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**Testimony for the Record
Immigrant Legal Resource Center
Senate Judiciary Hearing**

**“The MS-13 Problem: Investigating Gang Membership, its Nexus to Illegal
Immigration, and Federal Efforts to End the Threat”**

June 21, 2017

The Immigrant Legal Resource Center submits the following testimony for the record for this hearing. Our mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. To that end, we train attorneys, paralegals, and community-based advocates who work with immigrants around the country, inform the media, elected officials, and public to shape effective and just immigration policy and law, and work with grassroots immigrant organizations to promote civic engagement and social change.

Communities across the country are suffering from gang violence. While these communities are eager to find real solutions to combating gang violence, they are being held hostage by failed federal law enforcement strategies. The gang databases that undergird law enforcement’s response to the gang problem are over inclusive and populated with unreliable sources of information. In addition, the federal policy of targeting immigrants as primarily responsible for the gang problem and threatening them with deportation has fractured fragile relationships between local communities and law enforcement further destabilizing public safety for all. If these policies continue, victims and witnesses will be less likely to come forward and cooperate with law enforcement and communities will remain unsafe. Targeting unaccompanied children with accusations of gang involvement is especially damaging. Oftentimes these young people have been victims of gangs and police brutality in their home countries and have made the difficult decision to flee in order to stay out of gangs. They continue to be targets of these gangs even once they arrive to the United States. Criminalizing entire populations is not the answer. Instead, we need community-driven responses working with local policy makers, community organizations and the community at-large to find real solutions, along with investments in programs that are working to prevent violence from taking additional root.

Unreliable Gang Databases

Law enforcement employ overbroad criteria to identify gang members, including alleged indicators of gang involvement such as gang dress or tattoos, frequenting “gang areas,” or being seen with gang members. Based on this and other information, law enforcement often label individuals as being gang-involved and enter their names and information into gang databases. Gang databases are gang information tracking systems that are used by law enforcement to track and share

alleged gang affiliation and membership. Many jurisdictions nationwide maintain gang databases. Depending on the database, a wide variety of state, local, and federal law enforcement authorities may be able to access them and add individuals suspected of gang membership. Some databases only track individuals convicted of gang related crimes, while many others are so expansive that they also include persons alleged to be gang “affiliates” or “associates.”¹

For example, GangNet is gang database software owned by a private entity that contracts with many state governments, federal government agencies, and areas of Canada to operate gang databases.² These databases contain personal information about suspected gang members, including gang allegiance, street address, physical description, identifying marks, tattoos, photographs, and nationality.³ Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, Firearms and Explosives, fourteen states, and the District of Columbia have used GangNet to track gang members and in some cases share information between state, local, and federal agencies—with many of these jurisdictions sharing records in “real time.” Through GangNet, law enforcement agents in one jurisdiction can search gang records from a different participating local database.

Law enforcement in one jurisdiction may have access to a variety of other databases from which to pull gang information, including California’s gang database “CalGangs,” which is one of the largest statewide gang databases in the country,⁴ and the National Crime Information Center (NCIC), which has a gang file that contains information on gangs and their members and is populated by cooperating agencies. NCIC files are some of the most commonly accessed records by police in the field.⁵ Additional databases that may contain gang-related information exist – likely more than are publicly known.

It is unclear to what extent DHS relies upon information in gang databases to allege gang membership for purposes of immigration enforcement, or in individual removal proceedings because this information is not routinely made public. However, it is possible that DHS relies upon its own case management databases to locate individuals with gang ties that may be removable. In addition, at the federal level, agencies may make determinations about gang-involvement when an individual is detained or in the custody of ICE, U.S. Customs and Border Protection (CBP), the Office of Refugee Resettlement (ORR), or other agencies. These in-custody determinations about gang membership or affiliation can also be made by private companies that operate immigration detention centers, frequently with very little training in making such determinations. In post-custody situations, probation or parole officers may also create or possess records that allege gang membership. Despite the lack of oversight or due

¹ See NATIONAL INSTITUTE OF JUSTICE, U.S. DEPARTMENT OF JUSTICE, What is a Gang? Definitions (Oct. 28, 2011), <http://www.nij.gov/topics/crime/gangs/pages/definitions.aspx> (Affiliate” refers to individuals loosely connected to a gang.)

² For more information about GangNet, see <https://www.csra.com/gangnet>. For information about other local databases, see e.g., Michael Garigan & George Rodriguez, *The Street Gangs of Tucson*, 72 THE POLICE CHIEF 1, 1-2 available at <http://www.policechiefmagazine.org/the-street-gangs-of-tucson/> (2005); Danielle Gordon, *The Usual Suspects*, CHI. REPORTER, Sept. 1998, available at <http://www.chicagoreporter.com/usual-suspects/>.

³ See U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, Request for Records Disposition Authority (July 23, 2010), available at http://www.archives.gov/records-mgmt/rca/schedules/Departments/Department-of-homeland-security/rg-0567/n1-567-10-007_sf115.pdf.

⁴ See Joshua D. Wright, *The Constitutional Failure of Gang Databases*, 2 STAN. J. OF C.R. & C.L. 115, 125 (2005) (discussing the breadth of CalGangs gang-related identifications for FY 2001-02).

⁵ See FBI, *About Us: National Crime Information Center*, available at <https://www.fbi.gov/about-us/cjis/ncic>.

process in making determinations about gang membership in the custody context, DHS may nonetheless rely upon detention and custody records to allege that a noncitizen is a gang member.⁶

As discussed above, many of the criteria used to enter individuals into these databases are overbroad leading to the wrongful entry of individuals. Law enforcement often mistakenly label individuals living in neighborhoods where gang members reside as gang members or associates, even if they are not in a gang and have never been convicted of a crime. In California, an audit of CalGangs found that many law enforcement agencies could not substantiate a significant proportion of entries they had put into CalGangs.⁷ In fact, 42 individuals found in CalGang were 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.”⁸ Most individuals never become aware that they are in a database. Once an individual is placed in a gang database, it is incredibly difficult to challenge that determination.

The use of gang databases by law enforcement authorities is problematic for a multitude of other reasons. Many databases have very low thresholds for inclusion, including criteria such as living in a certain neighborhood, appearing in photographs with gang members, talking to gang members, or merely wearing certain colors, which can disproportionately target individuals who live in areas with significant gang activity—often lower socio-economic neighborhoods with high numbers of immigrants.⁹ In some cases, no conviction is necessary for law enforcement authorities to add an individual to a gang database.¹⁰ Further, many gang databases fail to purge names of suspected gang members after the period required by state, local, or federal law.¹¹ Moreover, gang databases generally do not provide individuals with notice or an opportunity to challenge determinations.¹² Gang databases are also regularly riddled with errors as a result of administrative mistakes, lack of appropriate supervision and review, and even police misconduct.¹³ Consequently, information from gang databases is often stale, inconclusive, or inaccurate. And yet, inclusion in gang databases has serious legal repercussions for an individual, including within the immigration context. Indeed, an immigrant suspected of being a gang member faces the possibility of detention, deportation, and permanent separation from family and community in the US.

Federal Response and its Impact on Communities

Local law enforcement has long advocated that local communities should have the power decide what strategies work best for them. In 2012, the Police Executive Research Forum published a

⁶ See, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, Privacy Impact Assessment for the ICEGangs Database (January 15, 2010) at 5 (stating that “ICE agents and support personnel also collect information from prisons about gang members in their populations on an ad hoc basis.”) available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ice_icegangs.pdf.

⁷ California State Auditor, The CalGang Criminal Intelligence System, Report 2015-130 (August 2016) at 2.

⁸ *Id.* at 3.

⁹ See California Gang Node Advisory Committee, Office of the California Attorney General, Policy and Procedures for the CalGang System (Sept. 27, 2007), available at http://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/policy_procedure.pdf; Wright, *supra* note 4, at 121.

¹⁰ *See id.*

¹¹ Wright, *supra* note 4, at 118.

¹² *Id.*

¹³ *Id.* at 120.

report offering findings from meetings with police chiefs and other stakeholders, including mayors, state officials, and immigrant advocacy groups, about the effects federal immigration policy was having on their communities.¹⁴ One of the main reasons local law enforcement agencies cited for wanting to limit their role in enforcing federal immigration laws was the belief that “aggressive enforcement will erode the trust that police have worked to develop with communities, and especially immigrant communities.”¹⁵ Similarly, the International Chiefs of Police issued a statement earlier this year opposing initiatives that would force state and local law enforcement agencies to play a role in immigration enforcement, declaring that such participation is “an inherently local decision that must be made by law enforcement executives, working with their elected officials, community leaders, and citizens.”¹⁶

In the context of combating gangs, the federal government already employs a number of longstanding initiatives and partnerships to address gang violence. For example, the Transnational Anti-Gang Task Force initiative, operated by the Federal Bureau of Investigation, operates in El Salvador, Guatemala, and Honduras and was developed to investigate, disrupt, and dismantle gangs in these countries as well as collect and disseminate intelligence to support U.S.-based investigations.¹⁷ More heavy-handed law enforcement is unnecessary and will only make immigrants, some of whom are themselves victims of gang violence, fearful of trusting or collaborating with law enforcement. In addition, threatening local law enforcement with the loss of critical public safety funding if they do not cooperate with federal immigration enforcement efforts will only make communities less safe.

Unaccompanied Children

Migration from El Salvador, Guatemala and Honduras has risen steadily as violence increases and transnational organized crime has gained a foothold.¹⁸ In fact, children from the Northern Triangle consistently cite gang or cartel violence as a primary motivation for fleeing.¹⁹ Research conducted in El Salvador on child migrants who were returned from Mexico found that 60 percent listed crime, gang threats, and insecurity as a reason for leaving.²⁰ Furthermore, the violence frequently targets youth. Recruitment for gangs begins in adolescence—or younger—

¹⁴ See Police Executive Research Forum, *Voices From Across the Country: Local Law Enforcement Officials Discuss The Challenges of Immigration Enforcement* (2012).

¹⁵ *Id.* at 42.

¹⁶ See International Association of Chiefs of Police, *Statement on Immigration Related Executive Orders* at <https://theiacpblog.org/2017/01/30/iacp-statement-on-immigration-related-executive-orders/> (January 30, 2017).

¹⁷ See Federal Bureau of Investigation, *Gangs* at <https://www.fbi.gov/investigate/violent-crime/gangs>.

¹⁸ See Women’s Refugee Commission, *Myth and Fact on Central American Migration Surge* at <https://www.womensrefugeecommission.org/rights/gbv/resources/1027-myth-and-fact-on-central-american-migration-surge>.

¹⁹ See American Immigration Council, *A Guide to Children Arriving at the Border: Laws, Policies and Responses* (June 2015).

²⁰ *Id.* See also, United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (March 2014), http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf; Elizabeth Kennedy, *No Childhood Here: Why Central American Children Are Fleeing Their Homes*, American Immigration Council (July 1, 2014), <http://www.immigrationpolicy.org/perspectives/no-childhoodhere-why-central-american-children-are-fleeing-their-homes>.

and there are incidents of youth being beaten by police who suspected them of gang membership.²¹

The Trump administration's new executive orders pertaining to unaccompanied minors would penalize families trying to bring children to the U.S., away from the gangs that seek to recruit them in their home countries.²² No data has linked MS-13 to the ORR system or unaccompanied minors. In fact, organizations that work with this system and population have extensive anecdotal information that runs directly contrary to that notion; the reality is that a majority of children coming to the U.S. from Central America are fleeing forced gang recruitment or other harms inflicted by gangs. The children who make it to the United States seeking safety are the ones who so deeply want *not* to be gang-involved that they were willing to risk it all and flee their country to ensure they are not forced into a gang. Some unaccompanied children may also have been forced or coerced into a gang, and then see that their only way out is to flee the country. Blaming the diverse population of unaccompanied children and youth that seek refuge in the United States for gang violence in our communities will only further traumatize these young people, many of whom are fleeing gang violence and threats. Moreover, using heavy-handed federal immigration enforcement will only drive immigrant communities further underground and further reinforce the growth of gangs.

Solutions

Allow Local Communities to Craft Local Solutions

As stated above, local communities are best positioned to decide what type of law enforcement responses work for them. In many communities, prevention and support programs aimed at young people have been successful in stopping gang involvement before it starts. For example, in Maryland, Montgomery County operates the Positive Youth Development/Gang Intervention and Suppression Initiative in collaboration with state agencies and state law enforcement. The program offers job training, out of school programming, mental health services, anti-gang programming and other intervention services to address gang violence before it takes root in communities. More funding should be dedicated to strengthening and supporting these types of programs for young people who are at-risk of gang recruitment.

Maintain the Central American Minors (CAM) Program

In 2014, the Departments of State and Homeland Security established the CAM Program, an in-country refugee/parole program in El Salvador, Guatemala, and Honduras that provides a safe, alternative to the dangerous journey many unaccompanied children are forced to take to flee violence in their home countries. The program allows parents who are lawfully present in the United States to request access to the U.S. Refugee Admissions Program for their children still in one of these three countries. Children who are found ineligible for refugee admission but still at risk of harm may be considered for parole on a case-by-case basis. The aim of the program is to provide certain vulnerable, at-risk children an opportunity to be reunited with parents lawfully resident in the United States. Maintaining this program would keep children out of the hands of gangs in their home countries and allow them to integrate successfully into communities in the U.S.

²¹ Kennedy, 2014, *supra* note 20, p. 4

²² See Immigrant Legal Resource Center, *Unaccompanied Minors & New Executive Orders* (March 2017).