not detain a youth with comparable charges who is a U.S. citizen.⁶⁰ Perceived citizenship status should not be used in making a detention determination for several reasons:

- Determining a young person’s legal immigration status is complex. There are many categories of immigration status for noncitizens, from lawful permanent residents, or green card holders – permitted to live and work permanently in the United States– to persons seeking asylum.⁶¹ For youth there are even more forms of immigration relief, including [Special Immigrant Juvenile Status \(SIJS\)](#) – available to some youth under the jurisdiction of the juvenile court (including child welfare and delinquency) and [U Visas for victims of violent and serious crimes](#).⁶² Many youth are themselves uncertain about what their immigration status is and may not realize they have legal status to be in the United States.⁶³ Such referrals can also subject local and state officials to liability. At least two localities were forced to pay large settlements in cases where probation officers acted upon incorrect assessments of an individual’s immigration status.⁶⁴ Given this complexity, an immigration status determination should only be made by an immigration expert, and not a probation officer or other youth justice staff.
- Immigration status is not predictive of a likelihood of future offending or of a failure to appear.⁶⁵ There is no validated study that supports using immigration status as a risk factor in a [risk assessment instrument \(RAI\)](#) and to do so would be culturally biased.⁶⁶

- Using immigration status violates the Juvenile Justice Delinquency and Prevention Act (JJDP A)
Detaining a youth based on perceived undocumented status is prohibited under the Juvenile Justice Delinquency and Prevention Act (JJDP A).⁶⁷

To help ensure that youth are not unnecessarily detained, all youth should have the assistance of counsel prior to a detention hearing, which is particularly crucial for immigrant youth given their increased risks. Defense counsel that understand the immigration consequences of delinquency proceedings and outcomes can help to prevent a youth's immigration status from being improperly used in the detention proceedings.

Finally, youth may have noncitizen parents who are able to provide proper parental supervision and support at home but fear coming to court to support their child. To prevent unnecessary detention, stakeholders should make accommodations for parents to appear by phone, through written information, or find another family or community member who could appear in their stead.⁶⁸

Detention Recommendations

NJJN makes the following recommendations to avoid unnecessary detention:

- Probation/courts and other juvenile justice system personnel should not attempt to determine the immigration status of youth and/or their families, should not record or disclose any information that they learn, and should adopt policies prohibiting the use of immigration status as a basis to detain youth or as a risk factor in a [risk-assessment instrument \(RAI\)](#).⁶⁹
- Youth should be appointed a defense attorney prior to the detention hearing who understands the potential immigration consequences of all aspects of juvenile justice involvement.⁷⁰
- Parents who fear coming to court because of their own immigration vulnerabilities should be permitted to identify another family or community member who could come to court in their stead or be able to present information by phone or in writing.

B. Adopt Policies and Services that are Sensitive to and Affirmatively Support the Needs of Immigrant Youth and Families

Like many youth, immigrant youth entering the youth justice system may need rehabilitative services to help ensure a successful transition to adulthood. Yet they also face distinct challenges that justice system officials must address. In order to engage these young people and their

families to best support the youth's healthy development, juvenile probation and courts should use an immigration lens in reviewing and adopting policies.

- Consideration of family fears

Given the heightened fear around deportation, families may be reluctant to participate in meetings with justice system staff to assess needs, determine family supports for the young person, and identify community-based options in lieu of confinement. Justice system authorities should be aware of this and develop policies that are not culturally biased against immigrant youth. For example, requiring parents or guardians to present a driver's license or other state sponsored identification to verify their identity may prevent undocumented parents from taking custody of their children, so other methods of screening parents should be used.⁷¹ Additionally, parents should be provided alternate ways of demonstrating support for their child other than presenting themselves in person at court or in meetings with justice system staff.

- Inclusion of immigrant youth in rehabilitative programs

Many localities disqualify young people from rehabilitation or early release programs once they have information alleging that the person is a noncitizen, either from a detainer or an interview with the young person. These policies should be removed, as they prolong detention inappropriately. Participation in treatment programs helps to establish evidence of rehabilitation, a positive factor for some forms of immigration relief.⁷²

- Need for culturally and linguistically competent/sensitive justice system staff, attorneys, and services

Many immigrant youth and/or their families have limited English language skills. Intake staff and the youth's defense attorney must be able to communicate meaningfully with the young person in order to make a sound detention recommendation and to fight for the young person's rights.⁷³ Language and cultural barriers can lead to miscommunication and erroneous assumptions that harm youth.⁷⁴ Additionally, jurisdictions should have culturally and linguistically competent community-based services so that they have appropriate programs to use as an effective alternative to secure detention for immigrant youth.⁷⁵ To be successful, these services should also be trauma informed, since many undocumented immigrant children, particularly [unaccompanied minors](#), have fled violence and experienced traumatic situations.⁷⁶

- Need for rehabilitative services that help stabilize a youth's immigration status

An important component of rehabilitative services for immigrant youth that can help them successfully transition to adulthood is support from youth justice officials in stabilizing their immigration status. Undocumented youth may be eligible for immigration relief but need the help of experts in navigating the system. Youth justice

staff, defense attorneys, and judges should be trained in immigration consequences of delinquency and pathways to legal status. Certain forms of immigration relief, such as [Special Immigrant Juvenile Status \(SIJS\)](#), require the assistance of the juvenile court in order to attain.⁷⁷ Similarly, a youth may be eligible for a U visa, which is available to victims of certain serious crimes, but it requires a judge, prosecutor, investigator, or other official, to certify that the youth meets the requirements.⁷⁸ It is also very helpful if youth have access to an immigration attorney. If youth are able to submit an immigration application affirmatively before they are placed in detention proceedings they are far more likely to succeed.⁷⁹ Finally, youth justice staff should also look for other ways to help reduce stress to youth, such as by sharing information about [safety planning](#) for the family.

Support Recommendations

- Probation/courts should adopt policies that are sensitive to the needs of immigrant youth and families, including not requiring parents to show state sponsored identification for verification of identity and providing alternatives for parents to show support for their child other than appearing in person in court or justice staff offices.
- Intake staff and youth’s defense attorneys should be culturally and linguistically competent or sensitive.⁸⁰
- Alternatives to detention should be available to all youth, including immigrant youth. In order to be effective for immigrant youth, these community-based services should be culturally and linguistically competent or sensitive and trauma informed.
- Youth justice officials should provide support to youth in stabilizing their immigration status, such as through access to immigration attorneys, providing resources and assistance in affirmatively seeking legal status, and sharing information about family safety planning.

C. Preserve Confidentiality

Since their inception more than a century ago, juvenile courts were premised on the protection of confidentiality to ensure that youth could be held accountable without damaging their chances of becoming productive members of society.⁸¹ As juvenile justice systems have grown, so has the need to protect a youth’s confidentiality. NJJN recommends

“... that the law enforcement and court records and related information associated with youth under the age of 18 who come into contact with the justice system be kept from any and all public disclosure. Our recommendation pertains to the records, wherever they are kept, of youth in contact with both the juvenile and adult systems. We recommend,

further, that limits be put in place regarding the sharing of information between government agencies, law enforcement, courts, and schools. Any records that are created as a result of a youth's justice system involvement should be automatically sealed and reviewed for expungement when the youth is discharged from court supervision. Furthermore, we recommend that juvenile court proceedings be kept presumptively closed." (See NJJN's Policy Platform, "[Confidentiality of Youth in the Juvenile Justice System](#)")⁸²

Confidentiality protections are of particular importance for immigrant youth, for whom the stakes are higher - juvenile justice system involvement revealed to ICE can result in prolonged detention and even deportation.⁸³ This confidential information may also be used later to deny an immigration benefit to youth.⁸⁴ Additionally, when law enforcement and/or juvenile justice officials, such as probation officers, actively share information and/or refer justice-involved youth to ICE, this breaks any trust that youth had in these officials. Many youth referred to immigration authorities eventually return to their home communities. Rather than being rehabilitated, many return further traumatized by their experiences in immigration detention.⁸⁵

Creating strong confidentiality protections can also increase the efficacy of the juvenile justice system process. Systems that protect confidentiality and do not share information with ICE may encourage noncitizen youth and families to more fully participate in the youth justice process and work with intake officials and others to determine and follow through on needed services.

Confidentiality Recommendations

- Ensure that your state has the strong confidentiality protections recommended in NJJN's platform, "[Confidentiality of Youth in the Juvenile Justice System.](#)" in order to protect information about youth at all points in the youth justice system, and ensure that there are no exceptions for federal immigration officials.
- Encourage juvenile justice officials to adopt policies against sharing information about and/or referring youth to ICE.
- When juvenile justice officials insist on sharing information with ICE, advocates should ensure that they are not violating their state's confidentiality laws.

D. Ensure Access to Immigration Experienced Counsel

All defense attorneys handling juvenile cases have a duty to counsel their clients on the immigration consequences of criminal convictions in order to provide effective assistance of counsel as required by the Sixth Amendment of the U.S. Constitution, pursuant to *Padilla v. Commonwealth of Kentucky*.⁸⁶ This standard was expanded upon by the American Bar Association (ABA) in a resolution adopted in 2013 urging courts and legal services providers to

ensure defense attorneys are trained and capable of fully addressing immigration consequences in their representation of juveniles.⁸⁷

In order to fulfil this duty, juvenile defense attorneys must be trained to understand the immigration consequences their client may face for taking certain actions, such as accepting plea deals, and must have access to expert resources, either in-house or externally, to effectively counsel and defend their clients against potential adverse outcomes. It is also helpful for juvenile court judges and prosecutors to get training on immigration issues as well as to understand the impact that delinquency has on immigrant youth. Likewise, because immigration law is so complex, youth should have access to immigration attorneys to help them navigate the immigration system and pursue potential pathways to legal status.⁸⁸ Intake and probation departments can assist noncitizen youth, such as connecting them with organizations that can provide immigration legal assistance, as is done in Multnomah County (Portland, OR).⁸⁹

Youth who are in deportation proceedings do not have the right to government appointed counsel and most are not represented in these proceedings.⁹⁰ When individuals do have counsel, however, the outcomes are significantly better. From 2007 – 2012, of the 272,532 immigrants seeking relief from removal proceedings, approximately half of those with counsel received relief (144,544) while only 2 percent of those without counsel received relief (6,597).⁹¹ Yet only 37 percent of all immigrants have legal counsel in their removal cases, and only 14 percent of detained immigrants have counsel.⁹² Given the dire consequences to those facing removal proceedings without counsel, it is vital for youthful immigrants to have legal counsel for immigration proceedings.

Access to Counsel Recommendations

- Ensure that juvenile defense attorneys, prosecutors, and juvenile court judges are trained on the potential immigration consequences of all aspects of juvenile justice involvement, including accepting plea deals.
- Ensure that juvenile defense attorneys have the expert immigration resources to effectively represent and defend noncitizen youth against the immigration consequences of their case.
- Ensure that juvenile justice- involved immigrant youth have access to immigration attorneys to consult with them and collaborate with their defense counsel to pursue the best pathway for them to mitigate harm and attain immigration relief.
- Advocate for government funded legal representation for youth in deportation proceedings.

III. Zero Tolerance Puts Youth at Increased Risk

In May of 2018, the U.S. Department of Justice enacted a “zero tolerance” policy on immigration indicating that they planned to prosecute and imprison all immigrants for migration crimes.⁹³ Particularly focused on migrants crossing over the southern border of the U.S. without legal papers, this policy led to nearly 3,000 children being separated from their parents at the border between May 5 – June 9, 2018.⁹⁴ Described as “agonizing” for the parents that endured this separation and citing evidence of the long-term destabilizing impact on the children, in June of 2018 a federal judge in California ordered U.S. immigration authorities to return the children to their families.⁹⁵ While the Administration backtracked from this separation policy in an executive order issued on June 20, 2018, they did not rescind the zero tolerance policy.⁹⁶ The federal government initially sought approval to lift the 20-day limitation ([“Flores agreement”](#)) on detaining immigrant children who cross the border so that they could detain families together for lengthier periods of time.⁹⁷ A federal district court ruled against this plan in July, 2018, thus the protocols for this policy are still unfolding.⁹⁸

A. Zero Tolerance Criminalizes Emerging Adults

The federal government is seeking to prosecute all adults crossing into the United States without legal papers pursuant to this policy. This criminalizes emerging adults from the moment that they enter the country. Arrests and convictions can stigmatize individuals as well as hurt their chances of eventually obtaining legal papers.⁹⁹

B. Zero Tolerance Harms the Well-Being of Youth and their Families

A child’s health and well-being are very dependent on that of their parents and family. Children can thrive when they are in a family that is healthy, safe, and economically stable.¹⁰⁰ Likewise, when families face stressful challenges, a child’s health and wellness can be negatively impacted.¹⁰¹ Incarcerating youth and their families forces them to live in an unstable and potentially harmful environment. Federal investigators issued a report in December 2017, in which they found that detained immigrants at four large detention centers in the U.S. were being treated inhumanely.¹⁰² Findings included expired, moldy, and spoiled foods, poor conditions in bathrooms, and long waits to receive medical care. Even if conditions are improved, living in a carceral environment is unhealthy for youth and their families.

Zero Tolerance Recommendations

- To encourage positive youth development and prevent youth justice system involvement, we must support family unity and well-being by advocating for an end to zero tolerance immigration policy.

- Rather than zero tolerance, support a path to citizenship for young people, such as the Dream Act, to help youth thrive.
 - [The Dream Act of 2017 \(S. 1615\)](#), a bipartisan bill sponsored by Sen. Lindsey Graham (R-SC), would provide a path to U.S. citizenship for people who are either undocumented, have [DACA](#) or temporary protected status (TPS), and who graduate from U.S. high schools and attend college, enter the workforce, or enlist in the military.¹⁰³

For More Information

For additional information and assistance, we encourage you to turn to the following organizations:

[American Civil Liberties Union \(ACLU\)- Immigrants' Rights](#)

[American Immigration Council](#)

[Annie E. Casey Foundation – Juvenile Justice](#)

[Immigrant Legal Resource Center](#)

[National Juvenile Defender Center](#)

[National Immigration Law Project](#)

[UnidosUS \(formerly known as National Council of La Raza\)](#)

[United We Dream](#)

Glossary

DACA (Deferred Action for Childhood Arrivals)

Under this program enacted by the federal government in 2012, certain youth who came to the United States as children and met several criteria were permitted to request deferred action from deportation and were eligible for work authorization for a period of two years, subject to renewal. The DACA policy was rescinded by the federal government on Sept. 5, 2017. However, due to federal court orders, the U.S. Citizenship and Immigration Services (USCIS) has resumed accepting requests to renew DACA for those who had previously been granted deferred action under DACA, but it is not accepting new requests.

Immigrant Youth

Youth who are not citizens, including both documented and undocumented youth.

Risk Assessment Instrument (RAI)

A tool used to help the court decide whether to release or detain a youth prior to the adjudication proceedings or trial. Generally, the two main factors that these instruments measure are the youth's risk of reoffending prior to adjudication and the youth's risk of failure to appear for trial (FTA). RAIs can also be used at other points, such as prior to release from custody.¹⁰⁴

Special Immigrant Juvenile Status (SIJS)

Allows a youth to gain lawful permanent residence if they are under the jurisdiction of a juvenile court (included dependency, delinquency, guardianship, custody) and the court makes a finding that the youth cannot be reunified with one or both parents due to abuse, neglect, abandonment, or similar state law basis and that it is not in the best interests of the youth to return them to their home country. The court must enter an order with these findings.¹⁰⁵

Unaccompanied Minors

Children are often referred to as “unaccompanied minors” when they are under 18 years old, arrive in the U.S. without a parent or legal guardian and have no parent or legal guardian available to provide care for them in the U.S., and do not have legal immigration status in the U.S. The technical term defined by law is “unaccompanied alien child (UAC).”¹⁰⁶

U Visas for Victims of Violent Crimes

A young person is eligible for a “U nonimmigrant status (U visa)” if they or their parent or siblings are a victim of certain crimes and have suffered substantial mental or physical

abuse and possess information that would likely be helpful to law enforcement in the investigation or prosecution of the crime.¹⁰⁷

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- ¹ American Psychological Association, “Undocumented Americans,” accessed June 5, 2018, <https://bit.ly/2u40Fp4>; citing Passel & Cohn, 2011, <https://pewrsr.ch/1CsIQO6> and Passel & Lopez, 2012, <https://pewrsr.ch/1Gp6n43>.
- ² Shannon Wilber and Angie Junck, “Noncitizen Youth in the Juvenile Justice System” (Baltimore, MD: Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, 2014): 5, 12, <https://bit.ly/2F5N6d7>.
- ³ Abigail Simon, “People are Angry President Trump Used This Word to Describe Undocumented Immigrants,” *Time*, June 19, 2018, <https://ti.me/2medABA>.
- ⁴ National Immigration Law Center (NILC), “How ICE Uses Local Criminal Justice Systems to Funnel People into the Detention and Deportation System” (March, 2014): 4, <https://bit.ly/2KPHuuH>.
- ⁵ *Ibid.*
- ⁶ Angie Junck and Rachel Prandini, “Noncitizen Youth in the Juvenile Justice System” (Baltimore, MD: Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, 2018): 5, <https://bit.ly/2KwISTR>
- ⁷ Wilber and Junck, 26.
- ⁸ Immigrant Legal Resource Center, “The Rise of Sanctuary” (January, 2018): 4, <https://bit.ly/2Bw7kxM>; Junck and Prandini, 6.
- ⁹ American Immigration Counsel, “The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails” (Aug. 1, 2013), <https://bit.ly/2u10R8F>.
- ¹⁰ Wilber and Junck, 22; In a 2017 U.S. Dept. of Homeland Security memo, the federal government called for an expansion of CAP, including within the juvenile justice system. Junck and Prandini, 5.
- ¹¹ U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” accessed May 14, 2018, <https://www.ice.gov/287g; Casey 2018 doc. 5>.
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- ¹⁴ As of 2010, Prince William County, Virginia paid an estimated \$6.4 million annually and \$25.9 million over five years to implement it’s 287(g) agreement with ICE. Lopez, “How 287(g) Agreements Harm Public Safety.”
- ¹⁵ NILC, “How ICE Uses Local Criminal Justice Systems to Funnel People into the Detention and Deportation System,” 2.
- ¹⁶ NILC, “How ICE Uses Local Criminal Justice Systems to Funnel People Into the Detention and Deportation System,” 2.
- ¹⁷ Angie Junck and Rachel Prandini, “Practice with Immigrant and Refugee Children and Families in the Juvenile Justice System,” in *Immigrant and Refugee Children and Families: Culturally Responsive Practice*, ed. Alan Dettlaff and Rowena Fong (New York: Columbia University Press, 2016): 323-5, <https://bit.ly/2ztWwAI>.
- ¹⁸ Junck and Prandini, “Noncitizen Youth in the Juvenile Justice System,” 4.
- ¹⁹ Miriam Valverde, “Immigration, MS-13 and Crime: The Facts Behind Donald Trump’s Exaggerations,” *Politifact*, February 7, 2018, <https://bit.ly/2nIaeYy>.
- ²⁰ Laila L. Hlass and Rachel Prandini, “Deportation by Any Means Necessary: How Immigration Officials are Labeling Immigrant Youth as Gang Members” (Immigrant Legal Resource Center, 2018): 2, 4, <https://bit.ly/2MMnHsx>.
- ²¹ Philip Bump, “The Slippery Slope of the Trump Administration’s Political Embrace of Calling MS-13 ‘Animals,’” *The Washington Post*, May 21, 2018, <https://wapo.st/2ug8WXX>.
- ²² Hlass and Prandini, 4.
- ²³ Mark Joseph Stern, “Bad Liars,” *Slate*, May 16, 2018, <https://slate.me/2rRhbYq>.
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- ²⁵ Alice Speri, “Federal Judge Frees Salvadoran Teen Accused of Gang Ties, Pens Lengthy Rebuke of His Detention by Ice,” June 27, 2018, <https://bit.ly/2KaSh29>.
- ²⁶ Hlass and Prandini, 5.

- ²⁷ National Juvenile Justice Network (NJJN), “Safeguarding the Confidentiality of Youth in the Justice System” (Washington, DC: NJJN, August 2016): 8, n. 32, <https://bit.ly/2DPMc7e>; citing Youth Justice Coalition, “Tracked and Trapped” (Dec. 2012), 4, 15, <http://bit.ly/1UoNGq4>; Jacobs, “Juvenile Criminal Record Confidentiality,” New York University Public Law and Legal Theory Working Papers, paper 403 (2013), 19-20, <http://bit.ly/2atH4op>.
- ²⁸ National Juvenile Justice Network (NJJN), “Creating Meaningful Change in the Relationship Between Law Enforcement and Youth of Color” (Washington, DC: NJJN, October, 2017): 6-7, <https://bit.ly/2KyGye4>.
- ²⁹ NJJN, “Creating Meaningful Change in the Relationship Between Law Enforcement and Youth of Color”
- ³⁰ Emmanuel Felton, “Gang Databases are a Life Sentence for Black and Latino Communities,” *Pacific Standard*, March 15, 2018, <https://bit.ly/2u3N5p4>.
- ³¹ Hlass and Prandini, 5.
- ³² Jacobs, “Gang Databases: Contexts and Questions,” *Criminology and Public Policy* 8, no. 4 (The American Society of Criminology, 2009): 705, <http://bit.ly/1XQb2Ia>; An individual can be added to a gang database without having ever been charged or convicted of a crime. Rebecca Rader Brown, “The Gang’s All Here: Evaluating the Need for a National Gang Database,” *Columbia Journal of Law and Social Problems* (2009): 299, <http://bit.ly/1U2Tylt>.
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- ³⁸ *Plyler v. Doe*, 457 U.S. 202, 226 (1982), <https://bit.ly/2wKyjn9>.
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- ⁴⁰ Andrew Ujifusa, “Besty DeVos: Schools Can Choose to Report Students to ICE. Advocates: She’s Wrong.” *Education Week* (blog), May 23, 2018, <https://bit.ly/2KPZhgN>.
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- ⁴⁵ NJJN, “Creating Meaningful Change in the Relationship between Law Enforcement and Youth of Color,” 6-7.
- ⁴⁶ Research indicates schools with SROs may be more likely to arrest students for low-level offenses and to report non-serious violent crimes (i.e., physical fights or threats without weapons) to police. Nathan James and Gail McCallion, “School Resource Officers: Law Enforcement Officers in Schools,” Congressional Research Service, (June 26, 2013): 22, <https://bit.ly/2Hvzt4..>
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- ⁵² Michael Biesecker, Jake Pearson, and Garance Burke, “Governor Orders Probe of Abuse Claims by Immigrant Children,” *AP News*, June 21, 2018, accessed June 22, 2018, <https://bit.ly/2IyC6WM>.
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- ⁵⁵ Angie Junck and Rachel Prandini, “Practice with Immigrant and Refugee Children and Families in the Juvenile Justice System,” 327.
- ⁵⁶ Junck and Prandini, 3.
- ⁵⁷ National Juvenile Detention Center (NJDC), “The Harms of Juvenile Detention,” *Infographic* (Washington, DC: NJDC, 2016), <https://bit.ly/2z7G0X2>.
- ⁵⁸ *Ibid.*
- ⁵⁹ Wilber and Junck, 13.
- ⁶⁰ Wilber and Junck, 10.
- ⁶¹ *Ibid.*, 8-9.
- ⁶² *Ibid.*, 15-16.
- ⁶³ *Ibid.*, 10.
- ⁶⁴ In *Soto-Torres v. Johnson*, officials paid \$100,000 due to a probation officer’s incorrect assessment of the plaintiff’s deportability which led to wrongful arrest and immigration detention and in *Guzman v. Chertoff* officials settled a claim for \$350,000 for the wrongful deportation of a cognitively impaired individual due to the Los Angeles Sheriff’s Department’s erroneous referral to immigration authorities. Wilbur and Junck, 28.
- ⁶⁵ *Ibid.*, 10.
- ⁶⁶ *Ibid.*, 9-10.
- ⁶⁷ *Ibid.*, 10, n. 25; citing 42 U.S. Code § 5633 (a)(11)(B).
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- ⁷¹ *Ibid.*, 12.
- ⁷² Comment from Paromita Shah, 7.3.18.
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- ⁷⁸ *Ibid.*
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