

June 17, 2014

The Honorable Jeh Johnson  
Secretary  
Department of Homeland Security

Dear Secretary Johnson,

For many years, the Immigration and Customs Enforcement (ICE) office in Santa Ana, California has issued detainers to the Orange County Probation Department (OCPD) on juveniles who did not have criminal records. We were deeply alarmed to learn that, from 2009-2013, Orange County Probation Department referred nearly 700 youth to ICE—accounting for 43% of California’s total ICE holds placed on minors.<sup>1</sup> Orange County’s disproportionate number of juvenile detainers is attributed to a local Probation Department policy that directs intake officers to investigate the citizenship and immigration status of youth and to refer those identified as “foreign nationals” to ICE for deportation. This practice violates California confidentiality laws and federal immigration laws as probation officers have no authority or training to determine who is in the county in violation of civil immigration laws.

In response to mounting community pressure, on June 3 OCPD announced that it will no longer honor ICE detainers for youth. Despite this progress, the Orange County Probation Department has not committed to changing its practice of investigating the immigration status of juveniles and improperly sharing their information with ICE. Whether or not these children are kept on ICE detainers, their referral and transfer to ICE custody deeply undermines the rehabilitative mission of the juvenile justice system,<sup>2</sup> erodes local community trust, and violates minors’ due process and confidentiality rights.

We call on DHS to investigate the practices of the Orange County Probation Department and stop accepting all youth from this department. In addition, we ask that ICE terminate its 287(g) agreement with Orange County and stop issuing detainers to youth in the juvenile justice system nationwide. Additionally, we respectfully request a meeting with DHS to discuss the situation in OCPD and its national implications.

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<sup>1</sup> *Why Orange County Probation Should Stop Choosing Deportation over Rehabilitation for Immigrant Youth* (University of California Irvine, Immigrant Rights Clinic, December 2013), [http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw\\_SecondChances\\_dec2013.pdf](http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf), executive summary, pg. 1.

<sup>2</sup> *Ibid.*

## BACKGROUND

An estimated 1.4 million undocumented children reside in the United States and approximately one in four live in California<sup>3</sup> and in Orange County. There are an estimated 300,000 undocumented Californians, including children, youth, and adults.<sup>4</sup>

**Orange County was responsible for 697 ICE hold requests against children in California during a 41-month period between 2009 and 2013, 43% of the total for California**, according to an analysis by the Center on Juvenile and Criminal Justice.<sup>5</sup> Orange County was followed by San Francisco (13%), Santa Barbara (12%), San Mateo (12%), Monterey (2%), Los Angeles (2%), San Luis Obispo (1%), San Diego (1%), Santa Cruz, Marin, Contra Costa, Alameda, Tehama counties (<1%).<sup>6</sup> Although Orange County has modified its internal procedure and the number of referrals has declined, its current procedure still requires intake officers to determine the immigration status of minors and notify an ICE Liaison if a minor is a “suspected foreign national.”

**A disproportionate percentage of child ICE holds in California were for undocumented Californians from Mexico.** Almost all--**82.5 percent**--of child ICE holds are enforced against children and youth originally from Mexico, even though only about half of the undocumented population in the United States is from Mexico.<sup>7</sup> The report from the University of California Irvine School of Law Immigrant Rights Clinic also raised concerns that Probation Department officers untrained in federal immigration law may rely on racial profiling to investigate youth.<sup>8</sup>

**Nearly half of the children with an ICE hold in California do not have a juvenile delinquency record. Of those that did, approximately 50 percent were for non-violent, non-serious charges.** In addition, of those youth with some delinquency background, 15 percent of those charges were immigration related, including possession of false immigration documents and illegal entry. Detaining children prevents their development and rehabilitation, stated goals of the juvenile justice system.<sup>9</sup>

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<sup>3</sup> *The Unnecessary Detention of Undocumented Youth* (Selena Teji, Center on Juvenile and Criminal Justice, August 2013), <http://www.cjci.org/news/6559>, p. 1.

<sup>4</sup> *Just the Facts: Undocumented Immigrants* (Laura Hill and Joseph Hayes, Public Policy Institute of California, February 2013), [http://www.ppic.org/main/publication\\_show.asp?i=818](http://www.ppic.org/main/publication_show.asp?i=818).

<sup>5</sup> *The Unnecessary Detention of Undocumented Youth* (Selena Teji, Center on Juvenile and Criminal Justice, August 2013), <http://www.cjci.org/news/6559>, p. 1.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> *Why Orange County Probation Should Stop Choosing Deportation over Rehabilitation for Immigrant Youth* (University of California Irvine, Immigrant Rights Clinic, December 2013), [http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw\\_SecondChances\\_dec2013.pdf](http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf).

<sup>9</sup> *The Unnecessary Detention of Undocumented Youth* (Selena Teji, Center on Juvenile and Criminal Justice, August 2013), <http://www.cjci.org/news/6559>, p. 1.

**Most children are held in local juvenile detention centers throughout California for an unnecessarily long period of time, costing taxpayers an estimated \$127,978 per year.**

Eighty-nine percent of all youth subject to ICE holds were detained in local facilities, regardless of whether the young person presented any danger to public safety, costing an average of \$352.06 per day.<sup>10</sup>

## THE PROBLEMS WITH THE ORANGE COUNTY PROBATION DEPARTMENT'S ACTIONS

**The Orange County Probation Department's practices usurp a federal responsibility and undermine community safety and policing.** Although the number of youth being deported has decreased since advocates exposed the disproportionate number of Orange County youth referred to ICE, the problem has not gone away. OCPD continues to investigate youth's citizenship and immigration status and refer them to ICE for deportation. Placing federal immigration enforcement responsibility in the hands of local juvenile justice system officials like OCPD not only violates federal law, but comes with drastic repercussions for youth of color in local communities. It also undermines the fragile trust that local law enforcement has with the immigrant community. OCPD's own studies indicate that as few as 8% of children who come into contact with OCPD qualify as "chronic recidivists." Targeting immigrant children for deportation is not only inhumane and disruptive to the health and wellbeing of the juveniles and their families, it also undermines community policing efforts and fails to make Orange County safer.

**OCPD's referral policy violates state confidentiality laws and undermines the juvenile justice system's mission to rehabilitate young people in the juvenile justice system.** OCPD's referral policy instructs officers to share juveniles' delinquency case file information with ICE without the permission of the juvenile court. This is a clear violation of California Welfare and Institutions Code Section 827 and harms youth's prospects for rehabilitation.<sup>11</sup> Transfer to ICE custody also leads to prolonged detention of young people in immigration facilities away from their families and communities, causing additional harm. Though the OCPD will no longer hold youth solely on ICE detainers, Department officials have not agreed to stop referring youth or sharing their information with ICE. Youth may be transferred to ICE custody prior to or on the date of their scheduled release from juvenile hall.

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<sup>10</sup> Ibid.

<sup>11</sup> *Why Orange County Probation Should Stop Choosing Deportation over Rehabilitation for Immigrant Youth* (University of California Irvine, Immigrant Rights Clinic, December 2013), [http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw\\_SecondChances\\_dec2013.pdf](http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf), executive summary, pg. 1.

**Black and Latino children are already significantly over-represented in the Orange County Juvenile System.** As a result, OCPD's referral policy disproportionately impacts youth of color. A 2013 Report by the Burns Institute reveals that the Orange County Probation Department disproportionately criminalizes youth of color in Orange County, predominately from communities in Anaheim and Santa Ana. Although Latinos make up 46% of the population, they make up 75% of the population in juvenile custody. This level of criminalization of our youth of color is alarming and has become a civil rights issue for our community.<sup>12</sup>

## RECOMMENDATIONS

Based on the overwhelming evidence pointing to the unlawful, inhumane and counterproductive ICE referral practices of the Orange County Probation Department, we request the Department of Homeland Security pursue the following recommendations:

- **Investigate OCPD's ICE referral practices** and immediately stop accepting youth referrals from OCPD.
- **Terminate the 287(g) agreement** with the Orange County Sheriff's Department.
- **End the use of detainers on children in the juvenile justice system and remove ICE from juvenile facilities nationwide.** The issue should be a priority within the current review of DHS enforcement procedures. The goal of any juvenile justice system should be rehabilitation, not exile.<sup>13</sup>
- **Instruct local agencies that young people questioned about their immigration status while in juvenile detention must be provided due process.** Youth should be informed of their rights and given an opportunity to consult with their parents and a lawyer before any questioning occurs. Federal law requires that immigration officials give a Form I-770, Notice of Rights and Disposition, to any undocumented juvenile when he or she is apprehended, a practice that is not currently regularly followed in Orange County.<sup>14</sup>

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<sup>12</sup> *Disproportionate Minority Contact-Technical Assistance Project: Summary Report and Recommendations Orange County, CA* (Gina Peralta, Anna Wong, Tracy Benson, W. Haywood Burns Institute, October 2013).

<sup>13</sup> *Why Orange County Probation Should Stop Choosing Deportation over Rehabilitation for Immigrant Youth* (University of California Irvine, Immigrant Rights Clinic, December 2013), [http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw\\_SecondChances\\_dec2013.pdf](http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf),

<sup>14</sup> *Why Orange County Probation Should Stop Choosing Deportation over Rehabilitation for Immigrant Youth* (University of California Irvine, Immigrant Rights Clinic, December 2013), [http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw\\_SecondChances\\_dec2013.pdf](http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf), p. 31.

- **Ensure state confidentiality laws are honored and juveniles' case files and the information contained within them are not summarily handed over to federal immigration officials.** Local officials should not be required nor encouraged to share confidential information with federal officials. Federal laws do not negate state laws that protect confidentiality.

To ensure oversight and accountability within the immigration system, the Department of Homeland Security should take immediate action to end the inhumane ICE referrals of youth and children in Orange County, California and throughout the U.S.

We appreciate your attention to this issue. We would like to request a meeting to discuss the problem in OCPD and beyond, and our recommendations. Please direct your response to Abraham Medina, RAIZ and Santa Ana Boys and Men of Color ([mamedina1618@gmail.com](mailto:mamedina1618@gmail.com) or 714-417-2460) and Virginia Mosqueda, The California Endowment ([VMosqueda@calendow.org](mailto:VMosqueda@calendow.org) or 213-928-8727).

Respectfully,

ACLU Foundation of Southern California  
Asian Americans Advancing Justice-Los Angeles  
Christian Tabernacle Church  
Christ Our Redeemer AME Church  
Community Justice Network for Youth  
El Centro Cultural de Mexico  
Gay and Lesbian Community Services Center of Orange County  
Immigrant Youth Coalition  
KidWorks Community Development Corporation  
Latino Health Access  
Los Amigos of Orange County  
Los Angeles Immigrant Youth Coalition  
Mexican American Legal Defense and Educational Fund  
National Immigration Law Center  
Orange County Asian and Pacific Islander Community Alliance, Inc.  
Orange County Communities Organized for Responsible Development  
Orange County Congregation Community Organization  
Orange County Dream Team  
Orange County Interdenominational Alliance  
Orange County Labor Federation  
Public Law Center

RAIZ

Santa Ana Building Healthy Communities (SABHC)

Santa Ana Men and Boys of Color Working Group

The California Endowment

The Cambodian Family

The Kennedy Commission

UCI Irvine School of Law Immigrant Rights Clinic

W. Haywood Burns Institute

CC: Department of Homeland Security Office of Civil Rights  
Board Chairman Shawn Nelson, Orange County Board of Supervisors  
California Attorney General Kamala Harris  
Congresswoman Loretta Sanchez, California's 46th District  
Congressman Alan Lowenthal, California's 47th District