

Nos. 18-17311, 18-17308

---

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

CITY AND COUNTY OF SAN FRANCISCO,

*Plaintiff-Appellee,*

v.

WILLIAM P. BARR, et al.

*Defendants-Appellants.*

STATE OF CALIFORNIA,

*Plaintiff-Appellee,*

v.

WILLIAM P. BARR, et al.,

*Defendants-Appellants.*

---

On Appeal From UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION  
Case Nos. 3:17-cv-04701-WHO, 3:17-CV-04642-WHO  
The Honorable William H. Orrick

---

**AMICUS BRIEF IN SUPPORT OF PLAINTIFFS-APPELLEES**

---

RACHEL S. BRASS  
GIBSON, DUNN & CRUTCHER LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105-0921  
Telephone: 415.393.8200

ABIEL GARCIA  
IAN F. SPRAGUE  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
Telephone: 213.229.7000

---

*Attorneys for Proposed Amicus Curiae Public Counsel*

---

---

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1, *amicus curiae* Public Counsel represents that it does not have any parent entities and does not issue stock.

*s/ Rachel S. Brass*

Rachel S. Brass

*Counsel for Amicus Curiae*

## TABLE OF CONTENTS

	<u>Page</u>
INTEREST OF AMICUS CURIAE .....	1
STATEMENT OF RELEVANT FACTS .....	3
ARGUMENT .....	4
I.    Overview of California’s Juvenile Confidentiality Statutes .....	6
A.    WIC Section 827 Guarantees the Confidentiality of Juvenile Court Records .....	6
B.    WIC Section 831 Protects Confidentiality for All Minors .....	9
C.    California’s Protection of Special Immigrant Juveniles .....	11
II.   California’s Interests in Protecting and Promoting the Confidential Treatment of Juvenile Court Records .....	12
A.    California’s Confidentiality Protections Are Integral to the Juvenile Court System’s Ability to Safeguard and Rehabilitate Vulnerable Youth .....	14
B.    California’s Confidentiality Protections Safeguard the Jurisdictional Prerogatives and Proper Function of Its Juvenile Court System .....	19
C.    California’s Confidentiality Protections Ensure State Agencies Are Best Able to Care for Vulnerable Populations .....	21
CONCLUSION .....	25

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>Cases</b>	
<i>Alfred L. Snapp &amp; Son, Inc. v. Puerto Rico, ex rel., Barez</i> , 458 U.S. 592 (1982).....	13
<i>Cty. of Santa Clara v. Trump</i> , 250 F. Supp. 3d 497 (N.D. Cal. 2017).....	25
<i>In re Elijah S.</i> , 125 Cal. App. 4th 1532 (2005).....	7
<i>In re Gina S.</i> , 133 Cal. App. 4th 1074 (2005).....	19
<i>In re James R.</i> , 153 Cal. App. 4th 413 (2007) .....	5
<i>In re Gault</i> , 387 U.S. 1 (1967).....	3, 4
<i>Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States</i> , 136 U.S. 1 (1890).....	5, 14
<i>Leslie H. v. Superior Court</i> , 224 Cal. App. 4th 340 (2014) .....	17
<i>Pack v. Kings Cty. Human Servs. Agency</i> , 89 Cal. App. 4th 821 (Ct. App. 2001) .....	19
<i>People v. Connor</i> , 115 Cal. App. 4th 669 (2004) .....	7
<i>People v. Meredith</i> , 29 Cal. 3d 682 (1981) .....	21
<i>People v. Superior Court</i> , 107 Cal. App. 4th 488 (2003) .....	7, 8, 19

<i>Republican Party of Minn. v. White</i> , 536 U.S. 765 (2002).....	20
<i>San Bernardino Cty. Dep’t of Pub. Soc. Servs. v. Superior Court</i> , 232 Cal. App. 3d 188 (Ct. App. 1991).....	4, 14, 17, 18
<i>T.N.G. v. Superior Court</i> , 4 Cal. 3d 767 (1971) .....	4, 7, 19
<i>Tarasoff v. Regents of Univ. of Cal.</i> , 17 Cal. 3d 425 (1976) .....	21
<i>Wescott v. Cty. of Yuba</i> , 104 Cal. App. 3d 103 (Ct. App. 1980).....	14, 18

## Statutes

8 U.S.C. § 1101(a)(27)(J) .....	11
18 U.S.C. § 5038(a) .....	9
Cal. Civ. Proc Code § 155 .....	6, 11
Cal. Civ. Proc. Code § 155(c) .....	3
Cal. Welf. & Inst. Code § 202(a) .....	14
Cal. Welf. & Inst. Code § 202(b).....	14
Cal. Welf. & Inst. Code § 827 .....	6
Cal. Welf. & Inst. Code § 827(a) .....	19
Cal. Welf. & Inst. Code § 827(a)(1) .....	8
Cal. Welf. & Inst. Code § 827(a)(3)(B).....	9
Cal. Welf. & Inst. Code § 831 .....	6, 9, 10
Cal. Welf. & Inst. Code § 831(a) .....	3
Cal. Welf. & Inst. Code § 831(e) .....	3

## Other Authorities

Annie E. Casey Foundation, <i>2017 Race for Results</i> (2017), available at <a href="http://www.aecf.org/m/resourcedoc/aecf-2017raceforresults-2017.pdf">http://www.aecf.org/m/resourcedoc/aecf-2017raceforresults-2017.pdf</a> .....	13
Chuck Wexler, <i>Police chiefs across the country support sanctuary cities because they keep crime down</i> , L.A. Times, March 6, 2017, available at <a href="http://beta.latimes.com/opinion/op-ed/la-oe-wexler-sanctuary-cities-immigration-crime-20170306-story.html">http://beta.latimes.com/opinion/op-ed/la-oe-wexler-sanctuary-cities-immigration-crime-20170306-story.html</a> .....	24
Fmr. Chief William Bratton, <i>The LAPD Fights Crime, Not Illegal Immigration</i> , L.A. Times, October 27, 2009, available at <a href="http://articles.latimes.com/2009/oct/27/opinion/oe-bratton27">http://articles.latimes.com/2009/oct/27/opinion/oe-bratton27</a> .....	23
Judicial Council of California, Memorandum, <i>Senate Bill 873 and the Special Immigration Juvenile Process in the Superior Courts</i> , (September 30, 2014).....	11
Legislative Counsel’s Digest, AB 899, § 1 (September 4, 2015).....	18
National Juvenile Justice Network, <i>Safeguarding the Confidentiality of Youth in the Justice System: Recommendations and Resources</i> (August 2016), available at <a href="http://www.njjn.org/our-work/confidentiality-of-youth-in-justice-system-safeguards">http://www.njjn.org/our-work/confidentiality-of-youth-in-justice-system-safeguards</a> .....	15
Police Executive Research Forum, <i>Local Police Perspectives on State Immigration Policies</i> (2014), available at <a href="http://www.policeforum.org/free-online-documents">http://www.policeforum.org/free-online-documents</a> .....	24
SB 940 Reg. Sess. (Cal. 2001).....	8
Stanford Immigrants’ Rights Clinic, <i>ICE Referral Practices within San Mateo County’s Juvenile Justice System</i> (September 9, 2011), at 8, available at <a href="https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/IRC.Report.SMC_.Juvenile.Referrals.pdf">https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/IRC.Report.SMC_.Juvenile.Referrals.pdf</a> . ....	16, 23
Stanford Immigrants’ Rights Clinic, <i>Practice Advisory: Defending Youth Against Violations of Confidentiality</i> (October 2012) .....	22

UCI School of Law Immigrant Rights Clinic, *Second Chances for All: Why Orange County Probation Should Stop Choosing Deportation Over Rehabilitation for Immigrant Youth* (2013) at 16, available at [https://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw\\_SecondChances\\_dec2013.pdf](https://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf). .....16, 17, 23

## **Rules**

Cal. R. Ct. 5.552.....9

Cal. R. Ct. 5.552(e)(5).....9

## INTEREST OF AMICUS CURIAE<sup>1</sup>

Public Counsel is the nation's largest not-for-profit law firm specializing in delivering *pro bono* legal services. Public Counsel and its attorneys frequently represent the legal rights of disadvantaged children, provide individuals and non-profit community organizations in underserved immigrant communities with legal representation, and represent immigrants who have survived torture, persecution, trafficking, and other crimes. Public Counsel provides free legal representation to children and youth in California, including undocumented unaccompanied minors.

Public Counsel attorneys have witnessed firsthand the adverse effects caused by the disclosure of juvenile records on the health, long-term well-being, and future prospects of immigrant children. Public Counsel has extensive knowledge of and familiarity with the statutes at issue, particularly Welfare and Institutions Code Sections 827 and 831, and California Code of Civil Procedure Section 155, which govern the confidentiality of records in juvenile proceedings. Overturning the district court's judgment would jeopardize the specific protections offered to immigrant children, many of whom are Public Counsel's clients, and could irreparably harm children in California.

---

<sup>1</sup> All parties have consented to the filing of this brief. Fed. R. App. P. 29(a). No counsel for a party authored this brief in whole or in part, and neither the parties, nor their counsel, nor anyone except for Public Counsel financially contributed to preparing this brief. *Id.*



Public Counsel respectfully submits this brief to assist the Court in analyzing the reasoning behind, and requirements of, Welfare and Institutions Code Sections 827 and 831, as well as California Code of Civil Procedure Section 155. If the district court's judgment is not affirmed—and if the juvenile statutes are found to not comply with 8 U.S.C. Section 1373—California's juvenile court system, law enforcement efforts, and its at-risk immigrant youth will all suffer.

## STATEMENT OF RELEVANT FACTS

California has enacted three juvenile confidentiality statutes pertinent to this litigation. California's juvenile confidentiality statutes protect the sensitive information of minors in the legal system. Of particular interest to *amicus curiae*, the California Welfare and Institutions Code contains two confidentiality statutes, Sections 827 and 831, that provide privacy for juveniles, including their immigration status, in court records. *See* Cal. Welf. & Inst. Code §§ 831(a) and 831(e). California Code of Civil Procedure Section 155 also requires "information regarding the child's immigration status... remain confidential" in the Special Immigrant Juvenile process in state court. Cal. Civ. Proc. Code § 155(c). In August 2017, Appellee State of California sued Appellants, in part, to obtain declaratory relief stating that its juvenile confidentiality statutes conformed with 8 U.S.C. Section 1373, a federal immigration statute. ER 16, 57.<sup>2</sup> In its judgment in favor of Appellees in November 2018, the district court held that California's juvenile confidentiality statutes conformed with Section 1373, and it separately ruled that Section 1373 violated the Tenth Amendment. ER 2.

---

<sup>2</sup> Cites to "ER" refer to the Excerpts of Record submitted by the federal Defendants-Appellants.

## ARGUMENT

Fifty years ago, the Supreme Court made clear its disdain for juvenile court systems where the purported confidentiality of juvenile records was “more rhetoric than reality.” *In re Gault*, 387 U.S. 1, 24 (1967) (criticizing those jurisdictions which fail to keep juvenile records truly confidential). As the Court explained: “it is the law’s policy to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past,” and youth are ill-served when law enforcement is given “complete discretion as to disclosure of juvenile records.” *Id.*

Mindful of that directive, California has diligently worked to afford all youth who come into contact with its juvenile court system real, not “rhetorical,” confidentiality. Through a comprehensive statutory scheme, refined by dozens of amendments, California’s Legislature has sought to protect juvenile records from free dissemination—limiting access to those specifically authorized by its specialist juvenile courts. These juvenile confidentiality statutes—including Welfare and Institutions Code Sections 827 and 831, and California Code of Civil Procedure Section 155, described in detail herein—ensure the protections of confidentiality to all of California’s children, regardless of immigration status.

Confidentiality serves the overarching rehabilitative goal of California’s juvenile court system, by protecting children in the delinquency system from the “stigma of criminality often attached to adult penal proceedings,” *T.N.G. v. Superior*

*Court*, 4 Cal. 3d 767, 775 (1971), and children in the dependency system from the “embarrassment, emotional trauma, and additional stress” that can attach to victims of maltreatment, *San Bernardino Cty. Dep’t of Pub. Soc. Servs. v. Superior Court*, 232 Cal. App. 3d 188, 200 (Ct. App. 1991).<sup>3</sup> The presumption of confidentiality also enhances the role of California’s specialist juvenile courts; as the exclusive arbiters of juvenile record disclosure, those courts are best positioned to assess the unique risks of disclosure in juvenile cases, a protection eviscerated if that individualized scrutiny is set aside in favor of blanket disclosure to third parties, including federal agencies. Finally, guaranteeing the confidentiality of the court records of youth fosters trust between these youth, their communities, and the local law enforcement and agencies intended to serve them.

By threatening California’s confidentiality regime, and the privacy of immigrant children, Appellants undermine California’s “inherent supreme power” to act “in the interests of humanity[,] for the prevention of injury to those who cannot protect themselves.” *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1, 57 (1890). To protect vulnerable children, and the

---

<sup>3</sup> “Delinquency” proceedings are generally designed to ensure a minor is provided with care, treatment, and rehabilitative guidance after the minor has engaged in misconduct. *See In re James R.*, 153 Cal. App. 4th 413, 431-32 & n.5 (2007). By contrast, “dependency” proceedings are initiated when there are concerns that the child’s welfare at home is at risk and when the child may need to be provided with state services for her well-being. *Id.* at 430 n.5.

interests of all Californians in a well-functioning and rehabilitative juvenile court system, *amicus curiae* respectfully urges the Court to protect the integrity of California’s juvenile confidentiality statutes and affirm the district court’s judgment, which declares that the statutes comply with 8 U.S.C. Section 1373. ER 2.

## **I. Overview of California’s Juvenile Confidentiality Statutes**

The California Legislature has long sought to protect the rights of youth, including those who have suffered mistreatment and those who stand accused of wrongdoing. One of the many pieces of its intricate web of protections for youth who find themselves in the State’s juvenile court system are several statutes that protect the confidentiality of juvenile records: Welfare and Institutions Code (“WIC”) Section 827, WIC Section 831, and California Code of Civil Procedure (“CCP”) Section 155. These statutes protect the records of all children in California’s juvenile court system, regardless of immigration status. And because juvenile victims of parental mistreatment require protection as well, CCP Section 155 protects immigrant children who petition California’s courts to obtain relief from abuse and abandonment.

### **A. WIC Section 827 Guarantees the Confidentiality of Juvenile Court Records**

For nearly sixty years, California has guaranteed the confidentiality of juvenile court records (including records from both dependency and delinquency proceedings) through WIC Section 827, which protects the confidentiality of the

documents filed in juvenile court proceedings, and also protects the information contained within those files. *See T.N.G.*, 4 Cal. 3d at 780 (1971). California’s courts have interpreted this provision broadly, holding that WIC Section 827’s confidentiality protection covers any information about a minor—legal or personal—contained in a court file. *See In re Elijah S.*, 125 Cal. App. 4th 1532, 1552 (2005) (protecting as confidential “a wide range of records, including agency files where no juvenile court proceedings have been instituted and the matter is handled informally” (internal quotation marks and citation omitted)); *People v. Connor*, 115 Cal. App. 4th 669, 681 (2004) (reasoning that a “restriction on access is, in effect, a type of shield” and inferring that a similar provision restricting access to adult probation records is “directed at the personal information, which might ordinarily be confidential”).

Time and again since its enactment in 1961, the Legislature has fine-tuned WIC Section 827 to ensure that vulnerable children are protected, while also allowing limited disclosure when in the public interest. *See People v. Superior Court*, 107 Cal. App. 4th 488, 494 (2003) (noting that California’s legislature has amended WIC Section 827 “virtually every year since it first appeared”). WIC Section 827 specifically enumerates the sixteen different classes of individuals permitted to access a child’s case file without a court order—and these enumerated classes include only the minor, her representatives, and certain officers of the state

child welfare and juvenile justice systems. Cal. Welf. & Inst. Code § 827(a)(1). Over the years of amendment and refinement of WIC Section 827, the Legislature has rejected the inclusion of federal law enforcement in the list of disclosure-eligible personnel—and has rejected an amendment to WIC Section 827 that would have allowed federal immigration officials to obtain access without a court order. *Compare* SB 940, Assembly Comm. Analysis (August 30, 2001) (proposing amendment to allow disclosure to the “United States Immigration and Naturalization Service” in certain circumstances), *with* SB 940 Reg. Sess. (Cal. 2001) as chaptered (INS provision removed).<sup>4</sup>

The procedures governing the disclosure of juvenile records protected by WIC Section 827 have been similarly calibrated: the California Judicial Council crafted a special procedural rule, California Rule of Court 5.552, that governs hearings regarding disclosure of confidential juvenile documents. *Superior Court*, 107 Cal. App. 4th at 495 (discussing the Judicial Council’s “considered” drafting of Rule 5.552, previously enumerated as CA ST TRIAL CT Rule 1423). To obtain a court order allowing disclosure, a petitioner must specifically designate which records are sought, provide detailed reasons for their disclosure, and establish “by a preponderance of the evidence that the records requested are necessary and have

---

<sup>4</sup> For the Court’s convenience, *amicus* notes that California legislative information is available at <http://leginfo.legislature.ca.gov>.

substantial relevance to the legitimate need of the petitioner.” Cal. R. Ct. 5.552. Both the child and her representatives must have notice and the opportunity to contest any release of confidential information that may undermine the child’s rehabilitation and best interests. *See* Cal. Welf. & Inst. Code § 827(a)(3)(B). To allow disclosure, the court “must find that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile case files.” Cal. R. Ct. 5.552(e)(5). In short, WIC Section 827 demands individualized evaluation before juvenile record disclosure. WIC Section 827, as well as WIC Section 831 described below, is consistent with *federal* law’s treatment of juvenile records, which also limits disclosure to certain narrow circumstances that do not include routine civil immigration enforcement. *See* 18 U.S.C. § 5038(a).

#### **B. WIC Section 831 Protects Confidentiality for All Minors**

WIC Section 831 supplements WIC Section 827 by clarifying and reinforcing California’s commitment to protecting children’s confidentiality regardless of their immigration status. Passed in 2015, WIC Section 831 makes explicit that federal officers—along with nearly everyone else—must obtain a court order before obtaining access to juvenile case files. *See* Cal. Welf. & Inst. Code § 831; AB 899, Assembly Floor Analysis (April 15, 2015), at 2. It also prohibits the disclosure of a child’s name, date or place of birth, and immigration status absent a juvenile court



order, if that information is obtained in connection with juvenile court proceedings. Cal. Welf. & Inst. Code § 831.

In enacting WIC Section 831, the California Legislature made clear that it was clarifying, not extending, the confidentiality protections enumerated in WIC Section 827. Specifically, WIC Section 831 was enacted to address the fact that certain local agencies had disclosed the immigration status of juveniles to federal officials—including to U.S. Immigration and Customs Enforcement (“ICE”) personnel who would detain and deport the child—in violation of the existing uniformly applicable confidentiality regime. AB 899, Assembly Floor Analysis, at 2 (explaining that WIC Section 831 was needed to stop entities that “may be circumventing [California’s confidentiality] protections in violation of state law,” and “disclosing confidential information about youth in the juvenile justice system to Immigration and Customs Enforcement”). Although neither required nor anticipated by federal law—and *prohibited* by California law—some county agencies would routinely disclose the case files of minors in their juvenile system to ICE. *Id.*; *see also* AB 899, Senate Floor Analysis (June 24, 2015), at 5 (noting that “at a minimum, 211 breaches of confidentiality” of youth records occurred during Fiscal Years 2012 and 2013, and resulted in ICE detaining immigrant youth). By passing WIC Section 831, California’s Legislature sought to stop any further unauthorized disclosures, repair

the breach of trust between immigrant children and local agencies, and reaffirm its commitment to the confidentiality of juvenile records for all children statewide.

### **C. California’s Protection of Special Immigrant Juveniles**

California Code of Civil Procedure Section 155 provides additional confidentiality protection for particularly vulnerable immigrant children who seek relief from abuse, neglect, and abandonment. *See* Cal. Code of Civ. Proc. § 155; 8 U.S.C. § 1101(a)(27)(J).

Specifically, CCP Section 155 protects children seeking Special Immigrant Juvenile (“SIJ”) status under federal law. SIJ status provides relief to abused, neglected, or abandoned children who enter or remain in the United States without documentation, and allows a qualifying child to apply for lawful permanent resident status. 8 U.S.C. § 1101(a)(27)(J). State juvenile courts play a critical role in the SIJ process, as children must petition state courts for factual findings as a precondition to SIJ relief.

Children seeking SIJ relief must disclose highly sensitive confidential information—including details of often painful abuse, as well as their immigration status—and any breach of confidentiality exposes these particularly vulnerable children to additional abuse and emotional trauma that the SIJ program seeks to mitigate. CCP Section 155 ensures that children seeking SIJ status are protected from such a traumatizing disclosure and undeterred from seeking relief. Judicial

Council of California, Memorandum, *Senate Bill 873 and the Special Immigration Juvenile Process in the Superior Courts*, at 6 & n. 22 (September 30, 2014) (describing the confidentiality provisions of CCP Section 155). Rather than burden it, CCP Section 155 furthers the interests of federal immigration law with respect to abused, abandoned, and neglected child immigrants by protecting their personal information and encouraging them to seek relief under the SIJ program.

## **II. California's Interests in Protecting and Promoting the Confidential Treatment of Juvenile Court Records**

California's juvenile confidentiality statutes protect the State's children from the stigmatizing, embarrassing, and humiliating disclosure of details of their private lives and any youthful brushes with the law. They ensure that children can move on, rather than being tagged as wrongdoers or victims in perpetuity. Disclosure of this private information risks serious trauma in the ordinary course; this trauma is magnified in cases of disclosure to federal immigration authorities, which result in vulnerable children being subjected to months of terrifying federal detention, even when the child is not in active deportation proceedings or is eligible for immigration relief. By keeping the past private, California allows its juvenile court system to do what it is designed to do: rehabilitate and protect, not punish.

These statutes also protect the integrity of California's juvenile court system and its exclusive jurisdiction and control over the disclosure of juvenile case files. Because disclosure of a case file can prevent a juvenile from ever having a

meaningful chance to rehabilitate—and thus prevent the juvenile court system from doing its intended work—the California Legislature limits the power to order disclosure of a child’s file to specialist juvenile courts. Discriminating against immigrant children—*who make up a substantial number of all children in California*—and allowing their records to be disclosed without a court order usurps that role and undermines the juvenile court’s ability to serve as impartial arbiters of the rights of all California children. *See* Annie E. Casey Foundation, *2017 Race for Results* (2017) at 13, *available at* <http://www.aecf.org/m/resourcedoc/aecf-2017raceforresults-2017.pdf> (noting that “nearly one in two” California children live in immigrant families).

Finally, the juvenile confidentiality statutes ensure that immigrant youth, their families, and California’s broader communities can trust and cooperate with law enforcement and other public agencies. Such cooperation is enhanced when individuals can trust that statements to law enforcement and others will be kept confidential. When that confidentiality is disregarded, trust-facilitated cooperation is cast aside.

Each of these policies implicates California’s protected sovereign interest in determining the policies that ensure “the well-being of its populace.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982). And the confidentiality regime, designed to protect the most vulnerable California residents,

implicates California's "inherent supreme power" to act "in the interests of humanity[,] for the prevention of injury to those who cannot protect themselves." *Late Corp. of the Church of Jesus Christ of Latter-Day Saints*, 136 U.S. at 57. Because California's juvenile confidentiality statutes serve critical state policies targeted towards rehabilitation, protection of endangered youth, and enhanced law enforcement, the district court's judgment vindicating them should be upheld.

**A. California's Confidentiality Protections Are Integral to the Juvenile Court System's Ability to Safeguard and Rehabilitate Vulnerable Youth**

California's Legislature designed its juvenile court system to ensure that all children are provided with the opportunity to be productive members of their communities. *See* Cal. Welf. & Inst. Code § 202(a), (b). But this goal is thwarted when the confidential details of a child's record are disclosed as disclosure risks subjecting a juvenile to "stigma and ridicule," as well as a near-insurmountable barrier to his or her integration with society. *Wescott v. Cty. of Yuba*, 104 Cal. App. 3d 103, 108 (Ct. App. 1980). Because "publicity, with its attendant stigma, generally impedes integration of a youth into the community, one of the hallmarks of the juvenile justice system has been confidentiality ensured by private hearings." *San Bernardino Cty. Dep't of Pub. Soc. Servs.*, 232 Cal. App. 3d at 198 (internal citations and quotation marks omitted).

Absent this safeguard, children face lifelong stigmas that increase “barriers to employment, higher education, housing, military service,” and prevent full integration with their communities. *See* National Juvenile Justice Network, *Safeguarding the Confidentiality of Youth in the Justice System: Recommendations and Resources* (August 2016), at 2, available at <http://www.njjn.org/our-work/confidentiality-of-youth-in-justice-system-safeguards>. Once a child is branded a criminal, or known to need the protection of the state, the bell of disclosure cannot be unrung. That is particularly true in the internet era, where online publishing of a juvenile record makes it “difficult, if not impossible, to remove evidence of a youthful mistake.” *Id.* These principles animate and undergird California’s integrated statutory regime protecting the confidentiality of juvenile court records.

By contrast, the misuse and disclosure of a juvenile’s confidential records turns California’s juvenile system upside-down, and twists a process built on mutual trust and designed to rehabilitate into one that threatens to consign a child to mental anguish and abuse. Prior to the passage of WIC Section 831, some state agencies in California illegally disclosed records of immigrant children to ICE, resulting in hundreds of child detentions. AB 899, Assembly Judiciary Comm. Analysis (April 3, 2015), at 4. Many detained children were ultimately found to be not deportable, and remained in the United States—but not before they had suffered severe trauma,

emotional harm, stigma, and social isolation through lengthy unwarranted detention. UCI School of Law Immigrant Rights Clinic, *Second Chances for All: Why Orange County Probation Should Stop Choosing Deportation Over Rehabilitation for Immigrant Youth* (2013) at 16, available at [https://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw\\_SecondChances\\_dec2013.pdf](https://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf). One child, referred to ICE after his records were illegally disclosed, suffered from such severe depression that he was placed on 24-hour suicide watch. Stanford Immigrants' Rights Clinic, *ICE Referral Practices within San Mateo County's Juvenile Justice System* (September 9, 2011), at 8, available at [https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/IRC.Report.SMC\\_.Juvenile.Referrals.pdf](https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/IRC.Report.SMC_.Juvenile.Referrals.pdf). Another was denied his prescribed ADHD medication, suffered from extreme anxiety, was routinely placed in an isolation cell for twenty-three hours a day, and restrained with shackles that left permanent marks on his hands and ankles. *Id.* Another child with mental disabilities—who served his ten-day juvenile hall detention only to be transferred on the last day to ICE custody—missed school, was cut off from his familial support networks, placed on various medications, and received none of the specialized treatment and counseling he required. *Second Chances*, at 9, 17, 18. Although he was ultimately released after an Immigration Judge recognized that his confidential information never should have been shared with ICE, he had suffered through *ten months of trauma and inadequate care* in federal custody—instead of

the court-ordered ten days of rehabilitative juvenile detention. *Id.* 17-18, n.93. And in another shocking case, Leslie, a sixteen year-old serving a four-month detention (and client of *amicus* Public Counsel), was threatened with deportation when her records were illegally shared with ICE—and faced the prospect of returning to Mexico and her mother, an exceptionally abusive alcoholic who had starved her, beaten her with cables, and tortured her with metal utensils dipped in boiling water. *Leslie H. v. Superior Court*, 224 Cal. App. 4th 340, 345–46 (2014). Fortunately, the California Court of Appeal recognized that the abuse Leslie had endured in Mexico entitled her to SIJ findings, and she was then able to apply for immigration relief. *Id.* at 352-53. But for the Court’s intervention, Leslie would have joined hundreds of other immigrant children whose juvenile misconduct was punished by a life sentence of separation from their American families and homes—and all because of an unlawful disclosure of confidential information.<sup>5</sup>

Even when a child is not accused of wrongdoing, publicity and disclosure of the child’s records can still work irreparable harm. Simply put, “the need for confidentiality is even more compelling” when a juvenile is “an abused, neglected, or dependent child [who] is wholly innocent of wrongdoing.” *San Bernardino Cty.*

---

<sup>5</sup> Leslie was detained for 120 days in juvenile hall after she and two friends tried to steal liquor and cigarettes from a liquor store—and fought with a clerk who attempted to stop them. *Leslie H.*, 224 Cal. App. 4th at 345. Although her conduct was serious and wrong—a fact Leslie acknowledged and admitted—she was not a danger to public safety. *Second Chances* at 11.



*Dep't*, 232 Cal. App. 3d at 220 at n.7. “[T]here can be little doubt that the embarrassment, emotional trauma and additional stress placed on the minor by public proceedings and the publicity engendered by public proceedings may well interfere” with a child’s development and integration with society, even when the child is not accused of delinquent or illegal behavior. *Id.* at 200. “Further, children who must face their peers in school might be subjected to special pressures if the matter is publicized.” *Id.* And, regardless of the nature of a proceeding, the child and her family “face a potential social stigma from public proceedings which would further interfere with rehabilitation and reunification.” *Id.* Thus, California ensures “that juvenile records remain confidential in order to serve the compelling interest of avoiding stigma and promoting rehabilitation for juveniles.” Legislative Counsel’s Digest, AB 899, Sec. 1 (September 4, 2015).

California’s courts have recognized that achieving the goals of the juvenile court system—and protecting children from the kind of trauma that befell others whose records were disclosed—depends on mutual trust and confidentiality: “The juvenile court law’s purpose is to protectively rehabilitate juveniles” and “the maintenance of confidentiality is a necessary corollary of that purpose.” *Wescott v. Cty. of Yuba*, 104 Cal. App. 3d 103, 109, (Ct. App. 1980). Thus, courts have found the “strong public policy” that “underlies the confidentiality accorded to juvenile proceedings” is “so substantial” as to outweigh many other competing interests.

*People v. Superior Court*, 107 Cal. App. 4th 488, 493 (2003) (citing *T.N.G. v. Superior Court*, 4 Cal. 3d at 778). Appellants’ interpretation of 8 U.S.C. Section 1373, rejected by the district court, should not be allowed to override the State’s strong interest in ensuring the protections to California’s youth inherent in its safeguarding of juvenile court records.

**B. California’s Confidentiality Protections Safeguard the Jurisdictional Prerogatives and Proper Function of Its Juvenile Court System**

Ensuring that juvenile records are protected from unauthorized or blanket disclosure is key to preserving the juvenile court’s position as the arbiter of youth record confidentiality. Implementation and enforcement of California’s intricate juvenile record confidentiality statutes is vested exclusively in California’s specialist juvenile courts. Cal. Welf. & Inst. Code § 827(a). This exclusive jurisdiction is no accident—these courts are the sole arbiters of juvenile records confidentiality because they are the institutions with “both ‘the sensitivity and expertise’ to make decisions about access to juvenile records and [are] in the best position to consider any other statutes or policies which may militate against access.” *Pack v. Kings Cty. Human Servs. Agency*, 89 Cal. App. 4th 821, 827 (Ct. App. 2001). Thus, California’s confidentiality statutes enshrine and enhance “the juvenile court’s ability to safeguard the privacy of minors in order to protect their best interests and to control access to juvenile case files.” *In re Gina S.*, 133 Cal. App. 4th 1074, 1084 (2005).

Allowing the blanket disclosure of records to federal immigration officials without a juvenile court order undermines the well-calibrated institutional structure of California's juvenile court system. California's juvenile courts rely on the trust they build with children and their families to properly function—and that trust is undermined by even limited disclosure to an ostensibly circumspect group of individuals (federal immigration officials). Indeed, one stated rationale for the enactment of WIC Section 831 was to reinforce and preserve the juvenile courts' "exclusive authority to determine the extent to which juvenile records should be released to third parties given the court's sensitivity and expertise in this area." AB 899, Sen. Comm. on Public Safety (June 22, 2015), at 5. And deeming the protections of confidentiality as dispensable for one group of children undercuts the court system's ability to garner public faith in the essential confidentiality protections writ large. *Cf. Republican Party of Minn. v. White*, 536 U.S. 765, 775 (2002) ("impartiality in the judicial context" preserves faith in the judiciary and "assures equal application of the law," and requires that a judicial system "treat[] all alike."). California's Legislature created a statutory bulwark against this kind of attack on its judicial institutions; affirming the district court's judgment here would protect it from encroachment by Appellants.

**C. California’s Confidentiality Protections Ensure State Agencies Are Best Able to Care for Vulnerable Populations**

Finally, and as emphasized by the district court in its order granting Appellees’ motions for summary judgment, California’s juvenile confidentiality statutes foster trust between immigrant communities and the local agencies and officials who serve them. Rejecting Appellants’ “unsubstantiated” views to the contrary, the district court rightly endorsed the proposition that information-sharing with immigration enforcement authorities “may damage” law enforcement efforts in California and elsewhere. ER 52. As demonstrated by the events precipitating the passage of WIC Section 831, a failure to preserve juvenile record confidentiality betrays the trust that immigrant youth and their communities place in local government and law enforcement—and can deal a debilitating blow to the functioning of government services in those communities.<sup>6</sup>

WIC Section 831 was enacted to stop the breakdown in trust that accompanied local agencies’ unauthorized disclosure of immigrant youth records to federal authorities. As explained by California’s Senate Committee on Public Safety, some local law enforcement agencies had routinely and illegally disclosed juvenile records

---

<sup>6</sup> The growth in trust that flows from preserving confidentiality is widely recognized. *See, e.g., Tarasoff v. Regents of Univ. of Cal.*, 17 Cal. 3d 425 (1976) (recognizing the relationship between confidentiality and trust in a psychiatrist-patient relationship); *People v. Meredith*, 29 Cal. 3d 682 (1981) (keeping attorney-client discussions confidential fosters open dialogue).

obtained during private meetings with immigrant youth. “Because of the relationship of trust between youth and Probation [officers], youth often disclose very personal information” during these interactions, including “immigration status or other immigration related information, such as foreign place of birth.” AB 899, Public Safety, at 6. Unfortunately, local and state officials abused this trust relationship, illegally disclosing the confidential information of immigrant children to ICE and other federal immigration authorities—and leading to severe trauma. *Id.* This history demonstrated that any supposed ambiguity in California’s confidentiality statutes—real or imagined—can lead to violations of California law and public policy that gut the trust between California immigrant communities and California officials. Indeed, illegal disclosure of confidential juvenile information was sufficiently widespread in California prior to the passage of WIC Section 831 that it eroded the trust required for successful community policing and engagement. AB 899, Assembly Floor Analysis, at 2; *see also* Stanford Immigrants’ Rights Clinic, *Practice Advisory: Defending Youth Against Violations of Confidentiality* (October 2012), *referred to and quoted with approval in* AB 899, Public Safety, at 6; Stanford Immigrants’ Rights Clinic, *ICE Referral Practices*, at 6, 14 (describing harm caused by disclosure of youth records to the trust that immigrant youth, their parents, and their communities place in state and local law enforcement).

Indeed, local agencies' relationships with entire communities are threatened when confidential juvenile immigration information is disclosed. In a survey of four counties, including Los Angeles County, nearly half of the Latino respondents indicated that fear of police inquiry regarding their immigration status would dissuade them from reporting a crime. *Second Chances*, at 20. And this fear is exacerbated by the misuse and disclosure of juvenile records. When juvenile immigrants' records were illegally disclosed in San Mateo, members of the community "felt betrayed and fearful." *ICE Referral Practices*, at 3. Parents who had cooperated with law enforcement "felt that they unwittingly aided in their child's deportation," and came to believe that local law enforcement was only interested in "targeting, rather than rehabilitating" their children. *Id.* And community leaders felt they could no longer reassure their neighbors and friends that it was safe to cooperate with local agencies and officers. *Id.* at 4. The breadth of this mistrust is unsurprising—approximately 85 percent of immigrant families include family members with mixed immigration statuses, and fear of disclosure of immigration status affects nearly everyone in an immigrant community. *Second Chances*, at 20.

Conversely, all Californians benefit when confidentiality is preserved, and trust is fostered. For example, the perpetrator of the brutal murder of a 53 year-old Los Angeles man was identified by an undocumented immigrant who came forward to speak with police. Fmr. Chief William Bratton, *The LAPD Fights Crime, Not*

*Illegal Immigration*, L.A. Times, October 27, 2009, available at <http://articles.latimes.com/2009/oct/27/opinion/oe-bratton27>. A vehicle full of terrified children was protected from a would-be-kidnapper by an undocumented man who confronted the attacker in the street. Chuck Wexler, *Police chiefs across the country support sanctuary cities because they keep crime down*, L.A. Times, March 6, 2017, available at <http://beta.latimes.com/opinion/op-ed/la-oe-wexler-sanctuary-cities-immigration-crime-20170306-story.html>. And another undocumented immigrant helped police locate a Los Angeles gang member who evaded police in a dangerous car chase. *Id.* The boon to Californians' safety and welfare that flows from this trust relationship is deeply appreciated by its government and law enforcement officials—as one California police chief noted, police are “lucky” in California, because immigrants “don’t see the police as a threat. That helps create trust.” Police Executive Research Forum, *Local Police Perspectives on State Immigration Policies* (2014) at 30, available at <http://www.policeforum.org/free-online-documents>.

WIC Sections 827 and 831 and CCP Section 155 work to ensure that communities trust, rather than fear, local officials, and encourage immigrant children—and their communities—to work with, not hide, from local government and law enforcement. Safeguarding the confidentiality of juvenile records represents the California Legislature’s sound “judgment of what policies and

practices are most effective for maintaining public safety and community health.” *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 525–26 (N.D. Cal. 2017) (holding that Executive Order 13768, which denied federal funds to jurisdictions that did not comply with certain immigration laws, violated the Tenth Amendment since it undermined the counties’ judgment in what policies and practices are most effective in maintaining public safety and community health and since it served as a coercive means to compel compliance with federal law).

### **CONCLUSION**

Together, California’s juvenile confidentiality statutes protect its youngest and most vulnerable residents from stigma, undergird the integrity and operation of California’s juvenile court system, and promote community trust in California’s governmental agencies. The statutes are critical to California’s interest in protecting and promoting the well-being of all children in California, regardless of immigration status. *Amicus curiae* Public Counsel respectfully urges the Court to protect the integrity of California’s juvenile confidentiality statutes and affirm the district court’s judgment.



Dated: May 29, 2019

Respectfully submitted,

s/ Rachel S. Brass

RACHEL S. BRASS, SBN 219301  
GIBSON, DUNN & CRUTCHER LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105-0921  
Telephone: 415.393.8200

*Attorneys for PUBLIC COUNSEL*

### **CERTIFICATE OF SERVICE**

I, Rachel S. Brass, hereby certify that I electronically filed the foregoing *amicus curiae* Brief of Public Counsel with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 29, 2019, which will send notice of such filing to all registered CM/ECF users.

s/ Rachel S. Brass

Rachel S. Brass

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains  words, excluding the items exempted

by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

- ☐ complies with the word limit of Cir. R. 32-1.
- ☐ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ☒ is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ☐ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ☐ complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
  - ☐ it is a joint brief submitted by separately represented parties;
  - ☐ a party or parties are filing a single brief in response to multiple briefs; or
  - ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ☐ complies with the length limit designated by court order dated .
- ☐ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)