

May 21, 2019

The Honorable Jerry Nadler
Chair
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

Re: Concerns with H.R. 2820, the Dream Act of 2019

Dear Chairman Nadler and Majority Members of the House Judiciary Committee,

As organizations dedicated to child and youth well-being and advocates for young people, families, community safety and justice, we strongly urge you to oppose H.R. 2820, the Dream Act of 2019 (“Act”), unless the discretionary bars based on juvenile adjudications or alleged or actual gang affiliation are removed. As the House moves to finally codify protections for immigrant youth who have known no other home than the United States, members are uniquely positioned to fight back against the false narrative that has emerged around immigrant youth in recent years. We are calling on you to put forward the best bill possible to protect *all* immigrant youth, and urge you not to support these discretionary bars to relief under the Act for the reasons outlined below.

Purpose of the Juvenile Court

The first juvenile court system was created in 1899 in Cook County, Illinois and, by the 1920s, every state in the country followed suit.¹ The goal of these courts was to rehabilitate rather than punish youth, and cases were treated as civil rather than criminal.² While the system has evolved over time, at its core, the juvenile court was created and exists in recognition that youth should be treated differently than adults. With the study of adolescent development and neuroscience over the past two decades, we have learned that youth, even into their late teens, do not have the same ability as adults to make mature decisions.³ Engaging in reckless behavior during adolescence is socially normative behavior. While crimes peak around late adolescence, they begin a steep decline into adulthood.⁴ *All youth*, including immigrant youth, should be held accountable in developmentally appropriate ways and those consequences should not follow them into adulthood.

¹ *Youth in the Justice System: An Overview*, JUVENILE LAW CENTER, <https://jlc.org/youth-justice-system-overview> (last visited Apr. 29, 2019).

² AMERICAN BAR ASS’N, THE HISTORY OF JUVENILE JUSTICE 5, available at <https://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf>.

³ BRIAN EVANS, CAMPAIGN FOR YOUTH JUSTICE, ADOLESCENT BRAIN DEVELOPMENT (Dec. 10, 2018), available at http://www.campaignforyouthjustice.org/images/factsheets/Adolescent_Brain_Development_FINAL.pdf.

⁴ Terrie E. Moffitt, *Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOL. REV. 674-75, 685-686 (1993); Terrie E. Moffitt, *Natural Histories of Delinquency*, in *Cross-National Longitudinal Research on Human Development and Criminal Behavior* 3-4,7, 29 (Elmar G.M. Weitekamp & Hans-Jürgen Kerner eds., 1994); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 343 (1992); U.S. Dept. of Justice, *Statistical Briefing Book*, <https://www.ojjdp.gov/ojstatbb/crime/index.html> (last visited Apr. 29, 2019) (statistics showing that arrests for both serious violent crimes and property crimes peak in late adolescence).

Youth Delinquency Rates

It is also important to consider a bar based on juvenile adjudications in the context of current statistics on youth who come into contact with the juvenile justice system. Between 2003 and 2013, the rate of youth committed to juvenile facilities after an adjudication of delinquency fell by 47 percent.⁵ Despite this drop, youth of color remain far more likely to be committed than white youth.⁶ Latinx youth are 65 percent more likely to be detained or committed than their white peers, according to data from the Department of Justice collected in October 2015.⁷ Black youth are five times more likely to be detained or committed compared to white youth.⁸ And while disaggregated data is scarce, one study of the California Youth Authority in 2002 found that Cambodian and Laotian youth were incarcerated at 4 and 9 times the rate that would be expected by their respective populations.⁹ Vietnamese and Laotian youth had the second and third highest arrest rates in Richmond in 2000 after African American youth.¹⁰

Further, we have seen a trend from the current administration to target and criminalize immigrant youth and youth of color.¹¹ This mislabeling and targeting of young people of color is reminiscent of calls in the 1990s when alarmist name calling and subpar research gave rise to public fear of the so-called “Superpredator.”¹² At the time, a report issued by John DeIulio called on the nation to fear young, wilding teens, remorseless and driving violent crime.¹³ This led to nearly every state in the nation passing laws making it easier to charge children as adults and to impose lengthy mandatory minimums and life without parole sentences.¹⁴ However, the predictions never materialized. In fact, youth crime is at a 30-year low,¹⁵ but youth and communities of color are still paying the price for these damaging and ineffective policies. This data represents a disproportionate and harsh impact on youth of color, and a bar to relief under the Act on the basis of a juvenile adjudication would create a double punishment for immigrant youth.

⁵ Joshua Rovner, *Youth Commitments and Arrests*, THE SENTENCING PROJECT (Apr. 1, 2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/>.

⁶ *Id.*

⁷ *Latino Disparities in Youth Incarceration*, THE SENTENCING PROJECT (Oct. 12, 2017), <https://www.sentencingproject.org/publications/latino-disparities-youth-incarceration/>.

⁸ *Black Disparities in Youth Incarceration*, THE SENTENCING PROJECT (Sept. 12, 2017), <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>.

⁹ 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/>.

¹⁰ *Id.*

¹¹ *What You Need to Know About the Violent Animals of MS-13*, THE WHITE HOUSE, May 21, 2018), <https://www.whitehouse.gov/articles/need-know-violent-animals-ms-13/>.

¹² Alex S. Vitale, *The New ‘Superpredator’ Myth*, NY TIMES (Mar. 23, 2018), <https://www.nytimes.com/2018/03/23/opinion/superpredator-myth.html>.

¹³ John DiIulio, *The Coming of the Superpredators*, WEEKLY STANDARD (Nov. 27, 1995, 12:00 AM), <https://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

¹⁴ Krista Larson & Hernan Carvente, *Juvenile Justice Systems Still Grappling with Legacy of the “Superpredator” Myth*, VERA INST. (Jan. 24, 2017), <https://www.vera.org/blog/juvenile-justice-systems-still-grappling-with-legacy-of-the-superpredator-myth>.

¹⁵ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Arrest Rate Trends*, OJJDP STATISTICAL BRIEFING BOOK (Dec. 6, 2017), https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201.

Even though the bill limits the consideration of juvenile adjudications to those that result in a disposition ordering placement in a secure facility, this does not mean it is limited to only the most serious offenses. Further, juvenile adjudications are generally not considered a conviction for immigration purposes for the previously mentioned reasons, and therefore they should not carry the same kinds of consequences as a conviction. As mentioned, youth crime has continued to drop across the county, including arrests for violent felonies.¹⁶ In California alone, the arrest rates for violent felonies committed by youth dropped by 68 percent from 1994 to 2017.¹⁷ In fact, most youth committed to the juvenile system are there for low-level offenses, including technical violations and status offense violations, such as truancy, running away, or violating curfew.¹⁸

While the legislation also allows for the judicial review of a provisional denial on the basis of a juvenile adjudication, the due process protections are only provided at the appellate level *after* the Secretary of Homeland Security has issued the denial. Providing an attorney and due process protections after a decision has been issued is far too late in the process, and could be very difficult to overturn. Moreover, the applicant will be asked to disclose the conduct behind the disposition, which will either make the applicant vulnerable to more immigration charges or even criminal prosecution. Some of these admissions, depending on the disclosures, could lead to mandatory detention under federal immigration law.¹⁹

Lastly, this bill may come into conflict with state sealing and confidentiality laws that are in place to protect youth from the stigma of criminality and help with their rehabilitation and treatment. When a case is sealed, the case is considered never to have occurred under state law. For example, California Welfare & Institutions Code § 781(a) provides that once juvenile records are sealed, “the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed.” Under this law, applicants may be forced to “unseal” records protected under state law because there is no legal provision that supports the state’s interest in keeping the records sealed for federal immigration purposes.

Immigrant Youth and Gang Involvement

As part of the administration’s campaign to target and criminalize immigrant youth, there has also been an increase in targeting immigrant youth for alleged gang involvement.²⁰ Per ICE

¹⁶ *Id.*

¹⁷ Jill Tucker and Joaquin Palomino, *Vanishing Violence*, NY TIMES (Mar. 21, 2019), <https://projects.sfchronicle.com/2019/vanishing-violence/>.

¹⁸ Press Release, Wendy Sawyer, Prison Policy Initiative, Youth Confinement: The Whole Pie (Feb. 27, 2018), available at <https://www.prisonpolicy.org/reports/youth2018.html>.

¹⁹ A noncitizen is inadmissible if he or she makes a formal, knowing admission of a drug offense to a Department of State or a Department of Homeland Security official. 8 U.S.C. § 11182(a)(2)(A)(i)(II), INA § 212(a)(2)(A)(i)(II). No conviction is necessary to trigger inadmissibility under this section.

²⁰ LAILA L. HLASS AND RACHEL PRANDINI, DEPORTATION BY ANY MEANS NECESSARY: HOW IMMIGRATION OFFICIALS ARE LABELING YOUTH AS GANG MEMBERS (2018), available at https://www.ilrc.org/sites/default/files/resources/deport_by_any_means_nec-20180521.pdf (finding that immigration officials across the Department of Homeland Security are falsely accusing immigrant youth of gang involvement; that immigrant youth with prior gang involvement are being denied immigration benefits, even when there is evidence of rehabilitation and community involvement; and that immigration law provides no clear definition on what constitutes gang involvement); Marie Holper and Claire Valentin, *Boston Has a Secret Point System That Turns Normal Teenage Behavior Into Gang Membership*, ACLU (Nov. 21, 2018),

policy, “a person can be identified as a gang member if they meet two or more criteria, including . . . frequenting an area notorious for gangs and wearing gang apparel.”²¹ As a result, immigrant youth are now being targeted by law enforcement for simply wearing a particular soccer jersey or writing the area code of their home country.²² A 2017 survey of immigration attorneys who have represented clients accused of gang affiliation in immigration proceedings revealed that, in some cases, no evidence of gang affiliation is even put forward. Rather, allegations are made directly by the immigration agency through the form of notes or social media pictures showing the young person wearing a particular item of clothing.²³ From California,²⁴ to Ohio,²⁵ to New York,²⁶ federal law enforcement officers have led mass raids under the guise of taking down dangerous gangs. Yet, according to Immigration and Custom Enforcement’s (“ICE”) own admission, during raids they have gone after people who not only are not members of gangs, but also people who pose no public safety risk.²⁷

There is a growing body of scholarship linking gang policing to over-policing, profile-based policing, and racial profiling.²⁸ ICE often relies on a massive architecture of gang units, databases, and stop and frisk practices to surveil and gain information about youth suspected of being in gangs. Data mining of social media sites and intensive policing are part and parcel of surveillance of youth of color to establish gang affiliation. Additionally, these suppression-style tactics have done little to reduce gang activity.

<https://www.aclu.org/blog/immigrants-rights/boston-police-has-secret-point-system-turns-normal-teenage-behavior-gang> (“In Massachusetts, law enforcement officials labeled him a gang member not because he was arrested for gang violence or suspected of engaging in it. Rather they labeled him that way because he was the victim of an assault at school. The crime committed against him cost him eight points. He was “verified” when he was seen leaving school with other supposedly “verified” gang members.”); F.E., *There’s No Evidence I’m in a Gang — Because I’m Not. But I’ve Been Locked Up for Two Months for Gang Membership.*, ACLU (Aug. 15, 2017), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/theres-no-evidence-im-gang-because-im-not-ive> (explaining that the author was accused of belonging to a gang based on a doodle found in his notebook and people he said hi to school).

²¹ First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief at 10, *Saravia v. Sessions*, Case No. 17-cv-03615-VC. (N.D. Cal. 2017), available at https://www.aclunc.org/docs/20170811-first_amended_petition.pdf [hereinafter First Amended Petition].

²² Stephen Kang, *The Trump Administration Is Detaining Immigrant Kids for Gang Membership Without Evidence. So We Sued.*, ACLU (Aug. 14, 2017, 2:00 PM), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/trump-administration-detaining-immigrant-kids>.

²³ HLAAS AND PRANDINI, *supra* note 15 at 10.

²⁴ Joel Rubin, *ICE Arrests Hundreds of Immigrants in ‘Sanctuary Cities’ Around the Nation, California*, LA TIMES (Sep. 28, 2017), <https://www.latimes.com/local/lanow/la-me-ice-raids-sanctuary-20170928-story.html>.

²⁵ Lily Moore-Eissenberg and Hailey Fuchs, *Activists Rush to Provide Aid for Those Detained in ICE Raid*, TOLEDO BLADE (June 8, 2018), <https://www.toledoblade.com/local/2018/06/07/Activists-rush-to-provide-aid-for-those-detained-in-ICE-raid.html>.

²⁶ Alice Speri, *The Largest Gang Raid in NYC History Swept Up Dozens of Young People Who Weren’t in Gangs*, THE INTERCEPT (Apr. 25, 2019), <https://theintercept.com/2019/04/25/bronx-120-report-mass-gang-prosecution-rico/>.

²⁷ Julianne Hing, *ICE Admits Gang Operations Are Designed to Lock Up Immigrants*, THE NATION (Nov. 20, 2017), <https://www.thenation.com/article/ice-admits-gang-operations-are-designed-to-lock-up-immigrants/>.

²⁸ K. Babe Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, 5 UNIV. DENVER CRIM. LAW REV. 1 (2015).

A common source of information and tracking of alleged gang affiliation by law enforcement are local, state, and regional gang databases.²⁹ 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.³⁰ 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.³¹ 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.³² All of these issues have made gang databases notoriously unreliable.³³ Despite these inherent flaws, many jurisdictions are sharing their gang databases with ICE.³⁴ ICE also stores gang information through various case management systems, which it then shares with some local law enforcement agencies.³⁵

As introduced, the legislation diminishes the impact of evidence acquired from federal and state gang databases to establish gang membership. This particular safeguard is insufficient for two reasons: (1) database information will not be entirely excluded from consideration; and (2) it ignores the vast architecture that ICE now uses to claim gang affiliation. ICE often accesses state, city, and regional gang databases to create target lists for enforcement or immigration benefit vetting purposes. Homeland Security Investigations ("HSI") or other Department of Homeland Security ("DHS") agencies generate an evidentiary packet that it submits in immigration court or to U.S. Citizenship and Immigration Services to establish gang affiliation. Immigration courts (which are not Article 3 courts) and DHS agencies largely defer to HSI and DHS evidence of gang profiling, and it is difficult to overcome their findings, especially in the context of discretionary waiver. We, therefore, fear the judicial review provisions will fail to mitigate against initial findings by the administrative adjudicatory bodies.

²⁹ HLAAS AND PRANDINI, *supra* note 15 at 5.

³⁰ *Id.*

³¹ See James B. Jacobs, *Gang Databases: Context and Questions*, 8 CRIMINOLOGY & PUBLIC POLICY 4, 705 (2009), available at <https://crimejustice.law.nyu.edu/wp-content/uploads/9-Jacobs-Gang-Databases.pdf> (explaining an individual can be added to a gang database without having ever been charged or convicted of a crime); Rebecca Bader Brown, *The Gang's All Here: Evaluation the Need for a National Gang Database*, 49 COLUM. J.L. & SOC. PROBS. 293, 299 (2009), available at <http://jlsplaw.columbia.edu/wp-content/uploads/sites/8/2017/03/42-Brown.pdf>.

³² NAT'L JUVENILE JUSTICE NETWORK, SAFEGUARDING THE CONFIDENTIALITY OF YOUTH IN THE JUSTICE SYSTEM 8 n. 39 (2016), available at http://www.njjn.org/uploads/policy-platforms/Juv-confidentiality_safeguards_recommendations_8.1.16_FINAL.pdf.

³³ See HLAAS AND PRANDINI, *supra* note 15 at 5 n. 9 (The California State Auditor found so many inaccuracies with California's gang database ("CalGang"), that the California legislature passed a law in 2017 placing a moratorium on the use of shared gang databases until issues exposed by a state audit are addressed and blocking federal law enforcement access to shared gang databases for immigration enforcement); NAT'L JUVENILE JUSTICE NETWORK, 2017 NJJN MEMBER YOUTH JUSTICE ADVANCES 5 (2018), available at [http://www.njjn.org/uploads/digital-library/2017%20Leg%20Advances%20Snapshot%20\(updated\)%20.pdf](http://www.njjn.org/uploads/digital-library/2017%20Leg%20Advances%20Snapshot%20(updated)%20.pdf).

³⁴ Rebecca A. Hufstader, *Immigration Reliance on Gang Databases: Unchecked Discretion and Undesirable Consequences*, 90 N.Y.L. Sch. L. Rev. 671, 683 (2015) (finding that California, Georgia, South Carolina, Virginia, and Washington all made their databases available to federal law enforcement); *Chicagoans for An End to the Gang Database, et. al., v. City of Chicago, et.al.*, No. 1:18-cv-04242 (N.D. Ill. 2018).

³⁵ JULIE MAO AND PAROMITA SHAH, FREQUENTLY ASKED QUESTIONS ON "GANG-RELATED" IMMIGRATION ENFORCEMENT (2017), available at https://www.nipnlg.org/PDFs/community/2017_Oct_FAQ-ICE-gang-enforcement.pdf.

Adding a bar to relief under the Act based on gang affiliation would also punish youth for activity that in itself breaks no laws. Further, it risks punishing youth who may have had no true gang affiliation and were denied due process to prove their case. In either case, such a bar would be counter to all principles of basic fairness.

Conclusion

Opposing this legislation on the basis of these discretionary bars is not a decision we take lightly. We support the overall goals of the Dream Act and want to see a pathway to citizenship for these young people codified into law. The many conduct-based triggers lead us to worry about the actual benefits for immigrant youth who come into contact with police and the criminal legal system. Rather than pitting kids against one another and promoting a narrative of the “good immigrant” versus the “bad immigrant,” Congress should be focused on ensuring all immigrant youth who have only known the United States as home no longer have to live in fear of an uncertain future. The juvenile justice system recognizes that young people are different than adults and treats them as such. We urge Congress to do the same.

Sincerely,

Anti-Recidivism Coalition
Campaign for Youth Justice
Center for Children's Law and Policy
Child Welfare League of America
Citizens for Juvenile Justice
Coalition for Juvenile Justice
Connecticut Juvenile Justice Alliance
Forum for Youth Investment
Human Rights Watch
Institute of Forgiveness
Justice For Families
Justice Policy Institute
Juvenile Law Center
Louisiana Center for Children’s Rights
NAACP
National Council of Churches
National Crittenton
National Juvenile Justice Network
New Jersey Parents Caucus, Inc.
Nolef Turns Inc.
School Social Work Association of America
SparkAction
The Sentencing Project
W. Haywood Burns Institute
Youth Advocate Programs (YAP)
Youth Sentencing & Reentry Project (YSRP)