
AILA

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Cyrus D. Mehta
Editor-in-Chief

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No Second Chance

The Inappropriate Use of Juvenile Delinquencies in Immigration Law Adjudications

Sarah Diaz, Jessica Heldman, Lisa Jacobs, and Sierra Garcia*

Abstract: Records generated by youth legal systems—or “juvenile justice systems”—are increasingly being used against young people in immigration proceedings. This practice undermines the core purpose of these youth-focused systems and can have devastating, life-altering consequences, including the denial of immigration benefits or deportation. Juvenile justice systems in the United States are founded on the recognition that children and adolescents are developmentally different from adults and require a distinct approach focused on rehabilitation rather than punishment. Rooted in the understanding that young people are still maturing, these systems are designed to support growth, foster second chances, and avoid permanent stigmatization. This article argues that the use of juvenile records in immigration proceedings functions to treat children as miniature adults and defies the underlying principles of state juvenile justice systems.

Introduction

Juvenile justice records are increasingly being used against young people in immigration proceedings. This practice undermines the core purpose of the juvenile justice system and can have devastating, life-altering consequences for youth, including the denial of immigration benefits or deportation. The juvenile justice system in the United States was founded on the recognition that children and adolescents are developmentally different from adults and require a distinct approach focused on rehabilitation rather than punishment.¹ Rooted in the understanding that young people are still maturing, the system is designed to support growth, foster second chances, and avoid permanent stigmatization. This article argues that the use of juvenile records in immigration proceedings functions to treat children as miniature adults and defies the underlying principles of state juvenile justice systems. The use of such records contradicts relevant case law and policy, including Supreme Court precedent, and ignores more than 25 years of social science on child and adolescent development, and, as a result, produces harmful and unjust outcomes.

To explain how records from the state juvenile justice system are currently being misused in federal immigration adjudications and even by some immigration law advocates, the second section of this article will set out the

scope of the discussion and define key terms, including “youthful offender” and “juvenile delinquency,” to clarify the distinct legal schemes and systems involved in this discussion. One of the challenges in conveying the legal and policy arguments against the use of juvenile records in immigration proceedings comes from a fundamental misunderstanding among many people (including judges, attorneys, clients, legislators, and agency personnel) about the difference between juvenile justice and youthful offender schemes. In this article, our priority is to be crystal clear about the fact that juvenile records are inappropriate to use in these circumstances because the juvenile system is wholly distinct from the adult system. The youthful offender scheme is actually a hybrid of the adult and juvenile system, which requires additional analysis. Our intent is to emphasize a bright line between juvenile and adult and leave arguments about youthful offenders for another piece to avoid confusion.

The third section will explain the fundamental differences between the juvenile justice system and the adult criminal system. Scientific research has consistently shown that adolescence is a distinct period of development characterized by differences in brain structure and function, cognitive abilities, and psychosocial maturity compared to adulthood.² This section will explain how the juvenile justice system is specifically designed to account for these differences, highlighting its civil, social service-oriented nature, the use of diversion, less adversarial processes, distinct accountability measures, and the critical principles of confidentiality and record sealing.

The fourth section will explore the legal precedent and guidance often cited by immigration adjudicators and demonstrate how this existing immigration law framework fundamentally misunderstands the difference between the juvenile court process and youthful offender convictions and fails to appropriately guide how juvenile justice encounters should be treated under immigration law. This section will also analyze both discretionary determinations and specific conduct-based grounds of inadmissibility under immigration law (i.e., drug trafficking and prostitution) and argue why it is inappropriate to apply these grounds to a child. Specifically, this section will demonstrate how applying these grounds based on juvenile conduct conflicts not only with juvenile law and science but also with other areas of immigration law that recognize the unique circumstances of children, such as protections for child trafficking victims.

The fifth section will detail how practitioners across the country are reporting that immigration authorities (specifically U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR)) are using juvenile records against youth to deny immigration benefits or pursue removal. This section will present findings from case reviews and surveys, highlighting these concerning patterns, offering specific case examples from Illinois and California, among other states, to illustrate the real-life consequences for young people.

The conclusion will pull together the above arguments to reinforce the position that allowing juvenile records in immigration proceedings for conduct-based inadmissibility or discretionary determinations defies established law, science, and policy concerning children and youth. The article will conclude with specific recommendations for reforming the approach of the immigration system toward juvenile adjudications to align with the foundational principles of juvenile justice and ensure fairer outcomes for youth.

Scope of Discussion: A Note on Terminology

This article sets out to address the concerning practice of treating state juvenile justice system records the same as adult records in federal immigration proceedings, a practice that conflicts with the fundamental principles of juvenile justice and the distinct developmental differences of youth. Due to the complexity and breadth of this issue, which intersects various areas of law, policy, and science related to children and youth, the discussion will be limited to analyzing the specific problems of utilizing these records for conduct-based admissibility and as a matter of discretion in immigration adjudications.

This article will refer to “juvenile records” as a catchall for any juvenile contact with law enforcement that takes place under the *state juvenile system*, including records of arrest and records of delinquency, etc. This article does not address the distinct and important schematic of “youthful offender” programs. When discussing young people and the legal system, it is important to understand the difference between a “youthful offender” and a “juvenile delinquent.” These terms involve separate schemes with distinct immigration consequences. *Matter of Devison* has caused confusion around these terms, leading to their conflation in immigration practice.³ Juvenile justice is categorically non-criminal and rehabilitative. Youthful offender adjudications, even if ultimately non-criminal in effect, do not carry the same categorical clarity because they arise in criminal court. Focusing solely on juvenile delinquency allows us to drive home the point that the system was intentionally designed to give youth a “second chance,” and that misuse of those records directly subverts that design.

State laws creating youthful offender status vary widely and must be analyzed on a case-by-case basis to determine if *Devison* applies. To avoid further confusion between these two distinct processes, this article uses the definition of “youthful offender” consistent with *Merriam-Webster’s* definition, referring to a young person (sometimes older adolescents between 18 and 21 years old) who commits a crime but is granted special status for potentially more lenient punishment, sometimes still involving processes similar to adult court.⁴ This term is distinguishable from “juvenile delinquency,” which involves a system for children, typically under 18, that is designed to care for and guide youth without the stigma of the adult criminal system. Juvenile delinquency

proceedings are fundamentally different from the adult criminal system; they are non-punitive, focused on rehabilitation and the well-being of the child or adolescent, and result in adjudications, *not criminal convictions*. To be clear, while “youthful offender” records may also be inappropriately used in the context of immigration adjudications, those discussions remain outside the scope of this article.

The Distinction: The Unique Nature and Purpose of the Juvenile Justice System

The juvenile justice system is fundamentally distinct from the adult criminal system, rooted in a different philosophy, and operates through unique processes designed specifically for young people.⁵ Understanding these core distinctions is vital to appreciating why using juvenile records in other contexts, particularly immigration, is so problematic. The original concept behind the juvenile court, first established in 1899 in Cook County, Illinois,⁶ was to address the *needs* of the young people, rather than focusing solely on the *deed*.⁷ This marked the beginning of a rehabilitative court specifically for youth. While there has always been a tension between social welfare goals and social control (i.e., punishment/public safety) within the system, and this balance has shifted over time and across jurisdictions, the underlying legal framework remains distinct.⁸

Recognition of Developmental Differences

The central principle characterizing the juvenile justice system is the recognition that children and adolescents are developmentally different from adults.⁹ Philosophers, educators, and parents have understood this for centuries, and recent scientific research, especially focused on the adolescent brain, has reinforced this understanding.¹⁰ Scientific evidence consistently shows that adolescence is a distinct, transient period of human development.¹¹

Key cognitive and behavioral features mark this stage, including differences in brain structure and function, increased experimentation and risk-taking, heightened sensitivity to peer influence, poor self-control, and a tendency to prioritize immediate rewards over long-term consequences.¹² These developmental factors mean juveniles typically have diminished culpability compared to adults and possess a greater capacity for change and rehabilitation.¹³

The U.S. Supreme Court has endorsed this science, concluding time and time again that youth are “categorically less culpable”¹⁴ for their misconduct, even that which causes serious harm.¹⁵ In the first of a series of cases regarding juvenile sentencing, the Court acknowledged that youth possess a “lack of

maturity and an underdeveloped sense of responsibility . . . [which] often result in impetuous and ill-considered actions and decisions.”¹⁶ Scientific studies have repeatedly demonstrated that the ability to make sound judgment does not develop until the early to mid-twenties.¹⁷ In *Miller v. Alabama*, the Court noted that adolescents can be expected to exhibit “transient rashness, proclivity for risk, and inability to assess consequences”¹⁸ and that courts must consider the malleability of these characteristics. The Court has affirmed that “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.’”¹⁹ As a result, the Supreme Court instructs that criminal conduct as a young person shall not be considered indicative of adult character and behavior.²⁰

Applying research and knowledge on adolescent development is necessary for designing a just and effective juvenile justice system and provides an empirical basis for its renewal and existence.²¹ This scientific understanding reinforces the normative foundations of the juvenile court and is increasingly being used to inform policy and practice.²² Equating juvenile misconduct to adult criminal behavior for any immigration determination disregards this crucial difference.

Distinct Processes and Procedures

The processes and procedures within the juvenile justice system are deliberately designed to be different from those in the adult criminal system.²³ The historical aim was to divert children and youth from the destructive punishments of criminal courts.²⁴ Instead of focusing solely on the offense, the system was intended to focus on the child as an individual in need of assistance.²⁵ Early juvenile court proceedings were designed to be informal, granting juvenile court judges significant discretion to act in what they perceived as the child’s best interests.²⁶ While the system has evolved and incorporated constitutional rights like the right to counsel, some procedural aspects remain distinct; for example, the juvenile court typically eschews jury fact-finding in favor of a less adversarial approach focused on protecting the youth and their best interests.²⁷

Crucially, the language used within the juvenile justice system underscores these differences. Proceedings relate to “delinquent acts” and result in “juvenile adjudications,” not “crimes” or “criminal convictions.”²⁸ If found responsible for a delinquent act, a youth is “adjudicated delinquent,” not “guilty.”²⁹ In states like Illinois, statutes explicitly declare that a juvenile adjudication is *never* to be considered a conviction, nor an adjudicated individual a criminal.³⁰ The system is complex and varies significantly by state, encompassing police, court intake workers, prosecutors, defense attorneys, judges, probation officers, and various institutions and programs.³¹ It operates like a funnel, with many cases diverted or handled informally before formal adjudication.³²

Accountability and Consequences

While the adult criminal court focuses on punishment that fits a crime, juvenile courts prioritize providing support and treatment for children. Accountability is a stated goal of the juvenile justice system, alongside preventing reoffending and treating youth fairly.³³ However, accountability in this context is intended to be developmentally appropriate and integrated into a rehabilitative approach.³⁴ The consequences imposed, or “dispositions,” are more flexible than adult sentences and are meant to be tailored to the individual youth’s needs and circumstances, often identified through risk/needs assessments.³⁵ The aim is to promote healthy social learning, moral development, and legal socialization.³⁶

The system utilizes a continuum of interventions, emphasizing graduated responses with incentives and sanctions.³⁷ The overarching goal in determining a disposition is to select the *least restrictive* option that can provide community safety, hold the youth accountable, help them learn new attitudes and competencies, and repair the damage caused by the offense.³⁸ This involves considering alternatives to secure detention and confinement, which are intended to be used sparingly and primarily for serious reoffending.³⁹ Accountability practices, if implemented in a developmentally informed way, can foster positive legal socialization; conversely, unduly harsh interventions or negative interactions with system officials can undermine respect for the law and reinforce a negative identity.⁴⁰ Taken together, the system aims to hold youth accountable without creating collateral consequences that will impede their transitions into adulthood.⁴¹

Confidentiality and Expungement

Another cornerstone of the juvenile justice system is the confidentiality of records and proceedings.⁴² Early juvenile court proceedings were closed to the public, and records were intended to remain confidential.⁴³ The purpose of this confidentiality is crucial: to prevent the labeling and stigmatization that could interfere with a child’s rehabilitation and reintegration into society.⁴⁴ By keeping records confidential, the system aims to protect youth from significant handicaps that a public record could create later in life.⁴⁵

Furthermore, every state provides options for youth to seal or expunge their juvenile records for this same reason—recognizing that what occurs in adolescence is not indicative of a youth’s character and should not have any bearing on their future. The juvenile court is vested with the authority to determine what information about juvenile detentions or adjudications should be released, and this decision is guided by the youth’s best interests and supported by the presumption of innocence.⁴⁶ Avoiding the public release of juvenile records through confidentiality and expungement is explicitly recognized as

a way to prevent collateral consequences that reduce opportunities for youth in their adult life.

Referral for Adult Prosecution Where Appropriate

All states have mechanisms for transferring certain juveniles accused of serious offenses into adult criminal court. In some states, certain offenses automatically trigger a transfer. In most states, however, a juvenile court judge has the discretion to transfer based on consideration of factors such as the juvenile's age and their amenability to rehabilitation in the juvenile system. The fact that a juvenile remains in the juvenile justice system despite the availability of transfer indicates that the legislature or the court has determined the youth, either categorically or individually, lacks the culpability necessary for criminal liability and is appropriate for the more informal and rehabilitative juvenile system.⁴⁷

The Problem: No Precedent Supports the Use of Juvenile Records for Conduct-Based Admissibility⁴⁸ or as a Matter of Discretion⁴⁹

Despite the distinct nature and purpose of the juvenile justice system, a significant problem arises when records from this system are used in federal immigration proceedings. Currently, no established legal precedent requires or supports using state juvenile justice records as evidence to trigger these conduct-based grounds nor does the case law support using juvenile records in discretionary determinations. Immigration adjudicators frequently rely on inapt existing case law that fails to incorporate the contemporary understanding of juvenile law and its paradigm shift.

No Precedent Requires the Consideration of a Juvenile Justice Record as a Matter of Discretion⁵⁰

Since 1978, the Board of Immigration Appeals (BIA) has relied on “a framework for an equitable application of discretionary relief.”⁵¹ The seminal framework laid out in *Matter of Marin* involves a balancing of equities against adverse factors that 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 or undesirability as a permanent resident of this country.⁵²

Importantly, this framework does not include consideration for any and every act or aspect of a respondent's or applicant's past behavior. Instead, *Marin* lays out "a framework for an *equitable* application of discretionary relief" via specific factors for consideration. The factors from *Marin* are repeated throughout case law and in the USCIS policy manual as appropriate factors for consideration in the equitable determination of discretion. While the list above may be interpreted not to be exhaustive, we argue that for discretion to be "equitable" it must pull from a factor in *Marin* or other factor highlighted in law or policy none of which include juvenile justice records.

The relevant *Marin* adverse factors applicable to youth with prior misconduct appear to fall under the rubric of "criminal history" or "other evidence indicative of a respondent's *bad character*." However, juvenile records, because they do not address "criminal matters," are not appropriate indicators of "criminal history." Because the nation's juvenile justice 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 those of the adult criminal justice system.

Take the Illinois Juvenile Court Act, which 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 "[a] juvenile adjudication shall never be considered a conviction *nor shall an adjudicated individual be considered a criminal*" (emphasis added). In California, the juvenile code states that "[a]n order adjudging a minor to be ward of the juvenile court shall not be deemed a conviction of a crime *for any purpose*, nor shall a proceeding in the juvenile court be deemed a conviction of a crime."⁵³ The judiciary further solidified this intent by reiterating that "a court can never actually convert a juvenile proceeding into a criminal one, nor transform the conduct that led to a minor's wardship into either a felony or misdemeanor. In such an action, *a minor is not charged with a crime, tried for a crime, nor convicted of a crime*."⁵⁴ This suggests that behavior underlying the delinquency under such statutes should also not be considered "criminal" for purposes of discretion. At the time of this writing, over a quarter of all juvenile codes, similar to the Illinois code cited here, expressly forbid the use of juvenile arrests *and* dispositions to be conflated with the term "criminal" or impose any civil disability.⁵⁵ Even in states that lack this explicit language, juvenile adjudications are generally not treated as equivalent to criminal convictions.⁵⁶

Nonetheless, immigration adjudicators often rely on the proposition that "mere arrests"⁵⁷—when there is a record of law enforcement contact, but no determination of guilt by a court—can be considered as part of the criminal history. For an adult, "mere arrests" *may* be considered to determine whether

there is “evidence of criminal conduct which has not culminated in a final conviction” but which may nevertheless be considered in discretionary determinations.⁵⁸ For youth, however, this has often meant that, even where an arrest does not result in a finding of delinquency, adjudicators nonetheless review that arrest and the underlying conduct absent a developmentally appropriate lens.⁵⁹ This record is captured under the rubric of “criminal history.” However, depending on the state, the conclusion that these records are criminal records may be wholly incompatible with state law. This is particularly true for states in which juvenile justice statutes contain the express language forbidding the equation of juvenile adjudications under the act with “criminality.”⁶⁰

Using juvenile arrests, adjudications, or dispositions as evidence of bad character is in direct conflict with the purpose and design of the juvenile justice system. The system is premised on the understanding that youth are uniquely capable of change. In fact, the United States Supreme Court, in decisions discussed above, 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.”⁶¹ As a result, the Supreme Court has found that “incorrigibility is inconsistent with youth,”⁶² 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.”⁶³

This developmentally appropriate lens for misconduct of children and youth suggests that juvenile contacts with law enforcement and juvenile delinquency adjudications, without any further indication of incorrigibility, should not be used to find that an applicant for an immigration benefit possesses “bad character.”

No Precedent Requires the Consideration of Juvenile Justice Records in Screening for Conduct-Based Grounds of Inadmissibility

The government and advocates alike often suggest that juvenile delinquencies can be used in determinations related to inadmissibility, for example, drug trafficking, which requires no conviction but is merely based on past conduct. The legal precedent typically cited for the proposition that delinquency can support the conduct-based grounds of inadmissibility is misconstrued and consistently misapplied (and is often entangled with discretionary decisions). This stems from a fundamental misunderstanding of the difference between youthful offender proceedings and delinquency proceedings. Recall at the outset of this article, that we are defining “youthful offender” consistent with a federal definition under the U.S. Sentencing Guidelines.⁶⁴ These are not necessarily cases that proceed under state juvenile systems. Specifically, the federal statute at issue in *Matter of Favela* in 1979 drew a distinction between youthful offenders—those between the ages of 18 and 22—and juvenile

delinquents—those under the age of 18. The following cases, often cited as precedent, *do not deal with delinquency systems but instead youthful offender status determinations*.

The case most often cited for the proposition that juvenile offenses can be considered for purposes of admissibility in immigration cases is the 1979 BIA decision in *Matter of Favela*.⁶⁵ Favela had been *convicted* of trafficking marijuana under the Federal Youth Corrections Act (YCA) of 1950.⁶⁶ In short, the BIA allowed an expunged YCA conviction for trafficking in marijuana to be used as evidence that the respondent could be deported. In doing so, the BIA indicated that the evidence could come in because it was conducted pursuant to a separate *criminal* proceeding that might demonstrate immigration law consequences should apply.

This precedent is cited by government officials and advocates alike for the proposition that juvenile court records can similarly be permitted in immigration adjudications. In fact, a training manual⁶⁷ for practitioners asserts that, pursuant to *Matter of Favela*, juvenile offenses can be considered for drug trafficking offenses: “Thus, a juvenile delinquency adjudication involving one of these offenses could support a finding of inadmissibility.”⁶⁸ Favela did not plead guilty to drug trafficking in a juvenile proceeding. Favela was involved in a federal criminal court proceeding that applied a youthful offender lens after the conviction. Advocates appear to reach this conclusion by conflating a youthful offender statute with “juvenile offenses.”

The YCA—the underlying statute of conviction in *Favela*—is from 1950 and was repealed in 1984.⁶⁹ More importantly, however, the statute applied to youthful offenders, defined as those between the ages of 18 and 22.⁷⁰ Those under the age of 18 were subject to a different federal law: the Federal Juvenile Delinquency Act (FJDA).⁷¹ Although this case is cited for the proposition that juvenile offenses can support the conduct-based grounds of inadmissibility, there is nothing in the case that specifically addresses the unique circumstance of juvenile delinquency. The BIA explained in *Favela*, “even where a criminal complaint has subsequently been dismissed, an alien could be excluded . . . when the immigration officer had reason to believe that the alien was a trafficker.” However, this line of reasoning was only applied in the context of a youthful offender (ages 18 to 22) who had been convicted of a crime. There has been no specific consideration of this in the context of juvenile delinquency.

Additional Case Law Inaptly Citing Youthful Offenses for the Proposition That Juvenile Records Can Be Reviewed in Immigration Proceedings

The other oft-cited case by practitioners and government officials is *Wallace v. Gonzalez*.⁷² Here, advocates again conflate juvenile justice encounters with youthful offenders. The existing guidance to practitioners explains: “A finding

of juvenile delinquency still could have adverse consequences for a noncitizen. First, it could be considered an adverse factor if the juvenile applies for any discretionary benefit under the immigration laws, such as adjustment of status to that of a lawful permanent resident.”⁷³ Here again, we have an example of an advocate’s manual that cites youthful offender case law for the proposition that juvenile justice records can be reviewed in discretion.

For purposes of distinguishing our arguments and for reasons discussed above, we draw a distinction between youthful offender statutes and juvenile delinquency statutes under state law. We recognize that some youthful offender state statutes, including an adjudication of a youthful offender status pursuant to Article 720 of the New York Criminal Procedure Law (as cited by *Wallace* and again in *Devison*) may be tantamount to a juvenile delinquency adjudication under the FJDA.⁷⁴ However, the comparison to a state juvenile justice proceedings remains inapt. In *Devison*, the BIA explained that “[t]he FJDA makes it clear that a juvenile delinquency proceeding results in the adjudication of a status rather than conviction for a crime.”⁷⁵ In this case, the BIA had to compare New York’s youthful offender adjudication procedures to the juvenile delinquency provisions contained in the FJDA. Nothing in *Devison* or *Wallace*, however, suggests that juvenile encounters, processed under the state juvenile justice system, can be considered for purposes of discretion or conduct-based grounds of inadmissibility. In fact, juvenile delinquents under New York state law proceed under the jurisdiction of family courts and are not processed through criminal courts, as opposed to youthful offenders. Thus, the same policy arguments simply do not apply.

Instead, *Wallace* holds the following with respect to youthful offenders under New York law:

Indeed, although our research has not revealed a precedential opinion of the Board directly on point, BIA practice suggests that the Board believes juvenile offenses not counting as “convictions” under the immigration law may nonetheless be considered when determining whether an alien merits discretionary relief. *See, e.g., In re Mendez-Morales*, 21 I. & N. Dec. 296, 301 (B.I.A.1996) (stating that factors relevant to grant of discretionary relief include, inter alia, “*the existence of a criminal record* and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien’s bad character or undesirability as a permanent resident of this country”) (emphasis added); *In re Morales-Castillo*, 2005 WL 3802090 (B.I.A. Dec. 8, 2005) (unpublished) (“recognizing that the respondent has not been convicted of a crime,” yet finding “the underlying basis for the [*juvenile*] respondent’s authorized confinement to be a significant adverse factor”). Because the purpose of adjustments of status is to provide worthy aliens with special relief, *we see no reason to prevent an IJ or the BIA from considering an applicant’s anti-social conduct-whether*

*leading to a conviction, a Youthful Offender Adjudication, or no legal judgment whatsoever—as an adverse factor in evaluating an application for discretionary relief.*⁷⁶

Setting aside the Second Circuit's failure to recognize children and youth as distinct from adults in assessing their behavior in a manner that is consistent with the Supreme Court's decision in *Miller*, this decision says nothing about juvenile delinquency adjudications. Instead, it speaks to the New York statute for rendering youthful offender determinations. The *Wallace* case is *not* dispositive of the inquiry as to whether or not a juvenile delinquency adjudication—which is not criminal by definition or procedure—can be considered as a discretionary factor or a factor on conduct-based inadmissibility.

Moreover, the applicant's "anti-social conduct—whether leading to a conviction" cannot be applied to juvenile delinquencies. This reasoning flies in the face of the public policy behind a juvenile delinquency adjudication and is in conflict with both social science and Supreme Court precedent. Namely, social science suggests that delinquency is not a reliable indicator of anti-social behavior. Indeed, New York's statutory framework endeavors to dispel this myth by automatically sealing youthful offender adjudications. This says nothing of New York's public policy reasoning for treating juvenile delinquents, whose cases are decided in family court, as not having engaged in criminal conduct. Lastly, it ignores the Supreme Court's plain language that "youth is not incorrigible."⁷⁷

The *Wallace* analysis in the excerpt above cites *In re Morales-Castillo* for the proposition that, even if a child has not been convicted of a crime, "the underlying basis for the [juvenile] respondent's authorized confinement [can be] a significant adverse factor [in a discretionary consideration]."⁷⁸ To be clear, this language does not state that *all* juvenile adjudications should be considered. Rather, the *unpublished decision* in *Morales-Castillo* cites that the underlying basis for "authorized confinement" in a juvenile's case could be explored as a matter of discretion. In any juvenile system, it is unusual for a youth to be "confined." The underlying conduct in the *Morales-Castillo* case involved murder:

We reach this [adverse discretionary] determination recognizing that the respondent has not been convicted of a crime.... The respondent has not been convicted of the offense of murder. Instead, the respondent spent approximately 8 years, from April 1995 until he was released in February 2003, under the jurisdiction of the California Youth Authority (CYA). The documents placing the respondent under the authorized confinement of the California Youth Authority reflect that he was born on February 3, 1978 (rather than June 5, 1980, as found by the Immigration Judge), and that his confinement would expire, based upon his age (i.e., 25) on February 3, 2003. The juvenile

court's finding that the respondent's offense was a felony required his commitment to the CYA until the age of 25. See Cal. Welf. & Inst. Code, § 1771. See also Cal. Welf. & Inst. Code, §§ 607(b) and 1769(b). In addition, the underlying basis for the respondent's commitment was his violation of Penal Code section 187(a), murder, a first degree felony, with a base term of 25 years and a total of life. We find the underlying basis for the respondent's authorized confinement to be a significant adverse factor.⁷⁹

In *Morales-Castillo*, the BIA states plainly that they are not looking into this case because he was adjudicated under a non-criminal statute, but rather because he was committed to confinement based on his violation of Penal Code section 187(a), murder, a first-degree felony, with a base term of 25 years to life.

To summarize our concerns with *Wallace* and the cases it relied on. (1) *Wallace* is a decision related to a youthful offender statute under New York law that seeks to authorize the BIA to consider a youthful offense in a discretionary matter. It does not rely on juvenile justice records but records emerging from a criminal court that redetermined the youth to be a "youthful offender." (2) The case uses the youthful offender record to show anti-social behavior. Using juvenile justice records alone to demonstrate anti-social prospective behavior is at odds with Supreme Court guidance on youth and incorrigibility. (3) *Wallace* relies on the *Marin* factors, restated under *Mendez Morales*,⁸⁰ to include the "existence of a criminal record," which we have established above that cases moving through juvenile systems are categorically not criminal in nature.

The above case law, though cited by both the government and advocates alike, is inapt. There is no judicial precedent to suggest that juvenile delinquencies can or should be considered in discretion or pursuant to an assessment for conduct-based grounds of inadmissibility. There is sufficient discussion in juvenile justice frameworks, however, to foreclose consideration of juvenile contacts with law enforcement, handled under a juvenile justice system, from being considered on discretion and for conduct-based inadmissibility.

The Inappropriate Use of "Mere Arrests" and Other Non-Adjudicated Conduct

Another particularly concerning aspect of the inappropriate use of juvenile records is the use of "mere arrests"⁸¹ or contacts with the juvenile justice system that do not even result in a formal adjudication. Utilizing records of these encounters, without a determination of responsibility or delinquency, to impose civil disabilities⁸² like immigration consequences directly contravenes the principles and statutory language of state juvenile court acts, such as Illinois', which explicitly states that a youthful offender adjudication is not a conviction and does not impose civil disabilities.⁸³ It also disregards the

juvenile justice system's developmentally informed determination that the child should not bear any liability for the underlying acts.

Additionally, because the juvenile justice system is designed to prioritize support over punishment, juvenile adjudicators are guided—or even required—to consider less restrictive dispositions such as informal supervision, probation, or diversion programs, and craft a response informed by the youth's needs rather than a judgment of their actions.⁸⁴ This means that contact with law enforcement does not necessarily lead to involvement with the juvenile justice system. An arrest may simply indicate that law enforcement encountered a youth (via the arrest) and identified a need that could be better addressed through the community-based or educational services provided through the juvenile justice system.

Why Applying Conduct-Based Inadmissibility Grounds to Children Is Deeply Problematic.

Applying conduct-based grounds of inadmissibility, typically designed to screen harmful behavior by adults, to actions taken by children and youth is problematic. These grounds often relate to issues like prostitution, drug offenses, or mental and physical disorders that pose a danger. Without diving into all of the conduct-related grounds of inadmissibility, we highlight the drug trafficking and prostitution-related grounds as demonstrative on the impropriety of mapping an adult legal design onto a child.

Drug Trafficking Example

The “reason to believe” ground of inadmissibility in the Immigration and Nationality Act (INA) § 1182(a)(2)(C) is particularly problematic when applied to youth. This ground of inadmissibility provides that a person is inadmissible if the government has “reason to believe” that the individual is or has been an “illicit trafficker in any controlled substance.”⁸⁵ The term “illicit trafficker” is not defined in the statute. The statute does not explicitly provide for different treatment based on age. If applied to juvenile records, this could mean that even a juvenile arrest or adjudication without a finding of guilt could be used as evidence that the child or youth is a drug trafficker and result in the denial of immigration benefits without an age-appropriate analysis of the conduct. An age-appropriate lens would take into account issues of knowledge, intent, capacity, and defenses such as duress. These considerations are relevant to any case that remains in juvenile court instead of being transferred to adult criminal court.

The cases routinely cited to support the proposition that juvenile records could be used to demonstrate a child or youth is an “illicit trafficker” are inapt. *Matter of Rico* and *Matter of Favela* do not concern matters arising out of state

juvenile delinquency. Instead, the cases review criminal prosecutions that were committed by minors. In *Matter of Rico* (1977), the court used the record of Rico's testimony to a Drug Enforcement Administration agent obtained via a federal criminal prosecution that was dismissed.⁸⁶ In *Matter of Favela* (1979), the court analyzed a statute from 1954 that reduced sentencing for "youthful offenders" but was nonetheless a criminal prosecution.⁸⁷ Neither case analyzes facts arising out of a juvenile justice record. Moreover, both emphasize the fact that the respondent *knowingly and consciously* participated in illicit trafficking, something that may not be applicable in juvenile proceedings where youth are presumed not to have the same capacity or level of culpability as adults (this is particularly important where the INA fails to define "illicit trafficker" and the *mens rea* necessary for such an offense).

No immigration case has yet addressed whether youth conduct (even youth conduct resulting in an adjudication) processed through a juvenile justice system would be sufficient to meet the "reason to believe" standard. Because of the legally recognized diminished capacity of youth and the purpose of juvenile justice systems across the nation, it is incongruous with state laws and public policy to permit children and youth to be subject to the vagueness of this ground of inadmissibility. Juvenile delinquency is treated differently by federal⁸⁸ and state juvenile law and is already recognized as fundamentally different through immigration case law, which does not permit juvenile delinquency adjudications to be equated with convictions. The BIA already recognized that we cannot simply map the adult criminal justice system over the juvenile system when it held that juvenile delinquency is *not* a conviction for immigration purposes.⁸⁹

Prostitution Example

People who are coming to the United States to engage in prostitution or who within the past ten years have "engaged in prostitution" are inadmissible under the prostitution ground. So are people who work with them in the business, who benefit from the proceeds of prostitution, or who come to the United States to engage in other forms of commercialized vice.⁹⁰ Prostitution is defined as offering sexual intercourse (as opposed to other lewd acts) for a fee.⁹¹ This provision will apply even if the person engaged in prostitution is in a jurisdiction where it is legal.⁹² While no conviction is required for this finding, one or more convictions for prostitution can serve as evidence. A single act of prostitution does not amount to engaging in prostitution under this provision. Rather, "prostitution" is defined as engaging in a pattern or practice of sexual intercourse for financial or other material gain.⁹³

To penalize a child who engaged in prostitution is completely at odds with how most states and their juvenile justice systems view and respond to this circumstance.⁹⁴ Moreover, it is at odds with immigration law's treatment of commercial sex by minors in the context of trafficking victims. Importantly,

to prove eligibility for T nonimmigrant status—a form of immigration relief for survivors of trafficking—any commercial sex act by a minor is considered a “severe form of trafficking”; there is no need to show force, fraud, or coercion.⁹⁵ It defies logic for immigration authorities to continue to screen out for immigration benefits people who are survivors of child sex trafficking, not perpetrators. It also highlights the proposition that the adult immigration system, including conduct-related grounds of inadmissibility, cannot simply be mapped onto a juvenile encounter with law enforcement.

The Effect: Utilizing Juvenile Records in Immigration Proceedings Harms Youth

The use of juvenile records in immigration proceedings has real-life consequences for children and youth. Despite the distinct legal and philosophical underpinnings of the juvenile justice system and the lack of clear precedent supporting the use of juvenile records for conduct-based inadmissibility and as a matter of discretion, the practice of utilizing these records in federal immigration proceedings is occurring and has significant, detrimental effects on youth. This not only contravenes the intended protective nature of the juvenile justice system but also results in substantial negative consequences for young people seeking immigration benefits or facing removal.

Denial of Immigration Benefits and Deportation

Perhaps the most severe and direct consequence of using juvenile records in immigration proceedings is the denial of immigration benefits and, in some cases, deportation. Immigration adjudicators rely on juvenile delinquency records, sometimes exclusively, to deny cases as a matter of discretion.

Case examples highlight this issue. From 2021 to 2024, the Center for the Human Rights of Children at Loyola University Chicago School of Law conducted an in-depth review of immigration cases from across the country, collected by our partner organizations at the National Immigrant Justice Center, the Immigration Center for Women and Children, and the Immigrant Legal Resource Center, to understand how juvenile delinquency records were used in immigration benefits adjudications.⁹⁶ The review revealed a concerning pattern: USCIS officers were relying inappropriately and sometimes exclusively on underlying juvenile delinquency records to deny discretionary immigration benefits. Adjudicators frequently cited immigration case law, such as *Paredes-Urrestarazu v. USINS* and *Matter of Thomas*, to support the proposition that they could consider “adverse conduct” or “criminal conduct” even in the absence of a formal conviction.⁹⁷

Participants reported that the use of juvenile records in adjudications universally resulted in receiving a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) requesting records for an arrest(s), charge(s), or adjudication(s) that were handled in the juvenile justice system, or had received a denial because of an arrest(s), charge(s), or adjudication(s) that was handled in the juvenile justice system. Twenty-one survey responses were obtained, corresponding to various types of immigration cases, most commonly U visas, Special Immigrant Juvenile Status–based adjustment of status, and naturalization. The survey results demonstrated that RFEs/NOIDs requesting documentation of juvenile interactions with law enforcement are common, and that these requests often result in delays in adjudication and mixed results in the outcomes, with many cases still pending, others denied, and others ultimately approved. This routinely leads to delays in adjudications, additional legal costs to respond to RFEs and NOIDs, and, in the worst cases, denial of benefits and referral to deportation proceedings—all due to the weight given to juvenile records by adjudicators who treat them the same as adult law enforcement contacts on discretion.

The cases we discovered were heartbreaking. In one case, a young person who had resided in the United States since the age of two and who had U.S. citizen children was denied adjustment of status through 245(m) based explicitly on a juvenile record that did not even result in a formal adjudication.⁹⁸ The records in that case indicated that an arrest for theft was disposed of by the Chicago Police Department with a formal station adjustment, which means that the matter was not even referred to the Office of the State’s Attorney for screening for prosecution. No delinquency petition was ever filed under the Juvenile Court Act, and the matter was closed. Under Illinois law, the officer(s) deciding to close this matter with a station adjustment considered the applicant’s history, his culpability, and the facts of the current alleged offense and determined that referral of this arrest for prosecution was not necessary in light of his age, stage of development, and level of culpability. Nonetheless, years later, that young person was denied lawful permanent residence in the United States, leaving them vulnerable to deportation, especially under the current administration.

In another concerning situation, an adolescent was removed from their mother by the Department of Homeland Security (DHS) based on contacts with juvenile law enforcement and was designated an “unaccompanied alien child” to facilitate their deportation.⁹⁹ These actions underscore how juvenile records are employed punitively in immigration proceedings, directly impacting a young person’s ability to obtain legal status, remain free from custody or in their parent’s care, or even to remain in the country at all.

In yet another case, an adjustment under 245(h), as a special immigrant juvenile, pended for six years due to requests for evidence related to a juvenile adjudication that had been sealed by the juvenile court in California. The case was subject to six different RFEs, some from different offices (local and

national) before finally being approved after advocacy with DHS headquarters. The RFE's were for sealed records that could not be unsealed due to state court procedures. The requests were designed to evaluate conduct as "criminal conduct" yet had been handled through juvenile systems. The RFEs were then duplicated by local offices after moving on from the national centers.

Defying the Purpose of the Juvenile Justice System

A core conflict arises when juvenile records are used against them in immigration proceedings. The juvenile justice system is specifically designed to provide care, treatment, and guidance to rehabilitate youth, recognizing their diminished culpability and greater capacity for change compared to adults.¹⁰⁰ This perspective is supported by advancements in the science of adolescent development, which provides an empirical basis for understanding the unique cognitive and behavioral features during adolescence, such as poor self-control and sensitivity to peer influence.¹⁰¹ Treating contacts with the juvenile justice system the same as adult arrests and convictions ignores decades of research and legal evolution recognizing that "incurability is inconsistent with youth."¹⁰²

State legislatures enacting juvenile justice statutes often include rehabilitative measures, such as expungement or record erasure provisions.¹⁰³ These measures aim to give youth a fresh start, free from the stigma and collateral consequences of past actions, thereby aiding their successful transition into adulthood.¹⁰⁴ When immigration law fails to honor these state-level expungements and uses these records punitively, it frustrates the legislative intent behind state juvenile justice systems and denies noncitizen children the meaningful opportunity for rehabilitation that courts have deemed constitutionally required.¹⁰⁵ In other words, it frustrates the juvenile justice goal of giving these children a second chance.

Violation of Confidentiality and State Law

In addition to defying the purpose of state law, using juvenile records often violates confidentiality principles and state laws specifically governing juvenile records. Most state statutes include measures to protect the confidentiality of juvenile records to prevent labeling and stigmatization, recognizing that this protection is crucial for supporting rehabilitation and the successful transition into adulthood.¹⁰⁶ State laws often also include provisions for sealing or expunging records to allow for a "fresh start."¹⁰⁷ This opportunity for a second chance is a core purpose of the juvenile justice system.

Despite these state-level protections, immigration practitioners report that DHS and the Department of Justice are treating juvenile records the same as adult records. Requests for confidential juvenile records are reportedly

made based on vague information, even when the state seals these records.¹⁰⁸ Furthermore, these records are subsequently misused to penalize children and youth. In one reported instance, a youth's juvenile record was entered unredacted into the immigration court record, violating state law governing such records' confidentiality and disclosing multiple third-party children's names in the process.¹⁰⁹ This practice of obtaining and using records in contravention of state confidentiality statutes directly defeats the legislative intent behind such provisions.¹¹⁰

Delays and Increased Legal Costs

Requesting juvenile records also leads to significant practical hardships for youth and their legal representatives. The widespread use of juvenile records by USCIS contributes to substantial delays and increased legal costs for many young applicants seeking immigration benefits. For example, a youth's adjustment of status application was significantly delayed due to repeated requests for evidence related to sealed juvenile adjudications, even after applying under provisions designed explicitly for immigrant youth.¹¹¹ Navigating these requests, obtaining access to often confidential or sealed records, and attempting to mitigate the potential negative impact of juvenile history adds considerable complexity and expense to immigration cases.

Conclusion and Recommendations

The preceding sections highlight the critical and deeply problematic intersection between the U.S. juvenile justice systems and federal immigration proceedings. At its core, the issue is the inappropriate use of juvenile delinquency records in immigration adjudications, a practice that occurs despite the clear and distinct legal and philosophical underpinnings of the juvenile justice system compared to the adult criminal system and despite the guidance of the U.S. Supreme Court related to youth and culpability. The juvenile justice system is rooted in the understanding that children and adolescents are fundamentally different from adults and has an explicit purpose to provide care, treatment, and guidance that facilitates a youth's successful reintegration into society without the lifelong stigma and civil disabilities associated with adult criminal convictions.¹¹²

However, U.S. immigration law largely lacks provisions distinguishing children and adults, with limited exceptions like Special Immigrant Juvenile Status.¹¹³ Crucially, long-standing precedent in immigration law recognizes that juvenile delinquency adjudications are not considered "convictions" for immigration purposes.¹¹⁴ Despite this, immigration adjudicators rely on legal interpretations from cases like *Paredes-Urrestarazu* and *Matter of Thomas* to

consider “adverse conduct” or “other evidence of bad character” even when a formal adjudication is absent, allowing them to improperly consider juvenile delinquency records as they would adult criminal records in discretionary immigration decisions. Immigration courts routinely use juvenile records to reach the determination that youth have anti-social tendencies, despite the Supreme Court guidance that recognizes that a juvenile’s character is not fixed in the same way as an adult’s might be perceived.

The consequences of this misunderstanding are dire and wide-ranging for youth navigating the immigration system. It directly results in the denial of immigration benefits and can lead to deportation, imposing severe, life-altering penalties on youth. It also actively undermines the rehabilitative purpose of the juvenile justice system, effectively nullifying the “fresh start” opportunities afforded by state laws through record expungement and confidentiality. In doing so, immigration adjudicators are directly contravening legislative intent and denying noncitizen children the meaningful opportunity for rehabilitation that courts have deemed constitutionally required before imposing severe penalties. This misunderstanding also indirectly harms youth by leading to significant delays and increased legal costs for youth and their families.

This continued practice represents a profound disconnect between the two legal systems and poses an immediate threat to the well-being and future of vulnerable youth. There is a dire need to end this practice to align immigration policy with the foundational principles of juvenile justice, recognize the unique developmental stage of adolescence, and uphold the rehabilitative goals intended by state legislatures. Allowing immigration authorities to penalize youth based on records from a system designed for care and guidance is not only legally questionable but also morally inconsistent with a society committed to providing youth a genuine chance at a successful future.

End the Practice of Requesting and Utilizing Juvenile Records

USCIS and EOIR must end the practice of requesting and utilizing juvenile delinquency records in immigration proceedings for any purpose, including screening for inadmissibility based on conduct or as adverse factors in discretionary adjudications. Simply put, juvenile records must not be used in immigration proceedings at all.

Ending the use of juvenile records would directly reduce the significant harm currently experienced by immigrant youth. It would prevent denying crucial immigration benefits, such as asylum, Special Immigrant Juvenile Status, or U visas, based on past behavior adjudicated in a system intended for their rehabilitation, not punishment. Ending this practice would also better align immigration policy with the developmentally appropriate advances within the juvenile justice field, promoting more equitable outcomes for noncitizen children, and eliminating the delay and costs associated with improperly requesting and reviewing these records.

Training for Practitioners and Adjudicators

Immigration agencies should develop and implement mandatory training programs for all adjudicators. The current issue surrounding the use of juvenile records in immigration proceedings is partly a result of immigration adjudicators' reported lack of sufficient training and understanding regarding juvenile justice principles and adolescent development. Without proper training, adjudicators are prone to misunderstanding juvenile delinquency records and the underlying behavior, treating them through an adult lens that is legally and developmentally inappropriate, leading to flawed decision-making.

Mandatory, comprehensive training is essential to inform adjudicators of the legal distinctions between the juvenile and adult systems. These trainings should focus on educating adjudicators on adolescent brain development, the distinct legal and policy goals of state juvenile justice systems, the distinction between juvenile adjudications and adult criminal convictions, and the importance of honoring state confidentiality and expungement provisions. Providing adjudicators with a deep understanding of adolescent development and juvenile justice principles can help them make more informed, legally sound, and developmentally appropriate decisions for youth.

The lessons from decades of juvenile justice reform, rooted in developmental science, clearly demonstrate that a person's age matters in determining legal outcomes. Applying severe immigration penalties based on juvenile records completely disregards this critical understanding and imposes consequences equivalent to banishment without acknowledging the capacity for change inherent in youth. Immigration policy must evolve to reflect these principles. Policymakers and immigration officials must take immediate action to end the harmful practice of using juvenile records to ensure that the promise of rehabilitation and a fresh start is not unjustly denied to immigrant youth. These steps are not merely administrative adjustments but essential reforms to protect vulnerable youth and uphold the integrity of both the juvenile justice and immigration systems. We must act now to ensure that a child's past mistake in the juvenile system does not unjustly determine their future in the immigration system because immigrant youth, like all youth, deserve a second chance.

Notes

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1. Diane Geraghty, *Bending the Curve: Reflections on a Decade of Illinois Juvenile Justice Reform*, 36 CHILD. LEGAL RTS. J. 71, 71-89 (2016).

2. NAT'L RSCH. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 89 (Richard J. Bonnie et al. eds., 2013).

3. In re Devison-Charles, 22 I&N Dec. 1362 (BIA 2000). *Devison* does not stand for the proposition that youthful offender convictions are the same as juvenile delinquency adjudications. Instead, the court held that a youthful offender conviction for a 17-year-old under New York law should not be considered a conviction for purposes of immigration law. The Board of Immigration Appeals (BIA) in *Devison* reviewed the New York statute for a juvenile offender, which moves youth 16 to 19 years of age through the criminal courts and criminal code rendering a conviction of guilt before deciding the *status* of the offender as a youthful offender. The BIA determined that the mechanism that decides this status can be viewed as analogous to the status determination of juvenile delinquent under the Federal Juvenile Delinquency Act (FJDA) (which includes youth ages 18 to 21 year of age). Under the FJDA, the decision whether to try an offender under age 21 as an adult considers factors such as age and social background, nature of the offense, extent and nature of prior record, etc. These same factors are used to decide the status of a youthful offender (age 16 to 19) under New York state law after conviction such that the conviction under New York law should be treated like a juvenile adjudication (and not encompassed in the definition of conviction for immigration law purposes). This is not the same as a juvenile delinquency proceeding, which does not take place in a criminal proceeding. In fact, New York state law has a juvenile delinquency process that moves youth through family court, in a non-adversarial juvenile justice setting. We are looking at juvenile justice systems, not convictions that are treated differently based on a post-conviction status determination of "youthful offender." While the records are sealed and other post-conviction protections are triggered to protect youthful offenders, the same juvenile justice considerations simply do not apply. In fact, in light of this confusion, we believe that practitioners are missing the opportunity to argue that adult convictions for youthful offenders ages 18 to 21 should also not be treated as convictions for purposes of immigration law if the youthful offender status follows the FJDA guidance (which applied to youth up to 21 years of age). For example, a 19-year-old youthful offender under the same New York statute analyzed in *Devison* should also have their conviction fit under the "youthful offender/juvenile adjudication" such that it does not fit the definition of "conviction" under the Immigration and Nationality Act because the FJDA applies to 18 to 21 year olds. This is a complex legal analysis reserved for a later article.

4. *Youthful Offender*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/legal/youthful%20offender>. This is also consistent with the U.S. Sentencing Commission's guidance on "youthful offenders in the federal system," which actually includes emerging adults up to 25 years of age. U.S. SENTENCING COMM'N, YOUTHFUL OFFENDERS IN THE FEDERAL SYSTEM 1 (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525_youthful-offenders.pdf.

5. NAT'L RSCH. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 5, 154 (Joan McCord et al. eds., 2001).

6. See Illinois Juvenile Court Act, 1899 ILL. LAWS 131, §1 (establishing the world's first juvenile court in Cook County, Illinois).

7. Juvenile Law Center, *2019 08 07 13 59 Juvenile Justice 101 for Reporters a Conversation with Juvenile Law Center*, YOUTUBE (Aug. 14, 2019), <https://www.youtube.com/watch?v=p6TS88NjGI4>.

8. JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 5, at 5.
9. REFORMING JUVENILE JUSTICE, *supra* note 2, at 19.
10. *Id.* at 89.
11. *Id.*
12. *Id.* at 89-91.
13. See generally Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009 (2003).
14. *Roper v. Simmons*, [543 U.S. 551](#), 567 (2005).
15. *Id.* at 570 (“The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”); see also *Montgomery v. Louisiana*, [577 U.S. 190](#) (2016); *Graham v. Florida*, [560 U.S. 48](#) (2010); *Miller v. Alabama*, [567 U.S. 460](#) (2012); *Jones v. Mississippi*, 593 U.S. 98 (2021).
16. *Roper*, 543 U.S. at 569-70.
17. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. OF CLINICAL PSYCH. 459 (2009); Ezequiel Mercurio et al., *Adolescent Brain Development and Progressive Legal Responsibility in the Latin American Context*, 11 FRONTIERS IN PSYCH. 1 (2020).
18. *Miller*, 567 U.S. at 472.
19. *Montgomery*, 577 U.S. at 207 (quoting *Roper*, 543 U.S. at 569-570 (alterations, citations, and some internal quotation marks omitted)).
20. See *Roper*, [543 U.S. at 551](#).
21. REFORMING JUVENILE JUSTICE, *supra* note 2, at 89.
22. *Id.* at 17.
23. JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 5, at 5.
24. *Id.*
25. *Id.* at 154.
26. *Id.*
27. See *McKeiver v. Pennsylvania*, [403 U.S. 528](#), 545 (1971) (determining that the character of the juvenile court was ideally “an intimate, informal protective proceeding” that is distinct from a criminal proceeding and therefore the presence of a jury could fundamentally transform the nature of the juvenile court).
28. JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 5, at 154.
29. *Id.*
30. 705 ILL. COMP. STAT. 405/1-8(A) (West 2025); see also SARAH J. DIAZ & LISA JACOBS, CTR. FOR THE HUM. RTS. OF CHILD., *THE INAPPROPRIATE USE OF JUVENILE RECORDS IN IMMIGRATION DISCRETION* 2 (2022).
31. REFORMING JUVENILE JUSTICE, *supra* note 2, at 77-79.
32. *Id.* at 87.
33. *Id.* at 322.
34. *Id.*
35. See NAT’L COUNCIL OF JUV. & FAM. CT. JJ., *ENHANCED JUVENILE JUSTICE GUIDELINES* 3, 9-10 (Jessica Pearce ed., 2018) (noting that disposition should be driven “by the specific needs and circumstances of the individual youth”).
36. REFORMING JUVENILE JUSTICE, *supra* note 2, at 185.
37. *ENHANCED JUVENILE JUSTICE GUIDELINES*, *supra* note 35, at 3, 9, 26.
38. *Id.* at 19.
39. *Id.* at 26.

40. REFORMING JUVENILE JUSTICE, *supra* note 2, at 185.

41. *Id.* at 324.

42. JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 5, at 154.

43. *Id.*

44. *Id.*

45. *Id.*

46. ENHANCED JUVENILE JUSTICE GUIDELINES, *supra* note 35, at 1-2.

47. *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 21, 2024), <https://www.ncsl.org/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws>.

48. The term “conduct-based inadmissibility” refers to conduct that will render an individual inadmissible from the United States, but for which a conviction is not required.

49. In all immigration adjudications (with the exception of mandatory relief including withholding, withholding or deferral under the Convention Against Torture), the applicant must show that, in addition to meeting the elements of the case, their request merits a favorable exercise of discretion in order to receive the benefit. *See* *In re Patel*, 17 I&N Dec. 597 (BIA 1980); *In re Edwards*, 201 I&N Dec. 191 (BIA 1990); *In re Marin*, 161 I&N Dec. 581 (BIA 1978).

50. This analysis uses the discretionary determination used in adjustment of status as it is the seminal case on discretion and is replicated across decisions and in the context of multiple USCIS adjudications. *See* U.S. Citizenship and Immigr. Servs., 7 USCIS Policy Manual pt. A, ch. 10 (2025), <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-10>. The same legal arguments can be made for any discretionary determination.

51. *Marin*, 161 I&N Dec. at 584.

52. *Id.* (emphasis added)

53. *See* CAL. WELFARE AND INSTS. CODE § 203 (West 2025) (emphasis added).

54. *See In re Anthony R.*, 201 Cal. Rptr. 299, 302 (Ct. App. 1984) (emphasis added).

55. *See, e.g.*, 705 ILL. COMP. STAT. 405/1-8(A) (West 2025) (“A juvenile adjudication shall never be considered a conviction nor shall an adjudicated individual be considered a criminal. Unless 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.”); CAL. WELFARE & INSTS. CODE § 203 (West 2025) (“An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.”); 42 PA. CONS. STAT. § 6354 (2025) (“An order of disposition or other adjudication in a proceeding under this chapter is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.”).

56. *See, e.g.*, *People v. Corson*, 379 P.3d 288, 298 (2016) (“Simply put, a juvenile adjudication is not a criminal conviction.”).

57. The term “mere arrests” is commonly used to refer to arrests not resulting in a conviction.

58. *In re Thomas*, 21 I&N Dec. 20 (BIA 1995).

59. In fact, nationally, nearly half of juvenile arrests are resolved without the filing of a delinquency petition (in 2021, the latest data available, 45 percent of arrests did not result in a petition). Of the cases in which a court petition is filed, roughly half of those

are resolved or diverted without a finding or adjudication of delinquency. *See Easy Access to Juvenile Court Statistics: 1985-2021*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, <https://www.ojjdp.gov/ojstatbb/ezajcs/asp/process.asp>.

60. *See supra* text accompanying note 55.

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

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

63. *Miller v. Alabama*, 567 U.S. 460, 472 (2012) (internal citations omitted).

64. *See supra* text accompanying note 4.

65. *See In re Favela*, 16 I&N 753 (BIA 1979).

66. Federal Youth Corrections Act, 18 U.S.C. §§ 5005-5026 (repealed 1984).

67. *Immigration Effects of a Delinquency Adjudication*, in Training Manual for Practitioners (UNIV. OF N.C. SCH. OF GOV'T, adapted from SEJAL ZOTA & JOHN RUBIN, IMMIGRATION CONSEQUENCES OF A CRIMINAL CONVICTION IN NORTH CAROLINA (2008)).

68. *See In re Favela*, 16 I&N 753 (BIA 1979) (holding that individuals who pled guilty to drug trafficking in juvenile proceedings are inadmissible as drug traffickers, even though there is no conviction).

69. Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, § 218(a) (8), 98 Stat. 1837, 2027 (1984).

70. Federal Youth Corrections Act, 18 U.S.C. § 5006 (repealed 1984) (defining “youth offender” as “a person under the age of twenty-two years at the time of conviction.”).

71. *Id.* § 5023(b); *see also* Michael J. Fusz, *Probation Under the Federal Youth Corrections Act*, 53 CHI.-KENT L. REV. 79, 81 (1976).

72. 463 F.3d 135 (2d Cir. 2006).

73. *See id.* (upholding BIA and immigration judge’s consideration of noncitizen’s New York *youthful offender adjudication* when evaluating his application for adjustment of status).

74. *In re Devison-Charles*, 22 I&N Dec. 1362 (2000).

75. *Id.* at 1366 (citing 18 U.S.C. §§ 5031-5032).

76. *Wallace*, 463 F.3d at 139 (emphasis added).

77. *Miller v. Alabama*, 567 U.S. 460, 473 (2012) (citing *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. 1968)).

78. *Wallace*, 463 F.3d at 141 (citing *Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996)).

79. *In re Morales-Castillo*, 2005 WL 3802090, *1-2 (BIA Dec. 8, 2005) (unpublished).

80. *In re Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

81. *In re Grijalva*, 19 I&N Dec. 713 (BIA 1988). *See also* *de Fraga Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (“In Matter of Grijalva . . . we held that inasmuch as all relevant factors regarding an alien’s arrest and conviction should be considered in cases involving discretionary relief, police reports concerning circumstances of arrest are appropriately admitted into evidence” and “[t]he fact that an Immigration Judge may consider police reports in ruling on applications for discretionary relief does not, however, mean that such reports should also be considered in determining deportability where the Act mandates a focus on a criminal conviction, rather than on an alien’s conduct.”); *Thomas*, 21 I&N Dec. 20 (BIA 1995).

82. Unless 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. 705 ILL. COMP. STAT. 405/1-8 (West 2025).

83. *Id.* § 405/1-8(A).

84. ENHANCED JUVENILE JUSTICE GUIDELINES, *supra* note 35.

85. Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(C) (2025).

86. 16 I&N Dec. 181 (BIA 1977).

87. 16 I&N Dec. 753 (BIA 1979).

88. Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48). This statute has been determined not to include juvenile adjudications. “Adjudication of a juvenile as a delinquent under the Act is not deemed a conviction of a crime. *United States v. Parker*, 956 F.2d 169, 171 (8th Cir. 1992); *United States v. Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990); *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101-02 (9th Cir. 1980), cert. denied, 449 U.S. 987 (1980); *United States v. King*, 482 F.2d 454, 456 (6th Cir. 1973), cert. denied, 414 U.S. 1076 (1973).”

89. See *United States v. Chambers*, 944 F.2d 1253, 1257 (6th Cir. 1991), cert. denied, 516 U.S. 1139 (1992) (stating that “[a] successful prosecution under the [Federal Juvenile Delinquency] Act does not result in a criminal conviction but rather in an adjudication that the defendant has entered into a state of juvenile delinquency”).

90. See Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(D).

91. *In re Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008); *In re T*, 6 I&N Dec. 474 (BIA 1954); *In re R.M.*, 7 I&N Dec. 392 (BIA 1957); *see also* 22 C.F.R. § 40.24(b) (2025).

92. 22 C.F.R. § 40.24(c).

93. *Gonzalez-Zoquiapan*, 24 I&N Dec. at 549; *T*, 6 I&N Dec. at 474. *See also* 22 C.F.R. § 40.24(b).

94. See *Report Cards on Child and Youth Sex Trafficking*, SHARED HOPE INT’L (2024), <https://reportcards.sharedhope.org/> (indicating that 31 states prohibit the criminalization of child sex trafficking victims for prostitution offenses).

95. 22 U.S.C. § 7102(11); 8 CFR § 214.11(a) (“Severe form of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, *or in which the person induced to perform such act is under the age of 18 years . . .*”) (emphasis added). Ironically, the prostitution ground of inadmissibility still applies to applicants for T nonimmigrant status, but it may be waived if the activities rendering the person inadmissible under the provision were caused by, or incident to, their victimization. Immigration and Nationality Act, 8 U.S.C. § 1182(d)(13)(B).

96. This review was coordinated through the special advocacy efforts of Azadeh Erfani, Director of Policy at the National Immigrant Justice Center, and Jessica Farb, Deputy Director with the Immigration Center for Women and Children, and Rachel Prandini, Managing Attorney with the Immigrant Legal Resource Center.

97. See *Paredes-Urrestarazu v. INS*, 36 F.3d 801, 809 (9th Cir. 1994) (USCIS may consider an applicant’s adverse conduct even in the absence of a conviction”); *see also* *Thomas*, 21 I&N Dec. 20, 20 (1995) (holding that evidence of criminal conduct which has not culminated in a final conviction can nevertheless be considered in discretionary determinations).

98. Case summary gathered during 2021-2024 practitioner survey, on file with author, Sarah J. Diaz.

99. The designation of a youth as an unaccompanied child requires the government to take the child into government custody thereby separating the child from his caregiver and placing him in removal proceedings while in a detention setting. Case summary gathered during 2021-2024 practitioner survey, on file with author, Sarah J. Diaz.

100. *Juvenile Justice*, YOUTH.GOV, <https://youth.gov/youth-topics/juvenile-justice>.

101. See Steinberg, *supra* note 17, at 468-70.

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

103. Rebecca Phipps, *Starting Over: The Immigration Consequences of Juvenile Delinquency and Rehabilitation*, 40 N.Y.U. REV. OF L. & SOC. CHANGE 515, 532-33 (2016).

104. *Id.*

105. *Id.*

106. *Id.*; see also Elizabeth M. Frankel, *Detention and Deportation with Inadequate Due Process: The Devastating Consequences of Juvenile Involvement with Law Enforcement for Immigrant Youth*, 3 DUKE F. FOR L. & SOC. CHANGE 63, 86 (2011) (describing confidentiality as “a mechanism intended to promote rehabilitation and prevent juvenile delinquency proceedings from being used against the child in the future”).

107. Phipps, *supra* note 104, at 532-33.

108. Observations made based on case summaries gathered during 2021-2024 practitioner survey, on file with author, Sarah J. Diaz

109. Case summary gathered during 2021-2024 practitioner survey, on file with author, Sarah J. Diaz.

110. Phipps, *supra* note 104, at 542-43.

111. *Id.* at 104.

112. Phipps, *supra* note 104, at 543.

113. *Id.* at 516.

114. See *In re Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000) (en banc) (holding that this long-standing rule was not altered by the 1996 enactment of a statutory definition of conviction in the INA (citing 8 U.S.C. § 1101(a)(48)(A))).