

** Note about “noncitizen” youth:

The Annie E. Casey Foundation (***Non Citizen Youth in the Juvenile Justice System***) reported that noncitizen youth could be any of the following:

- Lawful Permanent Resident or Green Card Holder
- Refugee or Asylee
- Nonimmigrant or Immigrant Visa Holder
- Undocumented Person
- An individual in the process of obtaining legal status

Show Transcript:

Hi, I’m your host Nikki and you’re listening to the [Juvenile Justice Information Exchange](#) Resource Hub podcast, or what we like to call the “**JJIE Hubcast**.” Our aim is to bring often underrepresented issues in the juvenile justice system to light. This season is going to be dedicated to sharing information about immigrant youth in the juvenile justice system. We will talk about who are immigrant youth in America, how they are involved in the juvenile justice system, and what policies are working or recommended by experts in the justice field. For each episode, we will post a transcript with references to related resources for anyone who wants to follow up on any information we discuss.

This episode will cover some information on how many immigrant youth are involved in the Juvenile Justice System, what are some of the causes for involvement, and what immigration consequences do youth face for involvement in the two systems?

Research shows us that youth of color are more likely to be involved in the juvenile justice system; some estimates say youth of color are 4.6 times more likely to be detained than their white peers. In 2017, one-quarter of the juvenile justice system was Latino youth, an overrepresentation that is at least partially due to police bias. Finding data on how many undocumented immigrant youth are here in America is difficult but NJJN places the number around one million. Measuring the number of undocumented youth involved in the juvenile justice system is also a challenge due to “inadequate recordkeeping and the way juvenile justice authorities gather a child’s information during intake” (***The Myth of Second Chances: Noncitizen Youth and Confidentiality of Delinquency Records***, pg 4).

So first, let’s start with a small history lesson about the formation of the juvenile justice system. The Center on Juvenile and Criminal Justice explains that the primary motive of juvenile courts was confidentiality protection so that the youth could be held accountable without undermining their future as productive adults in the community. Confidentiality issues arise when we talk about both citizen and non citizen youth.

- <http://www.cjcj.org/education1/juvenile-justice-history.html>

For immigrant youth, both documented and undocumented, there are issues with information sharing that can cause harm to their futures. Next, we will talk about some informal information sharing practices that can lead law enforcement to target immigrant youth: confidentiality issues and interagency sharing of information, and the use of gang databases. For this episode, we are going to focus in on noncitizen and undocumented youth. For more information on how the JJS affects second generation immigrant youth, I encourage you to head over to our JJIE resource hub to the racial-ethnic fairness section when you get the chance.

- <https://jjie.org/hub/racial-ethnic-fairness/>

School, delinquency, and immigration records are all critical aspects of an immigrant youth's status here in the U.S. Sharing information between schools, institutions, and agencies can lead to negative consequences in immigration proceedings. According to the **Immigrant Legal Resource Center's *School to Deportation Pipeline***, noncitizen youth's future immigration status can be negatively affected by the sharing of confidential records. Arrests, adjudication, or convictions can all keep noncitizen youth from obtaining Special Immigrant Juvenile Status, U visas, and other options they may otherwise have. It is important to remember here that part of the foundation of the JJS is that records should remain confidential so that youth can be held responsible while still protecting their future as an adult. Sharing school and/or delinquency records of immigrant youth with federal agencies that determine immigration status can lead to lifelong consequences for these youth. Interagency data sharing means that youth are not receiving the protections the JJS is designed to ensure for youth. Some states have taken measures to decrease the amount of informal collaboration between ICE and state agencies, for example:

- California actually prohibits access to juvenile records, even with approval for access from an institution-- authorities must still have court approval to access juvenile records. California also limits sharing juvenile records with immigration officials unless a court approves -- ***The Myth of Second Chances: Noncitizen Youth and Confidentiality of Delinquency Records***
- 17 states and the District of Columbia have criminal reprimands for informal sharing of juvenile records and 2 states have civil procedures; however, there are 33 states that do not have any consequences for the breach of confidentiality by informal sharing of juvenile records -- ***Noncitizen Youth in the Juvenile Justice System: The Serious Consequences of Failed Confidentiality by ICE Referral***

Another issue with sharing information is the type of databases that are used to monitor children. The use of interagency sharing and hyper-monitoring "at-risk students" have led to national gang databases that can be used to flag high-risk youth as possible gang

members. The ILRC defines gang databases as “gang information tracking systems that are used to track and share alleged gang affiliation and membership” (pg. 4) -- [*Understanding Allegations of Gang Membership/Affiliation in Immigration Cases*](#)

- <https://www.themarshallproject.org/records/3980-gang-database> -- for more information on gang databses and activity

The use of gang databases has increased since the widespread use of computers, which allows law enforcement to more broadly share information on a larger population of people. The databases are usually disproportionately made up of individuals who live in lower socio-economic status neighborhoods-- and often the neighborhoods have a large population of immigrants within the community.

- See: <https://crimejustice.law.nyu.edu/wp-content/uploads/9-Jacobs-Gang-Databases.pdf> for more information of gang databases

The ILRC published a study of immigration attorneys and their perception of the use of gang accusations against immigrants, seventy-nine percent of respondents had at least 1 immigration case involving gang allegations. Fifty percent of respondents felt that the use of gang allegations is increasing (***Deportation by Any Means Necessary, pg. 6***).

In [*Deportation By Any Means Necessary*](#), it is noted that attaching gang allegations to youth makes it easier for the government to deport them because the individual becomes a target of the Department of Homeland Security. Gang-related investigations and convictions make noncitizens ineligible for various types of immigration relief from deportation and gang allegations can also lead to detainment of individuals, which has negative consequences when fighting deportation. Finally, immigration decisions are discretionary in nature and allegations, detainment, or the perception of criminality, can negatively impact any credibility determination made by a judge.

One major issue with gang databases, especially because being included in one can have such severe consequences for youth, and in this case immigrant youth, is that there are very loose criteria to land a person on the list; anything from social media posts, tattoos, clothing, and school records can be used to place an individual in a gang database. Police field notes, reports, and testimonies can be used to further cases against youth in immigration proceedings. Gang databases are also harmful due to the nature of their consequences and the lack of “oversight, review, and transparency” (***Deportation by Any Means Necessary, pg. 7***).

- NJJN explains the dangers of gang databases in the following way: “Because law enforcement agencies often create gang databases for intelligence purposes, the

information in the database need not be tied to a youth's arrest, conviction, or even an investigation. Many youth are unaware that they have been placed on a gang database unless they wind up in court, and once they find out, there generally is no process for removal. All of these issues have made gang databases notoriously unreliable" ([*Supporting Immigrant Youth Caught in the Crosshairs of the Justice System*, pg. 7](#)).

- One recommendation to help combat the harmful nature of gang databases (if a state is not going to eliminate the database) is to enact oversight through a state agency (not a law enforcement agency). For example, see California's AB 90 legislations for more insights on how to address gang database issues.
 - https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB90

Okay, let's take a moment to recap all of that:

- Confidentiality in JJS cases is a fundamental aspect of youth corrections. The system was founded to hold youth accountable but preserve their opportunity to have a successful future.
- Confidentiality in undocumented youth cases is crucial to their immigration proceedings, and the JJS right to confidentiality still applies to noncitizen youth
- Gang databases are being used to target immigrant youth and the outcome can mean deportation or criminalization

So, this episode we have covered how information sharing can target immigrant youth and lead to their involvement in the juvenile justice system. Our next episode is going to dive into "what are the experts telling us is working or what we should be doing to protect immigrant youth in the United States?"

Resources:

Erin Mower Adams, *Noncitizen Youth in the Juvenile Justice System: The Serious Consequences of Failed Confidentiality by ICE Referral*, 2017 BYU L. Rev. 385 (2017). Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2017/iss2/6>

Hlass, L. L., & Prandini, R. (2018, May). *Deportation by Any Means Necessary*. Retrieved from https://www.ilrc.org/sites/default/files/resources/deport_by_any_means_nec-20180521.pdf.

The National Juvenile Justice Network. (2018, August). *Supporting Immigrant Youth Caught in the Crosshairs of the Justice System*. Retrieved from <http://www.njjn.org/uploads/digital-library/Supporting%20Immigrant%20Youth,%20NJJN%20Policy%20Platform,%20August%20%202018.pdf>

Marquez, N., & Prandini, R. (2018, February). *School to Prison to Deportation Pipeline* - ilrc.org. Retrieved from https://www.ilrc.org/sites/default/files/resources/school_delinq_faq_nat-rp-20180212.pdf.

The Annie E. Casey Foundation. (2014). *Noncitizen Youth in the Juvenile Justice System*. Baltimore, MD: Shannan Wilber and Angie Junck. Retrieved from <https://www.aecf.org/resources/noncitizen-youth-in-the-juvenile-justice-system/>

The Annie E. Casey Foundation. (2018). *Noncitizen Youth in the Juvenile Justice System 2018 Update*. Baltimore, MD: Angie Junck and d Rachel Prandini. Retrieved from <https://www.aecf.org/resources/noncitizen-youth-in-the-juvenile-justice-system-2018-update/>

The Immigrant Legal Resource Center. (2017). *Understanding Allegations of Gang Membership/Affiliation in Immigration Cases*. Retrieved from https://www.ilrc.org/sites/default/files/resources/ilrc_gang_advisory-20170509.pdf

Zilberman, Beth K. (2017). *The Myth of Second Chances: Noncitizen Youth and Confidentiality of Delinquency Record*. *Georgetown Immigration Law Journal*, 31.