CALIFORNIA COURT OF APPEAL

FOR THE FIRST APPELLATE DISTRICT

DIVISION THREE

IN THE MATTER OF: Christian H., A Minor.	No. A141758
PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. CHRISTIAN H., Defendant and Appellant.	Civil Case No. JW146068

On Appeal from the Superior Court of
California, County of San Francisco
Honorable Judge Suzanne Bolanos

BRIEF OF AMICI CURIAE YOUTH LAW CENTER AND PUBLIC COUNSEL LAW CENTER

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Amici Youth Law Center and Public Counsel Law Center submit this brief in support of Appellant's position that the juvenile court's disposition of Christian H. was contrary to law and should be overturned.

I. STATEMENT OF ARGUMENT

Two principles should have guided Christian's juvenile proceedings. First, the focus should have been on Christian's rehabilitation and a determination of his best interest. Second, Christian's immigration status should have played no role – the San Francisco Juvenile Probation Department ("JPD") and juvenile court should have treated Christian *the same as any other child*. Here, both principles were turned on their head, at Christian's expense, and in violation of California law and the U.S. Constitution.

From day one, Christian's rehabilitation and best interests were, at best, incidental to his proceedings. Instead, JPD and the juvenile court's erroneous views of federal law infected JPD's actions and recommendations, and ultimately the juvenile court's order. Specifically, JPD feared it would be federally prosecuted for criminally harboring or transporting an alien if it did anything but release Christian to the U.S. Immigration and Customs Enforcement ("ICE"). This caused JPD to recommend, and for the juvenile court to erroneously order, that Christian be handed over to ICE with full knowledge that he would be sent to Honduras. The rampant gang violence, drug activity, and mistreatment of

youth in Honduras, and the effect those conditions would have on Christian, played little to no role in the process.

The JPD's fear of prosecution prevented any fair assessment of Christian's best interest and any dispositional recommendation consistent with that interest. As a matter of policy, the JPD *automatically* recommends that undocumented children are handed over to ICE. It admitted as much in its disposition report for Christian and at his hearing. Christian never had a chance.

JPD and juvenile court's failure to consider and determine Christian's true best interests were erroneous, as a matter of law. Indeed, no authority supports JPD's and the juvenile court's prioritization of JPD's interests over Christian's best interest and rehabilitation. With no good response, Respondent simply ignores JPD's fear of federal prosecution and its policy of referring undocumented juveniles to ICE, and the effect both had on Christian's proceedings.

Federal law should have played no role in Christian's proceedings. Federal law does not require that children like Christian be turned over to ICE. And San Francisco and California law prohibit city and state agencies from detaining undocumented children like Christian for ICE. The U.S. Constitution, in turn, guarantees San Francisco's and California's authority to enact and enforce those laws.

More importantly, California juvenile law explicitly prohibits the

consideration of a child's immigration status when determining his best interest during his juvenile proceeding. In California, *all* children are entitled to the *same* juvenile process.

By basing Christian's disposition on his immigration status and by releasing him to ICE, the juvenile's court's order violated state juvenile law, the San Francisco Due Process Ordinance for All (the "DPFA"), the California Transparency and Responsibility Using State Tools Act (the "TRUST Act"), state confidentiality protections, and it denied Christian equal protection under the U.S. Constitution. The order should be overturned for each of these reasons.

II. LAW GOVERNING THE JUVENILE COURT

Children hold a unique place in the law. Judicial proceedings for children, therefore, are different in kind – not just degree – than those for adults. "Juvenile proceedings . . . [are] primarily rehabilitative" and focus on treatment. *In re Julian R.*, 47 Cal. 4th 487, 496 (2009); *see also In re Aline D.*, 14 Cal. 3d 557, 567 (1975). Once under the jurisdiction of a juvenile court, California law mandates that children "receive care, treatment, and guidance consistent with their best interest and the best interest of the public." Cal. Welf. & Inst. Code § 202(b). Ultimately, "the guidance [a child receives while a ward of the juvenile court] should enable him or her to be a law-abiding and productive member of his or her family and the community." *Id.*

To promote these objectives, juvenile law emphasizes the consistent involvement of the probation officer in the juvenile court process and, in particular, the officer's role in identifying and recommending treatment goals and monitoring progress. *See generally* Cal. Welf. & Inst. Code §§ 280-281.5, 650-664. Likewise, in selecting the appropriate disposition, a juvenile court must assess the juvenile in light of his or her individual needs. *See In re Jose P.*, 101 Cal. App. 3d 52, 58 (1980).

Of signal importance in this case, a juvenile court must determine a child's best interest *without reference to his or her immigration status*. *In re Teofilio A.*, 210 Cal. App. 3d 571, 579 (1989) ("Insofar as defendant's alien status may have been a factor in the court's conclusion, we point out that consideration of such a factor is unauthorized."); *In re Jose P.*, 101 Cal. App. 3d at 58 (reversing juvenile disposition where plan "was not designed to provide meaningful rehabilitative direction," no "appropriate [plan] for the individual . . . ha[d] ever been attempted for" him, and child's "social study candidly relie[d] on [his] alien status in making its recommendation").

Juvenile courts and public agencies are entrusted with and accountable for ensuring the equal treatment of all children and the proper determination of each child's best interest. "[T]he entire Juvenile Court Law places the responsibility of providing care and protective guidance for youths upon the juvenile court." *T.N.G. v. Superior Court*, 4 Cal. 3d 767,

781 (1971). Thus, JPD and the juvenile court must "consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor *in all deliberations*." Cal. Welf. & Inst. Code § 202(d) (emphasis supplied).

California law not only requires the JPD to prioritize the best interests of the child regardless of immigration status, it also prohibits JPD and the juvenile courts from detaining children like Christian for release to ICE. San Francisco's DPFA, enacted on October 1, 2013, is clear: San Francisco "law enforcement official[s] shall not detain an individual on the basis of a civil immigration detainer [from ICE] after the individual becomes eligible for release from custody." City and County of San Francisco, Admin. Code, Ch. 12I.3. And, effective January 1, 2014, California's TRUST Act adopted the DPFA into state law by providing that no child can be detained "on the basis of an immigration hold after the individual becomes eligible for release from custody" where such detention would violate a state or local law. CAL. GOV'T CODE, §§ 7282, 7282.5; Stats. 2013, ch. 570. The DPFA and TRUST Act without doubt apply to children, JPD, and the juvenile court.

III. THE PROBATION DEPARTMENT'S FEAR OF FEDERAL PROSECUTION – NOT CHRISTIAN'S BEST INTEREST – DROVE ITS RECOMMENDATION IN THIS CASE

As Christian entered the juvenile system, his status as an

undocumented child sealed his fate.

In 2008, JPD's practices became highly politicized after the *San Francisco Chronicle* wrote a series of articles about JPD's practices with undocumented children. That same year, then-U.S. Attorney Joseph Russoniello convened a federal grand jury to investigate JPD employees for harboring or transporting undocumented children in violation of federal law.

Although no charges have ever been brought against any JPD employee, the 2008 investigation led JPD to change its policies. Those changes improperly distinguished between undocumented and documented children, and they directly affected Christian's disposition. The Director of Probation Services who testified at Christian's hearing confirmed the policy change: "[A]fter being investigated by Federal authorities . . . [JPD] changed its practices to *differentiate* between the accompanied and unaccompanied undocumented youth." 3 RT 226 (emphasis supplied).

JPD now treats undocumented children like Christian as "under the jurisdiction of the Federal Government." 3 RT[1] 226; CT 30. JPD also views any "disposition that involves placing the minor" in out-of-home placements as a "violation of Federal law" because JPD believes it would be "shield[ing], transport[ing], or harbor[ing] any minor who is in this

[1] The Reporter's Transcript and Clerk's Transcripts are cited herein as "RT" and "CT," respectively.

country without the proper documentation." 3 RT 227. JPD's Dispositional Report for Christian confirmed JPD's view that it "is unable to house undocumented youth in out-of-home facilities." CT 30.

Having eliminated out-of-home placement as a matter of policy, JPD had only one option to recommend for Christian – turning him over to ICE for a return to Honduras. Not surprisingly then, JPD concluded that "it is in [Christian's] best interest that he be re-united with his family in Honduras" and released to ICE. CT 30.

Because only one option was available under JPD's policy, its recommendation was made without any real consideration of Christian's "best interest." Indeed, JPD's disposition report for Christian makes plain that release to ICE and return to Honduras was JPD's only true objective, regardless of the conditions that awaited Christian there:

- JPD believed that Christian "need[ed] support" for marijuana use, but did not "research whether there were any [drug support] programs available in Honduras" and was "not aware" whether Christian would "receive any treatment or programs" in ICE custody. 3 RT 209.

- JPD believed it was important to Christian's rehabilitation that he attend school, but knew Christian could not regularly attend school in Honduras. 3 RT 213-214.

- JPD recommended that Christian have a curfew and participate in counseling, but did not know if either of these would be possible in Honduras. 3 RT 214.

Any investigation into Honduras would have revealed its perilous conditions. In Honduras, children are routinely targeted and forced to join

violent gangs at gun point, and refusal can mean their death. *See, e.g.*, U. N. High Comm'r for Refugees, *Children on the Run*, at 36 (Undated)[2]; John Leland, *Fleeing Violence in Honduras, a Teenage Boy seeks Asylum in Brooklyn*, N.Y. TIMES, Dec. 5, 2014 ; Amanda Taub, *The awful reason tens of thousands of children are seeking refuge in the United States*, Vox (June 30, 2014).[3] Obtaining an education is itself dangerous, as schools are viewed as recruitment sites, and reliable protection is unavailable from a state police plagued by corruption. *See* Taub, *supra*. The murder rate is greater than the casualty rate in a war-torn country: in 2012, Honduras' murder rate was 30% higher than estimates of the civilian casualty rate during the height of the Iraq war. *Id*.

JPD did not consider any of this, or engage in the most basic investigation into options that might have served Christian better than a return to Honduras. Instead, JPD stuck to its new policy, driven by a perceived risk of federal prosecution.

The juvenile court continued to prioritize risk avoidance over Christian's best interests when it adopted JPD's recommendation and

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[2] *Available at* http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

[3] *Available at* http://www.vox.com/2014/6/30/5842054/violence-in-central-america-and-the-child-refugee-crisis.

ordered Christian's release to ICE.[4] Because the juvenile court *knew* that Christian would be deported to Honduras once he was released to ICE, this order *directly contradicted the court's own finding regarding Christian's best interest*: "It is not in [Christian's] best interest to return to Honduras." CT 89.

On May 2, 2014, Christian was released to ICE. App. Reply Br. at 8 (citing 5/15/2014 Probation Department Status Report).

IV. THE JUVENILE COURT'S DISPOSITION OF CHRISTIAN H. WAS CONTRARY TO LAW AND SHOULD BE OVERTURNED

Federal immigration law does not mandate that JPD or the juvenile court turn over to ICE unaccompanied, undocumented children or otherwise dictate California's decisions with respect to children in California. Federal law cannot and should not affect how JPD and the juvenile court fulfill their responsibility to protect and care for children. *California* law governs when the interests of a child are at stake.

California law mandates that JPD and the juvenile court prioritize rehabilitation and the best interests of a child above all else. JPD and the juvenile court are also entrusted to formulate an individualized treatment plan for each child and must ensure that this plan is implemented in a

[4] To effectuate that release, the juvenile court gave Christian credit for the 49 days he served at Juvenile Hall, but ordered that Christian "serve 51 days" for his possession of a controlled substance. 3 RT 229. The juvenile court ordered two extra days for the sole purpose of facilitating Christian's release to ICE. *See* App. Reply Br. at 7-8.

positive way *for the child*. Immigration status cannot be a factor. For no good reason, this is not what happened in Christian's case (and others like it).

When JPD and the juvenile court assume they are required to release undocumented children to ICE (like they did here), the universe of options for rehabilitating and caring for a child shrinks to just one: put them in the custody of an agency (ICE) that has no mandate or interest in actually caring for children. This is not fair, it is not right, and it is not legal. It violates California juvenile law, the San Francisco DPFA, the California TRUST Act, confidentiality protections, and the U.S. Constitution.

A. Federal Law Does Not Govern JPD's Or The Juvenile Court's Actions And Should Have Played No Role In Christian's Proceedings

"Participants in the juvenile justice system," not ICE, are "accountable" for considering "the best interests of the minor in all deliberations." Cal. Welf. & Inst. Code § 202(d). An ICE detainer request does not and cannot absolve the JPD or juvenile court of that statutory responsibility. Federal law does not require that JPD or the juvenile court detain children like Christian for ICE, and JPD's fear of federal prosecution for criminally harboring or transporting an alien if they failed to comply with an ICE request is unfounded and should have played no role in Christian's proceeding in any event.

1. JPD And The Juvenile Court Are Not Required To Comply With ICE Detainers

JPD and the juvenile court erroneously believed that federal law required that they comply with ICE detainer requests. There is no authority to support that position.

Respondent does not claim, nor can it, that ICE detainer requests are mandatory.[5] "All Courts of Appeals to have commented on the character of ICE detainers refer to them as 'requests' or as part of an 'informal procedure." *Galarza v. Szalczyk*, 745 F.3d 634, 640 (3d Cir. 2014) (citing cases from the First, Second, Fourth, Fifth, and Sixth Circuits). ICE itself has consistently taken the view that their detainers are mere requests. *Id.* at 641 ("Since at least 1994, and perhaps as early as 1988, ICE (and its precursor INS) have consistently construed detainers as requests rather than mandatory orders." (citing various ICE statements)). And the California Attorney General has affirmed that "law enforcement agencies in California are not required to fulfill an ICE immigration detainer." Cal. Dep't of Justice Info. Bulletin, *Responsibilities of Local Law Enforcement Agencies under Secure Communities and the TRUST Act*, at 2 (June 25, 2014).

Deeming ICE detainers as anything other than requests would run

[5]Respondent argues that "Regardless whether or not an Immigration Detainer is mandatory, a court is not prohibited from complying with the Detainer." Resp. Br. at 12. Respondent is wrong. As demonstrated in Section IV.B, below, cooperation with an ICE detainer for children like Christian was prohibited by numerous state and local laws.

contrary to "settled constitutional law" because under the Tenth Amendment, "the federal government cannot command the government agencies of the states to imprison persons of interest to federal officials." *Galarza*, 745 F.3d at 643; *see also Printz v. United States*, 521 U.S. 898, 922 (1997) ("The power of the Federal Government would be augmented immeasurably if it were able to impress into its service—and at no cost to itself—the police officers of the 50 States."). Thus, "immigration officials may not compel state and local agencies to expend funds and resources to effectuate a federal regulatory scheme." *Galarza*, 745 F.3d at 644; *see also* Cal. Dep't of Justice Info. Bulletin, *Responsibilities of Local Law Enforcement Agencies under Secure Communities*, at 2 (Dec. 4, 2012) (citing *Printz* and reaching conclusion that if ICE detainers "were mandatory, forced compliance would constitute the type of commandeering of state resources forbidden by the Tenth Amendment").

Accordingly, state and local officials are not obligated to comply with ICE detainer requests. *See* Dec. 4, 2012 Cal. Dep't of Justice Info. Bulletin, *supra*, at 2 ("[I]mmigration detainers are not compulsory. Instead, they are merely requests enforceable at the discretion of the agency holding the individual arrestee."). Many localities and states, including San Francisco and California, have exercised their discretion under the U.S. Constitution *to not assist ICE*. In particular, when enacting the DPFA, San Francisco made the following findings:

> The Attorney General [of California] clarified that S-Comm [ICE's "Secure Communities" program, under which it issues ICE detainer requests] does not require state or local law enforcement officials to determine an individual's immigration status or to enforce federal immigration laws. The Attorney General also clarified that civil immigration detainers are voluntary requests to local law enforcement agencies that do not mandate compliance. California local law enforcement agencies may determine on their own whether to comply with non-mandatory civil immigration detainers. Other jurisdictions, including Berkeley, California; Richmond, California; Santa Clara County, California; Washington, D. C., and Cook County, Illinois, have already acknowledged the discretionary nature of civil immigration detainers and are declining to hold people in their jails for the additional forty-eight (48) hours as requested by ICE. Local law enforcement agencies' responsibilities, duties, and powers are regulated by state law. However, complying with non-mandatory civil immigration detainers falls outside the scope of those responsibilities and frequently raises due process concerns.

City and County of San Francisco, Admin. Code, Ch. 12I.1. Consistent with these principles, the TRUST Act and DPFA lawfully provide that, as a matter of state and city law, JPD and juvenile courts are prohibited from detaining children in response to ICE detainer requests.[6]

[6] It is irrelevant that, in Christian's case, the ICE detainer request attached an order of deportation. CT 32. JPD's policy and response were based on the request, not the attached order. Moreover, if the order turned the request into a mandatory command, that would run afoul of the Tenth Amendment's guarantee that federal immigration officials cannot "compel

2. JPD and the Juvenile Court Are Not Liable Under Federal Harboring and Transportation Laws For Doing Their Jobs

The U.S. Attorney's 2008 investigation led JPD to believe that certain dispositional recommendations for children like Christian would expose them to liability for the federal crimes of harboring and transportation. 3 RT 227; U.S.C. 8 U.S.C. §§ 1324(a)(i)(A)(ii) and (iii). Thus, JPD believes that its *only* option is to detain children like Christian for ICE and that out-of home placement is not an option. JPD's beliefs are erroneous and unfounded.

The standard for criminal liability is very high. A person is criminally liable for harboring or transportation only if he or she harbors or transports with "the intent to violate United States immigration laws," *United States v. Yoshida*, 303 F.3d 1145, 1149 (9th Cir. 2002) (quotations and citations omitted), or with the intent "to further the alien's *illegal presence* in the United States," *United States v. Hernandez–Guardado*, 228 F.3d 1017, 1022 (9th Cir.2000) (emphasis supplied, quotations omitted). Placing a child in out-of-home placement, in furtherance of that child's best interest, cannot possibly qualify because the requisite intent is absent.

Criminal liability for harboring and transporting aliens is reserved for people who intend to violate federal immigration laws, not for

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state and local agencies to expend funds and resources to effectuate a federal regulatory scheme." *Galarza*, 745 F.3d at 644.

institutions that are providing state-mandated treatment and rehabilitation. Convictions usually involve schemes to smuggle, hide, and/or employ illegal aliens coupled with additional assistance to help them remain in the United States undetected. *See, e.g., United States v. Aguilar*, 883 F.2d 662, 666-67 (9th Cir. 1989) (conviction for harboring involved running "modern-day underground railroad" for immigrants to cross the Mexican border and be put up in churches that operated as "self-described sanctuaries" and later transferred to other safe houses in the country), *superseded on other grounds by* Pub. L. No. 99-603, 100 Stat. 3359 (1986); *Yoshida*, 303 F.3d at 1147-49 (conviction for guiding undocumented immigrants into the country, starting from their original airport of departure, accompanying immigrants on plane, and concealing in underwear baggage claim checks bearing the fake names of two of the immigrant travelers). In each case, the defendants clearly intended to "violate the United States immigration laws" or "further the alien's *illegal presence*" in the United States.

The JDP's provision of out-of-home placement to unaccompanied, undocumented children is fundamentally different and does not involve the requisite intent -- the placement is incidental to JPD *properly doing its job*. JPD does not hide children from ICE, nor does it obtain a personal benefit from placing children in out of home placement. Instead, JPD is statutorily-directed to act with the intent of furthering "the safety and

protection of the public," "redressing injuries to victims," and serving "the best interests of the minor." Cal. Welf. & Inst. Code § 202(d). That is not a crime. *See, e.g.*, *United States v. Moreno*, 561 F.2d 1321, 1322 (9th Cir. 1977) (driving undocumented employees to job site "too attenuated" to come within boundaries of a transportation offense because acts were "part of [defendant's] ordinary and required course of [] employment as a foreman"); *United States v. 1982 Ford Pick-Up*, 873 F.2d 947, 951-52 (6th Cir. 1989) (defendant lacked specific intent of supporting alien's presence, in part because defendant sought to promote their well-being). Indeed, no case has ever held a government entity or official guilty of "harboring" or "transporting" for following official policy.

Neither an ICE request nor a fear of federal prosecution should have played a role in JPD's recommendation for Christian (or any other child), or in the juvenile court's determination of Christian's (or any other child's) best interest.

B. The Release Of A Child Like Christian to ICE Violates State and Local Laws

As a result of its unwarranted fear of federal prosecution for harboring or transportation, JPD limited the options for unaccompanied, undocumented children to one: hand them over to ICE without any regard to what happens next. This policy, and its application in Christian's case, violates JPD's and the juvenile court's fundamental mandate: to

rehabilitate and protect the best interests of the child. That violation could not be clearer here, where the juvenile court ordered a disposition that would ensure Christian's return to Honduras, even after it determined that such a result was not in his best interest. This disposition and all others like it violate California juvenile law, the DPFA, the California TRUST Act, and juvenile confidentiality protections.

1. JPD and the Juvenile Court Ignored Their Directive To Prioritize A Child's Best Interest

JPD and the juvenile court failed Christian, and they continue to fail children like him. Instead of making a dispositional recommendation based on Christian's best interest, the JPD's erroneous view of federal law infected its recommendation for him and dictated that JPD would recommend Christian's release to ICE. Any documented child would have been treated differently.

Disposition orders like Christian's that are based on a pre-determined and flawed process must be overturned as a matter of law for at least the following four reasons.

First, the existence of an ICE detainer request was the dispositive factor for Christian and that was wrong as a matter of law. The Welfare and Institutions Code does not allow JPD or the juvenile court to consider the existence of an ICE detainer request when determining a child's best interest. Cal. Welf. & Inst. Code § 202(b). JPD recommendations and

dispositions that consider immigration status, like Christian's here, are erroneous. *In re Teofilio A.*, 210 Cal. App. 3d at 579; *In re Jose P.*, 101 Cal. App. at 58.

Second, an uninvestigated and undeveloped "plan" like Christian's here perforce cannot be in the child's *best* interest. A juvenile court must do some level of research into the probationary terms and conditions it imposes. *See In re Jose T.*, 191 Cal. App. 4th 1142, 1150-52 (2010) (remanding a "perfunctory" analysis of a child's commitment and requiring a fuller study into whether the disposition was in the best interest of the child). That is not what happened in Christian's case. Unconcerned with Christian's best interest, JPD recommended a series of probation conditions without ever investigating whether Christian could adhere to them in Honduras. *See* Section III, above. Indeed, JPD conceded that it did not know if Christian could adhere to the conditions. *Id*. JPD's plan was thus legally insufficient.

Third, the juvenile court failed to make any finding of Christian's best interest. The juvenile court found that it was "not in [Christian's] best interest to return to Honduras" (CT 89), but never determined what *was* actually in his best interest. Instead, it defaulted to releasing him to ICE, consistent with JPD's insufficient and uninformed recommendation.

Fourth, Christian was not afforded an individualized plan that was "tailored" to his "needs" as an "individual." *See In re Jose P.*, 101 Cal.

App. 3d 52, 58, (1980). Instead, he was put in an "undocumented children" category and, per JPD's policy, received the same recommendation (a release to ICE) that all others in that category do. The juvenile court did the same. There was no consideration of *Christian's* individual needs or what was in *Christian's* individual best interest.

No JDP fear of an ICE detainer request or federal prosecution can excuse what happened here. When JPD lets that fear determine its treatment of Christian and others like him, JDP and its employees necessarily put their own interests above those of the children for whose care and rehabilitation they are responsible. What is worse is that JPD's policy continues *after* federal courts, the City of San Francisco, the State of California, and the California Attorney General have unanimously stated that agencies like JPD have no obligation to comply with an ICE detainer request. And it is incomprehensible that JPD admits that the fear of federal prosecution is driving its actions and policies for undocumented children, but that it still submits disposition reports which purport to make a determination of an undocumented child's "best interest." This is senseless, it is wrong, and it cannot continue.

Likewise, juvenile courts must not rubber-stamp these illegal recommendations by JPD. When they do, they too fail the children. Many of these children have no one else looking out for them. The law requires more.

2. Release of a Child Like Christian to ICE Is Not An Authorized Disposition Under the Welfare & Institutions Code

The juvenile court's order that released Christian to ICE is not only an abdication of its responsibilities, it also exceeds its authority under California law. The California legislature has articulated *only* five "[p]ermissible sanctions" under juvenile law:

> (1) Payment of a fine by the minor[;]
>
> (2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor[;]
>
> (3) Limitations on the minor's liberty imposed as a condition of probation or parole[;]
>
> (4) Commitment of the minor to a local detention treatment facility, such as juvenile hall, camp, or ranch[; or]
>
> (5) Commitment of the minor to the Division of Juvenile Facilities, Department of Corrections and Rehabilitation.

Cal. Welf. & Inst. Code § 202(e). No other options are available to the juvenile court, because "[t]he choice of places to which the court can commit a ward is essentially a legislative rather than a judicial prerogative." *In re Kenny*, 79 Cal. App. 4th 1, 7 (2000) (a "court's authority to make any and all reasonable orders for the . . . custody of a ward is confined to the custodial dispositions provided for in . . . the Welfare and Institutions Code" (quotations omitted)). Allowing a different disposition "would be to

condone an unauthorized disposition by the juvenile court." *Id.* at 8 (overturning dispositional order not authorized by Welfare & Institutions Code); *see also In re Ramon M.*, 178 Cal. App. 4th 665, 672 (2009) ("It is the province of the Legislature and not the courts to enact changes in the court's custodial disposition alternatives."); *In re Jose H.*, 77 Cal. App. 4th 1090, 1097-1100 (2000) (overturning dispositional order because outside enumerated options, and finding that juvenile court's options are so limited even if child prefers a different disposition and the parties stipulate to it).

The legislature did not include the release to a federal agency as a permissible disposition. Christian's release to ICE, therefore, was improper and should be overturned.

3. Release of Children Like Christian to ICE Violates the San Francisco DPFA and the California TRUST Act

Except in certain cases where an alleged violent felony is involved, the DPFA mandates that "a law enforcement official shall not detain an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody." City and County of San Francisco, Admin. Code, Ch. 12I.3(a). When JPD recommends an ICE disposition for an undocumented youth otherwise eligible for release in response to a civil immigration detainer request, it recommends an act in violation of the DPFA. And when the juvenile court adopts this recommendation, compliance with its order doubly violates the DPFA.

The juvenile court and JPD's actions also violate the California TRUST Act. The TRUST Act sets statewide restrictions on officials, limiting when they can detain an individual on the basis of an ICE detainer request. It provides:

> A law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody *only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy*, and only under . . . [certain limited conditions].

Cal. Gov. Code § 7282.5(a) (emphasis supplied). The DPFA Ordinance is a "local law," and thus the detention of Christian and other children in his situation violates the TRUST Act.

Respondent does not dispute that DPFA prohibits releasing children to ICE. Respondent only argues that Christian's continued detention was permissible under the TRUST Act because he "committed" one of the enumerated offenses that qualify as an exception to the Act's prohibition of continued detention. Resp. Br. at 19. Respondent ignores the plain language of the statute. Under the TRUST Act, continued detention is only permitted where the detained individual has been "*convicted*" of the enumerated offense. Cal. Gov. Code § 7282.5(a) (emphasis supplied). Respondent does not allege a conviction, nor could it.

The distinction is all the more important in the juvenile context, where courts address potential offenses differently than in a criminal court. Tom Ammiano, the Assembly Member who authored the TRUST Act, explained:

> I intend the bill's protections against immigration hold requests to apply to juveniles booked and held in juvenile detention facilities. However, *I do not intend the word "conviction" as used in the bill to include juvenile adjudications that result in a sustained petition.* The one exception is for a juvenile adjudication for an offense that was committed when the juvenile was sixteen or older and that is listed in Welfare & Institutions Code § 707(b). *See* PC § 667(d)(3) (defining serious and violent felonies with respect to juvenile adjudications). It is my intent that such a juvenile adjudication constitutes a conviction under the bill, *but these are the only cases in which a juvenile adjudication can serve as the basis for responding to an immigration hold request*.

Assembly Daily Journal, 2013-2014 Regular Session, at p. 6765 (emphasis supplied).

Respondent's attempt to expand the scope of the TRUST Act's exceptions also runs directly contrary to the Attorney General's public statements. On June 25, 2014, the California Attorney General's office issued a press bulletin stating:

> When local law enforcement officials are seen as de facto immigration enforcers, it erodes the trust between our peace officers and the communities they serve . . . . Federal immigration detainers are voluntary and this

> bulletin supports the TRUST Act and law enforcement leaders' discretion to utilize resources in the manner that best serves their communities.
>
> . . .
>
> The TRUST Act requires that continued detention under Immigration and Custom Enforcement (ICE) agency detainers must meet conditions laid out in state law. First, continued detention by state and local law enforcement agencies must "not violate any federal, state, or local law, or any local policy," and second, the detainee's criminal history must include serious or violent crimes, federal charges, or inclusion in the California Sex and Arson Registry among other conviction criteria. *Only if both of these conditions are met*, then local law enforcement may continue to detain the individual.

Press Release, Office of the Attorney General, Attorney General Kamala D. Harris Issues Bulletin to Law Enforcement on Federal Immigration Detainers (June 25, 2014) (emphasis supplied).[7]

Respondent's other attempts to avoid JPD and the juvenile court's clear TRUST Act and DPFA violations fair no better. Respondent suggests that those laws are "preempt[ed]" by federal law if they prevented JPD from detaining children in response to ICE detainer requests. Resp. Br. at 20. That argument is disingenuous, at best. The same Attorney General that lauded the TRUST Act and its legitimate legal basis cannot now disclaim its enforceability. Respondent's argument is wrong on the merits

[7] *Available at* http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-issues-bulletin-law-enforcement-federal.

in any event. It is premised on a purported conflict between federal law (an ICE request) and state or local law (the TRUST Act and DPFA). *Id*. But there is no conflict here. An ICE detention request is a request and not a mandate, and federal law gives states and localities the option of not complying with the request. *See* Section IV.A.1. The TRUST Act and DPFA simply reflect California's and San Francisco's decisions to exercise that option for children like Christian.

Respondent also argues that "[a] state may not seek to achieve its own immigration policy in conflict with that of the federal government." Resp. Br. at 20. This is true, but so what? No evidence even suggests that San Francisco and California seek to "achieve their own immigration policy" by enacting the DPFA or the TRUST Act.

Even the Office that now seeks to defend a no-questions-asked release to ICE of a child who is in need of substantial care and support from the State has acknowledged both the actual harm this type of action causes to children and that doing so is illegal under California law. San Francisco and California have put in place laws to protect undocumented youths like Christian. The JPD and juvenile court violated those laws.

4. Release of Children Like Christian to ICE Violates Juvenile Confidentiality Protections

Christian's release to ICE also violated the juvenile confidentiality protections provided in California Welfare & Institutions Code Section 827.

As a result, the juvenile court disregarded the rehabilitative function these protections serve, again to Christian's detriment.

Section 827 prohibits the disclosure of *any* information pertaining to a juvenile, including any information that would be indicative of his/her immigration status. The statute reflects the "intent of the Legislature . . . that records or information gathered by law enforcement agencies relating to the taking of a minor into custody, temporary custody, or detention (juvenile police records) should be confidential." Cal. Welf. & Inst. Code § 827.9 (emphasis supplied).

"Confidentiality is necessary to protect those persons from being denied various opportunities, to further the rehabilitative efforts of the juvenile justice system, and to prevent the lifelong stigma that results from having a juvenile police record." Cal. Welf. & Inst. Code § 827.9; *see also T.N.G. v. Superior Court,* 4 Cal. 3d 767, 776-77 (1971) (juvenile confidentiality laws "explicitly reflect a legislative judgment that rehabilitation through the process of the juvenile court is best served by the preservation of a confidential atmosphere in all of its activities."). The confidentiality protections included in Section 827 thus allow children the opportunity to rehabilitate without stigma, and they facilitate treatment because they encourage children to be honest and open about their current situation.

While Section 827 sets forth limited exceptions for when and to

whom city officials may disclose information regarding juveniles, none applies here. Each of the exceptions – for example, information may be shared with Child Protective Services – is designed "to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse." Cal. Welf. & Inst. Code § 827(b)(1). Consistent with this purpose, the individuals and agencies to whom information may be disclosed work within California's juvenile justice system. Disclosing juvenile information to ICE, a federal agency, so that ICE can commence deportation proceedings is not one of the listed exceptions and therefore violates California law. *See also* App. Br. at 27-32.

The juvenile court erroneously ordered Christian's release to ICE in violation of these rules. Yet again, his rehabilitative concerns were impermissibly disregarded only due to his status as an undocumented child.

C. Disparate Placement Of Children Based Solely On Their Undocumented Status Violates The Fourteenth Amendment Of The U.S. Constitution

Christian was singled him out for prolonged detainment based on his undocumented status solely so that he could be released to ICE. This disparate treatment denied Christian equal protection of the law guaranteed by the Fourteenth Amendment. U.S. Const. Amend. XIV.

Analyzing the denial of equal protection in this case is a three-part

inquiry. First, are undocumented and documented children similarly situated for purposes of California juvenile law? They are. Second, what level of judicial scrutiny applies? Strict or at least intermediate scrutiny applies. Third, if strict or intermediate scrutiny applies, can the state meet its burden of showing that the juvenile court's disparate treatment of undocumented children like Christian furthers a compelling or important state interest? It cannot. The juvenile court's order must be overturned.

1. Undocumented Children like Christian Are Similarly Situated To Documented Children For Purposes Of Placement Under Juvenile Law

The constitutional guarantee of equal protection applies to persons who are "similarly situated." *People v. Brown*, 54 Cal. 4th 314, 328 (2012), *as modified on denial of reh'g* (Sept. 12, 2012). The question is "not whether persons are similarly situated for all purposes, but whether they are similarly situated *for purposes of the law challenged*." *Id*. (citations and quotations omitted, emphasis supplied). Specifically, the relevant group "must be comprised of similarly situated persons so that the factor motivating the alleged discrimination can be identified." *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005). "The groups need not be similar in all respects, but they must be similar in those respects relevant to the [challenged] policy." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1064 (9th Cir. 2014) (undocumented immigrants are similarly

situated to other non-citizens who may use Employment Authorization Documents to obtain driver's licenses (internal citations omitted)).

Here, under California juvenile law, all children, regardless of citizenship, are similarly situated. As described above, the purpose of the juvenile system is rehabilitation and treatment, and a child's immigration status must play *no role* in that process. *See In re Jose P.*, 101 Cal. App. 3d at 58-59; *In re Teofilio A.*, 210 Cal. App. 3d at 579; *see also* Section II, above. Undocumented children are thus entitled to equal protection under California law because California mandates that undocumented and documented children be treated similarly throughout the juvenile process.

Respondent argues that undocumented and documented children are not similarly situated because federal law permits distinctions between citizens and non-citizens. Respondent's Br. at 21. Respondent ignores the relevant inquiry. The question is whether undocumented and documented children are similarly situated *for the purposes of the law challenged*, which here is a court order based on *juvenile state law*. *See In re Jose C.*, 45 Cal. 4th 534, 542 (2009) (as matter of state law, juvenile courts have jurisdiction over juveniles declared wards of the court).

Federal law's disparate treatment of undocumented persons is irrelevant. The federal government has the unique power to classify on the basis of alienage. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). State and local governments do not have that same authority. *See Hines v. Davidowitz*,

312 U.S. 52, 68 (1941). Accordingly, all children are similarly situated for purposes of California juvenile law, and are entitled to the equal protection of those laws. *Cf. Darces v. Woods*, 35 Cal. 3d 871, 888 (1984) (undocumented and citizen siblings are similarly situated with respect to the legitimate purpose of a federal aid program — the relief of eligible, needy children).

2. Classifications That Discriminate Against Children Based On Their Immigration Status Are Subject To Strict, Or At The Very Least Intermediate, Scrutiny

To determine whether the juvenile court's disparate treatment of similarly-situated juveniles passes constitutional muster, the court must first determine the appropriate level of review (strict scrutiny, intermediate scrutiny, or rational basis).

If a law impinges on the exercise of a "fundamental right" or if it affects a "suspect" class, the law will be subject to strict scrutiny. *See Graham v. Richardson*, 403 U.S. 365, 376 (1971). Under strict scrutiny, the state bears the burden of showing that the challenged legislation is narrowly tailored to achieve some compelling state interest. Strict scrutiny carries with it a presumption of unconstitutionality. *Vieth v. Jubelirer*, 541 U.S. 267, 294 (2004) ("strict scrutiny readily, and almost always, results in invalidation").

Intermediate or "middle-tier" scrutiny applies to classifications that

are sensitive but not suspect, and to rights that are important, but not fundamental. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 238 (1982) (Powell, J. concurring). This level of scrutiny falls somewhere on the continuum between strict scrutiny and rational basis. It requires the state to show that the challenged law is "substantially related" to a "substantial" state interest. *Id*. at 239 (quoting *Lalli v. Lalli*, 439 U.S. 259, 265 (1978)).

A rational basis review applies to all other classifications and non-fundamental rights. It is the least onerous for the state and provides a presumption of constitutionality. *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 383 (2001). The standard requires only that the state action be rationally related to a legitimate governmental objective. *Id.*

Courts have not applied a consistent level of review when faced with equal protection challenges to state statutes affecting undocumented individuals. *See Korab v. Fink*, 748 F.3d 875, 895-96 (9th Cir. 2014) *cert. denied sub nom. Korab v. McManaman*, 135 S. Ct. 472 (2014) (Bybee, J. concurring and concurring in the judgment) (analyzing alienage cases). The weight of the authority, however, commands that the court's disparate treatment of Christian be subject to strict judicial scrutiny because detaining him in Juvenile Hall for an extra 48 hours – only because he was undocumented and solely so he could be released to ICE – impinged on a fundamental liberty interest. At the very least, intermediate scrutiny applies because the court's disparate treatment of undocumented children affects a

sensitive class.

The juvenile court's order is subject to strict scrutiny because detaining children in Juvenile Hall only because of their documented status impinges on a fundamental liberty interest. The Equal Protection Clause does not confer or create substantive rights. Rather, the function of the Equal Protection Clause is to determine whether state laws impermissibly impinge on a substantive right or liberty created or conferred by other provisions in the U.S. Constitution. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 60 (1973) (Stewart, J. concurring).

At issue here is Christian's right, as an undocumented child, to remain free from arbitrary institutional confinement. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The fundamental right to be free from bodily restraint is not reserved exclusively for citizens; rather, all persons within the territory of the United States have a fundamental liberty right. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *see also Harisiades v. Shaughnessy*, 342 U.S. 580, 586 & n. 9 (1952) (immigrants stand "on an equal footing with citizens" under the U.S. Constitution with respect to protection of personal liberty); *Zadvydas*, 533 U.S. at 696 (even an alien who has already been ordered deported retains a liberty interest).

"Children, too, have a core liberty interest in remaining free from institutional confinement. In this respect, a child's constitutional '[f]reedom from bodily restraint' is no narrower than an adult's." *Reno v. Flores*, 507 U.S. 292, 316 (1993) (O'Connor, J. concurring). Although courts recognize that children "are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as parens patriae" (*Schall v. Martin*, 467 U.S. 253, 265 (1984)), this parens patriae purpose does not limit a child's liberty right. *Flores*, 507 U.S. at 317. Rather, it is just one way of articulating a state's purported interest. *Id.*

A number of courts have recognized a child's fundamental right to liberty and have applied strict scrutiny to laws and policies that impinge on this right. In *Schall*, the Supreme Court upheld a New York statute authorizing pretrial detention of dangerous juveniles, but only after analyzing the statute at length to ensure that it complied with substantive and procedural due process. The Court recognized that children have a protected liberty interest in "freedom from institutional restraints, even for the brief time involved here." 467 U.S. at 265; *see also In re Gault*, 387 U.S. 1, 13 (1967) ("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone").

Similarly, in *People v. Olivas*, the California Supreme Court found that because physical confinement in the California Youth Authority entails

"physical restraint of the ward's person," that confinement was subject to strict scrutiny under the California and U.S. Constitutions. 17 Cal. 3d 236, 244, 251 (1976) ("personal liberty is a fundamental interest, second only to life itself"); *see also In re Harm R.*, 88 Cal. App. 3d 438, 443 (1979) (applying strict scrutiny where minor was placed in facility away from home because "[w]e are dealing with a personal liberty interest").

By contrast, in *Reno v. Flores*, the Supreme Court applied a rational basis review to determine the constitutionality of detaining undocumented children pending deportation hearings pursuant to a federal statute that only allowed release to parents, close relatives, or legal guardians. *Flores*, 507 U.S. at 303. Petitioners, who had no parent, close relative, or guardian, asserted a right to be placed in the custody of a responsible and willing adult rather than a government-operated child care facility during the 72 hour period. The Court narrowly construed the liberty interest at stake and found that during the pendency of deportation proceedings, juvenile aliens had no fundamental liberty interest to be released into the custody of a private custodian rather than a government child-care institution. *Id.* Because the juveniles in *Flores* were housed in a low-security "open type of setting" and not in "correctional institutions", the Court found that "'[l]egal custody' rather than 'detention' more accurately describe[d] the reality of the arrangement." *Id*. at 298. "[F]reedom from physical restraint . . . [was] not at issue." *Id.* at 302.

Here, the court's order infringed Christian's fundamental liberty interest in being free from the epitome of "physical restraint"—incarceration. But for Christian's undocumented status, Christian would not have received a sentence of two extra days in Juvenile Hall as punishment for his crime. The extra two days of detention in Juvenile Hall also had the effect of lengthening Christian's probationary period for two days longer than he otherwise would have been a ward of the state. Moreover, there can be no doubt that the court's order committing Christian to Juvenile Hall for two extra days was incarceration. *See* Cal. Welf. & Inst. Code § 857 ("Whenever a minor is *incarcerated* in a juvenile hall . . . ." (emphasis supplied)). So that he could be released to ICE, he was "order[ed] [] ***to serve*** 51days" at Juvenile Hall, and Juvenile Hall is a place of incarceration for punishment. 3 RT 229; *see also In re K.J.*, 224 Cal. App. 4th 1194, 1207 (2014) (Juvenile Hall is available form of "punishment" for juvenile court); *In re M.R.*, 220 Cal. App. 4th 49, 55 (2013) (describing detention in juvenile hall as incarceration). Because the court arbitrarily ordered a "physical restraint" on Christian in the form of two extra days of incarceration, solely because of his undocumented status, it abridged his fundamental liberty interests and should be subject to strict scrutiny.

At a minimum, intermediate scrutiny applies. Even if strict scrutiny does not apply, the court's disparate treatment of Christian is

subject at least to intermediate scrutiny. In *Plyler*, the Supreme Court reviewed a state statute that denied education funding for undocumented children. The court found that undocumented children were not a "suspect class," which would have entitled to them to strict scrutiny, because "entry into this class, by virtue of entry into this country, is the product of voluntary action" (i.e., entering the United States). 457 U.S. at 219, n.19. The court also recognized that the infringement of a fundamental interest would have subjected the challenged statute to strict scrutiny, but it found that the right to education was not fundamental. As described above, the right to liberty at issue in this case *is* fundamental and thus strict scrutiny is warranted for that reason alone.

While it did not apply strict scrutiny, *Plyler* did find that heightened judicial scrutiny was required because "more [was] involved . . . than the abstract question whether [the statute] discriminates against a suspect class, or whether education is a fundamental right. [The statute] imposes a lifetime hardship on a discrete class of children not accountable for their disabling status." *Id.* at 223. Undocumented children are not accountable for their disabling status because "children can neither affect their parents' conduct [in bringing them to this country] nor their own undocumented status." *Id.* at 202. Moreover, "[t]he inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it

most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause." *Id.* at 222. Importantly, *Plyler* recognized that children are "special members of [the alien] underclass" and thus deserve increased protection from potentially discriminatory state practices. *Id.* at 219. Accordingly, the court employed an "intermediate" standard of review requiring the state to show that the discrimination furthers a "substantial" state interest. *Id.* at 224.

Like the children in *Plyler*, the court's disparate treatment of Christian should at least be subject to intermediate review because he and undocumented children like him meet the two principles set forth by *Plyler* for enhanced protection. First, Christian is a child – a "special member of th[e] [alien] underclass." *Id.* at 219. Though he was not brought into this country by his parents, as a child, he cannot be "accountable for [his] disabling status." *Id.* at 222. Moreover, JPD and the juvenile court's practice of handing over children like Christian to ICE is done without any regard to how they entered this country (i.e., whether they came alone, with their parents, were trafficked here, etc.). Therefore, *Plyler's* enhanced protection for children applies in this case as well.

Second, the juvenile court denied Christian access to the juvenile court's treatment and rehabilitative processes which, as in *Plyler*, imposes an "inestimable toll . . . [on his] social, economic, intellectual, and

psychological well-being." *Id.* at 222. The rehabilitative function of the juvenile process, like education, has a "lasting impact" on the development of a child. *Id.* at 221. As in *Plyler*, denial of that rehabilitative process "to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit." *Id.* at 221-22. "Paradoxically, by depriving the children of any disfavored group of [the rehabilitative processes], we foreclose the means by which that group might raise the level of esteem in which it is held by the majority." *Id.* at 222. Indeed, as Justice O'Connor wrote in *Flores*,

> The consequences of an erroneous commitment decision are more tragic where children are involved. Childhood is a particularly vulnerable time of life and children erroneously institutionalized during their formative years may bear the scars for the rest of their lives. . . . To be sure, government's failure to take custody of a child whose family is unable to care for her may also effect harm. But the purpose of heightened scrutiny is not to prevent government from placing children in an institutional setting, where necessary. Rather, judicial review ensures that government acts in this sensitive area with the requisite care.

Flores, 507 U.S. at 318 (O'Connor, J. concurring) (internal quotations and citations omitted). Thus, at least intermediate review should apply because it is "difficult to reconcile the cost or the principle of a status-based denial of [the basic rehabilitative functions of California's juvenile system] with the framework of equality embodied in the Equal Protection Clause."

Plyler, 457 U.S. at 222.[8]

In sum, strict scrutiny applies because the court's order here impinged on Christian's fundamental liberty interest. At the very least, the Court's order should be subject to intermediate judicial review because Christian's status as a child who was in need of the state's treatment and rehabilitation.

[8]Applying at least intermediate review in this case is further supported by the Court's prior holdings that aliens are a suspect class who is entitled to strict scrutiny. A suspect class is a "discrete and insular minority." *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 n. 4 (1938). Suspect classes tend to be "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Rodriguez*, 411 U.S. at 28; *see also Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313–14 (1976). Here, undocumented children like Christian are burdened with all of the relevant disabling characteristics that identify suspect classes. Indeed, in *Graham v. Richardson*, the court struck down a state law that denied welfare benefits to aliens. Applying strict scrutiny, the court held that "[a]liens as a class are a prime example of a 'discrete and insular' minority." 403 U.S. 365, 372 (1971) (quoting *United States v. Carolene Prods. Co.* (1938) 304 U.S. 144, 153 n.4). Undocumented immigrants should be treated no differently because they have been similarly disadvantaged under the criteria set forth in *Carolene Prods.* They lack voting power, the power to defend themselves in the political arena, they have been historically victimized by prejudice, and they are often handicapped by lack of familiarity with our language and customs. Jason H. Lee, *Unlawful Status As A "Constitutional Irrelevancy"?: The Equal Protection Rights of Illegal Immigrants*, 39 Golden Gate U. L. Rev. 1, 20-21 (2008). Thus, under *Graham*, undocumented children like Christian would be considered a suspect class entitled to strict scrutiny.

3. The State Has Not Met, Nor Could It Meet Its Burden Of Showing That Its Classification Furthers A Compelling, Or Even An Important, Governmental Interest

Because strict scrutiny applies, Respondent must prove that its disparate treatment of children like Christian due only to his undocumented status is a "narrowly tailored measure[] that further[s] compelling governmental interests." *Johnson v. California*, 543 U.S. 499, 505 (2005) (quoting *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995)). But even if intermediate scrutiny applies, Respondent would still have to prove that its disparate treatment served an important government interest. *Plyler*, 457 U.S. at 224. It has not met its burden on either standard, nor could it.

Respondent has not asserted any interest, legitimate or otherwise, that would support the juvenile court's disparate treatment of undocumented children. Nor could Respondent meet its burden where, as here, Respondent has repeatedly reaffirmed that its interests are in treating all children the same under juvenile law. *See* Section II, above.

V. CONCLUSION

For all the reasons stated above, the juvenile court's disposition of Christian should be overturned.

DATED: February 13, 2015

MORGAN, LEWIS & BOCKIUS LLP

By: _____

Nitin Jindal
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Attorneys for Amici Curiae
Youth Law Center and Public
Public Counsel Law Center

CERTIFICATE OF COMPLIANCE

I certify that the attached brie of Amici Curiae uses a 13-point Times New Roman font, and contains 9,380 words.

DATED: February 13, 2015

MORGAN, LEWIS & BOCKIUS LLP

By: _____

Nitin Jindal
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CERTIFICATE OF SERVICE

I, Jennifer Gray, hereby declare:

I am a resident of the State of California, County of San Francisco; I am over the age of eighteen years and not a party to the within action; my business address is Three Embarcadero Center, San Francisco, California 94110. I am readily familiar with the practice of this office for collection and processing of correspondence for mail and UPS overnight delivery, and they are deposited that same day in the ordinary course of business.

On February 13, 2015, I served the attached:

APPLICATION OF YOUTH LAW CENTER AND PUBLIC COUNSEL LAW CENTER FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT CHRISTIAN H.

BRIEF OF AMICI CURIAE YOUTH LAW CENTER AND PUBLIC COUNSEL LAW CENTER

X (BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California, in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

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Attn: Hon. Suzanne Bolanos, Judge

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X (Electronic Service) by transmitting true and correct PDF copies of the above by TrueFiling. An attorney's registration with TrueFiling constitutes consent to service or delivery of all documents by any other party in a case through the system.

Kamala D. Harris, Attorney General
Office of the Attorney General
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Court of Appeal, First Appellate District

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Christian H. (through service to L. Richard Braucher)

I declare under penalty of perjury, under the laws of the United States of America and the State of California, that the above is true and correct. Executed on February 13, 2015 at San Francisco, California.

Jennifer Gray