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ACADEMIC RESEARCH
& POSITION BRIEF

THE INAPPROPRIATE USE OF JUVENILE RECORDS IN IMMIGRATION DISCRETION

By Sarah J. Diaz, J.D., LL.M & Lisa Jacobs, J.D.¹

The Center for the Human Rights of Children (CHRC) and the Civitas ChildLaw Center at Loyola University Chicago School of Law, after conducting a review of denied adjudications, make the following observations regarding the use of juvenile delinquency records in immigration benefits adjudications: 1) USCIS adjudicators rely inappropriately on immigration case law to support the proposition that juvenile records may be considered as a matter of discretion in immigration adjudications; 2) USCIS officers fundamentally do not understand the legal scheme or purpose of juvenile justice systems as a matter of state law and policy; and 3) USCIS officers misapply juvenile justice records in the discretionary immigration process.

1) US law does not support the proposition that juvenile records may be considered as a matter of discretion in immigration adjudications.

The CHRC et al. conducted an in-depth review of several immigration cases that were denied as a matter of discretion wherein the USCIS officer relied exclusively on underlying juvenile delinquency records to deny the case.ⁱⁱ In many of the denial notices, the adjudicators cite *Paredes-Urrestarazy v. USINS* for the proposition that “USCIS may consider an applicant’s adverse conduct even in the absence of a conviction.”ⁱⁱⁱ This approach allows adjudicators to consider juvenile delinquency records when reviewing a case, even when these juvenile records are not considered “convictions” under immigration law.^{iv} USCIS officers often explain in their denials that “it is well-established that USCIS may consider all relevant factors, including arrest reports and related documents regarding an arrest”^v noting that “this is especially appropriate in cases involving discretionary relief from deportation, where all relevant factors concerning an arrest and conviction should be considered to determine whether an alien warrants a favorable exercise of discretion.”^{vi} Denials often cite *Matter of Thomas*, 21, I&N Dec. 20 (BIA 1994) for the proposition that “significantly, evidence of criminal conduct which has not culminated in a final conviction can nevertheless be considered in discretionary determinations.”

Assuming *arguendo* that these cases support the propositions asserted, all of the cases rely on the ability to inquire into juvenile delinquency adjudications because they fall under the rubric of *Matter of Marin*’s “criminal conduct” or “bad character.” Juvenile delinquency adjudications, however, are definitively not considered criminal conduct under state law and the United States Supreme Court has long held that juvenile delinquency is not evidence of incorrigible bad character. USCIS’ blanket characterization of juvenile encounters with law enforcement as being the same as adult criminal

arrests defies the law and policy of the juvenile justice system and ignores Supreme Court guidance with respect to the treatment of children under the law.

While most immigration benefits are discretionary, there are limits to what USCIS may consider when adjudicating a discretionary immigration benefit. Since 1978, the BIA has relied on “a framework for an equitable application of discretionary relief.”^{vii} The seminal framework laid out in *Marin* involves a balancing of equities against adverse factors which are limited to “the nature and underlying circumstances of the exclusion (inadmissibility) ground at issue, the presence of additional significant violations of this country’s immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent’s bad character.”^{viii} The relevant *Marin* adverse factors at issue in this brief can thus be summarized as falling under the rubric of “criminal history” or “other evidence of respondent’s bad character/moral character (or both).” Juvenile encounters with law enforcement and juvenile delinquency adjudications, however, are neither criminal matters nor evidence of incorrigible bad character.

2) USCIS officers fundamentally do not understand the legal scheme or purpose of juvenile justice systems as a matter of state law and policy.

While the US immigration system insists on treating migrant children as adults in miniature, the same is simply not true for the nation’s juvenile justice systems. In defiance of state laws and Supreme Court jurisprudence acknowledging the diminished culpability of children, USCIS appears to categorize juvenile delinquency adjudications as “criminal history” and/or evidence of “bad moral character” in order to make a discretionary determination. This is true even though juvenile justice systems do not consider juvenile delinquency proceedings as “criminal matters.”

The nation’s juvenile delinquency systems recognize the principle that significant developmental differences between young people and adults require legal structures and legal responses tailored to the social, emotional and cognitive differences between young people and adults. While juvenile justice structures and terminology differ from state to state, juvenile justice systems across the country apply procedures, protections and legal standards that differ significantly from their criminal analog. The goals of juvenile justice systems are similarly distinct from those of criminal legal systems. While adult-focused criminal legal systems typically seek to impose accountability for illegal conduct through punitive responses, youth-focused systems typically seek to provide early interventions, community-based resources and restorative supports to address a range of youth behaviors and to facilitate the long-term well-being of young people and their communities.

In Illinois, for example, the purpose and policy section of Article V of Illinois’ Juvenile Court Act establishes that the Act is intended to deal with the unique challenges of youth delinquency and to capitalize upon the unique opportunities for youth to be “equip(ped) with competencies to live responsibly and productively”. Accordingly, the Act provides for policies and processes distinct from those applied to adults under the state’s criminal laws. The Act emphasizes these distinctions by providing that “(a) juvenile adjudication shall never be considered a conviction nor shall an adjudicated individual be considered a criminal.”

3) *USCIS officers misapply juvenile justice records in the discretionary immigration process.*

The nation's juvenile delinquency systems have created legal structures and legal responses that recognize that children's brains and bodies are fundamentally different than that of an adult. These systems recognize that 1) juvenile encounters with law enforcement, whether or not they result in delinquency adjudications, must not be treated as criminal matters; and 2) a young person's character is not fixed and misconduct is not indicative of "bad character"; in fact, adolescents are highly responsive to positive supports and resources.

a. Contacts with the juvenile delinquency system are not criminal matters and should not be considered under the rubric of "criminal history."

Because the nation's juvenile delinquency systems are premised on the significant developmental differences between young people and adults, they accordingly utilize legal structures, processes and outcomes distinct and different from adult criminal justice processes. For example, juvenile justice systems generally do not employ criminal procedure in addressing juvenile encounters and arrests nor do they contemplate the same criminal culpability. As indicated, Illinois' Juvenile Court Act explicitly provides that a juvenile adjudication (a juvenile court's determination that a youth has engaged in delinquent conduct) is not a criminal conviction and shall not be considered as such. The Act also emphasizes that "[u]nless expressly allowed by law, a juvenile adjudication shall not operate to impose upon the individual any of the civil disabilities ordinarily imposed by or resulting from conviction."^{ix}

In addition to distinguishing between delinquency adjudications and criminal convictions, Illinois' statute also creates youth-specific alternatives to prosecution and formal court proceedings. One such provision creates station adjustments. When youth are arrested in Illinois, a law enforcement officer may resolve the arrest by referring the matter to a prosecuting agency or designee of the juvenile court, which will determine whether a juvenile petition (complaint) will be filed. In the alternative, Illinois law provides for a juvenile officer to dispose of an arrest, at his or her discretion, through a station adjustment. The provisions for station adjustments are a uniquely child and youth-centered approach; there are no similar provisions for station adjustments of adults in Illinois.

USCIS has nevertheless considered these "mere arrest" encounters in its decisions to approve or deny a discretionary benefit. In an Illinois case that was reviewed by the CHRC et al., USCIS relied on the juvenile's encounters with law enforcement that did not even result in a finding that the juvenile was delinquent to deny the applicant a benefit notwithstanding that he has lived in the US nearly his entire life. In that case, the records of contact between the applicant and the juvenile justice system did not even rise to the level of an adjudication. Instead, the two juvenile arrests listed in the case were resolved through a "station adjustment"—not referred for prosecution.

Station adjustments are only one example of the legal and programmatic mechanisms in place in Illinois to address delinquent conduct and delinquency system referrals. Similarly, other states' juvenile justice systems provide a variety of procedures to meet the developmental and legal needs of young people in ways which differ significantly from their state's adult criminal legal system processes. USCIS decisions, however, fail to distinguish these delinquency processes from criminal records.

Instead, USCIS adjudicators are using state records without understanding the function and policy of the underlying law. The presence of juvenile delinquency adjudications alone, let alone evidence of mere arrests, is insufficient to be considered under the rubric of “criminal conduct” in the adverse discretionary factors set out in *Marin*.

b. Contacts with the juvenile delinquency system should not be considered under the rubric of “bad character.”

The United States Supreme Court has made the critical observation “that the character of a juvenile is not as well formed as that of an adult[;] the personality traits of juveniles are more transitory, less fixed.”^x As a result, the Supreme Court has found that “incorrigibility is inconsistent with youth,”^{xi} and that assessing the youth’s character as fixed “reflects an irrevocable judgment about [a youth’s] value and place in society, at odds with a child’s capacity for change.”^{xii}

In a series of five decisions, the Supreme Court has explicitly confirmed that youth are “categorically less culpable”^{xiii} for misconduct, even that which causes serious harm.^{xiv} In *Miller v. Alabama*, for example, the Court noted that adolescents can be expected to exhibit “transient rashness, proclivity for risk, and inability to assess consequences”^{xv} and that the malleability of these characteristics must be considered by courts. Just as importantly, the Court has repeatedly held that young people have a unique capacity for change and rehabilitation^{xvi}. Because “a child’s character is not as ‘well formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievable depravity.’”^{xvii} As a consequence, the Supreme Court admonishes us that criminal offending as a young person may not be indicative of adult character and behavior.^{xviii}

The Supreme Court’s line of decisions distinguishing children and adolescents from adults is informed by decades of developmental research. The Supreme Court has adopted rulings supported by the scientific evidence that acknowledge that youth possess a “lack of maturity and an underdeveloped sense of responsibility. . . [which] often result in impetuous and ill-considered actions and decisions.”^{xix} Scientific studies have repeatedly demonstrated that the ability to make sound judgment does not develop until the early to mid-twenties.^{xx} Juvenile courts have thus been shaped to affirm the principle that because children and adolescents are fundamentally different from adults, young people should not be subjected to the same legal standards, systems, and penalties.

Nonetheless, in a system that treats children as adults in miniature, adjudicators in the immigration system are treating contacts with the juvenile justice system the same as adult arrests and convictions in the analysis for discretion. Specifically, USCIS adjudicators cite multiple BIA cases relating to adult arrests and the propriety of using the facts and circumstances of those arrests in a discretion decision to support the proposition that a juvenile record warrants the exact same treatment. It does not. That USCIS insists that juvenile justice system contacts should be available as evidence of moral character and a reflection of who the young person will eventually become flies in the face of decades of research that suggest—as the Supreme Court has endorsed—incorrigibility is inconsistent with youth. Juvenile justice arrests and/or court records, without any further indication of incorrigibility, should not be considered as a matter of discretion under the rubric of “bad character.”

Conclusion

Notwithstanding the clear policies behind the majority of state juvenile justice systems, with no training on adolescent development nor an understanding of juvenile justice case law related to youth, USCIS uses juvenile records to allege sufficient “significant adverse factors” to support a negative discretionary determination of youth seeking adjustment of status. Indeed, adjudicators often suggest that these juvenile justice system contacts outweigh the fact that applicants with juvenile records typically have resided in the United States for extensive periods or “grown up” in the United States. The inappropriate use of juvenile records in this way demonstrates a fundamental misunderstanding of the juvenile justice law and policy.

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ⁱⁱⁱ *Paredes-Urrestarazy v. USINS*, 36 F. 3d 8011, 809 (9th Cir, 1994).

^{iv} *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000) (en banc), citing *Matter of C.M.*, 5 I&N Dec. 27 (BIA 1953), *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). In *Devison* the Board held that this longstanding rule was not changed by the 1996 enactment of a statutory definition of conviction at INA § 101(a)(48)(A), 8 USC § 1101(a)(48)(A).

^v *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988); *Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996).

^{vi} *Matter of Grijalva*, *id.* at 722.

^{vii} *Matter of Marin*, 13 I&N Dec. 581 (BIA 1978).

^{viii} *Id.* at 584.

^{ix} 705 ILCS 405/1-8(A).

^x *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005).

^{xi} *Graham v. Florida*, 560 U.S. 48, 73 (2010), as modified (July 6, 2010) (internal citations omitted).

^{xii} *Miller v. Alabama*, 567 U.S. 460, 472 (2012) (internal citations omitted).

^{xiii} *Roper v. Simmons*, 543 U.S. 551 (2005)

^{xiv} See generally *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005), *Graham v. Florida*, 560 U.S. 48, *Miller v. Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. ____ (2016), *Jones v. Mississippi*, 593 U.S. ____ (2020).

^{xv} *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

^{xvi} *Montgomery v. Louisiana*, 577 U.S. ____ (2016).

^{xvii} *Montgomery v. Louisiana*, 577 U. S., at ____ (slip op., at 8) (quoting *Roper*, *supra*, at 569–570; alterations, citations, and some internal quotation marks omitted).

^{xviii} *Roper v. Simmons* (03-633) 543 U.S. 551 (2005).

^{xix} *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005).

^{xx} Laurence Steinberg, Adolescent Development and Juvenile Justice, 5 Annual Review of Clinical Psychology 459 (2009); Ezequiel Mercurio et al., Adolescent Brain Development and Progressive Legal Responsibility in the Latin American Context, 11 FRONTIERS IN PSYCH. 627, 24 April 2020.