

THE MYTHS OF CENTRAL AMERICAN UNDOCUMENTED IMMIGRATION AND MS-13 IN THE UNITED STATES

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ABSTRACT

Despite the gang's birth on United States soil in the 1980s, President Donald Trump frequently targets the transnational criminal organization *Mara Salvatrucha*, or MS-13, as a current national security threat that justifies extreme border enforcement measures and drastic changes in immigration law and policies. To explore the myths and realities of MS-13, this article compares the scope, structure, aims, and modus operandi of this transnational gang in the United States and in the countries of the Central American Northern Triangle. We argue that the nature of MS-13 in the United States is different from the

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countries of the Northern Triangle. The findings presented in this study are grounded in interviews conducted with law enforcement officers, practitioners, and experts on the subject matter, as well as on content analysis of social media and other electronic platforms covering immigration and MS-13.

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INTRODUCTION

In May 2018, during a White House discussion about immigration and the so-called sanctuary cities, President Donald Trump referred to MS-13 as “animals.”¹ More specifically, he noted:

We have people coming into the country, or trying to come in—and we’re stopping a lot of them—but we’re taking people out of the country. You wouldn’t believe how bad these people are. These aren’t people. These are animals. And we’re taking them out of the country at a level and at a rate that’s never happened before. And because of the weak laws, they come in fast, we get them, we release them, we get them again, we bring them out. It’s crazy.²

1. Donald J. Trump, U.S. President, *Remarks by President Trump at a California Sanctuary State Roundtable* (May 16, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-california-sanctuary-state-roundtable> [hereinafter *California Sanctuary State Roundtable*].

2. *Id.*

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This is not an isolated statement by the president. According to the *Washington Post*, by February 7, 2019, President Trump has publicly talked about MS-13 on at least 160 occasions since he took office.³

President Trump is not alone in spreading this message of fear. Other members of his administration and the Republican Party, including Jeff Sessions, Ed Gillespie, and Senator Martha McSally, have also referred to MS-13 as a prime national security threat.⁴ A July 2018 poll on the Huffington Post website⁵ shows an overwhelming majority of Trump's supporters view MS-13 to be an effective threat to the United States.⁶

Are these assessments evidence-based? Is MS-13 a real national security threat to the United States that justifies extreme border enforcement measures and/or drastic changes in U.S. immigration law and policies? How much of this problem is driven by current

3. President Trump referred to MS-13 161 times by February 2019. Michael E. Miller, 'Savage gang': *Savage Gang*: *Despite Trump's Relentless Rhetoric, MS-13 Killings Are Down*, WASH. POST (Feb. 7, 2019), https://www.washingtonpost.com/local/savage-gang-despite-trumps-relentless-rhetoric-ms-13-murders-are-down/2019/02/06/9c6ace98-2662-11e9-81fd-b7b05d5bed90_story.html.

4. Press Release, U.S. Dep't of Justice, Attorney General Jeff Sessions Gives Key Department of Justice Task Force New Tools to Dismantle MS-13 (Oct. 23, 2017), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-gives-key-department-justice-task-force-new-tools-dismantle-ms>; Laura Vozella & Fenit Nirappil, *Virginia Republican's Ad Ties Opponent to MS-13. Democrats Compare It to 'Willie Horton'*, WASH. POST (Sept. 22, 2017), https://www.washingtonpost.com/local/virginia-politics/virginia-republicans-ad-ties-opponent-to-ms-13-democrats-compare-it-to-willie-horton/2017/09/20/28d673bc-9e49-11e7-8ea1-ed975285475e_story.html; Martha McSally, Opinion, *McSally: Asylum Seekers 'Enrich Cartels'; Vulnerable to MS-13 Recruitment*, TUCSON SENTINEL (May 23, 2018), http://www.tucsonsentinel.com/opinion/report/052318_mcsally_asylum/mcsally-asylum-seekers-enrich-cartels-vulnerable-ms-13-recruitment.

5. Dana Liebelson & Ariel Edwards-Levy, *Most Trump Voters Say MS-13 Is a Threat to the Entire U.S.*, HUFFPOST (July 16, 2018), https://www.huffpost.com/entry/most-trump-voters-say-ms-13-is-a-threat-to-the-entire-us_n_5b490310e4b022fdcc594c5d; see YouGov, *HuffPost: Immigration and Gang Violence*, HUFFPOST (July 5-6, 2018), <https://big.assets.huffingtonpost.com/athena/files/2018/07/13/5b48edece4b0bc69a7870876.pdf>.

6. See Emily Birnbaum, *Overwhelming Majority of Trump Supporters See MS-13 as a Threat to Poll*, THE HILL (July 16, 2018), <https://thehill.com/latino/397185-overwhelming-majority-of-trump-voters-see-ms-13-as-a-threat-to-us-poll>.

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immigration patterns and policies in the United States?⁷ This article explores these questions by analyzing the scope, structure, aims, and modus operandi of MS-13 in both Central America and the United States. This analysis dismantles a set of myths about the nature of the MS-13 “threat” in the United States. The geographic presence and alleged rapid expansion of MS-13 in certain regions of the country are associated with present-day immigration patterns and the existence of networks and policies that support undocumented newcomers, including the resettlement of “unaccompanied alien children” in gang-controlled zones. This study is complemented by interviews conducted with law enforcement officers, practitioners, and experts on the subject matter,⁸ as well as by a content analysis of social media and other electronic platforms.⁹

Part I of this article connects the notion of “MS-13 as a national security threat” with debates on U.S. national security policy and immigration. To dismantle the myths about the MS-13 “threat” to the United States, Part II compares and contrasts the gang model of MS-13 in the United States with the countries of the Central American Northern Triangle (Northern Triangle). Lastly, this article explores potential solutions to gang violence in the United States, particularly in the case of MS-13, including preventative models combined with policing strategies.

7. See SARAH PIERCE ET AL., U.S. IMMIGRATION POLICY UNDER TRUMP: DEEP CHANGES AND LASTING IMPACTS 2 (2018), <https://www.migrationpolicy.org/sites/default/files/publications/TCMTrumpSpring2018-FINAL.pdf> (on current immigration patterns and policies in the United States); SARAH PIERCE & ANDREW SELEE, IMMIGRATION UNDER TRUMP: A REVIEW OF POLICY SHIFTS IN THE YEAR SINCE THE ELECTION 2 (2017), <https://www.migrationpolicy.org/research/immigration-under-trump-review-policy-shifts>.

8. In the summer and fall of 2018, the authors, Professor Correa-Cabrera and Professor López-Santana, conducted eighteen in-depth interviews in the following locations: Fairfax County, Virginia; Arlington County, Virginia; Montgomery County, Maryland; and the city of Richmond, Virginia.

9. This analysis focuses on Twitter and mainstream media outlets, including the *New York Times*, *Washington Post*, *Fox News*, and the White House government website.

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I. U.S. NATIONAL SECURITY AND POLICY SHIFT FOCUS

U.S. immigration policy and border security, specifically at the Mexico-U.S. border, are currently at the center of American political discourse. Since Donald Trump's inauguration in 2017, he has pushed for major immigration policy shifts in the forms of executive orders, agency memoranda, and modifications to existing programs and practice.¹⁰ Moreover, President Trump declared that drugs, criminals, and undocumented ("illegal") immigrants crossing the border from Mexico, notwithstanding their country of origin, constitute a severe threat to national security,¹¹ thus justifying the construction of a border wall, more stringent border security, and restrictive immigration policies.¹² A significant example of the president's expansion in immigration policies is his authorization of U.S. Immigration and Customs Enforcement (ICE) to enforce these policies against "all removable immigrants, regardless of whether they fall within one of [the] priority [removal] categories."¹³

A recent political episode illustrates this immigration agenda. On February 15, 2019, President Donald Trump declared a "national emergency" on the border with Mexico, intending to access billions of

10. See PIERCE & SELEE, *supra* note 7, at 1 (discussing "sharp cuts to legal immigration," "adjustments across federal agencies that have an immigration role," and "extreme" vetting of all applicants for admission").

11. Peter Baker, *Trump Declares a National Emergency, and Provokes a Constitutional Clash*, N.Y. TIMES (Feb. 15, 2019), <https://www.nytimes.com/2019/02/15/us/politics/national-emergency-trump.html>.

12. PIERCE ET AL., *supra* note 7, at 3. A significant change in immigration policies is the implementation of Migrant Protection Protocols, which is "U.S. Government action whereby certain foreign individuals entering or seeking admission to the U.S. from Mexico – illegally or without proper documentation – may be returned to Mexico [to] wait outside of the U.S. for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay." Press Release, U.S. Dep't of Homeland Sec., Migration Protection Protocols (Jan. 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> [hereinafter *Migration Protection Protocols*].

13. PIERCE ET AL., *supra* note 7, at 3 n.5 (The current list of categories of noncitizens prioritized for removal "include all of those with removal orders, convicted or charged with any criminal offense, and those who have abused public benefits.").

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dollars to build a border wall.¹⁴ In a televised statement from the Rose Garden in February 2019, the president stated, “‘We’re going to confront the national security crisis on our southern border, and we’re going to do it one way or the other,’ . . . ‘It’s an invasion.’ . . . ‘We have an invasion of drugs and criminals coming into our country.’”¹⁵ Apart from the national emergency, Trump declared his administration would further expand the immigration policies implemented during his tenure, including “enhanced enforcement measures and new application vetting requirements, to cuts in refugee admissions, and the scaling back of temporary protections for some noncitizens.”¹⁶

While some view this as a “manufactured crisis,” others agree with the president’s assertions.¹⁷ Fueled by images of the Central American caravans, supporters of President Trump agree with his view that illegal immigrants from the South are invaders, who ultimately bring drugs and violence to the United States.¹⁸ To stop this alleged invasion, the consequences of various political measures aim to deter undocumented migrants from crossing the U.S.-Mexico border.¹⁹ These measures include construction of a wall, implementation of “zero-tolerance policies,” stricter enforcement of immigration laws by ICE, increased numbers of border patrol agents and detention centers, and advanced use of technology to prevent undocumented migrants from crossing the U.S.-Mexico border.²⁰

14. Baker, *supra* note 11.

15. *Id.*

16. PIERCE ET AL., *supra* note 7.

17. See Erik Wemple, *Fox News Is Finally Getting Its National Emergency*, WASH. POST (Feb. 15, 2019), <https://www.washingtonpost.com/opinions/2019/02/15/fox-news-is-finally-getting-its-national-emergency/>.

18. Birnbaum, *supra* note 6; Liebelson & Edwards-Levy, *supra* note 5.

19. Although reunification has made some progress for some families, many others are still enduring the consequences of family separation at the border, which is the result of the “zero-tolerance” immigration policies. Kirk Semple & Miriam Jordan, *For Families Split at Border, an Anguished Wait for Children’s Return*, N.Y. TIMES (Sept. 1, 2018), <https://www.nytimes.com/2018/09/01/world/americas/immigrant-families-separation-border.html>.

20. Donald J. Trump, U.S. President, *Remarks by President Trump in Meeting with Conservative Leaders on His Immigration Proposal* (Jan. 23, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-conservative-leaders-immigration-proposal/> [hereinafter *Immigration Proposal*]; Press Release, U.S. Dep’t of Homeland Sec., Written testimony of CBP U.S. Border

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An important element of President Trump's anti-immigration stance is his constant references to the Central American gang *Mara Salvatrucha* as a national security threat to the United States. The president and members of the Republican Party have frequently connected current immigration patterns—including increasing numbers of asylum seekers and particularly of unaccompanied minors trying to enter the United States—with the expansion of MS-13 in the United States.²¹ In particular, these political leaders have associated immigration patterns involving undocumented economic migrants and asylum-seekers from Central America with the influx of national insecurity, gang violence, drug trafficking, and human trafficking.²² These references to MS-13 members are framed as a manifestation of a dysfunctional immigration system allegedly supported by the Democratic Party.²³

Since early 2017, Trump has condemned MS-13 in various State of the Union addresses, tweets, and speeches—on the campaign trail and from the White House. The president's third State of the Union speech on February 5, 2019, is the 161st occasion in which he publicly spoke

Patrol Acting Chief of Carla Provost for a Senate Committee on the Judiciary hearing titled "The MS-13 Problem: Investigating Gang Membership as Well as Its Nexus to Illegal Immigration, and Assessing Federal Efforts to End the Threat" (June 21, 2017), <https://www.dhs.gov/news/2017/06/21/written-testimony-cbp-senate-committee-judiciary-hearing-titled-ms-13-problem> [hereinafter *Investigating Gang Membership*].

21. See Press Release, U.S. Dep't of Justice, *supra* note 4; Vozella & Nirappil, *supra* note 4; McSally, *supra* note 4.

22. *Immigration Proposal*, *supra* note 20; Donald J. Trump, U.S. President, *Remarks by President Trump in Signing Ceremony for S. 1862, the "Trafficking Victims Protection Reauthorization Act"* (Jan. 9, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-ceremony-s-1862-trafficking-victims-protection-reauthorization-act/> [hereinafter *Signing Ceremony*]; Donald J. Trump, U.S. President, *President Donald J. Trump is Dedicated to Combating MS-13* (May 23, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-dedicated-combating-ms-13/> [hereinafter *Combating MS-13*]; Donald J. Trump, U.S. President, *What You Need to Know About the Violent Animals of MS-13* (May 21, 2018), <https://www.whitehouse.gov/articles/need-know-violent-animals-ms-13/> [hereinafter *Violent Animals of MS-13*]; Donald J. Trump, U.S. President, *Remarks by President Trump at Law Enforcement Roundtable on MS-13* (Feb. 6, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-law-enforcement-roundtable-ms-13/> [hereinafter *Law Enforcement Roundtable*].

23. *Immigration Proposal*, *supra* note 20.

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about the gang since taking office.²⁴ An analysis of the tweets and speeches in which Trump mentions MS-13 sheds light on the nature of his political and electoral agenda.²⁵

Trump's strong immigration policy opinions have consistently utilized specific rhetoric against MS-13. In fact, the government has used images of MS-13 to depict drug dealers, violent criminals, and undocumented immigrants arriving from the South and mostly from Central America.²⁶ Discussions of Trump's immigration reform

24. See Miller, *supra* note 3.

25. See generally Donald J. Trump (@realDonaldTrump), TWITTER (Oct. 5, 2017, 6:58 PM), <https://twitter.com/realdonaldtrump/status/916120435762266114> (“Ralph Northam, who is running for Governor of Virginia, is fighting for the violent MS-13 killer gangs & sanctuary cities. Vote Ed Gillespie!”); Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 7, 2017, 2:56 AM), <https://twitter.com/realdonaldtrump/status/927852358209622016> (“@EdWGillespie will totally turn around the high crime and poor economic performance of VA. MS-13 and crime will be gone. Vote today, ASAP!”); Donald J. Trump (@realDonaldTrump), TWITTER (May 23, 2018, 12:35 PM), <https://twitter.com/realdonaldtrump/status/999373224059265026> (“Crippling loopholes in our laws have enabled MS-13 gang members and other criminals to infiltrate our communities—and Democrats in Congress REFUSE to close these loopholes, including the disgraceful practice known as Catch-and-Release. Democrats must abandon their resistance.”); Donald J. Trump (@realDonaldTrump), TWITTER (May 26, 2018, 6:59 AM), <https://twitter.com/realdonaldtrump/status/1000375761604370434> (“Put pressure on the Democrats to end the horrible law that separates children from their parents once they cross the Border into the U.S. Catch and Release, Lottery and Chain must also go with it and we MUST continue building the WALL! DEMOCRATS ARE PROTECTING MS-13 THUGS.”); Donald J. Trump (@realDonaldTrump), TWITTER (June 18, 2018, 5:46 AM), <https://twitter.com/realdonaldtrump/status/1008692333771132929> (“Why don’t the Democrats give us the votes to fix the world’s worst immigration laws? Where is the outcry for the killings and crime being caused by gangs and thugs, including MS-13, coming into our country illegally?”); Donald J. Trump (@realDonaldTrump), TWITTER (June 19, 2018, 6:52 AM), <https://twitter.com/realdonaldtrump/status/1009071403918864385> (“Democrats are the problem. They don’t care about crime and want illegal immigrants, no matter how bad they may be, to pour into and infest our Country, like MS-13. They can’t win on their terrible policies, so they view them as potential voters!”); Donald J. Trump (@realDonaldTrump), TWITTER (July 5, 2018, 5:44 PM), <https://twitter.com/realdonaldtrump/status/1015033658548207616> (“A vote for Democrats in November is a vote to let MS-13 run wild in our communities, to let drugs pour into our cities, and to take jobs and benefits away from hardworking Americans. Democrats want anarchy, amnesty and chaos - Republicans want LAW, ORDER and JUSTICE!”).

26. *Law Enforcement Roundtable*, *supra* note 22.

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proposals are often linked to his condemnation of MS-13, which is depicted in his tweets²⁷ and official White House briefings, statements, and remarks.²⁸

27. See Donald J. Trump (@realDonaldTrump), TWITTER (July 15, 2018, 8:33 AM), <https://twitter.com/realdonaldtrump/status/1018488668984504321> (retweeting, “RT @Scavino45: “Asylum-Seeking Central American Discovered to Be MS-13 Gang Member”); Donald J. Trump (@realDonaldTrump), TWITTER (Feb. 23, 2018, 3:28 AM), <https://twitter.com/realdonaldtrump/status/966998215592677376> (“MS-13 gang members are being removed by our Great ICE and Border Patrol Agents by the thousands, but these killers come back in from El Salvador, and through Mexico, like water. El Salvador just takes our money, and Mexico must help MORE with this problem. We need The Wall!”).

28. See *Immigration Proposal*, *supra* note 20 (“And I always talk about Long Island; that’s one of the real hotbeds for the MS-13 gangs. And I just see this morning, where the, really, radical Democrats don’t want them there because they don’t want to do anything to disturb MS-13. And when you think about it, MS-13 is about the most violent gang, they say; one of the most violent anywhere in the world. And they have done—we’re sending them out by the thousands out of our country. So we think it’s too bad.”); *Signing Ceremony*, *supra* note 22 (“But, Jon, I will tell you this: The people out there want something to happen at our southern border, whether it’s human trafficking, whether it’s drugs, whether it’s criminals, whether it’s MS-13. The folks behind me know all about MS-13 and how violent and vicious they are, and where they come from. In addition, they all come from the same place. And they call come in the same way; they come right across that border [. . .] And we’ve thrown thousands out. I would say thousands—right, fellas? I mean, literally MS-13. SECRETARY NIELSEN: Yes.”); *Combating MS-13*, *supra* note 22 (“I am calling on the Congress to finally close the deadly loopholes that have allowed MS-13, and other criminals, to break into our countr . . . The current immigration system contains loopholes and barriers that hinder efforts to fully confront MS-13 . . . Transnational gangs, such as MS-13, take advantage of our porous borders and seek to use our current immigration system to their advantage . . . Federal immigration officials are not able to quickly remove alien gang members based on their membership in a gang . . . MS-13 has sought to use the influx of Unaccompanied Alien Children entering the United States for recruitment . . . According to Congressional testimony by the U.S. Border Patrol Acting Chief in June 2017, MS-13 took advantage of recent large-scale flows of foreign nationals into the United States by hiding among these populations to enter our country.”); *Law Enforcement Roundtable*, *supra* note 22 (“MS-13 recruits through our broken immigration system, violating our borders. And it just comes right through—whenever they want to come through, they come through. It’s much tougher now since we’ve been there, but we need much better border mechanisms and much better border security. We need the wall; we’re going to get the wall. If we don’t have the wall, we’re never going to solve this problem. And I’ve gone to the top people. Many of these people are at the table right now, including this group. And without the wall, it’s not going to work. . . . During my State of the Union, I called on Congress to close the immigration loopholes that have allowed this deadly gang to break so

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Through the administration's characterization of MS-13 as a large part of "illegal" immigration, Trump has attempted to advance his current political and electoral agenda.²⁹ Are these statements evidence-based? Does MS-13 really represent a national security menace to the United States, justifying the proposed shifts in U.S. immigration law and policies? Comparing and contrasting the gang model of MS-13 in the United States with its Central American context will shed light on the realities and myths of the *Mara Salvatrucha* in the United States.

II. MS-13 IN THE UNITED STATES: MYTHS VERSUS REALITY

Many may not be aware that MS-13, or *Mara-Salvatrucha*, was formed on U.S. soil in Los Angeles in the 1980s by children of Salvadoran refugees and migrants, many of whom escaped El Salvador's civil war, which lasted from 1979 to 1992.³⁰ In a geographic area dominated by Mexican-American gangs, these youths were searching for the protection and the sense of belonging that a gang could provide.³¹ When peace accords were reached in El Salvador in the early

easily into our country. My administration has identified three priorities. We went through and looked very closely. We've identified three priorities for creating a safe, modern, and lawful immigration system: securing the border, ending chain migration, and cancelling the terrible visa lottery.").

29. *Combating MS-13*, *supra* note 22.

30. Arijeta Lajka, *MS-13 and the Violence Driving Migration from Central America*, CBS NEWS, (Jan. 18, 2019), <https://www.cbsnews.com/news/ms-13-illegal-immigration-families-in-crisis-cbsn-originals/>; José Miguel Cruz, *Five Myths About MS-13*, WASH. POST (June 29, 2018), https://www.washingtonpost.com/outlook/five-myths/five-myths-about-ms-13/2018/06/29/5860f1c4-7b17-11e8-93cc-6d3becdd7a3_story.html [hereinafter Cruz, *Five Myths*]; Thomas C. Bruneau, *Pandillas and Security in Central America*, 49 LATIN AM. RES. REV. 152, 156 (2014); Guadalupe Correa-Cabrera, Mariely López-Santana, & Camilo Pardo, *Is MS-13 as Dangerous as Trump Suggests?*, WASH. POST: MONKEY CAGE, (Dec. 7, 2018), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/12/07/trump-keeps-warning-about-ms-13-is-it-really-as-dangerous-as-he-suggests/> [hereinafter MONKEY CAGE].

31. See Lajka, *supra* note 30; Cruz, *Five Myths*, *supra* note 30; Guadalupe Correa-Cabrera, Mariely López-Santana, & Camilo Pardo, *The State vs. The Maras: An Assessment of MS-13 in the American Context*, Paper delivered at the 2018 American Political Science Association (APSA) Conference 13 (Aug. 31, 2018) [hereinafter *The State vs. The Maras*] (on file with authors); Kristina M. Lopez et al., *Immigration and Gangs*, in ROUTLEDGE HANDBOOK ON IMMIGRATION AND CRIME 95

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1990s, thousands of Salvadorans returned to their home country.³² Simultaneously, using the provisions of the 1996 Illegal Immigrant Reform and Immigrant Responsibility Act, the U.S. government deported approximately 4,000 gang members with criminal histories.³³ Back in Central America after the end of a civil war, in light of socio-economic exclusion and limited ties with their country of origins, many of those youths joined gangs, including MS-13.³⁴ Currently, MS-13 is a transnational gang of approximately 50,000 to 100,000 members concentrated in the countries of the Central American Northern Triangle: Guatemala, Honduras, and El Salvador.³⁵

According to official rhetoric in the United States, this gang represents a major national security threat for various reasons: (1) its scope, (2) its robust organization, and (3) the nature of its criminal activities.³⁶ By comparing MS-13's operations in the countries of the Central American Northern Triangle to its operations in the United States, some of the most common myths associated with the scope, nature, and modus operandi of MS-13 in the U.S. will be debunked.

(2018); DEBORAH J. YASHAR, *HOMICIDAL ECOLOGIES: ILLICIT ECONOMIES AND COMPLICIT STATES IN LATIN AMERICA* 91 (2018).

32. MONKEY CAGE, *supra* note 30.

33. See Óscar Martínez, *Trump Is Making MS-13 Stronger*, WASH. POST, (Feb. 17, 2018) <https://www.nytimes.com/2018/02/17/opinion/sunday/trump-ms-13-gang.html>; ELANA ZILBERG, *SPACE OF DETENTION: THE MAKING OF A TRANSNATIONAL GANG CRISIS BETWEEN LOS ANGELES AND SAN SALVADOR* 36-37 (2011); see also YASHAR, *supra* note 31, at 237-38; see generally ÓSCAR MARTÍNEZ, *A HISTORY OF VIOLENCE* 120 (2017).

34. See José Miguel Cruz, *Central American Maras: From Youth Street Gangs to Transnational Protection Rackets*, 11 *Global Crime* 379, 385 (2010) [hereinafter Cruz, *Central American Maras*]; ANTHONY W. FONTES, *MORTAL DOUBT: TRANSNATIONAL GANGS AND SOCIAL ORDER IN GUATEMALA CITY* 81-82 (2018); The State vs. The Maras, *supra* note 31, at 13.

35. Jonathan Rosen & José Miguel Cruz, *Rethinking the Mechanisms of Gang Desistance in a Developing Country*, *DEVIANT BEHAV.* 1, 3 (2018). See STEVEN DUDLEY & HÉCTOR SILVA, *INSIGHT CRIME & CTR. FOR LATIN AM. & LATINO STUDIES*, *MS13 IN THE AMERICAS: HOW THE WORLD'S MOST NOTORIOUS GANG DEFIES LOGIC, RESISTS DESTRUCTION* 3 (2018), <https://www.insightcrime.org/wp-content/uploads/2018/02/MS13-in-the-Americas-InSight-Crime-English-3.pdf>; see also Bruneau, *supra* note 30, at 159; YASHAR, *supra* note 31, at 318 fig.7.8.

36. DUDLEY & SILVA, *supra* note 35, at 9.

A. The Scope of MS-13: A Critical Look at the Data

When addressing the scope of MS-13, President Trump, members of his administration, and members of the Republican Party asserted there are 10,000 members of this gang on U.S. soil.³⁷ According to the U.S. Justice Department, 7,000 members are clustered in Long Island, Los Angeles, and the Washington, D.C., metropolitan area, while the remaining members are present in other cities throughout the United States.³⁸ According to estimates from the Federal Bureau of Investigation (FBI) and the Justice Department, MS-13 accounts for less than one percent of all gang members in the United States.³⁹ This estimate includes well-known gangs, such as the Mexican Mafia, Bloods, Crips, Gangster Disciples, Barrio 18, and The Latin Kings.⁴⁰

Nonetheless, estimates of gang membership and its activities must be taken with a grain of salt.⁴¹ The widely used 10,000-MS-13-member estimate, drawn from the FBI 2009 National Gang Threat Assessment, is more than a decade old.⁴² Along these lines, the most recent estimates on gangs in the United States are from 2011,⁴³ and the last annual National Youth Gang Survey was conducted in 2012 by the

37. See, e.g., *Violent Animals of MS-13*, *supra* note 22.

38. Salvador Rizzo, *President Trump's Claim that 'Thousands and Thousands' of MS-13 Members Are Off the Streets*, WASH. POST (Feb. 8, 2018), <https://www.washingtonpost.com/news/fact-checker/wp/2018/02/08/president-trumps-claim-that-thousands-and-thousands-of-ms-13-members-are-off-the-streets/>.

39. José Miguel Cruz, *Trump Is Wrong about MS-13. His Rhetoric Will Make It Worse*, WASH. POST (Jan. 31, 2018), <https://www.washingtonpost.com/news/posteverything/wp/2018/01/31/trump-is-wrong-about-ms-13-and-his-rhetoric-will-make-it-worse/>; Sahil Chinoy et al., *MS-13 Is Far from the 'Infestation' Trump Describes*, N.Y. TIMES (July 13, 2018), <https://www.nytimes.com/interactive/2018/06/27/opinion/trump-ms13-immigration.html>.

40. Chinoy et al., *supra* note 39. See Kristin Finklea, *MS-13 in the United States and Federal Law Enforcement Efforts*, CONGRESSIONAL RESEARCH SERVICE 3 n.15 (Aug. 20, 2018), <https://fas.org/sgp/crs/homsec/R45292.pdf> (noting the estimate included motorcycle gangs and prison gangs, in addition to violent street gangs).

41. See Jeff Asher, *Gang Stats Aren't Remotely Reliable, but Voters Keep Hearing about Them Anyway*, ABC NEWS (Nov. 3, 2017), <https://fivethirtyeight.com/features/gang-stats-arent-remotely-reliable-but-voters-keep-hearing-about-them-anyway>.

42. See generally *National Gang Threat Assessment*, NAT'L GANG INTELLIGENCE CTR. (2009).

43. Finklea, *supra* note 40, at 12.

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National Gang Center.⁴⁴ Moreover, FBI data are not comparable because survey methodologies have changed across time.⁴⁵ Finally, data on criminal activities of gangs, including MS-13, are not maintained at the local level because the federal government does not require local law enforcement to report such events.⁴⁶

While scholars and policy makers are attempting to acknowledge these noteworthy data gaps, key methodological issues should also be addressed. First, there is no consensus on the definition of “gang.”⁴⁷ There are wide variations in the definitions used by scholars and local, state, and federal jurisdictions; therefore, a “gang” in one jurisdiction may not meet the requirements for a “gang” in another.⁴⁸ Second, given the fluid, mobile, and clandestine nature of gangs, it is difficult to accurately identify their members and their activities. As a result, conclusions by politicians and mass media on the capacity and threat of transnational gangs rely upon outdated and unreliable data. These methodological issues “impact how both scholars and practitioners treat these groups, individuals, and actions both officially (e.g., sentence enhancements for ‘gang crime’) and unofficially (e.g., exclusion of ‘gang members’ from particular groups or activities).”⁴⁹

B. The Structure of MS-13: United States and Central America Compared

MS-13 is often equated with sophisticated transnational criminal organizations, such as drug cartels, drug trafficking organizations, or human trafficking rings.⁵⁰ Many believe MS-13 is an organization with

44. *National Youth Gang Survey Analysis*, NAT’L GANG CTR., <https://www.nationalgangcenter.gov/survey-analysis> (last visited June 6, 2019).

45. Lauren Magee & Chris Melde, *The Extent and Nature of Gang Crime*, in OXFORD RESEARCH ENCYCLOPEDIA, CRIMINOLOGY AND CRIMINAL JUSTICE (Apr. 2018).

46. Interviews with Members of the Northern Virginia Regional Gang Task Force (July and Aug. 2018).

47. Mark S. Fleisher, *The History of Gangs and Gang Research*, in OXFORD RESEARCH ENCYCLOPEDIA, CRIMINOLOGY AND CRIMINAL JUSTICE (Nov. 2018).

48. Magee & Melde, *supra* note 45.

49. *Id.*

50. *See generally* JONATHAN ROSEN & HANNA SAMIR KASSAB, DRUGS, GANG, AND VIOLENCE (2018); Press Release, U.S. Dep’t of Justice, Attorney General Jeff Sessions Delivers Remarks Announcing the Creation of a Transnational Organized

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a prominent hierarchy that has the capacity to conduct illegal business transactions across national boundaries.⁵¹ This assessment does not accurately reflect the reality of this gang. There are, in fact, marked differences between MS-13 in Central America and in the United States.

In Central America, MS-13 is a semi-hierarchical organization. Cliques (*clikas* or *clicas*), the lowest level of the organization, are led by *palabrer*os (shot-callers) and *misioner*os.⁵² Each clique has its own name, hierarchy, territory, and rules about leaving the gang. The cliques are grouped into a regional *programa* (program).⁵³ The *ranfla*, the highest level of the organization, is composed of the leaders from the *programas*, who tend to be in prison and who tend to be older than the leaders of the cliques.⁵⁴ The *ranfla* does not necessarily direct the activities of the groups below it because MS-13 is organized using a franchise model.⁵⁵

In contrast, based on data collected in the Washington, D.C., metropolitan area, MS-13 in the United States is not a vertical organization with a clear hierarchy and leadership.⁵⁶ The gang has been characterized as “a federation of teenage barrio cliques that share the MS-13 brand.”⁵⁷ Another author noted, “MS-13 is hardly a lucrative network of criminal masterminds. Instead, it is a loose coalition of young, often formerly incarcerated men operating hand to mouth across a vast geographic territory.”⁵⁸ Along these lines, an interviewee stated, “the real capacity of MS-13 in Northern Virginia—as in the United

Crime Task Force (Oct. 15, 2018), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-announcing-creation-transnational>.

51. DUDLEY & SILVA, *supra* note 35, at 9.

52. Lopez et al., *supra* note 31, at 99.

53. YASHAR, *supra* note 31, at 239.

54. *Id.*

55. *Id.*; Lopez et al., *supra* note 31, at 99; Sonja Wolf, *Mara Salvatrucha: the Most Dangerous Street Gang in the Americas?*, 54 *LATIN AM. POL. AND SOC'Y* 65, 67-68 (2012); Cruz, *Central American Maras*, *supra* note 34, at 388.

56. Cruz, *Five Myths*, *supra* note 30.

57. *Id.*

58. Steven Dudley, *MS-13 is a street gang, not a drug cartel—and the difference matters*, *THE CONVERSATION* (Mar. 20, 2018, 6:40 AM), <https://theconversation.com/ms-13-is-a-street-gang-not-a-drug-cartel-and-the-difference-matters-92702>.

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States in general—has been overstated, and its image as a powerful criminal syndicate has been glamorized by the media.”⁵⁹ Without much domestic or transnational leadership to dictate the gangs’ modus operandi and common objectives in the United States, cliques in the United States essentially compete against one another to “control” a small territory mainly populated by poor and undocumented members of the Latino community.⁶⁰ Compared to the organized structure of its Central American equivalent, the fragmented nature of MS-13 in the United States makes it difficult for this gang to become a strong organization that threatens or competes against government authorities.

*C. The Activities of MS-13: United States and
Central America Compared*

MS-13 and Barrio 18 (another powerful gang) often fill the void left by weak governments and institutions in the Northern Triangle by providing security and a variety of goods.⁶¹ Oftentimes, gangs also compete against the State for the monopoly over the use of force.⁶² They pay off corrupt public officials and exercise power through fear, extortion, robberies, and brutal violence.⁶³ El Salvador, for example, has been one of the most violent countries not at war, in part, because of its gang violence.⁶⁴ Despite having control over entire neighborhoods in the countries of the Northern Triangle, MS-13 as an organization is not the protagonist in the drugs and human trafficking world, as is the case for cartels and human trafficking rings. In Central America, MS-13 supports other powerful transnational criminal organizations (e.g., transports drug within the country) because the

59. Interviews with Journalist, in D.C. (June 12, 2018).

60. Interview with Law Enforcement, in Northern Va. (July 2018).

61. ROSEN & KASSAB, *supra* note 50, at 37-56; YASHAR, *supra* note 31, at 72-73, 95-96.

62. YASHAR, *supra* note 31, at 73, 96.

63. *Id.* at 240. See Wolf, *supra* note 55.

64. Chris Dalby & Camilo Carranza. *InSight Crime’s 2018 Homicide Round-Up*, INSIGHT CRIME (Jan. 22, 2019), <https://www.insightcrime.org/news/analysis/insight-crime-2018-homicide-roundup>.

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gang does not have the organizational capacity nor the resources to engage in these sophisticated criminal networks.⁶⁵

In the United States, as in the Northern Triangle, MS-13 engages in criminal activities, such as extortion, regular or aggravated burglary, drug-dealing, human smuggling and trafficking at the micro-level, and threats of violence.⁶⁶ Unlike its Central American equivalent, criminal activities by MS-13 in the United States are opportunistic, rudimentary, and small-scale in nature.⁶⁷ MS-13 mainly targets the Latino population, especially those who are poor and/or undocumented.⁶⁸ MS-13's fragmented structure in the United States, as well as the strong government presence, hinders its criminal activities and its capacity to raise revenue.⁶⁹ Although MS-13 members rarely perform human trafficking on a large scale, they participate in micro-activities such as "pimping."⁷⁰ Members of the gangs mainly serve as distributors of drugs at the local level (e.g., in gang-controlled neighborhoods and schools), but do not seem to play a significant role in the drug trafficking business nor in the large-scale transportation of drugs from South America to the United States.⁷¹

The trademark brutal violence of MS-13 has caught the attention of the American public, as illustrated by the well-known homicides in Long Island and Northern Virginia.⁷² Still, only thirteen percent of homicides are gang-related in the United States, compared to forty

65. Telephone interview with Member of Non-Governmental Organization from El Salvador (July 20, 2018).

66. Interviews with Experts and Law Enforcement, in D.C. and Northern Va. (July 2018).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. See Liz Robbins & Nadia T. Rodriguez, *The Gang Murders in the Long Island Suburbs*, N.Y. TIMES (July 12, 2017), <https://www.nytimes.com/2017/07/12/nyregion/ms-13-murders-long-island.html>; Justin Jouvenal, *MS-13 Associate Sentenced to 40 Years in Prison in Videotaped Slaying of 15-Year-Old Girl*, WASH. POST (Nov. 9, 2018), https://www.washingtonpost.com/local/public-safety/ms-13-associate-to-be-sentenced-in-videotaped-slaying-of-15-year-old-girl/2018/11/08/6e233230-e2da-11e8-b759-3d88a5ce9e19_story.html.

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percent in Central America.⁷³ Moreover, interviewees argued that these homicides were not part of a long-term trend; rather, gang activity must be understood as cyclical.⁷⁴ The latest uptick of gang activity and homicides have been associated with the “unaccompanied minor crisis” as some of these youths have joined or rejoined gangs in the United States.⁷⁵ According to the *Washington Post*, while homicides associated with MS-13 increased in 2016 and 2017, the trend in 2018 significantly reversed itself in the Washington, D.C., area and Long Island, partially due to the aggressive response of local and federal authorities.⁷⁶ For instance, gang members tend to “lay low” to go unnoticed.⁷⁷ These trends point at the need for comprehensive policy and law enforcement approaches to prevent gang membership and activities.

The evidence shows, first, MS-13 represents a threat to marginalized Latino communities in some geographical pockets, such as Los Angeles, California; Long Island, New York; Prince George County, Maryland; Houston, Texas; and Northern Virginia. Generally, however, this threat does not spill over to other ethnic groups or middle-class and affluent communities.⁷⁸ Second, most MS-13 members face socio-economic exclusion, a cycle of violence (e.g., at home, as refugees from Central America), and weak social support systems.⁷⁹ Like many teenagers, MS-13 members are looking for spaces of ownership and agency where they can “belong” and craft an identity.⁸⁰ The young members of the Latino communities are at risk, whether as recruits or as victims. Finally, because the U.S. government can have a strong presence in American communities,⁸¹ it is difficult for gangs

73. These estimates account for all gangs, not only MS-13. DUDLEY & SILVA, *supra* note 35, at 8. See Bruneau, *supra* note 30.

74. Interview with Law Enforcement, *supra* note 60. See Miller, *supra* note 3.

75. Interviews with Experts and Law Enforcement, *supra* note 66.

76. See Miller, *supra* note 3.

77. *Id.*

78. Interview with Law Enforcement, *supra* note 60.

79. See YASHAR, *supra* note 31, at 91 235-36 (on violence in Central America).

80. Interviews with Experts and Law Enforcement, *supra* note 66; see Lirio Gutiérrez Rivera, *Transnational and local entanglements in the ‘cycle of violence’ of Central American migration*, 19 GLOBAL CRIME 192 (2018).

81. The American government has a monopoly over the use of force and provides a variety of public goods and services. Max Weber’s famous

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to thrive in the United States. Therefore, it is unlikely MS-13's power will ever pose a social threat in the United States equivalent to what it is in the Northern Triangle.

CONCLUSION

The evidence presented suggests MS-13 does not represent a national security threat to the United States; however, the organization remains a dangerous menace to public safety in specific parts of the country. This is particularly true in areas with significant concentrations of MS-13 members. Moreover, the threat created by MS-13 members seems to be more significant for members of the Latino community.

The risk posed by MS-13 has certainly expanded due to recent immigration patterns, such as the sharp increase in asylum seekers from the Central American Northern Triangle.⁸² According to a report from the Washington Office on Latin America, more individuals from the Northern Triangle region sought affirmative asylum in the United States between 2013 to 2015 than in the previous fifteen years combined.⁸³ The rising number of asylum-seekers and unaccompanied minors from Central America “have been overflowing refugee centers and filling up federal processing facilities.”⁸⁴ Many of these unaccompanied minors have escaped from gang violence in their countries of origin but still face danger and violence in the United

conceptualization of the State characterizes the states as “human communit[ies] that (successfully) claim[] the *monopoly of the legitimate use of physical force* within a given territory.” MAX WEBER, *Politics as a Vocation* 2 (1965). See Michael Mann, *The Autonomous Power of the State: Its Origins, Mechanisms and Results*, 25 EUR. J. OF SOC. 185 (1984); Fund for Peace, *Fragility in the World 2019*, FRAGILE STATES INDEX, <https://fragilestatesindex.org> (last visited June 6, 2019).

82. Such an increase was particularly visible since the 2014 so-called “unaccompanied minor crisis.” See PIERCE ET AL., *supra* note 7, at 6.

83. Maureen Meyer & Elyssa Pachico, *Fact Sheet: U.S. Immigration and Central American Asylum Seekers*, WASH. OFF. ON LATIN AM. (Feb. 1, 2018), <https://www.wola.org/analysis/fact-sheet-united-states-immigration-central-american-asylum-seekers/>.

84. Rick Jervis, *Despite Stricter U.S. Immigration Rules, More Asylum-Seekers Flow Across Border*, USA TODAY, (Oct. 31, 2018), <https://www.usatoday.com/story/news/2018/10/31/migrants-border-refugee-mcallen-reynosa-border-patrol-trump-elections/1834286002/>.

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States. Upon their arrival to the United States, they must endure the challenges of socio-economic exclusion, languages barriers, and weak family ties, all of which put them at risk of joining a gang.⁸⁵ Accordingly, joining MS-13 and Barrio 18 are obvious choices for these Central American migrant minors, which exposes them to greater public safety risks associated with gang membership. However, according to many of the interviewees, there is no reason to expect a dramatic increase in crime or gang violence connected with the minors joining MS-13 or Barrio 18 because gang members are also strategic in their behavior and often “lay low” when their actions draw attention.⁸⁶

The public safety risks connected to the aforementioned immigration patterns do not require the declaration of a national emergency or the construction of a border wall. The evidence suggests more appropriate approaches—including effective policing and community strategies—may exist to address gang membership and violence.⁸⁷ An example is the model used by the Northern Virginia Gang Taskforce (NVGT), which is grounded in three pillars: (1) prevention, (2) intervention, and (3) enforcement/suppression.⁸⁸ This regional governance and policy model follows the U.S. Office of Juvenile Justice and Delinquency Prevention “Comprehensive Gang Model,” which was highly influenced by the well-known Spergel model.⁸⁹

The NVGT model expands communication among different stakeholders, such as law enforcement, local government, schools, and creates collaborative efforts to curb gang activity.⁹⁰ A special emphasis is placed on education, street outreach, mentoring, employment

85. DUDLEY & SILVA, *supra* note 35, at 22.

86. Interview with Law Enforcement, *supra* note 60.

87. *Id.*

88. The State vs. The Maras, *supra* note 31, at 27.

89. See IRVING A. SPERGEL, THE YOUTH GANG PROBLEM: A COMMUNITY APPROACH (1995). The Spergel model calls for community institutions—including law enforcement agencies, social welfare agencies, and human rights organizations—to work together with the aim of achieving better results in reducing gang violence. This model highly influenced the Office of Juvenile Justice and Delinquency Prevention “comprehensive approach” to reduce and prevent youth gang violence. See The State vs. The Maras, *supra* note 31, at 27.

90. See SPERGEL, *supra* note 89, pt. II, at 143; The State vs. The Maras, *supra* note 31, at 27.

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assistance, and family services/advocacy.⁹¹ This approach can help communities with a strong MS-13 presence because starting social services, such as family therapy and sports clubs, can help prevent youth from engaging in criminal activities.⁹² Regarding intervention, “this can be done through law enforcement or, for instance, through tattoo removal for gang members.”⁹³ Finally, the NVGT model is directly related to tackling and punishing criminal activities through law enforcement, which includes addressing gang activity as a multijurisdictional issue.

Under this holistic and collaborative policy framework, regions could be provided with more adequate resources and intelligence instead of delivered policy approaches that are solely focused on repression. Thus, communities with a significant presence of MS-13 could become more capable of addressing the socio-economic exclusion issue that tends to cause gang membership and activity, particularly amongst migrant populations.⁹⁴ The combination of the aforementioned elements in a holistic and multijurisdictional approach to fighting gang violence could be significantly less costly and more effective than spending billions of dollars on extreme border security measures and building a border wall.

91. See SPERGEL, *supra* note 89, ch. 15-17; The State vs. The Maras, *supra* note 31, at 27.

92. The State vs. The Maras, *supra* note 31, at 27-28.

93. *Id.*

94. *Id.* at 29-30.