INTRODUCTION

This memorandum summarizes our initial research into San Mateo County’s practice of juvenile probation officers reporting and referring youth to Immigration and Customs Enforcement (ICE). Our research began when Community Legal Services in East Palo Alto (CLSEPA) and the Immigrant Legal Resource Center (ILRC), two nonprofits working on behalf of youth in immigration proceedings, reported a sharp increase in ICE referrals in San Mateo County over the past three years. It is our understanding that San Mateo County currently has the second highest number of ICE referrals of immigrant youth of all California counties, although it is only the fourteenth most populous county in California.

To better understand the issues posed by juvenile immigration referrals and the current situation in San Mateo County, we spoke with youth and family members impacted by ICE referrals, San Mateo County Defenders (defenders), educators who work with youth in the juvenile justice system, local community leaders, heads of probation in other counties, and legal experts in San Mateo as well as other cities. Additionally, we conducted research regarding the legal implications of ICE referrals.

Our research has revealed several concerns raised by ICE referrals. First, youth are referred to immigration authorities despite their eligibility for immigration relief. Upon referral, ICE transfers youth to detention facilities in remote locations as far away as New York. Instead of being able to pursue immigration relief at home, these youth must try to apply for relief without the support of their families. Once an ICE hold is placed, youth are still referred to ICE even if their underlying juvenile offense is dismissed. Second, in contradiction with California Welfare & Institutions Code § 202, ICE referrals undermine youth’s best interests, impede their rehabilitation, and hinder family reunification. These referrals separate youth from their families who live in San Mateo County and reduce the juvenile justice system’s opportunities to work productively with youth in rehabilitative or educational settings. Third, immigration referrals share youth’s confidential information without judicial oversight; this is in tension with the strong confidentiality protections of California Welfare & Institutions Code § 827,
which prohibits the sharing of youth’s confidential information to third parties, like federal immigration authorities, without a prior court order. Finally, San Mateo County may be exposed to liability as a result of referrals made by probation officers, as it is conceivable that these officers may be incorrectly referring youth to ICE who turn out to be citizens or permanent residents. Some California counties have faced costly lawsuits following such erroneous referrals.

**AVAILABLE INFORMATION ABOUT SAN MATEO ICE REFERRALS**

Over the past three years, San Mateo Youth Services Center (Hillcrest) appears to have dramatically increased the number of referrals it makes to ICE. As one private defender explained to us, an “explosion” of immigration referrals began around 2008 as probation officers began contacting ICE to refer immigrant youth who they knew or suspected were undocumented. Several defenders have recalled that, before this recent change in practice, immigration referrals came exclusively through Juvenile Court judges, and only in rare instances.

Probation officers are now the main source of immigration referrals. Under both federal and state law, probation is not required to investigate a youth’s immigration status. Yet we have learned from several conversations with defenders that probation officers have asked youth their country of origin at the intake stage and may have speculated that youth are undocumented on the basis of their responses. The officers have referred youth to ICE at an early stage in their cases, before delinquency proceedings and before the youth were afforded an opportunity to consult with their defenders. Youth’s referrals were not based on their charges, but only on probation’s evaluation of their immigration status. Defenders have informed us that such referrals generally occur before they have an opportunity to meet or counsel youth. Upon receiving the referrals, ICE has placed detainers, or “holds,” on youth in Hillcrest, which are requests by ICE to have the County hold these youth for up to forty-eight hours after they have been ordered released or completed their dispositions. Referred youth who are later exonerated of their

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1 Our understanding of the current situation in San Mateo is based on our conversations with San Mateo defenders, with youth and their families, and with organizations that work with youth in the juvenile system.


3 San Mateo Youth Intake Form (on file with Stanford IRC).

4 In its August 2010 memo outlining its interim detainer policy, ICE explained that it issues detainers to local law enforcement agencies (LEA’s) informing them that ICE “intends to assume custody of an individual in the LEA’s custody.” U.S. IMMIGRATION AND CUSTOM ENFORCEMENT, Interim Policy Number 10074.1: Detainers, Aug. 2, 2010.
charges are still subject to ICE holds and transfers.

ICE referrals have resulted in youth being separated from their parents for lengthy periods of time. Once a youth is referred, ICE decides whether the youth is “accompanied” or “unaccompanied.” An “unaccompanied” youth is an undocumented person under the age of eighteen who does not have a parent or legal guardian who is willing or able to provide care and physical custody.\(^5\) ICE deems the majority of youth “unaccompanied,” even though their parents may be present in the United States. Typically, the youth is in removal proceedings but the parent is not because ICE has not interacted with the parents.

Once youth are classified as “unaccompanied,” they are transferred to the custody of the federal Office of Refugee Resettlement (ORR), which often moves youth to detention centers far from their families. Referred youth spend from a few months, up to over a year, in ORR detention following their release from Hillcrest, often in states far from California. The time youth spend in ORR custody is often many times longer than the relatively short dispositions they serve in Hillcrest. San Mateo youth have been deported as a result of ICE referrals. Even youth eligible for immigration relief have voluntarily accepted deportation to avoid staying in detention. Deported youth have ended up living in foreign countries without any adult supervision. Alone in these countries, youth from San Mateo County have faced economic, medical, and psychological difficulties. Some of these youth eventually returned to San Mateo once they finally obtained immigration relief, but were often deeply affected by their deportation.

ICE referrals have broadly impacted the San Mateo immigrant community, negatively affecting attitudes toward the juvenile justice system. Our initial interviews with advocates and families suggested that many members of the community felt betrayed and fearful because of youth referrals. As one local immigration leader explained, parents have come to her organization distressed after learning that their children received an ICE detainer. Parents who sought to cooperate with their child’s probation officer have felt that they unwittingly aided in their child’s deportation. Some parents of undocumented youth worried that probation was targeting, rather than rehabilitating, their children. Immigration referrals have had a particularly negative impact upon undocumented parents, who already live in fear of deportation. Some parents did not attend juvenile court hearings out of fear that ICE would be present and that participating in their child’s case would lead to their own deportation. As one youth educator

noted, community leaders can no longer reassure parents that they can feel safe speaking or cooperating with their child’s probation officer.

**LEGAL IMPLICATIONS OF IMMIGRATION REFERRALS**

Our initial research suggests several issues with San Mateo County’s ICE referral practice. First, youth are referred to immigration authorities despite their eligibility for immigration relief or their lack of culpability in the delinquency or probation offense for which they were first arrested. Second, in contradiction with California Welfare & Institutions Code § 202, ICE referrals undermine youth’s best interests, impede their rehabilitation, and hinder family reunification. Third, immigration referrals entail the sharing of youth’s confidential information without judicial oversight; this is in tension with the strong confidentiality protections of California Welfare & Institutions Code § 827, which prohibits the sharing of youth’s confidential information to third parties, including federal immigration officials, without a prior court order. Finally, San Mateo County may be exposed to liability as a result of referrals made by probation officers if officers incorrectly refer youth who turn out to be citizens or permanent residents.

I. Immigration Referrals Hamper Youth’s Efforts to Obtain Immigration Relief.

When deciding whether to make an ICE referral, probation officers do not appear to take into account the fact that many youth in Hillcrest are eligible for immigration relief that could lead them to become U.S. citizens. Referred youth may qualify for various forms of immigration relief, including Special Immigrant Juvenile Status (SIJS) (for abandoned, abused, or neglected youth who cannot reunite with one or both parents), U-visas (for crime victims who cooperate with the police or prosecution), adjustment to permanent residence (for youth with qualifying U.S. citizen family members), asylum (for youth who fear persecution abroad), T-visas (for trafficking victims), and Violence Against Women Act petitions (for domestic violence survivors and their immediate family members). Notably, Congress recognized the unique nature of undocumented youth and expanded the protections for these youth through the passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457)(TVPRA). The TVPRA made important procedural and substantive changes to broaden eligibility for immigration legal relief for youth.
Of the available forms of relief, immigrant youth in the juvenile justice system are most likely to qualify for SIJS or U-visas. Immigrant youth qualify for SIJS if: 1) reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis in law; 2) it is not in the youth’s best interest to return to his or her home country; 3) the youth has been declared dependent on a juvenile court; 4) the youth is under twenty-one; and 5) the youth is not married.\(^6\) Under the statute, a juvenile raised by a single parent can qualify for SIJS even if that parent is undocumented so long as reunification with the second parent is not viable. Because of the realities immigrant youth in the juvenile justice system face, many qualify for SIJS under these requirements. Youth granted SIJS are immediately eligible for permanent residence.

Many youth in the juvenile justice system also qualify for U-visas, either directly or as derivatives of parents or guardians. U-visas are available to youth who were the victims of certain crimes, such as abuse or assault, and who help in the investigation or prosecution of the criminal activity.\(^7\) Moreover, youth under sixteen do not have to directly help the investigation or prosecution in order to qualify. Through U-visas, youth gain the right to reside and work in the United States and later to apply for permanent residency.\(^8\)

When youth are referred to immigration authorities before applying for immigration relief, they have a much harder time working with their lawyers and families in San Mateo to apply for that relief even if they are eligible. In the summer of 2010, CLSEPA ran a pilot project to screen immigrant youth at Hillcrest with ICE holds for immigration relief. The results of this pilot indicated that a significant proportion of youth with ICE holds qualified for various forms of immigration relief. Of the approximately fifteen youth CLSEPA screened, three were able to obtain U-visas by working with CLSEPA, and others were able to pursue asylum and SIJS claims by working with Legal Services for Children in San Francisco.\(^9\)

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\(^8\) Other youth may be able to adjust their status eventually because they have U.S. citizen siblings who can petition on their behalf. Additionally, youth with a well-founded fear of persecution in their native countries based on race, religion, political opinion, nationality or membership can receive asylum. INA § 208 (8 U.S.C. § 1158 ) (2006)). Victims of sex or labor trafficking can qualify for T-visas under INA § 101(a)(15)(T) (8 U.S.C. § 1101(a)(15)(U) (2006)). Victims of abuse at the hands of parents who are citizens or permanent residents can also qualify for immigration relief. Violence Against Women Act of 1994 (VAWA), Pub.L. 103-322, 108 Stat. 1902-1955.
\(^9\) Helen Lawrence, San Mateo “Hillcrest” Screening Project Memo (on file with Stanford IRC, Aug. 31, 2010).
Through conducting this pilot program, CLSEPA observed that youth who have received ICE holds and been transferred to remote ORR locations encounter increased obstacles to obtaining immigration relief. Free or reduced cost legal services often are not available to youth placed at remote ORR locations. Even if youth are able to access such services and apply for immigration relief, youth’s applications are stymied by the fact that they have been transferred to locations far from their homes and families. For example the U-visa is often premised on a certification from local law enforcement that a youth crime victim assisted in the investigation or prosecution of her assailant. This certification process is far more difficult when youth must attempt to communicate with San Mateo County law enforcement from faraway detention facilities.


Immigration referrals of youth undermine the goals that California Welfare and Institutions Code § 202 sets for the treatment of wards and dependents alike. These goals are to: (1) provide treatment that is in the minor’s best interest and rehabilitate youth, and (2) preserve and reunite families. As outlined in the statute, wards and dependents alike under the Juvenile Court’s jurisdiction should “receive care, treatment, and guidance that is consistent with their best interest.”\(^{10}\) The statute provides that the juvenile justice system should aspire to provide youth with guidance conducive to their rehabilitation: that guidance is supposed to enable the youth to become a “productive member of his or her family and the community.”\(^ {11}\) Finally, under the statute, the Juvenile Court considers “family preservation and family reunification” as goals when adjudicating cases of minors who have been removed from their parents’ custody.\(^ {12}\) This statute applies to all youth, regardless of their immigration status, or status as a potential ward or delinquent, and nothing in the statute draws distinctions between youth based on national origin or immigration status.\(^ {13}\)

Hillcrest’s practice of immigration referrals contravenes the rehabilitation and family preservation goals of § 202. First, these referrals are inconsistent with youth’s “best interest” because they typically undermine youth’s trust in their probation officers and culminate in youth’s transfer to ICE or ORR

\(^{10}\) Cal. Welf. & Inst. Code § 202(b) (West 2010).
\(^{11}\) Id.
\(^{13}\) Cal. Welf. & Inst. Code §202 (West 2010).
custody, if not deportation. These transfers and deportations render youth vulnerable to physical and emotional harm, often exacerbating the underlying issues that caused youth to enter the juvenile justice system in the first place and jeopardizing their prospect for rehabilitation. Second, immigration referrals undermine §202’s goals of family preservation and reunification because referrals culminate in prolonged, if not indefinite, family separation.

1. Hillcrest’s Practice of Immigration Referrals Is Inconsistent with California Welfare and Institutions Code § 202’s Goal of Promoting Youth’s “Best Interest” and Does Not Facilitate Their Rehabilitation.

Immigration referrals conflict with §202’s exhortation that youth “receive care . . . consistent with their best interest,” since referrals punish, rather than rehabilitate, youth.14 Referrals move youth out of the juvenile justice system, and away from the “care, treatment, and guidance” necessary to help these youth become productive members of society. While §202 acknowledges that punishment is sometimes an acceptable form of guidance, deportation from the United States is a severe punishment out of proportion to some of the crimes with which youth have been charged. This is especially the case with referred youth who are later exonerated, but nevertheless picked up by immigration authorities as a result of referrals and transferred to locations as far away as Virginia. In addition, although the statute explicitly notes that punishment in the form of retribution is impermissible, the ICE referral practice allows officers to use ICE referrals for retributive purposes. For example, one youth reported that when his probation officer was frustrated with him for violating probation, she reported him to ICE.

We have also heard reports of probation officers instructing youth to cooperate with ICE, to the detriment of the youth and the trust that the officer had previously built with him or her. In one case, a probation officer asked the youth whether he was undocumented and, when he admitted to being so, told him that he was required to answer any questions ICE asked him and to sign any forms ICE gave him. When the youth later discovered that he was under no legal obligation to do so, he felt angry and betrayed and punched the wall until his knuckles bled.

Transfers to ICE or ORR custody, which are the direct consequence of immigration referrals, further undermine the rehabilitation goals of the juvenile justice system outlined in Cal. Welf. & Inst. Code §

202. Youth are sometimes subjected to verbal and physical abuse when transferred to ICE or ORR custody, which likely inhibits, rather than fosters, their rehabilitation. One youth was teased by an ICE officer on his way to the detention center and told that if he wanted to leave, he should get his undocumented parents to pick him up, implying that ICE would then deport them all. While in ORR custody in Yolo County, he was shackled with such force that he has permanent marks on his hands and ankles. Additionally, he was denied his prescribed ADHD medication that he had been taking for years and subsequently suffered from severe anxiety throughout his time in custody. He was routinely placed in an isolation cell for twenty-three hours at a time and made to walk with his eyes and head cast down. When the boy returned home this past fall, he was eager to resume his schooling, but regretted that the past four months in ICE and ORR custody set back his academic progress.

Meanwhile, another boy, who was referred to ICE within days of arriving at Hillcrest, was transferred to ORR custody in Washington and suffered from depression during his prolonged separation from his family; he was placed on a twenty-four hour suicide watch as a result. Instead of returning to their communities as productive individuals, these youth arrive home with additional setbacks and the scars of the emotional and physical abuse they endured in ORR and ICE custody. These experiences are in tension with the rehabilitative purpose of the juvenile justice system, as set forth in § 202.

Immigration referrals also undermine § 202’s goal of promoting youth’s “best interest” because they can result in juveniles’ deportation to foreign countries where they have no guardians and are vulnerable to abuse, injury, and neglect. Youth who are deported rarely have close family ties in their countries of origin, and many have not been in their home countries since they were young children and might not speak the language. As a result, they can end up living on their own and working to support themselves
instead of attending school. We have also learned of youth who became injured or ill after being deported. Such harsh outcomes are inconsistent with § 202’s goal of enabling youth to become “productive member[s]” of their community.  


Immigration referrals inhibit § 202’s goal to “preserve and strengthen the minor’s family ties,” as these referrals often remove youth from their parents and siblings. If a youth is referred to ICE by probation, the next step is often to transfer the youth to ORR custody. As a result of the ORR process, youth are frequently transferred to remote locations for weeks or months and parents often cannot afford to visit them. One mother lamented, for instance, that she could not visit her son, who was in ORR custody in Washington for over a month, because she did not have the money to travel there.

Moreover, youth have accepted deportation and the accompanying permanent separation from their families even when they potentially could have obtained immigration relief. They did so either to avoid continued detention or because they knew that their parents could not step forward to claim them without themselves risking deportation. For example, after one youth was referred to ICE by probation, immigration officials asked him to sign various forms and share the location and identification information of his parents and other family members. When he refused to give them this information, ICE officers became angry. Under these circumstances, it is understandable for youth—even

Francisco and Graciela Gutierrez are two hardworking parents who have resided in the United States for twelve years and whose youngest son, Omar, is a U.S. citizen. Francisco owns a successful painting business and Graciela works full-time cleaning houses. Francisco and Graciela’s two older sons, Ivan and Daniel, were referred to ICE by probation in San Mateo and subsequently transferred to ORR detention in Yolo County. Both parents want to help their sons return home from ORR detention and continue at their new school, where the boys have recently made significant academic and behavioral progress. However, to do so, the parents had to turn over their own birth certificates and immigration information to ORR. Francisco and Graciela now fear that they could be picked up and deported at anytime. Francisco and Graciela were willing to put themselves on the line for their sons, but as one of their sons told them, many children agree to deportation because they know that their parents won’t take the risk of claiming them from ORR.

those with defenses to removal—to sign away their rights to stay in the country.

To the extent that youth are ultimately deported after the ORR process, their deportations cause prolonged family separation. Parents are often unable to accompany deported youth to their home countries because they either have U.S. citizen children here or need to work in the U.S. to support their family abroad. Deportations of youth also threaten the stability of families, further undermining the family preservation goals of § 202. Among other harms, juveniles’ younger siblings, who may be United States citizens or lawful permanent residents, can be deeply affected by their siblings’ absence. For example, following a single graffiti incident and curfew violation, one youth was referred to ICE by probation at Hillcrest, and then sent to ORR detention on the East Coast. During his detention, his younger siblings’ grades went down, and they stopped wanting to go outside or to attend school. They asked about their brother all the time, why immigration took him, and whether he would come back. During dinner, the younger children would beg their parents to “save food” for their absent brother.

The deportation of a child can also be incredibly stressful for parents, making it difficult for them to provide needed support to their other children as well as the deported child. One mother, whose son was transferred to ORR custody after a referral from Hillcrest, reported that she was anxious that her cooperation could result in her own deportation and worried about what would happen to the U.S. citizen children she would be leaving behind. While she was active in helping her son, his transfer to ORR significantly increased her stress, to the point that she was hospitalized for a week. The experiences of parents like this mother, as well as the youth who have been subjected to ICE referrals, illustrate how referrals hinder the family preservation and reunification goals of § 202.

III. Referring Youth Contradicts California Welfare and Institutions Code § 202’s Public Safety Goals.

Immigration referrals undermine the public safety goals of California’s juvenile justice system. Under § 202, minors are supposed to receive care and guidance that conforms to their best interests as well as to the “interests of public safety and protection.”17 ICE referrals do not further public safety. Several counties that eliminated ICE referrals as part of wider reforms to their juvenile justice systems have subsequently experienced reduced rates of juvenile crime and increased levels of cooperation with the

immigrant community. As these counties realized, referrals do not help youth successfully return to their communities as productive citizens because deportations and ORR detention do not facilitate rehabilitation and sometimes subject youth to injury or abuse. Youth referred to ICE return with even more setbacks than when they were in the custody of juvenile facilities like Hillcrest. San Mateo’s practice of immigration referrals isolates immigrant families and communities and prevents them from working in partnership with the juvenile justice system to keep youth from re-offending.

1. Many Counties Have Successfully Reduced Juvenile Crime and Recidivism After Adopting the Practice of Neither Asking About Immigration Status Nor Reporting Youth.

Counties that have stopped referring youth to ICE as part of broader reforms to their juvenile justice systems have experienced a drop in juvenile delinquency. While many factors account for changes in crime levels, the experiences of Chicago and Portland, which have been profiled as model systems in the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative, demonstrate how a no-referrals policy can further the public safety goals of the juvenile justice system. These cities increased public safety and youth probation’s effectiveness while (1) never asking a youth about his or her immigration status and (2) never reporting a youth to ICE.

Thirteen years ago, the departments that form Chicago’s juvenile justice system came together and created an unwritten policy that banned either asking about or reporting a youth’s immigration status. As an official in Chicago probation explained, “we make it a point not to ask the children for citizenship – we figure that we don’t need that information.” Even if they discover that a child is undocumented, they do not record that information.

Like Chicago, Portland has an unwritten policy of never referring youth to ICE. Portland also has a written policy that prohibits ever asking about a youth’s immigration status. Both policies protect public safety while ensuring that the system treats all youth equally. Portland’s system reform administrator explained that the public safety and flight risk a youth poses is well assessed during intake without ever asking about country of origin, immigration status, or social security numbers. He also emphasizes that Portland’s “policy of treating all kids the same” is guided by equal protection principles: “We don’t have a separate policy that says we will not report brown children. What we have is a policy about exactly how we will treat all children.”
These practices in Portland and Chicago have been part of those cities’ larger reform efforts that have involved the community in youth rehabilitation and helped lead to a drop in juvenile crime. Portland’s police report that crime went down eleven percent in 2009, has continued to go down since, and is at its lowest level in forty years. The Portland administrator explained that reporting youth to ICE does not lead to increased public safety. In fact, since Portland’s probation department stopped referring youth to immigration and instead strongly partnering with the community, Portland’s youth re-offense rate has dropped to between five and six percent. Likewise, Chicago’s policies have helped lead to a reduction in juvenile crime and other improvements, including (1) fifty percent fewer referrals to Juvenile Court, (2) a forty percent reduction in commitment to state institutions, (3) a ninety percent reduction in out-of-home placements, and (4) a shifting of money to long-term programs. That Portland’s and Chicago’s practices of not referring have coincided with such improvements in public safety highlights how a practice of no referrals in San Mateo County could further § 202’s goal of promoting public safety.

Many counties in California, including Santa Cruz, Santa Clara, Sacramento, and Los Angeles, have also experienced reduced levels of juvenile crime when they implemented a “no referrals” policy as part of broader reform efforts. Santa Cruz, for example, has implemented a variety of detention reform efforts, including a no referrals policy, to reduce the overrepresentation of Latino youth in the juvenile justice system. Subsequently, its juvenile hall population decreased by over fifty percent, with juvenile felony arrests going down by forty-eight percent and misdemeanor arrests going down by forty-three percent.18 Additionally, the Santa Cruz police department has stated that the “no referrals” policy helps fight crime because the department needs the immigrant community’s cooperation in order to carry on its work.19 Similarly, rather than refer youth, Los Angeles County works to connect youth with services and helps them pursue immigration relief.20 Counties like Sacramento and Santa Clara also favor providing services to immigrant youth instead of subjecting them to ICE referrals.21

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18 Interview with Kathy Martinez, Assistant Juvenile Probation Director, Santa Cruz Probation Department, Mar. 30, 2011.
19 Id.
20 Interview with Chelsea Bell, Former Director of Casa Libre/Freedom House, Apr 7, 2011 available at http://www.casa-libre.org/ 
2. Immigration Referrals Prevent Youth From Successfully Reintegrating Into Communities and Becoming Productive Community Members, as Mandated by California Welfare and Institutions Code § 202.

Referring youth to ICE undermines the juvenile justice system’s efforts to help them become productive and law-abiding community members, as is statutorily mandated by Section 202 of the Welfare and Institutions Code: “[w]hen the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community.” After a referral from probation and time in ORR custody, San Mateo youth who obtain immigration relief return home with scars from their experiences, not guidance on becoming productive members of society.

ICE referrals often result in youth being sent to distant ORR facilities that do not facilitate a youth’s positive development. Unfortunately, the extra time spent in ORR secure detention facilities that are often far from families and communities is simply used to process youth through the immigration system. It does not provide youth with these critical educational and social skills and can even impede youth’s development.

As an attorney who works with immigrant youth emphasized, “if you want to keep kids from re-offending, reporting is counterproductive. Kids who spend time in ORR detention after their sentences are angry and frustrated and it’s a lot harder to work with kids who are frustrated.” According to a leader of a successful youth rehabilitation program in the area, youth succeed after incarceration when they are provided with positive adult role models and are empowered to build assets and skills, not when they are sent far away from these role models through ICE referrals. The example of Daniel Gutierrez, who was denied his needed ADHD medication while in ORR detention, showcases how time spent in ORR can actually cause a youth’s behavior to deteriorate, rather than progress. Ultimately, San Mateo’s practice of immigration referrals does not further youth’s development into “productive member[s]” of their families and communities.²³

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3. Immigration Referrals Hurt the Immigrant Community’s Trust, Leading Many Families to be Reluctant to Work with Youth Probation.

Referrals undermine the parental and community trust that is essential to enabling the juvenile justice system to reduce juvenile crime and fulfill the rehabilitation goals outlined in § 202. As the San Mateo County’s Juvenile Justice Coordinating Council (JJCC) identified in its plan for 2011-2015, families and communities are key to redirecting youth and helping them make positive choices. According to the JJCC’s plan, “[f]amily members play the largest role in positive youth development.”

Even a factor such as family meal times is predictive of a youth’s success. Acknowledging the central role played by parents, the plan prioritizes working to involve them in their children’s lives through strategies such as parent support groups and parenting skills training. Critical to this endeavor is communication between parents and probation.

Referrals run counter to San Mateo’s own goal of increasing communication between probation officers and parents. The practice of immigration referrals has caused some immigrant parents in San Mateo to avoid contact with their child’s probation officers. One youth educator highlighted the detrimental effect of ICE referrals on communication and trust between probation and immigrant parents. As she explained, “five years ago I could tell parents that probation was not referring youth and now I can’t tell them that.” Because some undocumented parents hesitate to contact government employees, reassuring them that communication will not cause immigration problems is essential to creating successful partnerships between parents and the juvenile justice system. As a Chicago probation official explained, winning the trust of immigrant parents takes time and effort: “It is sometimes more difficult to win over immigrant parents because of their distrust of government. It might be a number of months in until the parent understands that we won’t report them.”

In Chicago, building trust with parents has helped reduce recidivism and detention rates. In contrast, the trust that San Mateo probation has built with the community is weakened by ICE referrals. One parent explained to us that when her son was first arrested, she worked closely with his probation officer to try

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25 One of the plan’s identified “needs” was “[b]etter communication amongst service providers, justice and Probation, and families.” Id. at 26 (2011).
and help him. After she perceived that cooperation as helping facilitate his referral to ICE, she was much less willing to work with probation.


Immigration referrals without judicial oversight are in tension with California’s strict confidentiality provisions. California Welfare and Institutions Code § 827 protects youth’s confidentiality by: 1) restricting who can automatically review juveniles’ information and 2) endowing the Juvenile Court with the authority to control whether and how youth’s information is disclosed to third parties. Under the statute, only a select number of individuals can view juveniles’ information without a court order; this narrow list of exempt individuals consists of participants in the state juvenile justice system and does not include federal authorities like ICE.

Under § 827, entities other than certain participants in the state juvenile justice system are required to petition the Juvenile Court to access youth’s information. The plain language of the statute indicates that immigration authorities do not fall within the list of exempt individuals who can automatically inspect juveniles’ files. Moreover, the legislative history suggests that immigration authorities are not authorized to access youth’s information absent court orders. Because immigration authorities are not included within the parties that are specifically listed as exempt under § 827, they should first petition the Juvenile Court for permission.\(^{26}\)

California Welfare and Institutions Code § 827 protects a wide range of records and information relating to juvenile arrests or court proceedings, including:

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\(^{26}\) We note that California Welfare and Institutions Code § 827 is the same confidentiality provision that governs dependency proceedings. Thus, to interpret this statute as authorizing ICE to circumvent confidentiality protections surrounding juveniles in delinquency court also allows social workers to refer dependent children to ICE without a prior hearing. Such an interpretation renders all juveniles, including abused children and wards of the state, vulnerable to having their information shared with third parties without permission.
• “petition[s] filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report”;

• police reports, including reports pertaining to minors that are only temporarily detained;

• and “[a]ny [other] information” regarding the juvenile.

This broad language appears to protect all verbal communications with a youth as well as his written records from disclosure, information which would later form the basis of any potential communication between probation and ICE.

Under § 827, the Juvenile Court is the gatekeeper of juveniles’ confidential information. Agencies such as ICE are expected to obtain permission from the Juvenile Court to obtain juvenile records, as the Juvenile Court has the exclusive authority to release information to third parties. As the California Supreme Court declared four decades ago, “Welfare and Institutions Code section 827 reposes in the juvenile court control of juvenile records and requires the permission of the court before any information about juveniles is disclosed to third parties by any law enforcement official.” To gain the Juvenile Court’s permission to review files, third parties must petition the Juvenile Court in conformity with the procedures outlined in California Rules of the Court § 5.552(c). Parties seeking access must submit Petition for Disclosure of Juvenile Court Records (form JV-570) and demonstrate “by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate needs of the petitioner.”

Per the language of § 827, ICE should not be able to obtain information about juveniles without a prior court order. The statute contemplates a narrow exception to the general requirement of a court order, which permits only a limited number of individuals to review juveniles’ information without a court order, namely: court personnel, prosecution and defense attorneys, the youth, family members, and law

28 T.N.G. v. Superior Court, 4 Cal. 3d 767, 780-81 (1971).
29 Id. at 780.
30 T.N.G. v. Superior Court, 4 Cal. 3d at 780. See also Pack v. Kings County Human Services Agency, 89 Cal. App. 4th 821, 827 (5th Dist. 2001) (noting that such control over the sharing of confidential juvenile records reflects a legislative determination that the juvenile court has the “‘sensitivity and expertise’ to make decisions about access to juvenile records and is in the best position to consider any other statutes or policies which may militate against access.”) (internal citation omitted).
31 California Rules of the Court § 5.552 (c), (e)(6).
enforcement officers who are “actively participating in criminal or juvenile proceedings involving the minor.”

ICE officials are not included in this list of exempt law enforcement for three principal reasons. First, ICE officials are federal officials who are not participants in the state juvenile justice system. By contrast, all of the parties exempted from § 827’s requirements are participants in the state juvenile justice system, such as court personnel, prosecutors, and defenders. Second, besides the fact that ICE agents are not state-level officers, these agents do not “actively participate” in any criminal or juvenile proceedings involving youth. Immigration authorities typically have no role in juvenile or criminal proceedings involving youth. In fact, they often have no knowledge of such proceedings (and therefore cannot participate in the first place) until someone within the system—here probation—contacts them. Third, even if ICE officials had already initiated immigration proceedings against a youth before the youth became involved in the juvenile justice system, those immigration proceedings are civil in nature and therefore do not constitute “criminal or juvenile proceedings” for the purposes of § 827.

Since the enactment of § 827, the California legislature has amended the statute on several occasions, but has never created an exception for disclosure to the immigration authorities. For example, the legislature amended § 827 in 1994 to provide a “limited exception to juvenile record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools.” The legislature has not similarly amended § 827 to exempt ICE. To the contrary, in announcing a narrow exception to permit the sharing of information with school officials, the legislatures stressed that it “reaffirms its belief that juvenile court records, in general, should be confidential.”

Indeed, a California Court of Appeal in *People v. Superior Court* denied a county grand jury access to juvenile records under section 827, noting that “the balance of the concerns weigh predominantly against access.” Because grand juries are not included among the exempt parties listed in § 827, the court reasoned that the grand jury had no “self-executing right to inspect juvenile records and thus must petition the court as any ‘other person’.” Noting that the legislature has continually amended § 827 and yet has never added grand juries to the list of exempt individuals despite longstanding Supreme Court

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34 Id.
36 Id. at 492.
jurisprudence on the rule of grand jury secrecy, the court presumed that the legislature intentionally excluded grand juries from this list.  

Similar reasoning applies here, as the legislature could have amended § 827 to include immigration authorities as exempt officials, especially given the ongoing debates regarding California’s immigration policies. As with grand juries, federal immigration authorities are nowhere mentioned within the statute’s list of exempt parties, and hence it appears that they do not have a self-executing right to access juvenile’s records.

Section 827 is rooted in longstanding concerns that releasing information about youth stigmatizes these juveniles and prevents their rehabilitation. As the California Supreme Court explained in *T.N.G. v. Superior Court*, “several sections [of the Welfare and Institutions Code] explicitly reflect a legislative judgment that rehabilitation through the process of the juvenile court is best served by the preservation of a confidential atmosphere in all of its activities.” Three decades later, a California Court of Appeals in *People v. Connor* reaffirmed the state’s commitment to protecting youth’s confidentiality and reasoned similarly that a driving motivation behind keeping records confidential is to “protect the minor from present and future adverse consequences and unnecessary emotional harm.”

Hillcrest’s practice of immigration referrals departs from the strict confidentiality protections outlined above. Probation officers appear to be sharing juveniles’ information with ICE without prior authorization from the Juvenile Court. Neither ICE nor probation appears to be submitting petitions to the Court for disclosure of confidential information, as required by § 827. In cases where ICE issues detainers against juveniles at Hillcrest, ICE regulations require it to obtain “*all documentary records and information available from the [referring] agency that reasonably relates to the alien’s status in the United States.*” Per our conversations with defenders, ICE may be obtaining confidential information from probation without first complying with § 827’s requirement of a court order.

Ultimately, the disclosure of youth’s information is in tension with the mandate of California Welfare and Institutions Code § 827 and risks exposing youth to adverse consequences. Given that Juvenile Court Judges are entrusted to serve as gatekeepers to safeguard youth’s information, probation officers’

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37 *Id.* at 494.
38 4 Cal. 3d at 776.
40 8 C.F.R. § 287.7(c) (West 2010) (emphasis added).
practice of making early referrals absent court orders risks circumventing the Juvenile Court’s judicial authority.\textsuperscript{41}

V. Hillcrest’s Practice of Immigration Referrals May Pose Liability Problems for San Mateo County Because Erroneous Referrals Can Yield Costly Lawsuits.

San Mateo County may risk liability because of ICE referrals, as wrongful detentions and deportations may occur when probation officers make immigration referrals. Lawsuits have been brought against other counties after probation officers erroneously determined individuals’ immigration status. In \textit{Soto-Torres v. Johnson}, for example, local and federal government officials paid $100,000 to settle a lawsuit arising from a San Joaquin County probation officers’ determination regarding the plaintiff’s immigration status. This County probation officer’s incorrect assessment of the plaintiff’s deportability led to the plaintiff’s wrongful arrest and detention by immigration authorities, ultimately exposing the County to significant liability.\textsuperscript{42} Meanwhile, in \textit{Guzman v. Chertoff}, the United States, DHS, and the Los Angeles’ Sheriff’s Department (LASD) recently settled a claim for $350,000 for the wrongful deportation of a cognitively impaired U.S. citizen who spent three months lost in Mexico due to LASD’s erroneous referral. During the three months that this Los Angeles native spent homeless in Mexico, he bathed in dirty rivers and ate from garbage cans while his mother frantically searched for him.\textsuperscript{43} Guzman’s wrongful deportation occurred after he was incarcerated in Los Angeles for a misdemeanor because an LASD county official interrogated him, incorrectly concluded that he was undocumented, and then transferred him to immigration custody. Guzman and his mother were able to include LASD employees as defendants in their suit for compensatory and punitive damages because these employees’ actions ultimately triggered Guzman’s unlawful deportation.

The settlements in both \textit{Soto-Torres} and \textit{Guzman} highlight the risks involved when probation officers and state officials work with ICE to make immigration referrals. Both \textit{Soto-Torres} and \textit{Guzman} involved adult plaintiffs who had been incorrectly referred, but the same injuries that yielded costly settlements in those cases could occur where youth are erroneously detained or deported. Youth who are transferred to ORR or ICE custody may face physical and verbal abuse. Those who are deported often live without


adult supervision, are prone to injury or illness, and are vulnerable to undergoing experiences akin to the plaintiff in *Guzman*.

Hillcrest probation officers are at risk of making erroneous referrals. Determinations of immigration status are exceedingly complex, even for legal professionals and experienced immigration lawyers, and are outside probation officers’ expertise. Referrals of youth are particularly prone to error because juveniles are often unaware of their immigration status or whether they qualify for relief. Given that probation officers are not screening for immigration relief and seem to be largely basing their determinations on answers to an intake form, it is possible that a youth will be erroneously detained or deported. Ultimately, Hillcrest’s practice of interviewing youth about their immigration status at early stages in the process increases the likelihood of wrongful deportations and risks exposing the county to liability.

**CONCLUSION**

The experiences of impacted youth and families, together with the legal concerns presented by immigration referrals, illustrate the costs of these referrals for San Mateo County’s juvenile justice system. Immigration referrals run counter to the juvenile justice system’s goals of promoting youth’s best interests, preserving family ties, and furthering public safety.