

Latino Youth, Immigration, and the Juvenile Justice System^{*}

Profile of the Immigrant Youth Population[†]

- Latino children account for 7% of the children and youth population in the U.S.
- First-generation children of immigrants—children who themselves immigrated to the U.S.—account for 9% of the Latino population under age 18.

Profile of the Latino Youth Population in Juvenile or Adult Facilities

- On any given day, close to 18,000 Latino youth are incarcerated in the United States.
- Nationwide, Latino youth are overrepresented at every decision point of the juvenile justice system.
- Each year, an estimated 200,000 youth under age 18 are tried as adults.

Immigration Enforcement and the Juvenile Justice System

- There is no duty under federal law for state or local law enforcement officials to report noncitizens to federal agencies such as Immigration and Customs Enforcement (ICE).
- Federal law does not require state or local officials to collect information on immigration status.
- Federal law cannot compel state or local officials to share juvenile information in violation of state law.
- Memorandums of understanding (MOUs) exist between ICE and law enforcement to aid in the enforcement of immigration laws, but no MOUs currently exist between ICE and juvenile justice systems.
- ICE is increasingly using the juvenile justice system as an enforcement tool.
- Even though it is not required, many jurisdictions report suspected noncitizen juveniles to ICE.
- Some juvenile justice facilities obtain immigration information during intake or booking and share it with ICE. Notifying ICE at this stage of the process violates the youth's due process rights since the youth may be innocent of the crime being charged.
- ICE agents are allowed access to youth in facilities, in person or by phone.
- If ICE identifies a youth as being "removable from the U.S." (i.e., believed to be a noncitizen) they will put an "immigration hold" or "detainer"—a notice generated by the Department of Homeland Security (DHS)—on the youth.
- An "immigration hold" or "detainer" requires that the youth be turned over to ICE if the youth is granted release by the juvenile court. ICE has 48 hours to take the child into custody upon release.
- It is a violation of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) to detain a youth solely on the basis that he is undocumented. Mere presence in the U.S. without legal status is not a crime; it is a civil violation.

^{*} Much of the background information in this fact sheet is drawn from materials produced by the National Immigration Law Center.

[†] Mark Mather and Patricia Foxen, *America's Future: Latino Child Well-Being in Numbers and Trends* (Washington, DC: National Council of La Raza, 2010).

Juvenile Dispositions and Immigration Consequences

- A juvenile delinquency adjudication is not a criminal conviction under immigration law.
- A conviction in adult court is a criminal conviction under immigration law and can trigger immigration consequences (e.g., inadmissibility, deportability, and ineligibility for relief and benefits).
- Most, but not all, deportation grounds require a conviction.
- The following juvenile court findings and dispositions can trigger immigration consequences:
 - Prostitution
 - Drug trafficking offenses
 - Findings of drug abuse/addiction
 - Findings of suicide attempts, torture or mayhem, sexual predatory behavior, or alcoholism
 - Findings of violation of no contact or protection order
 - Making a false claim to U.S. citizenship
 - Gang-related activities

ICE Detention and Consequences for Noncitizen Youth

- No Release from Custody: Once ICE assumes custody of the youth, s/he is not likely to be returned to juvenile court for future hearings. This may result in a failure to appear.
- The youth may be:
 - Detained in a secure facility and separated from family for long periods of time
 - Unable to apply for immigration relief regardless of eligibility
 - Prohibited from applying for a green card or citizenship
 - Divested of his/her visa or lawful status
 - Barred from reentry into the U.S. (sometimes permanently)
 - Placed in expedited removal with no hearing in immigration court
- Youth in removal proceedings are not screened for immigration relief and are not entitled to legal representation at the government's expense.

Possible Immigration Relief for Noncitizen Youth

- *Special Immigrant Juvenile Status (SIJS)*: provides lawful permanent residency to children who are under the jurisdiction of a juvenile court and cannot be reunified with one or both parents due to abuse, neglect, abandonment, or a similar case under state law
- *Violence Against Women Act (VAWA)*: permits a child (whether abused or not) of a parent that was abused by a U.S. citizen or permanent resident spouse to self-petition for lawful permanent resident status (a "green card"). The child's parent must qualify for VAWA benefits.
- *U Visa*: for noncitizens who are victims of serious crimes and can be helpful in the investigation or prosecution of these crimes. Qualifying crimes include rape, torture, trafficking, incest, domestic violence, prostitution, sexual assault, involuntary servitude, or slave trade. The U Visa begins as a temporary visa and allows the petitioner to remain in the U.S. for four years. After three years, the U visa holder can apply to obtain lawful permanent status. In cases in which the victim/parent is deceased or incapacitated, the child of the direct victim may qualify as an indirect victim
- *T Visa*: for noncitizens who have been victims of severe forms of human trafficking. Severe forms of trafficking include sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under 18 years of age. The victim must be present in the U.S. on account of human trafficking. The T Visa begins as a temporary visa and allows the petitioner to remain in the U.S. for four years. After three years, the T visa holder can apply to obtain lawful permanent status.

RESOURCES

Asista

www.asistahelp.org

The Asista website includes a resource library of all of the Immigration and Naturalization Services and U.S. Citizenship and Immigration Services (USCIS) policy memoranda relevant to VAWA, U visa, and T visa cases as well as many sample materials, motions, declarations, and other resources.

Immigrant Legal Resource Center (ILRC)

www.ilrc.org

The ILRC website includes information about ongoing ILRC seminars and publications on aspects of immigration law, as well as manuals and materials that can be downloaded.

Migration and Child Welfare National Network (MCWNN)

www.americanhumane.org

The MCWNN website is hosted on the American Humane Association's website and has information and resources on improving the child welfare system's services to immigrant families.

National Center for Refugee and Immigrant Children

www.nationalchildrenscenter.org

The National Center's website contains a resource library on various legal topics affecting immigrant children and youth.

National Immigration Law Center (NILC)

www.nilc.org

NILC staff specialize in immigration law and the employment and public benefits rights of immigrants. The website contains links to their policy analysis and impact litigation, publications, technical advice, and training information.

National Immigration Project of the National Lawyers Guild

www.nationalimmigrationproject.org

The "domestic violence" link on the website of the National Immigration Project of the National Lawyers Guild contains extensive materials on VAWA, SIJS, and U visas, including links to background information, USCIS policy memoranda, and strategy articles.

U.S. Citizenship and Immigration Services

www.uscis.gov

The USCIS website includes many links to the latest USCIS policy and procedural information, the status of applications, and easy access to downloadable USCIS forms.