



MEANINGFULLY ADDRESSING GANG VIOLENCE

Legislation like H.R. 3697, the “Criminal Alien Gang Member Removal Act” and S. 1937, the “Border Security and Deferred Action Recipient Relief Act,” are advertised as promoting public safety but are ineffective and further normalize the Trump Administration’s agenda of associating immigrants with criminality. Meaningfully addressing gang violence requires local evidence-based solutions and approaches that do not further target immigrant communities already suffering from racially biased policing practices.

What Are Gang Databases?

Gang databases are gang information tracking systems that are used to track and share alleged gang affiliation and membership. These databases exist at the federal, state, and local levels and depending on the database, can be shared amongst various law enforcement agencies. Some gang databases track individuals convicted of gang-related crimes while others are expansive and include individuals alleged to be gang affiliates or associates.

Generally, individuals are placed into gang databases in four ways: 1) through the course of the investigation of a crime; 2) through a field interview, which is a consensual interaction with a law enforcement agent that does not necessarily involve a stop based on reasonable suspicion; 3) through in-custody interviews; and 4) as a result of gang-related convictions.

The criteria for determining gang affiliation and membership vary by jurisdiction and, at best, are highly indicative of racially biased stereotypes.¹ Classifying individuals as gang affiliates or members is often done with little training or supervision and targets individuals living in low-income neighborhoods with high populations of immigrants and people of color. In addition to these serious concerns, gang databases are riddled with errors² and often do not provide

¹ For example, in California a law enforcement agent can designate an individual as a gang member if two of the following criteria are met: has admitted to being a gang member; has been arrested with known gang members for offenses consistent with gang activity; has been identified as a gang member by a reliable informant/source; has been identified as a gang member by an untested informant; has been seen affiliating with documented gang members; has been seen displaying gang symbols and/or hand signs; has been frequenting gang areas; has been seen wearing gang dress; is known to have gang tattoos; or had an in custody classification interview. See CalGang Policy and Procedures *available at* https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/policy_procedure.pdf.

² In California, a CalGangs audit found 42 individuals in the database supposedly younger than one year of age at the time of entry—28 of whom were entered on the basis of “admitting to being gang members.” See California State Auditor, “The CalGang Criminal Intelligence System,” Report 2015-130 (August 2016) at 3.

individuals with notice or an opportunity to challenge determinations. The serious legal consequences for inclusion in a gang database, particularly in the immigration context, raise urgent due process and constitutional concerns.

What Immigration Consequences Arise from Allegations of Gang Membership or Affiliation?

Most immigration relief is discretionary, meaning ICE, USCIS or an immigration judge can oppose or deny any application for a green card, asylum, or other types of immigration relief. If Congress were to pass laws making gang membership or association a removal ground, many more people, including green card holders, would be subject to removal.

USCIS conducts biometrics processing for many immigration benefit applications and these searches check against several databases that are likely to contain gang-related information. In addition, many USCIS applications contain specific inquiries about gang membership or conduct that would suggest gang membership. Allegations of gang involvement could lead to an individual being found inadmissible under security or terrorism related grounds or their application being denied based on discretion. Individuals who know or suspect that they may be in gang database, even if they are not in fact gang members or associates, are advised not to file affirmative applications for immigration benefits.³

It is not entirely clear how DHS uses information from gang databases to conduct enforcement operations or adjudications of applications for immigration benefits. The Trump Administration has prioritized deporting individuals alleged to be gang affiliated, even though basic due process protections are not in place. The Obama Administration also prioritized enforcement against individuals involved in gang activity, even absent a conviction. For detained individuals, alleged gang affiliation is likely to result in high or no bond.

What Do the Gang Provisions in H.R. 3697 and S. 1937 Do?

Current legislative proposals related to gangs, such as those in HR 3697 and S. 1937, do the following:

- Create new grounds of inadmissibility and deportability for individuals suspected of gang affiliation.⁴
 - Without requiring convictions, so that proving a “reason to believe” an individual is associated with a gang is sufficient for the most serious immigration consequences.
 - Impacting all noncitizens, including legal permanent residents, UACs, and refugees.
 - Encouraging and rewarding racial profiling and other discriminatory police practices impacting low-income communities of color.
- Require no-bond mandatory detention, without exceptions, for individuals suspected of gang affiliation.
- Bar individuals suspected of gang affiliation from other forms of immigration relief, including humanitarian relief.

³ See Practice Advisory, Understanding Allegations of Gang Membership/Affiliation in Immigration Cases, Immigrant Legal Resource Center (April 2017) available at https://www.ilrc.org/sites/default/files/resources/ilrc_gang_advisory-20170509.pdf.

⁴ See also The Immigrant Legal Resource Center (ILRC), National Immigrant Justice Center (NIJC), and National Immigration Project of the National Lawyers' Guild (NIP) Oppose H.R. 3697 available at <http://www.immigrantjustice.org/testimony-ilrc-niic-nip-oppose-hr-3697>.

Why Are These Approaches Problematic?

The above approaches to addressing gang violence are problematic for a host of reasons. First, they sell the notion of promoting public safety but do not actually make communities safer. Demonizing immigrants further isolates communities in need of creative solutions and resources. Local law enforcement, around the country, has acknowledged that heavy-handed gang suppression tactics do not work.⁵

Simple due process protections are not in place for individuals included in gang databases and are not part of gang policing practices. For example, most individuals are not aware of their inclusion and have no meaningful ways to challenge the designations. Young men of color living in poor and over-policed neighborhoods are disproportionately impacted.

Further, since taking office (and even before) Trump has used nativist stereotypes grounded in white supremacy to institute an immigration agenda that targets immigrant communities for over-policing, enforcement, detention and deportation. The Trump Administration's narrative around gangs is but one prong in its efforts to associate immigrant communities with criminality. Congress should not normalize this narrative by adopting gang provisions that continue to demonize and target immigrant communities but rather, ensure our laws comport with due process, constitutional protections, and racial equity.

What Are Solutions that Meaningfully Address Gang Violence?

Gang-related crime should be addressed with local evidence-based solutions that effectively increase public safety. Documented research supports a more collaborative approach that involves law enforcement working with impacted community members to prevent violent gang-related crime.⁶ Two examples of successful solutions are listed below.

Operation Ceasefire started in Boston in the mid-1990s in response to acute gang violence. The program involved local law enforcement working with community leaders to identify and talk with young men at risk of shooting someone or being shot. The program offered these individuals services and other support.⁷ The National Institute of Justice rated Operation Ceasefire as being effective after multiple studies found a “statistically significant decrease in youth homicides, citywide gun assaults, calls for service, and the percentage of recovered handguns that had a fast time-to-crime (the time between a firearm’s first sale at retail and subsequent recovery in a crime).”⁸ A ProPublica article reported that “[i]n Boston, the city that developed Ceasefire, the average monthly number of youth homicides dropped by 63 percent in the two years after it was launched. The U.S. Department of Justice’s “what works” website for crime policy had a green check mark next to Ceasefire, labeling it “effective”—the highest rating and one few programs received.”⁹

⁵ See, e.g. Cure Violence, *Testimonials*, available at <http://cureviolence.org/the-model/testimonials/> (Los Angeles Police Chief Charlie Beck notes: “If you are willing to use resources other than traditional law enforcement—whether interrupters, intervention workers or school-based programs—then you can change a neighborhood.”)

⁶ Department of Justice, Office of Justice Programs, National Institute of Justice, Program Profile: Operation Ceasefire (Boston, Mass.), available at <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=207>.

⁷ Lois Beckett, How the Gun Control Debate Ignores Black Lives, ProPublica, Nov. 24, 2015, available at <https://www.propublica.org/article/how-the-gun-control-debate-ignores-black-lives>.

⁸ Department of Justice, Office of Justice Programs, National Institute of Justice, Program Profile: Operation Ceasefire (Boston, Mass.), available at <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=207>.

⁹ Supra at 8.

Gang Reduction and Youth Development (GRYD) in Los Angeles is a program of the Mayor’s Office established in 2007 and involves working within the community to prevent young people from joining gangs, intervening in cases where youth are already gang-involved to offer them alternatives, and offering many other community-based supports. A key component of GRYD is the “Intervention Incident Response” (IR), a model that involves partnering with the LAPD to reduce the potential for retaliation following an incident and support the families impacted by violence. A 2017 evaluation of GRYD found that when GRYD’s IR was involved in responding to gang homicides and aggravated assaults, there was a 96.2% reduction in gang retaliations.¹⁰

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¹⁰ *Id.*

Case Examples

Daniel Ramirez Medina,¹¹ a DACA recipient, was arrested by U.S. Immigration and Customs Enforcement (ICE) as part of a raid where ICE was looking for his father. Despite the fact that Daniel himself had not been arrested or convicted of a crime, ICE arrested him based on allegations that he was gang-involved. ICE officials said Daniel was a “self-admitted gang member” who was detained as a “risk to public safety.” Daniel’s attorneys denied the gang claim “unequivocally” and said he was “repeatedly pressured by U.S. Immigration and Customs Enforcement agents to falsely admit affiliation.”

Hugo, an immigrant from Guatemala, was detained by local police and handed over to ICE after he left his girlfriend at a bus stop. Hugo had no prior contact with police but was detained for allegedly coming out of a building that was a “known gang headquarters” and because he had the same first name as someone who had supposedly been trying to violently recruit young people into the MS-13 gang. An investigation by his immigration attorney and a gang expert showed that the high school students who frequented that bus stop often took shelter in the 4-plex office building, which housed a Women’s Empowerment Center and had no reports of gang activity or graffiti. Local students knew Hugo and insisted he was not a gang member nor had anyone seen him with gang members. ICE targeted Hugo for deportation based on police reports, although the surveillance of the area lasted less than 7 minutes, no witnesses were spoken to that day or after, and local police did not interview Hugo prior to handing him over to the federal agents. Hugo remains in detention as his case is being appealed.

Carlos came to the U.S. from El Salvador after being attacked by gang members. One night, while walking his girlfriend home, he was attacked by gang members. He went to the hospital and filed a police report, which clearly shows he was not a gang member and rejected violence.¹² About a year later, a police officer stopped Carlos walking down the street with his father and questioned and searched him—solely because Carlos was a young Central American and there is gang activity in the neighborhood he lived in. Two weeks later, ICE agents arrested Carlos and sought to deport him for being an MS-13 gang member. The “evidence” of Carlos’ gang affiliation consisted of Facebook pictures with a musician from El Salvador who was touring in the United States and is not a gang member. Carlos was ordered deported and faces grave danger in El Salvador for fleeing the gangs in his home country and speaking out against them in Spanish-language media in the U.S.

¹¹ For more information about Daniel’s case, see Ariane de Vogue et al., *Immigrant Protected Under ‘Dreamer’ Program Stays in Custody*, CNN, Feb. 17, 2017, available at <http://www.cnn.com/2017/02/14/politics/daniel-ramirez-medina-daca-detention/index.html>.

¹² See Jan Ransom, *Salvadoran teen recounts threats from gangs*, Boston Globe, February 3, 2016, available at <https://www.bostonglobe.com/metro/2016/02/02/salvadoran-teen-recounts-threats-from-gangs/U7SoEXgVVgWgtWP14XeH7J/story.html>.