



CONFIDENTIALITY OF JUVENILE RECORDS IN CALIFORNIA

Guidance for Immigration Practitioners

By Rachel Prandini

I. Overview¹ of California Law²

A. What is Confidentiality and What Does it Cover?

Confidentiality refers to limitations on access to and use of information and documents that are protected by law or policy. In the context of juvenile records from dependency and youth justice³ proceedings, California law states the intent of the legislature that “juvenile court records, in general, should be confidential.”⁴ This declaration reflects a long history of protecting juvenile proceedings and records from disclosure to facilitate the rehabilitation of youth and avoid stigmatization.⁵ In particular, California law makes “juvenile case files” confidential. The juvenile

¹ The Immigrant Legal Resource Center is a national, nonprofit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The mission of the ILRC is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. For the latest version of this practice advisory, please visit www.ilrc.org. For questions regarding the content of this advisory, please contact Rachel Prandini at rprandini@ilrc.org. Thanks to Kristen Jackson, Senior Staff Attorney at Public Counsel, for her insightful input and contributions to this advisory.

² While this advisory focuses on how to handle confidential juvenile records while representing clients at USCIS, California’s confidentiality protections apply equally before the Executive Office for Immigration Review (EOIR).

³ The term “youth justice” proceedings will be used in this advisory to refer to delinquency/juvenile justice proceedings in California.

⁴ Cal. Welf. & Inst. Code § 827(b)(1). Despite this general policy, some limited exceptions to confidentiality have been carved out. See, e.g., Cal. Welf. & Inst. Code §§ 827.2(a) (requiring notice to the county sheriff if the juvenile court finds that a youth has committed any felony); 827.2 (c) (allowing for disclosure of records of an adjudication for an offense under Welfare & Institutions Code section 707, subdivision (b) if the youth is 14 or older); 827.5 (allowing for disclosure of the name of a youth age 14 or older upon request following arrest for a serious felony); 828 (allowing for disclosure of juvenile police records to other law enforcement agencies under certain circumstances).

⁵ See, e.g., *T.N.G. v. Superior Court* (1971) 4 Cal. 3d 767, 775-778; see also *J.E. v. Superior Court* (2014) 223 Cal. App.4th 1329, 1337 (“There is a strong public policy of confidentiality of juvenile records.”). Many other states take similar approaches to their youth justice systems. For example, in Illinois, the Juvenile Court Act emphasizes

case file is defined to cover “a petition filed in a 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 the probation officer’s report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.”⁶ The courts have interpreted the protections of California Welfare and Institutions Code (WIC) Section 827 to apply broadly not only to the documents contained in juvenile records, but also to the information contained in those documents.⁷

California case law has further clarified that Section 827 includes reports and written statements by probation officers and social workers even if these reports or statements were not filed directly with the juvenile court (e.g. if the matter was handled informally) or are produced before juvenile proceedings have commenced (e.g. reports of suspected child abuse),⁸ as well as police reports that never lead to prosecution.⁹

B. Background on California’s Confidentiality Laws and How They Were Applied Unequally Depending on Immigration Status

In California, juvenile confidentiality laws have long been in existence that protect juvenile information and files arising out of dependency and youth justice proceedings from being disclosed without the juvenile court’s permission. This is by design, as the stigma and adverse consequences resulting from the “criminal” label can undermine the rehabilitative purposes and objectives of the juvenile court.¹⁰ Under California’s rubric, only certain individuals and

that “[u]nless expressly allowed by law, a juvenile adjudication shall not operate to impose upon the individual any of the civil disabilities ordinarily imposed by or resulting from conviction.” 705 ILCS 405/1-8(A).

⁶ Cal. Welf. & Inst. Code § 827(e).

⁷ See, e.g., *T.N.G.*, 4 Cal. 3d at 780 (“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”) (emphasis added); see also Cal. Welf. & Inst. Code § 827(a)(4) (“A juvenile case file, any portion thereof, *and information relating to the content of the juvenile case file*, may not be disseminated by the receiving agencies....”) (emphasis added); *People v. Espinoza* (2002) 95 Cal.App.4th 1287 (finding that a foster parent’s testimony in a criminal proceeding about a child in her care did not amount to the inspection of a juvenile case file or information relating to the contents of that file because the foster parent did not have access to the case file, there was no indication that her testimony would be based on information related to that file, and her proposed testimony was based on her personal observations).

⁸ *In re Elijah S.*, (2005) 125 Cal. App. 4th 1532, 1551-1552.

⁹ *T.N.G.*, 4 Cal. 3d at 780 (noting that in a case that did not result in the children being made wards of the juvenile court, “[t]he police department of initial contact may clearly retain the information that it obtains from the youths’ detention, but it must receive the permission of the juvenile court pursuant to section 827 in order to release that information to any third party, including state agencies.”)

¹⁰ *Id.* at 778. For additional information and arguments on the purpose of youth justice systems nationally as well as USCIS’s misuse of juvenile records, see Loyola University of Chicago School of Law, The Center for the Human Rights of Children, *Academic Research and Position Brief: The Inappropriate Use of Juvenile Records in Immigration Discretion* (2022),

agencies—such as court personnel, the district attorney, the young person/subject of the petition and their parents or guardians, and the attorneys for the parties—are given automatic access to juvenile information and files.¹¹ Everyone else must petition the juvenile court to request access to the juvenile court file under WIC Section 827(a)(1)(Q). This petitioning procedure is stringent and requires filing a petition, providing notice to the young person and their family (among others), and finally allowing the juvenile court to determine whether the need for disclosure “outweighs the policy considerations favoring confidentiality.”¹²

While California law never exempted federal immigration officials from having to follow the petitioning process, prior to 2016 many counties argued that there was no explicit statement in the law that releasing information to federal officials was subject to this process. With that rationale, many probation departments reported suspected undocumented youth to Immigration and Customs Enforcement (“ICE”), leading to the initiation of deportation proceedings for such youth, and in the process, violations of California’s confidentiality laws. Although advocates had been working with probation departments to curtail this harmful and unlawful practice for years,¹³ these types of violations continued in many counties. Given the need for clarity in California law on this issue, the legislature passed AB 899, which added Section 831 to the WIC and took effect on January 1, 2016. Section 831 does three main things:

1. Clarifies that juvenile court records and information are confidential regardless of a youth’s immigration status;
2. Makes clear that federal officials do not have automatic access to juvenile court records and must petition the juvenile court in order to be permitted access; and
3. States that a child’s name and immigration status are protected by California’s confidentiality laws and cannot be disclosed without court permission.

With this clarity in the law, it is beyond dispute that probation departments and other county agencies such as child welfare departments¹⁴ cannot share information about suspected

<https://www.luc.edu/law/academics/centersinstitutesandprograms/centerforthehumanrightsofchildren/resourcesandpublications/>.

¹¹ See Cal. Welf. & Inst. Code § 827(a)(1).

¹² Cal. R. Ct. 5.552(e)(5).

¹³ See, e.g., UC Irvine School of Law Immigrant Rights Clinic, *Why Orange County Probation Should Stop Choosing Deportation Over Rehabilitation for Immigrant Youth* (2013), http://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf.

¹⁴ Note that unlike probation departments, child welfare agencies typically share juvenile information with federal immigration officials in order to assist noncitizen youth in their care (for example, by filing an application for special immigrant juvenile status for a child).

undocumented youth in their care with ICE, unless ICE first files a petition with the juvenile court for access to that information.¹⁵

WIC Section 831 also codified case law that had found that juvenile information includes not only the “juvenile case file” as defined in Section 827(e), but also information related to the youth—including name, date or place of birth, and immigration status—that is obtained or created independent of, or in connection with, juvenile court proceedings about the juvenile and maintained by any government agency, including, but not limited to, a court, probation department, child welfare agency, or law enforcement agency.¹⁶ This makes absolutely clear that it is unlawful to share even a youth’s name and suspected immigration status or place of birth with immigration officials, absent a court order.

C. Who Gets Automatic Access to Juvenile Records, and What Can They Do with the Confidential Information and/or Documents They Access?

Pursuant to Section 827(a)(1) of the WIC, the following individuals are permitted to inspect a juvenile case file:

1. Court personnel;*
2. The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law;*
3. The minor who is the subject of the proceeding;*
4. The minor’s parent or guardian;*
5. The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor;*
6. The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action;*
7. The superintendent or designee of the school district where the minor is enrolled or attending school;

¹⁵ It is also possible that the probation department could file a petition with the juvenile court requesting permission to share information with ICE.

¹⁶ See *T.N.G.*, 4 Cal. 3d at 781; *Wescott v. County of Yuba* (1980) 104 Cal. App. 3d 103, 108.

8. Members of the child protective agencies as defined in Section 11165.9 of the Penal Code;*
9. The State Department of Social Services, under certain circumstances;*
10. Authorized staff who are employed by, or authorized staff of entities who are licensed by, the State Department of Social Services, under certain circumstances;*
11. Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor;
12. A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, and certain other people actively participating in the family law case;
13. A court-appointed investigator who is actively participating in certain types of family law proceedings, or a guardianship case involving a minor;
14. A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders;
15. Juvenile justice commissions as established under Section 225;
16. The Department of Justice as the repository for sex offender registration and notification in California;*
17. A probation officer preparing a report for a young person in the Division of Juvenile Justice who has petitioned for an honorable discharge; and
18. *Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.*

The individuals and agencies listed above with an *asterisk* are also permitted to receive *copies* of the case file.¹⁷

Federal immigration officials are not listed among the individuals and agencies that are entitled to automatic access to juvenile court records. Notably, neither are immigration attorneys.

While the above-listed individuals and agencies are permitted automatic access to inspect, and in some cases obtain copies of juvenile case files, Section 827 does not authorize these individuals or agencies to further disseminate juvenile records or information. In fact, Section

¹⁷ Cal. Welf. & Inst. Code § 827(a)(5).

827(a)(4) contains a clear mandate restricting dissemination, stating that: “[a] juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to a person or agency, other than a person or agency authorized to receive documents pursuant to this section.” In other words, even those individuals who have automatic access to juvenile case files are prohibited from disseminating the information or documents to other persons or agencies absent a juvenile court order through the petitioning process described below. The only exception is if the recipients themselves are also automatically entitled to access (and in the case of documents, copies). Section 827(a)(4) further provides that a “juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court,” unless in connection with a criminal investigation or a youth justice or dependency proceeding.

Even individuals who have automatic access to juvenile case files are prohibited from disseminating the records or information contained in those records absent a juvenile court order.

D. What is the Process for All Other Individuals and Agencies to Get Access to Juvenile Records?

Because of the confidential nature of juvenile proceedings, the juvenile court has exclusive authority to determine when and to what extent juvenile records may be disclosed.¹⁸ Accordingly, individuals who are not entitled to automatic access must file a petition pursuant to Section 827(a)(1)(Q). California Rule of Court 5.552 delineates the process to petition the juvenile court for records and information. Rule 5.552 requires that any person or agency seeking to inspect or obtain juvenile records must file a JV-570 Petition for Disclosure of Juvenile Court Records. The JV-570 should identify with some specificity the records being sought (for example, “disposition documents”). It is also important to describe in detail the reasons the records are being sought, assuming the petitioner wants the court to grant the JV-570 petition (for example, “I am the child’s immigration attorney, and I am seeking access to these records to assess his potential eligibility for a form of immigration legal status called U nonimmigrant status.”). The Court of Appeals held in a 2003 case that the superior court had properly denied a petition in

¹⁸ *Cimarusti v. Superior Court* (2000) 79 Cal. App. 4th 799, 803-804; *T.N.G.* 4 Cal.3d at 780 (“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”). The Court of Appeals has made clear that “the juvenile court has exclusive authority to determine the extent to which confidential juvenile records may be released and controls ‘the time, place and manner of inspection.’” *In re Gina S.* (2005) 133 Cal. App. 4th 1074, 1081-1082 (citing *Lorenza P. v. Superior Court* (1988) 197 Cal. App. 3d 607, 611); see also *T.N.G.*, 4 Cal.3d at 778; *In re Keisha T.* (1995) 38 Cal. App. 4th 220, 233 (“The juvenile court has both ‘the sensitivity and expertise’ to make this determination.”).

which a grand jury sought access to certain juvenile court records under Section 827 relating to a dependency action.¹⁹ The Court held that the grand jury had failed to provide adequate information to allow the court to determine that the interests of the grand jury in obtaining the information outweighed the interests behind the confidentiality protections governing juvenile records. The Court noted that “strong public policy...underlies the confidentiality accorded to juvenile proceedings.”²⁰ See additional information about the petitioning process in Section II(e) below, and **Appendix A** for a sample JV-570 petition.

II. California’s Confidentiality Laws in Practice²¹

A. Advocating for Clients whose Confidential Juvenile Court Information is Shared with DHS Despite California’s Confidentiality Laws

When representing immigrant youth who are involved with the youth justice system, advocates should be aware of the potential for probation officials to alert ICE to suspected undocumented youth in their care.²² Although this is unlikely (and illegal) under current California laws, it is important to be in communication with the client’s public defender and ensure that ICE has not been notified of the youth’s detention in juvenile hall. If you find that ICE has been in communication with local youth justice officials—for example, if the public defender discovers that ICE has issued detainer request for your client²³—work with the public defender to assist them in filing a request for a nondissemination order against the probation department (or whatever agency you find has shared your client’s information with ICE). If ICE has not yet met with your client, remind your client not to share any information with ICE, and request to have you or their public defender present.

It is also possible that the Department of Homeland Security (DHS) may attempt to use improperly obtained confidential information against your client in removal proceedings or in their

¹⁹ *People v. Superior Court (Tulare)* (2003) 107 Cal. App. 4th 488.

²⁰ *Id.* at 493.

²¹ Although outside of the scope of this advisory, advocates should also be aware that in cases involving the child welfare system, California law precludes information sharing with ICE pursuant to the federal Parental Interests Directive, unless juvenile court permission is obtained. For more information about ICE’s Parental Interests Directive, see ILRC, *The ICE Parental Interests Directive: How Child Welfare Agencies Can Advocate with ICE to Ensure Fair Treatment of Detained or Deported Parents* (Sept. 2022), <https://www.ilrc.org/the-ice-parental-interests-directive>; ICE, 11064.3: *Parental Interest of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* (2022), <https://www.ice.gov/detain/parental-interest>.

²² It is also possible that probation could alert ICE to immigrant youth in their care who have engaged in deportable conduct.

²³ An ICE detainer request is a request from immigration authorities to local law enforcement to 1) hold someone for 48 hours after the person is eligible for release from criminal custody in order for ICE to arrest them and take custody and/or to 2) notify ICE when the person will be released, so that ICE can apprehend them upon release.

case at U.S. Citizenship & Immigration Services (USCIS). Some examples of how DHS may try to use confidential information or documents against your client include:

- An ICE attorney trying to use against your client evidence of alienage or deportability obtained from documents or information in the juvenile court file or otherwise traced to violations of California’s confidentiality laws;²⁴
- An ICE attorney trying to submit to the immigration court juvenile court minute orders or probation reports as negative evidence bearing on statutory bars or discretion without juvenile court approval; or
- A USCIS officer relying upon these documents in an A file to deny a client a benefit like special immigrant juvenile status-based adjustment of status or asylum.

If DHS attempts any of these actions and you can demonstrate that they obtained the juvenile court records or information without having gone through the juvenile court petitioning process, argue against the admission of this evidence. File a motion to suppress if necessary.²⁵ Argue that the violation of state law results in a Fifth Amendment due process violation, because proceedings are fundamentally unfair when ICE uses evidence that was obtained unlawfully in disregard of state laws designed to protect children, and because this use of juvenile information constitutes a violation of the constitutional right to informational privacy.²⁶ A complete discussion of the grounds and strategies for suppressing illegally obtained evidence is outside of the scope of this advisory. For further information, please see “Strategies for Suppressing Evidence and Terminating Removal Proceedings for Child Clients” by Helen Lawrence, Kristen Jackson, Rex Chen, and Kathleen Glynn (March 2015) (sample motions to suppress included).²⁷

²⁴ See, e.g., *B.R. v. Garland*, 26 F.4th 827 (9th Cir. 2022) (remanding for the agency to reopen proceedings and to afford DHS the opportunity to rebut B.R.’s evidence that DHS’s evidence of alienage was tainted by the alleged violation of B.R.’s privacy rights under California’s confidentiality laws).

²⁵ In the case of a USCIS officer relying upon unlawfully obtained documents, it may not be possible to file a formal motion to suppress. Options in this situation include filing a motion to suppress with the immigration judge that asks for an order requiring that no one at DHS rely on the documents, or filing a letter brief with USCIS warning them that they have the documents in violation of California law and thus should not use them in the adjudication of the application/s. If USCIS denies the application, it may also be possible to file an appeal with the Administrative Appeals Office (if available), arguing that USCIS should not have relied upon information and/or records released in violation of California law.

²⁶ See *A.C. v. Cortez*, 34 F.4th 783, 787 (9th Cir. 2022) (finding that federal constitutional law recognizes a right to informational privacy that may be infringed upon a showing of proper governmental interest and applying a balancing test to determine when the government’s interest outweighs the individual’s privacy interest).

²⁷ Available at [http://www.immigrationadvocates.org/nonprofit/library/item.556972-Practice Advisory Strategies for Suppressing Evidence and Terminating Remov.](http://www.immigrationadvocates.org/nonprofit/library/item.556972-Practice%20Advisory%20Strategies%20for%20Suppressing%20Evidence%20and%20Terminating%20Remov.)

PRACTICE TIP: Prior to Section 831 being added to the Welfare & Institutions Code, it was not uncommon for DHS to receive documents, such as probation reports, directly from the probation department in the county where the young person was arrested. These records would often be retained in the A file and later used against the person when they were seeking a discretionary form of immigration relief. This practice has largely ended, but be on the lookout for older juvenile records in A files and vigorously object to the use of this evidence in immigration court or by USCIS.

B. Submitting Applications to USCIS that Request Information and Records from Juvenile Court Proceedings

Despite California's robust confidentiality laws, the disclosure of an arrest as a minor in immigration applications is typically unavoidable.²⁸ This is because most immigration applications ask detailed questions about interactions with law enforcement and require background checks. Nonetheless, detailed information²⁹ about the arrest and any resulting adjudication, as well as documentation from the juvenile court proceedings, cannot be shared with USCIS without juvenile court permission. Unfortunately, even when informed about California's confidentiality laws, USCIS officers often insist on seeing records from a juvenile case, arguing that these are necessary to make discretionary determinations in immigration

²⁸ For example, the I-485 application form to adjust status asks: "Have you ever in or outside the United States been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?" If your client has ever been arrested, even as a minor and even if the case was dismissed, they must answer yes to this question—even if under state law they are permitted to treat the arrest as not having occurred and to answer "no" to such a question on *state* forms.

²⁹ Cal. Welf. & Inst. Code § 827(a)(4) bars the dissemination not only of the juvenile case file, but also "information relating to the content of the case file." This prohibition, however, has not been interpreted as a complete bar to talking about juvenile court proceedings, and in particular to sharing information in one's personal knowledge, such as an individual's opinions and thoughts about the proceedings. Nonetheless, youth who were the subject of juvenile court proceedings should be careful about how much information they disclose, as courts have found that Section 827 bars disclosure of information originating from the court documents. *See, e.g. People v. Espinoza* (2002) 95 Cal. App. 4th 1287, 1314 (holding that Section 827 did not apply to the testimony of a foster parent about her own perceptions of the foster child because it was not "information relating to the contents of" a juvenile case file, in that it was based on her personal observations acquired from her one-on-one interaction with the child when she served as her foster parent, and that there was no evidence that the foster mother had access to the child's dependency case file or that her testimony would be based on any information related to that file); *In re Tiffany G.* (1994) 29 Cal. App. 4th 443, 451 (finding that the juvenile court's nondissemination order was not an invalid prior restraint or violation of the First Amendment because it in no way prohibited the non-party stepfather from expressing his views and opinions about the dependency proceedings. The nondissemination order did however appropriately prevent the step-father from circulating confidential documents from the juvenile case file that contained not his thoughts and expressions but those of the children and child welfare professionals involved in the proceedings.); *In re Gina S.* (2005) 133 Cal. App. 4th 1074, 1088 (holding that the lower court's denial of the petition requesting permission to disseminate information from the juvenile case file was too restrictive in that it limited the mother's ability to discuss an alleged violation of her privacy rights that was detailed in the juvenile court records.).

applications, or to rule out potential conduct-based inadmissibility grounds or other bars to relief. In some cases, not providing juvenile records has led USCIS to issue denials of immigration benefits. This means many practitioners find themselves facing the competing interests of honoring California's confidentiality laws and policies and pushing back on the government's expectation of viewing juvenile records, while successfully pursuing immigration relief for clients. Ideally, practitioners would never have to submit juvenile records. Submitting juvenile records is not only at odds with California law and policy, but also can harm an individual's case by providing negative information to the government that can be used against the individual in that case as well as any future case. Nevertheless, practitioners should analyze the facts of each case to determine whether there are instances where it would benefit the client to seek permission to disclose records. Both approaches below may be reasonable depending on the facts of your case:

1. **If you do not intend to submit juvenile records.** Do not request juvenile court permission in advance to disclose any documents or information from the juvenile case file. Instead, assist clients in briefly responding to any questions on immigration applications pertaining to their juvenile history (see sample language in **Appendix B**), and provide a short legal argument in the cover letter for why additional information and documentation is not being provided.³⁰ If you take this approach, be prepared for some push back. If you receive a Request for Evidence (RFE), Notice of Intent to Deny (NOID), or denial, you will need to assess at that point whether it makes sense to go through the JV-570 petitioning process to get permission to disclose the disposition documents from your client's juvenile case(s) in response to the RFE or NOID, or following a denial (such as in a motion to reopen, or a re-filing). See discussion of responding to RFEs, NOIDs, and denials in Section II(c).
2. **If you do intend to submit juvenile records.** Request juvenile court permission in advance to disclose disposition documents from the juvenile case(s). Do this by filing a narrowly tailored JV-570 request pursuant to WIC section 827(a)(1)(Q), only asking for the specific documents you need, as soon as possible in the case, as it can take juvenile courts months to rule on these requests.³¹ See Section II(e) for

³⁰ In addition to making the relevant arguments under California law, you may also wish to advance the arguments outlined in this position brief: Loyola University of Chicago School of Law, The Center for the Human Rights of Children, *Academic Research and Position Brief: The Inappropriate Use of Juvenile Records in Immigration Discretion* (2022), <https://www.luc.edu/law/academics/centersinstitutesandprograms/centerforthehumanrightsofchildren/resourcesandpublications/>.

³¹ The actual length of time varies significantly by county, so reach out to local practitioners to get a current estimate.

information about filing a JV-570 request and **Appendix A** for a sample JV-570 request. Once you receive permission to disclose your client's juvenile disposition documents, include them in their application for immigration relief along with a cover sheet noting they cannot be further disseminated absent juvenile court permission, but be careful not to share additional information or records from the juvenile case file beyond what you have received permission to disclose.

PRACTICE TIP: In practice, clients with juvenile records sometimes have a copy of their own records on hand, or could quickly obtain a copy from the juvenile court since they are entitled to automatic access. Oftentimes, this is how immigration attorneys first see a client's juvenile records. While the strict letter of the law does not allow for this kind of dissemination, even by the youth who is the subject of the records,³² advocates report that in some cases this provides a quick way to review a client's record and screen for any immigration consequences of the juvenile record.³³ Despite this practical reality, further sharing of the "juvenile case file, any portion thereof, and information relating to the content of the juvenile case file,"³⁴ in any application for immigration relief without juvenile court permission will constitute a violation of state law.

PRACTICE TIP: Advocates should warn clients that going into great detail about the facts underlying their youth justice proceedings in writing or in interviews or other testimony, and/or referencing information contained in the juvenile court records themselves may violate California law, and as a strategic matter, could also harm their immigration case.

³² See Cal. Welf. & Inst. Code § 827(a)(4); see also *In re Keisha T.* (1995) 38 Cal. App. 4th 220, 234 (stating "[i]t is the juvenile court, not the recipient, that has the authority to decide to whom juvenile court records may be released").

³³ Note that juvenile adjudications are not treated as convictions for immigration purposes, and accordingly do not trigger the conviction-based grounds of removability. See *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000), (citing *Matter of C. M.*, 5 I&N Dec. 27 (BIA 1953)), *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981) (noting that the Board of Immigration Appeals has consistently held "that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes."). Nonetheless, a juvenile adjudication can still create problems for immigrant youth because certain grounds of inadmissibility and deportability do not require a conviction but can be triggered by "bad acts" alone, and under current policy and practice, USCIS and immigration courts consider juvenile records when making discretionary determinations. For further information on the immigration consequences of a juvenile record, see ILRC, *What Are the Immigration Consequences of Delinquency?* (Mar. 27, 2020), <https://www.ilrc.org/what-are-immigration-consequences-delinquency>. For a quick reference sheet on the immigration consequences of a juvenile record, see ILRC, *Reference Sheet on the Immigration Consequences of Delinquency* (May 2022), <https://www.ilrc.org/reference-sheet-immigration-consequences-delinquency>.

³⁴ Cal. Welf. & Inst. Code § 827(a)(4).

C. Responding to USCIS Issuing an RFE or NOID Seeking Juvenile Records, or a Denial Based on Not Supplying Juvenile Records

Advocates report that in some cases in which they have not included juvenile records in the initial application for an immigration benefit, they have received an RFE or NOID asking for the juvenile court records, and in a smaller number of cases, a detailed declaration about the incident if the records are not available. If you decide to comply with this request, you must obtain juvenile court permission. If you know in advance that you will likely comply with an RFE or NOID requesting juvenile records (which you may decide to do, for example, in a case where the client was arrested for a serious sounding offense, but was actually adjudicated for a much lesser offense), you may want to file the petition requesting permission to disseminate the records even in advance of receiving an RFE or NOID.

As you and your client consider what approach to take, keep in mind several policy reasons that support not sharing juvenile records: doing so may jeopardize future cases where an advocate might want to keep information from being disclosed; it can set expectations within USCIS or other relevant agencies that these records should be provided on a regular basis; and it undermines the important work advocates are doing to ensure that DHS does not obtain confidential juvenile court information without going through proper state court channels. It may also work against the advocacy being done with DHS to treat young people differently than adults and stop requesting juvenile records to begin with.

If you and your client do decide to request juvenile court permission to share records with USCIS, be sure that you tailor your request to the limited records that you would like permission to share with USCIS. For example, in the JV-570 petition, you could make the following request: *“I am the young person’s immigration attorney and am requesting the final disposition documents from his juvenile court records in order to assess his eligibility for immigration relief options. I am also requesting permission to disclose the final disposition documents to U.S. Citizenship & Immigration Services if required in connection with his application for Deferred Action for Childhood Arrivals.”* See **Appendix A** for a sample JV-570 petition.

If you determine with your client not to request permission to disclose your client’s juvenile records, or if your petition to the juvenile court is denied, some advocates have had success in responding to an RFE by reiterating the legal arguments for why juvenile records cannot be lawfully shared. If the RFE requests a declaration in the alternative, your response should also address the fact that Section 827 protects not only juvenile records but also “information related to the content of the case file.”³⁵ Make sure to document the information you are providing and

³⁵ See note 29, *supra* for legal arguments regarding the confidentiality of juvenile information.

the efforts you have made to obtain evidence in the case. If, despite submitting these arguments to USCIS, you receive a denial, be prepared to litigate the case on appeal, including to the federal courts if necessary.

D. Advising Clients about Disclosing Information Regarding Juvenile Arrests and Adjudications in Interviews

As noted above, Section 827 of the Welfare & Institutions Code not only provides that juvenile records may not be disseminated without juvenile court permission, but also protects information relating to the content of the case file. This places some restrictions on what information can be shared with third parties, including immigration officials, without juvenile court permission. In general, a young person who is or was the subject of dependency or youth justice proceedings can talk about the facts surrounding those proceedings that they have personal knowledge of, and the source of which are not the juvenile court records themselves. However, advocates should warn clients that going into great detail about the facts, and including information contained in the juvenile court records may violate WIC Section 827(a)(4). Further, advocates should counsel clients not to answer questions about their juvenile record, but rather to reference the confidentiality of those records under state law.

Sample approach for how to counsel a client in preparation for a USCIS interview where you anticipate that the officer may ask questions about the client's confidential juvenile record:

Bryan was arrested for residential burglary in San Bernardino when he was 15 years old. His case was handled in juvenile court, and he has since completed the terms of his probation. He has filed for adjustment of status based on special immigrant juvenile status. In his I-485, you included the following information in response to the question regarding arrests: *"I was arrested as a minor for taking an iPhone from my neighbor's house. My case was handled in juvenile court and is now closed. My records are confidential under California law."* Now, you are preparing Bryan for his interview with USCIS. He asks you how he should respond if the officer asks him what happened in his juvenile court proceedings. How can you counsel him to be open with the USCIS officer, while at the same time following state law?

One way to help Bryan prepare for his interview would be to inform him that there are laws in California that limit the individuals and agencies that can access his juvenile court record, and that immigration authorities are not given permission under the law to know about his juvenile court record, unless the juvenile court has specifically granted them access. Because the laws govern both the actual physical records and the information contained in them, Bryan should not talk openly about information in the records. Accordingly, you could advise him to respond to USCIS questioning with something like the following: *"My attorney has advised me that I can't talk about what happened in*

juvenile court because it's protected by state law. I can tell you why I think I got arrested, which is that I took an iPhone from my neighbor's house, but I can't talk much more about juvenile court, other than to say that my case is now closed."

E. How to Request Juvenile Records and Share Them Lawfully when Necessary

In cases in which advocates and their clients decide to provide some juvenile information or documents to USCIS, they will have to obtain permission from the juvenile court. To do so, follow the JV-570 petitioning process described in California Rule of Court 5.552. The general process necessary to petition the court includes:

- Completing the JV-570 and JV-571;
- Serving those documents along with a blank copy of the JV-572 on the individuals and agencies listed in Rule 5.552(c)(1) at least 10 days before the petition is submitted to the court; and
- Filing the JV-569 proof of service with the court, along with a JV-573 and JV-574 for use by the court in ruling on the request.

With respect to the documents that you request permission to disseminate, be sure to limit your request only to those documents that you would actually like to share with USCIS. For example, it is generally not advisable to request permission to disseminate probation reports or police records, as those can often contain superfluous and inaccurate information, and can work against ongoing advocacy to encourage USCIS not to request and rely on them.³⁶ In general, requests should be limited to the final disposition documents from juvenile court.

For example, in the JV-570 petition, you could make the following request: *"I am the young person's immigration attorney and am requesting the final disposition documents from his juvenile court records in order to assess his eligibility for immigration relief options. I am also requesting permission to disclose the final disposition documents to U.S. Citizenship & Immigration Services if required in connection with his application for Deferred Action for Childhood Arrivals."* See **Appendix A** for a sample JV-570 petition. If you end up submitting juvenile court documents to USCIS, it is also advisable to include a confidentiality cover sheet with the filing to USCIS noting that the documents are confidential and dissemination to any

³⁶ Note, however, that you may wish to request access to review these records so that you can fully understand the factual circumstances of your client's juvenile history. It is possible to request access to a broader set of records than you request permission to be able to disclose to USCIS, and certainly possible that the juvenile court may agree that it is appropriate for the immigration attorney to review certain records that the court would not grant permission to disseminate to third parties.

other person or entity (including EOIR) is prohibited absent a court order. See **Appendix C** for a sample cover sheet.

III. Conclusion

The confidentiality protections that exist for people who have been involved in the dependency and/or youth justice systems in California are incredibly important to avoiding stigmatization and supporting their long-term well-being. As immigration advocates, we have an important opportunity to send a message to federal immigration authorities that youthful violations of the law should be treated differently. It is all of our jobs to ensure that we—as well as DHS and the county staff our clients interact with—respect these provisions that are designed to benefit young people.



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www.ilrc.org

Washington D.C.

600 14th Street NW
Suite 502
Washington, DC 20005
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f: 202.293.2849

Austin

6633 East Hwy 290
Suite 102
Austin, TX 78723
t: 512.879.1616

San Antonio

500 6th Street
Suite 204
San Antonio, TX 78215
t: 210.760.7368

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

APPENDIX A

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Founder

Via U.S. Mail

April 11, 2016

Superior Court of California, County of Los Angeles
 Central Juvenile District
 201 Centre Plaza Drive
 Monterey Park CA 91754

**Re: Request for Disclosure of Juvenile Case File
 John Doe DOB 01/12/2000; Case No. 123456789**

To Whom It May Concern:

Enclosed please find the original and one copy of the following documents:

1. JV-569 Proof of Service – Request for Disclosure
2. JV-570 Request for Disclosure of Juvenile Case File
3. JV-571 Notice of Request for Disclosure of Juvenile Case File
4. JV-572 Objection to Release of Juvenile Case File
5. JV-573 Order on Request for Disclosure of Juvenile Case File
6. JV-574 Order after Judicial Review

Please stamp the copy set as filed, and return it to me in the enclosed self-addressed stamped envelope.

Please call me at (213) 385-2977 ext. 157 if you have any questions or concerns regarding this request.

Sincerely,

Kristen Jackson
 Senior Staff Attorney

Enclosures

Clerk stamps date here when form is filed.

- ① Your name: Kristen Jackson
 Relationship to child (if any): Immigration Attorney
 Street address: Public Counsel, 610 South Ardmore Avenue
 City: Los Angeles State: CA Zip: 90005
 Telephone number: (213) 385-2977 ext. 157
 Lawyer (if any) (name, address, telephone numbers, and State Bar number): SBN 226255

Fill in court name and street address:

Superior Court of California, County of
Los Angeles
 Central Juvenile District
 201 Centre Plaza Drive
 Monterey Park, CA 91754

Fill in case number if known:

Case Number:
 123456789

- ② ☒ I was not able to provide notice of this petition to the following because I did not know their names or addresses. If this is a request for the case file of a living child, the clerk must serve a copy of the petition. If this is a request for the case file of a deceased child, the custodian of records must serve a copy of the petition.
- a. ☐ County counsel or other attorney representing the child welfare agency if petition filed under section 300
 - b. ☐ District attorney if petition filed under section 601 or 602
 - c. ☐ Child
 - d. ☐ Attorney of record for the child
 - e. ☒ Child's parent (*mother's whereabouts unknown*)
 - f. ☐ Child's legal guardian
 - g. ☐ Probation department if petition filed under section 601 or 602
 - h. ☐ Child welfare agency/custodian of records if petition filed under section 300
 - i. ☐ Child's identified Indian tribe
 - j. ☐ Child's CASA volunteer
- ③ ☒ Copies of *Request for Disclosure of Juvenile Case File (JV-570)*, *Notice of Request for Disclosure of Juvenile Case File (JV-571)*, and a blank *Objection to Release of Juvenile Case File (JV-572)* have been placed in a sealed envelope with postage paid and deposited in the United States mail addressed to the following:
- a. ☐ County counsel or other attorney representing the child welfare agency if petition filed under section 300 (name and address): _____

- ☐ Date mailed: _____ or ☐ Personally served on (date): _____

Case Number:

123456789

Your name: Kristen Jackson

- b. ☒ District attorney if petition filed under section 601 or 602 (*name and address*): Los Angeles County
District Attorney, Pasadena Juvenile Office, 215 North Marengo, Room 200, Pasadena CA 91101
☒ Date mailed: 04/11/2016 or ☐ Personally served on (*date*): _____
- c. ☒ Child (*name and address*): John Doe, 111 North Road, Los Angeles CA 90031
☒ Date mailed: 04/11/2016 or ☐ Personally served on (*date*): _____
- d. ☒ Attorney of record for the child (*name and address*): Los Angeles County Public Defender,
Pasadena Juvenile Office, 300 East Walnut Street, Suite 311, Pasadena CA 91101
☒ Date mailed: 04/11/2016 or ☐ Personally served on (*date*): _____
- e. ☐ Child's parent (*name and address*): John Doe, Sr., 2684 Moss Avenue, Los Angeles CA 90065
☐ Date mailed: 04/11/2016 or ☐ Personally served on (*date*): _____
- f. ☐ Child's parent (*name and address*): _____
☐ Date mailed: _____ or ☐ Personally served on (*date*): _____
- g. ☐ Child's legal guardian (*name and address*): _____
☐ Date mailed: _____ or ☐ Personally served on (*date*): _____
- h. ☒ Probation department if petition filed under section 601 or 602 (*name and address*): _____
Los Angeles County Probation Department, Foothill Area Office, 300 East Walnut Street, Room
200, Pasadena CA 91101
☒ Date mailed: 04/11/2016 or ☐ Personally served on (*date*): _____

Case Number:

123456789

Your name: Kristen Jackson

- i. ☐ Child welfare agency/custodian of records if petition filed under section 300 (*name and address*):

☐ Date mailed: _____ or ☐ Personally served on (*date*): _____

- j. ☐ The Indian child's tribal representative (*name and address*): _____

☐ Date mailed: _____ or ☐ Personally served on (*date*): _____

- k. ☐ The child's CASA volunteer (*name and address*): _____

☐ Date mailed: _____ or ☐ Personally served on (*date*): _____

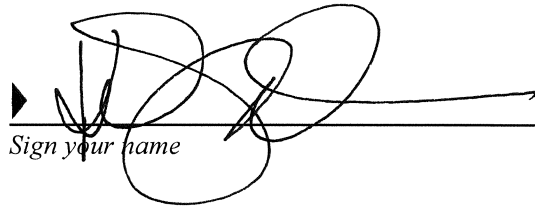
4

I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date: 04/11/2016

Kristen Jackson

Type or print your name

▶  _____

Sign your name

JV-570**Request for Disclosure of
Juvenile Case File**

If you are requesting a court order to obtain the juvenile case file of a child who is alive, fill out all items on this form, and file it with the court. You must also fill out and file Proof of Service—Request for Disclosure (form JV-569).

If you are a member of the public requesting the juvenile case file of a child who is deceased, you can:

- a. *Fill out items 1–4 and 7 on this form and file it with the court. You must then provide a copy of this form to the Custodian of Records of the county child welfare agency, who will then provide notice of this request.*

Or

- b. *Do not complete the form and request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.*

① Your name: Kristen Jackson
Relationship to child (if any): Immigration Attorney
Street address: Public Counsel, 610 South Ardmere Avenue
City: Los Angeles State: CA Zip: 90005
Telephone number: (213) 385-2977 ext. 157
Lawyer (if any) (name, address, telephone numbers, and State Bar number): SBN 226255

② Name of child (if known): John Doe

③ Child's date of birth (if known): 01/12/2000

- ④ a. ☒ A petition regarding the child in ② has been filed under
☐ Welfare and Institutions Code section 300
☐ Welfare and Institutions Code section 601
☒ Welfare and Institutions Code section 602 **or**
b. ☐ I believe the child in ② died as a result of abuse or neglect. Approximate date of death: _____
If you checked box b, you may skip items 5 and 6.

Note: You must provide a copy of this form to all interested parties if you know their names and addresses.

Clerk stamps date here when form is filed.

Fill in court name and street address:

**Superior Court of California, County of
Los Angeles
Central Juvenile District
201 Centre Plaza Drive
Monterey Park, CA 91754**

Fill in case number if known:

Case Number:
123456789



Case Number:

123456789

Your name: Kristen Jackson

- 5 The records I want are: *(Describe in detail. Attach more pages if you need more space.)*

Certified copy of the disposition (Adjudication/Disposition Order) for each juvenile delinquency petition filed against John Doe and permission to give the copies to U.S. Citizenship and Immigration Services (USCIS) if required.

☐ Continued on Attachment 5.

- 6 The reasons for this request are:

- a. ☐ Civil court case pending in *(name of county)*: _____
Case number: _____ Hearing date: _____
- b. ☐ Criminal court case pending in *(name of county)*: _____
Case number: _____ Hearing date: _____
- c. ☐ Juvenile court case pending in *(name of county)*: _____
Case number: _____ Hearing date: _____
- d. ☒ Other *(specify)*: Immigration assessment/applications
Case number: _____ Hearing date: _____

- 7 I need the records because: *(Describe in detail. Attach more pages if you need more space.)*

I need these records to assess John's eligibility for immigration relief. I need permission to disclose the final dispositions if USCIS requires the records to adjudicate John's applications for immigration relief.

☐ Continued on Attachment 7.

- 8 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date: 04/11/2016

Kristen Jackson

Type or print your name

Sign your name

**Notice of Request for Disclosure
of Juvenile Case File****RE: Release of Juvenile Case File and Right to File
an Objection**

*You must provide notice to all those listed in item 2 on Proof of Service—
Request for Disclosure (form JV-569).*

TO (names):

Los Angeles County District Attorney, John Doe, Los Angeles
County Public Defender, John Doe, Sr., Los Angeles County
Probation Department

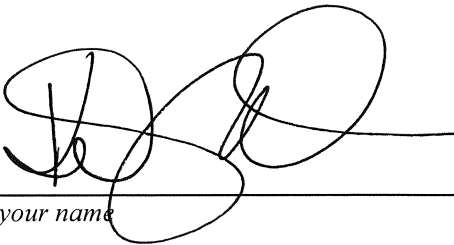
- ① Child's name: John Doe
- ② Information relating to the child named in item ① is being sought by
(name): Kristen Jackson
- _____
- _____

- ③ The requested information is described in the attached *Request for
Disclosure of Juvenile Case File* (form JV-570).
- ④ If you object to the disclosure of these records and information, you must fill out *Objection to Release of Records*
(form JV-572) and return it to the court listed at the address above within 10 days of the date you received this
notice.

Date: 04/11/2016

Kristen Jackson

Type or print your name


Sign your name

Clerk stamps date here when form is filed.

Fill in court name and street address:

**Superior Court of California, County of
Los Angeles**
Central Juvenile District
201 Centre Plaza Drive
Monterey Park, CA 91754

Fill in case number if known:

Case Number:

123456789

Warning: If you do not object, the court may release the child's case file.

Objection to Release of Juvenile Case File

Objections to the release of information and records described in the attached Request for Disclosure of Juvenile Case File (form JV-570) must be filed with the court.

① Name of child: John Doe

② My relationship to the child, if any, is: _____

③ I object to the release of information and records relating to the child named in item ①.

④ I do not want the court to release the records because *(describe in detail, attach additional pages if necessary)*:

Clerk stamps date here when form is filed.

Fill in court name and street address:

**Superior Court of California, County of
Los Angeles**
Central Juvenile District
201 Centre Plaza Drive
Monterey Park CA 91754

Fill in case number if known:

Case Number:

123456789

Date: _____

Type or print your name

Sign your name

**Order on Request for Disclosure
of Juvenile Case File***Clerk stamps date here when form is filed.***The court finds and orders:**

① ☐ The child is alive and the request is denied. The applicant has not shown good cause for the release of the requested records.

② ☐ The child is alive and the court sets a hearing on the request. Applicant has shown good cause for release of the juvenile case file, but the court must balance the interests of the applicant, the child, other parties to the juvenile court proceedings, and the public. Clerk to send notice under rule 5.552 of the California Rules of Court.

Date of hearing: _____

Time of hearing: _____

Location: _____

③ ☐ The child is alive and the court will conduct a review of the juvenile case file and any filed objections.

④ ☐ The child is deceased and the court sets a hearing on the request.

Date of hearing: _____

Time of hearing: _____

Location: _____

⑤ ☐ The child is deceased and the court will conduct a review of the juvenile case file and any filed objections.

Fill in court name and street address:

**Superior Court of California, County of
Los Angeles
Central Juvenile District
201 Centre Plaza Drive
Monterey Park, CA 91754**

Fill in child's name and date of birth:

**Child's Name: John Doe
Date of Birth: 01/12/2000**

Fill in case number

**Case Number:
123456789**

Date: _____



Judge (or Judicial Officer)

Clerk stamps date here when form is filed.

① Name of petitioner: John Doe

The court finds and orders:

② After a review of the juvenile case file and review of any filed objections ☐ and a noticed hearing the court denies the request. Disclosure is not in the best interest of the child.

③ After a review of the juvenile case file and review of any filed objections ☐ and a noticed hearing the court grants the request. The applicant has shown by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate needs of the applicant. The court has balanced this need with the child's best interest. The court finds that the need for disclosure outweighs the policy considerations favoring confidentiality of juvenile records.

a. ☐ The following records may be disclosed:

b. ☐ The procedure for providing access is:

c. ☐ See attached.

④ ☐ The child is deceased and the request is granted.

a. ☐ The court has read and considered the following:

b. ☐ There is a presumption under Welfare and Institutions Code section 827(a)(2)(B) in favor of the release of the documents unless a statutory reason for confidentiality is shown to exist. The court has balanced only the interests of the child who is the subject of the juvenile case file and the interests of other children who may be named in the file.

Fill in court name and street address:

Superior Court of California, County of
Los Angeles
Central Juvenile District
201 Centre Plaza Drive
Monterey Park, CA 91754

Fill in child's name and date of birth:

Child's Name: John Doe
Date of Birth: 01/12/2000

Fill in case number

Case Number:
123456789

Your name: John Doe

Case Number:

123456789

- c. ☐ The following records may be disclosed:

- d. ☐ The procedure for providing access is:

- e. Any information relating to another child or which could identify another child, except for information about the deceased, must be redacted.

- f. ☐ See attached.

- ⑤ ☐ The child is deceased and the request is denied. The court finds by a preponderance of the evidence that disclosure of the juvenile case file or of any portion of it is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the request.

Additional orders:

- ⑥ ☐ Applicant may not give the information to anyone who is not specified in section 827 of the Welfare and Institutions Code.

- ⑦ ☐ Disclosure subject to protective order (*list orders*):

-
-
-

- ⑧ ☐ Release of records listed in item 3a only.

- ⑨ ☐ Release of records with redaction.

- ⑩ ☐ Other:

- ⑪ ☐ See attached.

Date:



Judge (or Judicial Officer)

APPENDIX B

Sample approaches to immigration applications when a client has a delinquency history, or the client's application for relief implicates records from the dependency court, **and you have not received prior juvenile court permission to disseminate information or records from the juvenile case file:**

Application for SIJS-based Adjustment of Status: Nina is applying for adjustment of status based on special immigrant juvenile status. She is currently 19 years old. When she was 16, she was arrested for shoplifting a T-shirt from Kohls. She was declared a ward of the juvenile court, and adjudicated for shoplifting under Penal Code Section 490.5. She completed the terms of probation and her case was closed when she turned 18. In completing the I-485, Nina comes to the question that asks: "Have you ever in or outside the United States been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?" How should Nina respond?

Under Section 827 of the Welfare & Institutions Code (WIC), Nina's juvenile records and information relating to the content of the file are confidential. However, there is also no known legal exception allowing nondisclosure of an arrest, even as a juvenile.¹ Accordingly, she will need to disclose the arrest but be cautious in how she describes any other information. Assuming that Nina has not received juvenile court permission to disseminate her juvenile records, she could respond to the question in the following way: *"I was arrested as a minor for taking a T-shirt from Kohls. I completed probation for this. My case was handled in juvenile court, and the records from the proceedings are confidential under California law."*

Application for U Nonimmigrant Status: Daniel was removed from his parents' home at age 13 following a child abuse report. After an investigation, the allegations of abuse were found to be true by the dependency court. While his parents were receiving reunification services, Daniel was placed in foster care. He struggled to adjust to his foster care placement and began acting out. When he was 14, he was arrested for possession of a knife at school. His case was handled by the delinquency court, which placed him on a program of supervision for 6 months under Section 654 of the WIC rather than declaring him a ward of the juvenile court. He successfully completed informal probation and the petition in juvenile court was subsequently dismissed.

You are representing Daniel in his application for U nonimmigrant status based on the child abuse he suffered. You have successfully obtained a signed U visa certification from the Department of Children and Family Services ("DCFS," the county agency that investigates child abuse reports). However, you now have multiple questions about how you can file Daniel's application with USCIS without running afoul of the confidentiality provisions of the WIC that apply to both dependency and delinquency proceedings:

¹ The process of sealing juvenile records is distinct from state confidentiality protections. Generally, sealing allows an individual to have their whole record erased and sealed, such that legally the case is considered never to have occurred under state law. For example, California Welfare & Institutions Code § 781(a) provides that once juvenile records are sealed, "the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed." However, there is no known legal exception allowing nondisclosure of a juvenile adjudication for federal immigration purposes even when the case has been sealed and state law provides that the juvenile adjudication does not exist. So even if an entire case is sealed, it is recommended that the requestor disclose the incident because it may appear that the individual is engaging in fraud if they fail to disclose the information.

- 1) Do you need court permission to disclose the information contained in the U visa certification, which includes information relating to the content of the dependency file?

Given that your certification is from the Department of Children & Family Services,² hopefully this agency would have followed the proper procedure to be able to release the information contained in the U visa certification to you, and ultimately to USCIS.³ As an advocate on the receiving end of the completed U visa certification, you could either assume that there is no order permitting disclosure and file a JV-570 petition requesting permission to share the information included in the U visa certification with USCIS, or alternatively, assume that when the county releases the completed U visa certification to you, it has gone through the correct process to be able to disseminate the information, knowing that it would be shared with USCIS. Note that if you are already filing a JV-570 to request permission to share documents and reports from the dependency file, it may make sense to include a request to share the information contained in the U visa certification in the JV-570 as a matter of course.

- 2) Do you need court permission to be able to include a declaration from your client detailing the abuse he suffered at the hands of his parents?

Because Section 827 of the WIC applies not only to juvenile records, but also to “information relating to the content of the case file,” a declaration describing the facts underlying the proceedings could potentially violate the confidentiality provisions of the WIC. It is the ILRC’s position that a declaration that is based on your client’s personal knowledge and limited simply to the underlying facts of what happened will not violate Section 827, but that a declaration that includes information that has been obtained from dependency court documents, and/or that includes facts about the actual juvenile court proceedings, would violate the WIC. For example, the child could describe the abuse that they suffered at the hands of their father, but should not include things like, “I was made a court dependent and the government argued that my father abused me under Welfare & Institutions Code Sections....” If you want to include more information in the declaration, in particular obtained from or pertaining to the juvenile court proceedings themselves, the ILRC strongly recommends that you file a petition in juvenile court requesting permission to disclose this information to USCIS.

² Note that if the factual circumstances were different, and you were seeking to obtain a U visa certification or police report from the police or district attorney (“DA”) in a case where the victim or witness was a minor, but it either did not result in the initiation of dependency or delinquency proceedings, or the information contained in the U visa certification and/or police record did not include information from the juvenile court records, those records and information would likely not be governed by the confidentiality protections of the Welfare & Institutions Code (WIC). This is because neither Section 831, nor Sections 827 and 828 of the WIC make every record in California that involves a minor confidential. However, when you request a U visa certification or a police report from the police or DA in a case that involves a minor victim or witness, that may be covered by other laws. For example the Penal Code and Government Code. Section 827.9(a) of the WIC (which applies only to LA county but is helpful in understanding this distinction) deals with juvenile police records and states that “[t]his section does not govern the release of police records involving a minor who is the witness to or victim of a crime who is protected by other laws including, but not limited to, Section 841.5 of the Penal Code, Section 11167 et seq. of the Penal Code, and Section 6254 of the Government Code.” Instead, Section 827.9 applies when the minor was the person who allegedly committed the offense, and sets out procedures for requesting the police record in that instance. The California Rule of Court that deals with confidentiality of records in juvenile court proceedings is also instructive. In subdivision (f) regarding reports of law enforcement agencies, it covers “information gathered and retained by a law enforcement agency regarding the taking of a child into custody.” Accordingly, this provision applies when a child is arrested or taken into Child Protective Services custody, but would not govern when the minor is a victim or witness in a criminal proceeding.

³ DCFS could do this by requesting permission from the juvenile court in a given case to share the specific information included in the U visa certification. Alternatively, some county child welfare agencies that respond to a high volume of U visa certification requests have indicated that they may seek a blanket order from the juvenile court to allow them to share the basic facts generally needed to complete U visa certifications.

- 3) Do you need permission from the delinquency court to disclose information about your client's juvenile arrest, including that he has successfully completed informal probation and the petition in juvenile court was subsequently dismissed?

The application for U nonimmigrant status asks: "Have you EVER [b]een arrested, cited or detained by any law enforcement officer...for any reason?" As noted above, Daniel will need to disclose the fact that he was arrested, even though he was a minor at the time. Whether he can include additional information about the arrest and resulting proceedings in juvenile court depends upon whether he has personal knowledge of this information, or whether that information would need to come directly from the juvenile case file. If Daniel is able to tell you generally what happened in his case, it is the ILRC's position that sharing this basic information in an attachment to the I-918 would not be a violation of the confidentiality provisions of Section 827. However, this information should not be taken from the juvenile case file itself, nor should it include details about the court proceedings, unless they come from Daniel's personal knowledge. For example, Daniel could include the following as an attachment to his I-918: *"I was arrested when I was 14 because I had a knife in my backpack at school. I completed my probation. My case was handled in juvenile court. My records are confidential under California law."*

PRACTICE TIP: Be careful not to disclose too much detailed information about a client's juvenile history in an immigration application without prior court permission. Submitting a declaration on behalf of the applicant detailing the offense may be akin to submitting juvenile court records and would constitute a violation of state confidentiality laws. In addition, it could hurt the case. When responding to questions about juvenile arrests and/or adjudications on immigration applications, the key is to be brief, to only include information in the client's personal knowledge, and not to phrase descriptions in ways that may be viewed as admissions.

Application for Naturalization: Felicia has been a lawful permanent resident since 2015. In 2019, when she was 16 years old, she was arrested for theft after stealing a classmate's phone. The petition was sustained but Felicia has since successfully completed the terms of her probation. Felicia is now 19 and would like to apply to naturalize, but is concerned about how her delinquency adjudication might affect her chances of naturalizing, and how she should handle it on the N-400.

In order to naturalize, Felicia will need to show that she has had good moral character for the previous 5 years. Because her juvenile adjudication occurred only 3 years ago, it will be relevant to USCIS's determination of good moral character. Thankfully, Felicia is not definitively barred from establishing good moral character since juvenile adjudications are not considered convictions for immigration purposes,⁴ and thus do not create a statutory bar. Nonetheless, because USCIS can also find that a person does not have good moral character as a matter of discretion, the juvenile adjudication will be relevant to the success of Felicia's application, either broadly as evidence of bad behavior, or construed as the commission of an unlawful act under 8 CFR § 316.10.⁵ Furthermore, because the N-400 asks

⁴ *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000) (stating that the BIA has consistently held "that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.").

⁵ For additional information on how unlawful acts affect good moral character, see 12 USCIS-Policy Manual F.5(L)(3). For further information about naturalization, see *Naturalization & U.S. Citizenship* (ILRC 2022), <http://www.ilrc.org/publications>.

various questions about prior arrests and probation, Felicia will have to disclose the existence of the juvenile adjudication. In response to the question on the N-400 that asks whether the applicant has “ever been arrested, cited, or detained by any law enforcement officer (including any immigration...for any reason,” Felicia could respond as follows: *“I was arrested when I was 16 for taking a classmate’s phone without permission. My case was handled in juvenile court and I completed probation. My records are confidential under California law. I have had no further interaction with law enforcement since that time.”*⁶

In completing the chart that follows in question 29 of the naturalization application, Felicia would need to complete these questions based on her personal knowledge. For example:

Why were you arrested, cited, detained, or charged?	Date arrested, cited, detained, or charged. (mm/dd/yyyy)	Where were you arrested, cited, detained, or charged? (City or Town, State, Country)	Outcome or disposition of the arrest, citation, detention or charge (no charges filed, charges dismissed, jail, probation, etc.)
Taking a classmate’s phone	Approx. 10/01/2019	Orange, California, USA	Handled confidentially in juvenile court

If Felicia could not recall sufficient details to complete this table, or if she and her attorney thought it best to provide further information from the court records, Felicia would need to petition the juvenile court for permission to disseminate this information.⁷

Sample language for use in a cover letter when the applicant is not including juvenile records because they are protected under California law. In cases where the applicant has a juvenile history but is not including juvenile records with the application to USCIS or EOIR due to their confidentiality under California law, it is advisable to include a short explanation of this in the cover letter, for example: *“Please note that Mr. Doe has a brief juvenile delinquency history. He was arrested when he was 15 years old for taking a T-shirt from a store and his case was resolved in juvenile court. Pursuant to Welfare & Institutions Code Sections 827 & 831, the records of those proceedings are confidential and cannot be released to third parties without juvenile court permission.”*

⁶ Note that Felicia would likely need to also answer yes to questions 24 and 27 on the naturalization application, which ask whether the applicant has ever been charged with committing a crime or offense, and whether the applicant has ever “received a suspended sentence, been placed on probation, or been paroled.”

⁷ Felicia would also want to include evidence of positive equities in her case to balance out this negative evidence, for example, letters of support from teachers, coaches or guidance counselors, evidence that she is now enrolled in a community college and receiving good grades, a letter from her employer stating how hardworking, dedicated, and even-tempered she is, and evidence that she has been volunteering at her church for the past two years. In addition, if there were any extenuating circumstances surrounding the arrest, information about those circumstances should be included as well. This could involve, for example, evidence that her parents had just informed her the night before this incident that they were getting divorced, and the classmate’s phone that she took had been teasing her about this, over which she was experiencing deep emotional stress.

APPENDIX C

JUVENILE DELINQUENCY DISPOSITIONS

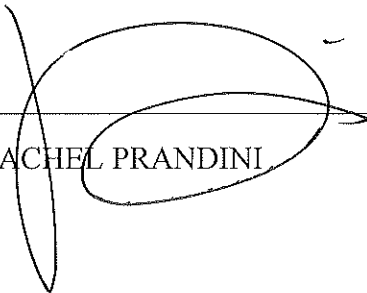
Attached are copies of the juvenile court dispositions for Jane Doe's arrests and/or citations.

Please note that these documents are protected by the confidentiality provisions of California's Welfare and Institutions Code.

The San Francisco County Juvenile Court has authorized our dissemination of these documents to U.S. Citizenship and Immigration Services (USCIS).

These documents are not to be further disseminated by any person or agency (include USCIS) to any person or agency (including the Executive Office for Immigration Review) without a specific order from the San Francisco County Juvenile Court authorizing further dissemination.

Date: September 22, 2022



RACHEL PRANDINI