

# Building Bridges to Benefit Youth

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## Undocumented Immigrant Youth: Guide for Advocates and Service Providers

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### Introduction

Hundreds of thousands of youth (under age 18) attempt to enter the U.S. every year. Some come with their families, others alone, either of their own will seeking jobs, protection and family reunification or they are smuggled into the country for sweatshop labor or sexual exploitation. The exact number of children who attempt to enter the country is unknown. However, only a small number of them are granted asylum or other immigration status and stay in the U.S as legal immigrants. In 2005, the U.S. granted legal permanent resident (LPR) status to 175,000 children under 14 years of age and to 196,000 youth ages 15 to 24. Twenty thousand youth ages 17 and under were accepted as refugees and 2,000 were granted asylum in the same year.<sup>1</sup> Many youth end up being returned to their countries of origin after being intercepted at sea or at ports of entry. Customs and Border Protection (CPB) apprehended almost 122,000 juveniles in the U.S. in 2004.<sup>2</sup> Of this total, 84.6 percent were released back to Mexico, or in rare cases to Canada.<sup>3</sup> When released back, accompanied juveniles are returned with their families, although not necessarily together, while unaccompanied juveniles are turned over to the immigration authorities of the cross-border country.

At the same time, many youth enter the country without being recognized by the authorities. It is estimated that there are 1.6 million of these undocumented youth currently living in the country, most of whom are from Central and South America.<sup>4</sup> Unlike youth with legal status, undocumented immigrant youth do not obtain long-term safety or security while staying in the U.S. They are constantly at risk of being deported if detected by the immigration agencies. Many youth are returned to their home countries despite being

### Abbreviations

BIA	Board of Immigration Appeals, Department of Justice
CBP	Customs and Border Protection - DHS
CIS	Citizenship and Immigration Services - DHS
DHS	Department of Homeland Security
DRO	Office of Detention and Removal Operations - ICE
ICE	United States Immigration and Customs Enforcement - DHS
LPR	Legal Permanent Resident
ORR	Office of Refugee Resettlement, Department of Health and Human Services

raised in the U.S. or having their family located here. For these youth, a return to their country of origin is a disorienting, frightening, and at times, dangerous experience.

One primary source of detection and subsequent deportation for these youth is their involvement with the criminal or juvenile justice system. Moreover, the youth's past record of criminal or delinquency charges might affect their eligibility for immigration relief from removal or benefits such as Special Immigrant Juvenile Status for abused, abandoned or neglected children, or application for Legal Permanent Resident (green card).

This brief will focus on undocumented immigrant youth: foreign-born children living in the U.S. without authorization. They might or might not intend to stay and might or might not apply for legal immigration status. They might be under the care of their relatives or by themselves. However, they share similar disadvantages and insecurities. In many cases, they lack language fluency, cultural knowledge and access to resources. In order to provide consistent support and protection for these children, juvenile justice advocates, immigration advocates and youth serving agencies must all collaborate. This brief aims to provide advocates and youth service agencies the background necessary for this collaboration. It outlines the risks and obstacles that undocumented immigrant youth face in both the immigration and juvenile justice systems. The brief also recommends policies and actions that immigration advocates, youth advocates, and service providers could adopt to improve the safety and well-being of immigrant youth.

## Immigrant Youth Need Protection and Assistance in Immigration Proceedings

### Detention

As the arresting agency that first interacts with undocumented immigrant youth, the Department of Homeland Security (DHS) has the authority to hold youth before releasing them to sponsors or federal custody where they wait for their case to proceed before the

In January of 2001, **16-year-old Malik Jarno** from Guinea was arrested at Dulles International Airport for using a fake French passport. A mentally retarded youth, Jarno was incarcerated in adult jails for three years before seeing an immigration judge to apply for asylum.

Executive Office for Immigration Review (EOIR or Immigration Court). This responsibility is split between Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). Both have the authority for making arrests, processing, detaining, transporting and making initial determinations of youth.<sup>5</sup> Children can be housed in CBP facilities for

24 hours maximum and up to 72 hours in ICE facilities. However, these timelines are not strictly adhered to by DHS. In 2004, 35.1 percent of juveniles apprehended by CBP were held for more than 24 hours and 12.1 percent of the 1,875 juveniles were held longer than five days before placement in a longer-term facility. In fact, DHS detention for these youth ranged from 6 to 225 days.<sup>6</sup>

The violation of the time guidelines by DHS means delays in transferring youth to longer-term facilities that are more appropriate for their care. The conditions of DHS facilities vary but they are generally not built to serve the needs of youth, especially younger children. The 1997 *Flores v. Reno* Settlement mandates that the government release youth promptly from immigration detention.<sup>7</sup> If detention is deemed necessary, it should be for the shortest time possible and in the least restrictive environment appropriate for youth's age and special needs. Furthermore, the settlement required DHS to define and implement standards for the care and treatment of children in detention facilities. Yet as of 2006, DHS has neither defined nor implemented these guidelines.

#### Family Shelters

Another concern for immigrant youth is the lack of family shelters to accommodate families apprehended together while waiting for the resolution of immigration proceedings. The Detention and Removal Office (DRO) at ICE is responsible for housing accompanied youth, while the Office of Refugee Resettlement (ORR) at the Department of Health and Human Services is responsible for the care, custody and placement of unaccompanied youth pending immigration proceedings. When there is not enough space in family shelters, DHS identifies accompanied children as unaccompanied so that they can transfer the children to ORR care. In these situations, children, ranging in age from babies to teenagers, are separated from their accompanying family members for the entire time they wait for the resolution of their immigration case.<sup>8</sup>

According to the Phoenix Field Office Juvenile Coordinator, the **Phoenix DRO** has no facility that can accommodate apprehended families with children (family shelter), even though it oversees detention and removals for the Tucson Border Patrol sector, which apprehended the most children in 2004.

#### Access to Information

During the detention process, the immigration authorities rarely provide full information to children and their families about their rights and the status of their cases. Children in DHS detention therefore do not know how long they will be detained, when their next hearing will be, whether or not they will be moved to different facilities, or when they will be able to contact family members or legal representatives. As a result, most children awaiting decisions on their cases are trapped in a stressful, seemingly endless limbo of uncertainty and powerlessness.<sup>9</sup>

#### Recommendations:

- ❖ Establish National Standards for Care: DHS needs to establish national standards for their facilities to provide proper treatment for youth. There also needs to be careful oversight to make sure that DHS closely abides by these standards, especially detention time. DHS should implement procedures to minimize processing time to avoid delays in transferring youth to longer-term care.
- ❖ Contract with More Family Shelters: DRO should consider contracting with more family shelters in order to house families apprehended together and limit the number

of children who are separated from their families. It also needs to train its staff to work with youth and make its detention facilities more appropriate for children.

- ❖ Utilize Community-Based Youth Serving Agencies: DHS should utilize community-based agencies with experience in serving immigrant youth to provide staffing assistance that is child-friendly, and culturally and linguistically appropriate.<sup>10</sup> More community-based programs should be recruited to assist immigrant youth so that fewer are held in large institutionalized settings.
- ❖ Provide Information to Youth and their Guardians: Children as well as their relatives and/or guardians need to be fully informed throughout the detention process. If children have legal representatives, they should also be notified whenever children are transferred to different facilities.

## **Immigrant Youth Lack Representation in Immigration Proceedings**

### Entitlement to Representation

During immigration proceedings before Immigration Court, juveniles are not entitled to guardians ad litem nor defense attorneys. They may obtain such support if they can afford it, but the court does not appoint individuals to counsel or pay for them. The extent of access to legal counsel consists of giving children a list of free legal service providers in the jurisdiction at the time of apprehension. This means that children are expected to find their own attorneys while in the middle of complex and intimidating immigration proceedings. Furthermore, the list distributed by CBP is not always accurate. In a reviewed list of 29 attorneys and legal organizations, eight did not represent juveniles, three were not in service and four were unreachable despite repeated attempts.<sup>11</sup> At the point of contact with CBP, the child has to choose between “voluntary departure” and a hearing before an immigration judge. However, usually no attorney or advisor is present to counsel the child regarding the consequences of this critical decision.<sup>12</sup> Even when youth proceed to court where their immigration case is considered by a judge, very few have access to legal representation: only 10 percent of children appearing in immigration court have representation,<sup>13</sup> and fewer than 50 percent of detained unaccompanied children have access to legal counsel.<sup>14</sup>

The lack of representation and counsel has serious implications for the youth in immigration proceedings. Immigration attorneys, with their expertise on immigration laws, can guide the child through the legal process and help present the case to the judge. Without this counsel, children are left to navigate confusing immigration procedures on their own, while being ill cared for in detention and separated from their caregivers. Under these circumstances, it is unlikely that children can make their case effectively and may fail to obtain their right to stay in the U.S. Studies have shown that children with representation are four times more likely to be granted asylum by an immigration judge, and avoid consequences such as prolonged detention, or deportation to their home country where they may face persecution or lack support.<sup>15</sup>

There are, however, several legal organizations that provide free legal assistance to immigrant youth during immigration proceedings, including the American Bar Association, the American Immigration Lawyers Association, National Center for Refugee and Immigrant Children, and the National Immigration Project (see Resources). These organizations offer services to children who otherwise would go through immigration proceedings unrepresented. The result of their services has been favorable: the Board of Immigration Appeals (BIA) Pro Bono Project, after three years of operation (2001-2004), estimated that their immigrant youth clients are three to four times more likely to win a favorable decision than youth who represent themselves during the appellate process.<sup>16</sup> While these services can be of critical assistance, there are not enough of them to address the needs of all youth in immigration proceedings.

**The National Center for Refugee and Immigrant Children** was established in 2005 to arrange free legal and social services for unaccompanied children released from detention and awaiting immigration proceedings. They take referrals from social workers and match the children with appropriate representation.

#### Role of Social Services

Children may also suffer from inadequate legal representation because attorneys may not have the training to deal with children or lack the cultural competency to understand the children's special circumstances. In the case of very young children, it is almost impossible to establish an appropriate attorney-client relationship.<sup>17</sup> Therefore, guardians ad litem or

**Lutheran Immigration and Refugee Service and the U.S. Conference of Catholic Bishops** are authorized by the Department of Health and Human Services to assist in ensuring the best interests of unaccompanied, undocumented children in government custody. They manage the Field Coordinators Program to ensure that each child receives the best placement and care, and can participate in the decisions regarding their future.

professional child welfare providers play an important role in investigating the children's situations, providing care and therapeutic services. Guardians ad litem can help advocate for the best interests of the child to the court. Child welfare providers with appropriate cultural backgrounds and experience dealing with immigrants can offer such assistance as translation services and child care for children with special needs. They can also offer to house children in their child welfare facilities as an alternative to detention. In particular, children who lack potential sponsors and are kept in ORR facilities will feel less abandoned if receiving

support from child care providers. ORR has made a substantial, but insufficient, attempt to address these needs by linking some of the youth in their custody to these services.

#### Role of Family Support

In addition to professional assistance, support from family members can improve outcomes for these youth. Children can avoid the experience of detention and the trauma of going through immigration proceedings by themselves if they have sponsors willing to take custody of them. However, in many cases, family members of the child are not willing to take the responsibility for fear of jeopardizing their own immigration status. These family members legitimately fear that once they offer to sponsor, pick up the child at a detention facility or accompany the child to court, they will be exposed to the immigration authorities

and may be subject to removal proceedings themselves. In fact, children have been used as bait to ensnare undocumented parents who are then detained and deported.<sup>18</sup>

#### Recommendations:

Children need attorneys as well as guardians ad litem and professional service providers to protect and represent their best interests throughout immigration proceedings. Pro bono legal and social services are good initiatives, however, not all children get the help they need, especially those in temporary DHS custody before they are transferred to ORR. More work is needed to expand these supports and transform them into a comprehensive system.

- ❖ Provide Funding for Legal Representation: Advocates should encourage the government to provide funding to ensure legal representation for children in immigration procedures.
- ❖ Increase Non-Profit Legal and Social Service Assistance: There should be more organizations providing legal and social services to children in need, and immigrant youth and their guardians should be made aware of the availability of such assistance.
- ❖ Provide Access to Counsel at Key Moments in the Process: Children should be encouraged to speak with an attorney and a family member (if available) before being made to decide whether or not to choose voluntary return.<sup>19</sup>
- ❖ Train Immigration Lawyers to Work with Youth: Immigration lawyers, in particular, need to have more training in child-friendly techniques and representing children who have experienced trauma or have mental health issues. Lawyers also need cultural training in order to understand the background of children from different countries. Finally, lawyers should be provided information about social services in their localities in order to refer their clients should they need additional assistance.
- ❖ Assist Youth in Contacting Pro-Bono Services: Federal custody facilities should provide children with information about available support resources and assist them in contacting service providers. ORR is already required to develop a pro bono legal representation plan and provide information about guardians and attorney availability. Nevertheless, this function needs to be emphasized and expanded to other federal custody agencies, which should also be required to coordinate with local service providers to ensure adequate support for immigrant children.
- ❖ Release Children to Sponsors Whenever Possible: A child should be released to a sponsor, regardless of the sponsor's immigration status. ORR is responsible for locating potential sponsors, and when doing so, it should create a safe space for undocumented family members by not referring them to immigration authorities. Once this safe space is established, family and youth advocates should make potential sponsors aware that it is safe to take custody of the child without jeopardizing their own immigration status.

# The Involvement of Immigrant Youth in Juvenile and Criminal Justice Systems Exposes Them to Immigration Proceedings

## Contact with the Criminal Justice System

Interacting with law enforcement creates consequences for undocumented immigrant youth, and sometimes even immigrant youth with legal status. For undocumented youth, if referred to DHS by local authorities, they might be subject to removal proceedings (see below). If their criminal or delinquency records fall into the “inadmissibility” category identified by DHS, they will be become ineligible to apply for particular immigration visas. For a youth with an immigration visa, if their record falls under the “removability” category, their legal status may be revoked and they may be placed into removal proceedings, and treated as undocumented. During removal proceedings, youth can apply for certain forms of relief including asylum, Convention Against Torture protection or cancellation of removal or an immigration status that allows them to stay in the U.S., however, the chance of success is slim and the process is often long and confusing.

What makes immigrant youth most vulnerable is that actions placing them in the “inadmissible” or “removable” classification do not have to be violent or especially serious. Actions that deem them inadmissible include engaging in prostitution, being a drug addict or abuser, making a false claim to U.S. citizenship, using false documents, and more significantly, providing the CIS with “reason to believe” that the youth ever has assisted or been a drug trafficker. An increasing list of more than 50 crimes can trigger deportation, including crimes that are considered misdemeanors under most state laws.<sup>20</sup> As a result, youth who are transferred into the adult court and receive a criminal conviction are at increased risk of deportation. A youth’s criminal history also impacts classification, even for those who have already completed their

***State v. Vairin M., 2002:*** 15-year-old Vairin was arrested for burglary and arson. The juvenile court waived him into the adult criminal court. Before Vairin had a hearing with the juvenile court on this waiver, he already had the first appointment with the adult court where the state filed criminal charges against him. His counsel appealed to the juvenile court to reconsider its waiver on the account that if convicted in the criminal court for these crimes, Vairin, who had a green card, could have his LPR revoked. Since he was not a citizen of the U.S. and could not prove he was a citizen of Thailand or Laos, he would be considered “stateless” and detained for an indeterminate amount of time. The juvenile court agreed that this could have been a factor for reconsideration but it no longer had jurisdiction over Vairin because the adult court already filed charges against him.

sentence when they apply for immigration status adjustment. An application or fingerprint check that reveals a criminal history can now be considered grounds for removal.<sup>21</sup> CIS runs finger print checks for all petitions for immigration service or benefit and will not grant them before the required security checks are completed.<sup>22</sup> In the vast majority of the checks, no match is found, but in some cases, delinquency records and criminal records are discovered.

### Contact with the Juvenile Justice System

Even youth who remain in the juvenile court can also face the risk of deportation. Although adjudication of delinquency acts is not a “conviction” for removal purposes and should not be used as evidence of a youth’s criminal history, the offenses and delinquency records of the types listed previously can constitute evidence for inadmissibility or removability under the conduct-based grounds.<sup>23</sup> Other juvenile court dispositions, including gang-related activities, are not absolute bars to immigration status adjustment, but they might be considered negative factors in discretionary decisions.<sup>24</sup>

### Opportunities for Special Visas

There is not yet a system to screen youth in juvenile justice proceedings for their eligibility for special immigration visas or asylum (see chart). Youth who find themselves within the juvenile justice system risk bypassing these opportunities because they do not know that they are eligible. Those who manage to find out about these opportunities are likely to abandon valid claims for a special immigration visa or asylum due to the hardships of processing delays and a likely prolonged detention. The number of youth who are granted special immigration status or asylum is small compared to those who are eligible for them. For example, while a huge number of youth are trafficking victims, only a few are granted T-visas for victims of trafficking.<sup>25</sup>

### Recommendations:

Unfortunately, not all juvenile court personnel and other stakeholders have adequate knowledge about the consequences and opportunities for immigrant youth in contact with the juvenile justice system. They might take actions without considering the youth’s immigration status, resulting in adverse outcomes or missed opportunities for immigration relief.

❖ Defense Attorneys for Youth Should Be Aware of the Immigration Consequences of Criminal and Delinquency Proceedings:

Proper legal counsel during delinquency proceedings is important to prevent negative immigration consequences. Juveniles, regardless of their immigration status, have the right to a defense attorney. Therefore, defense attorneys need to have some knowledge of immigration consequences or access to attorneys with immigration expertise so that they can advise youth about the potential impact of certain pleas on their immigration status. Attorneys should also try to seek agreements with prosecutors to limit the charges that may have adverse immigration consequences for youth.<sup>26</sup>

***United States v. Couto, 2002 (2nd Circuit)***: Ivania Maria Couto from Brazil was charged with bribing a public official in exchange for a green card. She then appealed, stating that her plea was not knowing and voluntary. Because deportation is certain for aliens convicted of aggravated felonies, her attorneys were required to inform her of those deportation consequences but they did not. Although this is an adult case, defenders should be aware that failing to inform their clients of the immigration consequences of certain pleas can be interpreted as ineffective assistance of counsel.

- ❖ Attorneys and Court Personnel Should Be Aware of Youth's Eligibility for Special Immigration Relief: Many immigrant youth under court jurisdiction are eligible for special immigration relief. Attorneys and court personnel should learn about applicable relief to ensure that youth do not miss these opportunities.
- ❖ Youth Advocates Should Understand the Opportunities and Dangers Posed When Youth Enter the Justice System: Youth advocates should have some knowledge of immigration consequences of criminal and delinquency proceedings, as well as possible immigration relief in order to advocate for effective assistance by attorneys and court personnel.
- ❖ Minimize Youth's Cultural and Language Disadvantages: Another important support for immigrant children in court is minimizing cultural and language disadvantages. The court needs to have staff with multilingual and multicultural skills to assist the child throughout the process. Child welfare agencies can ensure that these services are provided in courts and that the decisions by the court are made in a culturally-sensitive manner. Psychological counseling should also be available for children because contact with the court can be a stressful experience for many children.
- ❖ Involve Relatives and Guardians in the Court Process: Relatives and guardians should be involved during the court process to reduce stress for youth. However, undocumented family members might fear that accompanying the youth to court would expose them to law enforcement and jeopardize their status. The court should create a safe space for parental and guardian involvement without exposing them to immigration authorities (see the previous section on representation in immigration proceedings).
- ❖ Ensure that Juvenile Records Are Sealed: Youth advocates should ensure that juvenile records are sealed, so that early delinquent behavior do not cause immigration troubles for youth later in their lives.
- ❖ Know the Youth's Criminal and Delinquency History Before Filing for Relief: Immigrant youth and their guardians should know whether the youth's criminal or delinquency records will affect their immigration status adjustment before filing an application.

## When and How do State and Local Systems Connect Youth to the Immigration System?

On November 15, 2005, when **13-year-old Hector Maldonado** got into a school fight, the school officials called the local police. Upon determining Maldonado's undocumented status, the police referred him to ICE. This led to him being taken into federal custody for a month and put him in danger of being deported.

U.S. Border Patrol, upon notification from Del Norte High School, arrested **three undocumented Hispanic students** in March 2004 on immigration charges. The students then filed a law suit against DHS, local law enforcement and school officials on the grounds that campuses should be safe havens for students regardless of immigration status.

### Responsibility for Referrals to Immigration Authorities

The cases of Maldonado and the three Hispanic students are not common because schools, law enforcement and court personnel are not obligated to inform ICE of immigrant cases. However, such practice is happening in several jurisdictions, especially as local agencies experience mounting confusion about their required role in federal immigration enforcement. Exacerbating this situation, Congress is now considering measures to turn local law enforcement agents and public service providers into immigration law enforcement agents (See *CLEAR Act*).

Involving local agencies in federal immigration enforcement is not in the best interest of either the youth or local law enforcement. Youth suffer when they are referred to DHS to be "screened" for qualification of legal status.

The DHS focuses on enforcement of immigration law, not on investigating relief for youth. Instead of referring youth to DHS, the juvenile court should ensure that youth get some rudimentary screening for eligibility for immigration relief by directing the youth's attorney to review with the youth a screening checklist or appointing immigration counsel for a more thorough review.<sup>27</sup> At the same time, local law enforcement suffers because referring a child to immigration agencies undermines community policing efforts, which rely on trust between the community and police. Immigrant children would have legitimate reason to fear providing information to the police about crimes committed against them or that they have witnessed.<sup>28</sup> Actively encouraging local police to look out for undocumented immigrants might also lead to a high level of racial profiling and other civil rights violations.<sup>29</sup> Moreover, such practices divert scarce resources from local police functions to immigration

**The Clear Law Enforcement for Criminal Alien Removal Act or CLEAR Act (H.R.3137/S.1362)** was introduced in both 108<sup>th</sup> and 109<sup>th</sup> Congresses. It would give state and local police officers the authority to enforce all federal immigration laws; give financial incentives to states and localities to comply; criminalize all immigration law violations; and place the names of any individuals believed to be in violation of immigration laws in the National Crime Information Center database. As of November 2006, its status is pending in both the House and the Senate.

enforcement, a federal mandate. Dozens of cities, counties, and states have passed policies making clear that the enforcement of civil immigration law should not be placed on the shoulders of local police and governments.<sup>30</sup> Local police do not have the capacity and responsibilities to enforce federal civil immigration law.

Recommendations:

Immigration status checks and referral to immigration agencies by local officials differ across jurisdictions. There is not yet a comprehensive report on this practice. However, there have been reports of this happening (see the cases of Maldonado and the three Hispanic students).

- ❖ Know the Referral Precedents of Local Agencies: Immigrant and juvenile justice advocates and youth workers should know whether officials in their jurisdiction (schools, law enforcement, judges, etc.) often refer youth to immigration officials. They should then make these officials aware that referral is not in the best interest of the child or the community.
- ❖ Encourage Local Systems to Restrict the Release of Information to Immigration Authorities: Youth advocates should encourage their local authorities to not share information of either immigration status or delinquency record of the youth with immigration agencies unless it is a legal requirement.<sup>31</sup> There are many jurisdictions that have issued policies to restrict collecting and releasing immigration-related information.

**The City and County of San Francisco's** sanctuary ordinance prohibits the use of City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in its jurisdiction unless such assistance is required by regulation or court decision.

**Members of the Major Cities Chiefs Association**, comprising the largest police agencies in America, have committed to adopt policies of not inquiring about immigration status of individuals that are reporting crimes or in other encounters unless the person is suspected of committing a criminal offense (violating immigration law is a civil offense).

## Misperceptions About Gangs Affect Immigrant Youth

One path that may lead immigrant youth into the immigration system is gang member sweeps executed separately or collaboratively by police and ICE (see chart). In these sweeps, not only gang members but also gang affiliates are arrested, many of whom have not been involved in any gang crime. The recent heightened fear of gangs and the connection of immigrant youth to gangs in the public's eye leads to a reflex "get tough" law enforcement approach that has the potential for harsh consequences for immigrant youth. It

is important for advocates for youth and immigrants to demystify concerns about gangs and the involvement of immigrant youth in gangs.

**MYTH #1:** Gangs are illegal and are a main source of crime in metropolitan areas.

**REALITY:** There is no clear relationship between crime rates and increased gang activity.<sup>32</sup> Moreover, not all gang activities are violent and not all gang members are criminals. Many youth tend to hang out in groups, adopting a certain code of conduct and calling themselves gangs. Many are attracted to interacting with gangs but are not necessarily gang members. The First Amendment's "freedom of association" means youth can hang out and form groups with whomever they want, therefore, gangs are technically not illegal, except for criminal street gangs whose objectives are to commit certain crimes. To charge and convict apprehended gang members of crimes requires proof of gang membership and the types of crimes committed.<sup>33</sup> Immigrant and undocumented youth are affected by gang member arrests more than U.S. citizens because, even if no crime is proven, they can still be placed in immigration proceedings. Seventy percent of foreign gang members who are apprehended are not ultimately charged with a crime and are then deported on immigration violations alone rather than on criminal grounds.<sup>34</sup>

**MYTH #2:** Many youth are involved in gangs and gang membership has negative long term effects on youth.

**REALITY:** No more than 1 percent of youth aged 10-17 are gang members.<sup>35</sup> In addition, longitudinal surveys of young adolescents in several large cities have found that half or more of the self-reported gang members remain in gangs for less than one year.<sup>36</sup>

**MYTH #3:** Racial/ethnic and immigrant groups are predisposed to be in gangs.

**REALITY:** Minorities and immigrants have no special disposition to gang membership, but rather, they simply are overrepresented in socio-economic categories that often lead to gang activity. Gang membership is most closely associated with youth who come from poor communities that suffer from lack of employment and education opportunities and family disintegration.<sup>37</sup> Children of immigrants, who are generally poorer than children of U.S. citizens,<sup>38</sup> tend to reside in these communities. Socio-economic characteristics are the main reasons leading to the large representation of immigrant youth and youth of color in gangs, not racial/ethnic or nationality characteristics.

**MYTH #4:** Rigorous gang-targeting enforcement that leads to arrests of immigrant youth will solve the gang problem.

**REALITY:** The "get tough" approach focuses on short-term punishment rather than long-term solutions. Since socio-economic factors are the primary drivers of youth into gangs, interdiction of gang members will not keep youth from joining gangs. Rather, the focus should be on providing youth with opportunities to stay out of gangs.

Gang enforcement through the use of gang databases casts too wide a net, unnecessarily tagging many innocent youth. Because gang databases are rarely updated and because youth do not stay in gangs for very long, the databases are frequently out of date and include vast numbers of youth who are no longer gang-involved.

Finally, gang interdiction and the consequent deportations of immigrant youth have actually played a key role in the growth of transnational gangs. As a law enforcement strategy,

incarceration and subsequent deportation have not succeeded in permanently removing a gang population that, although foreign born, has grown up and started their affiliation with gangs in the U.S.<sup>39</sup> Instead, it has helped gang members establish, reinforce, and expand ties across countries, especially Central and South America.

Recommendations:

- ❖ Focus on Prevention: There need to be more efforts to raise awareness among both the public and law enforcement about why youth are drawn into gangs so that they can prepare appropriate preventive measures. Instead of focusing on punishing youth for affiliating with gangs, it is more effective to provide education and employment opportunities, as well as family support, to high-risk youth so that they stay away from gangs.<sup>40</sup>
- ❖ Keep Gang Databases Confidential: To reduce the risk of immigrant youth getting into the immigration system, it is necessary to maintain confidentiality of gang databases. Many youth participate in gangs for a brief time and some law enforcement agencies have not developed a protocol for systematically purging outdated intelligence records, thus retaining youth in the files who are in fact no longer gang members.<sup>41</sup> When these outdated records are shared, youth can be arrested even though they are no longer a member of a gang. Therefore, it is best to keep these records confidential until there is a reliable system that removes youth from law enforcement gang records after they renounce their gang membership.
- ❖ Conduct Public Awareness Campaigns: Advocates and service providers need to conduct public awareness campaigns that help remove the public perception that immigrant youth drive gang membership and activity.

**Fight Crime: Invest in Kids**, an anti-crime group of police chiefs, sheriffs, prosecutors, victims of violence, youth violence experts and leaders of police associations, has recommended steps that can reduce gang violence. Rather than putting youth gang members in jail, they believe that intensive support and services, such as afterschool programs and anti-bullying programs, can draw kids away from gang activity.

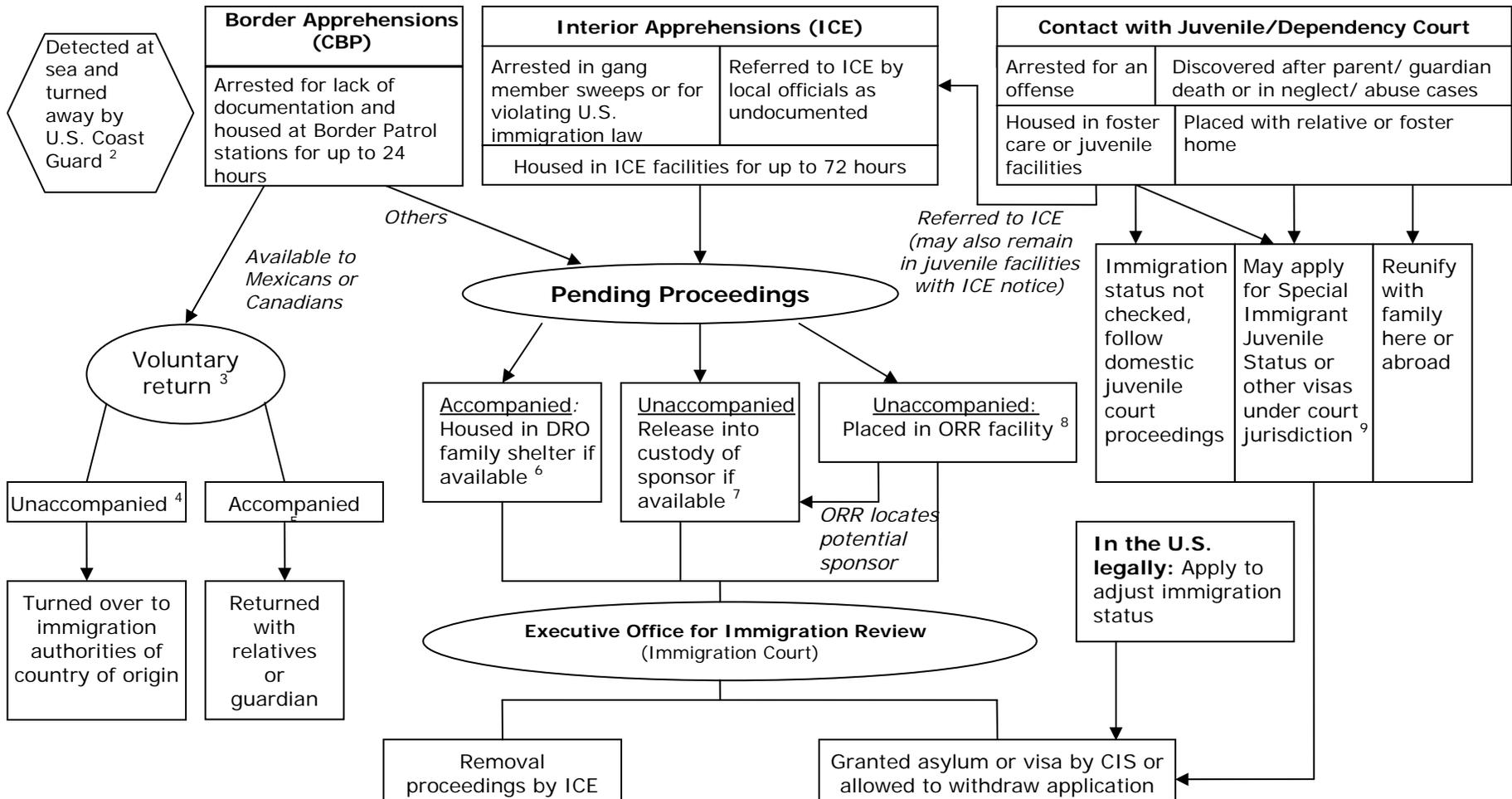
## Conclusion

Immigrant and undocumented youth who enter the immigration system face great challenges and complex circumstances that they often have to navigate on their own. Not only are these youth detained in unsupportive conditions but they also lack assistance in finding trained adults to help them protect their rights and interests. These situations often result in prolonged detention or deportation for the youth. Immigrant youth desperately need the support of juvenile and immigration advocates, as well as that of youth service providers. As immigration law and policies are constantly changing and immigration practices vary across jurisdictions and offices, it is almost impossible to capture all the risks and barriers facing youth. The issues elaborated upon in this brief are just some examples of the current trend within the immigration and juvenile justice systems. Immigrant youth advocates and youth service providers should be aware of these trends and the practices of immigration authorities and local enforcement in their own localities. This knowledge will guide their actions to give immigrant youth the best services and minimize their distress. Many organizations across the nation have taken the initiative to provide such assistance and protection. Examples of national programs are listed in the *Resources* section of this brief. Local advocates and youth workers should also learn about the programs currently available in their jurisdictions and utilize those that are reliable and competent.

## Responsibilities and Authorities of Relevant Immigration Agencies

- **Department of Homeland Security (DHS)** is an integrated agency established by the Homeland Security Act of 2002 to provide the unifying core for a national network of organization and institutions involved in the effort to secure the nation. It prevents external attacks, protects borders and responds to threats to the U.S.
- **Immigration and Customs Enforcement (ICE)** is the largest investigative arm of DHS. It enforces immigration and customs laws and protects the U.S. against terrorist attacks by targeting illegal immigrants. It has the authority to arrest non-U.S. children inside the U.S. who violate U.S. immigration laws.
- **Customs and Border Protection (CBP)** is an enforcement agency of DHS. It is responsible for protecting the borders. It apprehends and processes non-U.S. children at the ports of entry or borders. CBP facilities hold children on a short-term basis during the processing phase. Border Patrol agents and CBP officers also transport non-U.S. children from their facilities to longer-term facilities.
- **Detention and Removal Office (DRO) at ICE** is responsible for making certain that all removable non-citizens depart the U.S. when so ordered. It also transports children from initial arrest facilities to longer-term facilities while waiting for their cases to be processed.
- **Office of Refugee and Resettlement (ORR) at the Department of Human and Human Services** is responsible for caring for and housing unaccompanied children pending resolution of immigration cases. Their functions include selecting facility placement, overseeing facilities, running immigration and criminal checks on potential sponsors to whom children may be released, and transporting children for medical care, court appearances and facility transfers.
- **Citizenship and Immigration Services (CIS) at DHS** is responsible for adjudicating petitions for immigrant visas, citizenship, asylum, refugee, and other immigration status.

# IMMIGRANT YOUTH GET INVOLVED WITH THE IMMIGRATION AND JUVENILE JUSTICE SYSTEM<sup>1</sup>



CBP	Customs and Border Protection	ICE	Immigration and Customs Enforcement
DRO	Detention and Removal Office	ORR	Office of Refugee Resettlement

## **Chart Notes**

1. This chart outlines various possibilities of how undocumented youth get into immigration proceedings and how the immigration system deals with them. There are, however, exceptions due to different practices across the nation. Such particular cases are not included in this chart.
2. These children do not have the same rights as children intercepted on land because the U.S. government determines that it only has the duty to protect the human rights of those who reach their shore.<sup>1</sup> However, some children may be transferred to land for asylum and refugee processing. There is not much available data on these children.
3. Youth are given a choice by their arresting officers to either sign a “voluntary return” form to forego their deportation hearing, or go before a judge to seek permission to remain in the U.S. or to receive a formal court order for voluntary departure. No attorney or advisor is present to counsel the child regarding the consequences of this critical decision.<sup>2</sup>
4. The Homeland Security Act of 2002 defines an unaccompanied juvenile alien as an alien who is in the U.S. illegally, has not attained 18 years of age, and who either has no parent or legal guardian in the U.S. or has no parent or legal guardian in the U.S. available to provide care and physical custody.<sup>3</sup> This definition, however, does not cover unaccompanied minors who enter the U.S. legally under sponsorship.
5. An accompanied juvenile alien has a parent, legal guardian, or other immediate adult relative who is with the juvenile when he or she is apprehended.<sup>4</sup>
6. The Detention and Removal Office (DRO) at Immigration and Customs Enforcement attempts to keep families together by finding available space in a family shelter. However, on occasion, such as when criminal charges are filed against the parent or bed space is not available, the juvenile is separated from the adult relative and is treated as unaccompanied juvenile under Office of Refugee Resettlement (ORR)’s jurisdiction.<sup>5</sup>
7. ICE or ORR will run fingerprint and criminal checks on potential sponsors to make sure that sponsors can provide proper care for the children.
8. As of October 2004, ORR oversaw 41 facilities (group homes, shelter, etc.) nationwide, with a total dedicated capacity of approximately 920 beds. The facilities provide housing with different levels of security restrictions. The average time in 2003 for a child in ORR custody was 45 days. It had 6,200 unaccompanied youth in custody in 2004.<sup>6</sup> Three percent of the children are placed in secure detention centers.<sup>7</sup>
9. Special Immigrant Juvenile Status is for children under the juvenile court jurisdiction and unable to reunify with family to apply for legal permanent residence. Other visa options for undocumented immigrant children include: Violence Against Women Act (for children abused by a U.S. citizen or permanent resident parent); Family Visas (for children with a U.S. citizen family member); U Visas (for victims of serious crimes who are helpful to the investigation); T Visas (for victims of severe trafficking); Family Unity (for children of persons who obtained resident status through special amnesty programs of the late 1980s); Asylum (for children who fear persecution in their home country); Temporary Protected Status (for children from countries that have experienced unstable circumstances).<sup>8</sup>

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<sup>1</sup> *Haiti Refugee Center v. Baker*, cited in Wedderburn, Patrice (2003) “Refugee Crisis: The Plight of Haitian Refugees Victims of U.S. Foreign Policy,” Student Paper at the Shepherd Program, Washington and Lee University

<sup>2</sup> Bhabha, Jacqueline (June 2006). “Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.” Bridging Refugee Youth and Children’s Services. Available at [http://www.humanrights.harvard.edu/conference/Seeking\\_Asylum\\_Alone\\_US\\_Report.pdf](http://www.humanrights.harvard.edu/conference/Seeking_Asylum_Alone_US_Report.pdf)

<sup>3</sup> P.L. 107-296, § 462

<sup>4</sup> Detention and Removal Officer’s Field Manual (November 2003), Appendix 11-4: Juvenile Protocol Manual

<sup>5</sup> Department of Homeland Security – Office of Inspector General (September 2005) “A Review of DHS’ Responsibilities for Juvenile Aliens,” p.19

<sup>6</sup> *Ibid.*, p.7

<sup>7</sup> Bhabha, Jacqueline (June 2006), p.90

<sup>8</sup> Immigrant Legal Resource Center (2005). “Immigration Options for Undocumented Immigrant Children.” Available at <http://www.ilrc.org/resources/sijs/Fact%20sheets%20immigrant%20children.pdf>

## Glossary

- **Accompanied Youth** – A youth who is with a parent, legal guardian, or other immediate adult relative he or she is apprehended.
- **Adjustment of Immigration Status** – The procedure allowing children already in the U.S. to apply for different immigrant status. Children admitted to the U.S. in a non-immigrant or refugee category may have their status changed to that of lawful permanent resident if eligible. Children who enter the U.S. without legal documents are required to leave the U.S. and acquire a visa abroad from the State Department.
- **Asylum/Refugee** – The protection provided by the U.S. to children found to be unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution. Asylees/refugees are eligible to adjust to lawful permanent resident status after one year of continuous presence in the U.S.
- **Cancellation of Removal** – A discretionary benefit adjusting status from that of deportable alien to one lawfully admitted for permanent residence. Application for cancellation of removal is made during the hearing before an immigration judge.
- **Deportation/Removal** – The formal removal of children from the U.S. when they are found removable for violating immigration laws. This may be based on grounds of inadmissibility or deportability. Deportation is ordered by an immigration judge. Now called Removal, this function is managed by ICE.
- **Guardian ad Litem** – A volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in court proceedings. The guardian ad litem makes independent recommendations to the court by focusing on the needs of each child.
- **Immigrant** – “Immigrant” often refers to persons who intend to stay in the U.S. and have obtained some legal document. However, for the purpose of this brief, “immigrant” includes all persons in the U.S. without citizenship.
- **Inadmissible** – Children seeking admission to the U.S. but do not meet the criteria for admission. These children may be placed in removal proceedings or, under certain circumstances, allowed to withdraw their application for admission.
- **Lawful Permanent Resident** – Any person not a citizen of the U.S. who is residing in the U.S. with legal recognition.
- **Port of Entry** – Any location in the U.S. or its territories that is designated as a point of entry for non-U.S. and U.S. citizens. All district offices where immigrants adjust their immigration status are also considered ports of entry.
- **Unaccompanied Youth** – A youth who is in the U.S. illegally and has no parent or legal guardian in the U.S. or has no parent or legal guardian in the U.S. available to provide care and physical custody.
- **Voluntary Departure** – The departure without an order of removal. The departure may or may not have been preceded by a hearing before an immigration judge. It concedes removability but does not have a bar to seeking admission at a port of entry at anytime.

## Resources: National Programs and Services for Immigrant and Undocumented Youth

**American Bar Association Commission on Immigration** ensures fair treatment and full due process rights for immigrants and refugees within the U.S.  
<http://www.abanet.org/publicserv/immigration/>

**The American Immigration Law Foundation (AILF)** increases public understanding of immigration law and policy and the value of immigration to American society; promotes public service and excellence in the practice of immigration law; and advances fundamental fairness and due process under the law for immigrants.  
<http://www.aifl.org>

**The American Immigration Lawyers Association (AILA)** is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.  
<http://www.aiala.org>

**Bridging Refugee Youth and Children's Services (BRYCS)** is a national technical assistance program addressing challenges which refugee youth and children face in adjusting to life in the U.S. Its fundamental purpose is to broaden the scope of information and increase collaboration among service providers for refugee youth, children and families.  
<http://www.brycs.org>

**The National Center for Refugee and Immigrant Children** refers pro bono legal and social services to unaccompanied children released from detention pending removal proceedings.  
<http://www.refugees.org/nationalcenter/>

**The National Immigration Law Center (NILC)** protects and promotes the rights of low income immigrants and their family members. Its extensive knowledge of the complex interplay between immigrants' legal status and their rights under U.S. laws is an essential resource for legal aid programs, community groups, and social service agencies across the country.  
<http://www.nilc.org>

**The National Immigration Project** is one of the few national-level, legal support groups that specializes in defending the rights of immigrants facing incarceration and deportation.  
<http://www.nationalimmigrationproject.org>

**The Office of Refugee Resettlement (ORR)** houses the children in facilities nationwide, including Arizona, California, Colorado, Delaware, Georgia, Illinois, Indiana, New York, Oregon, Texas, Virginia, and Washington. Typically, a reputable public interest legal service provider in each location is charged with providing know-your-rights presentations to the children, screening the children for relief from removal, and referring them to pro bono representation.

To identify a legal service provider for training and referral, contact ORR personnel in each location or consult the **American Bar Association Commission for Immigration Policy, Practice and Pro Bono** (<http://www.abanet.org/publicserv/immigration/home.html>).

These agencies also welcome and can help host volunteers for short or extended periods of time:

**The Unaccompanied Refugee Minors Program – ORR** assists unaccompanied minor refugees and entrants in developing appropriate skills to enter adulthood and to achieve economic and social self-sufficiency. Two lead voluntary agencies, the Lutheran Immigration Refugee Services (LIRS) and The United States Catholic Conference (USCC), help ORR with the unaccompanied refugee minor program.

<http://www.acf.dhhs.gov/programs/orr/programs/urm.htm>

**The Refugee Children School Impact Grants Program - ORR** provides for some of the costs of educating refugee children incurred by local school districts in which significant numbers of refugee children reside.

<http://www.acf.dhhs.gov/programs/orr/programs/refcsig.htm>

**Women’s Commission for Refugee Women and Children** ensures protection, assistance and participants of all refugee children and adolescents

<http://www.womenscommission.org/projects/children/index.shtml>

## Endnotes

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1 Jeffreys, Kelly (May 2006). “Refugees and Asylees: 2005.” Department of Homeland Security Office of Immigration Statistics Annual Flow Report. Available at [http://www.uscis.gov/graphics/shared/statistics/publications/Refugee\\_Asylee\\_5.pdf](http://www.uscis.gov/graphics/shared/statistics/publications/Refugee_Asylee_5.pdf)

2 Department of Homeland Security – Office of Inspector General (September 2005) “A Review of DHS’ Responsibilities for Juvenile Aliens,” p.3

3 Ibid., p.4

4 Passel, Jeffrey (June 14, 2005). “Unauthorized Migrants: Numbers and Characteristics.” Background Briefing Prepared for Task Force on Immigration and America’s Future. Pew Hispanic Center, p 4

5 Department of Homeland Security – Office of Inspector General (September 2005), p.5

6 Ibid., p.16-17

7 *Janet Reno, Attorney General, et al., petitioners v. Jenny Lisette Flores et al.*, No. 91-905. Supreme Court, 507 U.S. 292 (1993)

8 Ibid., p.19

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9 Bhabha, Jacqueline (January, 2004). "Crossing Borders Alone: The Treatment of Unaccompanied Children in the United States." American Immigration Law Foundation. Available at [http://www.aifl.org/ipc/policy\\_reports\\_2004\\_CrossingBordersAlone.asp](http://www.aifl.org/ipc/policy_reports_2004_CrossingBordersAlone.asp)

10 The Annie E. Casey Foundation (2006). "Undercounted, Underserved: Immigrant and Refugee Families in the Child Welfare System." The Annie E. Casey Foundation. Available at <http://www.aecf.org/initiatives/familytofamily/tools/immigration.pdf>

11 Department of Homeland Security – Office of Inspector General (September 2005), p.12

12 Bhabha, Jacqueline (June 2006). "Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S." Bridging Refugee Youth and Children's Services, p.77. Available at [http://www.humanrights.harvard.edu/conference/Seeking\\_Asylum\\_Alone\\_US\\_Report.pdf](http://www.humanrights.harvard.edu/conference/Seeking_Asylum_Alone_US_Report.pdf)

13 Bhabha, Jacqueline (January, 2004)

14 Women's Commission for Refugee Women and Children (2004). "Refugee and Immigrant Children in the United States." Available at <http://www.womenscommission.org/projects/detention/unacc.shtml>

15 Kinoshita, Sally and Brady, Katherine (January 2005). "Immigration Benchbook for Juvenile and Family Court Judges." Immigrant Legal Resource Center, p.59

16 Board of Immigration Appeals (October 2004). "The BIA Pro Bono Project is Successful." Department of Justice.

17 Bhabha, Jacqueline (June 2006), p.82

18 Bhabha, Jacqueline (January, 2004)

19 Bhabha, Jacqueline (June 2006), p.77

20 Walker, N. et al. (2004). "Lost Opportunities: The Reality of Latinos in the U.S. Criminal Justice System." National Council of La Raza, p. 50

21 Community Legal Services and Center for Law and Social Policy, cited in Walker, N. et al. (2004), p. 50

22 CIS Fact sheet April 25, 2006

23 Kinoshita, Sally and Brady, Katherine (January 2005), p.58

24 Kinoshita, Sally and Brady, Katherine (January 2005), p. 72-4

25 Bhabha, Jacqueline (June 2006), p.94

26 Tebo, Margaret G. (April, 2003). "The Most Vulnerable Clients: Attorneys Must Deal with Special Issues When Kids Come into Contact with the Courts." In American Bar Association Journal 89 (48).

27 Kinoshita, Sally and Brady, Katherine (January 2005), p. 58

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28 National Immigration Law Center (November 2004). "Sample Language for Policies Limiting the Enforcement of Immigration Law by Local Authorities." Available at [http://www.nilc.org/immlawpolicy/LocalLaw/sample%20policy\\_intro%20brief\\_nov%202004.pdf](http://www.nilc.org/immlawpolicy/LocalLaw/sample%20policy_intro%20brief_nov%202004.pdf)

29 National Council of La Raza Web site (2006). "State/Local Police Enforcement of Immigration Law (CLEAR Act)" at <http://www.nclr.org/content/policy/detail/1063/>

30 Ibid.

31 The Annie E. Casey Foundation (2006)

32 Justice Policy Institute (2006). "2005 Crime Rise in Context." Justice Policy Institute Backgrounder

33 Albo, David B. (July 14, 2006). Statement by David Albo, Member Virginia House of Delegates, Chairman, Courts of Justice Committee to the House Committee on Government Reform at the hearing "MS-13 and Counting: Gang Activity in Northern Virginia."

34 Johnson, Mary H. (April 1, 2006). "National Policies and the Rise of Transnational Gangs." Migration Policy Institute. Available at <http://www.migrationinformation.org/Feature/display.cfm?id=394>

35 Snyder & Sickmun (2006), cited in JPI Backgrounder

36 Office of Juvenile Justice and Delinquency Prevention and National Youth Gang Center (July 2006). "National Youth Gang Survey 1999-2001," p. 20

37 Interview of Anne W. Patterson, former U.S. Ambassador to El Salvador discussing anti-gang efforts and U.S. deportation policy with Anchor, Daljit Dhaliwal (July 10, 2006). Transcript available at <http://www.pbs.org/wnet/wideangle/shows/elsalvador/transcript.html#>

38 The Annie E. Casey Foundation (2006)

39 Johnson, Mary H. (April 1, 2006)

40 Christeson, William and Newman, Sanford (2004). "Caught in the Crossfire: Arresting Gang Violence by Investing in Kids." Fight Crime: Invest in Kids.

41 Howell, Moore, and Egley (2002) cited in OJJDP (July 2006), p. 21

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### **Building Bridges to Benefit Youth**

The National Collaboration for Youth and National Juvenile Justice Network are partnering to strengthen connections between youth service providers and juvenile justice advocates. Vulnerable youth and families consistently transition between various publicly funded systems, from child welfare, community mental health, family support, special education and juvenile justice systems. Challenges abound, and youth frequently fail to receive the level of care and support they need. Moreover, a healthy youth development philosophy and approach should be applied to programming for all youth, regardless of the system in which they may find themselves. This initiative believes that the existing silos between programs, funding, and, in particular, advocacy, are counterproductive to the welfare of children and aims to break down those barriers. For more information, visit [www.collab4youth.org/ncy/cjj.htm](http://www.collab4youth.org/ncy/cjj.htm).

The National Collaboration for Youth (NCY), an affinity group of the National Human Services Assembly, includes 50 national, non-profit, youth development organizations. NCY's mission is to provide a united voice as advocates for youth to improve the conditions of young people in America, and to help young people reach their full potential. For more information, visit [www.collab4youth.org](http://www.collab4youth.org).

The National Juvenile Justice Network (NJJN), which is hosted by the Coalition for Juvenile Justice, comprises 26 state organizations and coalitions that work for fair, equitable and developmentally appropriate adjudication and treatment for all children, youth and families involved in the juvenile justice system. For more information, visit [www.njjn.org](http://www.njjn.org).

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