



SECOND CHANCES FOR ALL



Why Orange County Probation Should Stop Choosing
Deportation Over Rehabilitation for Immigrant Youth

December 2013

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IMMIGRANT RIGHTS CLINIC

Acknowledgments

Authors and Researchers: Victoria Anderson, James Buatti, Tim Martin, Jennifer Chin, Leah Gasser-Ordaz, Jeffery “Ryan” Graham, Andrew Kantor, Jacob Barack, Genevieve Kristie, Edgar Aguilasocho, Andrea Feathers, and David Koch

Editors: Annie Lai and Sameer Ashar

Design: Jennie Brewton

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About the UCI School of Law Immigrant Rights Clinic

The Immigrant Rights Clinic (IRC) is one of several clinics at UCI School of Law providing hands-on training to aspiring lawyers. Students represent immigrant clients pro bono under the close supervision of experienced clinical faculty on a range of legal issues, including workplace exploitation, deportation and civil rights. Students also provide support to community organizations and facilitate their political engagement through grassroots and advocacy campaigns.

Administrator: Debi Gloria

P.O. Box 5479
Irvine, CA 92616-5479
Phone: 949-824-9646
Fax: 949-824-2747
dgloria@law.uci.edu

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Executive Summary

In recent years, the Orange County Probation Department (OCPD) has adopted a policy of referring immigrant children in its care to U.S. Immigration and Customs Enforcement (ICE). In so doing, OCPD has violated confidentiality laws, undermined the rehabilitative goals of the juvenile justice system, impeded community policing efforts, unlawfully entangled its officers in federal immigration enforcement, and diverted county resources. This report was undertaken by the UC Irvine School of Law Immigrant Rights Clinic to analyze OCPD's referral policy, document some of these harms, and recommend possible solutions to address those harms.

As a result of OCPD's referral policy, Orange County has led the state in juvenile immigration referrals. From December 2010 to November 2012, the OCPD Procedure Manual instructed probation officers to proactively investigate the immigration status of youth and granted OCPD's ICE Liaison Officer discretion to refer practically any child with "questionable immigration status" to ICE. Pursuant to this policy, OCPD referred approximately 170 youth to immigration authorities in the year 2011 alone. Between October 1, 2009 and February 10, 2013, ICE issued immigration detainer requests for numerous youth detained in Orange County Juvenile Hall; Orange County accounted for approximately 43% of all ICE detainer requests issued to juvenile facilities in the state.

In November 2012, OCPD revised its referral policy; however, key problematic aspects of the policy were left unchanged. In the months following the policy change, OCPD has made a steady, if reduced, number of referrals. Approximately 24 youth were referred between December 2012 and September 2013.

OCPD's referral policy violates state confidentiality law and undermines OCPD's mission to rehabilitate juveniles. The policy violates California Welfare and Institutions Code Section 827, which strictly limits access to juvenile case files, by requiring employees to provide ICE with "all pertinent information" to assist ICE's investigation of referred juveniles. Juvenile referrals also cause both children and their families to distrust the probation department, hindering cooperation necessary for rehabilitation. Furthermore, many juveniles referred to ICE are detained in federal custody for an indefinite period awaiting immigration court proceedings, separating them from their families and subjecting them to physical and mental hardships that increase their risk of recidivism. In cases where children are deported, they experience long-term separation from family and friends, and may be left to fend for themselves in countries where they have no support system.

Juvenile referrals do not benefit public safety, and may even hinder policing efforts. Studies have repeatedly found that immigration status does not shape future delinquency. Also, OCPD's own studies indicate that as few as 8% of youth who come into contact with OCPD qualify as "chronic recidivists." Thus, targeting immigrant youth for deportation is unlikely to make Orange County safer. In fact, juvenile referrals can harm public safety because they foster distrust between immigrant communities and local police generally. Surveys show that approximately 44% of Latinos are less likely to contact police officers when they fear police officers will investigate their immigration status or that of their loved ones.

OCPD's involvement in federal immigration enforcement exceeds its authority under the Constitution and can lead to illegal detention, deportation, and profiling. Under the Constitution, immigration

status may only be determined by federal officers and classified according to federal standards, but OCPD's referral policy directs county officers to independently ascertain juveniles' immigration status, according to a local scheme inconsistent with federal standards. The Constitution also guarantees juveniles the right to be free from unlawful detention, but the referral policy violates that right with its blanket directive to detain juveniles subject to ICE detainers for up to five days past their scheduled release dates. Furthermore, officers untrained in the complexities of immigration status are likely to rely on apparent race and ethnicity in selecting juveniles for immigration investigations, exacerbating risks of illegal racial profiling. Finally, OCPD officers may erroneously refer U.S. citizens or other lawfully present youth to ICE, potentially leading to their unlawful detention and deportation.

OCPD's referral policy involves the unnecessary expenditure of county resources to subsidize federal immigration enforcement. OCPD employees — including a dedicated ICE Liaison — spend time on the county payroll investigating juveniles' immigration status and communicating with ICE, and the county incurs additional detention costs when OCPD denies out-of-home placement to juveniles subject to ICE detainers and detains such juveniles past their release dates. Further costs may result from lawsuits filed by those affected by OCPD's referral policy or by civil rights organizations, challenging violations of confidentiality laws, the detention of juveniles on the basis of ICE detainers, racial profiling by OCPD officers, or the erroneous referral and resulting detention or deportation of lawfully present juveniles.

Recommendations

OCPD and the Orange County Juvenile Court should rescind OCPD's current referral policy and prohibit OCPD officers from referring juveniles to ICE, investigating juveniles' immigration status, or detaining juveniles on the basis of ICE detainers.

If OCPD persists in assisting in federal immigration enforcement, it should immediately modify its policies in the following ways:

- **Referrals**

- Limit referrals to cases meeting clearly delineated public safety standards.
- Provide juveniles with notice of the decision to refer them to ICE and a fair opportunity to respond.
- Share no information with ICE unless ICE has met the requirements of California's juvenile confidentiality law.

- **Investigation**

- Ensure that no juvenile is questioned about his or her immigration status except by federal officers who have identified who they are and their purpose.
- Clarify that county officers are not allowed to independently verify juveniles' immigration status or to use juveniles' race or ethnicity as the basis for decisions to investigate.

- **Detainers**

- Train county officers on the TRUST Act's restrictions on honoring ICE detainers.
- Permit the release of juveniles to out-of-home placements regardless of any ICE detainer placed on them.

- **Outreach and relief**

- Reach out to immigrant families to explain the referral policy and build trust.
- Facilitate juveniles' access to counsel and pursuit of immigration relief.

The California Legislature should take the following actions to protect juveniles:

- Enact legislation prohibiting the detention of any juvenile on the basis of an ICE detainer, including juveniles tried and convicted as adults.
- Prohibit all probation departments and law enforcement offices in California from referring juveniles to ICE.

Introduction

The people of California entrust their juvenile justice system with a unique and solemn duty: the rehabilitation and protection of the state's troubled children. This charge extends to every single child who enters the system, including immigrant children. Unfortunately, in recent years, Orange County has breached this trust. County officials have needlessly entangled themselves in federal immigration enforcement by developing costly juvenile immigration referral practices. In fact, available data shows that Orange County has for the last several years led the state in total juvenile immigration referrals. These referrals harm the very children the system is charged with protecting. County officials have referred children to federal immigration authorities without the necessary training or authorization, against children's best interests and without an evaluation of the negative impact of referrals on public safety. Orange County officials appear to have also overlooked the potential fiscal burden that referral policies impose on the local community.

Orange County has for the last several years led the state in total juvenile immigration referrals.

In response to concerns raised by advocates, the UC Irvine School of Law Immigrant Rights Clinic (IRC) undertook an examination of the legal, social, political, and economic implications of the Orange County Probation Department (OCPD)'s continued referral of juveniles in its care to U.S. Immigration and Customs Enforcement (ICE). We drew on information obtained through California Public Records Act requests, federal Freedom of Information Act litigation, interviews, the experiences of clients represented by IRC, and from publicly available sources. In this report, we present the results of our analysis.

The harms of juvenile immigration referrals are many and varied. Immigration referrals tear children away from families to be detained in remote facilities for indefinite periods. In the past several years, hundreds of Orange County's youth have been separated from their families and communities. Without access to their families and sometimes without legal counsel, children in immigration detention face potential permanent removal from their families and communities. Because our immigration system lacks robust protections for children, deportation may occur even when the child is eligible for or has legal status. Immigration referrals also subvert the purposes of the juvenile justice system, most notably through abandonment of California's commitment to rehabilitation, confidentiality of juvenile records, and family unity. In addition, referrals to ICE sow distrust of law enforcement among community members, thus undermining community policing efforts. Lastly, immigration referrals unnecessarily divert scarce local resources and expose Orange County to potential civil liability.

To mitigate these harms, IRC presents a series of recommendations that OCPD and policymakers could implement at little or no cost. These recommendations appear at the end of this report. We welcome the opportunity to begin a dialogue with OCPD, together with community stakeholders, about how to address this very important issue.

Background

A. OCPD Referral Practices

Under federal and state law, California probation departments have never had any obligation to investigate a youth's immigration status or report a youth to immigration authorities.¹ However, sometime prior to 2009, OCPD officers began to get involved in federal immigration enforcement efforts by proactively referring juveniles to ICE.²

Through public records requests, IRC learned that OCPD issued a written procedure titled "Processing Undocumented Aliens Through Juvenile Custody Intake," dated 12/20/10. The Department issued a substantively identical procedure the following year under the same title, Procedure Manual Item (PMI) 2-4-102, dated 12/22/11. OCPD's procedure directed intake officers to investigate the citizenship status of every child upon admission to Juvenile Hall pursuant to an application for a petition alleging a Welfare and Institutions Code Section 602 violation.³ If the intake officer personally determined that there "[was] a reason to believe that [a] minor may be an undocumented alien," the intake officer was required to obtain verification of the minor's legal entry into the United States.⁴ If the officer subsequently determined that the minor "appears to be an undocumented alien," the officer was then required to notify OCPD's official ICE Liaison Deputy Probation Officer (hereinafter "ICE Liaison").⁵

Under OCPD's procedure, the ICE Liaison had broad discretion to refer children to ICE with little guidance or instruction. Specifically, PMI 2-4-102 allowed the ICE Liaison to refer minors to ICE

The procedure cited California Penal Code section 834(b) as authority for this requirement, despite the fact that the state of California was permanently enjoined from enforcing Section 834(b) in 1998 in *League of Latin American Citizens v. Wilson*.

when they met any one of four criteria, one of which was a catchall discretionary category that read "[a]ny other minor with a questionable immigration status."⁶ As part of the referral process, the ICE Liaison furnished ICE with "all pertinent information to assist [ICE] in their investigation."⁷ The procedure

cited California Penal Code section 834(b) as authority for this requirement, despite the fact that the state of California was permanently enjoined from enforcing Section 834(b) in 1998 in *League of Latin American Citizens v. Wilson*.⁸

If ICE responded to OCPD's referral with a detainer request,⁹ the policy provided that OCPD would transfer youths to ICE custody at the end of their commitment, rather than releasing them home to their families or assigning them to out-of-home placements.¹⁰

The ICE Liaison also "review[ed] each daily admission roster" to determine whether the minors in Probation Department custody met the criteria for referral to ICE. According to OCPD, if a minor's resident status could not be determined through interviews with the minor and the minor's family, the checking of a California database, or through a birth certificate, the ICE Liaison referred the youth to ICE.¹¹

OCPD officers made these referrals during the very early stages of a youth's delinquency case. According to Orange County ICE Log sheets obtained in a 2012 Public Records Act request, some youth were referred in 2012 on the same day or within days of arrest, prior to adjudication of a delinquency petition by any court.¹² This often occurred during custody intake, with OCPD officers asking youth

about their citizenship status right after recording their names, ages, and birthdates.¹³ **Questions about citizenship status preceded questions about the nature of the petition filed against the minor, possible mental health issues or family stressors, delinquency factors, or prior pre-placement services provided to the minor.**¹⁴

In November 2012, OCPD issued an updated version of PMI 2-4-102, re-naming it “Processing Suspected Foreign Nationals Through Juvenile Custody Intake.”¹⁵ The November 2012 procedure lists different sources of law as the basis of its authority and requires that ICE referrals be approved in advance by a supervising probation officer.¹⁶ It also changes the criteria for referrals. Under the November 2012 procedure, referrals of juveniles to ICE should occur “[i]n alignment with the purpose of the Juvenile Justice System pursuant to WIC 202,” when the youth either “presents a foreseeable and/or articulated danger to public safety,” or when “[r]eporting the minor’s immigration status serves the best interests of the minor.”¹⁷

Several key aspects of the procedure, however, were left unchanged. **PMI 2-4-102 still directs OCPD officers to make determinations as to whether a child is a “suspected foreign national,” without clear criteria or training in federal immigration enforcement.**¹⁸ Similarly, the ICE Liaison still retains discretion to refer youth to ICE without consideration of confidentiality rules or the eligibility of youth for immigration relief. Youth with ICE detainers are still ineligible for out-of-home placements.¹⁹ In addition, some changes to the procedure appear to be cosmetic. Although the revised procedure removed references to the enjoined California Penal Code Section 834(b), the substance of the paragraph where it appeared was not altered.²⁰ Lastly, the procedure contains a new clause requiring officers to categorize youths’ citizenship or immigration status using a novel local classification system that is inconsistent with federal standards. This system includes seven status categories: “Naturalized U.S. Citizen, Pending Documentation, Resident Alien, U.S. Citizen, Undocumented Alien, Unknown, and Work Permit.”²¹

Mario’s Referral to ICE

The experience of youths represented by IRC provide additional insight into how OCPD’s referral practices have operated in practice. For example, in 2011 and 2012, IRC represented a fourteen-year-old referred youth named Mario.²² Shortly after Mario was placed in OCPD custody, he was diagnosed with severe mental disabilities, including paranoia and a disinhibition disorder that required constant medication. Despite these disabilities, Juvenile Hall staff—including guards and nurses—routinely asked Mario and other Latino children if they were “illegal.” On Mario’s last day at juvenile hall, he made a statement regarding his status to the guards. OCPD informed ICE of Mario’s statement and arranged for him to meet with two adult ICE officers, alone and without notice. The ICE officers demanded that Mario sign a stack of papers without identifying themselves or informing him what the papers were for. When Mario refused, he was later transferred to ICE custody and eventually placed in removal proceedings. Mario’s experience demonstrates that OCPD’s written procedures do not tell the entire story of how OCPD investigates immigration status and makes referrals.

B. As a Result of OCPD's Referral Practices, Orange County Leads California in ICE Detainer Requests

Data obtained from public records requests by a Santa Barbara group shows that between January 2009 and June 2012, OCPD referred approximately 546 youth to ICE.²³ Similarly, Orange County officials report that in 2011 alone, OCPD referred approximately 170 youth to ICE.²⁴ According to the Center on Juvenile and Criminal Justice, between October 1, 2009 and February 10, 2013, ICE issued a total of 697 detainer requests for California's immigrant youth.²⁵ Youth detained in Orange County facilities accounted for approximately 43 percent of the total.²⁶ This number was substantially higher than any other California county, with San Francisco, Santa Barbara, and San Mateo counties following at 13, 12, and 12 percent, respectively.²⁷

Between January 2009 and June 2012, OCPD referred approximately 546 youth to ICE.

ICE Detainer Requests

Detainer requests are ICE's primary instrument for taking custody of persons currently incarcerated in state or local facilities. When ICE identifies an individual suspected of violating immigration laws—typically through referrals in the case of OCPD—it issues a detainer request to the agency with custody of the individual, asking the agency to notify ICE of the individual's pending release and detain the individual for 48 hours past his or her scheduled release date (excluding weekends and holidays) to facilitate transfer to ICE. Because detainer requests are non-binding, the state or local agency has historically had the option to decide whether to honor the detainer request and hold the individual for ICE at the end of her commitment.²⁸ With California's recent passage of the TRUST Act, state law now prohibits local agencies from honoring detainers for both adults and juveniles in certain circumstances.²⁹

The cooperation between OCPD and ICE described in this report seems to be part of a larger federal program consisting of ad-hoc partnerships between local detention officials and ICE called the Criminal Alien Program (CAP).³⁰ However, CAP is not the only means by which ICE identifies persons suspected of violating federal immigration laws. ICE has developed a sophisticated system of increasing co-optation of local and state law enforcement functions that includes CAP and two more recent programs: Secure Communities (S-Comm), a program by which the FBI automatically forwards biometric information from state or local arrestees to ICE for investigation³¹ and Section 287(g) agreements, which allow for the cross-deputization of local law enforcement officers to carry out certain immigration enforcement functions.³² In the case of OCPD, however, it is likely that most detainer requests in recent years resulted from OCPD's practice of proactively referring youth, and ICE's response to such referrals through CAP.³³

Data from the Office of Refugee Resettlement (ORR) also confirms the high rate of youth referrals from Orange County. Approximately 26 percent of the children referred to ORR from California juvenile justice departments originated from Orange County between March 1, 2011 and June 30, 2012.³⁴ And youth advocates report that the number of Orange County children sent to immigration detention centers in other parts of the country also remains disproportionately high.³⁵ One advocate

formerly at the National Immigrant Justice Center in Chicago, Illinois reported that 38 out of 42 beds in the former Vincennes, Indiana ORR secure detention facility were filled by youth sent from Orange County.³⁶

OCPD claims that referrals have dropped since it updated its referral policy in November 2012.³⁷

While the numbers have dropped, OCPD has continued to make a steady stream of referrals.

OCPD officials report that approximately 24 youth were referred to ICE between December 2012 and September 2013.³⁸ One example of such a referral is a sixteen-year-old youth named Eva,³⁹ who IRC currently represents. Eva unfortunately got into an altercation with a store clerk and, among other things, struck him with a shoe. She was found to have engaged in assault with a “deadly weapon”—the deadly weapon being the shoe—and subsequently transferred to immigration authorities. Although Eva acknowledges her conduct was serious and wrong, she does not pose a serious danger to public safety. However, she now faces permanent separation from the only reliable caregiver she has ever had—her grandmother—and return to a country where she would be vulnerable to abuse, neglect and possible homelessness.⁴⁰

Legal Violations and Other Harms

Juvenile referrals violate confidentiality laws and undermine OCPD's core mission of rehabilitating juveniles and protecting public safety. OCPD breaches confidentiality through unauthorized information sharing with ICE, ultimately lowering juveniles' chances of successful reintegration into the community. The risk of referral makes both children and their families fearful of contact with the probation department, impeding cooperation with probation officers. Further, OCPD's policy contravenes the juvenile justice system's goals of rehabilitation of children and family unity by subjecting children to prolonged detention, and separating them from family and friends. The referral policy also undermines public safety goals by eroding the community's trust in law enforcement without offering an appreciable benefit to public safety.

OCPD's unnecessary involvement in federal immigration enforcement violates federal law and creates further risks of harm to juveniles and the county. Only federal officials have the authority to enforce immigration laws, and OCPD's independent investigation and classification of immigration status violates the Constitution. Furthermore, status investigations conducted by untrained, unauthorized OCPD officials are likely to lead to illegal racial profiling as well as erroneous referrals of U.S. citizens and other lawfully present youth – potentially leading to their unlawful detention and deportation. Finally, in addition to diverting county resources to the referral and detention of juveniles for the federal government, OCPD's referral policy exposes the County to costly lawsuits arising from erroneous referrals, racial profiling, violations of constitutional law, and breaches of confidentiality.

A. Juvenile Referrals to ICE Violate Confidentiality Law and Impede the Rehabilitation of Children

A central goal of the California juvenile justice system is to provide minors with “protection and safety,” and to “preserve and strengthen the minor’s family ties where possible.”⁴¹ The referral of children in the care of juvenile probation to immigration authorities thwarts these goals by impeding a youth’s prospects for rehabilitation and separating youth from their families and communities.

From its inception in the late 19th century, the juvenile system has treated youthful offenders differently from adults.⁴² Responding to developing scientific understandings of adolescence,⁴³ courts in the United States used *parens patriae* authority to develop a rehabilitative and protective model of juvenile justice that treated youthful offenders as “delinquent” and in need of treatment rather than “criminal” and in need of punishment.⁴⁴ Proponents of a separate system of justice for children believed that children are “not fully formed”⁴⁵ and therefore the system had a greater chance of “making good citizens rather than useless criminals”⁴⁶ through rehabilitation. More recently in *Roper v. Simmons*, the Supreme Court recognized, in holding the juvenile death penalty unconstitutional, that “[t]heir own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”⁴⁷ This reflects a view that children are also less culpable than adults for their acts.⁴⁸

Minors charged with delinquent conduct may be held accountable for their behavior, but any sanctions must be appropriate for the circumstances and consistent with the “rehabilitative objectives” of the system and the minors’ “best interest[s].”⁴⁹ Further, to avoid stigma and promote rehabilitation, there is a strict norm of confidentiality that pervades the juvenile justice system.⁵⁰

Through its referral practices, OCPD is violating confidentiality and imposing, through another agency, an *additional* punishment on a subset of children—largely minority children—in its care. Rather than ensuring the necessary conditions for rehabilitation or acting in a child’s best interests, OCPD appears to have abandoned the traditional juvenile justice system goals for this subset of children. The cooperation of a child and his or her family with the probation department is vital to successful rehabilitation. Unfortunately, juvenile referrals cause some family members to be hesitant to cooperate because they fear the immigration consequences that may result from contact with OCPD. When OCPD refers a juvenile to ICE, he or she will likely be subject to prolonged detention far away from family and friends. Due to the special considerations associated with housing juveniles, the detention centers where they are held are scarce and scattered throughout the United States. In cases where a youth eventually returns to his or her community, prolonged detention impedes her reintegration. In the case of deportation, the permanent separation from family and banishment to a foreign country can cause children deep and lasting harm.

Rather than ensuring the necessary conditions for rehabilitation or acting in a child’s best interests, OCPD appears to have abandoned the traditional juvenile justice system goals for this subset of children.

Furthermore, OCPD’s policy seems to conflict with the goals of the Juvenile Detention Alternatives Initiative (JDAI) program, in which Orange County has participated for the past two years.⁵¹ The aim of JDAI is to divert children from detention and improve public safety through collaborations among stakeholders, schools, community groups, and mental health agencies.⁵² Counties that have implemented JDAI have seen positive results from reductions in confinement.⁵³ Because ICE referrals increase the length of a child’s detention by denying them out-of-home placements and inducing an additional term of detention by federal authorities, they undermine the very goals to which OCPD has committed through participation in JDAI.

1. OCPD’s Referral Practices Violate Juvenile Confidentiality Laws

Confidentiality is a key mechanism by which the juvenile justice system promotes rehabilitation. It allows a youth to avoid any stigma or residual legal disability resulting from involvement in the juvenile justice system beyond the delinquency case.⁵⁴ Further, the protection of other information obtained by OCPD in connection with a child’s delinquency case or detention at Juvenile Hall from unauthorized disclosure, including information about immigration status, is critical to encouraging cooperation with juvenile probation. OCPD’s practices violate confidentiality laws by sharing information from a juvenile’s case file and other information about the juvenile with ICE to be used against her.

OCPD is required to keep juvenile case information strictly confidential

Congress and the courts have repeatedly recognized states’ legitimate wishes to protect the confidentiality of state juvenile proceedings. Indeed, because the ability of states to enact confidentiality rules is such a core component of the juvenile justice system, the federal judiciary has recognized only limited exceptions to it. In *Kent v. United States*,⁵⁵ the Supreme Court recognized that a youth’s defense attorney may access records in connection with a youth’s case in order to properly represent

the child. Similarly, in *Application of Gault*, the Supreme Court held that state confidentiality laws should give way to a child's due process right to have his or her parents timely notified of the nature of a petition or charge filed against the child.⁵⁶ In *Kent and Gault*, confidentiality rules were set aside in two narrow circumstances to aid or protect the interests of the child. Neither Congress nor the Supreme Court has ever recognized any broad exception that would allow state and local agencies to breach confidentiality to share information with federal immigration authorities, particularly when such information sharing would pose a *detriment* to the child.

Under state law, all information from a juvenile case file is confidential, and there are only limited exceptions to this confidentiality. Acting within its authority to protect the confidentiality of juveniles in the state, the California legislature has created a scheme with which all parties wishing to access juvenile case information, including federal agencies such as ICE, must comply. **California Welfare and Institutions Code Section 827 strictly limits access to juvenile case files, providing for the exchange of information with state and local law enforcement agencies, but only in specific circumstances.**⁵⁸

The only other entities and individuals listed in Section 827 permitted to access juvenile case files are participants in the juvenile justice system,⁵⁹ suggesting that the legislature intended only to enable sharing of information between those individuals or agencies directly involved in a minor's case.⁶⁰ Indeed, the California legislature has specifically declined to adopt an amendment to Section 827 that would have permitted the sharing of confidential information with ICE as well.⁶¹ The Orange County Juvenile Court has affirmed this requirement of confidentiality. Presiding Judge Douglas Hatchimonji, in his Administrative Order No. 12/003-903, "Exchange of Information," states that "disclosure of juvenile case files, the exchange of information between and among agencies concerned with court matters affecting children . . . shall be governed by Welfare and Institutions Code Section 827, California Rules of Court 5.552, Local Rules under Section 903 and this Administrative Order."⁶² Judge Hatchimonji's Order provides for disclosure of confidential juvenile case file information to only two federal agencies—the FBI (under very limited circumstances) and the Department of Defense, Investigative Services.⁶³

All persons or entities not listed in Sections 827 or 828 must petition the juvenile court for authorization to inspect or obtain juvenile case file information, and obtain permission before using it in any kind of court proceeding.⁶⁴ The petition requires the party to describe in detail why the confidential information is needed.⁶⁵ OCPD's Policy Manual also strongly emphasizes juvenile confidentiality. It states that "[c]ase information is considered confidential and to be shared only with those who have the need and right to know. State statute, case law, court directive, departmental policy, procedure and directives strictly limit access to case information."⁶⁶ The Policy Manual also states that OCPD employees must have a court order or valid subpoena, and permission from a supervisor, before releasing case file documents.⁶⁷

OCPD's referral practices involve the unauthorized sharing of case file information with ICE

OCPD's written policy specifically directs employees to share information about a juvenile with ICE. When OCPD decides to refer a juvenile to ICE, the ICE Liaison is instructed to call the Santa Ana ICE office and inform ICE that a "suspected foreign national" is in custody. The ICE Liaison is also to provide "all pertinent information to assist [ICE] in their investigation."⁶⁸ There is no limitation on

what information should be provided to ICE or any mention of the Section 827 procedure for petitioning the juvenile court to share information. In several

In several instances, advocates have been able to confirm that delinquency case information has ended up in ICE's files without a Section 827 order.

instances, advocates have been able to confirm that delinquency case information has ended up in ICE's files without a Section 827 order.⁶⁹ Thus, probation officers seem to be routinely engaging in unauthorized sharing of confidential case file information with immigration authorities.

Section 827 limits access not only to official documents filed with the juvenile court, but to the entire "juvenile case file" and information relating to the content of the case file. The case file includes "a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report . . ."⁷⁰ California Rules of Court Section 5.552 also contains a long list of documents protected as part of the case file, including all documents "maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers,"⁷¹ as well as "[t]ranscripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program."⁷² Under these statutes, the definition of "case file" encompasses nearly all office files maintained by OCPD. Additionally, neither the plain language nor legislative history of Section 827 makes a distinction or exception for verbal disclosures, as opposed to written disclosures, of confidential juvenile delinquency information.

Because ICE is not an approved entity listed in Section 827, ICE must file a Form JV-570 with the Orange County Juvenile Court before OCPD may share any juvenile case file information with the agency.⁷³ After filing the form, ICE must serve a copy, as applicable, on county counsel, the district attorney, the child whose records it seeks, the child's parent, the child's attorney, the child's legal guardian, the probation department, the child's identified Indian tribe, and the child's CASA volunteer.⁷⁴ California law allows any of these interested parties to file an objection to the release of records with the court in response to the request.⁷⁵ In determining whether "to authorize inspection or release of juvenile case files . . . the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public."⁷⁶ A petition for disclosure is granted only when the court finds that "discovery outweighs the policy considerations favoring confidentiality of juvenile case files."⁷⁷ Provision of any juvenile case file material to ICE outside of this procedure violates the plain language and the intent of Section 827.

By providing, without limitation, that OCPD will share "all pertinent information" about a juvenile with ICE, OCPD appears to be circumventing California law and juvenile court orders. The harm of unauthorized sharing of delinquency case information is clear. However, California's broad confidentiality protections also reach *other* information contained in OCPD's "office files." This includes information that OCPD obtained in connection with a child's case or her detention at Juvenile Hall, such as a child's citizenship or immigration status. Protection of this information from disclosure encourages a child and her family to communicate freely with OCPD to best provide for the needs of that child. A federal appeals court has acknowledged a Tenth Amendment interest of states and localities in the enforceability of broad confidentiality laws that extend to immigration status information, notwithstanding Congress's enactment of a federal statute that provides for exchange of such information.⁷⁸ The court held that

while a state or local agency cannot single out immigration status for non-disclosure, that information may be protected as part of a general policy of confidentiality. Because a juvenile's immigration status information is protected under a general policy of confidentiality under Section 827, federal law cannot require disclosure of that information.

OCPD's confidentiality violations undermine the otherwise protective, rehabilitative functions of the juvenile justice system, and harm the children the system is meant to protect. Under OCPD's policy, the stakes are much higher for the subset of youth who probation officers might refer for immigration enforcement. Children arrested for even minor offenses, or those mistakenly arrested or never adjudicated delinquent of the charges filed against them, face the possibility of detention and deportation as a result of unauthorized information sharing.⁷⁹ Instead of protecting children from the stigma and legal disability of a delinquency record, OCPD's practices expose immigrant children to *additional* stigma and legal consequences, against their best interests.

2. Referrals Impede Cooperation with Probation Officers

A child's rehabilitation is most successful when the child and his or her family are willing to cooperate with the probation officer. In the juvenile system, there is no predetermined length of probation; instead, a child's probation officer decides whether to recommend extending or reducing the probation period based on the child's progress.⁸⁰ According to the Orange County Deputy District Attorney's office, "it's really up to the minor to decide exactly how seriously they want to take probation."⁸¹ A child who engages successfully with the system could complete probation in six months, while a child who performs poorly could potentially remain on juvenile probation for years, until she reaches the age of twenty-one.⁸² In addition to recommending the probation period, the probation officer may refer the child to other programs and services, including community service programs, counseling services, and informal supervision.⁸³ A probation officer's ability to effectively tailor a child's probation to fit his or her specific needs, however, depends on the degree to which the child and his or her family are forthcoming with information.

OCPD's referral practices undermine the trust between a child and her probation officer. Detained children may come to see probation officers as an extension of ICE, and may become fearful that contact with or disclosure of information to the officer could lead to immigration consequences, including deportation. This erosion of trust may OCPD's referral practices undermine the trust between a child and her probation officer. make the child less likely to cooperate with the officer, hindering the rehabilitative process. Furthermore, the OCPD referral policy creates the risk that probation officers will use ICE referrals for retributive or punitive purposes. One youth detained in San Mateo Youth Services Center (Hillcrest) prior to San Mateo's change in its ICE referral policy reported that "when his probation officer was frustrated with him for violating probation, she reported him to ICE."⁸⁴

ICE referrals can also cause the family members of youth to distrust juvenile probation officers, and even the juvenile court system more broadly. When a child is booked into juvenile hall, OCPD requires that the child's parent or legal guardian complete a "Minor and Family Data Sheet." This form allows

OCPD to collect residency status information on the child and his or her family by asking for the place of birth, Social Security Number, Alien Registration Number, and California Driver's License Number of the child and his or her parents.⁸⁵ Family members asked to complete this form may become anxious about the juvenile justice system before even meeting with the probation officer. When parents of OCPD detainees learn, through direct experience or word of mouth, that children of the immigrant community are sometimes referred to ICE by OCPD officers, they may become fearful that cooperation with OCPD or the juvenile court in their child's case will lead to questions about their own immigration status. **Parents who do cooperate with the probation department, only to see the department refer their child to ICE, often feel that they unintentionally aided in their child's deportation and wonder whether the juvenile system is trying to punish, rather than rehabilitate their children.**⁸⁶

Family members' unwillingness to cooperate with probation or the juvenile court can make it harder for the juvenile justice system to achieve swift rehabilitation and reintegration.⁸⁷ For example, the system needs parents to produce certain documents, show up for proceedings and work with probation officers to develop a plan for the child.⁸⁸ The participation of parents and guardians is thus an important part of the effective functioning of the juvenile justice system, and their cooperation is key. Unfortunately, Latino youth are often unnecessarily held in detention because their parents are too afraid to visit the detention facility or to attend court hearings.⁸⁹

3. Prolonged Detention Hinders Rehabilitation

In addition to violating confidentiality and impeding cooperation between children, their families, and the juvenile justice system, ICE referrals also hinder a child's rehabilitation by subjecting him or her to prolonged detention. OCPD referrals can prolong the detention of juveniles in two ways. First, juveniles with ICE detainer requests are ineligible for out-of-home placements.⁹⁰ Second, juveniles referred to ICE face possible detention in federal ORR facilities upon the conclusion of their detention by the county.⁹¹ Detention away from youths' family and community delays their reintegration and decreases their chances of successful rehabilitation.

Federal immigration detention has no definite duration, and children may be detained for weeks, or even months in facilities that are basically county juvenile halls before their immigration court proceedings begin.⁹² Although formally in civil "administrative" detention, these children are detained in state juvenile detention facilities. Eventually, some children are released back to their families for the duration of their immigration court proceedings, which can take years to resolve. Despite being returned to their families, these youth have to live under the cloud of potential deportation and the stress of going to immigration court for years. Additionally, due to the time they spend in detention, these youth often fall behind in school and have trouble reintegrating when they return home. Orange County must then provide *additional* services to help these youth cope with the hardships they suffered in federal detention.

For example, Mario, one of the clients represented by IRC, spent nearly a year away from his family while detained in Yolo County juvenile detention center, and experienced various setbacks as a result of his time there. Mario was transferred to the custody of immigration authorities following his ten-day detention at Orange County Juvenile Hall. Although OCPD examined his mental and physical health

upon his admittance, placing him into a special unit for youth with mental health issues, he received no treatment or counseling. Mario then spent a total of ten months in immigration detention until his immigration court case was concluded.⁹³ While in custody, Mario missed school, was cut off from his social and familial networks, and was placed on various medications, including Lithium. Throughout his time in federal custody, Mario was still on juvenile probation, but juvenile probation essentially stopped monitoring his progress.

The hardships Mario endured during detention were exacerbated by the separation from his family and community. **The hostile environment of federal custody isolates children from their family and friends, and can cause them to return home with additional emotional and physical setbacks. The federal detention setbacks not only hinder a youth's rehabilitation, but also contribute to an increased risk of recidivism.**⁹⁴ According to Orange County Probation Department's own study in the 1990s, the 8% of juvenile offenders who qualify as "chronic recidivists" have "significantly more problem areas in their lives, such as drug abuse, dysfunctional families, or failure in school."⁹⁵ The stressful and isolating environment of ICE detention is likely to contribute to these "problem areas," increasing a youth's risk of recidivism and decreasing her chances of rehabilitation. Furthermore, prolonged detention in such a traumatic environment has been shown to cause or hasten mental illness.⁹⁶

4. Juvenile Referrals Disrupt Family Unity

OCPD's practices seem to entirely ignore the juvenile justice system's goal of family unity for the subset of youth who are referred to ICE. The referral policy relies on California Welfare & Institutions Code Section 202, which specifically states that a fundamental goal of the juvenile system is to "preserve and strengthen the minor's family ties whenever possible."⁹⁷ The section goes on to state that "family preservation and family reunification" are appropriate considerations when determining a delinquency disposition." Furthermore, OCPD's study on recidivism found that "[c]ooperative, concerted efforts to empower and build the families of high-risk youth can pay major dividends for years to come."⁹⁸ However, this goal of family unity is thwarted by prolonged family separation caused when OCPD's referral of youth to ICE leads to federal detention and deportation.

Once OCPD refers a youth to immigration authorities, the prospects for reunification with a youth's family and community are greatly diminished. ICE detainers prevent youth from being released home to their families, and make youth ineligible for out-of-home placements. Generally, if the juvenile court decides a child is a ward of the court, it can send him or her home, or into an out-of-home placement as an alternative to detention. A child granted an out-of-home placement may be released to live with a relative, in foster care or in a group home, among other options.⁹⁹ Pursuant to OCPD's referral policy, children with active ICE detainers cannot be released to an out-of-home placement.¹⁰⁰ **Under this policy, a child who may be otherwise eligible to live with a relative—and possibly regain a family support system—will remain in custody simply because he has an ICE detainer.** ICE does not make detainer determinations based on an assessment of flight risk. OCPD's policy of barring children with ICE detainers from out-of-home placements thus unnecessarily prolongs family separation, undermining the juvenile justice system's stated goal of family unity.

When a youth is referred to ICE, he or she is usually placed in a juvenile detention center by ORR unless a parent or legal guardian comes forward to take the child. Most undocumented parents and guardians will not risk coming forward, which means the child is will be treated as “unaccompanied” and turned over to the custody of ORR. ORR may detain the child in a juvenile detention center far away, in other parts of the country. There are no ORR facilities in

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Orange County that will take youth directly from OCPD. The closest facility is in Yolo County, over 450 miles away. And some Orange County youth have been sent as far away as Washington and Indiana.¹⁰¹ Unless family members can afford the cost of traveling to distant detention centers, they may not be able to visit the child during the entire detention period.

In cases where children are deported, they experience long-term separation from their parents and siblings in the United States.¹⁰² This separation is not only traumatic for the deported youth—many of whom grew up in the United States and know little about the language or culture of their birth country—but also for the family they leave behind. Many parents of deported youth cannot accompany their deported child because they have U.S. citizen children in school here or need to work in the United States in order to provide for their families.¹⁰³ In situations where a family originally fled the country to avoid abuse or violence, the youth is returning to potentially dangerous conditions.¹⁰⁴ Even if the country itself is safe, the child must find a way to survive in a place where he or she may have little to no support system. In some cases, detained youth may even voluntarily accept deportation to get out of detention because they fear that their parents cannot come forward to claim them without risking their own deportation.¹⁰⁵ A child should never have to choose between her own freedom and that of her parents. Such a choice contravenes the juvenile justice system’s goal of family unity.

B. Juvenile Referrals Undermine Public Safety

Juvenile probation officials may believe that referring juveniles to immigration authorities can protect the community from juveniles who may commit crimes in the future.¹⁰⁶ However, data shows that the juvenile justice system is already doing an effective job of this, and there is no reason to believe that rates of recidivism among immigrant children are higher than that of the general population. Further, respected law enforcement leaders across the country have discussed the harm that local entanglement with immigration enforcement can have on community policing efforts. **By eroding immigrant communities’ trust in local law enforcement, OCPD referral practices can actually have a net negative impact on public safety.** In fact, jurisdictions “that eliminated ICE referrals as part of wider reforms to the juvenile justice systems have subsequently experienced reduced rates of juvenile crime and increased levels of cooperation with the immigrant community.”¹⁰⁷

1. Juvenile Referrals Confer No Appreciable Benefit to Public Safety

Immigration status does not predict or shape future juvenile delinquency. Research has repeatedly shown that “immigrant concentration is either negatively associated with neighborhood crime rates or

not related to crime at all.”¹⁰⁸ As a result, there is no rational public safety basis for treating immigrant children differently from other children.

Even if a correlation between immigration status and delinquency did exist, which it does not, OCPD’s procedures are overbroad. The referral policy allows probation officers to refer juveniles to ICE prior to court adjudication, using as-yet unproven charges as a basis for making risk determinations.¹⁰⁹ This creates a greater risk that children who pose little or no threat to public safety ultimately receive a referral. In addition, as discussed above, OCPD’s own studies show that only a small percentage, or 8%, of youth who come into contact with the probation department qualify as “chronic recidivists.”¹¹⁰ Thus, excessive focus on the potential public safety benefits of OCPD immigration referrals seems misguided.

2. Juvenile Referrals Make Communities Less Safe By Eroding Immigrant Community Trust in Law Enforcement Generally

Immigrant communities unfamiliar with the complex role of different components of the justice system are unlikely to draw a meaningful distinction between juvenile probation officers and law enforcement generally. Even for those who do, juvenile referrals likely still contribute to a broader fear that government agencies responsible for the protection of immigrant residents are instead out to get them. A similar effect has been observed between federal and local officials, with federal immigration officials’ actions coloring immigrants’ perceptions of local law enforcement.¹¹¹ Thus, OCPD referrals to ICE can have the effect of making immigrant communities more fearful of reporting crime to all Orange County law enforcement agencies.

The U.S. Department of Justice (DOJ) and the Orange County Sheriff’s Department (OCSD) have both recognized the public safety significance of building trust in local communities. According to a DOJ and Vera Institute of Justice report, police goals of solving and preventing crime rely in part on law enforcement legitimacy in the eyes of immigrant communities.¹¹² OCSD has also recognized the importance of community trust, setting forth a vision statement on its website that “your trust is our legacy.”¹¹³

It is easy to understand why immigration referrals would discourage families from trusting local law enforcement agencies. Approximately 85 percent of immigrant families include family members with mixed immigration statuses, for example, a combination of U.S. citizens, lawfully present immigrants, and undocumented immigrants.¹¹⁴ As Los Angeles Police Chief William Bratton stated in a 2009 op-ed to the Los Angeles Times, “My officers can’t prevent or solve crimes if victims or witnesses are not willing to talk to them because of fear of being deported.”¹¹⁵

In recent study by a researcher at the University of Illinois at Chicago, a survey of over two thousand Latinos from four counties across the nation, including Los Angeles County, revealed that approximately 44 percent of Latinos were less likely to contact police officers about a crime because of increased collaboration between local law enforcement agencies and ICE.¹¹⁶ Similarly, 45 percent of survey participants stated that they were less likely to voluntarily offer information about crimes or report crimes for the same reason. This reluctance extended to 28

Approximately 44 percent of Latinos were less likely to contact police officers about a crime because of increased collaboration between local law enforcement agencies and ICE.

percent of U.S.-born Latinos, who feared that police officers would inquire into the status of people they know.¹¹⁷ Conversely, **when Santa Clara County announced in 2011 that it would thereafter refuse to honor ICE detainer requests, officials observed a marked increase in community trust and cooperation with law enforcement.**¹¹⁸

As the above sources confirm, collaboration between local law enforcement and ICE erodes trust in law enforcement for a significant number of immigrants. OCPD's referral policies undoubtedly contribute to this erosion of trust by directing the probation department to act as a vehicle for immigration enforcement. To restore the trust between immigrant communities and law enforcement that is critical to public safety, immigrants must be able to distinguish local probation officers from federal immigration authorities and be assured that their cooperation with investigations will not result in adverse immigration consequences.

C. OCPD Is Not Authorized or Suited to Enforce Federal Immigration Law

There is no reason why OCPD needs to be involved in federal immigration enforcement efforts. ICE can fulfill its enforcement mission without the proactive referral of youth by juvenile probation departments.¹¹⁹ Moreover, the California Attorney General has made clear that ICE cannot require local law enforcement "to determine an individual's immigration status or to enforce federal immigration laws," including by mandating compliance with ICE detainers.¹²⁰

More importantly, OCPD's involvement in federal immigration enforcement is both unwise and, as currently conducted, illegal. OCPD's referral policy directs OCPD employees to independently attempt to determine and classify juveniles' immigration status, in excess of their constitutional authority as local officers. Further, OCPD violates juveniles' constitutional rights by detaining them solely on the basis of ICE detainers without any state law grounds for detention. OCPD's referral policy is also bad public policy. Immigration law is very complex and OCPD officers do not have the requisite training to make immigration status determinations. The policy undermines OCPD's commitment to racial equality by exacerbating the risk of illegal racial profiling in the selection of children for immigration investigations. It also risks subjecting U.S. citizens and other lawfully present children to erroneous detention and deportation, and may deprive juveniles who are eligible for immigration relief of an opportunity to apply for relief. In sum, there is no need for OCPD to assist in enforcing federal immigration law against the minors in its care—and there are compelling reasons why it should not.

1. OCPD's Referral Policy Directs County Officers to Exceed Their Constitutional Authority by Independently Determining Juveniles' Immigration Status

By placing the determination of juveniles' immigration status in the hands of county probation officials and directing them to employ a locally defined verification and classification scheme, OCPD's referral policy exceeds the lawful authority allocated to local law enforcement officers in the area of immigration enforcement under the U.S. Constitution. In *League of United Latin American Citizens v. Wilson (LULAC)*, the District Court for the Northern District of California made clear, when declaring CPC Section 834b unconstitutional, that a state or local government may not adopt a "set of criteria by which to classify individuals based on immigration status" independently of federal standards.¹²¹ More recently, **the Supreme Court confirmed in *Arizona v. United States* that, unless an exception applies,**

lawful state cooperation with federal agencies is limited to communication with *federal officials* so that federal officers can verify immigration status.¹²²

OCPD's referral policy violates these constitutional limits on the authority of local officers. Under the referral policy, Custody Intake Probation Officers must make "all reasonable attempts" to identify the citizenship status of each minor admitted to Juvenile Hall. The policy envisions that probation officers will make these determinations *prior* to consulting federal authorities or databases.

In addition, the policy requires intake officers to verify U.S. citizenship in those cases when citizenship is claimed. And when an officer finds "reason to believe" that a minor is a foreign national, the officer must require from the minor or his/her family "verification of legal entry into the United States." According to a January 2012 e-mail from the ICE Liaison DPO to the Juvenile Hall Division Director, the ICE Liaison relies on the following to assess a minor's immigration status: "interviews with the minor or his/her family, the checking of a California data base (for those who claim to be born in California) or . . . a parent providing a birth certificate." This independent verification process is unconstitutional under *LULAC*. There, the court found a state law provision preempted in part because it required state officers to independently verify the immigration status of an arrestee by "questioning the person" and "demanding documentation."¹²³

Finally, **the referral policy requires OCPD officers to assess minors' immigration status according to a classification scheme created by the county and inconsistent with federal legal standards.** The policy makes an initial distinction between "citizens" on the one hand, and "foreign nationals" who must "verif[y] . . . legal entry" on the other. But this is a false dichotomy. A person could have entered unlawfully and be a U.S. citizen today. More generally, "legal entry" is far from determinative of a person's present immigration status under federal law—many who entered lawfully are unlawfully present today, and many who entered unlawfully may today be lawfully present. Indeed, the *LULAC* court highlighted this feature of federal immigration law when striking down a state-created classification scheme, faulting it for failing to recognize federal categories of persons "who are not citizens, not admitted as permanent residents and not admitted for a temporary period of time but who are nevertheless present in the United States [and] authorized to remain here."¹²⁴

OCPD's policy instructs intake officers to further deviate from federal classification standards after they complete their investigation, when they are required to enter the youth's status into a case management system. The referral policy lists the following citizenship status classifications: "Naturalized U.S. Citizen, Pending Documentation, Resident Alien, U.S. Citizen, Undocumented Alien, Unknown, and Work Permit." These classifications differ from classifications recognized by federal law. Federal law, for example, does not recognize "work permit" or "pending documentation" as an immigration status; it does, on the other hand, make numerous different groups of noncitizens eligible for work authorization, including those who have no lawful status.

The U.S. Constitution circumscribes the role that local law enforcement may play in immigration enforcement. OCPD has overstepped the bounds of its authority by creating its own, independent scheme for the verification and classification of juveniles' immigration status.

2. OCPD's Detention of Juveniles on ICE Detainers Violates Juveniles' Right to Be Free From Unlawful Detention

Under the recently enacted TRUST Act, which will go into effect on January 1, 2014, county officers may no longer detain any individual solely on an ICE detainer unless the individual subject to the detainer has been convicted of certain crimes, or a magistrate has found probable cause to believe that the individual has committed one of those crimes.¹²⁵ Because juveniles may be considered "convicted" of such crimes only in limited circumstances,¹²⁶ the TRUST Act will substantially limit OCPD's discretion to detain juveniles in its care solely on the basis of an ICE detainer.

Even where Orange County officials have the discretion to honor an ICE detainer under the TRUST Act,¹²⁷ OCPD may be constitutionally prohibited from detaining youth on ICE detainers under certain circumstances. To comply with the Constitution, any detention of a juvenile beyond his or her scheduled release date under California law must be independently authorized by federal law. However, **OCPD's referral policy requires the detention of juveniles beyond their release dates in circumstances where an ICE detainer cannot provide such authorization.**

First, OCPD's referral policy instructs officers to hold an juvenile subject to an ICE detainer for up to 48 hours past the juvenile's scheduled release date, excluding weekends and holidays. But the Supreme Court has held that an individual cannot be detained for more than 48 hours, including weekends and holidays, without a judicial determination of probable cause as to the basis for that detention.¹²⁸ Thus, OCPD's policy appears to violate the Fourth Amendment rights of juveniles who are held on an ICE detainer for more than 48 hours.

Second, OCPD's policy directs employees to honor detainer requests without regard to the underlying charge. Congress has only explicitly authorized detainer requests for those detained on charges of controlled substance offenses.¹²⁹ Any ICE detainer placed on a juvenile detained pursuant to other charges is therefore not grounded in federal statutory authority, and may not justify the juvenile's detention beyond his or her release date. The issue has been litigated in several jurisdictions.¹³⁰

Finally, some scholars have suggested that compliance with ICE detainer requests is unlawful in all cases because it requires local officers to prolong the detention of immigrants based solely on their immigration status, which the Supreme Court held in *Arizona* local officers cannot do.¹³¹

In one recent case, OCPD appeared to even disregard the explicit terms of ICE's detainer request. In

June 2013, ICE placed a detainer on a juvenile in OCPD custody, but clearly stated the detainer would only become operative upon the juvenile's "conviction." The juvenile was declared incompetent to stand trial by the Juvenile Court in September

One juvenile was declared incompetent to stand trial by the Juvenile Court in September 2013, before the juvenile could be adjudicated delinquent on any charges. Though the court ordered the juvenile released to family, an OCPD officer turned the juvenile's parent away, citing ICE's detainer request as authority for the juvenile's continued detention.

2013, before the juvenile could be adjudicated delinquent on any charges. Though the court ordered the juvenile released to family, an OCPD officer turned the juvenile's parent away, citing ICE's detainer

request as authority for the juvenile’s continued detention. Local immigration advocates intervened, and OCPD subsequently arranged for the juvenile’s release—but despite the best efforts of advocates, other misinterpretations of detainer requests may go unnoticed and unremedied.

Our Constitution requires that all individuals be detained only pursuant to lawful authority. By erroneously treating every ICE detainer as cause to delay release of juveniles back to their families and communities, OCPD’s policy violates juveniles’ constitutional rights.

3. OCPD’s Referral Policy Undermines Its Commitment to Racial Equality by Exacerbating the Risk of Illegal Racial Profiling

OCPD has expressed a commitment to racial equality through its pledge to reduce “disproportionate minority contact,” or the overrepresentation of youth of color in the juvenile justice system.¹³² Despite OCPD’s ongoing efforts, however, racial and ethnic disparities in the rate of detention were no lower in 2012 than they had been in 2010; for instance, in 2012, Latino youth were 3.5 times more likely to be admitted into detention than White youth in Orange County.¹³³ OCPD’s referral policy exacerbates the racial disparities in the system: its requirement that officers investigate juveniles’ immigration status based on their own suspicions as to who may be “a foreign national” heightens risks of illegal racial profiling.

The United States Court of Appeals for the Ninth Circuit, which has federal jurisdiction over California, has declared that it is illegal to rely on race and ethnicity to any degree in determining who may be unlawfully present in the United States.¹³⁴ However, OCPD officers have not received training on immigration law, and immigration status is particularly difficult to discern based on observable conduct. Thus, local officers are more likely to rely on foreign appearance and foreign-sounding surnames in determining who to target for additional investigation. Due to the makeup of the foreign-born population in the United States, this determination is likely to consist of judgments based on race, ethnicity, or language.

Sadly, there have been numerous recent examples of local law enforcement agencies engaging in racial profiling in their efforts to target undocumented immigrants. In a 2009 study of the CAP program, the Warren Institute at the University of California, Berkeley School of Law found that greater collaboration between local police in Irving, Texas and ICE was accompanied by a spike in discretionary arrests of Latinos for petty offenses.¹³⁵ Likewise, the DOJ has determined that police agencies that sought to investigate undocumented immigrants in Arizona, North Carolina, and Connecticut were systematically targeting Latinos based on their ethnicity.¹³⁶ Nationwide, law enforcement participation in immigration enforcement has nearly exclusively targeted migrants who entered unlawfully from Mexico and Central America, even though 40% of America’s unlawfully present population consists of people who entered lawfully, often from non-Latin countries.¹³⁷ Perhaps unsurprisingly, 38% of Latinos nationwide report that they feel they are under more suspicion “now that local law enforcement authorities have become involved in immigration enforcement.”¹³⁸

OCPD’s instruction to its officers to investigate juveniles’ immigration status on the basis of a “reason to believe” that they are “foreign,” with no instruction on how to do so in a race-neutral way, is cause for concern. Anecdotal evidence confirms this view. While detained in Orange County Juvenile

Hall, Mario was asked about his immigration status by a nurse during his entrance medical examination and later by multiple guards and probation officers.¹³⁹ According to Mario, the other “Latino-looking” children in custody at the time fielded similar questioning, while the white children did not.¹⁴⁰

Mario was asked about his immigration status by a nurse during his entrance medical examination and later by multiple guards and probation officers. According to Mario, the other “Latino-looking” children in custody at the time fielded similar questioning, while the white children did not.

OCPD’s referral policy distracts juvenile probation officers from their central responsibilities by inviting them to treat the youth in their care differently based on their appearance or where they come from. It can lead to racially targeted investigation that alienates youth of color and pits them against other detainees. As the Ninth Circuit Court of Appeals has stated, such profiling sends a harmful “message to all our citizens that those who are not white are judged by the color of their skin alone [and] . . . enjoy a lesser degree of constitutional protection.”¹⁴¹

4. OCPD’s Referral Policy Risks the Erroneous Detention and Deportation of U.S. Citizens and Other Lawfully Present Children

OCPD’s collaboration with ICE creates a substantial risk that U.S. citizens and other lawfully present youth may be erroneously referred, detained, and deported. As discussed above, juvenile probation officers are not trained in immigration law.¹⁴² Probation officers cannot be expected to understand the complexity of federal immigration law and the numerous ways that children may be legally present in the United States.¹⁴³ Even a task that may appear straightforward on its face, such as determining if a juvenile is a U.S. citizen, cannot be accomplished reliably through simple methods such as asking for a birth certificate or proof of naturalization, since a minor may have acquired citizenship through any number of ways, such as by deriving citizenship from a parent.¹⁴⁴

In addition, the particular circumstances of children exacerbate the risk of mistaken evaluations of their immigration status. First, many children do not carry identification and may not know or understand the nature of their immigration status. Second, U.S. citizen or lawfully present children may have undocumented parents or guardians who are too afraid to come forward to verify their children’s legal status; indeed, the vast majority of youth turned over to ICE by the juvenile justice system are designated as “unaccompanied minors,” even though they were living with parents or legal guardians before their detention.¹⁴⁵

Finally, courts have recognized that detained juveniles’ responses to interrogation are inherently unreliable due to their age. The Supreme Court has cautioned that minors “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,”¹⁴⁶ and has warned that the coercive nature of interrogation is heightened for children, since “a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.”¹⁴⁷ For some juveniles, interrogation is rendered even more coercive by the juveniles’ mental disabilities,¹⁴⁸ or by probation officers’ intimidating behavior.¹⁴⁹

In recognition of these vulnerabilities, a federal regulation governing immigration enforcement against

juveniles requires that each juvenile, when “apprehended,” be given a Form I-770 notice of rights.¹⁵⁰ OCPD’s referral policy and practices circumvent this regulation in two ways. First, OCPD policy requires probation officers to question juveniles about their immigration status without providing them with the notice required by the regulation, or any alternative form of notice. That information is then passed on to ICE to be used against juveniles in their immigration court proceedings. Second, OCPD allows juveniles to be directly questioned by ICE officers while they are in OCPD custody, without providing Form I-770 notices to the youth, undermining the spirit of the federal regulation.

OCPD policy requires probation officers to question juveniles about their immigration status without providing them with the notice required by the regulation, or any alternative form of notice.

The particular vulnerabilities of children, combined with probation officers’ lack of expertise in assessing immigration status, create substantial risks that legally present children will be referred to ICE, after which the lack of adequate safeguards in the federal immigration system may compound the mistake. For example, ICE may issue detainers against U.S. citizens and other lawfully present youth, since a detainer may be issued so long as there is simply “reason to believe the individual is subject to removal.” ICE agents frequently issue wrongful detainers for individuals who are actually U.S. citizens. **In a recent 50-month period, the Transactional Records Access Clearinghouse found that ICE issued detainers for 834 U.S. citizens,¹⁵¹ and other studies have estimated that the number of U.S. citizens apprehended by ICE may be much higher.¹⁵²**

Children subject to erroneous detainers may face erroneous deportation if they are transferred to federal custody and placed in immigration court proceedings. Children in this situation are especially vulnerable because immigration courts lack the child-specific protections present in the juvenile justice and child welfare systems—in particular, there is not as robust an entitlement to legal representation, and there is no provision for guardians *ad litem*.¹⁵³ Federal authorities are only required to provide unaccompanied minors with counsel “to the greatest extent practicable.”¹⁵⁴ This relative lack of safeguards leaves minors ill-equipped to challenge their cases. For instance, ICE lawyers prosecuting a juvenile’s deportation case may make use of his or her statements to probation officers, even though those statements, as explained above, are inherently unreliable. An Immigration Judge may then rely on those statements in ordering a juvenile deported.

In fact, the failure to recognize the special vulnerabilities of children has resulted in numerous high-profile wrongful deportations of U.S. citizen children. **Jakadrien, a fourteen-year-old U.S. citizen, was deported to Colombia after she gave a false name to law enforcement, even though she had never been to Colombia and did not speak Spanish.**¹⁵⁵ Jakadrien was picked up by law enforcement when she ran away from home, distraught over the loss of her grandfather and her parents’ divorce. Despite the red flags indicating her statements to law enforcement were unreliable, ICE failed to confirm her identity before deporting her to Colombia. Another deported U.S. citizen was four-year-old Emily Samantha Ruiz, who was stopped by customs agents and immigration authorities because she was travelling with her grandfather, who held a valid visa but had prior immigration infractions on his record.¹⁵⁶ Emily was deported to Guatemala before she was eventually retrieved by the Ruiz family’s attorney and returned to her family on Long Island.

5. OCPD's Referral Policy Risks the Unnecessary Detention and Deportation of Juveniles Eligible for Immigration Relief

Balancing various public policy considerations, the federal government has created numerous programs that provide immigration relief to undocumented children. These programs include affirmative pathways to legal immigration status and citizenship, including family visas,¹⁵⁷ T visas,¹⁵⁸ U visas,¹⁵⁹ S visas,¹⁶⁰ asylum,¹⁶¹ and Special Immigrant Juvenile Status (SIJS).¹⁶² Certain juveniles may also apply for Temporary Protected Status (TPS)¹⁶³ relief or to the Deferred Action for Childhood Arrivals (DACA) program, which—though not leading to legal status—provides youth with work authorization and temporary protection from deportation. Once a juvenile is in immigration court proceedings, she may be able to apply for additional forms of defensive relief from deportation, such as cancellation of removal.¹⁶⁴

Juveniles eligible for certain types of immigration status or relief—such as visas, SIJS, or DACA—may be deprived of an opportunity to apply for them, or to complete processing of their applications, if they are referred by OCPD and deported first. DHS attorneys have no legal obligation to agree to close a juvenile's immigration court case pending the resolution of an application for immigration relief.¹⁶⁵ Similarly, Immigration Judges often have no obligation to postpone hearings¹⁶⁶ or close a juvenile's case under such circumstances.¹⁶⁷ Once removal proceedings are initiated, children must assert their own eligibility for relief, and certain applications can take quite a long time to process.

Because children left to navigate complex immigration proceedings on their own have slim to no chance of success,¹⁶⁸ it is important that children have the greatest opportunity to consult with their families and with legal counsel regarding their eligibility for programs that providing a path to legal status prior to the initiation of removal proceedings. Under current OCPD policy, however, the Probation ICE Liaison notifies ICE of "suspected foreign national[s]" without regard to whether the children are eligible for immigration relief.¹⁶⁹ Although the Liaison is given some discretion regarding referrals, that discretion does not contemplate the children's potential eligibility for immigration relief, and the Liaison is not trained or qualified to assess such eligibility. This can cut short the time that juveniles have to work with their families and attorneys to apply for visas or other relief.

According to a 2012 Vera Institute of Justice report, more than one-quarter of unaccompanied children admitted into ORR custody are potentially eligible for legal status through U visas, T visas, and SIJS.¹⁷⁰ Legal status for these youth would benefit the community and further the goals of the juvenile justice system: legal status often confers work authorization, removing juveniles' incentive to commit certain offenses, and long-term permanent residents are eligible for federal financial aid, which may motivate youth to pursue higher education. Sadly, juvenile referral policies like OCPD's create a pipeline to detention and deportation for juveniles who, if never referred to ICE by juvenile probation, might otherwise have had an opportunity to attain such legal status.

According to a 2012 Vera Institute of Justice report, more than one-quarter of unaccompanied children admitted into ORR custody are potentially eligible for legal status through U visas, T visas, and SIJS.

D. Juvenile Referrals Drain County Funds

1. OCPD Spends County Resources Referring Juveniles to ICE and Detaining Them at ICE's Request

In fiscal year 2012 alone, the federal government allocated more than \$17.9 billion to immigration enforcement—substantially exceeding its spending on all federal criminal law enforcement agencies combined.¹⁷¹ Though ICE thus commands a hefty budget, OCPD's immigration enforcement policies effectively result in the county incurring additional costs to subsidize ICE's work. Under current OCPD policy, officers are encouraged to spend their time "on the clock" attempting to ascertain the immigration status of youth under their care, rather than pursuing their core missions. OCPD staff must also spend time communicating with each other about youth that it wants to refer, and communicating with ICE when the decision to refer is made. To bear these burdens, OCPD has designated an ICE Liaison Deputy Probation Officer to handle communication with ICE.¹⁷² **OCPD thus maintains a staff member on the county payroll whose position is dedicated to federal immigration enforcement.** Supervising Probation Officers must also divert time from their core job functions to supervise the referral decisions of the ICE Liaison.

Further, if OCPD refers a youth to ICE and ICE elects to place a detainer on the youth, OCPD policy states that it will (1) notify ICE of the youth's pending release; (2) detain the youth for up to an additional five days past the youth's scheduled release date;¹⁷³ and (3) refuse to release the youth into an out-of-home placement, instead maintaining custody of the minor in Juvenile Hall.¹⁷⁴ These activities each require the expenditure of time and money. For instance, in order to notify ICE of the pending release of each youth subject to an ICE detainer, the county shoulders additional administrative costs to track pending detainers and communicate with ICE regarding juveniles' release dates.

After notifying ICE of the pending release of a juvenile subject to an ICE detainer, OCPD may delay the juvenile's release for up to five days, thus assuming a substantial additional unnecessary cost. According to OCPD data, the county spends an average of over \$420 per day, including direct and indirect costs, to detain a single juvenile.¹⁷⁵ Children held for the maximum additional amount of time under the policy could therefore cost the county over \$2,000 in additional costs, even if ICE never actually assumes custody. There is no federal program or policy to specifically reimburse counties for the costs of honoring ICE detainers for minors.¹⁷⁶

Finally, under OCPD's policy of refusing out-of-home placement services to minors with active ICE detainers, undocumented youth must serve the terms of their probation in expensive prison-like conditions rather than with relatives, in a group home, or in a therapeutic facility.¹⁷⁷ These detention options are often more expensive than out-of-home placements, further straining county probation budgets.¹⁷⁸

2. OCPD's Participation in Federal Immigration Enforcement Exposes the County to Costly Lawsuits

OCPD's unnecessary involvement in immigration enforcement exposes the county to costly legal liability and, even where liability is not established, the costs of legal defense if the county is sued. If OCPD continues to follow its referral policy, former detainees or civil rights organizations may sue

the county for the erroneous referral, detention, and deportation of U.S. citizen and other lawfully present youth; for OCPD's detention of youth solely on the basis of an ICE detainer; for violations of juvenile confidentiality laws; or for county officials' reliance on race or ethnicity when deciding who to interrogate and refer.

Orange County may face legal challenges arising from OCPD's erroneous referral or detention of youth, or for the county's role in their wrongful detention or deportation by ICE. The substantial risks of such erroneous referrals, detention, and deportations were discussed on pages 25-26, and each incident exposes the county to liability. **At least two other California counties have already faced costly lawsuits for erroneous evaluations of immigration status.** San Joaquin County paid \$25,000 to settle a lawsuit, *Soto-Torres v. Johnson*, stemming from a county probation officer's incorrect determination of the plaintiff's deportability and wrongful referral to ICE.¹⁷⁹ Similarly, in *Guzman v. Chertoff*, the Los Angeles County Sheriff's Department mistakenly referred a developmentally disabled U.S. citizen to ICE, resulting in his wrongful deportation to Mexico.¹⁸⁰ Los Angeles County and the federal government reached a settlement agreement with Mr. Guzman that required the United States to pay him \$350,000.¹⁸¹ Though *Soto-Torres* and *Guzman* involved adult plaintiffs, Orange County risks liability for similar erroneous referrals regardless of the age of the detainee.

Even where OCPD refers unlawfully present youth to ICE, its policy of detaining those youth beyond their scheduled release dates solely on the basis of an ICE detainer request exposes the county to additional liability. As described on pages 23-24, detention on an ICE detainer may violate a juvenile's Fourth Amendment rights. Counties across the nation have already faced legal challenges to their enforcement of ICE detainers.¹⁸² Notably, Los Angeles County is currently defending itself in a class action lawsuit challenging its practice of holding people subject to ICE detainers in county jail for more than 48 hours and refusing to release those subject to ICE detainers on bail.¹⁸³

Other legal issues raised by OCPD's referral policy expose the county to additional lawsuits. Youth may challenge the policy's violations, examined on page 14-16, of laws governing juvenile confidentiality. And by creating risks of racial profiling, as described on pages 24-25, the policy also makes OCPD vulnerable to legal liability under anti-discrimination laws. In fact, Sonoma County once faced a lawsuit that invoked federal and state civil rights laws, as well as the federal and California Constitutions, to challenge, among other things, county officers' use of race, Spanish surnames, and national origin as factors in targeting inmates for interrogation regarding their immigration status and referral to ICE.¹⁸⁴

Recommendations

After considering the many legal and policy issues discussed in this report, IRC offers the following recommendations to Orange County officials and the California Legislature.

A. Recommendations for Orange County Officials

The harms caused by OCPD's policy of referring youth to ICE outweigh any benefit. OCPD and the Orange County Juvenile Court should resolve to discontinue OCPD's involvement in federal immigration enforcement. Accordingly, they should rescind OCPD's referral policy and adopt the following policies:

- **No referral of juveniles to ICE.**
- **No investigation of juveniles' immigration status.**
- **No compliance with ICE detainers.**

If OCPD continues to engage in federal immigration enforcement, it should mitigate the legal problems and social harms caused by local collaboration with ICE by adopting the following recommendations.

Referrals

- **No referrals unless they meet clear public safety standards.** Provide clearly delineated standards for the ICE Liaison to employ in assessing whether a juvenile presents "a foreseeable and/or articulated danger to public safety" sufficient to warrant his or her referral to ICE; such standards should limit referrals to exceptional circumstances. Eliminate the provision granting the Liaison discretion to refer a juvenile to ICE when the Liaison believes that the referral will serve the juvenile's best interests—referral does not serve juveniles' best interests.
- **Observe confidentiality law.** Pursuant to WIC 827, provide ICE with no information regarding a juvenile's case file—including but not limited to the juvenile's immigration status information and delinquency history—unless ICE has obtained an order from the Juvenile Court granting OCPD permission to share the information with ICE.
- **Notice and response.** Require the ICE Liaison to notify a juvenile, her parents or guardians, and her counsel, if any, of the Liaison's decision to refer the juvenile to ICE, along with the grounds for that decision, before the referral is made. Require the Supervision Probation Officer charged with reviewing that decision to give the juvenile a fair opportunity to contest the referral. ICE should not be contacted unless and until the interested parties are notified and, after the juvenile has had a fair chance to challenge the decision to refer, the Supervision Probation Officer has affirmed the decision.

Investigations

- **No immigration questioning by county officers.** Prohibit probation officers from questioning any juvenile or his or her family members concerning the juvenile's citizenship or immigration status.

- **No immigration questioning without notice.** Allow federal immigration officers to have access to juveniles for questioning only when they identify themselves and their purpose to the juvenile, and provide the juvenile with a Form I-770 Notice of Rights and Disposition.

Limits on assisting federal investigation. If any officer, short of questioning a juvenile concerning his or her citizenship or immigration status, should assist ICE with investigation of any juvenile, that officer’s activities should be subject to the following limits:

- **No independent verification.** The officer may not attempt to ascertain a juvenile’s immigration status—only ICE may conduct the verification.
- **No racial profiling.** Race and ethnicity may not be used as criteria in the decision to investigate a juvenile’s citizenship or immigration status.
- **No premature investigation.** No investigation of a juvenile’s immigration status should occur unless that juvenile has been adjudicated delinquent of the offense for which he or she is presently detained. If information on a juvenile’s immigration status is inadvertently disclosed prior to such adjudication, OCPD should not record that information in the juvenile’s case file.

ICE detainers

- **Observe the TRUST Act.** Instruct officers that they are prohibited from honoring any ICE detainers in certain circumstances that do not satisfy the requirements of the TRUST Act, and provide all officers with training on those requirements.
- **No unauthorized detention.** Clarify that officers may honor ICE detainers only by notifying ICE of a juvenile’s pending release, and not by detaining the juvenile beyond the time of his or her scheduled release.
- **Allow out-of-home placement.** Release juveniles subject to ICE detainer requests into out-of-home placements when they are ordered by a court.

Outreach and relief

- **Outreach to immigrant families.** Conduct outreach to clearly explain OCPD’s referral policy to immigrant families and assure them that their cooperation with OCPD will not expose them to immigration enforcement.
- **Promote immigration relief.** Assist juveniles in pursuing immigration relief, thereby obtaining status and/or privileges that will facilitate their rehabilitation, through the following steps:
 - **Information on relief.** Provide juveniles with written information, prepared by immigration lawyers or organizations, on forms of immigration relief for which they may qualify, including visas, SIJS, and DACA.
 - **Access to legal counsel.** Provide juveniles with contact information for local lawyers and organizations that can provide free representation or advice to immigrants.
 - **Eligibility screening.** Collaborate with local immigration advocates to screen juveniles for eligibility for immigration relief.

B. Recommendations for State Legislators

The California Legislature took a critical step towards protecting immigrant youth when it enacted the TRUST Act, but that legislation, achieved through political compromise, does not extend to all juveniles; for instance, it excludes juveniles who are tried in the adult criminal justice system of offenses that permit compliance under the TRUST Act. By focusing solely on ICE detainers, the TRUST Act also fails to address the initial referral of juveniles to ICE.

California should pass legislation to extend the following protections to juveniles:

- **No juvenile detainers.** Extend the TRUST Act to prohibit detention of any juvenile in California on an ICE detainer, regardless of the charges brought against the juvenile and even if the juvenile has been tried and convicted as an adult.
- **No juvenile referrals.** Prohibit all probation departments and law enforcement offices in California from referring juveniles to ICE.

Conclusion

OCPD should change its referral practices because they violate the law, contravening California’s juvenile confidentiality laws as well as constitutional limits on the authority of county officers to detain juveniles and enforce federal immigration law. But even if its practices were lawful, OCPD should stop referring youth to ICE. The agency’s unnecessary immigration enforcement activities are a drain on county coffers, diverting resources from OCPD’s core missions: rehabilitating youth and protecting the community. Worse, OCPD’s referral practices actually interfere with those missions by discouraging immigrant families from cooperating with OCPD and with law enforcement, and by subjecting juveniles to the destabilizing conditions of detention, often far away from their families and communities. Finally, by directing untrained local officers to engage in immigration enforcement, OCPD creates risks that U.S. citizens and other lawfully present youth will be erroneously detained or deported, as well as risks that juveniles will be racially profiled and denied a fair chance to obtain the immigration benefits for which they are eligible.

As illustrated by California’s enactment of the TRUST Act, California residents are beginning to recognize the hazards of state and local participation in immigration enforcement. OCPD took a step in the right direction when it revised its referral policy last year, but the revisions failed to address the policy’s violations of confidentiality law and other harms detailed in this report. Moreover, the revised policy still invests county officers with too much unguided discretion to refer juveniles to ICE—resulting in the referral of juveniles such as Eva.

We hope that OCPD will begin to give serious consideration to the harms of referring Orange County youth in its care to ICE. Adoption of the analysis and recommendations in this report would advance justice for all Orange County youth.

Endnotes

- ¹ See *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407, 1411 (2009) (upholding the Los Angeles Police Department’s policy prohibiting officers from initiating police action with the objective of discovering the immigration status of the individual); *see also* *League of United Latin American Citizens v. Wilson*, [LULAC] 997 F. Supp. 1244 (C.D. Cal. 1997) (holding that federal law preempts Cal. Penal Code § 834b, which required state law enforcement agencies to investigate the immigration status of arrestees and communicate their findings to the legacy Immigration and Nationality Service (INS)); *Gates v. Superior Court*, 193 Cal. App. 3d 205, 219 (Cal. Ct. App. 1987).
- ² The records obtained by IRC via Public Records Act requests extend back to 12/20/2010.
- ³ *Processing Undocumented Aliens Through Juvenile Custody Intake*, OCPD Procedure Manual Item 2-4-102 (Dec. 22, 2011).
- ⁴ *Processing Undocumented Aliens* at 1.
- ⁵ *Processing Undocumented Aliens* at 2.
- ⁶ *Processing Undocumented Aliens* at 2. Other criteria included: “a minor who has been charged with a serious felony (example: rape, murder, sex offense);” “a minor who has a history of committing serious offenses such as listed above, as well as theft, assaults, etc.”; and “minors who are prior deportees.”
- ⁷ *Processing Undocumented Aliens* at 2.
- ⁸ 94-7569 MRP, 1998 WL 141325 (C.D. Cal. Mar. 13, 1998) (enjoining the California governor, his agents, employees, and successors from enforcing the portion of Proposition 187 that is now codified at California Penal Code § 834(b)).
- ⁹ Detainer requests are ICE’s primary tool for taking custody of persons currently incarcerated in state or local facilities.
- ¹⁰ *Processing Undocumented Aliens* at 2-3.
- ¹¹ OCPD internal email dated February 1, 2012 (obtained in 2/2/12 PRA).
- ¹² RUSSELL TRENHOLME, IMPORTA SANTA BARBARA, DEPORTATION UNLIMITED: THE SANTA BARBARA PROBATION DEPARTMENT-ICE PARTNERSHIP TO DEPORT IMMIGRANT JUVENILES 31 (NOV. 2012), *available at* [http://importa.homestead.com/Probation_ and ICE_Revison_120612.pdf](http://importa.homestead.com/Probation_and_ICE_Revison_120612.pdf). In such situations, this would likely also occur before a youth has been assigned defense counsel or had an opportunity to meet with counsel.
- ¹³ Orange County Intake Assessment Worksheet, obtained by IRC in a 2/2/2012 Public Records Act request to OCPD.
- ¹⁴ Orange County Intake Assessment Worksheet, obtained by IRC in a 2/2/2012 Public Records Act request to OCPD. Generally, intake questions are intended to protect juveniles and to help probation officers identify risk factors. However, OCPD has instead been using the intake process to investigate youths’ immigration status, without warning that this information could be used to make referrals.
- ¹⁵ *Processing Suspected Foreign Nationals Through Juvenile Custody Intake*, OCPD Procedure Manual Item 2-4-102 (Nov. 13, 2012).
- ¹⁶ *Processing Suspected Foreign Nationals* at 2.
- ¹⁷ *Processing Suspected Foreign Nationals* at 2. This policy is unusual in that best interest determinations are typically reserved for juvenile courts, not probation officers. *See* Cal. Welf. & Inst. Code § 202.
- ¹⁸ *See Processing Suspected Foreign Nationals* at 1-2.
- ¹⁹ *See Processing Suspected Foreign Nationals* at 3.
- ²⁰ *See Processing Suspected Foreign Nationals* at 2; *Processing Undocumented Aliens* at 2.

- ²¹ *Processing Suspected Foreign Nationals* at 1. These status classifications deviate from federal standards in several respects. First, they are incorrectly named “citizenship status[es]” when in fact they are both citizenship and immigration statuses. Second, “Work Permit” is not a citizenship or immigration status under federal law. Third, the system apparently does not include categories for U.S. nationals or certain nonqualified immigrants who may nonetheless be lawfully present in the United States.
- ²² Name changed to protect confidentiality.
- ²³ TRENHOLME, *DEPORTATION UNLIMITED* at 30.
- ²⁴ Data obtained from the Orange County Probation Department through a PRA request 2/2/2012.
- ²⁵ SELENA TEJI, CENTER ON JUVENILE AND CRIMINAL JUSTICE, *THE UNNECESSARY DETENTION OF UNDOCUMENTED YOUTH* (2013), available at http://www.cjcj.org/uploads/cjcj/documents/cjcj_juvenile_ice_hold_factsheet.pdf (analyzing data obtained by the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law and others as a result of litigation filed in 2010).
- ²⁶ TEJI, *UNNECESSARY DETENTION* at 1.
- ²⁷ TEJI, *UNNECESSARY DETENTION* at 1. Orange County has a larger population than most other California counties. This population difference may account for a significant portion of Orange County’s lead in total referrals.
- ²⁸ Information Bulletin from California Attorney General Kamala D. Harris, *Responsibilities of Local Law Enforcement Agencies under Secure Communities 2-3* (Dec. 4, 2012), available at <http://www.immigrationpolicy.org/sites/default/files/docs/Kamala-Harris-guidance-on-immigration-detainers.pdf>.
- ²⁹ Under the TRUST Act, law enforcement agencies may only honor a juvenile ICE detainer request if: (1) the request is based on a sustained juvenile adjudication; and (2) the offense constitutes a juvenile strike under Cal. Penal Code § 667(d)(3). See Cal. Gov. Code §§ 7282(a); 7282.5(a)(1) (effective January 1, 2014). Under Cal. Penal Code § 667(d)(3), the juvenile must be at least 16 years or older at the time of the offense. In addition, the sustained adjudication must include a charge listed in Cal. Welf. & Inst. Code § 707(b) and must qualify as a serious or violent felony as defined by Cal. Penal Code §§ 1192.7 or 667.5. See *People v. Lang*, 71 Cal. App. 4th 1, 10 (1999). Even when a juvenile meets all of these criteria, the TRUST Act does not require probation officials to report noncitizen youth. Probation officials still retain discretion to reject compliance with ICE detainer requests in all cases.
- ³⁰ This program was created in the late 1980s for the purpose of screening and targeting serious criminal offenders for deportation, although its reach has extended far beyond that. TREVOR GARDNER II & AARTI KOHLI, THE CHIEF JUSTICE EARL WARREN INSTITUTE ON RACE, ETHNICITY, & DIVERSITY, *THE C.A.P. EFFECT: RACIAL PROFILING IN THE ICE CRIMINAL ALIEN PROGRAM* 8 (2009), available at http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf.
- ³¹ EDGAR AGUILASOCHO, DAVID RODWIN, & SAMEER ASHAR, UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW, IMMIGRANT RIGHTS CLINIC, *MISPLACED PRIORITIES: THE FAILURE OF SECURE COMMUNITIES IN LOS ANGELES COUNTY* 3 (2012).
- ³² CRISTINA RODRIGUEZ, MUZAFFAR CHISTI, RANDY CAPPS, AND LAURA ST. JOHN, MIGRATION POLICY INSTITUTE, *A PROGRAM IN FLUX: NEW PRIORITIES AND IMPLEMENTATION CHALLENGES FOR 287(G)* 5 (March 2010), available at www.migrationpolicy.org/pubs/287g-March2010.pdf.
- ³³ See TRENHOLME, *DEPORTATION UNLIMITED* at 32 (showing a strong correlation between referrals and detainer requests for each year reported).
- ³⁴ Data provided from ORR to Angie Junck, Staff Attorney at Immigrant Legal Resource Center in San Francisco (2012).
- ³⁵ Affidavit of Angela Junck, *In re: A 200 709 940* (2013). This document is on file with IRC.
- ³⁶ Conversation between Manoj Govindaiah, then-attorney at the National Immigrant Justice Center in Chicago, Illinois and Angie Junck, Staff Attorney at Immigrant Legal Resource Center in San Francisco, California.
- ³⁷ Interview between Yvette Cabrera, reporter with Mission & State, and OCPD.

- ³⁸ Data provided by OCPD to Yvette Cabrera, reporter with Mission & State.
- ³⁹ Name changed to protect confidentiality.
- ⁴⁰ Petition for Writ of Mandate, Case no. G049127. This document is on file with IRC.
- ⁴¹ Cal. Welf. & Inst. Code § 202.
- ⁴² Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 141 (1997).
- ⁴³ Scott & Grisso, *The Evolution of Adolescence* at 141.
- ⁴⁴ RICHARD LAWRENCE & CRAIG HEMMENS, JUVENILE JUSTICE 24 (2008).
- ⁴⁵ Scott & Grisso, *The Evolution of Adolescence* at 142.
- ⁴⁶ Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 121–22 (1909).
- ⁴⁷ *Roper v. Simmons*, 543 U.S. 551, 553 (2005).
- ⁴⁸ Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 526 (2004).
- ⁴⁹ Cal. Welf. & Inst. Code § 202(b).
- ⁵⁰ For a discussion of the policy reasons for confidentiality and the scope of the protections, see *T.N.G. v. Superior Court* 4 Cal. 3d 767, 776 (1971) (“[S]everal sections explicitly reflect a legislative judgment that rehabilitation through the process of the juvenile court is best served by the preservation of a confidential atmosphere in all of its activities.”).
- ⁵¹ JUVENILE DETENTION ALTERNATIVE INITIATIVES, 2011 ANNUAL RESULTS REPORT 6, available at <http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/JDAIResultsReport2011/JDAIResults2011.pdf>.
- ⁵² DAVID STEINHART, JUVENILE DETENTION ALTERNATIVE INITIATIVES, PLANNING FOR JUVENILE DETENTION REFORMS: A STRUCTURED APPROACH 7, available at <http://www.aecf.org/upload/publicationfiles/planning%20for%20detention%20reforms.pdf>.
- ⁵³ JUVENILE DETENTION ALTERNATIVES INITIATIVE, DETENTION REFORM: AN EFFECTIVE PUBLIC SAFETY STRATEGY 4 (see chart), available at http://www.aecf.org/upload/PublicationFiles/jdai_facts2.pdf.
- ⁵⁴ Henning, *Eroding Confidentiality in Delinquency Proceedings* at 527.
- ⁵⁵ *Kent v. United States*, 383 U.S. 541, 563 (1966).
- ⁵⁶ *Application of Gault*, 387 U.S. 1, 33 (1967).
- ⁵⁷ Hon. Douglas J. Hatchimonji, Administrative Order No. 12/003-903: Exchange of Information (March 29, 2012), available at <http://www.occourts.org/general-public/notices/juvenile/admin-order-12-003-903.pdf>.
- ⁵⁸ Cal. Welf. & Inst. Code § 827(a)(1)(E) allows inspection of a juvenile case file by “law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.”
- ⁵⁹ Cal. Welf. & Inst. Code § 827(a)(1).

⁶⁰ Federal immigration authorities do not fall under the category of “any person or agency which has a legitimate need for the information for purposes of official disposition of a case.” The legislative history of Section 828 reveals that the bill’s author did not intend to extend the sharing of information with federal authorities. See, for example, Enrolled Bill Memorandum to Governor (SB 910, Nov. 20, 1972). In addition, it is unlikely that federal immigration officers are involved in the type of “case” contemplated by Section 828, which was designed to deal primarily with the disposition of state juvenile court proceedings, as they ostensibly have no knowledge of a minor’s possible civil immigration violations at the time such information is shared.

⁶¹ Compare S.B. 940, Comm. Analysis on May 15, 2001, with S.B. 940 Reg. Sess. (Cal. 2011) as chaptered.

⁶² Hatchimonji, Administrative Order No. 12/003-903

⁶³ Hatchimonji’s Administrative Order No. 12/003-903 Section A.5.b. states that the FBI can obtain confidential information from the juvenile court “provided a disposition has been made and the minor has been declared a ward of the Juvenile Court . . . for a violation which may be punishable as a felony if committed by an adult.”

⁶⁴ Cal. Welf. & Inst. Code § 827(a).

⁶⁵ Form JV-570, Request for Disclosure of Juvenile Case File, *available at* <http://www.courts.ca.gov/documents/jv570.pdf>.

⁶⁶ *Case Confidentiality – Client’s Right to Privacy*, OCPD Policy B-1, at 1 (March 2005).

⁶⁷ *Case Confidentiality – Client’s Right to Privacy*, at 1.

⁶⁸ *Processing Suspected Foreign Nationals* at 2. Additionally, the federal regulations governing the issuance of immigration detainers require the agency holding the suspected alien to “provide [ICE] with all documentary records and information available from the agency that reasonably relates to the alien’s status in the United States, or that may have an impact on conditions of release.” 8 C.F.R. 287.7(c) (2012).

⁶⁹ For example, Kristen Jackson at Public Counsel reports that she has received A file copies (via FOIA requests) for Orange County youth, and in those A files are confidential juvenile court documents released to ICE without any Cal. Welf. & Inst. Code § 827 order. Additionally, IRC is able to confirm that delinquency case information was included in Mario’s A-file.

⁷⁰ Cal. Welf. & Inst. Code § 827(e).

⁷¹ Cal. Rules of Court § 5.552(a)(4).

⁷² Cal. Rules of Court § 5.552(a)(5).

⁷³ Cal. Welf. & Inst. Code § 827.

⁷⁴ Form JV-569, Proof of Service – Request for Disclosure, *available at* <http://www.occourts.org/forms/local/l452.pdf>

⁷⁵ Form JV-572, Objection to Release of Juvenile Case File, *available at* <http://www.occourts.org/forms/local/l452.pdf>.

⁷⁶ Cal. Rules of Court, Rule 5.552(e)(4).

⁷⁷ Cal. Rules of Court, Rule 5.552(e)(5).

⁷⁸ *City of New York v. United States*, 179 F.3d 29, 31-37 (1999) (suggesting that although New York City mayor Edward Koch’s 1989 Executive Order prohibiting City officials from sharing the immigration status of any individual with federal immigration authorities was preempted by federal law, codified at 8 U.S.C. §§ 1373, the City would have a right under the Tenth Amendment to control the use of information obtained in the course of official City business and thus enact a more general confidentiality policy that covered immigration status information, among other things); *Printz v. United States*, 521 U.S. 898 (1997).

- ⁷⁹ The introduction of this improperly disclosed information about alienage in a child's immigration court proceedings also shifts the burden of proof to the child in those proceedings, where they often go unrepresented, undermining due process.
- ⁸⁰ Video: Orange County Juvenile Court, Part 2, ORANGE COUNTY JUVENILE JUSTICE SYSTEM, at 3:57, <http://ocgov.com/gov/probation/ocjjs>
- ⁸¹ Video: Orange County Juvenile Court, Part 1, ORANGE COUNTY JUVENILE JUSTICE SYSTEM, <http://ocgov.com/gov/probation/ocjjs> (begin at 6:00 for identification of the Deputy District Attorney).
- ⁸² Video: Orange County Juvenile Court, Part 2, ORANGE COUNTY JUVENILE JUSTICE SYSTEM, <http://ocgov.com/gov/probation/ocjjs>.
- ⁸³ *Probation Officer*, ORANGE COUNTY JUVENILE JUSTICE SYSTEM, <http://ocgov.com/gov/probation/arrested/officer>.
- ⁸⁴ STANFORD IMMIGRANTS' RIGHTS CLINIC, ICE REFERRAL PRACTICES WITHIN SAN MATEO COUNTY'S JUVENILE JUSTICE SYSTEM 7 (September 9, 2011), available at <http://stopdeportingyouth.com/about/>.
- ⁸⁵ OCPD, *Minor and Family Data Sheet*, produced in February 3, 2012 PRA production.
- ⁸⁶ STANFORD, ICE REFERRAL PRACTICES at 3.
- ⁸⁷ OCPD, *A Parent's Guide to Juvenile Hall Admissions*, produced in April 2013 PRA production ("California's juvenile court law requires the probation department to conduct an investigation into each case brought to Juvenile Hall, and an interview with the parents or guardian is an important part of that investigation.")
- ⁸⁸ *Parental Responsibilities When Your Child is Arrested*, SUPERIOR COURT OF CALIFORNIA - COUNTY OF ORANGE, <http://www.occourts.org/self-help/juvenile/delinquency.html> (last accessed November 11, 2013).
- ⁸⁹ JAMES BELL, LAURA JOHN RIDOLFI, MICHAEL FINLEY, & CLINTON LACEY, THE KEEPER AND THE KEPT: REFLECTIONS ON LOCAL OBSTACLES TO DISPARITIES REDUCTION IN JUVENILE SYSTEMS AND A PATH TO CHANGE, W. HAYWOOD BURNS INST. 9-10 (Dec.2009), available at: <http://www.burnsinstitute.org/downloads/BI%20Keeper%20Kept.pdf>.
- ⁹⁰ *Processing Suspected Foreign Nationals* at 3.
- ⁹¹ ORR facilities are often local juvenile detention facilities.
- ⁹² JACQUELINE BHABHA & SUSAN SCHMIDT, SEEKING ASYLUM ALONE: UNACCOMPANIED AND SEPARATED CHILDREN AND REFUGEE PROTECTION IN THE U.S. 86 (2006).
- ⁹³ The Immigration Judge terminated Mario's case after IRC argued that the evidence ICE had obtained from OCPD was obtained illegally. However, termination is rarely granted. If not for the Immigration Judge's willingness to grant termination in this case, Mario would have likely stayed in federal detention even longer.
- ⁹⁴ Barry Holman & Jason Zeidenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, JUSTICE POLICY INST. (Nov. 28, 2006) available at <http://www.justicepolicy.org/research/1978>.
- ⁹⁵ GWEN A. KURZ & LOUIS E. MOORE, OCPD, EXPLORATORY RESEARCH FINDINGS AND IMPLICATIONS FOR PROBLEM SOLUTIONS, EXECUTIVE SUMMARY, available at <http://ocgov.com/gov/probation/about/8percent/findings>.
- ⁹⁶ The uncertainty of a release from detention, coupled with the fear of deportation can create a stressful, even traumatic environment. Louise K. Newman & Zachary Steel, *The Child Asylum Seeker: Psychological and Developmental Impact of Immigration Detention*, 17 CHILD & ADOLESCENT PSYCHIATRIC CLINICS N. AM. 663, 680 (2008) (explaining the current stressors for detained children include "being held indefinitely in detention, being subject to incomprehensible legal and administrative processes and having little control over daily life."). Studies have shown that "detained children may develop apathy, depression, and feelings of hopelessness and worthlessness," at times causing the detained youth to engage in self-harm. Elizabeth M. Frankel, *Detention and Deportation with Inadequate Due Process: The Devastating Consequences of Juvenile Involvement with Law Enforcement For Immigrant Youth*, 3 DUKE FORUM FOR L. & SOC. CHANGE 63, 80 (2011) available at <http://scholarship.law.duke.edu/dflsc/vol3/iss1/4>.

⁹⁷ Cal. Welf. & Inst. Code § 202.

⁹⁸ KURZ & MOORE, EXPLORATORY RESEARCH FINDINGS.

⁹⁹ *Delinquency Hearings*, SUPERIOR COURT OF CALIFORNIA - COUNTY OF ORANGE, <http://www.occourts.org/self-help/juvenile/delinquency.html> (last accessed November 11, 2013).

¹⁰⁰ *Processing Suspected Foreign Nationals* at 3.

¹⁰¹ Email correspondence with Kristen Jackson dated Oct. 4, 2013. Conversation between Manoj Govindaiah, attorney at Southern Poverty Law Center in Miami Florida and Angie Junck, Staff Attorney at Immigrant Legal Resource Center in San Francisco.

¹⁰² STANFORD, ICE REFERRAL PRACTICES at 9.

¹⁰³ STANFORD, ICE REFERRAL PRACTICES at 10.

¹⁰⁴ Frankel, Detention and Deportation with Inadequate Due Process at 66.

¹⁰⁵ STANFORD, ICE REFERRAL PRACTICES 9.

¹⁰⁶ See Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings* at 534.

¹⁰⁷ STANFORD, ICE REFERRAL PRACTICES at 10-11.

¹⁰⁸ Charis E. Kubrin & Hiromi Ishizawa, *Why Some Immigrant Neighborhoods Are Safer than Others: Divergent Findings from Los Angeles and Chicago*, 641 ANNALS OF THE AM. ACAD. 148, 148 (2012) (adding that “[c]ontrary to popular opinion, scholarly research has documented that immigrant communities are some of the safest places around”).

¹⁰⁹ *Processing Suspected Foreign Nationals* at 2 (“If a youth...is a suspected foreign national, the Custody Intake Officer will immediately notify the Immigration and Customs Enforcement (ICE) Liaison DPO.”); *Processing Undocumented Aliens* at 1 (“If a minor has been lodged at Juvenile Hall on an Application for Petition alleging a 602 Welfare and Institutions Code law violation, the minor’s citizenship status is to be determined during the Custody Intake process.”).

¹¹⁰ KURZ & MOORE, EXPLORATORY RESEARCH FINDINGS.

¹¹¹ POLICY RESEARCH INSTITUTE FOR THE REGION, PRINCETON UNIVERSITY, JUSTICE AND SAFETY IN AMERICA’S IMMIGRANT COMMUNITIES 9 (Martha King, ed., 2006) (“Not only do immigrants fear deportation (their own or that of their family and friends) but their experiences with federal immigration officials spill over to affect their perceptions of other parts of the justice system, including the police.”).

¹¹² COMMUNITY ORIENTED POLICING SERVICES, U.S. DEP’T OF JUSTICE & VERA INST. OF JUSTICE, BUILDING STRONG POLICE-IMMIGRANT COMMUNITY RELATIONS: LESSONS FROM A NEW YORK CITY PROJECT 2 (2005), available at http://www.cops.usdoj.gov/Publications/Building_PoliceImmigrant_Relations.pdf (recognizing that “[r]esidents who trust the police are more willing to call when they need help, to cooperate as a witness, to provide information on crime conditions, and to cooperate with police during an involuntary contact.”). See also U.S. DEP’T OF JUSTICE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, POLICING IN NEW IMMIGRANT COMMUNITIES 5 (June 2009), available at <http://www.cops.usdoj.gov/Publications/e060924209-NewImmigrantCommunities.pdf> (<http://www.cops.usdoj.gov/Publications/e060924209-NewImmigrantCommunities.pdf>) (participants in DOJ focus groups recognized that “an immigration enforcement action by federal agents can seriously damage hard-won trust at the local level” and that immigrants “may not be able to distinguish between city, state, and federal law enforcement officers”).

¹¹³ *Mission & Core Values*, ORANGE COUNTY SHERIFF’S DEPARTMENT, <http://ocsd.org/about/mission>.

¹¹⁴ POLICE FOUNDATION, THE ROLE OF POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES 24 (April 2009), available at <http://www.policefoundation.org/sites/pftest1.drupalgardens.com/files/Khashu%20%282009%29%20-%20The%20Role%20of%20Local%20Police.pdf>

- ¹¹⁵ William Bratton, *The LAPD Fights Crime, Not Illegal Immigration*, L.A. TIMES, October 27, 2009, available at <http://articles.latimes.com/2009/oct/27/opinion/oe-bratton27>; see also AGUILASOCHO ET AL., MISPLACED PRIORITIES at 17
- ¹¹⁶ NIK THEODORE, DEP'T OF URBAN PLANNING AND POL'Y AT THE UNIV. OF ILLINOIS AT CHICAGO, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT i (2013).
- ¹¹⁷ THEODORE, INSECURE COMMUNITIES at i.
- ¹¹⁸ Dave Cortese, Molly O'Neal and Cynthia Hunter, *Santa Clara County Should Keep Current Immigration Policy*, SAN JOSE MERCURY NEWS, January 29, 2013, available at http://www.mercurynews.com/ci_22474917/dave-cortese-molly-oneal-and-cynthia-hunter-santa-clara-county-should-keep-current-immigration-policy. This story was based in part on a survey of 519 county residents, which found that a full 81% of respondents believed that a policy that allows some ICE deportations and detentions through contact with the criminal justice system decreases the immigrant community's willingness to work with law enforcement. *The Trust Index: Survey Results on Community Responses to Immigrant Detainer Policy*, SILICON VALLEY DE-BUG, September 21, 2013, available at <http://www.siliconvalleydebug.org/articles/2013/09/21/trustindex>.
- ¹¹⁹ ICE gives particular consideration to minors and to immigrants who arrived in the U.S. as young children when deciding whether to pursue immigration enforcement. See Memorandum from John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>. President Obama's recent enactment of the Deferred Action for Childhood Arrivals program, which temporarily defers enforcement action against certain young people who arrived as children and even grants them work authorization, further underscores that children are not an enforcement priority. See *Deferred Action for Childhood Arrivals*, DEP'T OF HOMELAND SECURITY, <http://www.dhs.gov/deferred-action-childhood-arrivals>.
- ¹²⁰ California Attorney General, *Responsibilities of Local Law Enforcement*
- ¹²¹ See LULAC, 908 F. Supp. at 768.
- ¹²² *Arizona v. United States*, 132 S. Ct. 2492, 2507-09 (2012) (declining to invalidate provision of state law that merely instructs officers to make a reasonable attempt to determine an individual's immigration status by using the verification procedure set forth by federal law at 8 U.S.C. §1373(c)); see also LULAC, 908 F. Supp. at 770.
- ¹²³ LULAC, 908 F. Supp. at 771.
- ¹²⁴ LULAC, 908 F. Supp. at 778.
- ¹²⁵ Assemb. B. 4, Reg. Sess. (Cal. 2013), available at http://leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/ab_4_bill_20131005_chaptered.pdf.
- ¹²⁶ See Assemb. B. 4; Cal. Penal Code § 667(d)(3).
- ¹²⁷ The TRUST Act prohibits detention on the basis of an ICE detainer in some circumstances, but even prior to its enactment, the Attorney General of California made clear that detention on the basis of an ICE detainer is never mandatory. See California Attorney General, *Responsibilities of Local Law Enforcement*
- ¹²⁸ *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991); see also *Gerstein v. Pugh*, 420 U.S. 103, 124-25 (1975).
- ¹²⁹ See I.N.A. § 287(d), 8 U.S.C. § 1357(d); Christopher N. Lasch, *Enforcing the Limits of the Executive's Authority to Issue Immigration Detainers*, 35 WM. MITCHELL L. REV. 164, 191-93 (2008).

- ¹³⁰ See *Comm. for Immigrant Rights of Sonoma Cnty. v. Cnty. of Sonoma*, 644 F. Supp. 2d 1177, 1198-99 (N.D. Cal. 2009) (holding that ICE's statutory authority to issue detainers is not limited to those detained on charges for controlled substance offenses); Complaint at 10, *Brizuela v. Feliciano*, No. 3:12-cv-00226-JBA (D. Conn. Feb. 13, 2012), available at <http://www.legalactioncenter.org/sites/default/files/docs/lac/Brizuela%20v.%20Feliciano%20Complaint.pdf>; Amended Complaint for Injunctive and Declaratory Relief and Petition for Writ of Habeas Corpus at 11, *Moreno v. Napolitano*, No. 1:11-cv-05452 (N.D. Ill. May 1, 2013) available at <http://legalactioncenter.org/sites/default/files/Jimenez%20Moreno%20v%20Napolitano--Amended%20Complaint.pdf>.
- ¹³¹ *Arizona v. United States*, 132 S. Ct. 2492, 2505-07 (2012); Christopher N. Lasch, *Preempting Immigration Detainer Enforcement Under Arizona v. United States*, 3 WAKE FOREST J.L. & POL'Y 281, 297-301 (2013). Indeed, OCPD's policy of honoring all detainer requests, like the state law provision struck down in Arizona, purports to grant local officers "even greater authority to arrest aliens on the basis of possible removability than Congress has given to trained federal immigration officers." *Arizona*, 132 S. Ct. at 2506. The policy requires the department to detain juveniles on the basis of their immigration status without meeting the requirements established by Congress for immigration arrests by federal authorities: possession of an administrative warrant or, failing that, a finding that the detainee is likely to escape before a warrant can be obtained. 8 U.S.C. § 1357(a)(2); *Arizona*, 132 S. Ct. at 2505-06; Lasch, *Preempting Detainer Enforcement*, at 295-96. Some detainer requests may be accompanied by an administrative warrant, giving OCPD sufficient assurances that the issuing ICE official would be authorized to make an immigration arrest. Lasch, *Preempting Detainer Enforcement*, at 296. However, OCPD policy does not limit the department to honoring detainer requests in such circumstances.
- ¹³² *Disproportionate Minority Contact*, OC PROBATION, <http://ocgov.com/gov/probation/dmc>.
- ¹³³ GINA PERALTA ET AL., W. HAYWOOD BURNS INSTITUTE, DISPROPORTIONATE MINORITY CONTACT—TECHNICAL ASSISTANCE PROJECT: SUMMARY REPORT AND RECOMMENDATIONS 10 (2013).
- ¹³⁴ *United States v. Montero-Camargo*, 208 F.3d 1122, 1131-35 (9th Cir. 2000) (en banc).
- ¹³⁵ GARDNER II & KOHLI, THE C.A.P. EFFECT at 5-6.
- ¹³⁶ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice Civil Rights Division, to Bill Montgomery, Maricopa County Attorney (Dec. 15, 2011), available at http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf; Letter from Thomas E. Perez to Clyde B. Albright, Alamance County Attorney (Sept. 18, 2012), available at <http://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>; Letter from Thomas E. Perez to The Honorable Joseph Maturo, Jr., Mayor of The Town of East Haven (Dec. 19, 2011), available at http://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf.
- ¹³⁷ Doris Marie Provine & Roxanne Lynn Doty, *The Criminalization of Immigrants As a Racial Project*, 27 J. CONTEMP. CRIM. JUST. 261, 266 (2011).
- ¹³⁸ THEODORE, INSECURE COMMUNITIES at 12.
- ¹³⁹ Affidavit of [Mario], *In re A 200 709 940* (2013), at ¶¶ 2, 7-8, 15-16.
- ¹⁴⁰ Affidavit of [Mario] at ¶ 3.
- ¹⁴¹ *Montero-Camargo*, 208 F.3d at 1135.
- ¹⁴² Under the 287(g) program described earlier in this report, by contrast, ICE typically requires local officers to go through four weeks of training before they can be certified to engage in immigration enforcement functions. *Fact Sheet: Delegation of Immigration Authority: Section 287(g) Immigration and Nationality Act*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <http://www.ice.gov/news/library/factsheets/287g.htm> (last visited Nov. 11, 2013).
- ¹⁴³ See LULAC, at 770 ("Permitting state agents, who are untrained—and unauthorized—under federal law to make immigration status decisions, incurs the risk that inconsistent and inaccurate judgments will be made.").
- ¹⁴⁴ See Jennifer Lee Koh, *Rethinking Removability*, 65 Fla. L. Rev. (forthcoming) (manuscript at 18-26), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2291137.

- ¹⁴⁵ Angie Junck & Helen Beasley, *Two-Tiered Justice for Juveniles*, in *CHILDREN IN HARM'S WAY: CRIMINAL JUSTICE, IMMIGRATION ENFORCEMENT, AND CHILD WELFARE* 33 (Susan D. Phillips et al. eds., Jan. 2013).
- ¹⁴⁶ *Bellotti v. Baird*, 443 U.S. 622, 635 (1976); see also *Eddings v. Oklahoma*, 455 U.S. 104, 116 (1982) (“Even the normal 16 year-old customarily lacks the maturity of an adult.”).
- ¹⁴⁷ *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2403 (2011); see also *Perez-Funez v. District Director, I.N.S.*, 619 F. Supp. 656, 662 (C.D. Cal. 1985) (stating that “the situation faced by unaccompanied minor aliens [asked to sign voluntary departure forms] is inherently coercive”); *In re Hernandez-Jimenez*, No. A29-988-097, slip op. at 9-10 (BIA Nov. 8, 1991) (unpublished) (declaring that any admissions or confessions allegedly made by an unaccompanied minor during a custodial interrogation should be treated as “inherently suspect”).
- ¹⁴⁸ In assessing the evidentiary use of a purported unauthorized immigrant’s in-custody statement, an Immigration Judge must determine whether the statement was given voluntarily. Voluntariness depends on an assessment of the entirety of the circumstances, including the detained immigrant’s mental and physical condition. See *Navia-Duran v. I.N.S.*, 568 F.2d 803, 808 (1st Cir. 1977) (using totality of the circumstances analysis that includes “psychological coercion, intimidation, and [the] misrepresentation of facts on the part of her INS interrogators”); *De Souza v. Barber*, 263 F.2d 470, 476-77 (9th Cir. 1959) (“Whether [a minor’s] confession or admission is competent depends not alone upon the infant’s age, but also upon his intelligence, education, information, understanding and ability to comprehend.”).
- ¹⁴⁹ Many juvenile detainees, especially those with mental disabilities, suffer extreme nervousness as a direct and proximate cause of intentional intimidation by interrogating officers. In *Galvan v. Holder*, the Sixth Circuit held that information contained in an I-213 could be inadmissible because it was obtained through coercion or duress, as evidenced by a psychological state of “extreme nervousness” exhibited by the person subject to interrogation. 403 F. App’x 35, 41 (6th Cir. 2010).
- ¹⁵⁰ 8 C.F.R. 236.3(h).
- ¹⁵¹ Who Are the Targets of ICE Detainers?, *TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE* (Feb. 20, 2013), <http://trac.syr.edu/immigration/reports/310/>; see also Julia Preston, *Immigration Crackdown Also Snares Americans*, *N.Y. TIMES*, Dec. 13, 2011, available at <http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?pagewanted=all&r=1&>.
- ¹⁵² AARTI KOHLI ET AL., *THE CHIEF JUSTICE EARL WARREN INSTITUTE ON LAW AND SOCIAL POLICY, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS 4*, available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf (estimating that 3,600 U.S. citizens were apprehended by ICE between the inception of the Secure Communities program in October 2008 and April 2011).
- ¹⁵³ BHABHA & SCHMIDT, *SEEKING ASYLUM ALONE* 33 (2006).
- ¹⁵⁴ 8 U.S.C. § 1232(c)(5). This largely entails providing children with a list of free legal service providers in the apprehending jurisdiction. 8 C.F.R. § 1003.61. When one such list of 29 attorneys and legal organizations was reviewed by the National Collaboration for Youth and the National Juvenile Justice Network in 2006, eight of the providers did not represent juveniles, three were not in service, and four were unreachable despite repeated attempts. NAT’L COLLABORATION FOR YOUTH & NAT’L JUVENILE JUSTICE NETWORK, *UNDOCUMENTED IMMIGRANT YOUTH: GUIDE FOR ADVOCATES AND SERVICE PROVIDERS 4* (2006), available at http://www.njjn.org/uploads/digital-library/resource_451.pdf.
- ¹⁵⁵ Rebecca Lopez, *Dallas Teen Missing Since 2010 Was Mistakenly Deported*, *WFAA.COM* (Jan. 3, 2012, 11:35 PM, updated Jan. 4, 2012, 7:31 PM), <http://www.wfaa.com/news/texas-news/Dallas-Teen-Is--Mistakenly-Deported--136626533.html>.
- ¹⁵⁶ Tim Stelloh, *4-Year-Old Citizen Who Was Deported Comes Back*, *N.Y. TIMES CITY ROOM* (Mar. 30, 2011, 9:50 AM, updated 4:20 PM), <http://cityroom.blogs.nytimes.com/2011/03/30/4-year-old-citizen-who-was-deported-comes-back/>.
- ¹⁵⁷ Family visas are available to certain spouses or immediate relatives of U.S. citizens. See *Family of U.S. Citizens*, *U.S. CITIZENSHIP AND IMMIGRATION SERVICES* (Apr. 4, 2011), <http://www.uscis.gov/family/family-us-citizens>.
- ¹⁵⁸ T visas are available to certain victims of human trafficking. See 8 C.F.R. § 214.11.

- ¹⁵⁹ U visas are available to victims of certain crimes in the United States and who assist law enforcement in the investigation and/or prosecution of those crimes. See 8 C.F.R. § 214.14.
- ¹⁶⁰ S visas are available to certain criminal or terrorist informants. See 8 C.F.R. § 214.2(t).
- ¹⁶¹ Asylum is available to immigrants fearing certain forms of persecution in their countries of origin. See 8. U.S.C. § 1158.
- ¹⁶² SIJS is a form of immigration relief available to immigrant children under the jurisdiction of a juvenile court who have been abused, neglected, or abandoned by at least one of their parents. 8 U.S.C. § 1101(a)(27)(J).
- ¹⁶³ TPS is available to nationals of certain designated states. See 8 C.F.R. § 244.
- ¹⁶⁴ Cancellation of removal is a removal defense available to immigrants who meet certain eligibility requirements. These requirements differ depending on the immigrant's current status. See I.N.A. § 240A(a)-(b), 8 U.S.C. § 1229b(a)-(b).
- ¹⁶⁵ See 8 C.F.R. § 214.14(c)(i) (providing that DHS may, *as a matter of discretion*, file a joint motion to terminate proceedings without prejudice due to a respondent's pending U Visa application); 8 C.F.R. § 214.11(d)(8) (providing that T visa applicants must obtain concurrence of DHS counsel and consent of the Immigration Judge for administrative closure).
- ¹⁶⁶ See 8 C.F.R. § 1003.29 ("The Immigration Judge *may* grant a continuance for good cause shown") (emphasis added).
- ¹⁶⁷ See *Matter of Avetisyan*, 25 I. & N. Dec. 688, 697 (BIA 2012) (holding that Immigration Judges "*may, in the exercise of independent judgment and discretion*, administratively close proceedings under the appropriate circumstances, even if a party opposes.") (emphasis added).
- ¹⁶⁸ See, e.g., Julia Preston, *Young and Alone, Facing Court and Deportation*, N.Y. TIMES, Aug. 25, 2012, available at <http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-face-deportation.html?pagewanted=all&r=0>. The difficulties OCPD detainees face after being transferred to immigration detention are compounded by the fact that they are detained in ORR facilities distant from Orange County, and thus distant from the documentation and information sources they need to defend themselves in immigration court proceedings.
- ¹⁶⁹ *Processing Suspected Foreign Nationals* at 2.
- ¹⁷⁰ OLGA BYRNE & ELISE MILLER, THE FLOW OF UNACCOMPANIED CHILDREN THROUGH THE IMMIGRATION SYSTEM: A RESOURCE FOR PRACTITIONERS, POLICY MAKERS, AND RESEARCHERS 25 (2012), available at <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>.
- ¹⁷¹ DORIS MEISSNER ET AL., IMMIGRATION ENFORCEMENT IN THE UNITED STATES: THE RISE OF A FORMIDABLE MACHINERY 12 (2013), available at <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>.
- ¹⁷² MEISSNER ET AL., IMMIGRATION ENFORCEMENT, at 2.
- ¹⁷³ Though the policy says ICE must assume custody of a youth within 48 hours, this excludes Saturdays, Sundays, and holidays. See *Processing Suspected Foreign Nationals* at 2-3 (citing 8 C.F.R. § 287.7).
- ¹⁷⁴ *Processing Suspected Foreign Nationals* at 2-3.
- ¹⁷⁵ Data provided by OCPD in response to a 2012 California Public Records Act request showed that the average daily cost per bed in OCPD juvenile institutions was \$420.56.
- ¹⁷⁶ See California Attorney General, *Responsibilities of Local Law Enforcement*, at 2 ("[T]he federal government neither indemnifies nor reimburses local law enforcement agencies for complying with immigration detainers."). Under the *State Criminal Alien Assistance Program (SCAPP)*, the federal government provides limited reimbursement to localities for the costs of incarcerating undocumented people with certain criminal records. State Criminal Alien Assistance Program (SCAAP), U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, https://www.bja.gov/Funding/13SCAAP_Guidelines.pdf (last accessed Nov. 11, 2013). SCAAP employs distinct criteria and does not specifically reimburse localities for the costs incurred due to honoring ICE detainers.

- ¹⁷⁷ See *Juvenile Court: Delinquency*, SUPERIOR COURT OF CALIFORNIA - COUNTY OF ORANGE, <http://www.occourts.org/self-help/juvenile/delinquency.html> (last accessed Nov. 11, 2013) (describing the non-detention dispositions available in Orange County Juvenile Court).
- ¹⁷⁸ See RICHARD A. MENDEL, *NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 19–22* (2011), available at <http://www.aecf.org/OurWork/JuvenileJustice/JuvenileJusticeReport.aspx>; Cyn Yamashiro et al., *Kids, Counsel, and Costs: An Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts*, CRIM. L. BULL. (forthcoming) (manuscript at 29–30), available at <http://ssrn.com/abstract=2222376>.
- ¹⁷⁹ Stipulation for Compromise Settlement and Releases and Dismissals and Order Thereon, *Soto-Torres v. Johnson*, No. CIV S-99-1695 WBS/DAD (E.D. Cal. Nov. 16, 2000).
- ¹⁸⁰ Second Amended Complaint, *Guzman v. Chertoff*, No. 2:08-01327-GHK-SS (C.D. Cal. Sept. 8, 2009), available at <http://www.legalactioncenter.org/sites/default/files/docs/lac/guzman-sac.pdf>. *Guzman v. Chertoff*, 2:08-cv-01327-GHK-SS (C.D. Cal. Filed Feb. 27, 2008).
- ¹⁸¹ Stipulation for Compromise Settlement, *Guzman v. Chertoff*, No. 2:08-01327-GHK-SS (C.D. Cal. May 4, 2010).
- ¹⁸² See *Enforcement - Detainers*, LEGAL ACTION CENTER (updated June 2013), <http://www.legalactioncenter.org/clearinghouse/litigation-issue-pages/enforcement-detainers>.
- ¹⁸³ See Complaint, *Roy v. Los Angeles Cnty.*, No. 12-9012 (C.D. Cal. Oct. 19, 2012), available at <http://legalactioncenter.org/sites/default/files/Roy%20v.%20County%20of%20Los%20Angeles--Complaint.pdf>.
- ¹⁸⁴ Second Amended Complaint for Declaratory and Injunctive Relief and Damages, Comm. for Immigrant Rights of Sonoma Cnty. v. Cnty. of Sonoma, No. 08-4220 (N.D. Cal. Sept. 14, 2009), available at <http://legalactioncenter.org/sites/default/files/Roy%20v.%20County%20of%20Los%20Angeles--Complaint.pdf>.

PROCESSING SUSPECTED FOREIGN NATIONALS THROUGH JUVENILE CUSTODY INTAKE

- AUTHORITY:** Juvenile Court Directive, dated 08-22-77
(Procedure of Handling Illegal Aliens) Attachment
Juvenile Court Miscellaneous Order 606.4 dated 12-21-2001 Attachment
Section 834c, California Penal Code
8 U.S.C. Section 1325 (Improper entry by alien)
8 U.S.C. Section 1373 (Communication between government agencies and ICE)
8 CFR 287.7 (Detainer Provisions)
Article 36 of the Vienna Convention
Section 202 WIC
- RESCINDS:** Procedure Manual Item 2-4-102, dated 12/22/11 (Major Revision)
- FORMS:** Immigration and Customs Enforcement Form I-247
- PURPOSE:** To outline the general procedures for processing Custody Intake referrals of suspected foreign nationals at Juvenile Hall.

I. GENERAL INFORMATION

Through this Procedural Manual Item (PMI), the terms “Illegal Aliens” and “Foreign Nationals” are used interchangeable depending on the wording of the reference document.

Pursuant to the Juvenile Court Directive of August 22, 1977, entitled, "*Procedure of Handling Illegal Aliens*," no youth will be admitted to Juvenile Hall based solely on their suspected illegal alien status. Further, the directive states, “Illegal alien youths suspected of being destitute or in need of proper and effective parental care and control should be brought to attention of the Department of Social Services.”

II. PROCEDURE

When a minor has been lodged at Juvenile Hall on an Application for Petition alleging a 602 Welfare and Institutions Code law violation, the Custody Intake Probation Officer will make all reasonable attempts to identify the minor's citizenship status during the Custody Intake process. If United States citizenship is claimed, verification must be provided.

If there is reason to believe that the minor may be a foreign national, the Custody Intake Officer shall require verification of legal entry into the United States from the minor or his/her family.

The Custody Intake Officer is to enter the youth's citizenship status (Naturalized U.S. Citizen, Pending Documentation, Resident Alien, U.S. Citizen, Undocumented Alien, Unknown, and Work Permit) into the Integrated Case Management System (ICMS) via the “Edit Probationer” option.

A. Procedure for Processing Suspected Foreign Nationals:

1. If a youth claims citizenship in another country or is a suspected foreign national, the Custody Intake Officer will immediately notify the Immigration and Customs Enforcement (ICE) Liaison DPO. The ICE Liaison DPO will notify the youth that he/she has the right to communicate with an official from the consulate of his or her country pursuant to Section 834c(a)(1) CPC. If the youth chooses to exercise that right, the ICE Liaison DPO shall notify the pertinent official from the consulate of his or her country. Furthermore, if the youth originates from a country that is listed under Article 36 of the Vienna Convention, the consulate shall be notified without regard to the youth's request.
2. In alignment with the purpose of the Juvenile Justice System pursuant to WIC 202, the ICE Liaison DPO shall contact ICE if the following conditions are met:
 - a. In the judgment of the officer, the youth presents a foreseeable and/or articulated danger to public safety, or
 - b. Reporting the minor's immigration status serves the best interests of the minor.
3. All referrals to ICE shall be approved, in advance, by a Supervising Probation Officer (SPO).
4. The ICE Liaison DPO will notify ICE by calling the Santa Ana Office at (714) 834-4870. The ICE liaison DPO will inform ICE that a suspected foreign national or foreign national is in custody and will provide them with all pertinent information to assist them in their investigation. If the minor otherwise meets legal requirements for release, ICE should be advised of our intentions to release the minor.

B. ICE Detainers

If ICE elects to place an ICE detainer on a youth, ICE will issue a Form I-247 (Immigration Detainer - Notice of Action) pursuant to 8 C.F.R. 287.7 to the Probation department via the ICE liaison DPO. The ICE liaison DPO will provide the youth a copy of the detainer form and a notice advising him or her that ICE intends to assume custody. The ICE liaison DPO will also make all reasonable attempts to provide the minor's parents with a copy of the detainer form and notice.

The ICE liaison DPO will notify ICE of pending releases for all youth with ICE detainers.

1. Under the authority of Juvenile Court Misc. Order 606.4 dated December 21, 2001, minors can be released to ICE up to 7 days prior to their sentence completion.
2. Pursuant to 8 C.F.R. 287.7, ICE must assume custody of a youth within 48

hours, excluding Saturdays, Sundays, and holidays, for any youth who is no longer detained by a criminal justice agency. If ICE does not assume custody of a youth within 48 hours of the scheduled release date, the youth will be released to an appropriate parent or guardian.

3. Undocumented minors without an active ICE Detainer on file can be ordered into an out-of-home placement by Juvenile Court. The Placement Unit would facilitate such a placement. A minor with an active ICE Detainer would not be released to an out-of-home placement.

REFERENCES:

Procedures:	2-1-103	Undocumented and Deportable Criminal Aliens
	2-4-101	Custody Intake Referrals
	3-2-011	Intake
	3-2-014	Juvenile Hall Automated Logbooks/ Institutional Management System (IMS) and Manual Logbooks
Policy:	E-13	Undocumented and Deportable Criminal Aliens
WIC:	Sections 627b, 627.5, 628, 630-632, 650-656 and 707	

C. Stiver:mas

APPROVED BY:

Catherine Stiver
Division Director

November 26, 2012
Date

**PROCESSING UNDOCUMENTED ALIENS THROUGH
JUVENILE CUSTODY INTAKE**

AUTHORITY: Sections 627b, 627.5, 628, 630-632, 650-656, & 707, Welfare and Institutions Code
Sections 834b & 834c, Penal Code
Title 8 Section 1325, United States Code
Juvenile Court Directive, dated 8-22-77 (Procedure of Handling Illegal Aliens)
Code of Federal Regulation 8 CFR 287.7

RESCINDS: Procedure Manual Item 2-4-102, dated 12/20/10

FORMS: Application for Petition/Intake & Transmittal Sheet (F057-4024)
Juvenile Court Report (Face Sheet) (Computer Generated)
Authorization for Medical Care (F057-7004)
Detention Report (Computer Generated)
Cover Sheet (Computer Generated)
Twenty-Four-Hour Detention Letter (Computer Generated)

PURPOSE: To outline the general procedures for processing Custody Intake referrals of undocumented aliens at Juvenile Hall.

I. GENERAL INFORMATION

The Juvenile Court Directive of August 22, 1977, regarding "Procedure of Handling Illegal Aliens" must be adhered to whenever youths suspected of being undocumented aliens are admitted to Juvenile Hall. The directive states, "Youths under 18 years of age, suspected of being illegal aliens, should be admitted to Juvenile Hall only in the event that secondary delinquent offenses are involved. Minors will no longer be processed in Juvenile Hall solely on the basis of their suspected illegal alien status, per Title 8, Section 1325, U.S. Code."

The directive further states, "Illegal alien youths suspected of being destitute or in need of proper and effective parental care and control should be brought to attention of the Department of Social Services."

II. PROCEDURE

If a minor has been lodged at Juvenile Hall on an Application for Petition alleging a 602 Welfare and Institutions Code law violation, the minor's citizenship status is to be determined during the Custody Intake process. If United States citizenship is claimed, verification must be provided.

If there is reason to believe that the minor may be an undocumented alien, the Intake Officer shall require verification of legal entry into the United States from the minor or his/her family.

The minor's citizenship status is entered into **the Integrated Case Management System (ICMS)** once the status is determined.

If it is determined that the minor appears to be an undocumented alien, the following action will be taken.

A. Enter the "Citizenship" information into ICMS via:

1. Profile Screen – "Juvenile ICMS"
2. Edit Probationer

B. If the minor claims citizenship in another country, Resident Alien status or his status cannot be determined, the Custody Intake **Immigration and Customs Enforcement (ICE)** Liaison will notify the Consulate of the minor's nation of origin of the minor's detention and the ICE Liaison Deputy **Probation Officer (DPO)**.

C. All Cases

The ICE Liaison **DPO** will notify ICE if a minor has been determined to be an undocumented alien and meets the following criteria:

1. A minor who has been charged with a serious felony (example: rape, murder, sex offense).
2. A minor who has a history of committing serious offenses such as listed above, as well as theft, assaults, etc.
3. Minors who are prior deportees.
4. Any other minor with a questionable immigration status.

Pursuant to 834b PC, the ICE Liaison **DPO** will notify **ICE** by calling the Santa Ana Office at (714) 972-4100, and advising that a minor who appears to be an undocumented alien and meets the above criteria, is in custody and provide them with all pertinent information to assist them in their investigation. If the minor otherwise meets legal requirements for release, ICE should be advised of our intentions to release the minor.

D. In the event ICE requests that a minor be held who otherwise meets the Probation Department's criteria for release, the specific reason for the request must be documented along with the name and title of the ICE official making the request. ICE shall be requested to come for the minor as soon as possible, and must respond prior to the filing deadline. Upon arrival of ICE, the **ICE Liaison DPO** will supply them, upon request, written information including the minor's name, date of birth, place of birth, allegations referred and police case number, as well as ICE cards such as permanent resident cards. It is the responsibility of ICE to make a final determination of the minor's alien status prior to release.

E. ICE Detainers

If the minor is placed on an ICE Detainer, the ICE Liaison **DPO** will notify the Court via an Information to Court Officer prior to any Court hearing.

The minor will be released to ICE at the end of their commitment according to federal regulations (8 CFR287.7)

Undocumented minors without an active ICE Detainer on file can be ordered into an out-of-home placement by Juvenile Court. The Placement Unit would facilitate such a placement. A minor with an active ICE Detainer would not be released to an out-of-home placement.

If a petition has been filed and the matter is set for a detention hearing, the Custody Intake **DPO** will complete an ICE referral form when all of the following criteria are met:

1. The minor is not residing with a responsible relative who is providing adequate supervision.
2. The minor has parents/guardians in another country.

REFERENCES:

Procedures:	2-1-103	Undocumented and Deportable Criminal Aliens
	2-4-101	
	3-2-011	
		Custody Intake Referrals
		Intake
Policy:	E-4	Clients with Legal Residence Outside of Orange County

B. Johnson:mas

APPROVED BY: Brian Johnson
Division Director

December 29, 2011
Date