

The Media, Politics, and Policy: Taking Another Look at the Development of San Francisco’s Policies on Immigrant Juvenile Offenders

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I. Introduction

There can be no question that politics frequently influence policy-making. This is particularly true regarding political hot-topics like immigration and crime. Recently, San Francisco became a political battleground when its immigrant sanctuary city policy came under close scrutiny, especially in regard to the city's policy of not referring immigrant juveniles to Immigration and Customs Enforcement ("ICE").¹ The political battle over San Francisco's status as a sanctuary city reveals the strong influence of the mainstream local media on politics and divides San Francisco by pitting the Latino immigrant community and the advocates for immigrant youth against law enforcement officials.

II. Juveniles Should Be, and Generally Are, Treated Differently from Adults in the Immigration and Criminal Justice Systems

Congress recognized the need to provide a path to legal residency and citizenship for unaccompanied minors.² First, they created special immigrant juvenile status ("SIJS")³

¹ The term "sanctuary city" generally applies to cities that do not allow municipal funds or resources to be used to enforce federal immigration laws. These cities implement ordinances or have unofficial policies that do not allow police or municipal employees to inquire about one's immigration status. See Peter Fimrite, *Newsom says S.F. won't help with raids*, S.F. Chron., Apr. 23, 2007, at B1.

² The term "unaccompanied minors" is used to refer to persons who are under 18 years of age or under a country's legal age of majority, are separated from both parents, and are not with and being cared for by a guardian or other adult who by law or custom is responsible for them. This includes minors who are without any adult care, minors who are entirely on their own, minors who are with minor siblings but who are unsupported by any adult responsible for them, and minors who are with informal foster families. See U.N. Secretary-General, *Report of the High Commissioner for Refugees, Questions Relating to Refugees, Returnees and Displaced Persons and Humanitarian Questions: Assistance to Unaccompanied Refugee Minors*, ¶ 2, delivered to the General Assembly, U.N. Doc. A/52/273 (Aug. 7, 1997), available at <http://www.un.org/documents/ga/docs/52/plenary/a52-273.htm>.

³ 8 U.S.C. §§ 1101(a)(27)(J) & 1255(a).

through the Immigration Act of 1990.⁴ Recently, they enacted additional protections for children who are SIJS and asylum applicants with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”).⁵ In doing so, Congress acknowledged that unaccompanied immigrant children are more vulnerable to traffickers than other groups of immigrants. Traffickers offer children false promises of education, employment, or reunification with family in the United States only to put them into exploitative and abusive situations as child laborers, drug dealers, or prostitutes.⁶ Even children who pay human smugglers, known as *coyotes*, often face mistreatment.⁷ Their smugglers become coercive or abusive and demand additional money from the children or their families once they have arrived in the United States.⁸ Many children choose to take the dangerous journey, usually from Central America, to the U.S. to escape abuse, abandonment, neglect, forced prostitution, child marriage, female genital mutilation, conscription, gang recruitment, and armed conflict’s devastating effects.⁹

In order to make immigration relief more accessible to minors, Congress amended the immigration laws to waive specific grounds of inadmissibility for juveniles.¹⁰ For

⁴ Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C.).

⁵ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 8 U.S.C. and 22 U.S.C.) [hereinafter TVPRA].

⁶ Wendy Young & Megan McKenna, Kids in Need of Defense (“KIND”), *Special Project: The Measure of Society: The Treatment of Unaccompanied Refugee and Immigrant Children in the United States*, Harv. C.R.-C.L.L. Rev. 247, 248 (2010).

⁷ *Id.* at 248-49.

⁸ See Young & McKenna, *supra* note 6, at 249; Kris Axtman, *Changing Landscape of an Underground Trade*, Christian Sci. Monitor, July 17, 2003, at 3, available at <http://www.csmonitor.com/2003/0717/p03s01-usgn.html>; Joel Millman, *Immigrants Become Hostages as Gangs Prey on Mexicans*, Wall St. J., June 19, 2009, at A1.

⁹ Young & McKenna, *supra* note 6, at 248.

¹⁰ Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, sec. 302(d)(2), § 1255(h), Pub. L. No. 102-232, 105 Stat. 1733; see Angela Lloyd, Symposium on Children and Immigration,

instance, most juvenile delinquency adjudications are not considered convictions¹¹ for immigration purposes.¹² The Board of Immigration Appeals (“BIA”)¹³ has held that an adjudication of youthful offender status under certain state laws which correspond to a determination of juvenile delinquency under the Federal Juvenile Delinquency Act, the primary piece of federal legislation dealing with juvenile offenders, do not constitute a judgment of conviction for immigration purposes.¹⁴

Arguably, a juvenile delinquency adjudication, or the underlying activity, cannot form the basis for finding someone inadmissible because there is still a technical question as to whether a minor can form the mental intent to participate in a crime, including drug trafficking.¹⁵ Historically, laws dealing with juvenile offenders reflect the theory that minors, who are in the developmental process of forming character, intellect, personality and values, are unable to form the requisite mental intent to understand fully the criminality of their actions.¹⁶ Research shows that normal adolescent brains are not fully developed, especially in the areas of the brain that “govern control of impulsivity, judgment, planning for the future,

Regulating Consent: Protecting Undocumented Immigrant Children from their (Evil) Step-Uncle Sam, or How to Ameliorate the Impact of the 1997 Amendments to the SIJ Law, 15 B.U. Pub. Int. L.J. 237, 242 (2006).

¹¹ Generally, juvenile offenses are not considered criminal convictions. However, a “conviction” under immigration law sometimes includes acts or offenses that are not convictions under state or federal law. In some cases, an admission to sufficient facts to warrant a finding of guilt, without a formal conviction, may be considered a “conviction”. See 8 U.S.C. § 1101(a)(48)(A).

¹² *Matter of Ramirez-Rivero*, 18 I.&N. Dec. 135 (B.I.A. 1981). See also 22 C.F.R. §§ 40.21(a)(2), 40.22(a).

¹³ The Board of Immigration Appeals is a branch of the Executive Office for Immigration Review within the U.S. Department of Justice. The BIA is the highest administrative body for interpreting and applying immigration laws. Board of Immigration Appeals, <http://www.justice.gov/eoir/biainfo.htm> (last visited Nov. 14, 2010).

¹⁴ See 18 U.S.C. §§ 5031-5042; *Matter of Devison*, 22 I.&N. Dec. 1362 (B.I.A. 2000).

¹⁵ Mary E. Kramer, *Immigration Consequences Of Criminal Activity* 76 (Richard J. Link ed., 3rd ed. 2008).

¹⁶ *Id.*

foresight of consequences, and other characteristics that make people morally culpable.”¹⁷

Recently, in the case of *Roper v. Simmons*, the American Medical Association contended: “The adolescent’s mind works different from ours. Parents know it. This court has said it. Legislatures have presumed it for decades or more. And now, new scientific evidence sheds light on the differences.”¹⁸ In this case, the Supreme Court held that juveniles under the age of eighteen are categorically different from adults and the death penalty shall not be applied to minors. They cited three general differences between minors and adults: (1) lack of maturity and an underdeveloped sense of responsibility; (2) juveniles are more vulnerable or susceptible to negative influences and pressures; (3) the character of a juvenile is not as well formed as that of an adult.¹⁹ Based on this perspective, treating juveniles differently from adults is both appropriate and good policy in the criminal justice and immigration systems.

California Welfare and Institutions Code Section 202 reflects this policy.²⁰ It provides that the purpose of the juvenile court is “to provide for the protection and safety of the public and each minor.”²¹ The Code distinguishes the juvenile system from the punitive adult criminal justice system. The California Supreme Court has also noted that “arrest” terminology, such as that used in Health and Safety Code Section 11369, is not used in juvenile cases.²² However,

¹⁷ Eileen Hirsch, Ginger Murray & Wendy Henderson, ‘Raise the Age’ - Return 17-Year-Olds to Juvenile Court, 80 Wis. Law. (June 2007), available at www.wisbar.org/AM/Template.cfm?Section=Wisconsin_Lawyer&template=/CM/ContentDisplay.cfm&contentid=65353 (citing National Institute Of Mental Health, Nih Publication No. 01-4929, Teenage Brain: A Work In Progress (2004), <http://www.nimh.nih.gov/health/publications/teenage-brain-a-work-in-progress.shtml> (last visited Nov. 12, 2010)).

¹⁸ Brief for Am. Med. Ass’n et. al. as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

¹⁹ *Roper*, 543 U.S. at 569-70 (2005).

²⁰ See CAL. WELF. & INST. CODE § 202 (Deering 2009).

²¹ *Id.*

²² See *T.N.G. v. Superior Court of S.F.*, 4 Cal. 3d 767, 775 (1971).

in San Francisco, the interplay of media influence and politics have pushed for policies and practices that treat juvenile immigrant offenders like adults who have been arrested and charged with felonies.

III. A Brief History of San Francisco's Sanctuary City Policy

In 1985, Mayor Dianne Feinstein signed legislation that designated San Francisco as a sanctuary city for immigrants seeking asylum from El Salvador and Guatemala.²³ Four years later, the city extended the policy to all immigrants.²⁴ The city would not use its resources or funds to assist federal immigration law enforcement, except when required by federal law.²⁵ In the early 1990s, legislative amendments allowed law enforcement to report felony arrests of suspected undocumented immigrants to federal authorities as required by federal law.²⁶ At that time, San Francisco officials interpreted the ordinance and state juvenile law as preventing them from referring undocumented immigrants in the juvenile justice system to federal authorities for deportation.²⁷

Nonetheless, in March 2007, federal ICE agents conducted a series of surprise immigration raids throughout the San Francisco Bay Area as part of "Operation Return to Sender." These raids upset several pro-immigrant groups and

²³ S.F. Bd. of Supervisors Res. 1087-85 (Cal. 1985), available at <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=486> [hereinafter City of Refuge Resolution] (urging the Mayor to declare San Francisco to be a "City of Refuge"); see also Rose Cuison Villazor, "Sanctuary Cities" and Local Citizenship, 37 Fordham Urb. L.J. 573, 583 (2010).

²⁴ Cuison Villazor, *supra* note 23, at 583.

²⁵ *Id.* at 583-84.

²⁶ S.F., CAL. ADMIN. CODE ch. 12H (1989), available at <http://sfgsa.org/index.aspx?page=1067>.

²⁷ *S.F.'s sanctuary city story so far*, S. F. Chron., Aug. 31, 2008, at A14; see S.F., CAL. ADMIN. CODE ch. 12H, § 12H.2 (1992), available at <http://sfgsa.org/index.aspx?page=1067>.

led to protests in several cities, including San Francisco.²⁸ Mayor Gavin Newsom responded by promising to maintain San Francisco as a sanctuary for immigrants and to do everything he could to discourage federal authorities from conducting immigration raids in his city.²⁹ He publically announced that he would not allow city department heads or “anyone associated with [San Francisco]” to cooperate in federal immigration raids.³⁰ Again in April 2008, as San Francisco commenced an \$83,000 campaign to announce the city’s “Don’t Ask, Don’t Tell” policy on immigration status, Police Chief Heather Fong also said that police officers will report undocumented immigrants if they have a felony arrest, but otherwise they “do not work on enforcing immigration laws.”³¹ Like several other cities in California, San Francisco prided itself in its status as a sanctuary city.³²

IV. The San Francisco Chronicle’s Media War Against Immigrant Juvenile Offenders

On June 29, 2008, San Francisco Chronicle Staff Writer Jaxon Van Derbeken³³ published an inflammatory

²⁸ Jesse McKinley, *San Francisco Bay Area Reacts Angrily to a Series of Immigration Raids*, N.Y. Times, Apr. 27, 2007, at A14.

²⁹ Peter Fimrite, *Newsom says S.F. won’t help with raids*, S. F. Chron., Apr. 23, 2007, at B1.

³⁰ Cecilia M. Vega, *City making clear illegals can obtain services here*, S. F. Chron., Apr. 03, 2008, at B1.

³¹ *Id.*; Press Release, City & County of San Francisco Office of the Mayor, Mayor Newsom Launches Sanctuary City Outreach Campaign (Apr. 2, 2008), *available at* http://www.sfmayor.org/archives/PressRoom_NewsReleases_2008_78378/ (last visited Nov. 12, 2010).

³² See Debra J. Saunders, Op-Ed, *GOP would make sanctuary cities pay*, S. F. Chron., Sept. 1, 2008, at B5.

³³ Jaxon Van Derbeken had already been chronicling the case of Edwin Ramos, a 21-year-old suspected member of the Mara Salvatrucha (MS-13) and undocumented immigrant from El Salvador. Ramos was being charged with triple-homicide for shooting a man and his two sons during a fit of road rage. Ramos had been arrested in the past but was released when the District Attorney dropped the charges. See Jaxon Van Derbeken, *Slaying suspect escaped prior prosecution*, S. F. Chron., June 27, 2008, at B1.

article.³⁴ In it, he accused the City's immigrant sanctuary status of protecting Honduran youths caught dealing crack cocaine from possible federal deportation.³⁵ He asserted that the City gave some offenders city-paid flights home with *carte blanche* to return.³⁶ It is frequently argued that whoever controls the media controls the minds of the public.³⁷ This article framed the sanctuary city issue in the eye of the public and established the vocabulary, tone, and focus of the ensuing controversy.³⁸ Van Derbeken appealed to the public's disdain for criminality, especially as it relates to drug dealers and "illegal" immigrants.³⁹ He played on the idea that the city was spending taxpayer dollars on undeserving criminal immigrants by paying for their flights home.⁴⁰

Van Derbeken's article exposed the City's practice of not referring immigrant juvenile offenders to ICE, in accordance with the City's sanctuary policy, and of providing transportation to reunite juveniles with their parents or guardians in a foreign country.⁴¹ He characterized sending juveniles "home" as a method to circumvent the process of federal deportation which "legally bars them from ever returning" to the U.S.⁴² The article specifically referred to an

³⁴ Jaxon Van Derbeken, *City's shield of migrants probed*, S. F. Chron., June 29, 2008, at A1.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See Edward Herman & Noam Chomsky, *Manufacturing Consent: The Political Economy Of Mass Media* (Pantheon Books 2002) (1988); Walter Lippmann, *Public Opinion* (Wilder Publications 2010) (1922).

³⁸ See generally Deana A. Rohlinger, *Friends and Foes: Media, Politics, and Tactics in the Abortion War*, 53 Soc. Probs. 537, 540 (2006).

³⁹ See John Hagan, Ron Levi & Ronit Dinovitzer, *The Symbolic Violence of the Crime-Immigration Nexus: Migrant Mythologies in the Americas*, 7 Criminology & Pub. Pol'y 95 (2008).

⁴⁰ Van Derbeken, *supra* note 34; see Jaxon Van Derbeken, *S.F. mayor reverses policy on illegals*, S. F. Chron., July 3, 2008, at A1.

⁴¹ *Id.*

⁴² Van Derbeken, *supra* note 34. Since the enactment of the TVPRA in December 2008, unaccompanied children must be placed in removal proceedings under INA §240 and are eligible for relief under INA §240B at no cost to the child. In other words, children will be ensured an opportunity to seek relief during removal proceedings, and will be eligible for voluntary departure. This is important for unaccompanied children who

incident in May 2008 when Houston federal immigration authorities detained and questioned a San Francisco juvenile probation officer who was escorting two offenders back to Honduras.⁴³ Joseph Russoniello, United States Attorney for California's Northern District, said in an interview that "the phenomenon of Hondurans being trucked into the Bay Area, housed in Oakland and sent out to sell crack cocaine" had been going on for years.⁴⁴ According to Russoniello, dealers claim to be under eighteen so they can avoid harsher treatment by federal authorities.⁴⁵ He complained that without an effective protocol for age verification, drug dealers "know they can game the system by claiming they're juveniles."⁴⁶

California Welfare and Institutions Code Section 738 technically authorizes the practice of transporting juveniles to their home countries to reunite them with their families when they do not have a legal guardian in the U.S.⁴⁷ While this

may not be able to afford the financial cost of returning to their countries, and who would like to avoid the time-barred consequences of a prior removal order by seeking voluntary departure. *See* TVPRA, *supra* note 5, § 235(a)(5)(D); Deborah Lee, Manoj Govindaiah, Angela Morrison & David Thronson, *Legal Relief Options for Unaccompanied Alien Children: Update Since the Enactment of the 2008 Trafficking Victims Protection Reauthorization Act*, in *Immigration & Nationality Law Handbook* 833, 834 (2009-10 ed. 2009).

⁴³ Van Derbeken, *supra* note 34; *see also* Maria L. La Ganga, David Kelly, & Anna Gorman, *Migrant snafus bedevil S.F.*, L.A. Times, July 2, 2008, at A1.

⁴⁴ La Ganga, et. al, *supra* note 43; *see* Van Derbeken, *supra* note 34.

⁴⁵ La Ganga, et. al, *supra* note 43; *see* Van Derbeken, *supra* note 34.

⁴⁶ La Ganga, et. al, *supra* note 43; *see* Van Derbeken, *supra* note 34

⁴⁷ CAL. WELF. & INST. CODE § 738 (Deering 2009) ("In a case where the residence of a minor placed on probation . . . or of a ward of the juvenile court is . . . in another state or foreign country, or in a case where . . . his parents, relatives, guardian, or person charged with his custody is in another state, the court may order such minor sent to his parents, relatives, or guardian, or to the person charged with his custody, or, if the minor is a resident of a foreign country, to an official of a juvenile court of such foreign country or an agency of such country authorized to accept the minor, and in such case may order transportation and accommodation . . . as the court deems necessary. If the court deems an attendant necessary, the court may order the probation officer or other suitable person to serve as such attendant. . . .").

practice technically circumvents federal deportation procedures, immigrant advocates find this practice problematic for different reasons than those cited by Van Derbeken's article.⁴⁸ The practice sends children home to parents in a foreign country without any process to determine whether that child will be put at risk for abuse or neglect. This is not only adverse to the best interest of the child, but also causes children to forfeit any claim they might have had for obtaining special immigrant juvenile status, asylum, or immigration relief through visas for victims of crimes and/or trafficking.

On July 1, 2008, Van Derbeken published another article describing how eight Honduran crack dealers managed to escape within days of arriving at unlocked group homes in San Bernardino County.⁴⁹ He explained, "San Francisco sent the youths to the Southern California group homes after federal authorities demanded that they stop flying illegal immigrant juvenile offenders to their homeland without alerting immigration officials."⁵⁰ This was not the first time that juveniles had escaped from group homes and halfway houses.⁵¹ San Francisco had a practice of transferring these juveniles to homes in San Bernardino County.⁵² In response, San Bernardino County officials became more vocal about their concerns.⁵³ They complained the practice essentially "import[ed] offenders" who take up an inordinate amount of San Bernardino County's resources and bring more violence and drugs into their communities.⁵⁴

⁴⁸ See Van Derbeken, *supra* note 34.

⁴⁹ Jaxon Van Derbeken, *8 young migrant crack dealers escape*, S. F. Chron., July 1, 2008, at A1.

⁵⁰ *Id.*

⁵¹ See David Kelly, *Halt drug dealer exports, S.B. County says*, L.A. Times, July 9, 2008, at B3; Cinnamon Stillwell, *San Francisco: Sanctuary City Gone Awry*, S. F. Chron., July 2, 2008, at A1.

⁵² See Kelly, *supra* note 51; Stillwell, *supra* note 51.

⁵³ See Kelly, *supra* note 51; Stillwell, *supra* note 51.

⁵⁴ See Kelly, *supra* note 51; Stillwell, *supra* note 51 (indicating that it costs \$7,000 per month to house each immigrant juvenile offender); Van Derbeken, *S.F. mayor reverses policy on illegals*, *supra* note 40.

The Chronicle's shocking revelations put San Francisco at the center of national attention.⁵⁵ The controversy overshadowed Mayor Newsom's announcement earlier that week that he was considering a 2010 run for governor of California.⁵⁶ On July 1, 2008, he had no choice but to call a news conference to address the issue just three days after Van Derbeken's original article was printed.⁵⁷ However, the results of this conference were less than satisfactory as it provided no solutions and made clear that no one would take responsibility for the situation.⁵⁸ Mayor Newsom sidestepped the issue by indicating that he was "powerless to order the city to cooperate with federal authorities," and the courts had the authority here.⁵⁹ In response, Juvenile Court Jurist, Donna Hitchens said judges were simply approving recommendations from juvenile probation officers.⁶⁰ Ultimately, several departments and officials had contributed to the practice of flying immigrant juveniles to their home countries because the district attorneys, judges, public defenders, and probation officers had all recommended and acceded to this practice in the past.⁶¹ Newsom insisted that the sanctuary policy was never intended to protect lawbreakers.⁶² Since at this time there had been little or no media coverage of advocates who supported the policy, the pressure to change the policy was mounting.⁶³

⁵⁵ Jaxon Van Derbeken & Maria Lagos, *Illegals called Court's problem*, S. F. Chron., July 2, 2008, at A1; See Maria L. La Ganga, *Newsom, with eye on higher office, is jolted by a new issue*, L. A. Times, July 3, 2008, at B6.

⁵⁶ Van Derbeken, *S.F. mayor reverses policy on illegals*, *supra* note 40.

⁵⁷ Van Derbeken & Lagos, *supra* note 55; see Van Derbeken, *supra* note 34.

⁵⁸ Van Derbeken & Lagos, *supra* note 55.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Stillwell, *supra* note 51 (referencing a local CBS poll where "79 percent of respondents agreed that San Francisco should 'turn over convicted illegal immigrants for deportation.'").

V. Under Pressure, Mayor Newsom Ends the Sanctuary

The Office of San Francisco City Attorney Dennis Herrera issued a memorandum after Newsom's news conference about the sanctuary city law.⁶⁴ It said that nothing in the law prevents San Francisco officials from alerting the federal government when a juvenile immigrant is arrested for the alleged commission of a felony.⁶⁵ However, it also noted there is nothing in federal law that requires them to do so.⁶⁶ The memorandum suggested that state law governing the confidentiality of juvenile court records does not preclude referrals from the juvenile justice system to immigration officials.⁶⁷ The Superior Court can order dispositions in juvenile cases that include an order to return the juvenile to his or her residence in another country after hearing from the District Attorney, the Juvenile Probation Department, and the juvenile's attorney.⁶⁸

Indisputably, the city cannot penalize a city employee or official for turning over information.⁶⁹ However, the analysis by the Office of the City Attorney possibly misinterprets the language of the confidentiality statute, explicitly granting exceptions to certain parties "who are actively participating in criminal or juvenile proceedings involving the minor".⁷⁰ The U.S. Supreme Court has held that immigration removal proceedings are by nature civil

⁶⁴ Memorandum from Dennis J. Herrera, Office of the S.F. City Att'y, on Undocumented Youth Detained in the Juvenile Justice System (July 1, 2008), *available at* <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=114> (last visited Nov. 12, 2010) [hereinafter Undocumented Juvenile Memo].

⁶⁵ *Id.*; see Van Derbeken & Lagos, *supra* note 55.

⁶⁶ Undocumented Juvenile Memo, *supra* note 68, at 1; see Van Derbeken & Lagos, *supra* note 55.

⁶⁷ Undocumented Juvenile Memo, *supra* note 68, at 1-2.

⁶⁸ Undocumented Juvenile Memo, *supra* note 68, at 2; see Van Derbeken & Lagos, *supra* note 55.

⁶⁹ See 8 U.S.C. § 1373; Undocumented Juvenile Memo, *supra* note 68, at 2.

⁷⁰ CAL. WELF. & INST. CODE § 827(a)(1)(E) (Deering 2009).

proceedings.⁷¹ This suggests and reflects that the Department of Homeland Security (“DHS”), which includes both ICE and the U.S. Citizenship and Immigration Service (“USCIS”), is not a law enforcement agency, but rather an administrative agency. Additionally, according to California state law, law enforcement may disclose information relating to a minor they have taken into custody to another law enforcement agency that has a legitimate need for the information for the purposes of official disposition of a case.⁷² Although immigration officials may have a “legitimate need” for the information, unless they already have a prior deportation order for the juvenile, or the juvenile has an open immigration case, they are not “actively participating in . . . proceedings involving the minor.”⁷³ The purpose of the need for the information would no longer be for the “disposition of [an existing] case,” but rather, for the commencement of a case against the juvenile.⁷⁴ Therefore, the dissemination of information regarding juvenile records may be in violation of California’s juvenile confidentiality statutes.⁷⁵ This issue has not yet been litigated fully.

Nonetheless, on July 2, 2008, the day after Mayor Newsom received the memorandum, he announced that San Francisco would begin turning over juvenile undocumented immigrants convicted of felonies to federal authorities for possible deportation.⁷⁶ He indicated that he had directed his administration to work in cooperation with the federal government on all cases and urged the district attorney and public defenders to do the same. However, Public Defender

⁷¹ *Immigration & Naturalization Serv. v. Lopez-Mendoza*, 468 U.S. 1032 (1984).

⁷² CAL. WELF. & INST. CODE § 828(a) (Deering 2009) (“[A]ny information gathered by a law enforcement agency . . . relating to the taking of a minor into custody may be disclosed . . . to another law enforcement agency . . . or to any person or agency which has a legitimate need for the information for the purposes of official disposition of a case.”).

⁷³ See CAL. WELF. & INST. CODE § 827(a)(1)(E) (Deering 2009) (limiting the parties and agencies to whom a juvenile case file can be released).

⁷⁴ See CAL. WELF. & INST. CODE § 828(a) (Deering 2009).

⁷⁵ See CAL. WELF. & INST. CODE § 827 (Deering 2009).

⁷⁶ Van Derbeken, S.F. *mayor reverses policy on illegals*, *supra* note 40.

Jeff Adachi announced that juvenile disposition is ultimately a judicial determination and that public defenders “are going to continue to advocate for the child, for [their] client. If the client doesn’t want to go to the feds [sic], that’s what [they’ll] be advocating for.”⁷⁷ The issue proved to be difficult to resolve, and the controversy presented an untimely challenge for Newsom in the wake of his prospective gubernatorial campaign. San Francisco established its sanctuary city status decades before Newsom took office.⁷⁸ Nonetheless, the conflict and confusion served as an unfortunate introduction of Newsom to the less liberal counties in California, including San Bernardino County, where San Francisco sent the Honduran juveniles to “escape and victimize the neighborhoods.”⁷⁹

Mayor Newsom’s announcement of the policy changes led to mixed reactions. Legal analysts, city officials, and immigrant advocates acknowledged that the City’s controversial practices were unintentional and the sanctuary laws did not require them. However, policies discouraging police officers from inquiring about immigration status also counter the perception of the police as the enemy. This encourages witnesses and victims of crimes to file police reports and cooperate with investigators.⁸⁰ However, people were clearly not happy with a policy that gave drug dealers a “free ticket home”, “dumped” them in Southern California, or helped them evade federal deportation, especially when it was costing the City millions of taxpayer dollars.⁸¹ Meanwhile, advocates were coming forward and warning that city officials were failing to look at the reasons why youths from Honduras

⁷⁷ La Ganga, *supra* note 55.

⁷⁸ City of Refuge Resolution, *supra* note 23; *see also* Cuison Villazor, *supra* note 23, at 583.

⁷⁹ *See* La Ganga, *supra* note 55.

⁸⁰ *See* Tyche Hendricks, *Sanctuary laws seen as pragmatic*, S. F. Chron., July 6, 2008, at A1.

⁸¹ Van Derbeken, *S.F. mayor reverses policy on illegals*, *supra* note 40 (noting San Francisco had spent \$2.3 million to house illegal immigrants in juvenile hall since 2005 when Newsom appointed juvenile probation director William Sifferman and paid nearly \$19,000 to fly juveniles to their home countries).

are leaving their countries and families behind to come to the United States to deal drugs.⁸² The city's reactionary policy changes failed to recognize that these were children in need of services.⁸³ The Chronicle quoted Chief Juvenile Probation Officer William Siffermann saying, "We are committed to not returning any youth to their countries of origin, and we are committed to not placing any more of the undocumented youth in out-of-home placement."⁸⁴ Yet, he noted that most of the undocumented youths have no parents in this country.⁸⁵ Most of these immigrant youth were unaccompanied minors.⁸⁶

Meanwhile, the Chronicle printed several stories following the case of Edwin Ramos, an undocumented immigrant from El Salvador and suspected member of the Mara Salvatrucha (MS-13) gang.⁸⁷ Ramos was charged with the murder of Tony Bologna and his two sons who he shot "during a fit of road rage."⁸⁸ The articles provide an account of several incidents in which Ramos committed, or was suspected of having committed, several crimes including assault, battery, and attempted robbery.⁸⁹ During one of his later arrests, just three months before the murder, the immigration and sheriff officials discovered that Ramos was potentially deportable. However, federal authorities had decided not to detain him or place him in removal proceedings.⁹⁰ These revelations further angered the public.⁹¹ The victims' family members even filed a negligence suit

⁸² See Heather Knight, *Juvenile hall braces for surge of detainees*, S. F. Chron., July 4, 2008, at A1.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See Van Derbeken, *supra* note 33.

⁸⁸ See Van Derbeken, *supra* note 33; Jaxon Van Derbeken, *Slaying suspect once found S.F. sanctuary*, S. F. Chron., July 20, 2008, at A1.

⁸⁹ Van Derbeken, *Slaying suspect once found S.F. sanctuary*, *supra* note 88.

⁹⁰ *Id.*

⁹¹ See *Id.*

against the City of San Francisco.⁹² Minutemen Project activists blamed Newsom and the sanctuary city policy for the Bologna killings.⁹³ They faced off against hundreds of immigrant rights supporters as they protested in the streets.⁹⁴

The Chronicle also seemed committed to documenting the ongoing struggle to figure out where and why the sanctuary policy “went wrong” and the difficulties of determining the future of San Francisco’s status as a sanctuary city. Public Defender Jeff Adachi indicated that “San Francisco’s policy of reuniting undocumented youth with their families was enacted with the full knowledge and cooperation of the Immigration Naturalization Service (INS), [ICE’s predecessor].”⁹⁵ Five days later, Van Derbeken published another story in which he quoted city officials insisting that INS had agreed to the City’s policy, as well as federal officials unequivocally denying any such agreement.⁹⁶ The finger-pointing continued as city and immigration officials continuously diverted the blame away from themselves.⁹⁷

Mayor Newsom once again addressed the ongoing controversy in a letter published in the Chronicle.⁹⁸ Newsom acknowledged that “[t]he system failed” in the case of Edwin Ramos.⁹⁹ However, he also emphasized that “[o]n a monthly basis, the sheriff refers to ICE some 80 to 100 undocumented

⁹² Bob Egelko, *Judge lets victims’ kin sue S.F. over sanctuary*, S. F. Chron., Sept. 15, 2009, at C2. The court ultimately dismissed the Bologna Family’s suit against the city of San Francisco. Bob Egelko, *Victims’ kin lose sanctuary suit in S.F.*, S. F. Chron., Feb. 24, 2010, at C1.

⁹³ Maria L. La Ganga, *Foes face off over sanctuary policy in S.F.*, L.A. Times, July 31, 2008, at B4.

⁹⁴ *Id.*

⁹⁵ Jeff Adachi, Letter to the Editor, *The feds approved*, S. F. Chron., July 15, 2008, at B6.

⁹⁶ Jaxon Van Derbeken, *Feds deny S.F. claims on juvenile cooperation*, S. F. Chron., July 20, 2008, at A15.

⁹⁷ See Deborah Saunders, *Sanctuary policy made city less safe*, S. F. Chron., July 22, 2008, at B7.

⁹⁸ Gavin Newsom, *Sanctuary city*, S. F. Chron., Aug. 8, 2008, available at http://articles.sfgate.com/2008-08-08/opinion/17120614_1_sanctuary-city-undocumented-residents-policy (last visited Nov. 11, 2010).

⁹⁹ *Id.*

individuals arrested for felonies.”¹⁰⁰ Newsom indicated that he initiated an intensive review of the sanctuary city policies “because, no matter how old or well-intentioned any city policy or procedure, we simply can’t be afraid to take responsibility for and correct errors when public safety is at stake.”¹⁰¹ Newsom’s letter attempted to shift the focus toward the proactive steps that he and the City had taken to remedy the mistakes of the past.

VI. Taking a “Defiant Stand”

While Mayor Newsom promised more vigorous law enforcement, San Francisco’s Immigrant Rights Commission (“IRC”) passed a resolution that strongly urged for the implementation of a policy that protects the rights of undocumented immigrant youth in the juvenile justice system.¹⁰² Ten days after Newsom’s letter in the Chronicle, Van Derbeken wrote an article about the IRC’s “defiant stand” on Newsom’s changes to the sanctuary city policy.¹⁰³ The IRC’s resolution urged the Probation Department to develop a new policy, with input from local community-based organizations.¹⁰⁴ The policy would allow all immigrant minors in custody to have a legal screening¹⁰⁵ by an immigration attorney.¹⁰⁶ The IRC also requested that the minors in custody be provided an attorney to represent them in immigration proceedings.¹⁰⁷ They insisted that the City

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² S.F. Immigrant Rights Comm’n Res. No. 004-2008 (2008), available at <http://www.sfgov2.org/ftp/uploadedfiles/immigrant/Resolution%20regarding%20the%20treatment%20of%20immigrant%20youth.pdf> [hereinafter IRC Resolution] (regarding the treatment of undocumented immigrant youth in the San Francisco juvenile justice system).

¹⁰³ Jaxon Van Derbeken, *Panel sticks up for immigrant juvenile felons*, S. F. Chron., Aug. 19, 2008, at A1.

¹⁰⁴ IRC Resolution, *supra* note 102, at 2.

¹⁰⁵ In this context, a “legal screening” refers to a legal interview conducted by an attorney in order to identify possible legal claims to relief from deportation.

¹⁰⁶ IRC Resolution, *supra* note 102, at 2.

¹⁰⁷ *Id.*

expand opportunities for unaccompanied youth “because these youth are extremely vulnerable to exploitation by adult criminals” and develop culturally appropriate community based programs for them.¹⁰⁸ Finally, the IRC recommended that the Juvenile Probation Department and all other juvenile stakeholders make every effort to place undocumented immigrant youth with their family and in their communities in San Francisco.¹⁰⁹

Although the resolution had the support of immigrants rights groups, Van Derbeken had already set the tone for the discussion of these issues. His articles embodied the constant conflict created by the sanctuary city controversy. The Commission Chairman Jamal Dajani cautioned against making abrupt decisions to change the policy, as Newsom had done.¹¹⁰ Instead, he insisted “[w]e shouldn’t be punishing everyone because of [the Ramos] case, where we had a breakdown in the system.”¹¹¹ Van Derbeken depicted others, such as Aaron Peskin the president of the Board of Supervisors, as having brushed off the resolution; Peskin simply called it “entirely advisory” without having taken the time to read it.¹¹² The ultimate decision of whether to take the advice of the Commission was in the hands of Mayor Newsom, but he did not act to implement any of the recommendations.¹¹³

Amid front-page headlines that blamed the sanctuary city policy for the Bologna slayings by Ramos, came others that depicted the power struggle among players in the juvenile justice system who disagreed on how to handle immigrant youth who are picked up on drug charges.¹¹⁴ California

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 3.

¹¹⁰ Van Derbeken, *supra* note 103.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See id.*

¹¹⁴ *See* Jaxon Van Derbeken, *Family of 3 victims blames S.F. policy*, S. F. Chron., Aug. 23, 2008, at A1; Jaxon Van Derbeken, *S.F. court lets teenager in drug case stay in U.S.*, S. F. Chron., Aug. 27, 2008, at A1; Jaxon Van Derbeken, *S.F. turns teen drug suspect over to feds*, S. F. Chron., Aug. 28, 2008, at A1.

juvenile courts have jurisdiction over any person under the age of eighteen who violates any law or ordinance and may deem that person to be a ward of the court.¹¹⁵ The juvenile court maintains the authority to transfer a juvenile for proceedings in the adult criminal court when deemed appropriate.¹¹⁶ However, any order finding a minor to be a ward of the juvenile court cannot be considered a conviction of a crime.¹¹⁷ Furthermore, juvenile court proceedings are not regarded as criminal proceedings.¹¹⁸ Therefore, Juvenile Court Commissioner Abby Abinanti acted within her authority when she concluded that the courts should treat the 14-year-old Honduran immigrant arrested on drug charges, Francisco G., within the social welfare system and not the criminal system.¹¹⁹ This was because Francisco G. had no family in Honduras, fled to the U.S. to escape gang beatings, turned to drug dealing to survive, and deserved a chance to seek asylum while in foster care.¹²⁰

Commissioner Abinanti ordered probation to turn over Francisco G. immediately to social workers for possible placement in a group home while his juvenile case remained in progress.¹²¹ However, rather than send him to a group home, probation officials honored a 48-hour hold placed by federal immigration authorities until ICE agents picked up Francisco G. from juvenile hall.¹²² In response to the probation officials' defiance of the court order, Nathan Ballard, a spokesperson for Mayor Newsom, said that "[i]t appears [the city's] new policy is working the right way."¹²³

¹¹⁵ CAL. WELF. & INST. CODE §602(a) (Deering 2009).

¹¹⁶ CAL. WELF. & INST. CODE §707.1 (Deering 2009).

¹¹⁷ CAL. WELF. & INST. CODE §203 (Deering 2009).

¹¹⁸ *Id.*

¹¹⁹ Van Derbeken, *S.F. turns teen drug suspect over to feds*, *supra* note 114.

¹²⁰ *Id.*

¹²¹ Van Derbeken, *S.F. court lets teenager in drug case stay in U.S.*, *supra* note 114.

¹²² Van Derbeken, *S.F. turns teen drug suspect over to feds*, *supra* note 114.

¹²³ *Id.*

The San Francisco Chronicle, including Van Derbeken who wrote many of the articles on this issue during this time period, mastered the art of writing articles that gave the illusion of being objective. They would give “both sides” of the story, while setting an adversarial tone that quoted juvenile and immigrant advocates in such a way that readers could easily disregard their opinions.¹²⁴ The articles’ headlines frequently depicted immigrant youths as “illegals”, “crack dealers”, “drug suspects”, and “teen felons.”¹²⁵ Having set the tone and vocabulary for the article, the Chronicle quoted advocates amid the voices of their opposition. Advocates seemed to be fighting an uphill battle getting their point across in this media outlet. For example, in another of Van Derbeken’s articles, Deputy Public Defender Lisa Katz told Francisco G.’s story of abandonment, abuse, and desperation.¹²⁶ Furthermore, the San Francisco Police Commissioner said that many juveniles such as Francisco G. deal drugs only out of necessity, and therefore, any policy should treat juveniles differently from adults.¹²⁷ Meanwhile in the same article, others, such as the spokesperson for Mayor Newsom and U.S. Attorney Russoniello, applauded the policy changes as a step in the right direction.¹²⁸ The position taken by Van Derbeken and the San Francisco Chronicle is undeniably adverse to the immigrant youths. The Chronicle continued its campaign against treating juveniles differently under the sanctuary city policy. It released more articles that alleged that “hundreds of adult illegals” also benefited from the sanctuary city policy and that as many as “30 percent of

¹²⁴ See Van Derbeken, *supra* note 49; Van Derbeken, *supra* note 103; Van Derbeken, *S.F. court lets teenager in drug case stay in U.S.*, *supra* note 114; Van Derbeken, *S.F. turns teen drug suspect over to feds*, *supra* note 114.

¹²⁵ See Van Derbeken, *supra* note 49; Van Derbeken, *supra* note 103; Van Derbeken, *S.F. court lets teenager in drug case stay in U.S.*, *supra* note 114; Van Derbeken, *S.F. turns teen drug suspect over to feds*, *supra* note 114.

¹²⁶ Van Derbeken, *S.F. court lets teenager in drug case stay in U.S.*, *supra* note 114.

¹²⁷ *Id.*

¹²⁸ *Id.*

San Francisco juvenile offenders [were] actually adults” who had found a way to “game the system.”¹²⁹

In October 2008, the City of San Francisco found itself at the center of a controversy and legal battles regarding the sanctuary city policy.¹³⁰ A federal Grand Jury investigated whether San Francisco’s policy of offering sanctuary to undocumented immigrants violated U.S. laws against harboring people who are in the country without authorization.¹³¹ Attorney General Jerry Brown’s office investigated leaks of confidential juvenile court filings to *The Chronicle*.¹³² Finally, a state appeals court reinstated a lawsuit regarding the sanctuary city policy that accuses San Francisco officials of violating a state law that requires police who make drug arrests to notify federal authorities if a criminal suspect does not appear to be a U.S. citizen.¹³³

VII. Immigrant Advocates Face an Uphill Battle in San Francisco

By January 2009, as the U.S. welcomed Barack Obama as the nation’s first African-American President, San Francisco again felt pressure to address the problems facing their immigrant community. Almost 70 percent of Latino voters supported Obama, and immigration reform was among the most important issues for the Latino community.¹³⁴

¹²⁹ Phillip Matier & Andrew Ross, *Hundreds of adult illegal immigrants also got sanctuary in S.F.*, *S. F. Chron.*, Sept. 17, 2008, at B1; Jaxon Van Derbeken, *Adult offenders shielded by S.F.*, *S. F. Chron.*, Sept. 19, 2008, at A1.

¹³⁰ Bob Egelko, *Critics of S.F. immigration policy win round*, *S. F. Chron.*, Oct. 23, 2008, at B3; Bob Egelko, *Federal probe into S.F. policy*, *S. F. Chron.*, Oct. 4, 2008, at A1.

¹³¹ Egelko, *Federal probe into S.F. policy*, *supra* note 130.

¹³² *Id.*

¹³³ Egelko, *Critics of S.F. immigration policy win round*, *supra* note 130.

¹³⁴ See Julia Preston, *In Big Shift, Latino Vote Was Heavily for Obama*, *N.Y. Times*, Nov. 7, 2008, at A24; Rene Martinez, *Commentary: Obama, Immigration and the Hispanic Vote* (Public Broadcasting Station radio broadcast Jan. 19, 2009), http://www.publicbroadcasting.net/kera/news.newsmain?action=article&ARTICLE_ID=1458651§ionID=1 (last visited Nov. 12, 2010).

During that month, San Francisco finally distributed municipal identification cards that would be available to all city residents regardless of their immigration status; Mayor Newsom had put the program on hold in September 2008 as city officials reviewed the sanctuary policy.¹³⁵ Protestors marched on San Francisco's City Hall to push for immigration reform in Washington. They also sought to pressure Mayor Newsom to reverse the 6-month-old policy of reporting juveniles arrested for a felony to federal immigration authorities. Ana Pérez, director of the Central American Resource Center, said during the demonstration at San Francisco City Hall, "We're asking for due process for all children, so kids can see a judge who can determine whether the child has committed a crime, and if referral to ICE happens, that it happens at discharge, not at the point when the child is charged with a crime."¹³⁶

Soon advocates and Latino residents reported that police were targeting Latinos since the controversy over the city's sanctuary city ordinance erupted during summer 2008.¹³⁷ Reports indicated that racial profiling, police abuse, and perceived racism have led the Latino community to distrust police.¹³⁸ In response, City Supervisor David Campos called a public hearing to address the issue of racial profiling.¹³⁹ He demanded internal reforms and said he would introduce legislation to deal with the problem if the Police Department did not.¹⁴⁰

Two weeks after Supervisor David Campos's meeting regarding racial profiling, the San Francisco Immigrants Rights Defense Committee—a coalition of more than 30 immigrants rights organizations, labor groups, faith

¹³⁵ Wyatt Buchanan, *Mayor puts the city's controversial ID card program on hold*, S. F. Chron., Sept., 4, 2008, at B1; Heather Knight, *Hundreds wait for hours to buy ID card*, S. F. Chron., Jan. 16, 2009, at B1.

¹³⁶ Tyche Hendricks, *Immigration protest at Ballet gala*, S. F. Chron., Jan. 22, 2009, at B2.

¹³⁷ Marisa Lagos, *Residents accuse police of harassment*, S. F. Chron., Feb. 10, 2009, at B1.

¹³⁸ *Id.*

¹³⁹ *See id.*

¹⁴⁰ *Id.*

organizations and other activists—organized a rally for immigrant rights in San Francisco’s Mission District.¹⁴¹ The mostly Latino crowd spoke against the city’s new policy of automatically reporting undocumented juveniles arrested for a felony to federal immigration authorities.¹⁴² David Campos and three other supervisors—President David Chiu, John Avalos and Eric Mar—attended; Mayor Newsom faced criticisms for failing to attend.¹⁴³

On March 25, 2009, the influential Democratic County Central Committee passed an advisory resolution that accused police of racial profiling by making traffic stops in neighborhoods with big immigrant populations.¹⁴⁴ The resolution reflected the Democratic Party’s criticism of Mayor Newsom for his revised sanctuary city policy.¹⁴⁵ Under the policy, the city notifies ICE when an immigrant youth is booked for an offense.¹⁴⁶ Then, the youth is scheduled for juvenile adjudication proceedings, or for a trial on criminal charges, but is turned over to federal authorities regardless of the outcome.¹⁴⁷ Since Newsom’s policy change, the city handed over at least 70 to 100 youths to immigration authorities without a court hearing.¹⁴⁸ The Committee’s resolution includes the adoption of the United Nations

¹⁴¹ Marisa Lagos, *Protesting city's treatment of immigrants*, S. F. Chron., Feb. 26, 2009, at B3.

¹⁴² *Id.*

¹⁴³ Marisa Lagos, *Newsom under fire*, S. F. Chron., Feb. 26, 2009, available at http://www.sfgate.com/cgi-bin/blogs/cityinsider/detail?entry_id=36332 (last visited Nov. 12, 2010).

¹⁴⁴ See Heather Knight, *Dems pass resolution blasting mayor for handing over youths*, S. F. Chron., Mar. 27, 2009, at B3 (citing Democratic Cnty. Cent. Comm. Res. in Support of Sanctuary Ordinance, S.F. Democratic Party (Cal. 2009), available at <http://dev.sfdemocrats.org/node/11> (last visited May 12, 2010) [hereinafter Sanctuary Ordinance Resolution]).

¹⁴⁵ *See id.*

¹⁴⁶ *See* City & Cnty. Of S.F. Juvenile Prob. Dep’t, Policy 8.12, Probation Services Division Policies And Procedures, Chapter: Intake, Processing, And Release (2008), at 1, <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=482> (last visited Nov. 12, 2010).

¹⁴⁷ *See id.*

¹⁴⁸ Knight, *supra* note 144.

Convention on the Rights of the Child.¹⁴⁹ The resolution states: “[C]ity policy [is] to provide every youth who has contact with the juvenile justice system his or her right to due process under the law before any city employee initiates communication with federal immigration officials.”¹⁵⁰ In the face of criticism that Newsom had acted too hastily, Nathan Ballard, Newsom’s press secretary, said “the city has no say in immigration policy and that the Democratic Party should take up their fight with President Obama instead.”¹⁵¹

The Chronicle once again covered the political battle, but this time there was a strong presence of immigrant and juvenile advocate voices as well. Van Derbeken continued to cover the story of Edward Ramos, and there were more reports that the sanctuary policy had shielded as many as 185 undocumented youths held on felony criminal charges between 2005 and summer 2008.¹⁵² Despite this, his articles no longer monopolized the front page of the Chronicle. Advocates were finally obtaining access to the local media.¹⁵³ Some advocates said that although “it’s true that some youths are being picked up on serious charges, . . . the mayor is missing the bigger point: The youths are being trafficked from Honduras and are made to sell drugs in the Tenderloin to pay

¹⁴⁹ Marisa Lagos, *Fight over sanctuary city policy rolls on*, S. F. Chron., Mar. 30, 2009, available at http://www.sfgate.com/cgi-bin/blogs/cityinsider/detail?entry_id=37709 (last visited Nov. 12, 2010); See Rachel Hodgkin & Peter Newell, Unicef, *Implementation Handbook For The Convention On The Rights Of The Child* (3rd ed. 2007), available at <http://www.unicef.org/crc/files/Implementation%20Handbook%203rd%20ed.pdf>.

¹⁵⁰ Sanctuary Ordinance Resolution, *supra* note 144; Lagos, *supra* note 149.

¹⁵¹ Knight, *supra* note 144; Lagos, *supra* note 149; see also Jesse McKinley, *San Francisco at a Crossroads on Immigration*, N.Y. Times, June 13, 2009, at A12.

¹⁵² Heather Knight, *Policy shielded up to 185 youths*, S. F. Chron., Apr. 3, 2009, at A1; Jaxon Van Derbeken, *Suit: Sanctuary policy a factor in killings*, S. F. Chron., Apr. 4, 2009, at B3.

¹⁵³ See Abigail Trillin, *Sanctuary policy change harms youth*, S. F. Chron., Apr. 7, 2009, available at http://articles.sfgate.com/2009-04-07/opinion/17195347_1_probation-officers-juvenile-hall-new-policy.

back their traffickers for bringing them here in the first place.”¹⁵⁴

Public Defender Jeff Adachi and Abigail Trillin, an attorney for Legal Services for Children in San Francisco, warned that the mayor’s policy was also affecting innocent immigrant youth and those with minor offenses.¹⁵⁵ For instance, the Juvenile Probation Department referred to ICE a 14-year old honor student for having a BB gun at school.¹⁵⁶ In addition, a child who was a long-time victim of abuse was taken to Juvenile Hall then immediately transferred to immigration after his mother filed a false police report against him.¹⁵⁷ Abigail Trillin further warned that Newsom’s changes to the sanctuary policy were susceptible to abuse and facilitated racial profiling.¹⁵⁸ Additionally, reporting youths to immigration authorities at the booking stage risks deportation of innocent children.¹⁵⁹ Furthermore, if done without due process, it will scare parents from sending their children to school and destroy the trust of the Latino community.¹⁶⁰

By mid-June, Mayor Newsom had not changed the sanctuary city policy, but again made front-page headlines when he announced the selection of a new Chief of Police, George Gascón.¹⁶¹ Gascón previously had been the Assistant Chief in Los Angeles and most recently was the Chief in Mesa, Arizona.¹⁶² He was known for being tough on crime but also supporting sanctuary city policies.¹⁶³ Although Gascón’s position was that the police should not cooperate in the enforcement of immigration law through community sweeps and raids, his department in Arizona regularly turned

¹⁵⁴ Knight, *supra* note 152.

¹⁵⁵ Trillin, *supra* note 153.

¹⁵⁶ *Id.*

¹⁵⁷ Knight, *supra* note 152; *Id.*

¹⁵⁸ Trillin, *supra* note 153.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Phillip Matier, Andrew Ross & Heather Knight, *Mayor picks Arizona chief as S.F. top cop*, S. F. Chron., June 17, 2009, at A1.

¹⁶² *Id.*

¹⁶³ *Id.*

over arrested criminals to immigration.¹⁶⁴ However, in regards to juvenile offenders, Gascón initially said that he “doesn't believe in a blanket policy for undocumented youth and that turning them over upon arrest would depend on their age and the severity of their alleged crime.”¹⁶⁵

During that same month, political pressure prompted District Attorney Kamala Harris to change her “Back on Track” program when another one of Van Derbeken’s articles revealed that the program had admitted several undocumented immigrants.¹⁶⁶ The program provides first-time drug offenders with an opportunity to clear their convictions.¹⁶⁷ Meanwhile, Supervisor David Campos prepared a proposal for changing San Francisco’s sanctuary city policy.¹⁶⁸ San Francisco was still torn and the media reflected mixed messages about how to handle the immigrant offender problem.¹⁶⁹

VIII. Supervisor Campos’s “Confidentiality of Juveniles’ Immigration Status” Proposal

When Supervisor David Campos revealed the contents of his proposal to the public in August 2009, it highlighted how divisive the issue had become in San Francisco.¹⁷⁰

¹⁶⁴ *Id.*

¹⁶⁵ Heather Knight, *New top cop looks to be tailor-made*, S. F. Chron., June 21, 2009, at A1; see John Coté, *New chief undaunted by challenges in S.F.*, S. F. Chron., June 18, 2009, at A1.

¹⁶⁶ C.W. Nevius, *Proposal won't get sanctuary back on track*, S. F. Chron., June 25, 2009, at B1; Jaxon Van Derbeken, *D.A. let illegals clear their records*, S. F. Chron., June 23, 2009, at A1.

¹⁶⁷ Nevius, *supra* note 166.

¹⁶⁸ *Id.*

¹⁶⁹ Although there was media attention on the immigrant advocates’ perspective, there was also a continued flow of publicity surrounding the Ramos murder case and insisting that a strict policy is necessary for dealing with immigrant offenders. See Demian Bulwa, *Suspect to be tried on 3 murder counts*, S. F. Chron., June 30, 2009, at B1; *Sanctuary has its limits*, S. F. Chron., June 26, 2009, at A12.

¹⁷⁰ David Campos, *Proposed Sanctuary policy preserves rights*, S. F. Chron., Aug. 24, 2009, available at http://articles.sfgate.com/2009-08-24/opinion/17175416_1_policy-young-people-juvenile (last visited Nov. 12, 2010).

Campos proposed a new juvenile justice policy under the sanctuary law that would “strike[] a balance between the former city policy that failed to report people who should have been reported, and the current one, which in essence violates the right of these young people to a hearing on the accusations against them and can ultimately tear them from the protection of their families.”¹⁷¹ His proposal would allow immigrant youth to have their day in court and be heard by an impartial judge who would then decide the merits of the charges against them.¹⁷² If a youth is a public safety or a flight risk, then they would be detained pending resolution of the case.¹⁷³ If a judge finds probable cause that an undocumented youth engaged in felonious conduct or determines that the juvenile should be tried for a felony in adult criminal court, then they would be referred to immigration authorities as is required by the law.¹⁷⁴ These changes would protect the due process rights of immigrant youth, who otherwise would be referred to ICE for deportation proceedings with little or no access to legal assistance. Thus, this proposal also had the support of legal experts in the areas of juvenile, immigration, and constitutional law.¹⁷⁵

In accordance with the San Francisco City Charter, the City Attorney must “approve as to form . . . prior to enactment” all ordinances of the Board of Supervisors in order to make sure they are not “patently unlawful.”¹⁷⁶ Thus, the

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*; see S.F., Cal., Ordinance No. 228-09, Confidentiality of Juveniles’ Immigration Status (Oct. 27, 2009), available at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances09/o0228-09.pdf> [hereinafter Campos Ordinance].

¹⁷⁵ Memorandum from the S.F. Immigrant Rights Comm., Legal Experts Support Board of Supervisors’ Effort to Restore Due Process to San Francisco’s Immigrant Youth (Sept. 29, 2009), <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=511> [hereinafter IRC Restore Due Process Memo].

¹⁷⁶ S.F., CAL. CHARTER § 6.102(6) (1996), available at <http://library.municode.com/index.aspx?clientId=14130&stateId=5&stateName=California>; Memorandum from Dennis J. Herrera, Office of the S.F.

City Attorney approved the ordinance before it was submitted to the Board for a vote.¹⁷⁷ However, the City Attorney's Office submitted a confidential memorandum to Mayor Newsom advising against the implementation of Campos's proposal due to a number of concerns.¹⁷⁸ First, it would conflict with federal law, which prohibits a government entity from preventing its officials from reporting immigration status to ICE.¹⁷⁹ Second, it would conflict with state law which requires an "arresting agency" to report to ICE individuals arrested for certain drug offenses where there is reason to believe that they are not citizens, which was at issue in *Fonseca v. Fong*.¹⁸⁰ In that case, the California Court of Appeal ruled that the City must comply with the reporting requirement.¹⁸¹ Third, it may have negative consequences for the City because the U.S. Attorney was continuing a federal criminal investigation of the City and its officials for the alleged illegal harboring and transportation of undocumented youth.¹⁸² Finally, it may prolong the case the Bologna family filed against the City alleging that implementation of the sanctuary city ordinance caused the death of its family members.¹⁸³

City Att'y, on Disclosure of Attorney-Client Privileged Advice from the City Attorney's Office, at 3 (Aug. 20, 2009), <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=273> [hereinafter Advisory Memorandum].

¹⁷⁷ See Advisory Memorandum, *supra* note 176, at 3.

¹⁷⁸ Memorandum from Dennis J. Herrera, Office of the S.F. City Att'y, on Legal Issues in Connection with Proposed Amendment to Sanctuary City Ordinance (Aug. 18, 2009), <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=481> [hereinafter Confidential Memorandum]; see *Fonseca v. Fong*, 167 Cal. App. 4th 922 (2008); Heather Knight & Jaxon Van Derbeken, *Memo warns of threat to policy*, S. F. Chron., Aug. 20, 2009, at A1.

¹⁷⁹ Confidential Memorandum, *supra* note 178, at 1.

¹⁸⁰ Confidential Memorandum, *supra* note 178, at 2; see *Fonseca*, 167 Cal. App. 4th 922 (2008).

¹⁸¹ See *Fonseca*, 167 Cal. App. 4th 922 (2008).

¹⁸² Confidential Memorandum, *supra* note 178, at 2-3; see also Egelko, *Federal probe into S.F. policy*, *supra* note 130.

¹⁸³ Confidential Memorandum, *supra* note 178, at 3.

The San Francisco Chronicle later exposed the contents of the confidential memorandum.¹⁸⁴ After its exposure, Supervisor John Avalos asked City Attorney Dennis Herrera and the Ethics Commission to investigate the leaking of the confidential memo.¹⁸⁵ Newsom confirmed that he authorized the leak “because San Franciscans need to know the legal jeopardy the legislation would bring to the city – and its sanctuary city ordinance.”¹⁸⁶ By purposefully exposing this information to the media, Mayor Newsom made clear that he considered this a political battle and understood the influence of the local media.

However, Mayor Newsom’s decision to remain opposed to every resolution and proposed legislation fostered an adversarial atmosphere in which neither side was willing to compromise. Discussions among the Board of Supervisors, Mayor Newsom, and City Attorney Dennis Herrera could have resulted in a revision of Campos’s proposal that would have alleviated some of the concerns enumerated in the confidential memorandum. For example, the ordinance proposal prohibited the dissemination of information regarding the immigration status of individuals in the City and County of San Francisco, unless federal or state statute, regulation, or court decision required it.¹⁸⁷ The ordinance also enumerates limitations on the dissemination of information.¹⁸⁸ Instead, it could have prohibited agencies and officials within the City and County of San Francisco from implementing policies and protocols that require, or result in, the automatic dissemination of immigration status information, with certain exceptions as provided by law. In so doing, they could have accomplished both goals. First, they would change the policy that denied suspected juvenile offenders of their due process rights by

¹⁸⁴ Heather Knight, *Avalos launches investigation of memo leak*, S. F. Chron., Aug. 22, 2009, available at http://www.sfgate.com/cgi-bin/blogs/cityinsider/detail?entry_id=46012 (last visited Nov. 12, 2010); see Knight & Van Derbeken, *supra* note 178.

¹⁸⁵ Knight, *supra* note 184.

¹⁸⁶ *Id.*

¹⁸⁷ Confidential Memorandum, *supra* note 178, at 1-2, 4, 6.

¹⁸⁸ Confidential Memorandum, *supra* note 178, at 4, 6.

referring them to ICE upon arrest rather than upon a finding of guilt. Furthermore, they would avoid conflicting with federal laws, which prohibit a government entity from preventing its officials from reporting immigration status to ICE.¹⁸⁹ Instead, the City would be regulating the implementation of policies and procedures rather than the individual conduct of city officials.

Nonetheless, when the Board of Supervisors officially passed the proposal in October 2009, Mayor Newsom immediately, and expectedly, responded with a veto.¹⁹⁰ His spokesperson, Nathan Ballard, had announced previously that Mayor Newsom would not give any credence to the legislation.¹⁹¹ Newsom planned to continue to direct law enforcement officials to turn youth over to federal officials as soon as they are arrested on felony charges.¹⁹² He also had the support of Gabriel Calvillo, president of the San Francisco Deputy Probation Officers' Association.¹⁹³ Calvillo told *The Chronicle* that San Francisco's sixty juvenile probation officers would continue reporting arrested youth to ICE if they suspect the youth are in the country illegally.¹⁹⁴ Within a few weeks, the Board of Supervisors overrode Mayor Newsom's veto with an 8-3 vote.¹⁹⁵ The controversy incited debate among legal scholars and politicians about the ordinance's legality, Mayor Newsom's authority to ignore the legislation, and the city officials' liability for following the legislation if a court subsequently deems that it is invalid.¹⁹⁶

¹⁸⁹ See Confidential Memorandum, *supra* note 178, at 2, 4-6.

¹⁹⁰ Campos Ordinance, *supra* note 174, at 9. See Maria L. La Ganga, *Panel acts on illegal immigrant policy*, L.A. Times, Oct. 21, 2009, at A8; Jesse McKinley, *San Francisco to Delay Reports on Charges Against Immigrants*, N.Y. Times, Oct. 21, 2009, at A19.

¹⁹¹ Heather Knight, *Mayor to ignore sanctuary bill*, S. F. Chron., Oct. 21, 2009, at A1.

¹⁹² *Id.*

¹⁹³ Heather Knight, *Probation officers side with mayor*, S. F. Chron., Oct. 22, 2009, at D1.

¹⁹⁴ *Id.*

¹⁹⁵ Campos Ordinance, *supra* note 174, at 9.

¹⁹⁶ See Bob Egelko, *Decision time for supes on youth deportation*, S. F. Chron., Nov. 10, 2009, at A1; Melissa Griffin, *Officials loathe to follow*

IX. Conclusion

These events have demonstrated how local mainstream media can be a crucial tool for influencing local politics. For years, probation officials in San Francisco had not referred any juvenile offenders to ICE for deportation.¹⁹⁷ Suddenly, after a citywide debate began in response to a handful of inflammatory articles by the Chronicle's Jaxon Van Derbeken, Mayor Newsom reversed the city's policy.¹⁹⁸ Now, probation officials can refer suspected juvenile offenders to ICE for deportation despite them not having an opportunity to defend themselves through juvenile or criminal court proceedings.¹⁹⁹ The San Francisco Chronicle's headlines consistently depicted immigrant youths as "illegals", "crack dealers", "drug suspects", and "teen felons."²⁰⁰ Thus, with the San Francisco Chronicle having set the tone and vocabulary of the discussion, advocates were then quoted amid the voices of their opposition.²⁰¹ They seemed to be fighting an uphill battle getting their point across in this media outlet against city officials who refused to compromise or to implement their resolutions and legislation.²⁰²

sanctuary law, S.F. Examiner, Nov. 12, 2009, available at http://www.sfexaminer.com/opinion/columns/melissa_griffin/Officials-loathe-to-follow-sanctuary-law--69831332.html (last visited Nov. 12, 2010); Heather Knight, *With veto annulled, legal fight possible*, S. F. Chron., Nov. 11, 2009, at C1; Maria L. La Ganga, *S.F. overrides sanctuary veto*, L.A. Times, Nov. 11, 2009, at A3.

¹⁹⁷ See S.F., CAL. ADMIN. CODE ch. 12H, § 12H.2 (1992), available at <http://sfgsa.org/index.aspx?page=1067>; S.F.'s sanctuary city story so far, *supra* note 27.

¹⁹⁸ See Van Derbeken, *supra* note 34; Van Derbeken, *S.F. mayor reverses policy on illegals*, *supra* note 40.

¹⁹⁹ See Campos Ordinance, *supra* note 174; Hendricks, *supra* note 136; Knight, *supra* note 191; Van Derbeken, *S.F. mayor reverses policy on illegals*, *supra* note 40.

²⁰⁰ See Van Derbeken, *supra* note 49; Van Derbeken, *supra* note 103; Van Derbeken, *S.F. court lets teenager in drug case stay in U.S.*, *supra* note 114; Van Derbeken, *S.F. turns teen drug suspect over to feds*, *supra* note 114.

²⁰¹ See *supra* notes 38, 126 and accompanying text.

²⁰² See Knight, *supra* note 191.

Advocates generally have other means of communicating with their supporters, such as blogs, email listservs, newsletters, and community meetings.²⁰³ However, obtaining access to the mainstream media to reach a broader audience can be crucial for mitigating the damaging effects of an inflammatory news-breaking article and managing the discussion in a forum that promotes compromise and cooperation. Unfortunately, resolutions and decisions of advocate groups, such as the Immigrant Rights Defense Committee, have not been disseminated to wider audiences, even when they have been made publically available through other means.²⁰⁴

Currently, the problems remain unresolved in San Francisco. The media continues to alternate between stories that encourage Newsom's unforgiving policy on juvenile immigrants and those that argue how that policy adversely affects the immigrant community, innocent youth, and youth with minor offenses.²⁰⁵ The latter stories call for the enforcement of Campos's legislation.²⁰⁶ Meanwhile, Newsom and the Probation Department refuse to follow the new sanctuary law.²⁰⁷ Supervisor David Campos has confronted them on numerous occasions, and has threatened to propose

²⁰³ See *supra* note 137 and accompanying text; See generally Rohlinger, *supra* note 38.

²⁰⁴ See IRC Restore Due Process Memo, *supra* note 175.

²⁰⁵ See Heather Knight, *Sanctuary dispute hits home with teen*, S. F. Chron., Jan. 24, 2010, at A1; Erin Sherbert, *Battle over 46 cents is costly for family*, S. F. Examiner, Mar. 1, 2010, available at <http://www.sfexaminer.com/local/Battle-over-46-cents-is-costly-for-family-85794097.html> (last visited Nov. 12, 2010); *Some deported youths re-offending*, S. F. Examiner, Feb. 7, 2010, available at <http://www.sfexaminer.com/local/Some-deported-youths-re-offending-83731817.html> (last visited Nov. 12, 2010).

²⁰⁶ See Sherbert, *supra* note 205.

²⁰⁷ Joshua Sabatini, *Campos to grill Juvenile Probation Department on failure to follow new sanctuary law*, S. F. Examiner, Feb. 9, 2010, available at <http://www.sfexaminer.com/opinion/blogs/under-the-dome/Campos-grills-Juvenile-Probation-Department-83976952.html> (last visited Nov. 12, 2010); Erin Sherbert, *Supervisors escalate fight about sanctuary law*, S. F. Examiner, Mar. 4, 2010, available at <http://www.sfexaminer.com/local/Fight-over-Campos-sanctuary-amendment-continues-86438052.html> (last visited Nov. 12, 2010).

withholding funds from the Probation Department or pursuing litigation if they do not comply.²⁰⁸ Even though the sanctuary city issue seems to have fallen out of the spotlight in recent months, immigration issues in general continue to make headlines locally and nationwide as David Campos, politicians, and community organizers nationwide pressure the Obama administration to pass immigration reform legislation.²⁰⁹

Nonetheless, the TVPRA addressed some of the concerns of the immigrant and juvenile advocates in San Francisco.²¹⁰ The IRC's resolution in July 2008 urged the Probation Department to develop a policy that allowed immigrant minors to have a legal screening by an immigration attorney and be provided an attorney to represent them in immigration proceedings.²¹¹ Just five months later, the TVPRA implemented changes that should guarantee unaccompanied children have broader access to legal counsel in immigration removal proceedings. The Secretary of Health and Human Services is now obligated to provide these children access to counsel "to the greatest extent practicable."²¹² This includes access to pro bono counsel who can represent them free of charge.²¹³ The statutory language makes the TVPRA subject to financial appropriations and other resource constraints because it includes the qualifying language "to the greatest extent practicable."²¹⁴ Nonetheless, this added provision will ensure that legal counsel will be

²⁰⁸ See Sabatini, *supra* note 207; Sherbert, *supra* note 207.

²⁰⁹ See David Campos, *Time to fix the immigration system, Campos says*, S. F. Chron., Mar. 28, 2010, at E1, available at http://articles.sfgate.com/2010-03-28/opinion/20447693_1_legalization-immigrant-workers-comprehensive-immigration-reform (last visited Nov. 12, 2010); Kevin Fagan, *Hundreds march on Feinstein's office*, S. F. Chron., Mar. 25, 2010, at C2; John Wildermuth & John Coté, *S.F. supervisors press for boycott against Arizona*, S. F. Chron., Apr. 27, 2010, at A1.

²¹⁰ See TVPRA, *supra* note 5.

²¹¹ IRC Resolution, *supra* note 102.

²¹² TVPRA, *supra* note 5, § 235(c)(5).

²¹³ See TVPRA, *supra* note 5, § 235(a)(5)(D)(iii), (c)(5).

²¹⁴ TVPRA, *supra* note 5, § 235(c)(5); Lee et. al., *supra* note 42, at 834.

available to represent greater numbers of unaccompanied children and to assess whether they are potentially eligible for SIJS and other forms of immigration relief.²¹⁵ Unlike in juvenile court proceedings, the U.S. government has not guaranteed the right to appointed counsel for anyone in immigration proceedings.²¹⁶ As a result, more than half of unaccompanied children have gone through immigration proceedings without lawyers.²¹⁷

However, many more of the concerns troubling immigrant and juvenile advocates in San Francisco remain unresolved. Federal legislation from the Obama Administration may resolve some of the problems facing San Francisco. However, the Latino community and the children and families whose lives can be torn apart by Mayor Newsom's immigrant juvenile offender policy cannot afford to wait that long. Mayor Newsom denies that his political aspirations influenced his stance.²¹⁸ Now that he is no longer preparing a gubernatorial campaign, we can only hope that he will be more willing to work with advocates to reach a solution that balances both the need to protect public safety and the rights of immigrant children and families in San Francisco.

²¹⁵ See Lee et. al., *supra* note 42, at 834.

²¹⁶ See Olga Byrne, Unaccompanied Children in the United States: A Literature Review, 34 (Patrick Kelly Ed. 2008) (citing Immigration and Nationality Act § 292, 8 U.S.C. § 1362 (2006)), available at <http://www.vera.org/download?file=1775/UAC%2Bliterature%2Breview%2BFINAL.pdf> (last visited Nov. 12, 2010).

²¹⁷ *Id.* at 35 (citing Claire L. Workman, *Kids are People Too: Empower Unaccompanied Minor Aliens Through Legislative Reform*, 3 Wash. U. Global Stud. L. Rev. 223, 233 (2004); Office Of The Inspector Gen., Report I-2001-009, Unaccompanied Juveniles In Ins Custody (2001), available at <http://www.justice.gov/oig/reports/INS/e0109/index.htm>; see, e.g., *In re Gault*, 387 U.S. 1, 35-37, 41 (1967).

²¹⁸ See Heather Knight, *supra* note 196.

