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LEGAL EXPERTS SUPPORT BOARD OF SUPERVISORS' EFFORT TO RESTORE DUE PROCESS TO SAN FRANCISCO'S IMMIGRANT YOUTH

September 29, 2009

Asian Law Caucus



San Francisco Immigrant Rights Defense Committee

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I. Executive Summary

On August 18, 2009, the San Francisco Board of Supervisors introduced an amendment to restore due process to San Francisco's immigrant youth. ***This policy change, which will help ensure that innocent youth are not wrongly reported to immigration officials for deportation, is supported by law professors and legal experts in the areas of immigration, constitutional, and juvenile law.***

In reviewing the proposed legislation, the City Attorney approved the proposed legislation as to form, signifying that the amendment is legally tenable and defensible. ***Notably, the City Attorney rejected the argument that the proposed legislation is patently unconstitutional or otherwise clearly illegal on its face.*** As is common practice, the City Attorney also provided a memo to the Mayor and Board of Supervisors regarding the proposed legislation.¹ The reference to possible legal challenges in the memo, however, should neither be overstated nor dissuade the Board from exercising its policymaking role.² ***Time and again, the City has successfully defended against legal challenges to its policy initiatives, including the municipal identification card program, universal health care initiative, and expansion of domestic partner benefits.***³ Indeed, the City's Sanctuary Ordinance has stood strong for two decades and strengthened ties between the City and immigrant communities, despite the pessimistic predictions offered by opponents since the Ordinance's enactment.

This memo is intended to clear up any lingering misconceptions about the legislation.

The proposed amendment WILL:

- Allow immigrant youth to have their day in court and be heard by an impartial judge, ensuring due process is upheld for all of San Francisco's youth.
- Ensure families are not torn apart because a youth is mistakenly referred for deportation.
- Encourage cooperation between law enforcement and immigrant communities by re-establishing a relationship based on trust and therefore increasing public safety.
- Lessen the risk that the City will be liable for racial profiling, unlawful detention and mistaken referrals of United States citizens and lawful immigrants for deportation.
- Bring the City's juvenile probation practices into compliance with state confidentiality laws for youth.

The proposed legislation will NOT:

- Prevent referral to ICE of youth who have sustained felony charges.
- Put the Sanctuary Ordinance at risk. The Sanctuary Ordinance has stood strong for twenty years, and the proposed amendment strengthens the Ordinance by taking steps to bring the City's practices more into compliance with state juvenile justice law.

In short, the legislation is a measured step in the right direction that will help restore accountability and fairness in the City's treatment of immigrant youth.

¹ See Editorial, *Newsom's Leak*, San Francisco Bay Guardian, Aug, 25, 2009 (quoting former San Francisco Board of Supervisors President Aaron Peskin as stating, "In my eight years in office, I saw hundreds of these memos.").

² The Mayor's decision to provide the *San Francisco Chronicle* a copy of the City Attorney's confidential memorandum is noteworthy in light of the City Attorney's admonition that public disclosure of the City Attorney's advice "can ultimately undermine our City's ability to govern responsibly and defend itself effectively" and that City Attorney memos are "not intended to be fodder in political disputes." See Press Release, *Herrera Issues Guidance to Board, Mayor Following Disclosure of Legal Advice*, Aug. 20, 2009, available at <http://www.sfcityattorney.org/index.aspx?page=185>.

³ As a recent decision in the *Bologna* case illustrates, filing a lawsuit is not the same as winning a lawsuit. See Bob Egelko, *Victims' family loses round in sanctuary suit*, San Francisco Chronicle, August 15, 2009.

II. RESTORING DUE PROCESS FOR IMMIGRANT YOUTH

Juvenile Probation Department's (JPD) current policy towards undocumented youth has unjustly torn many youth from their families and reported these youth to ICE for deportation.

The story of one youth, given the pseudonym "D" for confidentiality reasons, illustrates the current policy's defects. D is an excellent student whose academic achievements have come despite enduring abuse at home. This past year, his mother falsely accused him of committing a crime, for which the charges were dismissed. However, at the time of D's booking, D was told he was being referred to ICE for deportation, even though he had done nothing wrong. This would be a frightening and stressful experience for any teen, but the situation was made much worse because D was not even deportable, as Juvenile Probation mistakenly assumed.

The current policy of reporting youth to ICE immediately after a felony booking denies youth any meaningful access to the courts or a chance to prove their innocence. Because referral to ICE happens without any court review, youth like "D" may be referred to ICE for deportation even though they are actually innocent of the charges against them or are documented. **By moving the point of referral from the time a juvenile is accused of a felony, to after a felony petition has been sustained, the proposed legislation will help ensure that due process is upheld for all youth.**⁴ The amendment also will decrease the likelihood that innocent youth or youth who are legal residents or U.S. citizens will be mistakenly referred to ICE for deportation.

It also is important to clarify that there are a number of practices that the proposed legislation will not change. Juveniles who are accused of crimes will *not* automatically be released after they are arrested. Rather, after a youth has been arrested, the juvenile probation department will continue to use an evidence-based risk assessment instrument. This screening process is used to determine whether it is safe to return the juvenile to his or her family while the case proceeds through the juvenile court process. The risk assessment, which is conducted for all youth at the booking stage, weighs a number of factors to determine if the youth is a flight or public safety risk. The probation officer then detains youth who have an unfavorable assessment. A judge reviews this decision at a hearing, after considering recommendations and evidence from the District Attorney, the Public Defender, and Probation Department.

The proposed amendment will also not change or hamper the ability of the officers of the juvenile court to do their jobs. The proposed legislation recognizes that juvenile court judges are skilled and experienced in adjudicating charges against youth and evaluating all the evidence in a juvenile justice case in an impartial manner. Juvenile probation officers, in turn, will continue to play a critical role in determining whether youth should be released or detained and also determining the ages of individuals in custody, through a variety of investigation methods including having dental records examined. The juvenile court process will continue to provide an opportunity for all sides, including the public defender and the district attorney, to produce their evidence and witnesses. This juvenile court system, which includes a number of state-mandated checks and balances, ensures due

⁴ Contrary to popular belief, once referred to ICE for deportation, youth often do not receive due process. Rather, they are often sent to remote locations out of the state where affordable, competent immigration attorneys are scarce or not available at all. They also have no right to *pro bono* legal representation in removal proceedings.

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process for all of San Francisco's youth, without compromising the court's ability to deliver a fair and just decision in each case.

III. THE CITY ATTORNEY AND LEGAL EXPERTS AGREE THAT THE PROPOSED AMENDMENT IS LEGALLY TENABLE AND DEFENSIBLE

As the City Attorney and legal experts have made clear, the proposed amendment to San Francisco's sanctuary ordinance is a legally tenable measure that is within the prerogative of the Board of Supervisors and Mayor to enact. It is ultimately a policy decision.

By approving the proposed legislation as to form, the City Attorney has acknowledged that there are legally cognizable arguments in support of the proposed legislation and that the Board of Supervisors is within its authority to enact the legislation. As the City Attorney recently explained:

The San Francisco Charter vests in the City Attorney the authority and the duty to act as the City's independent legal advisor. One of the City Attorney's specific responsibilities under the Charter is to approve as to form all ordinances before they are enacted by the Board of Supervisors. **As a matter of long-standing policy and practice, the City Attorney's Office approves as to form all proposed ordinances that are in proper form and the substance of which is not patently unconstitutional or otherwise clearly illegal; that is, where the City would have a legally cognizable argument to support adoption of the legislation.**⁵

Once proposed legislation has been approved as to form by the City Attorney, the decision to enact such legislation is a *policy* decision that rests with the Board of Supervisors and Mayor. It is not, as some have argued, a legal decision. As the City Attorney has stated, "[t]he legislative authority of the Board and the Mayor includes the prerogative to push the limits of existing law, and even to attempt to shape case law, so long as there are legally tenable arguments to support doing so."⁶ In this case, the City Attorney approved the proposed amendment as to form, recognizing that the proposed legislation is legally tenable and defensible; as a result, the pending decision to adopt the proposed amendment is a policy decision and not a legal decision.

Legal experts have similarly offered their support of the proposed legislation. This includes the following prominent law professors who have reviewed the legislation and agree with the assessment of the City Attorney that the proposed legislation is legally defensible:

- Dean Kevin Johnson, Dean and Professor of Law at UC Davis School of Law. Dean Johnson has taught courses in Immigration Law and Policy and Civil Rights law and published extensively on these topics in national and international journals. Dean Johnson states that "[s]tate and local governments possess the general 'police powers' under the U.S. Constitution and, generally speaking, should be able to establish their basic rules, regulations, and priorities for state and local law enforcement." Dean Johnson can be contacted via e-mail at krjohnson@ucdavis.edu or via telephone at (530) 752-0243.

⁵ City Attorney Memorandum entitled "Disclosure of Attorney-Client Privileged Advice from the City Attorney's Office," dated Aug. 20, 2009, at 1 (emphasis added), *available at* <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=273>.

⁶ *Id.*

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- Professor Bill Ong Hing, UC Davis School of Law. Professor Hing is the author of numerous academic and practice-oriented books and articles on immigration policy and race relations. He can be contacted by email at bhing@ucdavis.edu, or by phone at (530) 754-9377.
- Professor Michael Wishnie, Yale Law School. Professor Wishnie's teaching, scholarship, and law practice have focused on immigration, labor & employment, habeas corpus, civil rights, and administrative law. He can be reached at michael.wishnie@yale.edu.
- Professor Jayashri Srikantiah, Stanford Law School. Professor Srikantiah is a respected voice on immigration law and civil rights and is the founder and director of Stanford Law School's Immigrants' Rights Clinic. She may be contacted at jsrikantiah@law.stanford.edu.

This assessment is furthermore shared by legal experts at organizations with decades of expertise in the areas of immigration law, constitutional law, and juvenile justice law. These organizations include:

- **Asian Law Caucus (ALC)**⁷
- **Legal Services for Children (LSC)**⁸
- **Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR)**⁹
- **Immigrant Legal Resource Center (ILRC)**¹⁰
- **ACLU of Northern California**¹¹
- **San Francisco Immigrant Legal & Education Network (SFILEN)**¹²
- **San Francisco Immigrant Rights Defense Committee (SFIRDC)**¹³

⁷ Founded in 1972, the ALC is the oldest nonprofit civil rights organization promoting, advancing, and representing the right of low-income Asian and Pacific American immigrant communities. The ALC has expertise in immigration, civil rights, housing, education, juvenile justice, and employment law. The Juvenile Justice Project at the ALC provides direct representation to immigrant families with youth in the juvenile system to challenge language and cultural barriers.

⁸ Legal Services for Children has been representing Bay Area children and youth since 1975. LSC represents minors in education, foster care, guardianship and immigration cases.

⁹ For over two decades, LCCR has advised government officials and community groups regarding sanctuary laws/policies and in 1989 helped draft San Francisco's sanctuary ordinance.

¹⁰ ILRC is one of the leading national support centers with expertise in immigration and related legal issues affecting children and youth including the immigration consequences of delinquency. ILRC has provided over 100 trainings, and published the only manuals in the country on the immigration options for youth in dependency or delinquency and the immigration consequences of delinquency.

¹¹ Founded in 1934, the American Civil Liberties Union of Northern California is the largest ACLU affiliate in the country, with approximately 55,000 members. It is dedicated to the defense and promotion of the guarantees of equality, freedom of expression, liberty and other individual rights embodied in state and federal constitutions, and it has a long tradition of defending and supporting the rights of immigrants.

¹² The San Francisco Immigrant Legal & Education Network (SFILEN) is a novel collaboration of thirteen community and legal service organizations with deep roots in San Francisco that provide immigrant legal services and education to diverse immigrant populations.

¹³ That San Francisco Immigrant Rights Defense Committee (SFIRDC) is a growing alliance of immigrant rights advocates, labor groups, faith leaders, youth advocates, and LGBT activists dedicated to promoting inclusive policies. The Committee includes: The African Immigrant and Refugee Resource Center, ALDI, American Immigration Lawyers Association of Northern California, Arab Resource and Organizing Center, Asian Law Caucus, Asian Youth Advocacy Network, Bay Area Immigrant Rights Coalition, Central American Resource Center, Chinese for Affirmative Action, Communities United Against Violence, Dolores Street Community Services, EBASE, Global Exchange, Filipino Community Center, Harvey Milk LGBT Democratic Club, H.O.M.E.Y., Immigrant Legal Resource Center, Instituto Familiar de la Raza, La Raza Centro Legal, La Voz Latina, Legal Services for Children, Mission Neighborhood Centers, Inc. Mission Neighborhood Health Center, Movement for Unconditional Amnesty, Mujeres Unidas y Activas, National Lawyers Guild--San Francisco Chapter, PODER, POWER, Pride at Work, SF Immigrant Legal & Education Network, SF Labor Council, SFOP, SF Public Defender's Office, St. Peter's Housing, Tenderloin Housing Clinic, Worker Immigrant Rights Coalition, and Young Workers United.

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Since the legislation was announced last month, opponents of the Sanctuary Ordinance have nevertheless raised the specter of a legal challenge in an effort to derail the legislation. Yet, time and again, the City has successfully defended against legal challenges to its cutting edge policy initiatives.¹⁴ These include:

- San Francisco prevailing in the nation's first immigration preemption challenge to a municipal identification ordinance.¹⁵
- San Francisco prevailing in a legal challenge to its universal health care ordinance.¹⁶
- San Francisco prevailing in a legal challenge to its domestic partner benefits ordinance.¹⁷

Just as the Board of Supervisors has not shied away in the past from doing the right thing despite the threat of legal challenges, it should not hesitate now to restore critical due process protections for immigrant youth.

It is also worth remembering that two decades ago, when the City first enacted its Sanctuary Ordinance, it was met with similar dire warnings. Yet, two decades later, the Sanctuary Ordinance remains a critical cornerstone of the City's effort to build bridges with a vibrant and growing immigrant population. This policy has become a source of pride for San Francisco as a beacon for tolerance, diversity, and inclusion. The Sanctuary Ordinance also has been vital in ensuring that undocumented residents feel safe reporting crimes to the police and accessing other important government services without fear of being deported, thus, promoting overall community safety.

And, it is also worth noting that San Francisco does not stand alone. Over 50 cities across the country have sanctuary laws and policies, including Seattle, New York, Chicago, and Los Angeles. Sanctuary ordinances across the country have stood strong and will continue to stand strong for many years to come.¹⁸

IV. DEBUNKING THE MYTHS

Criticism of sanctuary policies is often grounded in misunderstandings about how our immigration and other laws work. It is important to understand what our laws actually do and do not require.

A. *Local Officials Are Not Required by Law to Expend Limited Local Resources on Federal Immigration Enforcement.*

¹⁴ Lee Romney, "Activism Defines S.F. City Attorney's Office," *Los Angeles Times*, March 23, 2004, available at <http://articles.latimes.com/2004/mar/23/local/me-cityatty23>.

¹⁵ Matt O'Brien "San Francisco judge rejects challenge to city ID card plan," *Oakland Tribune*, Oct 14, 2008, available at http://findarticles.com/p/articles/mi_qn4176/is_20081014/ai_n30903539/.

¹⁶ Office of the City Attorney News Release, "Herrera Hails 9th Circuit Decision Upholding Employer Mandate for 'Healthy San Francisco'", Sept. 30, 2008, available at <http://www.sfcityattorney.org/index.aspx?page=156>.

¹⁷ Dennis Herrera, "You've Gotta Give Them Hope," *San Francisco Chronicle*, June 27, 2003, available at <http://www.sfcityattorney.org/index.aspx?page=40>. ("San Francisco led the way during the 1980s in proposing the nation's first measures to recognize domestic partnerships. Today, domestic partner benefits are a staple in benefit packages of enlightened companies -- and an important benchmark by which job-hunters judge potential employers as true meritocracies that support diversity.")

¹⁸ See, e.g., *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407 (June 17, 2009). In *Sturgeon v. Bratton*, the California Court of Appeal for the Second Appellate District upheld Special Order 40 (SO40), the Los Angeles Police Department's sanctuary policy, against a legal challenge.

City officials have no legal duty to expend limited City resources on immigration enforcement. In fact, as state and federal courts have made clear, local officials who engage in immigration enforcement may themselves be violating the law.¹⁹

In the juvenile probation context, the City Attorney has made clear that “[f]ederal civil law does not require the city to give federal authorities information about juvenile detainees who appear to be in the country illegally.”²⁰ Nor does federal criminal law impose any such duty on local officials. Notably, there has *never* been a successful criminal prosecution under federal harboring laws of any municipal government entity, employee or officer acting pursuant to a policy such as San Francisco’s sanctuary ordinance.²¹ In order to be held criminally liable under federal harboring statutes, an individual must have the requisite criminal intent, which cannot be established against City officials under these types of circumstances. As a recent Court of Appeals case illustrates, even an immigration officer who counseled an individual how to avoid detection by staying out of trouble was not criminally liable for harboring.²²

B. Local Officials Are Not Equipped to Determine an Individual’s Immigration Status.

There is no simple method or procedure to determine an individual’s immigration status. Determining an individual’s immigration status can be exceedingly complex, even for trained immigration agents and experienced immigration attorneys. For those who lack any such training, these determinations are all too often based on uninformed hunches or ethnic and racial stereotyping.

For this reason, the decision by local officials to divert limited resources to immigration matters outside of their expertise or training can be very costly. A case from San Joaquin County illustrates how costly these mistakes can be. In *Soto-Torres v. Johnson*, local and federal government officials had to pay \$100,000 to settle a lawsuit brought by the Lawyers’ Committee for Civil Rights after a County probation officer made an erroneous determination regarding the plaintiff’s deportability,

¹⁹ See, e.g., *Gates v. Superior Court of Los Angeles County*, 193 Cal. App.3d 205, 218 (1987) (“[b]y allowing LAPD officers to arrest for civil violations of the [Immigration and Nationality Act], the [former LAPD] policy impermissibly intruded upon the federal preserve.”); *Gonzales v. Peoria*, 722 F.2d 468, 474-76 (9th Cir. 1983); *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 771 (C.D. Cal. 1995); *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-887 (inquiry into immigration status solely based on an individual’s appearance of Mexican ancestry is unlawful).

²⁰ City Attorney memo to Mayor Newsom, *Re: Undocumented Youth Detained in the Juvenile Justice System*, July 1, 2008, at 2, available at: <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=114>.

²¹ Despite the significant legal hurdles that any such criminal prosecution would face, U.S. Attorney Joseph Russoniello continues to direct federal taxpayer dollars to a grand jury investigation of San Francisco’s policies. It is worth noting that Mr. Russoniello has a contentious history with immigrants and immigrant advocacy groups, and has been embroiled in a number of controversies over the years. See e.g. “Russoniello Tells Hispanics He Is Sorry,” *S.F. Chronicle*, Jan. 19, 1990, at B7 (quoted as saying, “of all of the major drug traffickers that are involved in drug trafficking, a disproportionate amount are of Latino or Hispanic ancestry.”). “Hispanic Leaders Urge Boycott of Firm that Hired Russoniello,” *S.F. Chronicle*, Feb. 24, 1990, at A6; “The Trial of La Migra: Raids, Racism and the I.N.S. (Immigration and Naturalization Service),” *Nation*, May 8, 1989 (allegation that Mr. Russoniello used the term “wets” to describe undocumented immigrants). However, it is likely that Mr. Russoniello will be replaced with another U.S. Attorney in the near future. See Dan Levine, “Three Advance in Search For U.S. Attorney,” *The Recorder*, August 14, 2009.

²² See *United States v. Ozelik*, 527 F.3d 88, 100-101 (3d Cir. 2008), cert. denied, 129 Sup. Ct. 1037 (2009) (immigration officer not guilty of shielding an alien from detection when he told the alien, “. . . [d]isappear, don’t tell anyone what address you’re staying at,” and “[s]tay away. . . stay away from everything for 5-6 months. . .”).

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which resulted in the wrongful arrest and detention of plaintiff by immigration agents.²³ Litigation is also ongoing in the U.S. District Court for the Central District of California in *Guzman v. Chertoff*, Case No. CV-08-01327, a case brought against Los Angeles County Sheriff's employees and federal immigration agents by a U.S. citizen who was deported upon the advice of a County employee. Mr. Guzman, who is developmentally disabled, was lost in Mexico for three months following the improper deportation and is suing local and federal officials for damages.

In San Francisco, the risk of liability increases each day the current policy remains in place. In the twelve month period the current policy has been in place, San Francisco's Juvenile Probation Department has referred approximately 160 youth to ICE for deportation.²⁴ As illustrated by the case of "D" (mentioned earlier in this report), errors have already occurred and will continue to occur. As these errors mount, the total amount that the City will have to spend in investigating, defending, and settling these cases will only grow.

Separate and apart from these litigation costs are the costs that we collectively bear – an increase in pretextual arrests and racial profiling by rogue police officers, the wrongful separation of families, and the growing distrust and fear of police in immigrant communities. While these costs may not be as readily quantifiable, they are significant. By addressing these costs, the proposed amendment would bring San Francisco's policy toward youth back in line with the City's strong tradition of protecting due process and individual rights.

C. *Undocumented Youth Who Are Innocent of Charges Are Still Subject to Deportation After Charges Are Dismissed if Previously Reported to ICE.*

Under the City's current policy, youth are referred to ICE at the booking stage. Even if criminal charges against a youth are later dismissed, the youth still faces deportation. Contacting ICE is ringing a bell that cannot be un-rung. A youth does *not* have a defense to deportation based on the mistaken circumstances of the youth's arrest. Even if the City acknowledges that the arrest was in error, the youth still remains subject to deportation under our immigration laws. It is for this reason that innocent youth are being harmed that the proposed legislation remains crucial.

D. *Youth Are Treated Differently Under our State Juvenile Justice Laws.*

California, like most other states throughout the country, has long recognized that the process for adjudicating cases in the juvenile system must be tailored to the unique needs of juveniles. Unlike the criminal justice framework for adults, which focuses primarily on punishing offenders, juvenile justice systems in the United States promote rehabilitation and treatment as their primary goals because youth have a strong potential for rehabilitation if given the opportunity and the support.²⁵ Accordingly,

²³ *Soto-Torres v. Johnson*, CIV S-99-1695 WBS/DAD (E.D. Cal. filed Aug. 30, 1999); Reynolds Holding, *Heavy-Handed INS Agents*, San Francisco Chronicle, Sep. 19, 1999, at SC-2, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/1999/09/19/SC80136.DTL>.

²⁴ Jessie McKinley, *San Francisco at Crossroads Over Immigration*, NY Times, Jun. 13, 2009, at A12 ("the new policy has resulted in more than 100 referrals"), available at <http://www.nytimes.com/2009/06/13/us/13sanctuary.html>. At the time this story was being written, the NY Times was informed by ICE that 130 referrals of youth from JPD to ICE had occurred from July 2008 to February 2009. A recent inquiry into ICE by another media outlet found that 160 youth have been referred to ICE as of August 2009.

²⁵ Tamryn J. Etten and Robert F. Petrone, *Sharing Data and Information in Juvenile Justice: Legal, Ethical, and Practical Considerations*, 45 Juv. & Fam. Ct. 65 (1994); Cal. Welf. & Inst. Code §502 (the purpose of the Juvenile Court Law is "to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State....").

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California and many other states have long maintained the confidentiality of juvenile court information which, if made public, could attach the stigma of criminality to minors and ultimately work against the rehabilitative aims of the system.²⁶

To meet these goals, California enacted Welfare and Institutions Code section 827, and subsequently section 828, to explicitly protect records and information relating to juvenile arrests or court proceedings from disclosure to all unauthorized parties. Section 827 provides that *only* certain listed individuals, all of whom are participants in the state juvenile justice system and not federal officials, may access this information without first obtaining an order from the court.²⁷ The legislature therefore vested power to disseminate juvenile records to third parties exclusively to the juvenile court, which is in the best position to determine in what circumstances and with whom information should be shared. Any violation of this law is punishable as a misdemeanor and sanctioned by imprisonment and/or a fine.

In sum, youth are treated differently than adults under California law. For example, while state law provisions such as California Health & Safety Code section 11369 (which is at issue in the City's *Fonseca* litigation) apply to adults, such provisions neither apply to juveniles nor override longstanding state laws pertaining to youth.²⁸ The proposed amendment would address the current conflict between JPD policy and practice and important state law confidentiality protections for youth.

V. CONCLUSION

The proposed amendment to the sanctuary ordinance is a measured but important step toward ensuring due process for all youth. The City Attorney and legal experts agree that the proposed legislation is legally tenable and defensible. The proposed legislation will ensure that San Francisco's sanctuary law, which celebrates its 20th anniversary this October, remains a critical tool to build trust between City officials and immigrant communities. The proposed change is sound under federal and state law, and it strengthens the City's position both legally and morally. It is our hope that it is adopted not only for the immigrant youth of our city, but for everyone who believes in due process and our system of justice.

Respectfully submitted,

Asian Law Caucus
Lawyers' Committee for Civil Rights
Legal Services for Children
Immigrant Legal Resource Center
ACLU of Northern California
San Francisco Immigrant Legal & Education Network
San Francisco Immigrant Rights Defense Committee

²⁶ *Id.*

²⁷ Cal. Welf. & Inst. Code § 827(a)(1)(A)-(P). Examples of people privileged to view juvenile case files are the court personnel, district attorney, family members, the juvenile's attorney and the school superintendent to name a few.

²⁸ The California Supreme Court has noted that "arrest" terminology, such as that used in Health & Safety Code § 11369, is not used in juvenile cases. See *TNG v. Superior Court*, 4 Cal.3d 767, 775 (1971).