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**Between the Border and the Street: A Comparative Look at Gang Reduction
Policies and Migration in the United States and Guatemala**

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Introduction

On a breezy afternoon at the Guatemala City air force base, an unmarked plane chartered by the U.S. Department of Homeland Security (DHS), delivered Pedro and about 150 other Guatemalan citizens to their native country.¹ As they disembarked the aircraft onto the tarmac, they were greeted by a half-dozen reporters and cameramen, documenting the misfortune of some of the 14,000 Guatemalan citizens that had been deported from the United States between January and August of 2007. The men and women on Pedro's plane exhibited mixed emotions, ranging from fear, embarrassment, and subdued resignation to jovial defiance. Pedro maintained a stoic composure.

Like many of his compatriots, Pedro had lived outside of Guatemala for most of his life. His mother brought him to the United States as a baby, during the initial years of the Guatemalan civil war. He grew up in a poor family in Los Angeles, in which his mother and stepfather worked long hours and provided him with little supervision. At age eleven, Pedro became involved with a gang. He saw the gang as an escape from poverty and looked to his fellow gang members for social support and protection from violence in the community. After several years of gang activity, Pedro was arrested at age eighteen for carrying brass knuckles. While in detention, Pedro was befriended by a police officer who convinced him to leave his gang. Upon release, Pedro began to cooperate with law enforcement in anti-gang initiatives and worked for several years as an informant for the Bureau of Alcohol, Tobacco, and Firearms (ATF) and the Federal Bureau of Investigation (FBI).

Following drastic changes in U.S. immigration law in 1996, and after more than a decade of life away from his gang, Pedro was detained by immigration officials and eventually deported based on his old weapons conviction. In 2001, Pedro returned to Guatemala, a country to which he had no ties other than a birth certificate and about which he knew virtually nothing. As Pedro left the Guatemalan airport, the police stopped him, told him to remove his shirt in the middle of the street, and interrogated him because of several visible tattoos. Pedro asserted that he had no gang affiliation and explained to the police that he worked in the United States in gang suppression. After further interrogation Pedro pleaded to speak with the U.S. Embassy. The police told him that now that he was in Guatemala, nobody could help him. After an argument, the police arrested Pedro, took him to a jail in Villa Nueva, and continued his interrogation.

When Pedro refused to cooperate with the police in Villa Nueva, an officer arrived and began to beat him. Pedro asserted that he knew nothing about gangs in Guatemala, and the incensed officer then broke a soda bottle and slashed Pedro's upper arm and thigh. He lay bleeding in a cell for fourteen days, until the police put him in the back of a pickup truck, robbed him, and dumped him on the side of the highway. Fearing for his life, Pedro immediately began to make arrangements to return to the United States.

¹ Information for this section was collected by GHRA researchers accompanying the International Organization for Migration (IOM) and the Guatemalan Ministry of the Exterior to greet a plane of deportees at the Guatemalan Air Force base. Pedro's name and the names of all other non-official interviewees in the report have been changed to protect their identities.

U.S. agents detained Pedro for a second time as he crossed the Texas border in an attempt to re-enter the country in which he had spent his entire life. This time he was charged with criminal reentry and was sentenced to two years in jail. After completing his criminal sentence, Pedro spent another two years in immigration detention where, unable to afford legal counsel and not provided an attorney by the government, he unsuccessfully represented himself in an asylum claim. Almost five years after fleeing persecution at the hands of the Guatemalan police, Pedro was returned to his country of origin.

Pedro's story, though unique in some aspects, is indicative of several of the problems with the current gang suppression strategies in the United States and in Guatemala. Through official and unofficial policies of profiling, deportation, retroactive punishment, harsher criminal and immigration policies, and social isolation of high-risk youth, both governments are expending resources targeting individuals who present little danger to society and are using ineffective gang suppression methods at the expense of intervention and prevention work that has been proven to reduce crime rates and gang activity. This report will examine the rise of gangs in Guatemala and the United States, compare the anti-gang strategies in each country, discuss relative successes and failures, and offer recommendations for more sensible, humane, and effective policies to reduce youth violence.

Although this report focuses primarily on human rights issues for young people suspected of being involved in gangs, the authors by no means intend to minimize the actual violence that is perpetrated by youth gangs in Central America and in the United States. Guatemala remains one of the most violent countries in the world, and although the media and government may be unfairly attributing a disproportionate amount of violence to gangs, there is no doubt that they present a real threat to society. This study focuses on understanding the current realities of youth gangs in Guatemala and the United States and proposes more effective solutions that recognize both the scale of the problem and the limitations to enforcement-heavy approaches.

The Growth of Gangs in Guatemala

During the post-war period, in which the Guatemalan state was attempting to restructure the military, police, and to a lesser extent other social structures, youth crime in Central America also underwent a major shift. Although gangs existed in Guatemala throughout the civil war, the modern face of *maras* and *pandillas*, as embodied by the MS-13 and M18, did not come to being until close to the end of the war. Throughout the post-war period, youth gangs became increasingly more violent and better organized. Martín's story, below, is indicative of how the first wave of deportees following the tightening of U.S. immigration laws in 1996 brought young men who became organizers of some of the first local gang cliques (local subgroups of larger gangs) in Guatemala, Honduras, and El Salvador.

Martín, an ex-M18 member, recounts being sent by his family from Chicago back to Guatemala in 1994 and having no contacts because M18 had no presence then. After returning to the United States and being deported roughly two years later, Martín became involved with the newly-established M18 cliques in Guatemala and organized several of

his own cliques.² Similarly, Iván, a former gang member in Los Angeles, returned to Guatemala twice in the early nineties and had no contact with gang members because they did not have a significant presence at that time. By his third deportation in 2001, however, he noted an increased gang presence, and he was accorded some degree of respect because he was affiliated with the Sureños in Los Angeles.³

As the United States sent waves of young criminal deportees to Guatemala in the mid to late nineties, these young men brought with them the organizational skills and, more importantly, the “branding” of MS-13 and M18 that they learned growing up in the urban slums of the United States. Violence and organized crime were an unfortunate lingering legacy of the civil war. Criminal deportees, along with disaffected homegrown youth with no alternative options for economic or social mobility, took advantage of the weak state structure and the culture of fear that permeated throughout the war. MS-13 and M18 cliques began to take over individual *barrios* throughout Guatemala City, fighting each other for respect, protection of their cliques, and the right to run small-scale criminal enterprises such as extortion of local businesses.

Despite the extra respect afforded to gang members deported from the United States and the evidence that some of the criminal deportees in the mid-nineties played important roles in the formulation of youth-gangs in Guatemala, the research team uncovered little evidence in the way of a coherent and ongoing transnational hierarchy in the structure of gangs.⁴ Rather, Guatemalan gangs appear to be almost entirely local enterprises. They are transnational only in that they mimic and expand upon some of the traditions, rituals, cultural values, styles, and symbolism used by similar groups in El Salvador, Honduras, and the United States.

It is unsurprising that the vacuum left in the post-war period was filled by increased gang activity, considering that virtually all of the risk factors and few of the protective factors identified by Spergel⁵ were present for criminal deportees and other Guatemalan youth in the mid-nineties. Deported individuals faced increased risk factors upon return, including separation from family and culture, previous exposure to criminal street gangs in Los Angeles, and the trauma of detention and deportation. For those who grew up almost entirely in the United States, linguistic and cultural barriers to reintegration into Guatemalan life were even more severe. The dislocated family structures, weak governmental support networks, lack of effective education, high exposure to violence, lack of pro-social opportunities, and extreme poverty made Guatemala an ideal breeding ground for youth violence.

² Interview with Martín, in Guatemala City, Guatemala (Aug. 19, 2007).

³ Interview with Iván, in La Granja Canada, Guatemala (Aug. 19, 2007).

⁴ *But see* USAID BUREAU FOR LATIN AM. & CARIBBEAN AFFAIRS, CENTRAL AMERICAN AND MEXICAN GANG ASSESSMENT 5 (2006) (asserting that some gangs in Latin America and the United States are international criminal organizations whose criminal activity in the Americas has damaging effects on national security by increasing domestic crime levels and facilitating drug trafficking).

⁵ *See* IRVING SPERTEL, THE YOUTH GANG PROBLEM: A COMMUNITY APPROACH 6 (1995).

Gangs, Violence, and Security in Guatemala

In the midst of societal turmoil, gangs have emerged as the perfect scapegoat for many of the ills pervading Guatemala. The Guatemalan state, which has little capacity to investigate the multitude of daily homicides, characterizes most murders as the product of feuds between rival gangs. The media similarly fails to independently investigate the crimes it reports. This eases societal tension because when crime is rationalized as gang-related, the state can ignore the deeper structural causes of crime such as governmental corruption, state complicity in narco-trafficking, and an essentially failed economic and judicial system.

At the same time, the perception of public insecurity has intensified. Absent a strong state with the capacity and will to investigate crimes, citizens have taken the law into their own hands, as exemplified by the increase in public lynchings and hired killers (*sicarios*).⁶ Moreover, the public is increasingly willing to turn a blind eye to the alarming increase in extrajudicial killings of Guatemalan youth at the hands of the Guatemalan police. A Guatemalan prosecutor summed up the problem as follows:

Although there is no anti-*mara* law, there is a widespread perception that the *maras* are responsible for all crime. Larger criminal organizations and politicians use the *maras* to distract the public from the real problems. But the picture isn't exactly as they describe it. For instance, about 15-20 people are murdered in Guatemala everyday. The police and the politicians don't have the investigative resources to follow up on every one of these so they'll often just say that it is the result of different *mara* factions killing each other. That way they don't have to deal with it. The investigative capacity is so small that they have to place the blame elsewhere. For the state it's simple to say this is a crime of revenge between gangs, to which the general public responds - "it's fine if they kill amongst themselves as long as they don't kill others." - I doubt that the killings are all inter-gang because of the same pattern you see in many of the killings. There are a good number of professional murders that end with kids, with their hands tied behind their back, executed efficiently and left in an isolated area.⁷

This section draws on our fieldwork in Guatemala and secondary sources to analyze youth gangs and violence in Guatemala. It focuses on the treatment of gangs by the Guatemalan media, the role of gangs in contributing to violence and insecurity, the existence (or lack of) links between gangs and organized crime and narco-trafficking, and the societal response to gangs both in terms of official policy and citizen action. What emerges is a complex story in which members of youth gangs are both victims and perpetrators, with no real solution on the horizon.

The Responsibility of Gangs for Crime and Violence in Guatemala

Although poor recordkeeping makes it difficult to accurately analyze crime statistics in Guatemala, evidence indicates that a disproportionate number of crimes are unfairly attributed to gangs. During the last decade, violent crime in Guatemala has risen

⁶ MISIÓN DE VERIFICACIÓN DE LAS NACIONES UNIDAS EN GUATEMALA [MINUGUA], INFORME DE VERIFICACIÓN: LOS LINCHAMIENTOS: UN FLAGELO QUE PERSISTE 7 (2002) (indicating that the UN Human Rights Mission in Guatemala documented 817 lynching victims between 1996 and 2001, of whom 215 died).

⁷ Interview with Jorge Donado, Chief Prosecutor of the Organized Crime Div., Dep't of Guatemala City, in Guatemala City, Guatemala (Aug. 10, 2007).

rapidly. With an annual homicide rate of twenty-six per 100,000 residents, the country ranks in the top ten globally.⁸ Furthermore, given the wide scale community distrust of the National Civil Police, many crimes go unreported. In fact, less than a quarter of all crimes are officially reported, indicating that the actual levels of violence may be much higher.⁹

Although overall levels of violence are high, there is significant variation by region. For instance, some departments like the largely indigenous highland department of Solola have homicide rates as low as 6.5 for every 100,000 inhabitants while others like eastern department of Escuintla have rates of over 80.¹⁰ Interestingly, according to a 2006 study that compared the geographic occurrence of homicide rates with reported gang presence, with the exception of Guatemala City, the highest concentration of homicide rates was in areas with little gang presence but high rates of narco-trafficking.¹¹ Our research shows that little connection exists between narco-traffickers and gangs, thus indicating that high homicide rates may be more accurately attributed to narco-trafficking than gang activity.

Whereas the percentage of crimes perpetrated by gang members is unclear, actual and suspected gang members most likely comprise a disproportionate number of violent crime victims. Nine out of ten victims of homicide are men, and the majority of them are young men.¹² Approximately two-thirds of 5,338 homicide victims in 2006 were men under the age of thirty-five.¹³ While the probability of being a homicide victim is much less for women, young women, defined as those below the age of thirty-five, face the highest risk. Although the authors were not able to obtain statistics indicating the percentage of homicide victims that were gang members, gang members largely fall into this demographic group, predisposing them to a higher risk of homicide.

There are no national level statistics that classify homicides by the motive of the perpetrator, making it difficult to state what percentage of homicides are gang-related. There are some reports, however, that give a glimpse into the motives behind homicides. For example, in 2004, the Human Rights Ombudsman Office found that between July 2002 and August 2003 approximately thirty-three percent of the 358 murders of people under twenty-five years old were gang related.¹⁴ Approximately thirty percent were attributed to ordinary delinquency not involving gangs, and 16.5 percent were the result of extrajudicial killings, a topic that will be dealt with later in this section.¹⁵ A variety of other factors make up the difference. The fact that an extremely low level of homicide investigations

⁸ UNITED NATIONS OFFICE ON DRUGS AND CRIME, CRIME AND DEVELOPMENT IN CENTRAL AMERICA 60 (2007), available at <http://www.wola.org/media/Gangs/Central%20America%20Study.pdf> at 51.

⁹ ELIN CECILIE RANUM, *PANDILLAS JUVENILES TRANSNACIONALES EN CENTROAMÉRICA, MÉXICO, Y ESTADOS UNIDOS* 25-27 (2006), available at http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD_707101606/Pandillas%20Juveniles%20Diagnostico%20Gua%2007.pdf?url=%2FBibliotecaWeb%2FVarios%2FDocumentos%2FBD_707101606%2FPandillas+Juveniles+Diagnostico+Gua+07.pdf.

¹⁰ *Id.* at 26.

¹¹ *Id.* at 27.

¹² PROGRAMA DE LAS NACIONES UNIDAS PARA EL DESARROLLO, *DIVERSIDAD ÉTNICO-CULTURAL: LA CIUDADANÍA EN UN ESTADO PLURAL* (2005).

¹³ *Id.*

¹⁴ PROCURADOR DE LOS DERECHOS HUMANOS, *MUERTES VIOLENTAS DE NIÑEZ, ADOLESCENCIA Y JÓVENES Y PROPUESTAS PARA SU PREVENCIÓN* (2004).

¹⁵ *Id.*

eventually result in a conviction further limits our ability to attribute the high level of homicides in Guatemala to gangs.

While youth gangs do contribute to the overall levels of violence in Guatemala, their criminal activities tend to differ from normal street crime and sophisticated organized crime. Gang members are detained most often for possession of small amounts of drugs, for robbery or extortion, physical aggression, and to a much lesser extent possession of a firearm and homicides. The high numbers of gang members detained for possession of drugs for personal consumption is seen by many as evidence of corruption by the National Civil Police, who are widely reputed to plant small amounts of drugs on gang members they target.¹⁶

None of the official statistics or our key informant interviews can be used to establish a national level indicator of the contribution of gangs to violence and crime in Guatemala. They do, however, provide insight into the fact that gangs are not the only perpetrators of violent crime Guatemala. The lack of a definitive link between gangs and high levels of violence and crime in Guatemala begs the question of why gangs are so often blamed for these problems.

The scapegoating of gangs by politicians and the media for virtually all violent crime harkens back to the civil war, in which most acts of violence were characterized as perpetrated by, or as an unavoidable response to guerilla activity. It is likely that the Guatemalan government, plagued by corruption, implicated as being connected to organized crime, and accused of perpetrating extra-judicial killing and social cleansing of stigmatized youth, is taking advantage of the societal fears to avoid any investigation into its illicit activities. Poor, uneducated, and largely disenfranchised, gangs and the youth imputed to belong to them can do little to counter their portrayal as the sole face of societal evil in Guatemala.

Gangs and the Guatemalan Media

Just as a rise in violent crime in the 1980s led to the sensationalistic media portrayals of youth violence throughout the 1990s in the United States, the rise in violent crime in post-war Guatemala has led to societal perception of lawlessness, violence, and delinquency among youth, making them the easy scapegoats for numerous societal ills. Guatemalans are constantly bombarded with violent images and text on the cover of newspapers. A sample review of the headlines and articles in the four major newspapers, *Prensa Libre*, *Nuestro Diario*, *El Periodico*, and *Siglo 21*, between January 2006 and August 2007 shows that Guatemalans are fed a constant stream of information about high levels of violence, which the news outlets usually attribute to gang activity.

Although all the papers report on gangs and violence, *Nuestro Diario*, the most widely distributed paper in Guatemala, consistently provides the most lurid imagery. The publication features pictures of murder victims almost every day. The cover article on September 4, 2007 is indicative of this trend,¹⁷ showing a picture of a mangled cadaver

¹⁶ Interview with Juvenile Judge Norma Eugenio Fratti Luttmann, Dep't of Guatemala City, in Guatemala City, Guatemala (Aug. 21, 2007).

¹⁷ Matan a un niño [Child is Killed ?] NUESTRO DIARIO (Guatemala), Sept. 4, 2007, at 1.

lying in a public square surrounded by a group of police and concerned onlookers with the headline “A Child is Killed.” It is accompanied by a byline attributing the death to gang members without any supporting facts.

These types of stories fuel the societal perception of insecurity spiraling out of control. Such stories are often accompanied by the comments of a frightened and frustrated observer, for instance:

*The National Civil Police have to provide more protection; we can no longer live with the assaults and extortions committed by gang members. If the police don't provide security, the people will have to provide it without them.*¹⁸

Representatives of youth violence prevention NGOs lament the sensationalized portrayal of violence and insecurity and the adverse effects it has on Guatemala's youth. The director of APREDE, an organization that works with former gang members, criticized this approach, saying that it focuses disproportionately on insecurity rather than the lack of opportunities for young people and on the shortfall of the state in assuming the principal role in generating viable alternatives.¹⁹

In a relatively undereducated population like that of Guatemala, in which few organizations exist that are willing and able to investigate the complex phenomenon of youth gangs, the majority of people unquestioningly accept the media's portrayal of a scourge of violent gangs threatening national security. The media outlets have little incentive to report a more accurate picture. Violence sells, and the papers can profit from national insecurity. Furthermore, serious investigative journalism is a dangerous profession in Guatemala, as reporters may be threatened or killed should their stories implicate anyone in power.²⁰ Unfortunately, the sensationalistic journalism that typifies the Guatemalan media unfairly stigmatizes all urban youth as criminals and pushes societal causes of crime further out of the public discourse.

Guatemalan Government Response to the Gang Problem

MANO DURA LAWS

Unsurprisingly, the rise in societal fears about the violence and crime perpetrated by gangs has led to a demand for a political response from the Guatemalan government.

¹⁸ LA PRENSA LIBRE (Guatemala), May 8, 2006, at 3.

¹⁹ Interview with Emilio Goubaud, Dir. General of APREDE's Casa Joven, in Guatemala City, Guatemala (Aug. 19, 2007). “The media should focus less on insecurity and more on lack of opportunity. In Guatemala, things are going really bad right now because there is no citizen participation, the social fabric of the country has been broken apart, and there is no work. It is much, much easier for a young person to access guns and drugs than a good education and work. Furthermore, we're never going to re-integrate young people into society if we continue with the current stigma that is like a black mark on a significant portion of our young population.” *Id.*

²⁰ See, e.g., THE COMMITTEE TO PROTECT JOURNALISTS, ATTACKS ON THE PRESS IN 2007: SNAPSHOTS (2007), available at http://www.cpj.org/attacks07/americas07/snaps_americas07.html#gua (documenting numerous assaults, kidnappings, death threats, and one murder of Guatemalan media workers in 2007).

Rampant corruption and government ineffectiveness along with a near total popular distrust of law enforcement and the state bureaucracy, however, have crippled any efforts to effectively respond to youth violence.

Despite strong rhetoric against gangs in Guatemala,²¹ none of the three most recent administrations has been able to formulate a cohesive national strategy to deal with youth violence. Some sectors of Guatemalan society have looked towards the repressive *Mano Dura*, or “iron fist” anti-gang strategies of El Salvador and Honduras as hopeful models. Indeed, Otto Perez-Molina, the runner-up in the November 2007 Guatemalan presidential election, focused his entire campaign around the *mano dura* approach to combating crime. This approach resonated with a good deal of the Guatemalan population, as he garnered over forty-seven percent of the vote.²²

Mano Dura, however, failed to bring about any long term gains in reducing gang violence in Honduras and El Salvador,²³ and the heavy handed policy raised concerns of international and local human rights observers. Experts ranging from representatives of the U.S. State Department’s Narcotics Affairs Section to grassroots gang prevention NGOs all agree that the gang problem in Guatemala is too complex to be solved by a blanket crack down on all suspected gang members.²⁴ In his 2007 campaign, the current President Álvaro Colom opined that “[*Mano Dura*] is not what this country needs. *Mano Dura* will bring more poverty, more gunshots, [and] more destruction.”²⁵

Guatemala has passed some legislation that tangentially applies to gang members; however, the lack of any cohesive national strategy has led to inconsistent application of the laws and a failure to create any sustainable violence prevention. For example, in August 2006 Guatemala passed the Anti-Organized Crime Law, establishing the crime of “illicit association”; but this law does not specifically target gangs and fails to provide a definition of what a gang is under Guatemalan law.²⁶ Furthermore, police and prosecutors lack capacity to take on complex investigations, and judges are not equipped to handle complex cases.²⁷

²¹ See, e.g., *Mueren 16 personas cada día*, PRENSA LIBRE (Guatemala), Jan. 24, 2006 (indicating that President Berger states, “War has been declared” against the gangs).

²² *Center-left wins presidential elections in Guatemala*, CNN, Nov. 5, 2007, available at <http://edition.cnn.com/2007/WORLD/americas/11/05/guatemala.election/index.html>.

²³ See, e.g., WASHINGTON OFFICE ON LATIN AM., TRANSNATIONAL YOUTH GANGS IN CENTRAL AMERICA, MEXICO AND THE UNITED STATES 2 (2007) (suggesting that *mano dura* policies have been counterproductive in dealing with gang violence).

²⁴ Interview with Samuel Rivera Espinosa, Aceso Programa Narcotics Affairs Section-Law Enforcement Development Unit (NAS-LED) and Raymond Campos, Program Manager NAS-LED, U.S. Dep’t of State, in Guatemala City, Guatemala (Aug. 20, 2007); Interview with Emilio Goubaud, *infra* note 19; Interview with staff members of Grupo Ceiba, in Guatemala City, Guatemala (Aug. 20, 2007).

²⁵ *El Top 10*, LA PRENSA LIBRE (Guatemala), Oct. 9, 2007, available at <http://www.prensalibre.com/pl/domingo/elecciones/tribuna/archivo/22/01.shtml>.

²⁶ Interview with Samuel Rivera and Raymond Campos. “In Guatemala, there is no official definition of what a gang is, or what a gang member is, so although a gang is by normal definition an “organization” it is not so under Guatemalan law. While there are sections of the new law that can be applied to gangs, such as the section dealing with extortion of public transportation vehicles, it has not be used to a great extent thus far.” *Id.*

²⁷ *Id.*

Law enforcement specialists warn of the adverse unintended consequences of enacting strict *Mano Dura* type policies without having the capacity, resources, or personnel to properly implement the program. For instance, in El Salvador during the first stage of the *Mano Dura* policy, many people were arrested just for affiliation or having tattoos; but without solid evidence to prosecute, within 72 hours people were back on the street and emboldened. Anti-gang officials cautioned that the *Mano Dura* approach has the unintended consequences of creating more confidence among gang members and coalesces the presence of gangs in areas with little or nor prior history of gangs.

[*Mano Dura* policies create] a “ginned up” confidence among gang members making them think “I’m bullet-proof...When El Salvador clamped down on gangs, there was spill over to Honduras. When Honduras clamped down, many people went to Guatemala and Chiapas (gangs in Chiapas are involved in trafficking). The unfortunate result of this “Cucuracha [cockroach] Effect” was that places like Guatemala, which hadn’t really had a big gang problem up to that point, saw a jump in gang activity.²⁸

Guatemalan NGOs working on gang prevention also warned against the need for *Mano Dura* policies and discussed the problems that would emerge if such laws were passed. Specifically, gang outreach workers fear that a *Mano Dura* policy in Guatemala would result in further entrenchment of the gangs, make outreach work more difficult by pushing gangs further underground, and significantly increase violence between police and gang members.²⁹

The absence of an official *Mano Dura* policy in Guatemala has not completely impeded the Guatemalan government from implementing law enforcement initiatives based on doctrines similar to *Mano Dura*. For instance, in August 2003, the National Civil Police implemented *Plan Escoba* or “Broom Plan” that sought to address gangs by “sweeping up” gang members. *Plan Escoba*, however, differed from the *Mano Dura* practices in Honduras and El Salvador because unlike those countries, Guatemala does not have a law defining gangs and illicit association. The police had to come up with ad hoc rationales to detain suspected gang members.³⁰

By far the most common legal justification for detaining gang members, both during *Plan Escoba* and in the present, has been the possession of drugs for personal consumption. Although possessing of drugs for personal consumption may be a problem in Guatemala, many people lament that focusing on such crime reduces the attention the National Civil Police pay to more serious crime. Given the high murder rates in Guatemala, these efforts have been seen as a misuse of already scarce resources.

The Guatemalan National Civil Police detained thousands of individuals under *Plan Escoba*, but the plan had little effect other than to overburden an already dysfunctional penitentiary system, a system that the chief of the anti-gang unit of the National Civil Police described as “one of Guatemala’s major weaknesses in its effort to fight gangs.”³¹

²⁸ *Id.*

²⁹ Interview with staff members of Grupo Ceiba.

³⁰ Interview with Antonio Rodriguez, Procuradaria de Derechos Humanos, in Guatemala City, Guatemala (Aug. 21, 2007).

³¹ Interview with Francisco de la Cruz, Nat’l Civil Police Anti-Gang Unit, in Guatemala City, Guatemala (Aug. 21, 2007).

Between June 2003 and June 2004, over 10,500 people were detained in the department of Guatemala for personal drug possession charges.³² Formal charges were brought against 5,327, or approximately half of the detainees.³³ Of these cases, only 1.1 percent actually resulted in a formal conviction.³⁴ In most of the cases, the judge was unable to find a basis to convict the accused because the police did not present proper evidence.

INEPTITUDE AND CORRUPTION OF THE NATIONAL CIVIL POLICE (PNC)

The low conviction rates of the *Plan Escoba* are representative of the overall problems facing the Guatemalan National Civil Police and Judicial System. Several interviewees stated the National Civil Police are at best woefully under-trained and under-resourced and, at worst, rampantly corrupt and abusive.³⁵ They pointed to the police practice of framing targeted youth gang members by planting a small amount of drugs on their person during an arrest. This has happened so frequently that a juvenile judge stated that when a young person comes before her in court on a personal drug possession charge, she assumes police corruption. She expressed frustration over this circumstance:

The current practice of police amounts to what could be called a state policy of violating the constitutional rights of Guatemalans, especially the youth. The police often single young adolescents out just because of their tattoos and detain them illegally. Police will detain and lock up people, especially the youth without good reason. Usually, when a youth is arrested for possession of drugs, it can be assumed that if the quantity is small the police planted it on them. This is a violation of their human rights, and Guatemala does not have enough human rights advocates who can make a difference for these kids. The investigative police work is so shoddy that so many cases are appealed or thrown out, creating unnecessary work for the legal system.³⁶

While the problem of corrupt police targeting and detaining youth who appear to be gang members continues, the number of detentions has dropped slightly since the end of *Plan Escoba*. A juvenile public defender in Guatemala City attributed this decline to a 2004 change made to the law governing youth detention and protection.³⁷ The amended law permits the detention of youth only in very limited situations. When the crime is a *delito menor*, or misdemeanor, there can be no deprivation of liberty.³⁸ In cases of more serious crimes, such as murder, kidnapping, extortion, and sexual assault, the youth can only be detained if the judge determines him/her to be a flight risk.³⁹

³² RANUM, at 36-37.

³³ *Id.* at 37.

³⁴ *Id.*

³⁵ Interview with Samuel Rivera, Aceso Programa NAS-LED, U.S. Dep't of State, in Comisaría Modelo, in Villa Nueva, Guatemala (Aug. 23, 2007); interview with police officer, Comisaría Modelo, in Villa Nueva, Guatemala (Aug. 23, 2007). The members of the Guatemalan National Civil Police and U.S. Embassy personnel working with the Guatemalan Police indicated that the low salaries of police promote police corruption. Police officers described the low salaries as an indication that society and the government do not value their work. We heard police officers complain that they had to pool resources and lend each other money to make ends meet. *Id.*

³⁶ Interview with Juvenile Judge Norma Eugenio Fratti Luttmann.

³⁷ Interview with María del Carmen Baldizón, Chief Juvenile Public Defender, Dep't of Guatemala City, in Guatemala City, Guatemala (Aug. 22, 2007).

³⁸ *Id.*

³⁹ *Id.*

Although the changes to the law governing the detention of youth are a step in the right direction, they are isolated and not part of a comprehensive anti-gang strategy that incorporates prevention, rehabilitation, as well as suppression. To date, the limited government initiatives specifically directed at the gang issue have focused solely on suppression. The arbitrary detentions and minimal conviction rate that occurred under *Plan Escoba* exposed the ineffectiveness of this approach and highlighted the need to reform an inept national police force and inefficient judicial system. However pressing the need for a comprehensive anti-gang framework from the Guatemalan government, there appears to be little indication that the government is moving in this direction.

Aside from the general ineffectiveness of police work, many former, active, and suspected gang members report severe harassment by the police, and blame police officers for a significant portion of the extrajudicial killings carried out in Guatemala. The police frequently force youth to take off their shirts to see if they have any tattoos. They order youth to strip down to their boxers and lie on the ground, often in public places where crowds can witness the shaming.⁴⁰ Sometimes the police officers rob the youth, leaving them half-naked and penniless.⁴¹

Sexual abuse of women by police officers is another disturbingly common phenomenon. The U.S. State Department reports that 2007 saw “credible allegations of involvement by individual police officers in criminal activity, including rapes, killings, and kidnappings”⁴² Our key informant interviews confirmed these allegations; virtually every female prisoner with whom we spoke recounted personal instances of sexual assault and rape by police officers.⁴³

Because the police lack the capacity and institutional support to perform their duties, and because they so often victimize the population they ought to be serving, there is very little confidence in law enforcement. The only substantial effort to professionalize the police force and equip them to effectively and humanely deal with community violence, the *Comisaría Modelo* in Villa Nueva, is limited in geographic scope and depends almost entirely on U.S. funds and leadership.

⁴⁰ Interview with Gustavo Cifuentes, outreach worker, APREDE, in Guatemala City, Guatemala (Aug. 18, 2007) (talking about what would have happened if we had continued with the soccer game).

⁴¹ Iván, a deported gang member from LA who no longer was part of a gang since being deported to Guatemala in June of 2006, said he walked around with long sleeves and pants to hide his tattoos but it didn't matter because the police still stopped him and made him lift up his shirt. Police officers robbed three times in his first year back. The first time, after an officer stopped him and robbed him, two more policemen came on motorcycles with ski masks and started hitting him. The second time, police stopped him coming out of a store, put him up against a wall, and made him take off his shirt. One officer searched him and took his wallet and cell phone. He has not complained about police abuse because he feels it will put him at more risk. He feels lucky that they have only robbed him. Interview with Iván, *supra* note 44.

⁴² See U.S. DEPARTMENT OF STATE, GUATEMALA, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2007, (Mar. 11, 2008).

⁴³ Interviews with female detainees, Santa Theresa Prison, Guatemala City, Guatemala (Aug. 20, 2007).

COMISARÍA MODELO: AN EFFORT TO IMPROVE POLICE PROFESSIONALISM AND EFFECTIVENESS, AND TO INCREASE PUBLIC CONFIDENCE IN POLICE

The U.S. Embassy-backed *Comisaría Modelo* (or Model Precinct) in Villa Nueva is partly an effort to increase community confidence in local police, both by improving the professionalism of the police and by creating opportunities for collaboration between police and community members.⁴⁴ An overarching aim of the *Comisaría* is to provide the police working at the precinct with the skills, resources, and leadership needed to undertake effective law enforcement, including anti-gang initiatives.⁴⁵ The *Comisaría* is situated in a precinct just outside Guatemala City, in the town of Villa Nueva, an area with high rates of gang activity and drug crimes. In 2003, the U.S. Embassy began its program to recruit officers to staff the precinct and to provide them with training, oversight, and resources.⁴⁶ Since its inception, the *Comisaría* has launched several specialized units to handle particular criminal areas, a criminal investigation unit in July 2004, a citizen services office in May 2005, and a “saturation unit” in April 2007, which aims to increase police presence on the streets.⁴⁷

In addition to U.S. Embassy backing, the *Comisaría* has received financial support from the governments of Japan, China, Taiwan, and Korea and has received the blessing of Guatemala’s Attorney General and Minister of Governance. U.S. Embassy staff-member Samuel Rivera serves as the de-facto chief of the precinct.⁴⁸ Although officially only a consultant to the *Comisaría* and outside its chain of command, Rivera is the primary driving force behind all of the precinct’s innovations and is intricately involved with its day-to-day operations. Each of the *Comisaría*’s twenty-two investigators was subjected to an extensive background check and polygraph exam before being hired, and each submits to biannual polygraphs while on the job, in an effort to keep the precinct free of the corruption that generally afflicts the Guatemalan police.⁴⁹

The *Comisaría* has achieved some promising accomplishments. For instance, although the national rate of convictions following an arrest is a dismal one percent for all crimes (and a slightly higher three percent for murders), attributed mainly to the poor skills of most police officers and insufficient resources, the *Comisaría* claims a forty-five to fifty percent conviction rate.⁵⁰ The *Comisaría* established an anonymous tip line, named “Cuéntaselo a Waldemar” or “Tell it to Waldemar,” for residents of Villa Nueva to report on gang extortions, drug trafficking, assaults, murders, and various other crimes. U.S. Embassy officials argue that the tip line has been particularly effective in reducing gang presence in Villa Nueva.⁵¹

Mr. Rivera indicated that, although crime rates in Villa Nueva remain high, extortions and other crimes have decreased enough to allow area residents to reclaim the

⁴⁴ Interview with Samuel Rivera.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Interview with Samuel Rivera and Raymond Campos.

⁵¹ Interview with Samuel Rivera.

town square, which was previously unused after dark because of the pervasive gang presence. The Comisaría recently organized an outdoor festival to celebrate the reductions in crime, which drew an estimated 2,500 residents.⁵² Various individuals we met in Guatemala, including prosecutors, public defenders, and staff members at several nonprofits, signaled that the precinct's accomplishments were impressive. For instance, some observers have credited the Cuéntase a Waldemar tip line with increasing confidence in the police in Villa Nueva.⁵³

Endorsement of the Comisaría's activities, however, was far from universal. Representatives from some human rights organizations and nonprofit groups that work on gang-member rehabilitation were skeptical of the Comisaría, fearing that its officers are guilty of severe abuses, such as feeding information obtained through the tip line to people who carry out extra-judicial killings of gang members.⁵⁴ Various nonprofits also feel that the Comisaría officials, and Mr. Rivera in particular, are dismissive of or even hostile toward their efforts.⁵⁵ They argue that before the United States should attempt to expand the technical capacity of the Guatemalan police through fingerprinting technology and various innovations of the Comisaría Modelo, major improvements in police corruption must be made. If corruption is not remedied, the United States will be complicit in human rights violations by increasing the capacity for extra-judicial killings.

Notwithstanding these weighty concerns, many of the Guatemalans we met viewed the Comisaría favorably. However, the reach of the U.S. Embassy's efforts in Villa Nueva appears rather limited, and these efforts may be unsustainable. Although the Comisaría Modelo is intended to serve as a model to be replicated at other precincts, the U.S. Embassy has not broadened its focus to other areas since it began working in Villa Nueva in 2003. There was talk of launching a second model precinct by the end of 2007,⁵⁶ but as of our visit in August 2007, there appeared to be no concrete plans to do so. One USAID official in Guatemala expressed his concern that the Embassy's efforts have only minimal reach because of the almost singular focus on Villa Nueva.

Several of the Guatemalan police officers we interviewed at the Comisaría said that things will "fall apart" when Mr. Rivera ultimately leaves Villa Nueva. Some signaled that Rivera's ability to supply anything the officers need, from digital cameras to vehicles, is integral to the Comisaría's success.⁵⁷ Others voiced concern that whomever the Guatemalan government appoints to head the Comisaría after Rivera's departure will inevitably be uncommitted to continuing his approach to investigation, community outreach, and recruitment, among other practices.⁵⁸ Even Rivera himself acknowledged that the Comisaría's accomplishments are almost certain to crumble whenever he leaves.⁵⁹ If

⁵² Interview with Samuel Rivera and Raymond Campos.

⁵³ See, e.g., Julio Lara, *Policía retoma colonia en poder de mareros Hubo 26 capturas en cateos en Ciudad del Sol, Villa Nueva*, LA PRENSA LIBRE (Guatemala), June 16, 2007, available at http://www.prensalibre.com/pl/2007/junio/16/lectura_nac.html.

⁵⁴ Interview with Antonio Rodriguez.

⁵⁵ Interview with Emilio Goubaud.

⁵⁶ Interview with Samuel Rivera and Raymond Campos.

⁵⁷ Interview with Police Officer, Comisaría Modelo.

⁵⁸ *Id.*

⁵⁹ Interview with Samuel Rivera and Raymond Campos.

the Comisaría's model is replicated at another precinct, it is unclear whether Rivera could remain involved enough in the functioning of Villa Nueva to prevent this predicted erosion.

A large factor in the Comisaría Modelo's likely unsustainability is a lack of institutional buy-in by the Guatemalan government in the U.S. Embassy's efforts in Villa Nueva. This lack of buy-in is a common theme across various U.S.-funded programs, which presents a serious obstacle to effective U.S. expenditures in Guatemala. In addition to the belief among the Comisaría's officers that the Guatemalan government will choose a successor for Rivera who does not share his vision of effective policing, there are more concrete, current examples of the government's lack of support for the precinct. For example, the Comisaría is working to develop a criminal database that would centralize police and investigative information from across the country and would be accessible to police nationwide. Although the U.S. Embassy has secured the technology and offered to provide the training necessary to run the system, the Guatemalan government has not provided the space needed to set it up. The result has been that expensive computer equipment is sitting unused in a storage facility at the Embassy.⁶⁰

The Guatemalan government does not oppose the Embassy's efforts in Villa Nueva nor the range of other programs that the Embassy and USAID support in Guatemala. Rather, the government appears to be disengaged from these efforts. Guatemalan leaders rarely articulate requests for specific assistance from the United States. Instead, they simply accept whatever aid is provided to them. One likely reason they cited for this trend is the high level of turnover in the Guatemalan government. In the last decade, there have been fourteen or fifteen different Chiefs of Police in Guatemala and seven or eight different Ministers of Government who oversee the police. In comparison, El Salvador, which has a long tradition of cultivating strong ties to Washington and has been very successful in securing U.S. backing for its priorities, has had just two police chiefs since 1996.⁶¹ Guatemala may lose money to the already better-funded El Salvador as the United States shifts increasingly away from country-specific security-strengthening programs and toward regional initiatives.

Civil Response to Gang Violence in Guatemala: Social Cleansing, Extrajudicial Killings, and Lynchings

Faced with a judicial void created by corrupt police, an overburdened penitentiary system, and inefficient courts, Guatemalan communities have turned to extrajudicial protective and punitive measures. The most common manifestations of this phenomenon, dubbed by some as "social cleansing" because of the similarity to the practices that occurred during the civil war, are extrajudicial killings and public lynchings of suspected criminals. The two practices are distinct but share common roots in the incapacity of the judicial system to adequately respond to insecurity. Gang members are increasingly mentioned among the victims of extrajudicial killings and lynchings.

⁶⁰ *Id.*

⁶¹ Interview with Samuel Rivera and Raymond Campos.

EXTRAJUDICIAL KILLINGS

A wide range of this report's key informants lamented that the disappearance and brutal murder of young men and women is now a defining characteristic of urban life in Guatemala. According to an official with the Human Rights Ombudsman, the use of extrajudicial killings targeting delinquent youth came in full force in 2005, after the National Civil Police realized that they could not "detain" their way out of the gang problem with the *Plan Escoba* program.⁶² The national and international preoccupation over extrajudicial killings in Guatemala rose to the point that the United Nations sent a special representative to study the issue in 2006. A report drafted by a variety of organizations in Guatemalan civil society for the special representative indicated that there were 408 extrajudicial executions between January and July 2006, among which many of the victims were gang members.⁶³

A 2007 study on extrajudicial killings conducted by a Guatemalan Human Rights NGO indicated that the majority of extrajudicial killings are directed at people presumed to be delinquents, many of whom had criminal records or visible tattoos. A representative from the Human Rights Ombudsman office likened the current struggle between gangs and police to what occurred during the war between the military and the guerillas.⁶⁴

Both gangs and the guerillas are a manifestation of non-conformity with the dominant socio-political/economic system. Gangs, however, have no political consciousness and large portions of the population do not help gangs, but the families of gang members might give some sort of support. Like the guerillas, gangs may be forced out of their normal habitat and more underground as a result of suppression. Like guerilla, gangs have communal ideology and common values. Gangs are a form of social integration for the disenfranchised.⁶⁵

Whereas the media categorically characterizes these killings as feuds between rival gangs and the police lack the capacity or the will to investigate the deaths, the manner of the killings suggests that these are professional murders carried out by trained individuals. Often the victims are found far from the neighborhoods in which they lived, with hands bound behind their back and signs of torture evident on their corpses.⁶⁶ A youth violence prevention worker recounted an incident in which, following a spate of gang activity in the neighborhood, several suspected gang members disappeared and their dismembered body parts were later found in areas where gangs were known to congregate.⁶⁷ She felt certain this was a message from the police to gang members warning of future harm to come.⁶⁸

Although there is never definitive proof of who carries out such acts, most gang members assert that their organizations have neither the motivation nor the ability to conduct killings in such a manner. The similarity of these extrajudicial killings to political disappearances during the civil war suggests that the violence is not perpetrated by gang

⁶² Interview with Rodriguez.

⁶³ CASA ALIANZA ET AL., REPORT FOR PHILIP ALSTON, SPECIAL REPRESENTATIVE FOR EXTRAJUDICIAL EXECUTIONS FOR THE UNITED NATIONS (2006).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Interview with Grupo Ceiba staff, Guatemala City, Aug. 22, 2007.

⁶⁷ Interview with Grupo Ceiba staff, Guatemala City, Aug. 23, 2007.

⁶⁸ *Id.*

members who are mostly too young to have served in the war, but rather by police officers and private hit men (*sicarios*) who have been trained in such tactics.

LYNCHINGS

The failure of the Guatemalan state to provide security for its citizens has led citizens to take matters into their own hands in the absence of established rule of law. Public lynchings committed by groups of private citizens are the most salient demonstration of this is the phenomenon. Lynchings, defined by the UN as the punishment, not necessarily to death, of one or more persons (e.g., presumed criminal offenders) by collective violence without due process of law, quickly spiked in post-war Guatemala. Lynchings, like extrajudicial killings, have their origin in Guatemala's armed conflict. During the civil war, the self-defense mentality became ingrained in citizens, especially in rural and indigenous areas. The structure remained after the end of the conflict, which paved the way for informal law enforcement.

Statistics compiled by the UN show there were 480 cases of lynching between 1996 and 2002, resulting in 235 deaths.⁶⁹ While the number of lynchings has declined in more recent years, the problem persists. During the time of our fieldwork in Guatemala there was a major lynching case in which two suspected delinquents were lynched, beaten, and one was burned to death. There is a growing concern that the practice of lynching in Guatemala, while on the decline overall, is moving from rural to urban areas, which may lead to a greater targeting of suspected gang members.⁷⁰ In the later months of 2007, several communities resorted to lynching as a way to combat gangs. In Cerro Alto, two gang members were lynched and burned in September of 2007. In November, three more "suspected gang members" were lynched and burned in San Juan Sacatepéquez.

SOCIAL STIGMATIZATION AND DISCRIMINATION OF SUSPECTED GANG MEMBERS

Aside from the more drastic measures of lynchings and extrajudicial killings, Guatemalan society protects itself from a perceived plague of gang violence through widespread social stigmatization and discrimination against anybody thought to be involved in a gang. This discrimination materializes in the form of social rejection, economic alienation, and even death. One ex-gang member deportee reported receiving threats from his neighbors saying that he had to move away or he would be killed:

After I arrived, I was living with my grandmother. I received an anonymous letter from neighbors saying that I had ten days to leave or they were going to kill me. They thought I was a gang member hiding out from another zone. I got another letter after my friend and his girlfriend got into a fight in

⁶⁹ Carlos A. Mendoza, *Structural causes and diffusion processes of collective violence: Understanding lynch mobs in post-conflict Guatemala*, prepared to be delivered at the 2006 meeting of the Latin American Studies Association, San Juan, Puerto Rico, Mar. 15-18, 2006, at 6, available at [http://www.nd.edu/~cmendoz1/Structural%20causes%20and%20diffusion%20of%20collective%20violence%20\(lasa2006\).doc](http://www.nd.edu/~cmendoz1/Structural%20causes%20and%20diffusion%20of%20collective%20violence%20(lasa2006).doc).

⁷⁰ Julio F. Lara & Coralia Orantes, *Linchan a pandillero*, LA PRENSA LIBRE (Guatemala), Sept. 10, 2007, available at <http://www.prensalibre.com/pl/2007/septiembre/10/182058.html>.

front of the house. It said they would kill me. After that, I went around to all the neighbors with a copy of my record, which basically proves that I am not a criminal in Guatemala. No one admitted to having written the letter. I thought about removing my visible tattoos, but the way they do it in Guatemala leaves big, cigarette burn-type scars. I decided to move out of my grandmother's house to another zone."⁷¹

For most former gang members, removing tattoos is too expensive.⁷² One ex-gang member deportee, Joaquín, had the tattoos on his face and hands removed in Guatemala for Q8,000, which is equivalent to about four months' salary for most Guatemalans. Even Joaquín still had some burns on his hands and there was still some ink above his eyebrows.⁷³ The authors interviewed other ex-gang members who had self-removed tattoos, leaving disfiguring scars on their face and hands. Martín, who always wore pants and long-sleeved shirts to cover his tattoos, talked about how he couldn't work at places where the employees wore short-sleeved uniforms. He had been forced to sell used books on the street and was just making enough to maintain his skinny frame.⁷⁴

Harold Sibaja, a USAID contractor working with ex-gang members to place them in jobs, reports that ex-gang members are often fired when their employer does a health check and the company doctor identifies them as having "poor health" after seeing any tattoos. Others can only find work in their ex-gang's enemy territory, where they are unable to travel.⁷⁵ Similar discrimination makes it difficult for ex-gang members to be accepted into educational programs.

Because there are so few options for young men and women identified as gang members, it is extremely difficult to avoid gang membership. Economic and social pressures, as well as the need for protection from police and society at large, push many young people into gangs. Ironically, societal and governmental efforts to quell gang violence have the effect of creating a greater incentive for stigmatized youths to become further entrenched in gangs.

The Response of Guatemalan Non-Governmental Organizations to Gang Violence

As an alternative to state suppression and private dispensation of vengeance and justice, several faith-based and secular NGOs work in gang prevention and rehabilitation efforts. The three Guatemalan NGOs most actively engaged in gang prevention initiatives

⁷¹ Interview with Iván. Another ex-gang member deportee, Joaquín, had the tattoos on his face and hands removed in Guatemala for 8,000Q, which is an exorbitant amount in a country where 2,000Q a month is a good salary. [Others reported that to get the tattoos removed well cost too much.] Even Joaquín still had some burns on his hands and there was still some ink above his eyebrows. Interview with Joaquín, *supra* note 114.

⁷² Interview with Martín.

⁷³ Interview with Joaquín.

⁷⁴ Interview with Martín.

⁷⁵ Interview with Harold Sibaja, Dir., USAID Youth Alliance Program, Creative Associates Int'l, in Guatemala City, Guatemala (Aug. 22, 2007).

are Casa Alianza, APREDE, and Grupo Ceiba.⁷⁶ Casa Alianza provides a broad range of services to street children – most of whom have been orphaned, abused or abandoned, and who are among the most vulnerable for being swept into gangs. APREDE works with youth and young adults who want to leave the gangs as well as those who are at-risk for joining gangs. APREDE runs a number of community centers and transitional living facilities that serve as safe spaces for youth, connecting them with mentors who provide academic support as well as life-skills and job-skills training. APREDE employees also conduct outreach work in vulnerable communities to connect with youth and talk with them about the variety of options that exist outside gang-banging.⁷⁷ Grupo Ceiba works in various parts of Guatemala, but its operations are based in Guatemala City’s notorious Zone 18—one of the poorest and most crime-afflicted areas of the city. Founded in 1989, the organization’s mission is to reduce the problems of youth gangs and drugs by providing education and other opportunities to Guatemala’s most marginalized children and young adults.

Distrust as a Barrier to Effective Anti-Gang Collaboration

A serious barrier to the effectiveness of NGO gang reduction and prevention efforts in Guatemala is pervasive distrust between individuals and groups who are involved with law enforcement activities to combat gang violence and those who work on rehabilitation of former gang members and initiatives to prevent at-risk youth from joining gangs. The most successful gang reduction strategies have involved enforcement agents working closely with groups that are engaged in prevention and intervention. A breakdown of communication among these actors in Guatemala is potentially fatal for long-term reduction in crime.

This distrust exists not only among Guatemalan police and nonprofits, but also among U.S. officials working on the gang problem from different angles. U.S. Embassy officials who are working to strengthen Guatemala’s capacity to crack down on gangs stated their belief that there is no such thing as a former gang member and that NGOs like Grupo Ceiba and APREDE are “stuck in the 60s.”⁷⁸ In contrast, at USAID’s Guatemala office, officials highlighted the importance of gang prevention and reduction activities carried out by Guatemalan NGOs.⁷⁹

⁷⁶ Although there are other groups working on these issues in Guatemala, including many small faith-based organizations, these three are among the largest and most actively involved with gang member rehabilitation and gang prevention. Our group interviewed the staff and of each organization, observed their activities, and interviewed various recipients of each group’s services.

⁷⁷ Interview with Emilio Goubaud.

⁷⁸ Interview with Samuel Rivera and Raymond Campos. These officials shared with us the story of failed gang rehabilitation initiative by APREDE. They told us that one nonprofit had set up a metal-working shop to provide skills training to former gang members, but the trainees used the shop to make home-made guns and then returned to the streets. In the view of these U.S. Embassy officials, if someone can pull in hundreds of Quetzales per day through gang extortions then why would they go “straight” and work a job where they could make no more than a few hundred Quetzales per month. *Id.*

⁷⁹ Interview with USAID official, in Guatemala City, Guatemala (Aug. 20, 2007). This interview contradicted the U.S. Embassy’s depiction of former gang members who used their training in a metal shop to make guns, characterizing this story as an “urban myth.” *Id.*

USAID officials did not exhibit the same level of skepticism towards U.S. Embassy-supported enforcement efforts as the Embassy officials showed toward rehabilitation initiatives. Nonetheless, officials expressed concern that the Embassy's concentration of most of its resources on one pilot program—the “Comisaría Modelo,”—may not have the wide-ranging impact that more geographically-dispersed initiatives could have.⁸⁰ USAID is funding programs to improve the professionalism of Guatemalan police in numerous precincts across the country, whereas the Embassy is focusing the vast majority of its capacity building resources only in Villa Nueva.⁸¹

The wide range of perspectives—and in some cases, skepticism—that we observed among U.S. government officials working in Guatemala is echoed by the distrust between Guatemalan police forces and local nonprofits like Grupo Ceiba and APREDE that undertake gang rehabilitation programs. This distrust forestalls the possibility of effective collaboration between these groups. Although the differing viewpoints among U.S. officials appear to be based on divergent ideological approaches, the mistrust between Guatemalan nonprofits and local police is more deeply rooted. NGO workers typically believe that police are engaged in extra-judicial killings of suspected gang members and various other forms of corruption, whereas many law enforcement officials perceive organizations like APREDE and Grupo Ceiba as aiding and abetting gang members' criminal enterprises.

Concerns about police corruption extend far beyond local nonprofit organizations and the individuals these programs target. Indeed, every U.S. government official we interviewed cited Guatemalan police corruption as a substantial problem, although U.S. Embassy officials characterized corruption as involving “a few bad apples,” whereas our USAID contact stated plainly, “the barrel is rotten.” At the same time, officials at the Comisaría Modelo were deeply suspicious of the activities of non-profits such as Rincón Joven, even going so far as to accuse the director of the organization of offering his personal residence as a meeting place for gangs to plan attacks on the Comisaría Modelo. Instead of working together with organizations like Rincón Joven, even the model police force treated the outreach workers as suspects and surveilled the premises of the organization as a target. This in turn creates resistance in the community to trusting and assisting law enforcement and foments an atmosphere in which gang activity can flourish.

Recommendations for Effective U.S. Investment in Guatemala

Distrust among the various actors that are addressing gang problems, and the lack of buy-in from the Guatemalan government for various U.S.-backed initiatives, are serious limitations on the effectiveness of U.S. assistance. But given the grave challenges Guatemala faces in confronting gang violence, corruption, and impunity—among other social, political and economic ills—and the consequences of these problems for U.S. and regional security, these obstacles do not warrant reducing U.S. funding to Guatemala. Rather, they warrant a more strategic and informed allocation of resources.

⁸⁰ *Id.*

⁸¹ *Id.*

First, the U.S. government must develop strategies for increasing the Guatemalan government's buy-in for U.S.-funded security programs—including efforts to enhance the quality of engagement between U.S. and Guatemalan decision-makers. Second, the United States should shift the emphasis of its security funding away from highly-technical assistance, such as digitized fingerprinting, and toward programs focused on improving basic crime enforcement skills, increasing police professionalism, and building linkages between security forces and the nonprofit organizations engaged in gang prevention work. Third, U.S. Embassy and USAID officials in Guatemala should work to improve collaboration between their offices by breaking down the misunderstandings and working to build trust between them. Fourth, the United States should increase investment in community-based programs focused on gang prevention and rehabilitation—both to increase the reach of their work, and to help them to implement evidence-based approaches, as well as to increase accountability and transparency.

Current U.S. funding priorities in Guatemala strike an improper balance between enforcement initiatives and programs focused on rehabilitation and prevention. Although initiatives to improve police capacity are undoubtedly indispensable to the effort to reduce gang violence in Guatemala, the overwhelming majority of U.S. resources are spent on security initiatives, leaving insufficient resources for other priorities. In addition to programs that are explicitly focused on gang reduction, broader investments in education and poverty alleviation are also important tools for reducing risk factors and expanding protective factors for youth violence.

Trends toward greater regionalization of U.S. funding to Central America mean Guatemala is likely to lose funds to El Salvador, given the latter's track record of effectively lobbying Washington for increased resources. Regionalization may favor expensive, unconstructive programs at the expense of initiatives with a greater capacity to improve the localized and specific gang problems faced by Guatemala. In 2007, the United States spent \$900,000 on what U.S. Embassy officials termed anti-gang efforts, but the largest single expenditure from these funds was the "Automated Fingerprint Identification System" (AFIS), the purpose of which is to permit information exchange on a regional basis.⁸² The efficacy of this expensive fingerprinting system is doubtful, given the Guatemalan government's track record of failing to provide institutional support for various U.S.-backed programs, including the Comisaría Modelo's proposed creation of a national crime database. AFIS is projected to remain the largest budgetary drain in Guatemala in the coming year. Moreover, given the pervasive corruption of the police force, the United States should consider suspending the provision of fingerprinting technology and other tools to increase the technical capacity of Guatemalan police until corruption problems can be substantially improved. If the U.S. government continues to provide this assistance before achieving considerable gains in combating police corruption, the government runs the risk of increasing the incidents of extra-judicial killings and other severe human rights abuses.

⁸² Interview with Samuel Rivera and Raymond Campos. This \$900,000 figure does not include an additional \$1 million for police development.

International Migration and Guatemalan Gangs

Although there has been little serious investigation about the fate of deportees upon return to Guatemala, our research indicates that deportees are especially vulnerable to the discrimination and violence highlighted in the previous sections. Migrants awaiting deportation to Guatemala from the United States consistently stated that they were afraid to return because of a lack of knowledge about current conditions in the country combined with anecdotal evidence of abuse and oppression against deportees fitting the profile of a current or former gang member. Unfortunately, these fears of return are well-founded. The problems of discrimination and persecution experienced by at-risk Guatemalan youth are magnified for deportees from the United States.

While Guatemalan government programs for deportee arrivals are well-intentioned, they are ineffective at ensuring viable livelihoods for the recently returned and ineffective at ensuring deportees are treated equitably by state officials and society. As a result, most Guatemalan deportees return to the United States for a variety of reasons. While some cite an inability to earn enough money to repay smuggler debts in Guatemala, others cite fear of police officers and vigilante gangs that target deportees perceived as criminals or gang members.

Deportation to Guatemala

Accurate information of what happens to deported ex- and current gang members is difficult to ascertain. The deportation process itself is not transparent, and immigrants' rights advocates have little idea of what actually happens to deportees when they arrive in their home countries.⁸³ Most knowledge is based on anecdotes and news stories that have been communicated back to the United States, which have created a perception of a grave threat to deportees. The case of Edgar Chocoy received media attention in the United States,⁸⁴ and has been emphasized by immigrants' rights advocates:

Edgar Chocoy came to the United States from Guatemala. While here, he fell in with a gang and eventually was convicted for serving as a lookout at a crime scene. While in juvenile jail, he rehabilitated himself and even removed his gang tattoos. However, when he completed his criminal sentence, immigration authorities initiated deportation proceedings. The youth told his immigration judge that he would be persecuted by gangs in Guatemala if returned home, because he had abandoned gang life. He was nonetheless deported to Guatemala and was killed by "a gang" only 17 days later.⁸⁵

Chocoy's story is sadly not unique. Deported former and active gang members face violence from gangs, as well as from the police and civil society. Furthermore, they have nowhere to turn for protection. Luis Cardona, who does anti-gang work for the Montgomery County Department of Health and Social Services, reported that, based on

⁸³ A major impetus for our fact-finding mission was the fact that the Capitol Area Immigrant Rights' Coalition, which represents Guatemalan detainees (among others) facing deportation, knew little of what happened to deportees upon arrival in Guatemala.

⁸⁴ Jennifer Kay, *Central Americans Seek Refuge From Gangs*, WASH. POST, May 24, 2006, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/05/24/AR2006052401634_pf.html.

⁸⁵ WASH. LAWYERS' COMM. FOR CIVIL RIGHTS & URB. AFF. ET AL., DISTRICT OF COLUMBIA RESPONSE TO YOUTH VIOLENCE: IMPACT ON THE LATINO COMMUNITY (2004).

what he has heard from former and current gang members and people who work in the prevention and law enforcement fields, few suspected gang members deported to Central America survive if they stay. He stated:

An aggravated assault here becomes the death penalty there. Basically, *Mano Dura* is a genocide of economically struggling boys. Look at the massacre in Honduras jails and other Central American jails too. We are deporting guys who have no connection to their former countries to places with no social services and histories of genocide.⁸⁶

DEPORTEE PERCEPTION OF RETURN TO GUATEMALA PRE-DEPORTATION:

All of the ex- and current gang members with whom the authors spoke in Immigration and Customs Enforcement (ICE) detention facilities in the United States expressed fear of re-entering a society they knew little about and where they had little family and few connections. Alcides, a detainee in Virginia, stated:

I came to LA when I was 9, on a plane with a green card, with my dad and sister. All my siblings, cousins, aunts and uncles and parents are here. I am American and used to America. In El Salvador I have nobody. I will stay with the people who are taking care of some land and three houses that my grandma left.⁸⁷

Many interviewees recounted stories of their fellow gang members being killed upon return to their home countries. They had all heard reports that gang members were being killed by rival gangs, their own gang (if they tried to leave), hired hit-men, and police. One young man recounted:

I have homeboys who spent 78 hours in police custody just because of their tattoos. Right when you get off the airplane you are targeted. Once the police get your info they come at night and get you. Three of my homeboys were found murdered in a neighborhood where there were no enemy gang members. We are certain it was police or military. [. . .] The difference between the United States and there is this: here, you in a gang, we're gonna put you in jail to scare you. There, they gonna kill you.⁸⁸

DEPORTEE EXPERIENCES POST-REMOVAL IN GUATEMALA:

The fieldwork in Guatemala suggests that many of the fears of the ICE detainees were well-founded. Although it did not appear that gang suspects are being literally picked up at the airport in Guatemala City as they might be in San Salvador,⁸⁹ youth who fit the

⁸⁶ Interview with Luis Cardona, Youth Violence Coordinator, Montgomery Co. Dep't of Health and Social Services, in Montgomery Co., Md. (April 11, 2007).

⁸⁷ Interview with Alcides, Hampton Roads Regional Jail in Hampton Roads, Va. (May 4, 2007).

⁸⁸ Interview with Alcides. Another detainee noted that, in Central America, "police are killing a lot of boys with tattoos every night. Their bodies are found in the morning. The killers come in masks and no one knows who it is, but it's the police." Interview with Ignacio, Piedmont Regional Jail, in Farmville Va. (April 18, 2007). Another detainee stated: "In Central America, my homeboys have told me that police enter houses and kill gang members. I know two of my homeboys who were burned to death in their house by police." Interview with Esteban, Piedmont Regional Jail, Farmville, Md. (May 16, 2007).

⁸⁹ One detainee described a previous experience arriving in San Salvador: "I was 17 when I arrived in San Salvador. They took me and all other passengers to a bottom part of the airport. They took off my shirt and asked me why I was in 18th Street I explained that I was an ex-member and where I was from [in El Salvador] and they admitted that I was from a big 18th Street area. They let me go because my grandma was

gang-member profile (wearing certain colors [commonly white, blue, or red] or baggy clothing, baseball cap, tattoos, vocabulary, hand gestures⁹⁰), confront a terrifying reality in Guatemala.

Arrival:

Every day between 100 and 200 deportees arrive at an air force base in Guatemala City on an unmarked plane run by a private carrier contracted by DHS.⁹¹ When the deportees arrive, they are led off the plane by armed police and lined up roughly thirty feet from the plane, where the press is often waiting to take photos.⁹² One deportee reported that he was never given his personal clothes before being deported, and he arrived in Guatemala dressed in his orange jumpsuit that read “state prison” on the back.⁹³ Others said that they had no time to call family either in the United States or in Guatemala to inform them of their deportation, so they arrived without anyone to receive them.⁹⁴ One of the major complaints of deportees is that when they are detained in the United States, the detention centers confiscate all of the cash they have on them. When they are deported, they are often given receipts to local U.S. banks from which they can reclaim their money. Not surprisingly, these receipts are useless in Guatemala. The Ministry of the Exterior works to reclaim large sums of money (over \$1000), but deportees are often forced to forfeit smaller, yet still significant sums of money.⁹⁵

From the plane, the police lead the deportees into an area where the Guatemalan Ministry of the Exterior has established a greeting protocol to receive deportees. The welcoming includes a bag lunch (cookie, sandwich and juice), a three minute phone call to arrange transportation⁹⁶, and “medical attention,” which consists of a small box with Vicks vapor rub, antacids, band-aids and a few other items.⁹⁷ There is a job kiosk run by the Guatemalan Department of Labor, but the service is virtually unused because the positions offered rarely provide a living wage, much less a salary sufficient to pay off debts accrued

waiting for me.” Interview with Ignacio. For a more complete account of deportees' arrival to San Salvador see The International Human Rights Clinic, Human Rights Program, Harvard Law School, *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, February 2007, at 95-99, <http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport%283-6-07%29.pdf>. Although such practices were not common in Guatemala, there were some reports of the Guatemalan police arbitrarily arresting deportees at the airport. See interview with Iván.

⁹⁰ This description was repeated by various interviewees. Interview with Francisco de la Cruz. Interview with Ausencio Hugo Sandoval Bautista, Chief of the Comisaría Modelo, and Officer, Comisaría Modelo, in Villa Nueva, Guatemala (Aug. 21, 2007).

⁹¹ Interview with Ricardo, Intern, Ministry of the Exterior, at Air Force base in Guatemala City, Guatemala. (Aug. 21, 2007). Our team of researchers met one plane of deportees on April 21, 2007. As reported, it arrived an hour late. Details on how deportees are welcomed come from conversations with police and employees of the Ministry of the Exterior and observations by researchers.

⁹² The day we observed deportees, the press zealously took photos of their arriving countrymen with deportees often lifting their shirts to hide their faces from the intrusive photos.

⁹³ Interviews with deported gang members, USAID, in Guatemala City, Guatemala (Aug. 22, 2007).

⁹⁴ *Id.*

⁹⁵ Interview with Ricardo.

⁹⁶ For deportees who cannot afford transportation, the Guatemalan Ministry of the Exterior and the IOM provide a free bus ticket to their hometown. Our researchers spoke with a group of deportees awaiting this free bus ride, many of whom asked to be taken close to the border so they could begin their journey back to the U.S. as soon as possible.

⁹⁷ Interview with Guatemalan Consular Official, in Guatemala City, Guatemala (April 21, 2007).

during migration. There is also a migrant house near the airport run by religious organizations where deportees who missed their bus or who are sick or pregnant can stay for a night or two. A wide range of deportees arrive on these planes, including people in wheelchairs, children, and pregnant women. Recently, a deportee arrived suffering from acute mental illness after witnessing wild coyotes devour his wife in the desert. One challenge facing Guatemalan officials is the huge number of deportees coming into the country. More than 15,000 deportees arrived to Guatemala in 2007.

Police Response to Deportees

Unlike El Salvador, which has a defined anti-gang policy, Guatemalan authorities have no formal strategy for dealing with gang members upon their arrival.⁹⁸ According to Pablo Garcia, the Director of the Center for Attention to Migrants under the Ministry of the Exterior, before migrants get to Guatemala, the Guatemalan government receives a copy of each deportee's biographical information, including name, birthplace, age and criminal record. The Guatemalan authorities do not place much importance on the criminal record in the majority of cases because many crimes in the United States, such as running stoplights, public urination, and other quality of life offenses, are either legal or not prosecuted in Guatemala. For deportees with serious criminal offenses, such as murder, rape or robbery, the ministry passes on the information to the police. The police briefly detain people with serious criminal records for about thirty minutes at the airport to check if they have a record in Guatemala. If there are outstanding warrants for their arrest, they are detained; if not, they are released like everyone else. Mr. Garcia was not aware of the police doing any further profiling or tracking of suspected gang members who do not have criminal records in Guatemala.⁹⁹

Mr. Garcia's knowledge is in accordance with reports received from the Guatemalan police. Francisco de la Cruz, chief of the anti-gang unit of the PNC, said that the national police need to improve their protocol for receiving deportees: "The police have lost a lot of very important information thus far. Every day, with the landing of planes full of approximately 200 deportees, we lose information."¹⁰⁰

Mr. De la Cruz explained that the police planned to establish more of a presence at the air force base. "We are rushing to do so, but have not yet established the program. Our idea is to place two of our officers from the anti-gang unit at the airport in order to register

⁹⁸ Interview with Francisco de la Cruz; Interview with Samuel Rivera and Raymond Campos; Interview with Pablo Garcia.

⁹⁹ Interview with Pablo Garcia; *See also* Interview with Iván ("When I arrived [in 2006] I wore something with long sleeves to cover my tattoos. When I got off the plane, I was asked for my name and *cedula* number, but because I left Guatemala when I was so young, I did not have a *cedula* number. I was separated from non-criminal deportees and brought to the police, who ran my name for outstanding warrants in Guatemala. Then they let me go. No one was detained from my plane."); *See also* Interview with Martín; ("When I arrived in the mid-90's, I was asked for my ID and they checked on the computer. My record was clean so they let me go. Tattoos at the time were not a point of focus by officials. Tattoo checking started about three years ago."); *See also* Interview with Joaquín, USAID, in Guatemala City, Guatemala (Aug. 22, 2007) ("When I landed in Guatemala, the police asked me where I was from, if I had been in jail, how long, if I had any pending charges in Guatemala, and if I planned to commit any crimes in Guatemala. My record in the U.S. didn't matter to police in Guatemala.").

¹⁰⁰ Interview with Francisco de la Cruz.

and document gang members who get off the plane and are among the deportees.” He explained that identifying the gang members is easy, based on their “manner of dress, the slang they use, their hand gestures and their tattoos.” “However,” he added, “many gang members are no longer using tattoos so we will have to rely on the other methods.”

The anti-gang unit chief explained that “[o]ur idea is to register each of the suspected gang members and enter that information into a central database. Then, when a crime is committed or a tip is given, we can use that database as an information source.”¹⁰¹ This same technique is being implemented at the Comisaría Modelo in Villa Nueva. Based on our conversations with the American officials at the U.S. Embassy, the government plans to equip the Guatemalan police at the air force base with hi-tech equipment to allow for finger-printing and the implementation of a database of suspected gang members.¹⁰²

Although intelligence is necessary for effective gang prevention, given the extensive corruption in the Guatemalan police force and the widespread suspicion that the government is implicated in extrajudicial killing, this type of technical assistance may lead to U.S. government complicity in human rights abuses. Without a properly trained police force that is free of corruption, such tools may simply increase inaccurate profiling and allow information to be transmitted to extrajudicial murderers

A less nefarious concern with the push towards information sharing is that the Guatemalan police force does not have the capacity to use the information. In our observation of the arrival process, we spoke with two young officers, each of whom had three years experience with the police and only months working at the air force base, who were responsible with receiving the deportees.¹⁰³ Although they were supposed to receive information on the deportees days in advance, they had been given sheets of paper with the returning deportees’ names only minutes beforehand. As a result, they were not able to do criminal background checks, so they had a walkie-talkie that they used to radio each name to someone else, who supposedly performed the checks.

The information that the officers received from the DHS, which included each deportee’s Alien Number, name, date of birth, and reason for deportation (criminal or immigration violation) was in English, which neither officer spoke. The officers reported that they did not understand the significance of terms such as *DUI*, *robbery*, and *assault*, or *non-crim* (non-criminal).

The officers explained that had they gotten the sheet in advance as they sometimes do, they would have checked for outstanding Guatemalan warrants, and detained and processed anyone with a warrant. Roughly half the people who checked in were not on the lists the officers had been given. They asked for these deportees’ names and wrote them down on the back of the papers, at times only writing last names such as “Ramirez” or “Chavez.” The officers claimed they would square everything up with the Guatemalan immigration officials later on.

¹⁰¹ *Id.*

¹⁰² Interview with Samuel Rivera and Raymond Campos.

¹⁰³ *Id.*

Because of the inability to transmit accurate and comprehensible information, identification or tracking of gang members at the airport is based solely on speculation and profiling. Although our researchers did not witness any police harassment of deportees at the air force base, informants confirmed that sometimes suspected gang members are detained, harassed, and abused by police at or near the point of arrival.

NEW MIGRATORY FLOWS FROM GUATEMALA

The majority of deportees interviewed at the Guatemalan airport reported that they would immediately return to the United States, even though they had recently been released from what they described as inhumane conditions in U.S. detention facilities.¹⁰⁴ The recent deportees who turn around and migrate again to the United States are joining a huge number of Guatemalans who are making the trip. The majority of those migrants are young males, for whom opportunities for viable employment in Guatemala are limited.¹⁰⁵ Those deportees who had been living for a long period of time in the United States had family, friends and work to return to.¹⁰⁶ Those who had been caught and sent back at the border had huge debts to pay coyotes [human smugglers].

Pablo Garcia of the Ministry of the Exterior estimated that eighty percent of migrants head back to the United States because they need to pay off their debts to coyotes—debts that often are up to \$5,000 (Q38,000).¹⁰⁷ Many deportees, upon arrival to Guatemala City, tell the Ministry that they are from the border areas of Huehuetenango or San Marcos, so that they can get free transportation to the Mexican border. Around 200-250 Guatemalan migrants cross the Mexican border into the United States each day. The

¹⁰⁴ Deportees commenting on the conditions in ICE detention facilities described the conditions as “terrible.” They noted that the food was “cold and hard,” and “often no more than one piece of cold bread,” that there was frequently no toilet paper, and that detainees often got sick. The deportees stated that the guards ignored their needs while in detention, and routinely employed violence against them. One detainee described being grabbed and held in uncomfortable positions. Interviews with arriving deportees at Air Force base (Aug. 21, 2007).

¹⁰⁵ More than 60 percent of the Guatemalan-born population living in the U.S. in 2005 had arrived since 1990. More than 30 percent had arrived since 2000. 58 percent were male and more than 60 percent of Guatemalan males were under the age of 35. U.S. Census Bureau, 2005 American Community Survey, Steven Ruggles, Matthew Sobek, Trent Alexander, Catherine A. Fitch, Ronald Goeken, Patricia Kelly Hall, Miriam King, and Chad Ronnander. Integrated Public Use Microdata Series: Version 3.0 [Machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor], 2007. <http://usa.ipums.org/usa/>

¹⁰⁶ Interview with arriving deportee at Guatemalan Air Force base in Guatemala City, Guatemala (Aug. 21, 2007), who said she spent 11 years in the U.S. She is married, and her husband resides in the U.S. with her three kids. She appreciates the fact that her kids were not denied educational opportunities in the U.S. based on their immigration status. They were never asked about it in school. She was applying for her residence when she was detained for having failed to appear at a previously mandated court appearance. She had been working at a Marlboro factory, where she was treated well.”

¹⁰⁷ One of the deportees we interviewed mentioned that she had a debt of Q45,000 (\$5,920), and she would have to return, and risk more inhumane treatment in the U.S. detention facilities, in order to pay off her coyote. Another said she also would have to return to pay a debt of Q25,000 (\$3,290) to a coyote. Such sums are impossible to pay off working an entry-level job in Guatemala that pays around Q2,000 (\$200) per month. Interviews with arriving deportees at Guatemalan Air Force base in Guatemala City, Guatemala (Aug. 21, 2007).

journey is very dangerous, and many migrants die on the way.¹⁰⁸ Another factor that encourages migration is that those who return penniless are seen as failures in the eyes of the Guatemalan public.¹⁰⁹

Gang members, have even greater proclivities to return to the United States. The director of a Guatemalan NGO working on gang prevention stated:

They immediately go back to the United States. All of them return. And, when they return they bring two or three friends or family with them. Now that they know the way they act as coyotes.¹¹⁰

Agustín, an employee at the Rincón Joven, a community center in Villa Nueva that works with at-risk youth said:

In general, deportees face huge difficulties upon returning to Guatemala and seventy-five percent return to the United States. Those that stay suffer a lot. They don't have many resources here. Even if they know some Spanish, we use different speech and mannerisms here. They are also not accustomed to the level of violence in Guatemala. Most gang members who are deported from the United States belong to an entirely different gang from those in Villa Nueva--even those who are Mara Salvatrucha. When these people come to Villa Nueva with tattoos no one has seen before, they immediately face persecution from all sides. First, by police who are far rougher than what they had back home. Second, by the public, some of whom pay 1,500 Q to have a gang-member killed. Third, by gangs who are very protective of their territory, and when someone walks around with tattoos from a gang that is unknown to them, their immediate instinct is to kill that person. Very few, if any, gang members from the United States are able to come and integrate into a clique here. Finally, they face persecution in prison. In jail, deportee gang-members are rejected by all other gang-members, including members of their own gang.¹¹¹

Those who remain in Guatemala do so because they, like Jorge, do not have the means to return:

I was deported a few years ago. I want to go back to the United States because I have my entire family there, including my parents, my siblings, my kid, and my baby's mamma who I never married. My kid was born in the United States, and I have been in the United States since I was three years old. Right now, the only thing supporting me is the money my brother and sister send me from the US. The only clothes I have are baggy, and the police always stop me because of it. So far I have been lucky; they have let me go once they see I have no criminal record in Guatemala. I plan to go back in December of 2007 once I have the money.¹¹²

Or, like Martín, they tried unsuccessfully to return:

Two months after my arrival in Guatemala, I tried to go back to the United States [Martín had already been deported once and returned with no problem.] In Tapachula, I hurt my leg jumping from one side of the train to another, trying to avoid the police. I badly injured my leg trying to

¹⁰⁸ Interview with Pablo Garcia, Dir. of the Center for Attention to Migrants of the Ministry of the Exterior, Guatemalan Ministry of the Exterior, in Guatemala City, Guatemala (Aug. 20, 2007).

¹⁰⁹ Interview with Iván.

¹¹⁰ Interview with Emilio Goubaud.

¹¹¹ Interview with Agustín, Rincón Joven, in Guatemala City, Guatemala (Aug. 22, 2007) (Agustín founded, and now works in the turf of, a clique of MS-13 called Los Coronados Locos).

¹¹² Interview with Jorge, ex-gang member, in Guatemala City, Guatemala (Aug. 18, 2007).

escape after getting off the train. The Mexican INS caught me, and sent me back to Tecún Umán. I had to put on a cast and couldn't walk. I never made it back to the United States since.¹¹³

Like Adrián, almost all hope to go back at some point:

I had three friends that were deported with me and they all went back to the United States within 2-3 days. I will go back in about one year. I have a job, but it doesn't pay enough to live comfortably and the neighborhood where I live with my wife and baby is too dangerous.¹¹⁴

The way they see it, deportees are confronted with the same dilemma as all Guatemalan youth who want to escape poverty: join a gang or migrate to the United States.¹¹⁵ Deportees face additional problems of acculturation, family fragmentation, and further harassment because the style and mannerisms developed by many young people who grow up in the United States comport with Guatemalans' stereotypical ideas about gang members (baggy pants, use of slang, tattoos, piercings, etc.). Their lives in Guatemala, if they manage to survive, are extremely dangerous and difficult, whether they remain in the gang or try to leave.

Cyclical Deportation and the Evolution of the "Transnational" Gang Phenomena

Views vary on how easy it is for gang members to continue their gang involvement after being deported to Guatemala. The head of the PNC's anti-gang unit reported that he would not be surprised if deportees were active in Guatemala, but he has only heard of one case in which that happened.¹¹⁶ The lead U.S. Embassy official at the Comisaría Modelo in Villa Nueva, who has been working in Guatemala for five years, said that he has not seen any cases involving deported gang members. He added:

It is "a myth" that there are gang member ties between here and the United States. There is no evidence that deported gang members stay more than a couple weeks or a month before returning to the United States. Often deportees will go to gangs here, show their creds, perhaps make a hit or two to make some money and contacts, and then go back.¹¹⁷

The ex- and current gang members interviewed reported that in the early to late 1990's it was much easier for a gang member to continue his gang involvement upon arrival to Guatemala. In fact, during those years, deportees were seen as knowledgeable teachers who enjoyed higher status than back in the United States.¹¹⁸ and many even founded cliques.¹¹⁹ However, in recent years, there has been a disconnect between deportees and Guatemalan gang members, even those from the same gang. Deportees face the risk of being killed by members of their own gang because the Guatemalan cliques

¹¹³ Interview with Martín.

¹¹⁴ Interview with Adrián, ex-gang member, in Guatemala City, Guatemala (Aug. 22, 2007).

¹¹⁵ Interviews with members of Grupo Ceiba, in El Limon, Guatemala (Aug. 23, 2007).

¹¹⁶ Interview with Francisco de la Cruz.

¹¹⁷ Interview with Samuel Rivera.

¹¹⁸ Interview with Joaquín.

¹¹⁹ Interview with Martín.

often do not recognize the American cliques.¹²⁰ Although the gangs, at least in name and style, spread to Guatemala from the United States, they have now taken on a life of their own. Eugenio, a Salvadoran member of the 18th Street Gang who came to Guatemala and, according to the prison warden at La Canada, rose to be the 18th Street leader in Guatemala, reported that:

Many deportees are outraged by the lack of rules and honor in the Guatemalan cliques. When they arrive, they try to teach the Guatemalan cliques the correct form of the gangs. But many Guatemalan gang members see the deportees as soft, and too idealistic for the harsh, violent reality of Guatemala. Many deportees are killed by their own gang for not being able to accept and follow the new rules.¹²¹

An overarching theme of our interviews is that gang membership is not a monolithic concept. Rather than viewing members of MS13 as part of “one of the most violent and rapidly growing transnational street gangs,”¹²² gang reduction workers and policy makers should recognize that most gang membership is highly localized, and each different clique has different customs, rituals, practices, and levels of criminal activity and violence. Whereas one clique may welcome deportees from the same gang, others may feel that a group of kids in Herndon, Virginia who skip school, graffiti walls, and engage in petit theft may have little in common with a clique in Zone 18 in Guatemala City, who primarily extort local businesses and fight over turf. Any efforts to reduce gang crime need to focus on the local characteristics of each clique.

The problem of gangs can be characterized as transnational, however, in that different countries’ domestic and foreign policies have broad implications for the communities affected by youth violence. U.S. foreign policy played a major role in launching and sustaining the conflicts that caused so many families to flee Central America in the 1980s. Similarly, U.S. domestic policy throughout the eighties made inner-city conditions ripe for the rise of gangs. In the nineties and through the twenty-first century, U.S. immigration policy has led to the deportation of thousands of violent criminals and tens of thousands of young people back to their war-torn places of birth. At the same time, U.S. trade and development policies have made it difficult for many people in Central America to lawfully support themselves, leading to crime and illegal migration. As countries like El Salvador and Honduras have passed increasingly draconian domestic gang laws, they have pushed actual and suspected gang members into neighboring countries. All of these and other political and economic pressures play a role in the movement of people, including gang members, throughout the region, thus contributing to transnational problems of youth violence.

¹²⁰ Interview with Emilio Goubaud. (“If they don’t return, they’ll be killed here—either by the opposing gang or by their own. For example, if they are MS-13 from the U.S., the MS 13 here will not recognize them in Guatemala as one of their own and kill them.”).

¹²¹ Interview with Eugenio, detainee, La Granja Canadá, in Guatemala (Aug. 22, 2007).

¹²² U.S. Immigration and Customs Enforcement, Fact Sheets, Operation Community Shield, Jan. 16, 2008 <http://www.ice.gov/pi/news/factsheets/opshieldfactsheet.htm?searchstring=salvatrucha>

Central American Gangs in the United States

Although the Guatemalans displaced by the Civil War ended up fleeing to many areas throughout Mexico, Central America, the United States, and Canada, a significant portion migrated to Southern California. The children of the waves of immigrants coming in the 1980s grew up in a socio-economic and cultural setting in which they were subjected to virtually all of the risk factors correlated with gang involvement. Furthermore, they were thrown into an already developed gang culture in Los Angeles. Rather than experiencing the upward mobility and acculturation that typified earlier waves of immigrants to North America, a sizeable portion of this new generation of migrants assimilated “down” instead of “up,” a phenomenon dubbed “segmented assimilation” by academics who study the integration patterns of migrants.¹²³ Because the men and women fleeing the conflicts in Central America tended to settle in lower-class urban settings in which they were subjected to racial prejudice and few opportunities for economic improvement, it was predictable that elements within first and second generation youth may tend to eschew mainstream American middle-class culture, and would be more likely to develop an “adversarial subculture.”¹²⁴

The tendency to downwardly assimilate or to join adversarial subcultures is exacerbated by the insecure legal status of many Central Americans (with the notable exception of Nicaraguan immigrants from the 80s and 90s), many of whom have been denied stable and permanent forms of immigration and legal status. The insecurity of legal status experienced by Guatemalans and Salvadorans, even relative to other regional migrants, has been described by some scholars as “liminal legality,”¹²⁵ and has been recognized as one of the adverse determinative factors pushing these immigrants towards downward or segmented assimilation. The history of American immigration policy toward Central Americans has tended toward provision of temporary work permits and forms of protection that do not offer clear pathways to citizenship, forcing immigrant communities to exist in half-legal or multi-status households, tending to isolate them from the greater community and discouraging assimilation and future-oriented planning. The children of families who migrated to the United States in the 80s and 90s, families whose heads of household exist under constant threat of deportation and who lacked security either in their home countries or in the United States, became the core members of the largest and most widely known Central American gangs – the 18th Street Gang and the Mara Salvatrucha (MS-13).

¹²³ “Segmented Assimilation Theory” seeks a more realistic and nuanced view of immigrant assimilation experiences than the classic linear integration models provide. In particular, it acknowledges that immigrants and their American-born children will integrate into an already existing system of inequality in the United States and that subsequent generations of immigrant communities may integrate or fail to integrate differently in different areas of life: educational, vocational, economic, cultural, linguistic, etc. which may even include negative assimilation, or culturally oppositional behaviors such as joining a street gang. *See generally* Alejandro Portes & Min Zhou, *The New Second Generation: Segmented Assimilation and its Variants among Post-1965 Immigrant Youth*, 530 ANNALS AMER. ACAD. POL. & SOC. SCI. 74 (1993).

¹²⁴ *See id.*; Min Zhou, *Segmented Assimilation: Issues, Controversies, and Recent Research on the New Second Generation*, 31(4) INT’L MIGRATION REV. 975 (1997).

¹²⁵ Cecilia Menjivar, *Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States*, 999 THE AMERICAN JOURNAL OF SOCIOLOGY 111(4): 999-1037 (2006).

Birth of Maras and Pandillas in the United States

THE RISE OF MS-13 AND 18TH STREET IN LOS ANGELES.

The standard history of how Central American gangs (*maras* and *pandillas*) came to exist in the United States recounts that as migrants from conflicts in Central America arrived in Los Angeles in the 1980s, problems arose between the new immigrants and the already well-established Mexican, Mexican-American and African-American gangs.¹²⁶ As a defense mechanism, new immigrants bound together along ethnic and nationalistic lines to form the Mara Salvatrucha, which was originally composed primarily of Salvadorans, and the 18th Street Gang, which was an already established Hispanic gang and was open to a more diverse Hispanic population (and by some accounts, African Americans).

As these gangs became more powerful and violent in the 1990s, the U.S. government began to implement strategies aimed at controlling what was viewed as emerging community violence. At the same time, anti-immigrant sentiment was rising and with it increased demands for more control over non-citizens with criminal convictions within the United States' borders. This eventually evolved into IIRIRA in 1996 (discussed in detail below), which allowed the government to deport a significant number of Central American criminal offenders and suspected gang members. This wave of deportation in the mid-nineties is credited by many as the impetus for the rise of gangs in Central America.¹²⁷

While this report will accept the above description as generally accurate, the situation is far more nuanced than most accounts acknowledge. Although it is beyond the scope of this paper to discuss in detail the evolution of Central American gangs in Los Angeles and Guatemala, it is worthwhile to devote a few paragraphs to investigate why these youth chose to organize themselves as they did.

Research into youth violence shows that adolescents and young adults tend to form into gangs to compensate for a breakdown in family, community, and other socializing relationships.¹²⁸ Domestic violence and exposure to other forms of violence, drug abuse, and arrest of a family member can be contributing factors. Migration and deportation is also a frequent cause of family fragmentation and may affect intrafamilial relations as parents and their children struggle to assimilate or survive in a new environment.

When one views the displaced youth from Guatemala and El Salvador from this perspective, it is unsurprising that they formed youth gangs. Many came from families in which one or both parents were targeted or killed during the war. They were accustomed to

¹²⁶ See, e.g., WASHINGTON OFFICE ON LATIN AMERICA (WOLA), WORKING PAPER ON CENTRAL AMERICAN YOUTH GANGS IN THE WASHINGTON, D.C. AREA at 4 (2007), available at http://www.wola.org/media/Gangs/washington_dc_gang_research.pdf.

¹²⁷ See *id.*

¹²⁸ See, discussion of the work of SPERGEL.

a culture of violence, which often extended into the home.¹²⁹ Their social networks were fragmented through migration, and they were subjected to the determinative factors associated with downward social assimilation discussed above.¹³⁰ Poverty forced their parents to spend much more time working than providing family support and mentorship, which added additional stress to the family.

As the number of documented and undocumented immigrants in California rose, anti-immigration sentiment developed into a cohesive movement. With the 1994 re-election of California Governor Pete Wilson and the passage of Proposition 187, denying all education, welfare, and non-emergency health services to undocumented aliens,¹³¹ California voters made clear that their state would not welcome these youth to integrate into established social institutions. Similarly, increasing voter concern about crime led to the passage of draconian criminal provisions, sentencing guidelines, and “three-strikes-and-you’re-out” legislation. This fed a massive upswing in incarceration, where many immigrant youth were subjected to further fragmentation of their social networks and socialization reinforcing gang membership within prison settings.

Adrián has a story typical of many of the young men who joined gangs in this era. His father abandoned his mother in Guatemala while she was pregnant. He was raised in Los Angeles by his mother and his step-father; however, both were working full time for very little pay. When presented with what he recognized at a young age were few options for upward mobility, he chose to assimilate himself into the criminal culture that surrounded him and join a gang.¹³² Stories like Adrian’s exemplify the context in which the MS-13 and 18th Street Gangs formed in the United States.

Domestic Anti-Gang Policies

“They are called super-predators. They are not here yet, but they are predicted to be a plague upon the United States in the next decade. They are not some creature from outer space; they are our own children.” (Tampa Tribune, May 21, 1996)¹³³

As fear and anger towards undocumented immigrants rose, a similar paranoia surrounding a perceived spike in youth crime overtook much of America. The rising and misplaced fear of the super-predator youth was typified by an increasing, media-fueled fear of gang violence in the United States. To combat the perceived rise in crime and gang

¹²⁹ Although accurate statistics on domestic violence in Guatemala during the civil war are unavailable, current sources estimate that at least 1 in 3 Guatemalan women is subject to domestic violence. See, e.g., ADRIANA BELTRÁN & LAURIE FREEMAN, HIDDEN IN PLAIN SIGHT: VIOLENCE AGAINST WOMEN IN MEXICO AND GUATEMALA 5 (2007), available at <http://www.wola.org/media/ViolenceAWomen.pdf>.

¹³⁰ See Portes & Zhou, at 74-98.

¹³¹ This referendum was never implemented, because of judicial challenges to its constitutionality. See, e.g., Keith Bradsher et al., *THE 1994 ELECTIONS: STATE BY STATE*; West, N.Y. TIMES, Nov. 10, 1994, available at <http://query.nytimes.com/gst/fullpage.html?res=9403E5D91E3EF933A25752C1A962958260&sec=&spon=&pagewanted=2>.

¹³² Interview with Adrián.

¹³³ Quoted in Robin Templeton, *Superscapegoating: Teen “superpredators” hype set stage for draconian legislation*, FAIRNESS & ACCURACY IN REPORTING, Jan./Feb. 1998, available at <http://www.fair.org/index.php?page=1414>.

activity in the 1990s, a variety of federal, state, and local initiatives emerged. Approaches to lowering gang activity and violence can be separated, roughly, into three categories:

- Suppression: “Hard” response from law enforcement—arrest, prosecution, imprisonment, and deportation;
- Prevention: Community-based programming to divert at-risk young people to productive alternatives to gangs; and
- Intervention/Rehabilitation: Supporting individuals in leaving gangs.

Many 1990s gang reduction strategies focused solely on suppression, punitive measures, and federal prosecution of street-level crimes, many of which later proved to be ineffective or counter productive. However, community-based policing models which combined suppression, prevention, and intervention/rehabilitation were successful in some American cities, most notably Boston’s Operation Ceasefire. Because a similar discourse of fear surrounding juvenile crime, gangs, and an emphasis on suppression appears to be re-emerging today, especially when dealing with immigrant gangs, it is useful to examine the successes and failures of previous domestic approaches to combating juvenile crime.

SUPER-PREDATORS AND THE EVOLUTION OF THE SUPPRESSION-ONLY APPROACH

The myth of the super-predator began in 1995 with the work of John Dilulio, a University of Pennsylvania professor and Brookings Institute Fellow. Dilulio warned of a generation “wolf-pack” of “fatherless, godless, and jobless youth.”¹³⁴ He predicted that by the year 2010, there would be 270,000 more violent juvenile offenders in the United States.¹³⁵ Other academics claimed that a link existed between low-intelligence and crime and that people with a low IQ would *only* respond to harsh punishment, not rehabilitation or prevention.¹³⁶

While these predictions were swirling in academia, crime rates were dropping. In the early 1990s, overall violent crime levels peaked, then began a precipitous decline.¹³⁷ According to the FBI, 1.9 million violent crimes were reported to the police in 1991 (758 crimes/100,000 people).¹³⁸ Between 1993 and 2005, however, violent crime rates fell fifty-seven percent for the general population.¹³⁹ Beginning in 1994, juvenile crime also began a steady decline, eventually reaching the lowest rates since the 1970s.¹⁴⁰ The Justice

¹³⁴ CAMPAIGN FOR YOUTH JUSTICE, *THE CONSEQUENCES AREN’T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM 3* (2007), available at http://www.justicepolicy.org/images/upload/07-03_C4YJConsequences_JJ.pdf.

¹³⁵ BARRY KRISBERG, *JUVENILE JUSTICE: REDEEMING OUR CHILDREN 2* (2005).

¹³⁶ *Id.* at 3 (paraphrasing RICHARD Herrnstein and CHARLES Murray, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (Free Press (1994)).)

¹³⁷ JEFFREY BUTTS & HOWARD SNYDER, *CHAPIN HALL CENTER FOR CHILDREN AT U. OF CHICAGO, TOO SOON TO TELL: DECIPHERING RECENT TRENDS IN YOUTH VIOLENCE* (2006).

¹³⁸ *Id.*

¹³⁹ NATIONAL IMMIGRATION FORUM, *BACKGROUNDER: IMMIGRATION LAW ENFORCEMENT BY STATE AND LOCAL POLICE 2* (Aug. 2007), available at <http://www.immigrationforum.org/documents/TheDebate/EnforcementLocalPolice/Backgrounder-StateLocalEnforcement.pdf>.

¹⁴⁰ *Id.*

Department's Office of Juvenile Justice and Delinquency Prevention reported that juvenile crime fell thirty percent from 1994 to 1998 and the murder arrest rate dropped nearly fifty percent between 1993 and 1998.¹⁴¹ Because of routine delays in data collection, while crime rates were dropping, many believed that they were continuing to rise.

Barry Krisberg argues in *Juvenile Justice: Redeeming our Children* that the super-predator myth was based on a misinterpretation of research,¹⁴² which found that a small number of juveniles accounted for a large number of juvenile arrests. Krisberg claims that Dilulio "applied this number to the entire growth in the youth population to manufacture their bogus trend."¹⁴³ Krisberg states that the vast majority of cases in the juvenile justice system were for minor property crimes and status offenses.¹⁴⁴ Only eight percent of juvenile court cases were for murder, robbery, forcible assault, or rape.¹⁴⁵

Despite falling crime rates, the portrayal of juveniles as super-predators caught on in the media. The Chicago Tribune wrote that super-predators are:

[Y]oung criminals—mostly male, at least for now—who commit violent acts without remorse, to whom the idea of conscience is foreign . . . who live in 'moral poverty.' Right and wrong do not mean anything to them: 'They are perfectly capable of committing the most heinous acts of physical violence for the most trivial reasons (for example, a perception of slight disrespect or the accident of being in their path). They fear neither the stigma of arrest nor the pain of imprisonment. They live by the meanest code of the meanest streets, a code that reinforces rather than restrains their violent, hair-trigger mentality.'¹⁴⁶

It is easy to understand how the alarmist super-predator rhetoric led to a suppression-heavy approach to gang reduction. Still, even before the emergence of the super-predator mythology, gangs were the principal targets of punitive law enforcement tactics.¹⁴⁷ The rhetorical association of gang members with terrorists emerged as early as 1990 when Los Angeles Police Chief Daryl Gates claimed he would "obliterate" gangs and "take the little terrorists off the street."¹⁴⁸ Los Angeles tried various suppression-only programs, such as creating the Community Resources Against Street Hoodlums (CRASH) unit in the LAPD¹⁴⁹ that carried out Operation Hammer (1988). Operation Hammer saturated communities with police officers, used special tactical units complete with officers dressed in completely black clothing, and military type police sweeps of

¹⁴¹ See Shay Bilchick, Juvenile Justice Bulletin, Juvenile Arrest 1998 (OJJDP 1999), available at http://www.ncjrs.gov/html/ojjdp/9912_3/contents.html. See also American Bar Association, *Juvenile Crime Reduction*, CRIM. JUST. MAG., Spring 2000, available at <http://www.abanet.org/crimjust/cjmag/15-1/sherman2.html>.

¹⁴² KRISBERG, *supra* note 193, at 2 (referring to MARVIN Wolfgang, ROBERT Figlio, and THORSTEN Sellin, *DELINQUENCY IN A BIRTH COHORT* (The University of Chicago Press 1972).

¹⁴³ KRISBERG, at 2.

¹⁴⁴ *Id.* at 164.

¹⁴⁵ *Id.* at 164.

¹⁴⁶ Bob Greene, "Superpredators May be Just the Beginning," CHI. TRIB. (Dec. 27, 1995), at CN1.

¹⁴⁷ KRISBERG, at 164.

¹⁴⁸ CHARLES M. KATZ, *POLICING GANGS IN AMERICA* (2006).

¹⁴⁹ *Id.*

neighborhoods.¹⁵⁰ Suspected gang members were arrested for existing warrants, traffic citations, curfew violations, amorphous gang-related behaviors such as wearing colors or flashing gang signs, and observed criminal activities.¹⁵¹ Of 1,453 people arrested in one weekend, only sixty were arrested for felonies, and charges were filed against only thirty-two.¹⁵² Slightly more than half of these were categorized as gang members.¹⁵³ The dehumanizing anti-gang sub-culture of the CRASH unit and the racist attitude of police officers towards young, urban, and poor minority men whom they equated with gang members came to the fore during the Rampart Corruption Scandal in 1997, in which officers admitted to attacking suspected gang members and planting drugs on them in order to make arrests.¹⁵⁴ Officers reputedly felt that, “if the suspect didn’t commit this crime, he did another for which he didn’t get caught.”¹⁵⁵

FEDERALIZATION OF GANG REDUCTION STRATEGIES: INCREASED INCARCERATION, JUVENILE TO CRIMINAL TRANSFER, AND DISPROPORTIONATE IMPACT ON MINORITY AND IMMIGRANT YOUTH

Despite the dropping juvenile crime rates in the mid-1990s,¹⁵⁶ the imagery of young men as violent, conscienceless animals caught on in the media and captured the public’s imagination, leading to the passage of increasingly punitive federal and state legislation. The combination of tougher enforcement, longer sentences, more juveniles tried as adults, and restrictions in immigration law led to a dramatic increase in the deportation of non-citizens.

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act (VCCLEA).¹⁵⁷ VCCLEA allowed the criminal prosecution of children as young as thirteen for serious felonies and made membership in a criminal street gang a federal offense. It also provided that federal judges may consider gang ties in determining whether to transfer a juvenile to adult court. VCCLEA also reduced confidentiality measures, allowing federal courts to release information to the FBI if a child thirteen or older is convicted of a serious crime. The VCCLEA also made federal funding conditional on the adoption of these measures by the states.¹⁵⁸

¹⁵⁰ KRISBERG, *Id.* at 164-5.

¹⁵¹ JAMES C. HOWELL, PREVENTING AND REDUCING JUVENILE DELINQUENCY: A COMPREHENSIVE FRAMEWORK 142 (2003).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See CHARLES M. KATZ & VINCENT J. WEBB, POLICING GANGS IN AMERICA (2006); see generally PBS FRONTLINE, RAMPART SCANDAL TIMELINE, available at <http://www.pbs.org/wgbh/pages/frontline/shows/lapd/scandal/cron.html>.

¹⁵⁵ KATZ, at 3.

¹⁵⁶ See BUTTS & SNYDER.

¹⁵⁷ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1824, 1896 (1994) (VCCLEA).

¹⁵⁸ Joseph F. Yeckel, “Violent Juvenile Offenders: Rethinking Federal Intervention In Juvenile Justice,” 51 J. URB. & CONTEMP. L. 331, 333 (1997).

In 1997, Congress passed The Violent and Repeat Juvenile Offender Act. This legislation revised federal court procedures to make it easier for prosecutors to try youth as adults, provided increased penalties for juvenile gang members, and encouraged states to adopt policies “to ensure that the victims of violent crimes committed by juveniles receive the same level of justice as do victims of . . . adults.”¹⁵⁹ Forty-seven states amended their laws to permit younger children to be tried in adult criminal courts, to give more discretion to prosecutors to decide when to prosecute juveniles as adults, and to allow judges to “blend sentences” combining juvenile and criminal court sanctions. Once again, confidentiality provisions were loosened, allowing prior juvenile convictions to be used in later adult proceedings to enhance sentences. Punishment became an explicit goal of the juvenile justice system, as opposed to providing rehabilitative resources to the disproportionately minority youth involved in the system.¹⁶⁰

Following September 11, 2001, both juvenile and adult gang members have been equated with terrorists, particularly Al Qaeda. The Boston Herald reported that “The news that a Boston street gang of Salvadorians has been meeting with Al Qaeda members to help smuggle terrorists in the United States is a sign of an escalating threat which emphasizes the urgency of cracking down on illegal immigration and the need for increased vigilance on the part of all Americans.”¹⁶¹ Though later repudiated by the FBI, ICE and other agencies, the myth of a connection between Al Qaeda and gangs like MS-13 remains both in the public imagination and in law enforcement tactics, exacerbated by the perception that members of both groups tend to be foreign-born.

Anti-terrorism statutes are being used to prosecute gang members for street crimes. On October 31, 2007, Edgar Morales, a twenty-five year old gang member was convicted for several typical street crimes, and on charges of terrorism.¹⁶² The terrorism charge increases each conviction one level, dramatically increasing the sentence. The judge instructed the jury that an act is terrorism “if it is intended to intimidate or coerce a civilian population or to inflict fear and dominate.”¹⁶³ Anti-terrorism laws were passed by thirty-six states after September 11, 2001 and were aimed at groups like Al Qaeda.¹⁶⁴ These laws are inappropriate for combating gang violence comprised largely of local street crime, since the underlying convictions of crimes like manslaughter or attempted murder carry sufficient penalties to punish the offender and deter others. In Guatemala, similar headlines routinely appear in the daily newspapers. This dehumanizing and fear mongering approach permits a continuing focus on suppression and de-emphasis of prevention and intervention.

As federalization of gang reduction strategies favored a punitive approach, rates of juvenile incarceration increased and more minors were sentenced to adult prisons and jails.¹⁶⁵ According to the National Counsel on Crime and Delinquency, the incarceration

¹⁵⁹ Violent and Repeat Offenders Act Report of the Senate Judiciary Committee 10/9/1997 senate r 105-108.

¹⁶⁰ Yeckel, at 333.

¹⁶¹ Michelle McPhee, *Texas Rep: Beware of Al-Qaeda, Eastie Tie; Warns of border invasion*, BOSTON HERALD, Jan. ¹⁶¹ *Boston Street Gang M-13 Cited as ‘True Terror Threat,’* BOSTON HERALD, Jan. 7, 2005

¹⁶² Timothy Williams, “Gang Member Is Convicted Under Terror Law,” N.Y. TIMES, Nov. 1, 2007.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ KRISBERG, at 3-4..

rate of youth in adult jails increased 208 percent since 1990.¹⁶⁶ Because the growth of Central American gangs in U.S. cities in the 1990s coincided with a broader trend in juvenile justice law and policy treating juvenile offenders as ‘super-predators’ and terrorists, Latino youth were disproportionately affected by this increase. Building Blocks for Youth, a nonprofit working to reduce racial disparities in the juvenile justice system, reports that Latino youth are incarcerated at two to three times the rates of white youth in nine states, three to six times the rates of white youth in eight states, and seven to seventeen times the rates of white youth in four states.¹⁶⁷ Building Blocks for Youth also reports that Latino youth who committed violent offenses in Los Angeles between 1996 and 1998 were twelve times as likely as white youth to be incarcerated.¹⁶⁸

Despite its popularity with politicians, incarceration may do little to disrupt gang-based violence caused by the few individuals who cause the most harm, and it undermines the ability of less dangerous gang members to leave criminality behind. The [Federal Bureau of Prisons](#) report, [The Influence of Prison Gang Affiliation on Violence and Other Prison Misconduct](#) (2001), indicates that gang affiliation increases the likelihood of prison violence and other forms of misconduct inside prisons. The trouble does not end when gang members are released from confinement. According to [Highlights of the 2001 National Youth Gang Survey](#) (Office of Juvenile Justice and Delinquency Prevention, 2003), “sixty-three percent of gang-problem jurisdictions reported the return of gang members from confinement to their jurisdiction in 2001. More than two-thirds (69 percent) of these jurisdictions reported that gang members returning from confinement considerably affected their jurisdictions’ gang problem in 2001. A large proportion of these jurisdictions reported that returning members noticeably contributed to an increase in violent crime (63 percent of respondents) and drug trafficking (68 percent) by local gangs.”¹⁶⁹

In the long-term, incarceration of juveniles with little focus on rehabilitation aggravates underlying social inequalities that contribute to delinquency and decrease community safety. The National Research Council reports that many young people are raised in settings that “fail to provide the resources, the supports, and the opportunities essential to a healthy development and reasonable preparation for productive adulthood.”¹⁷⁰ Transfer from juvenile to criminal court, instead of acting as a deterrent to further crime, actually increases recidivism and robs youth of critical rehabilitative resources and legal protections that would otherwise keep them separated from adult offenders.¹⁷¹ Youth who have been involved with the justice system lack educational opportunities and are left with the stigma of an arrest, further limiting their future employment prospects.¹⁷² With few positive alternatives and socialization with a criminal population, many youths return to crime. Each felony conviction a youth receives increases the likelihood of becoming an

¹⁶⁶ CAMPAIGN FOR YOUTH JUSTICE, at 7.

¹⁶⁷ FRANCISCO A. VILLARRUEL ET AL., BUILDING BLOCKS FOR YOUTH, ¿DÓNDE ESTÁ LA JUSTICIA? (July 2002), available at http://www.buildingblocksforyouth.org/latino_rpt/exec_eng.html.

¹⁶⁸ *Id.*

¹⁶⁹ NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE, IN THE SPOTLIGHT: GANGS (2007), available at <http://www.ncjrs.gov/spotlight/gangs/summary.html>.

¹⁷⁰ NATIONAL RESEARCH COUNCIL, LOSING GENERATIONS: ADOLESCENTS IN HIGH-RISK SETTINGS 2 (1993).

¹⁷¹ Robert E. Pierre, *Adult System Worsens Juvenile Recidivism, Report Says*, WASH. POST, Nov. 30, 2007.

¹⁷² NAT’L CENTER ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA U., CRIMINAL NEGLECT: SUBSTANCE ABUSE, JUVENILE JUSTICE, AND THE CHILDREN LEFT BEHIND 28 (2004).

adult felon by fourteen percent while each misdemeanor conviction increases the risk by seven percent.¹⁷³ Not only will increased incarceration ravage a generation of mostly minority youth, it may have the perverse effect of increasing criminal activity and decreasing community safety.

Alternative Gang reduction Strategies

COMMUNITY POLICING

Interspersed with the national trend of an increased focus on suppression at the expense of rehabilitation was a successful model of law enforcement designed to combine elements of suppression, prevention, and intervention/rehabilitation to ultimately reduce or eliminate gangs and increase community safety while providing viable alternatives to at-risk youth. The Community Policing model involves the engagement of local law enforcement with members of the community including residents, local government officials, schools, church groups, and business people and relies on gaining their trust. Community leaders participate in problem solving by identifying and developing plans to address their most pressing concerns.¹⁷⁴

Community policing activities expand beyond the traditional law enforcement framework to include a wide range of services such as helping to resolve neighborhood conflicts, working to improve neighborhood conditions, providing emergency social services for the homeless and mentally ill, and guaranteeing resident’s constitutional rights to provide a visible and positive presence in the community.¹⁷⁵ These services and the corresponding community involvement aim, in part, to keep youth out of gangs by increasing identified protective factors and decreasing risk factors.

The Boston Police Department, in developing what many credit as the United States’s most successful gang and youth violence reduction model, identified the following list of risk and protective factors that respectively push young people towards, or protect them from becoming involved in gangs and violence. Successful gang reduction strategies should aim to decrease risk factors and increase protective factors, through a combination of measures, to ensure that fewer young people are attracted to anti-social activities and gangs.

	Risk Factors	Protective Factors
Individual	<ul style="list-style-type: none"> • Anti-social behavior and alienation/Delinquent beliefs/General delinquency involvement/Drug dealing • Early onset of aggression and/or violence • Favorable attitudes toward drug use/Early onset of AOD use/Alcohol and/or drug use 	<ul style="list-style-type: none"> • Healthy / Conventional beliefs and clear standards • Perception of social support from adults and peers • Self-efficacy • Social competencies and problem-solving skills

¹⁷³ *Id.* at 27.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

	<ul style="list-style-type: none"> • Gun possession/Illegal gun ownership and/or carrying • Lack of guilt and empathy • Life stressors • Poor refusal skills • Victimization and exposure to violence 	
Family	<ul style="list-style-type: none"> • Family history of the problem behavior/Parent criminality • Family management problems/Poor parental supervision and/or monitoring • Family violence 	<ul style="list-style-type: none"> • Effective parenting • Good relationships with parents / Bonding or attachment to family
School	<ul style="list-style-type: none"> • Dropping out of school • Inadequate school climate/Poorly organized and functioning schools/Negative labeling by teachers • Negative attitude toward school/Low bonding/Low school attachment/Commitment to school • School suspensions • Truancy/Frequent absences 	<ul style="list-style-type: none"> • High quality schools / Clear standards and rules • Presence and involvement of caring, supportive adults
Community	<ul style="list-style-type: none"> • Availability of alcohol and other drugs • Availability of firearms • Community crime/High crime neighborhood • Community instability • Economic deprivation/Poverty/Residence in a disadvantaged neighborhood • Low community attachment • Neighborhood youth in trouble • Social and physical disorder/Disorganized neighborhood 	<ul style="list-style-type: none"> • Clear social norms / Policies with sanctions for violations and rewards for compliance • High expectations • Nondisadvantaged neighborhood • Presence and involvement of caring, supportive adults • Prosocial opportunities for participation / Availability of neighborhood resources • Rewards for prosocial community involvement • Safe environment / Low neighborhood crime
Peer	<ul style="list-style-type: none"> • Association with delinquent and/or aggressive peers • Gang involvement/Gang membership • Peer alcohol, tobacco, and/or 	<ul style="list-style-type: none"> • Good relationships with peers • Involvement with positive peer group activities

	other drug use	“Help America’s Youth” ¹⁷⁶
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Community policing efforts proved generally successful, especially in immigrant communities, where residents had an opportunity to establish trust with law enforcement. Between 1993 and 2000 the Department of Justice (DOJ) reports that non-fatal crime dropped forty-four percent for the general population and fifty-six percent for the Latino population, and violent crime against Asians also dropped. Though causality is complicated, many have attributed these successes to the use of community policing strategies. Community policing is especially vital in the immigrant-gang context, where close relations with the community are necessary for intelligence, evidence and witness participation from communities that may have an inherent distrust of police stemming from negative or violent experiences with law enforcement in their home countries.

WHAT WORKS?

Lessons from past efforts to combat gangs and juvenile crime should inform our approach to similar challenges that are re-emerging today:

1. Suppression works most effectively when it targets unwanted behaviors, rather than being used to remove vaguely-defined groups from society.
2. Suppression works most effectively when individuals are given concrete alternatives to gang activity. Rehabilitation is a necessary and under-invested aspect of successful anti-gang work, which too often focuses on a prevention/suppression dialectic. The most at-risk individuals may be written off by social service agencies, but these individuals need the most tenacious outreach.
3. Local and federal cooperation and information sharing is possible and effective when there is political and concrete buy-in, engagement, and leadership from local communities and actors.
4. For increased suppression efforts to deter unwanted violence, they must be communicated directly to potential targets by neutral parties like street workers.
5. Effective anti-gang policy evolves and improves through ongoing monitoring and evaluation of thorough empirical data.
6. Gang members, just like other actors, respond to incentives and disincentives. Good gang policy rewards lawful behavior as well as imposing costs on violent behavior.

¹⁷⁶ HELPING AMERICA’S YOUTH, OPERATION CEASE FIRE (undated), *available at* <http://guide.helpingamericasyouth.gov/programdetail.cfm?id=371>.

Implications of Anti-Gang Policy and Anti-Immigrant Sentiment on Immigration Status

In the 1990s, the media frenzy promoting images of “super-predators,” fears of rising crime rates and gangs combined with anti-immigrant sentiments led to changes in immigration law designed to speed up and to expand the removal of non-citizens with criminal convictions. The former Immigration and Naturalization Service (INS) (now under DHS) budget more than doubled during that decade, with much of the funds going to border enforcement and the detention and removal of unauthorized non-citizens.¹⁷⁷ Four pieces of legislation, the Anti-Drug Abuse Act (ADAA) (1988), the Immigration Act of 1990 (IMMACT), the Anti-Terrorism and Effective Death Penalty Act (AEDPA) (1996) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) (1996), increased total deportations by expanding the definition of aggravated felonies, eliminating several defenses to deportations, applying these provisions retroactively, and expanding the role of local law enforcement in federal immigration law. Combined with these changes in immigration law, the new juvenile crime laws had dramatic immigration consequences for many young non-citizens. As more youth were brought into the criminal justice system and transferred to adult criminal court, more young people became deportable.

CRIMINAL DEPORTATION: AGGRAVATED FELONIES AND CRIMES INVOLVING MORAL TURPITUDE

Despite the misconception that all gang members are illegal immigrants, many have legal status or live with families whose members have mixed legal status (i.e. some members are residents, some citizens, and some undocumented). And yet, current immigration law allows that anyone who is not a U.S. citizen may be deported for certain types of criminal activity, regardless of other positive factors, including how long he or she has lived in the country.

Since the late 1700s, non-citizens in the United States have been subject to deportation for certain criminal acts or convictions.¹⁷⁸ In the 1950s, the United States government began deporting non-citizens who committed crimes involving moral turpitude (CMT),¹⁷⁹ which are defined as crimes which are “inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.”¹⁸⁰ Because the term “moral turpitude” is not strictly defined in immigration law, courts have wide discretion in designating an offense as such.¹⁸¹ From

¹⁷⁷ THOMAS ALEXANDER ALEINIKOFF, DAVID A. MARIN & HIROSHI MOTOMURA, IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 167 (West, 5th ed. 2003).

¹⁷⁸ HUMAN RIGHTS WATCH, FORCED APART: FAMILIES SEPARATED AND IMMIGRANTS HARMED BY UNITED STATES DEPORTATION POLICY 10 (2007), available at <http://www.hrw.org/reports/2007/us0707/index.htm>.

¹⁷⁹ *Id.*

¹⁸⁰ BRYAN LONEGAN ET AL., LEGAL AID SOCIETY, IMMIGRATION DETENTION AND REMOVAL: A GUIDE FOR DETAINEES AND THEIR FAMILIES 12 (2006), available at

http://www.nysda.org/idp/docs/06_ImmigrationDetentionRemovalGuideDetaineesFamilies.pdf. Common categories of offenses interpreted as involving moral turpitude include fraud, larceny, and the intent to harm a person or thing. See U.S. DEPARTMENT OF STATE, FOREIGN AFFAIRS MANUAL VOLUME 9 - VISAS (June 29, 2005), available at <http://www.state.gov/documents/organization/86942.pdf>.

¹⁸¹ HUMAN RIGHTS WATCH, at 11.

1952 to 1996, non-citizens were deportable for crimes of moral turpitude committed within five years of entry.¹⁸² Despite this, until 1996 non-citizens charged with deportability could plead for relief based on family ties in the United States and other mitigating factors, allowing judges a modicum of discretion when determining whether a criminal immigrant could safely re-integrate into American society, or whether public safety called for his or her deportation.

Concurrent with the elevated concerns in the United States regarding crime rates, especially those related to gang violence, American politicians became increasingly interested in capitalizing on the public's fear of criminal immigrants. This led to the passage of progressively harsher immigration laws throughout the 80s and 90s, which coincided with increased migration flows from Central America and the formation of Central American youth into organized criminal gangs. With the passage of the ADAA in 1988, Congress began limiting the forms of relief available to non-citizens convicted of crimes involving moral turpitude.¹⁸³ The ADAA also created the concept of aggravated felonies, or serious crimes including murder and offenses previously designated as CMTs.¹⁸⁴ With the passage of IMMACT,¹⁸⁵ immigrants convicted of an offense for which a sentence of five years or more could be imposed were deportable as aggravated felons. The Act also eliminated the power of the immigration judge to recommend that the offense not trigger deportation.¹⁸⁶ The Immigration and Technical Corrections Act of 1994 further expanded the number of offenses for which an alien would be deportable.¹⁸⁷

IIRIRA¹⁸⁸ dramatically broadened categories of deportable aliens and was the final step in eliminating judicial discretion in many cases. The Act further expanded the definition of an aggravated felony, created mandatory detention provisions for immigrants fighting deportation based on an aggravated felony conviction,¹⁸⁹ and severely curtailed or eliminated immigration relief available to aggravated felons and those who falsely claimed U.S. citizenship. The expanded list of aggravated felonies under IIRIRA included many non-violent offenses and many crimes considered misdemeanors under local laws. In addition to widening the scope of deportable offenses, IIRIRA also mandated that suspended sentences and convictions that are expunged through diversion or other means of satisfactory compliance with the criminal court's orders would still render an alien deportable.

There is very little room for discretionary relief for an alien convicted of an aggravated felony, a definition under which many gang-related crimes fall. Furthermore, because aliens in removal, unlike their counterparts in criminal court, are not guaranteed an attorney, many aliens are adjudicated by an immigration judge without counsel while still serving time for a criminal conviction. Unfortunately, many criminal attorneys are not

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Public Law No. 101-649, 104 Stat. 4978 (1990).

¹⁸⁶ HUMAN RIGHTS WATCH

¹⁸⁷ *Id.*

¹⁸⁸ 8 U.S.C. § 1101(a)(43).

¹⁸⁹ *See* 8 U.S.C. § 236. The "no bond" provision in 8 U.S.C. § 236(c) was later deemed unconstitutional by the U.S. Court of Appeals for the Ninth Circuit. *See Kim v. Ziglar*, 276 F.3d 523 (9th Cir. 2002).

well-versed in immigration law, and sometimes advise their clients to plea to crimes that have adverse immigration consequences. Despite judicial limitations on retroactivity and indefinite detention contained in IIRIRA,¹⁹⁰ the law caused and continues to cause massive and mandatory deportation of aliens convicted of certain crimes in the United States, regardless of their duration of residence, lack of ties to the home country, evidence of rehabilitation, or any other mitigating factor that previously would have been taken into account to provide relief from deportation.

The retroactive nature of the criminal provisions in the Immigration and Nationality Act (INA) has negative secondary effects on aliens' interaction with the U.S. government. Because many long-term U.S. residents were convicted of crimes before the regulations were passed, or they were not placed into removal proceedings while in criminal detention, many inadmissible or removable aliens currently reside in the United States. Because DHS and the former INS have made it clear that removable aliens who apply for immigration benefits will be deported, current non-citizen U.S. residents have a disincentive to continue abiding by immigration laws. Rather than take steps to naturalize or renew green-cards or work permits, which may subject them to removal proceedings, it is likely that many otherwise law-abiding and rehabilitated long term residents with past convictions choose to live under the radar. It is also likely that this has had a chilling effect on immigrants with minor past convictions, who incorrectly believe they are no longer admissible and will face deportation should they come forward.

Also notable is the negative impact of the unequal treatment of asylum seekers from Cold War allied countries compared to other countries. Throughout the eighties as the major waves of Guatemalans and Salvadorans fled their home countries to seek protection in the United States, the Reagan and Bush administrations imposed their political agenda upon asylum adjudicators.¹⁹¹ This led to a significantly higher grant rate, and thus pathway to citizenship, for asylum seekers from Nicaragua and Soviet bloc countries than from Guatemala or El Salvador. Guatemalans now have a significantly lower rate of naturalization than Nicaraguans and other foreign born residents. Because U.S. citizenship is the only guaranteed protection from deportation, Guatemalans and Salvadorans are much more likely to have their family structure disrupted by criminal deportations than other foreign born populations who have the opportunity to naturalize.

For Central American gang members, former gang members, or suspected gang members with aggravated felonies, making a successful application for relief from deportation is nearly impossible. While this may be the intended consequence of immigration provisions in anti-gang legislation and criminal provisions in the INA, it is important to recall that the nebulous definition of gang membership and the conflation of Latino cultural symbols with gang symbols. may result in gang enhancements being

¹⁹⁰ See *INS v. St. Cyr*, 533 U.S. 289 (2001) (creating an exception to inadmissibility for aliens who had pled guilty to criminal charges in reliance on previous immigration provisions that would not have made the offense deportable); see also *Zadvydas v. Davis*, 533 U.S. 678 at 689 (2001) (holding that “the statute, read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States” and “does not permit indefinite detention.”)

¹⁹¹ For a general account of this history, see See THOMAS ALEXANDER ALEINIKOFF, DAVID A. MARIN & HIROSHI MOTOMURA, *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 1029-30 (West, 4th ed. 1998).

incorrectly applied to the relatively minor crimes of immigrants with dubious gang affiliation, thus rendering them deportable.

Post 9/11 Anti-Gang Initiatives: Using Immigration Laws in the Fight against Gangs

Though tough immigration and criminal law provisions were passed by Congress in the nineties, federal law enforcement was not focusing on foreign-born or transnational gang activity in particular until after the attacks of September 11, 2001. Because the attacks were committed by non-citizens inside U.S. borders, the foreign born and those perceived to be foreign born have increasingly become the targets of federal enforcement programs, media attention, and public fear.

The FBI began developing a comprehensive National Gang Strategy in 1993 “to identify the gangs posing the greatest danger to American communities, to combine and coordinate the efforts of local, state, and federal law enforcement in Safe Streets Violent Gang Task Forces throughout the United States, and to utilize the same statutes and intelligence and investigative techniques, previously used against organized crime.”¹⁹² Simultaneously it started the National Major Gang Taskforce¹⁹³ to help integrate cooperation between law enforcement agencies. The ATF took the lead on some multi-agency efforts such as the Regional Area Gang Enforcement Task Force and regional gun violence programs. Most of these early efforts were focused on an “enterprise theory” of investigation and sought to prosecute gang members under U.S. Code, Titles 18 and 21, including violations such as racketeering, drug conspiracy, and firearms violations. During the nineties, no particular emphasis was placed on foreign born gang members, and national efforts were focused mainly on providing support for local initiatives. For the most part, immigration law remained the province of civil regulatory bodies like the former INS and was not used in conjunction with criminal enforcement on a systemic level.

After the tragic events of September 11, 2001, many local gang task forces began dismantling or transferring resources toward anti-terrorism units. The federal government dedicated many resources to better tracking the movement of immigrants into, out of, and around the country, and to expediting the removal of immigrants convicted of deportable offenses. While many gang members and alleged gang members were deported as part of these general efforts, federal law enforcement had not yet explicitly targeted immigrant gangs for prosecution and deportation.

On May 10, 2004, a member of MS-13 attacked a member of a rival gang with a machete in Fairfax County, Virginia¹⁹⁴, which is also home to many politicians and directly adjacent to Washington, DC. Shortly thereafter, the MS-13 National Gang Task Force (NGTF) was established, which emphasizes “national-level takedowns of MS-13 and 18th

¹⁹² Statement of Chris Swecker, Assistant Director, Criminal Investigative Division, Fed. Bureau of Investigation, Before the Subcommittee on the Western Hemisphere House International Relations Committee (Apr. 20, 2005) available at <http://www.fbi.gov/congress/congress05/swecker042005.htm>.; NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE.

¹⁹³ NATIONAL MAJOR GANG TASKFORCE, NMGTF/TIMELINE, available at <http://www.nmgtf.org/history/>.

¹⁹⁴ Maria Glod & Jerry Markon, *Gang Violence Worries N.Va Officials*, WASH. POST, May 23, 2004 at C6.

Street Gang.”¹⁹⁵ In 2005, several teenagers also believed to be part of MS-13 stabbed another youth in a Target store in Wheaton, MD, another DC suburb.¹⁹⁶ Sensationalist national media accounts began to focus on MS-13, calling it the “most dangerous gang in America.”¹⁹⁷ Faced with the specter of gang violence in their own backyards and influenced by the anti-immigrant sentiments created by 9/11, Congress appropriated millions of dollars and extensive law enforcement resources to finding and deporting immigrant gang members. In 2005, the NGTF established a National Gang Intelligence Center meant to serve as a national, multi-agency gang intelligence integration project.

Although some localities have reported a slight increase in violent crime in the last two years, crime rates in the United States are still near a thirty-year low.¹⁹⁸ Of that small rise in crime, there is no dependable evidence tending to show that a majority or large portion is gang-related, or that if gangs are involved that those gangs are likely to be Latino gangs. In fact, most law enforcement agencies reported zero youth gang homicides between 2002 and 2004.¹⁹⁹ Yet a small number of ugly and heavily-reported crimes²⁰⁰ connected with organizations like MS-13, along with unsubstantiated fears of gang collaboration with terrorists, have provided fodder for a large amount of attention given to gang violence, particularly Latino gangs. Though the FBI labels MS-13 “ultra violent,” it acknowledges that due in part to a lack of “standard reporting criteria for the identification of gang members...and the transient nature of gang members, the actual number of MS-13 members in the United States is difficult to determine.”²⁰¹

OPERATION COMMUNITY SHIELD:

Operation Community Shield, launched in February 2005, is ICE’s comprehensive nationwide law enforcement initiative targeting violent criminal street gangs. Initially, the stated focus of the effort was MS-13, and was based on a 2003 ICE assessment of violent street gang activity in the United States. The ICE assessment identified MS-13 as a street gang “having a presence across the United States, a significant foreign-born membership and history of violence.”²⁰² In May 2005, however, ICE expanded Operation Community Shield to include all “criminal street gangs that pose a threat to national security and public safety.” As of DHS’ most recent press release on Operation Community Shield, individuals

¹⁹⁵ GOING GLOBAL ON GANGS, FED. BUREAU OF INVESTIGATION, (Oct. 10, 2007) *available at* <http://www.fbi.gov/page2/oct07/ms13tag101007.htm>.

¹⁹⁶ Ernesto Londono, *Suspected Members of MS-13 Charged in MD Brothel Robbery*, WASH. POST, Nov. 16, 2005 at B4.

¹⁹⁷ Andrew Romano, *MS-13: The Most Dangerous Gang in America*, NEWSWEEK, Mar. 28, 2005.

¹⁹⁸ GREENE & PRANIS, at 13.

¹⁹⁹ *Id.* at 57.

²⁰⁰ *See, e.g.*, accounts of the highly publicized murder of Brenda Paz, an MS-13 informant, in 2003 in Northern Virginia; *c.f.* Dan Rather, *The Fight Against MS-13*, 60 MINUTES, Dec. 14, 2005, *available at* <http://www.cbsnews.com/stories/2005/12/01/60minutes/main1090941.shtml>; Sam Dealy, *America’s Most Vicious Gang : Waging War on MS-13*, READER’S DIG., Jan. 2006, *available at* <http://www.rd.com/content/americas-most-vicious-gang/2/>; Jamie Stockwell, *In MS-13, A Culture of Brutality and Begging*, WASH. POST, May 2, 2005, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/01/AR2005050100814.html>.

²⁰¹ *See* Statement of Chris Swecker.

²⁰² *Gangs and Crime in Latin America: Hearing before the Subcomm. on the Western Hemisphere of the H. Comm. on Int’l Relations*, 109th Cong. 96 (2005) (testimony of John P. Torres, Deputy Assistant Director, Human Smuggling and Public Safety Division, U.S. DHS, April 20, 2005).

from over 700 gangs are claimed to have been netted in Operation raids. At the same time, ICE asserts that the focus of Operation Community Shield is on “foreign-born” gangs in particular, noting that the U.S. government believes about ninety percent of MS-13 to be foreign born and thus potentially subject to deportation.²⁰³

The Operation consists of a partnership between ICE and other federal, state and local law enforcement in an effort to combine resources in combating gangs. The Operation does the following:

- Partners with federal, state and local law enforcement agencies, in the United States and abroad, to develop a comprehensive and integrated approach in conducting criminal investigations and other law enforcement operations against violent street gangs and others who pose a threat to public safety.
- Identifies violent street gangs and develops intelligence on their membership, associates, criminal activities and international movements.
- Deters, disrupts and dismantles gang operations by tracing and seizing cash, weapons and other assets derived from criminal activities.
- Seeks prosecution and/or removal of alien gang members from the United States.
- Works closely with our attaché offices throughout Latin America and foreign law enforcement counterparts in gathering intelligence, sharing information and conducting coordinated enforcement operations.²⁰⁴
- Conducts outreach efforts to increase public awareness about the fight against violent street gangs.

Since the inception of Operation Community Shield, ICE claims to have arrested a total of 7,655 street gang members and associates, representing over 700 different gangs.²⁰⁵ While the majority of those arrested are of Mexican and Central American descent, targeted individuals have also come from Somalia, Iraq, Jamaica, and Vietnam, among other countries. These apprehensions include 2,444 criminal arrests and 5,211 administrative immigration arrests. One hundred and seven of those arrested, according to DHS were gang leaders. More than 2,555 of the arrested suspects had violent criminal

²⁰³ See *Operation Community Shield; Chertoff, Senior Officials Promote Achievements*, NEWS BLAZE, 2008 available at <http://newsblaze.com/story/20060312145111nnnn.nb/topstory.html> (containing transcript of press conference by ICE, DHS, and Dallas police regarding recent Operation Community Shield raids).

²⁰⁴ This is part of a larger trend toward cooperation with foreign law enforcement in the fight against gangs. In February 2007, the Attorney General announced a joint initiative with the government of El Salvador to target regional gangs with a presence in the United States. The initiative, led by the FBI and the Department of State, provides assistance to El Salvador’s civilian police (National Civilian Police, or PNC). As part of the initiative, a Transnational Anti-Gang Unit (TAG) unit was created to pursue and prosecute gang members. The TAG initiative stations two FBI agents permanently in San Salvador, El Salvador, to work alongside PNC in identifying and tracking gang members in El Salvador, “gleaning as much information as possible about each member; their tattoos, their street names, their associates, their families, and their typical hideouts and hangouts in the U.S. and Central America” and shared directly with U.S. law enforcement.²⁰⁴ In addition to providing operational assistance through the TAG program, the Central American Fingerprint Exploitation Initiative (CAFE) was created in May 2006. Under the CAFE Initiative, criminal fingerprint and other biometric records from Mexico, El Salvador, Honduras, Guatemala, and Belize are supposed to be entered into the FBI’s fingerprint databases, which can then be searched by U.S. law enforcement. The DOJ also sponsors anti-gang training for Central American law enforcement officials.

²⁰⁵ U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, PUBLIC INFORMATION: OPERATION COMMUNITY SHIELD available at <http://www.ice.gov/pi/investigations/comshield/>.

histories. Through this initiative, ICE has also seized and removed from the streets 287 firearms.

Under Operation Community Shield, ICE has received thousands of names of known and suspected gang members from federal, state and local law enforcement agencies, as well as from foreign governments. This information is compared with ICE's immigration and customs databases to identify and prioritize gang suspects who may be subject to ICE's legal jurisdiction—in other words, those who are deportable. The ICE Law Enforcement Support Center (LESC) checks MS-13 gang member data provided by state and local law enforcement partners and U.S. Bureau of Prisons records against DHS and other databases to identify and locate gang members.

LESC in Vermont plays a central role in this effort by running data on gang suspects provided by other law enforcement agencies against its immigration databases to determine whether these individuals are subject to ICE's federal immigration authority. This data is then shared with ICE field offices and law enforcement partners to compile target lists.²⁰⁶ ICE also collaborates with foreign governments in this effort, claiming a “close working relationship with Mexico, Honduras, El Salvador and Guatemala in the exchange of intelligence pertaining to MS-13 and other gang activity.”²⁰⁷

Press releases from ICE, DHS, FBI, and other federal agencies following raids performed pursuant to Operation Community Shield stress the violent, criminal nature of those arrested. In a 2006 press conference, DHS Secretary Michael Chertoff said, “More than 260 of the 375 individuals arrested in the latest action have past criminal records, most of them violent. ICE agents arrested seventy-three of the individuals on new criminal charges ranging from drug and firearms violations to charges of re-entering the country after deportation. The rest have been accused of administrative immigration violations and placed into deportation proceedings.”²⁰⁸ In the same press conference, Julie Myers, the Assistant Secretary for ICE, called gang members “the worst of the worst.”²⁰⁹

Officials also publicly emphasize that ICE works collaboratively with local law enforcement, perhaps responding to the concerns some police chiefs and municipalities have voiced regarding local enforcement of federal immigration law. Chertoff has stated, “Law enforcement partnerships at the local level are critical to the success of Operation Community Shield. Recent collaboration in Dallas was representative of joint operations nationwide. In Dallas, ICE received data from the Dallas Police Department about local violent gang members. ICE conducted further investigation to determine if any were subject to arrest for federal customs or immigration violations. After identifying targets

²⁰⁶ *Id.*

²⁰⁷ *Immigration and the Alien Gang Epidemic: Problems and Solutions: Hearing before the Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on the Judiciary 109th Cong. 8 (2005)* (testimony of Michael J. Garcia, Assistant Secretary of U.S. Immigration and Customs Enforcement, U.S. DHS, Apr. 13, 2005).

²⁰⁸ Press Release, U.S. Department of Homeland Security, ICE Arrests 375 Gang Members and Associates in Two-Week Enforcement Action (Mar. 10, 2006) available at http://www.dhs.gov/xnews/releases/press_release_0878.shtm.

²⁰⁹ *Id.*

subject to ICE authorities, ICE and Dallas police conducted a joint operation that netted 44 gang members.”²¹⁰

CRITICISM OF OPERATION COMMUNITY SHIELD

Despite ICE and DHS’ intent to focus on MS-13, and violent street gang members in particular, 5,211 out of 7,655 individuals arrested under Operation Community Shield have been charged only with administrative immigration violations, and not with any criminal charges. Furthermore, according to the May 2007 United Nations Office on Drugs and Crime report, “Crime and Development in Central American: Caught in the Crossfire,” thirty-seven percent of criminal deportees in 2005 were convicted of drug offenses, of which half of these offenses were for possession, not for sale. Drug and immigration offenses accounted for fifty-six percent of U.S. criminal deportees. Just over ten percent were convicted of assault, three percent for burglary, and four percent for larceny. Murders did not register in the top ten deportable crimes. Therefore the most of those arrested in Operation Community Shield are charged with no crime, and of those who are found guilty of criminal activity the largest proportion are deported for nonviolent crimes like possession of drugs and immigration violations such as re-entry after deportation or failure to depart after an order of deportation.

Furthermore, of the criminal charges brought as part of the Operation, many of those arrested belong not to large, well organized, well connected transnational gangs, but rather local street crews.²¹¹ ICE’s Operation Community Shield public website mentions that not only gang members, but also “associates” of gang members and those with “ties to” gang members, are arrested and targeted in the Operation. A recent ICE raid in Nassau, New York drew criticism from local law enforcement when 186 individuals were arrested, twenty-eight of whom were identified as gang members, and the remaining 129 labeled as “associates of gang members.” ICE agent Peter J. Smith, when asked how the agency defined “associates of gang members,” replied, “[i]f you’re hanging with gang members and you’re eating with gang members, there’s an affiliation there.”²¹² The lack of a reliable, operable definition of who is a gang member, and the inability or unwillingness of ICE to focus on the most dangerous gang members in carrying out raids have led to an outcry by community members and law enforcement in many of the areas where Operation Community Shield raids are carried out.²¹³

Social perceptions that view markers of gang membership and racial and ethnic characteristics as interchangeable may lead to erroneous applications of gang enhancements in criminal proceedings and erroneous identification of immigrants as gang members by immigration and local authorities. “While many [juvenile defendants] have committed a crime or conspired to commit a crime, these young people are being sentenced with gang enhancements simply for having grown up in a gang-identified neighborhood, given a nickname by friends or family, having formerly been involved in the gang, or being tenuously connected to the gang.” Although youth survey data shows that whites make up

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Nina Bernstein, *Officials Protest Antigang Raids Focused on Immigrants*, N.Y. TIMES, Oct. 2, 2007.

²¹³ Nina Bernstein, *Immigrant Workers Caught in Net Cast for Gangs*, N.Y. TIMES, Nov. 25, 2007.

the largest group of adolescent gang members,²¹⁴ “77% of the individuals that received mandatory sentences for gang crimes were African American or Latino.” For immigrant youth, gang-enhanced criminal sentences may have immigration consequences, leading to deportation and family separation. The lack of linguistic and culturally-appropriate services in the juvenile and criminal courts, coupled with an alarming lack of knowledge and incomplete understanding by defense attorneys and their clients regarding the immigration consequences of certain pleas and convictions, makes spurious gang identification of Latino immigrant youth especially dangerous.

Urban Latino street culture is characterized by the same symbols that both federal and local law enforcement officers use to identify defendants as gang members in the courtroom.²¹⁵ Specific slang, nicknames, neighborhood affiliations, and specific modes of dress widely employed in low-income minority neighborhoods are cited by law enforcement as proof of gang membership or affiliation. Often, minority youth in gang-intensive areas utilize gang paraphernalia to blend in with others, for self-protection, or because it is popular amongst their peers.²¹⁶ Merely associating with a gang also carries potentially devastating legal consequences. However, unaffiliated youth in gang-infested neighborhoods likely have family members or childhood friends who are gang members,²¹⁷ and it is unrealistic to expect youth to disassociate themselves from their families or community. Because law enforcement officers in states with gang databases use these same characteristics to identify and document suspected gang members, these databases are often unreliable indicators of actual criminal or gang activity.

Community groups, some local police, immigrant advocacy groups, and policy researchers from the left and the right have voiced a number of concerns about the implementation of Operation Community Shield. Critics at the Heritage Foundation find fault with increasing federalization of gang laws, finding risk of overbreadth, vagueness, and problems presented by the Commerce Clause.²¹⁸ They point to the fact that local police and authorities are better positioned to respond to the localized nature of gangs, and that federalizing these basic local functions threatens federalism, drawing funds away from true federal issues to problems already being tackled by local actors.

The Justice Policy Institute has criticized the overblown government and public fear of gangs, noting to a House Judiciary hearing on gang violence that “Youth crime in the United States remains near the lowest levels seen in the past three decades, yet public concern and media coverage of gang activity has skyrocketed since 2000.”²¹⁹ The Institute also points out that gang membership itself is lower in the United States than it was ten years ago, with no evidence that gang activity is growing, falling from 850,000 youth gang

²¹⁴ GREENE & PRANIS at 6.

²¹⁵ *Id.* at 26.

²¹⁶ *Id.* at 18.

²¹⁷ Interview with Luis Cardona.

²¹⁸ ERICA LITTLE & BRIAN WALSH, THE HERITAGE FOUNDATION, FEDERALIZING ‘GANG CRIME’ REMAINS COUNTER-PRODUCTIVE AND DANGEROUS (June 5, 2007), available at <http://www.heritage.org/Research/Crime/wm1486.cfm>

²¹⁹ *Gang Crime Prevention and the Need to Foster Innovative Solutions at the Federal Level: Hearing before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary 110th Cong.* (2007) (testimony of Kevin Pranis, Researcher, Justice Policy Institute, Oct. 2, 2007) available at <http://judiciary.house.gov/media/pdfs/Pranis071002.pdf>.

members in 1996 to 760,000 in 2004. The number of jurisdictions reporting gang problems has also dropped substantially.²²⁰ Advocates also note an inconsistent or even inverse relationship between reported violent crime levels in particular jurisdictions and the level of gang membership, calling into question whether gang activity is positively correlated with a rise in violent crime, despite exceptional and sensationalistic media portrayals of a select few extremely violent attacks. Some assert that heavy handed law enforcement tactics can counter-productively increase cohesion and risk-taking in existing gangs and make it harder for those who wish to leave to do so.²²¹ Some of the ineffectiveness of these techniques may be explained by the definitional and evidentiary problems with defining gangs, and the tendency of some law enforcement to confuse minority cultural indicators such as dress, neighborhood, family and associates, and other non-criminal markers with gang membership.

Immigrant advocates like the National Immigration Project oppose dragnet enforcement polices like Community Shield for several reasons. The abbreviated removal process used to deport individuals forecloses meaningful assessment of their eligibility for relief and the opportunity to effectively test their identification as gang members. Without procedural safeguards, law enforcement tends to rely too heavily on racial profiling in identifying targets. Deportation also tears apart family structures and removes protective factors from at-risk minors, and disrupts evidence-tested community efforts at rehabilitation and prevention. Community safety is threatened when local police are turned into immigration agents, creating distrust between police and communities and diverting needed resources from better public safety investments. Finally, deportation-led strategies like Community Shield endanger legitimate asylum seekers and victims fleeing gang violence and repressive police practices in their home countries.

While no one is likely to dispute the desirability of disrupting violent criminal gangs, the effects of Operation Community Shield actually undermine effective anti-gang law enforcement programs. Some dangerous individuals have been arrested as a result of the Operation; however, many others deported are innocent of gang affiliation, criminal activity, or danger to the public, and many have been legal permanent residents with strong ties to the community. In addition to netting innocents, Operation Community Shield may be functioning against its own stated purposes by entrenching and consolidating gang activity and identity among individuals who are likely to be temporary members of the gang, criminalizing youth who may be responsive to rehabilitation efforts, disrupting family ties and increasing the likelihood that youth will continue to turn to gangs for a sense of identity and safety.

Moreover, such tactics further alienate the immigrant community from law enforcement, leading to less on the ground intelligence and further entrenchment of sub-legal protection schemes in lieu of a productive relationship with police. As local police work to develop relationships with immigrant communities to gain intelligence about gangs

²²⁰ *Id.*

²²¹ *Gang Crime Prevention and the Need to Foster Innovative Solutions at the Federal Level: Hearing before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary 110th Cong. (2007) (testimony of Kevin Pranis, Researcher, Justice Policy Institute, Oct. 2, 2007) available at <http://judiciary.house.gov/media/pdfs/Pranis071002.pdf>. Make hearing testimony common format – check blue book.*

and to reassure witnesses afraid of testifying in gang cases, the alienation and fear created by indiscriminate immigration raids is undoing this vital anti-gang work.

LOCAL POLICE ENFORCEMENT OF FEDERAL IMMIGRATION LAW

Apart from joint initiatives like Operation Community Shield, gang violence has been used as a basis for expanding use of local police to enforce civil immigration law, a pattern which, while increasing in frequency, has drawn considerable criticism from sources as diverse as advocacy groups like the National Council of La Raza and the International Police Chiefs Association.²²²

Traditionally, immigration law has been civil and regulatory in nature, enforced by agents trained in complex immigration law at DHS through the Bureau of Citizenship and Immigration Services and ICE. Local police did not have the authority to make arrests based on civil immigration violations. In 1974, the INS concluded that local police lacked authority to arrest a person subject only to an administrative warrant of deportation. In the mid-1980s, INS sought to revisit the issue, but in 1989 the DOJ Office of Legal Counsel (OLC) concluded in an opinion memorandum that police were lawfully permitted to detain and arrest immigrants only for criminal violations of the Immigration and Naturalization Act. However, starting with legislative changes in 1996, continuing as harsh anti-immigrant legislation passed in some states, and accelerating after the attacks of September 11, 2001, local police in increasing numbers of states and municipalities are being asked to make arrests based on suspected civil immigration violations alone, placing individual officers on shaky legal ground. Because immigration law is complex and constantly changing, and because it is extremely difficult for police to enforce without resorting to racial profiling and other unconstitutional methods or without alienating a large pool of victims and witnesses to crimes, many localities have resisted local police conscription to enforce immigration law, fearing for liability and loss of relationships with the community.

AEDPA and IIRIRA, (discussed above), also made explicit that local law enforcement officials had jurisdiction to make arrests based on *criminal* immigration provisions (such as alien smuggling, willful refusal to depart after a final order of deportation, or illegal re-entry). AEDPA permitted a small number of immigration violators to be entered into the National Crime Information Center (NCIC), a centralized database local police can access to determine if a suspect has outstanding warrants. For the first time, some immigration warrants were allowed to be entered into the NCIC—only warrants outstanding for previously deported felons who had illegally re-entered the United States. A 1996 OLC memo reiterated that while local police could enforce criminal immigration law, it had no authority to enforce purely civil immigration statutes (such as overstaying a visa or working without authorization).

²²² See, e.g. INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, ENFORCING IMMIGRATION LAW: THE ROLE OF STATE, TRIBAL, AND LOCAL LAW ENFORCEMENT (undated), available at <http://www.theiacp.org/documents/pdfs/Publications/ImmigrationEnforcementconf.pdf>; NATIONAL COUNCIL OF LA RAZA, STATE AND LOCAL POLICE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS: A TOOLKIT FOR ADVOCATES (Mar. 2006), available at http://www.nclr.org/files/41508_file_State_local_enforcement_toolkit_final.pdf.

IIRIRA made an exception to this rule, allowing for the possibility of the Attorney General delegating some enforcement of civil immigration law to local law enforcement when three factors were present: a “mass influx” of foreign nationals, the situation requires an immediate response from federal government, and federal officials obtain the consent of the state or local supervising department. This consent is obtained through a Memorandum of Understanding process (MOU), a written agreement between the state or locality performing the enforcement and DHS. The process includes safeguards of federal immigration law and does not supersede any state or local law that might prohibit such an arrangement. The formal MOU process, including training of local officers by DHS, is sometimes referred to as the “deputization” of local police to enforce immigration law.

While the legal framework for local enforcement of federal immigration law was laid down in this 1996 legislation, prior to September 11, 2001 no localities had completed an MOU negotiation. In fact, many localities explicitly rejected such an arrangement as disruptive to popular “community policing” efforts underway in cities and states across the country. Because of the need for close working relations with the community, officers engaged in community policing expressed concern about enforcing immigration law, fearing that being vested with the power to make immigration related arrests would alienate the community and keep residents from cooperating out of fear of deportation, particularly in cases of domestic violence.²²³ These concerns are heightened when the type of crime targeted is concentrated in ethnic enclaves, such as race-based gang activity and some types of terrorist activity, where on the ground intelligence from community members is vital to law enforcement efforts. Several high profile incidents of joint law enforcement/INS actions had resulted in serious liability for localities, such as the well known Katy, Texas incident where many U.S. citizens were caught up in an immigration raid, leading to a successful class action judgment against the city of Katy. Fears of racial profiling and counter-productivity led many cities to pass ordinances explicitly prohibiting local enforcement of immigration law.

Despite the successes of community policing in the nineties, September 11 re-oriented DOJ’s policies. Immigration law was deployed more often as a tool of law enforcement. Through the introduction of the National Security Entry/Exit Registration System, civil immigration violations associated with males from Muslim, Arab and South Asian men were entered into the NCIC. From the beginning, some law enforcement officials resisted engagement with immigration law as prohibitive of their efforts to gain counter-terror intelligence.

Despite OLC’s previous decision and Congress’ disavowal of entering civil immigration violations into the NCIC, in December 2001 DOJ began entering immigration warrants for other civil immigration violators such as “absconders” who failed to depart after an order of deportation (even in cases where individuals were deported in absentia and did not know they had to depart). In June 2002, with no action or word from Congress but

²²³ See, e.g. GAIL PENDLETON, AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, LOCAL POLICE ENFORCEMENT OF NATIONAL IMMIGRATION LAWS (undated), available at www.nationalimmigrationproject.org/DVPage/DVSA_CLEAR_Article.doc; see also CRAIG E. FERRELL, JR., ET AL., MAJOR CITIES CHIEFS, M.C.C. IMMIGRATION COMMITTEE RECOMMENDATION FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES (June 2006) available at www.houstontx.gov/police/pdfs/mcc_position.pdf; INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE.

justified by fears of further terrorist attacks, the OLC issued another memo, this one in secret, expressing the opinion that local law enforcement did indeed have jurisdiction and inherent authority to enforce purely civil immigration violations, directly contradicting their 1996 opinion. Such an approach raises serious federal pre-emption issues, given that Congress and Supreme Court decisions have historically found Congress to have plenary power over immigration enforcement to the exclusion of engagement by local law enforcement actors and the legal basis for individual police officers is unclear. Despite the fact that immigration violators were entered into the NCIC on the grounds that the violators represented terror threats, not a single terror suspect has been netted through this process meanwhile, thousands of Latino immigrants with no suspected ties have been.

Though information sharing is an important component of any law enforcement strategy, serious problems remain with the use of the NCIC hits as a justification for arrest. From 2002 to 2004, when police queried names in the NCIC, the officer received erroneous immigration hits in almost 9,000 cases. The rate of false positives was forty-two percent overall, and some individual law enforcement agencies had error rates as high as ninety percent.²²⁴ Even where a warrant indicated in the NCIC does exist, the nature of immigration law is so complicated that a warrant does not necessarily mean that a person is deportable or has no defense to deportation. This is particularly relevant to the Guatemalan population, who (as discussed earlier) may live in mixed-status families and communities, may have unadjudicated asylum claims, may be eligible for adjustment of status through the Nicaraguan Adjustment and Central American Relief Act (NACARA), or may qualify for cancellation of removal based on family ties or long term residence.

Furthermore, it is unclear how police could make arrests based on civil immigration violations without resort to ethnic profiling. It is difficult to imagine a situation which would provide a police officer with the requisite reasonable suspicion to make a stop based on suspected civil violations. If police are encouraged to make stops of Latino or other “foreign-looking” individuals in seeking to capture absconders or other civil violators, ethnic minority citizens and legal residents are also at greater risk for police encounters. The risk of racial profiling presents a major constitutional hurdle to practical implementation of local enforcement initiatives. Coupled with the pre-emption issues discussed above, local enforcement of federal immigration law presents a serious Constitutional crisis. As the lines between civil regulatory law and criminal law become increasingly blurred in the immigration contexts, too much of the responsibility for the lack of clarity falls on the shoulders of individual police and localities open to liability for civil rights abuses, and on immigrants and Latino citizens already alienated from full membership in American society.

The greatest risk attendant to local enforcement of federal immigration law is law enforcement alienation from immigrant communities. The success of community policing initiatives and problem-solving programs like Operation Ceasefire are dependent upon close cooperation with local community members. Many police officers, chiefs, and

²²⁴ HANNAH GLADSTEIN ET AL., MIGRATION POLICY INST., *BLURRING THE LINES: A PROFILE OF STATE AND LOCAL POLICE ENFORCEMENT OF IMMIGRATION LAW USING THE NATIONAL CRIME INFORMATION CENTER DATABASE, 2002-2004*, 3 (2005), available at http://www.migrationpolicy.org/pubs/MPI_report_Blurring_the_Lines_120805.pdf.

organizations have expressed concern about the negative effect local enforcement of immigration law will have on the effectiveness of their work. One example among many²²⁵ is Arlington County (VA) Police Department, Spokesman Matt Martin, who stated, “[A] very likely outcome of [local enforcement of immigration laws is] an entire segment of the population shutting down because they are afraid of you. And what you create is a group of people who’s ripe for additional victimization.”²²⁶ Though deportation-driven gang policies may meet short-term goals of displacing some gang members from individual localities, the disruption it produces to effective local policing is likely to exacerbate the gang problem in the long term.

In the Post-IIRIRA world, it is exceedingly difficult for those at the highest risk of joining a gang to achieve positive social integration. Many high-risk youth are members of families in which one or both parents have been deported. Many are forever ineligible for any legal status because of past transgressions. Although the impetus for much of the anti-immigrant legislation has been a perceived rise in crime committed by immigrants, most of the leading data on criminality would predict that by further marginalizing high-risk groups, such legislation will likely lead to increased offending.

The research underlying successful anti-gang initiatives like Operation Ceasefire has identified specific protective factors that keep youth from joining gangs, and risk factors which increase their vulnerability to gang recruitment and make it more difficult to leave if they do join. As local laws are increasingly being passed that base social services upon legal status, many are further excluded from mainstream life. Gang reduction programs like Operation Ceasefire are rendered ineffective when gang members amenable to rehabilitation are excluded from requisite publicly-provided rehabilitative services based on immigration status. Fear of adverse immigration consequences including deportation isolates immigrant families from law enforcement and discourages them from seeking out preventative social services that may help to avert family crisis before a child joins a gang. Without recourse to the police (whom they may fear as agents of immigration authorities), immigrants may feel forced into unofficial protection schemes such as those offered by some gangs. Local law enforcement of immigration provisions, hard suppression methods indiscriminately imposed on immigrant and Latino citizen communities, and deportation-led anti-gang initiatives tend to exacerbate risk factors and minimize protective factors to which at-risk youths are subject.

Leaving aside, for the moment, the question of whether violent transnational criminal gangs indeed represent “one of the greatest threats to the safety and security of all Americans,” it remains clear that the Federal government has chosen an almost entirely suppression-oriented approach to deterring and lessening gang violence. The FBI Gang Taskforce makes no mention of attempts at deterrence, prevention, or rehabilitation. Unfortunately for those who would like to see gang violence lessen, such heavy-handed tactics, without careful targeting and accompanying social programming, is likely to be

²²⁵ See NATIONAL IMMIGRATION FORUM, PROPOSALS TO EXPAND THE IMMIGRATION AUTHORITY TO STATE AND LOCAL POLICE (2006) available at

<http://immigrationforum.org/documents/TheDebate/EnforcementLocalPolice/CLEARHSEAQuotes.pdf>

(providing quotes from law enforcement representatives opposing local enforcement of immigration laws).

²²⁶ David Cho, *Some Laborers Arrested In Va. Face Deportation*, WASH. POST, Oct. 27, 2004 at A1.

money and energy wasted that will only stymie effective gang prevention and reduction initiatives.

Conclusion

As the research presented here demonstrates, many of the most politically popular anti-gang initiatives, both in Guatemala and in the United States, result in the further marginalization of already at-risk youth. These policies do not represent one comprehensive anti-gang policy; rather, the evolution of Central and North American gangs has been affected by a patchwork of policies from the criminal justice, juvenile justice, immigration, and international aid sectors. A lack of reliable data supporting best practices, lack of coordination between agencies dealing with gang issues, and lack of articulation of effective anti-gang strategies all contribute to the haphazard and ineffective legacy of the United States's war on gangs. Rather than learning from the mistakes of the last three decades of failed suppression-led policies, the United States runs the risk of replicating past problems on an even larger scale as it seeks to federalize and internationalize harsh and ineffective policies. Meanwhile, promising programs too often remain under-funded and dismissed as "soft on crime," notwithstanding the effectiveness of smart prevention and intervention and the historically poor outcomes of popular suppression strategies.

In the immigration policy realm, widespread deportations are largely responsible for the transnational nature of gangs like MS-13. Starting with politically-based asylum denials for Guatemalans in the 80's, and enhanced by the harsh provisions of AEDPA and IIRIRA in 1996, many immigrants with no criminal convictions or with minor offenses have been deported back to Guatemala, in some cases after decades of integration into American society including legal residency, citizen family members, property, and economic and business ties. Despite the harsh and draconian sanctions for illegal re-entry, migration and re-migration from Guatemala to the United States is ubiquitous. More recent developments such as local police enforcement of immigration law and indiscriminate raids on immigrant communities have further isolated immigrant families from law enforcement, undermining local police efforts and increasing the likelihood that youth will turn to the protection of gangs in lieu of strong families, legitimate state actors and law enforcement. Current deportation policies place immigrant children at higher risk of joining gangs through exposure to detention, disruption of family ties, community, education, and work life, and an undermining of faith in the criminal justice system. Meanwhile, remigration keeps deportation from providing sustainable reductions in gang affiliated individuals in the United States, and further destabilizes struggling post-war Guatemala, inducing even more migration northward. Use of immigration arrests, which do not require the same procedural safeguards as criminal arrests, invites racial profiling and undermines evidence-based police work, further marginalizing immigrant youth.

Forcibly returning youths, especially gang-affiliated or ex-gang youths, to Guatemala may constitute a violation of U.S. obligations under international law not to return individuals to countries where they are more likely than not to be tortured or persecuted on a protected ground. Upon arrival in Guatemala, youths suspected of being

gang members or criminal deportees are at serious risk of lynchings, extrajudicial killings, and torture by state and non-state actors.

Harsh suppression-led strategies in the criminal and juvenile justice sectors have had similarly perverse consequences despite the best intentions. Targeted suppression supported by strong social services, rehabilitation and prevention efforts by local community actors can be effective, as shown by the success of problem solving programs like Operation Ceasefire. However, cities like Los Angeles, which have relied on suppression as leading strategies in fighting gangs, find that their gang problem has only grown stronger after decades of tough-on-crime approaches. Social science research on juvenile delinquency suggests that gang membership for most youths is a transient phase which does not necessarily entail commission of violent crimes. The ninety percent of gang affiliated youths who can be rehabilitated are subjected to disproportionately harsh treatment under a guilt-by-association theory, paying for the violent crimes committed by a more incorrigible ten percent of violent gang members. Without real alternatives, youths find it difficult to leave gangs behind, and criminal and civil penalties that over-identify gangs with people of color push these youths into a criminal justice system with a dismal recidivism rate. Federalized efforts which attempt to apply a one-size-fits-all strategy to gang activity which is essentially local in nature is ineffective, and the demonizing of gang members only strengthens the “brand name” of gangs like MS-13.

Recommendations

Guatemala:

The recommendations set forth below specifically focus on the ways U.S. policymakers can improve gang reduction efforts in Guatemala. The authors are cognizant that Guatemala suffers from deep-seated corruption and rule-of-law problems that negatively affect gang prevention initiatives and limit the reach of U.S. efforts in this area. These underlying factors are largely for the Guatemalan government to address and are beyond the scope of this set of recommendations.

- ***Focus foreign spending on capacity building and anti-corruption efforts for the National Civil Police.*** U.S. anti-gang resources in Guatemala should focus on fostering leadership and training as well as fighting corruption within the Guatemalan National Civil Police. The current project at the Model Precinct in Villa Nueva, outside Guatemala City, is a step in the right direction, but suffers from a lack of sustainability and replicability. The program is unsustainable because Guatemalans are not being trained to take over leadership once the United States ceases its involvement, and is not replicable because there is a lack of trained personnel able to implement it in other precincts.
- ***Build bridges between the Guatemalan police and community/NGOs.*** Gang prevention efforts and community policing initiatives are severely undermined by the lack of trust between the police and the wider community, as well as between police and Guatemalan NGOs. The U.S. Embassy should take steps to facilitate dialogue among the National Civil Police, community leaders, and NGO representatives by funding a meeting of these groups to discuss

prospects for collaboration in gang reduction strategies. This effort should be followed up with the establishment of a competitive funding stream to support initiatives to bring these diverse sectors together on an ongoing basis, for the purpose of advancing their common goal of gang reduction.

- ***Increase interagency cooperation between the U.S. Department of State and USAID on anti-gang efforts.*** U.S. Embassy and USAID officials in Guatemala should harmonize their efforts to reduce the gang problem. This collaboration could serve as a model for Guatemalan law enforcement and NGOs to emulate, rather than exacerbating the existing lack of trust between these two sectors in Guatemalan society. The Embassy and USAID should co-sponsor initiatives, such as the meeting mentioned above, that foster interagency effectiveness and build interagency expertise.
- ***Provide support to grassroots Guatemalan NGOs.*** The U.S. government should increase support to Guatemalan NGOs carrying out gang prevention activities. This support should focus on strategic planning, program development, financial management, service delivery, and monitoring and evaluation, in order to solidify local NGOs as equal partners in efforts to achieve gang reduction.
- ***Develop and maintain country-specific plans for gang reduction.*** The United States should maintain and support country-specific efforts for gang reduction, as opposed to moving toward a greater regionalization of anti-gang funding and programs in Central America. Although there are common elements to the gang phenomenon across countries, gangs are local problems and should be dealt with as such. Regionally focused efforts that favor expensive technological tools such as multi-country criminal databases offer little support to local police, who often lack the resources and capacity to use them effectively. Intensely localized strategies such as the model police precinct in Villa Nueva should serve as the archetype, instead of broader regional efforts that do not take local context into account.

United States:

In order to combat gang violence on the streets of North America, policy makers must understand the domestic social realities and root causes of the gang phenomenon. Gangs, especially youth gangs from new immigrant communities, have been a part of American culture for at least 150 years. Despite cultural and historical variation over time, the risk and protective factors that affect whether young people join gangs remain relatively constant. Any effective gang reduction strategies must address the social roots of youth violence. One cannot dismiss gangs as a Central American problem. Current and past gangs have originated in U.S. cities, and U.S. policies have fueled the development and growth of gangs. Moreover, many gang members are longtime U.S. residents and even citizens. The United States cannot deport its way out of the MS-13 phenomenon. This report recommends the following approaches:

- ***Enhance public safety by reducing reliance on deportation to combat gangs.*** Policymakers should not view deportation as a tool to reduce gang violence, because

barriers to legalization and indiscriminate enforcement of immigration laws undermine public safety in the long run. Deportation-led strategies exacerbate domestic and international instability by disrupting social networks, destabilizing fragile post-war Central American countries, removing many law-abiding immigrants, and increasing international ties for the small proportion of deportees who are serious criminals. Widespread deportation does nothing to enhance public safety within U.S. borders, as deported immigrants quickly return to the United States. Because re-entry after deportation is a crime, such individuals must exist in the shadows of America, isolated from police, schools, health care, and other institutions responsible for public safety. This cycle creates an underclass which is forced to rely on informal protection networks including gangs, thereby perversely increasing the power of criminal networks and inhibiting law enforcement. Deportation is not a solution to youth violence.

- ***Focus gang reduction strategies on rehabilitation and prevention.*** Increased local and federal spending should be dedicated to gang prevention and rehabilitation programs. Measures such as the Youth PROMISE Act (H.R. 3846) should be adopted. This Act would provide funding, oversight, and research to community organizations using prevention and rehabilitation models that have been proven to be the most successful means to reduce youth delinquency and violence. Effective gang reduction programs focus not on the unachievable goal of eradicating the existence of gangs, but rather on decreasing violent crime and promoting public safety. Because the majority of youths who are involved with gangs can leave behind their gang affiliation—particularly when they are provided thoughtful community intervention—attention and funding must be dedicated to job training and placement, educational and family support, safe recreational activities, and medical and addiction services. In particular, rehabilitative programs must be expanded for current gang members who seek to escape the gang lifestyle. Too often, the youths who most need intervention and community support are excluded from services because of their immigration status or because of present or former gang affiliation.
- ***Compliment rehabilitation and prevention with intelligent suppression.*** Suppression efforts are most effective when: (1) they are targeted at the small proportion of gang-affiliated youth who pose a real threat to public safety; (2) law enforcement officials communicate directly with targeted groups and offer real alternatives to continued criminal behavior; and (3) these efforts benefit from the participation, support, and intelligence of the local community. Anti-gang bills that focus on suppression by increasing and enhancing penalties for gang crimes are redundant and unnecessary. Harsh punitive measures—absent real options for at-risk youth—make it even harder for gang members to leave their gangs, and may perversely increase gang cohesion. Suppressive methods must be tailored to avoid the marginalization of families and youth that contributes to new cycles of violence in already scarred communities. African American and Latino youth disproportionately bear the negative effects of ineffective suppression policies. Suppression should be driven by community needs, and should rely on intelligent data rather than racial or ethnic stereotypes. Moreover, law enforcement officials engaged in suppression efforts should serve to foster trust in the community by working together with prevention and rehabilitation programs as part of a comprehensive solution to youth

- violence.
- ***Develop local solutions to local problems.***
 - The overwhelming majority of gang activity is best characterized as street-level delinquency, and should be dealt with as such. Although increased attention and funding for effective gang reduction policies is needed, federal legislators must take care not to impose one-size-fits-all policies on localities responding to gang violence. Youths are drawn to gangs or resist gangs as a result of common, identifiable social factors. However, responses must be particularized to the needs of each locality. Federalization of gang issues should be limited to setting agendas, providing funding and support to local programs, and developing better research on effective gang policies. Local police and communities know best what will reduce gang violence in their own back yards.
 - Some recent federal legislation inappropriately seeks to impose a broad, common definition of what constitutes a gang. Such definitions suffer from vagueness and overbreadth, targeting youth in poor immigrant and urban communities by conflating ethnic and urban cultural markers with gang affiliation. The use of overbroad definitions for gangs spreads fear of law enforcement among lawful members of the community. Similarly, gang databases—absent serious procedural safeguards—have netted many innocents without reliably identifying true gang members. Gang definitions and databases should not be legislated at the federal level, and serve only to waste precious resources and undermine reliable evidence for effective prosecution.
 - ***Support policies that foster close working relationships between police and local communities, especially in immigrant communities.*** The most successful gang reduction initiatives foster a closer working relationship between police and local communities. For gangs with predominantly immigrant members, police must possess cultural literacy in order to understand and respond to patterns of crime and violence. Local sources in the community are necessary for information gathering and dissemination—such as to help police distinguish between dangerous gang leaders and low-level members who might be responsive to rehabilitation, and to enable police to communicate messages to targeted gangs and members. Local community members are also indispensable as witnesses for any prosecutions. Community policing—which stresses police collaboration with local activists, church leaders, service providers, street workers, schools, and residents in developing community responses to crime—has proved especially effective at reducing gang violence. Local police enforcement of immigration laws is antithetical to community policing and should be abandoned. In order for police to effectively battle gang violence, communities should employ policies that make it safe for immigrants to participate collaboratively with law enforcement, without undue fear of deportation.
 - ***Support continued research into effective gang reduction policies.*** Not enough data is available on the comparative efficacy of law enforcement responses to gang violence. “Tough on crime” measures are politically popular but are not proven to be effective at reducing gang violence. Many promising, comprehensive strategies to

reduce gang violence have been proposed and tested, but efforts to replicate successful projects such as Operation Ceasefire in Boston have been plagued with problems. The federal government should fund further research on promising, evidence-based practices, in order to more conclusively identify those approaches which are most effective and to empirically prove their efficacy in reducing juvenile recidivism and promoting positive outcomes for youth. Before devoting more resources to gang suppression and law enforcement tactics, funding should be targeted to research-based programs operated by agencies in the health and human services sector.

- ***Enact immigration and social reforms that provide opportunities to develop pro-social activities for youth.***
 - To redress the structural problems which lead to widespread gang violence, the U.S. and local governments must enact immigration and social reforms aimed toward developing positive opportunities for youth, especially those in low income, immigrant, or otherwise marginalized communities. Immigrant children face many risk factors, such as poverty, cultural isolation, unmet educational and social needs, and families divided by the dangers of immigration and deportation. These risk factors should be reduced, and protective factors increased, for those children most at risk of joining gangs. Lawmakers should pass legislation increasing public services for at-risk youth, regardless of their immigration status. Policies to provide increased access to education for undocumented children, such as the recently-defeated DREAM Act, should be revived. With policies that reward lawful behavior and encourage integration into American society, these youths could have promising futures in the United States.
 - Policies that lead to a sustainable reduction in gang violence focus on family unification and the maintenance of familial and community bonds. Deportation and other suppression methods work to separate parents from children and increase the likelihood that children will engage in gang activity. Provisions of IIRIRA that removed judicial discretion in deportation proceedings must be amended. This reduced discretion can lead to the removal of long-time lawful residents with strong community ties. The United States must recognize that immigrants frequently contribute positively to society by providing important protective factors to at-risk youth, many of whom are U.S. citizens. Comprehensive immigration reform is necessary to open up pathways to legalization for immigrants and their families. Greater legal security will increase the likelihood that immigrant families collaborate with law enforcement, while at the same time decreasing the likelihood that immigrant youths will turn to gang life.

Methodology Appendix

This project combined a “top down” literature review, legal review, and statistical analysis with “bottom up” fieldwork employing two primary data collection methods:

1. Key informant interviews with representatives of government, non-governmental organizations, international organizations, law enforcement, religious institutions, deportees, and current and former gang members in both the United States and Guatemala.
2. Observation of the deportation process through visits to immigration detention centers in the United States and the Guatemalan Air Force Base receiving planeloads of deportees in Guatemala City.

Literature review

The project began with a thorough review of academic literature, news articles, governmental reports and other pertinent documents contributing to the overall literature on gangs and deportations. This was supplemented by a review of existing law, judicial decisions, and current legislation related to gangs and deportation. The literature review continued throughout the duration of the project. In addition, members of the research team were able to attend multiple presentations at meetings and conferences held in the Washington, DC area dealing with the topic of gangs. The results of the literature review confirmed that relatively little has been written about the issue of gangs and deportation in relation to Guatemala. This was one of the principal reasons the research project focused on Guatemala.

Statistical Analysis

In an effort to better understand migration flows, levels of deportations, grants of asylum, and the overall socio-economic standing of the Guatemalan and Central American population in the United States, the research team conducted original analysis of data from the U.S. Census Bureau and DHS. The data were obtained from the Integrated Public Use Microdata program available through the Minnesota Population Center at the University of Minnesota and the Department of Homeland Security Statistical Yearbooks.

Fieldwork

The objective of the fieldwork was to elicit in-depth qualitative data on a range of issues related to the decisions of Guatemalan youth to migrate to the United States, the nature of gang activity both in the United States and Guatemala, anti-gang law enforcement efforts, and the deportation of Guatemalan youth gang members with an emphasis on the conditions upon return.²²⁷ The team drafted and vetted a discussion guide (See Appendix A) which permitted the researchers to conduct open-ended discussions and to pose probing follow-up questions, while also obtaining similar information from a variety of sources for comparative purposes.

²²⁷ Given that this research project involved human research subjects, the project and research protocol were approved by the Georgetown University Social and Behavioural Research Institutional Review Board.

U.S. Fieldwork

Interviews were conducted with the following groups in the United States:

1. Guatemalans and other Central Americans in deportation proceedings
2. Representatives from the U.S. government from the DOJ, DOS, and DHS.
3. Representatives of the Guatemalan Diplomatic Corps in the United States
4. U.S. Local Law Enforcement officers
5. Local Government officials
6. Community based organizations

The work carried out in Washington, DC, both before and after the fieldwork in Guatemala as described below, was done in collaborations with the CAIR Coalition. CAIR Coalition conducts legal rights education, assessment, and outreach to immigrants in immigration detention settings in Virginia. Members of the research team volunteered with CAIR Coalition to assist in the legal education and assessment. This allowed the team to better understand the realities of deportation as well as to become familiar with the stories of deportees. Prior to the fieldwork mission to Guatemala, the research team spoke with representatives from the Guatemalan Embassy, CAIR Coalition, CASA de Maryland, Ayuda Legal Services, Inter-American Dialogue, Montgomery County Government, Amnesty International, and Washington Office on Latin America to understand the knowledge gaps for the advocacy community in the Washington, DC metropolitan area. Based on these meetings, there was uniform agreement that one of the biggest gaps was the lack of knowledge around the trajectories of deportees after return to their native countries.

Upon returning from Guatemala, the group arranged discussions with several of these organizations to converse about the findings and current issues regarding gangs in the Washington, DC area. Additionally, the research team joined forces with the National Council of La Raza and the National Juvenile Justice Coalition's Gang Task Force to advocate for community-based prevention oriented legislation currently pending in the House of Representatives. The results of these efforts are reflected in this report.

Guatemalan Fieldwork

During a trip to Guatemala in August 2007, the group conducted interviews with the following groups:

1. Guatemalan Deportees
2. Representatives of the Guatemalan Government
3. Representatives of Guatemalan law enforcement
4. Representatives of USAID, DOS, and DHS in Guatemala
5. Local Gang Prevention/Youth/Employment training and placement organizations
6. Representatives of Religious Organizations.

The following chart presents a breakdown of the different interviews conducted:

Category	Number of Interviews
Ex-Gang Members	23
Guatemalan Government (non-law enforcement)	7
Guatemalan Law Enforcement	7
Guatemalan NGOs	9
U.S. Government & Subcontractors in Guatemala	5
Total	51

The research team worked closely with APREDE and Grupo Ceiba, two NGOs working on gang prevention and outreach to youth in Guatemala. These two organizations were instrumental in providing the group access to former gang members who could speak about their experiences. The team also worked with USAID contractors to organize a discussion group with several former gang members, the majority of whom had been deported from the United States to Guatemala. In addition to speaking to former gang members and representatives of NGOs working on the gang issue, the research team spoke with officials from the Guatemalan government, U.S. government, religious organizations, and international organizations involved in the deportation process, the Guatemalan judicial process, and social and prevention programs aimed at reducing the gang problem. Researchers also spoke with members of U.S. and Guatemalan law enforcement focused on the gang issue.