

## The Juvenile Justice System and Immigrant Youth

At the turn of the 20<sup>th</sup> century, states began creating juvenile justice systems because they recognized that children are different from adults, are capable of change, and need support and opportunities for healthy development. Unfortunately, over time these juvenile justice systems became a maze – with many entrances in, and few exits out. Today, increasing numbers of youth are lost in this maze as youth are getting drawn in through unsubstantiated allegations of gang conduct, which is, more often than not, behavior that is not criminal in nature. Below are some key facts to know about today's juvenile justice system and the connection to immigrant youth.

### 1. Gang databases are inherently unreliable

Gang databases have been criticized not only for having vague criteria for designating someone as a gang member, but for their lack of oversight, review, and transparency.<sup>1</sup> Increasingly, law enforcement agencies create gang databases for intelligence purposes; thus the information in the database is not tied to a youth's arrest, conviction, or even an investigation.<sup>2</sup> Depending on the jurisdiction, youth can be placed on a gang database by law enforcement, school police, school security, and school staff, based on mere suspicion of gang involvement, such as having a particular hairstyle or jewelry or living in a certain neighborhood.<sup>3</sup> Since officials disparately target and scrutinize the behavior of black and brown youth,<sup>4</sup> immigrants of color face a greater risk of being labeled as gang members.<sup>5</sup> In fact, Black people and Latinx people constitute a disproportionate number of the individuals on gang databases.<sup>6</sup>

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<sup>1</sup> Laila L. Hlass and Rachel Prandini, "Deportation by Any Means Necessary: How Immigration Officials are Labeling Immigrant Youth as Gang Members" (Immigrant Legal Resource Center, 2018): 5, <https://bit.ly/2MMnHsx>.

<sup>2</sup> James B. Jacobs, "Gang Databases: Contexts and Questions," *Criminology and Public Policy*, vol. 8, issue 4 (The American Society of Criminology, 2009): 705, <http://bit.ly/1XQb2Ia>; An individual can be added to a gang database without having ever been charged or convicted of a crime. Rebecca Rader Brown, "The Gang's All Here: Evaluating the Need for a National Gang Database," *Columbia Journal of Law and Social Problems* (2009): 299, <http://bit.ly/1U2Tylt>.

<sup>3</sup> Youth Justice Coalition, "Tracked and Trapped" (Dec. 2012), 4, 15, <http://bit.ly/1UoNGq4>; James B. Jacobs, "Juvenile Criminal Record Confidentiality," *New York University Public Law and Legal Theory Working Papers*, paper 403 (2013), 19-20, <http://bit.ly/2atH4op>.

<sup>4</sup> National Juvenile Justice Network (NJJN), "Creating Meaningful Change in the Relationship Between Law Enforcement and Youth of Color" (Washington, DC: NJJN, October, 2017): 6-7, <https://bit.ly/2KyGye4>.

<sup>5</sup> *Id.*

<sup>6</sup> Emmanuel Felton, "Gang Databases are a Life Sentence for Black and Latino Communities," *Pacific Standard*, March 15, 2018, <https://bit.ly/2u3N5p4>.

## **2. Youth of color are disproportionately impacted by the juvenile justice system and are often targeted for non-violent offenses**

The vast majority of youth are in delinquency court for non-violent offenses, as more serious offenses often lead to adult court processing.<sup>7</sup> Unfortunately, there remains a significant problem of racial profiling and over-policing of youth of color, which leads to significant overrepresentation of youth of color in our juvenile justice systems.<sup>8</sup> Since many immigrant youth are youth of color, they have a higher chance of being processed in the juvenile justice system through racial profiling on the streets and heavier use of law enforcement for minor disciplinary matters in under-resourced schools.

## **3. Immigrant youth may have a higher chance of an adjudication because of family fears of coming to court**

Juvenile delinquency court systems often rely on evidence of family support before diverting youth from further court processing and receiving an adjudication of delinquency. However, families of immigrant youth may fear involvement with court matters because of problems with their status.<sup>9</sup> This creates a greater likelihood that an immigrant child will end up with an adjudication of guilt, because they are unable to present to the court the substantial family support that they do in fact have.

## **Conclusion**

At both the state and federal level, we see a wave of reform efforts that enhance fairness; reduce school-based arrests, suspensions and expulsions; and expand diversion.<sup>10</sup> Yet because many youth of color end up in the justice system for all the wrong reasons, we've seen that while the number of justice-involved youth has fallen, the rate of disparities in these systems has risen.<sup>11</sup> Our policymakers should take note of these disparities and avoid legislation that will further harm youth who are already lost in the justice maze. As Congress moves to codify protections for immigrant youth who have known no other home than the United States, members are uniquely positioned to ensure that their legislation avoids fear-based presumptions, is based on the facts of how our justice systems operate, and is in line with the nationwide trend of reform.

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<sup>7</sup> Press Release, Wendy Sawyer, Prison Policy Initiative, Youth Confinement: The Whole Pie (Feb. 27, 2018), *available at* <https://www.prisonpolicy.org/reports/youth2018.html>.

<sup>8</sup> NJJN, Creating Meaningful Change in the Relationship between Law Enforcement and Youth of Color 6-7, *available at* <http://www.njjn.org/our-work/creating-meaningful-police-and-youth-of-color-relationships---njjn-policy-platform---oct--2017>.

<sup>9</sup> Shannan Wilber and Angie Junck, A Guide to Juvenile Detention Reform: Noncitizen Youth in the Juvenile Justice System (2014), *available at* <file:///C:/Users/Rachel%20Marshall/Downloads/aecf-NoncitizenYouthIntheJJSytem-2014.pdf>.

<sup>10</sup> See National Juvenile Justice Network (NJJN), "2018 NJJN Member Youth Justice Advances," (Washington, DC: NJJN, May 2019), <http://www.njjn.org/our-work/2018-njjn-member-youth-justice-advances>; Juvenile Justice Reform Act of 2018, PL 93-415 (2018).

<sup>11</sup> *Latino Disparities in Youth Incarceration*, THE SENTENCING PROJECT (Oct. 12, 2017), <https://www.sentencingproject.org/publications/latino-disparities-youth-incarceration/>; *Black Disparities in Youth Incarceration*, THE SENTENCING PROJECT (Sept. 12, 2017), <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>; Katrina Dizon Mariategue, *Southeast Asian Americans and the School-to-Prison-to-Deportation Pipeline*, SOUTHEAST ASIA RESOURCE ACTION CENTER (Apr. 15, 2018), <https://www.searac.org/resource-hub/immigration/resources-toolkits-immigration/southeast-asian-americans-and-the-school-to-prison-to-deportation-pipeline/>