

SWEPT UP IN THE SWEEP: The Impact of Gang Allegations on Immigrant New Yorkers

May 2018



CUNY SCHOOL OF LAW

IMMIGRANT & NON-CITIZEN RIGHTS CLINIC



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**The New York Immigration Coalition (NYIC)
City University of New York (CUNY) School of Law's
Immigrant and Non-Citizen Rights Clinic (INRC)**

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Cover photo: Jocsan Hernandez, left, and other students of Maria Victoria Mendoza class at Brentwood East Middle school share their sections of "Luchando por un Mejor Futuro" (Fighting for a Better Future), a book they created, in Brentwood, N.Y. A group of young immigrants has written the book about how they fled street gangs in Central America in search of a better life in a New York town now plagued by the same gang violence, 14 Jun 2017.
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EXECUTIVE SUMMARY

The United States is no stranger to the use of expansive profiling and discriminatory policing when facing real or perceived threats to national security. Whether it was the casting of Japanese Americans as traitors during World War II, civil rights leaders as radical threats to the country during the civil rights movement, Americans Muslims as national security threats after September 11th, or young black and brown men as criminals through stop-and-frisk policing—the use of fear and stereotypes to justify discriminatory tactics has repeatedly come at the expense of individuals’ constitutional and civil rights. The end result? The dehumanizing of people of color, destabilizing of community structures, chilling of constitutionally protected speech and activity, and ultimately the mass incarceration and deportation of entire communities.

The Trump administration has consistently sought to cast immigrants as threats to the economic and national security of the United States. And thus, MS-13, a gang born in the United States and grown in Central America, has become a favorite foil for President Donald Trump, as well as for Attorney General Jeff Sessions and White House Chief of Staff John Kelly. >>

The Trump administration has taken a specific narrative course to elevate the status of MS-13 to a household name, responsible for invading armies of Central American migrants who are using supposed loopholes in immigration law to sow terror in the quiet American suburbs of Long Island.

The problem is that the threat of MS-13 is purposely exaggerated to manipulate support for unfettered immigration enforcement in the name of gang-policing, without addressing the effectiveness of such policies or their devastating consequences—the large-scale detention and deportation of Latinx individuals. All empirical evidence shows that MS-13 on Long Island lacks basic organization and coordination. And while MS-13 is undoubtedly violent, the gang is not, by far, responsible for the majority of crimes committed on Long Island or, more broadly, in New York.

The Trump administration has created and exploited public fear of MS-13 to further the Administration’s own anti-immigrant agenda. Immigration and Customs Enforcement’s (ICE) “Operation Matador” (Matador) launched in 2017 as part of “Operation Community Shield” specifically seeks to “target violent gang members and their associates.” The most troubling aspect of Matador is that it leads to increased local law enforcement collaboration with ICE. This collaboration exponentially increases the devastating impacts of discriminatory policing by compounding it with immigration enforcement. Allegations of MS-13 affiliation or membership are routinely made by immigration officers, often without credible evidence or the possibility for an individual to challenge the designation. Schools,

By broadly casting immigrant Latinx youth as gang members to be targeted for incarceration and deportation, even the outward pretense of basic rights and due process is pushed to the side.

local police departments, and federal law enforcement agencies all communicate in secrecy and trap Central American migrants in a growing and obscure web of enforcement.

By broadly casting immigrant Latinx youth as gang members to be targeted for incarceration and deportation, even the outward pretense of basic rights and due process is pushed to the side. Gang policing, like unconstitutional stop-and-frisk policies, has disproportionately impacted black and brown men. Notoriously flawed and unregulated, gang databases have minimal inclusion criteria. Simply living in a building or even a neighborhood where there are gang members, wearing certain colors or articles of clothing, or speaking to people law enforcement believe to be gang members can lead to inclusion in a gang database. Often individuals do not know they have been listed in such a database, and no mechanism exists to challenge inclusion. Similar vague criteria, such as the apparel an individual wears or a drawing made in a notebook, are used to label Latinx youth and young men as gang affiliated and then to subsequently justify their arrest, detention and deportation.

The Department of Homeland Security (DHS) does not need to make any showing of gang affiliation to initiate removal proceedings—being undocumented alone is a sufficient basis. Law enforcement agencies have every incentive to target suspected gang affiliates for deportation when they do not have evidence to make a criminal arrest. Further, since immigration proceedings are not subject to the same evidentiary standards as are required in the criminal context, immigration enforcement takes advantage of these lax standards and introduces allegations of gang involvement with little or no evidence. For those swept up by these overbroad allegations, the effect could be the denial of immigration benefits for which they are otherwise eligible, the denial of immigration bond, and ultimately deportation.

To better understand how the Trump administration has used the pretext of gang enforcement to further its anti-immigrant policies, the New York Immigration Coalition (NYIC) and the City University of New York (CUNY) School of Law’s Immigrant and Non-Citizen Rights Clinic (INRC) embarked on a survey (LE Interactions Survey) of legal service providers, community-based organizations, and community members in the New York City metro area, including Long Island, detailing how various immigration agencies have gone beyond the publicized gang sweeps and are in fact using gang allegations broadly in the immigration removal and adjudications process.

METHODOLOGY

To learn more about the trends and experiences regarding gang-related allegations that immigration law practitioners, advocates and community leaders are witnessing against their clients or communities, INRC students conducted the Law Enforcement Interactions Survey¹ (LE Interactions Survey). This report includes the findings of the LE Interactions Survey based on responses received from practicing attorneys, advocates, and community leaders throughout New York State between November 2017 and March 2018.

The LE Interactions Survey questions reflect scenarios and interactions that INRC students identified through observations, casework, discussions with member organizations of the NYIC, and media content. The questions were developed based on preliminary research regarding the intensification of gang-related allegations in immigration enforcement. In designing survey questions, law students engaged in conversations with immigration practitioners encountering gang-related allegations against their clients.

Ultimately, the LE Interactions Survey sought details on how gang allegations are lodged by law enforcement and in schools, and how those interactions are used to allege gang affiliation during immigration matters. The survey further asked questions about the effectiveness of strategies used by practitioners in challenging gang allegations.

The LE Interactions Survey was divided into four parts:

- 1) *Immigrants' Interactions with Law Enforcement and Their Consequences*, focusing on interactions with law enforcement where gang-related allegations or suspicions were raised against immigrants,
- 2) *Questioning by Law Enforcement, DHS, USCIS, and Immigration Judges*, focusing on accusations or questioning about gang affiliation during the course of immigration interviews and proceedings,
- 3) *Use of Gang Allegations in Schools or by School Resource Officers*, focusing on students being questioned about gang affiliation in schools, and
- 4) *Denial of Access to Schools*, focusing on whether students were denied enrollment to schools based on immigration status.

The LE Interactions Survey was limited to the firsthand experiences of practitioners, advocates, and community leaders dealing with gang allegations in the immigration context. Thus, the accounts shared of impacted individuals are filtered through perspectives of self-selected service providers. The survey was conducted through Survey Monkey, with the exception of one phone interview. Of the 43 total survey respondents who participated, some did not complete all survey questions; thus, analysis of the data collected reflects the pool of participating respondents.²

LE Interactions Survey responses were confidential. Compelling quotes were identified for purposes of the report. INRC reached out to individuals to use specific quotes and gave them an opportunity to revise the quote. Some survey respondents asked to maintain anonymity because of pending cases to preserve the confidentiality of their clients. To honor those requests, INRC assigned an LE Interactions Survey, Anonymized Response number to each individualized survey to reflect responses in this report.

KEY FINDINGS

- **78 percent of LE Interactions Survey respondents report interactions that immigrant clients or community members had where law enforcement made gang-related allegations or implied suspicions.** This corroborates media reports of a significant increase in law enforcement patrolling, policing, and arresting Latinx community members related to vague and uncorroborated gang allegations.
- **When asked where interactions connected to gang-related allegations or suspicions occur, half of respondents specify that interactions take place “on the streets” and a third indicate home raids by law enforcement.** Some report interactions occurring in government buildings, in court houses, in criminal custody, during USCIS interviews, while traveling by car or public transport, and even over the phone.
- **Law enforcement relies on questionable methods and unreliable evidence to assert that Latinx individuals are gang members.** Some examples of this include: social media postings, wearing certain kinds of clothes, doodling in school notebooks, being seen with people who are alleged gang members, or living in neighborhoods known to suffer from gang activity. These flawed assertions are then used to make gang-related allegations in “reports” or “internal memoranda” created by immigration enforcement agencies. These reports are generated by information or tips received by federal agencies, local law enforcement, school officers, and/or by relying on gang databases created by using overbroad criteria, and then submitted in immigration matters as evidence of gang affiliation.
- **Gang allegations are seldom corroborated and much of the evidence used to support these allegations would raise reliability issues in an Article III court.** Moreover, as constitutional evidentiary protections are significantly weakened for immigrants who are applying for immigration benefits before USCIS or defending themselves before an Immigration Judge, gang-related allegations in this context are often accepted even where they are unsubstantiated.
- **Data showed a significant correlation between gang-related allegations and eventual arrests.** Many of the respondents reported that their clients who had been questioned about gangs were eventually arrested or, if already arrested, further detained. A majority of these arrests were on immigration charges, some on gang-related criminal charges, and some on misdemeanor charges, felony charges, or infractions unrelated to gang allegations.
- **Identification or allegations of gang membership by DHS may arise in a number of different settings.** Respondents reported allegations arising during agency interviews, in “Requests for Evidence” issued by USCIS, in evidence presented during bond and individual hearings in immigration court, or during custodial and non-custodial interviews by DHS officers.
- **DHS and the Department of Justice have used gang allegations to deny applications for benefits and justify the detention and deportation of Latinx community members.** The allegations often do not include corroborating or verifiable evidence to substantiate the claims made within, but are used to deny applications for benefits, such as applications for asylum or legal permanent residence, and to justify detention and deportation orders by Immigration Judges. Allegations are usually made with very little or no advance notice to the individual and their representative, making the allegations difficult to rebut. DHS agencies use their discretion to deny benefits, a process which shields the decision from judicial scrutiny. Similar allegations are the basis of denials of relief from removal in immigration courts, often leading to deportation.



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Chapter One

How Failed Immigration Policies Contributed to the Growth of MS-13

The Mara Salvatrucha, also known as MS-13, was born in the 1980s in Los Angeles as Salvadorans fled a brutal civil war³ in their home country.⁴ Many children of these new immigrants found a sense of identity in this group, amidst other gangs in the L.A. barrios, as they searched for a sense of purpose and respect in their new home.⁵

At the same time, U.S. law enforcement, at the height of the country's war on drugs, employed tough on crime approaches that resulted in the incarceration of many alleged gang members for minor delinquencies.⁶ California law allowed for minors who were suspected of being gang members to be tried as adults,⁷ while the state's RICO (Racketeer Influenced and Corrupt Organizations) styled laws enhanced sentencing for gang affiliated crimes.⁸ These consequent prolonged incarcerations allowed the gang's networks to foster, grow, and strengthen within prison walls.⁹

In 1996, President Bill Clinton signed into law the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), creating harsh new penalties for immigrants with minor violations of law and laying the foundation for the criminalization of immigrants that continues to this day.¹⁰

The combination of California’s increased enforcement against immigrant gang members and 1996 immigration laws led to mass deportations of suspected or known MS-13 members from the United States.¹¹ In turn, these deportations contributed to gang migration throughout the Western Hemisphere.¹²

Even the U.S. government acknowledges that the expansion of MS-13 is linked to the deportation of its members in the wake of IIRIRA.¹³ As a result of the changes enacted in IIRIRA, over 90 percent of individuals deported on criminal grounds between 2001 and 2010 were returned from the United States to the Northern Triangle of Central America, consisting of El Salvador, Guatemala, and Honduras.¹⁴ The 20,000 individuals deported to El Salvador between 2000 to 2004 alone were sent to a country recovering from a brutal civil war that had no capacity to absorb them.¹⁵ More so, the United States failed to identify which individuals had criminal records and to communicate that information to the returning country.¹⁶ As a result, the United States was not just deporting known MS-13 gang members, but also their brutal gang traditions and practices, to a country ill-equipped to confront either.¹⁷ Ultimately, 84 percent of accused gang members held in Salvadoran jails were released in the early 2000s because of lack of proof of any criminal activity,¹⁸ swelling the gang’s ranks outside prison walls with individuals who had been hardened by years of incarceration.¹⁹



However, “[t]he history of MS-13 shows that where gang members are matters less than the strength of the [government] institutions that are supposed to protect the public from them.”²⁰ MS-13 grew as it did in El Salvador due to the combination of “Mano Dura” (“hard handed”) policies and its failure to support and integrate its deported members back into society.²¹ To address the influx of gang members into their country, Salvadoran authorities employed “Mano Dura” policies originally developed in Honduras, mimicking the tough on crime approach of their U.S.-based counterparts.²² This approach included the same incarceration strategies used in California, which led to gang members being jailed together, often for long periods of time, allowing them to consolidate their network, grow their connections, and strengthen their collective identities.²³ Moreover, deportees arriving from the United States faced hostility from other ethnic groups in El Salvador, further isolating them from civil society and strengthening the bonds they formed in prison and on the streets.²⁴

In El Salvador, as MS-13 grew in size, it created hierarchies and expanded the scope of its activities.²⁵ From Salvadoran jail cells, MS-13 leaders established rules (or guidelines), to which all members had to adhere—ranging from restricting certain drugs to sanctioned haircuts.²⁶ The jailed leaders gave orders to organize various cliques into “programs” to allow for more coordinated communication between leadership and members out on the street.²⁷ They also increased their criminal enterprises and money collection schemes to better support the jailed leaders and their families, though the gang “remains a largely hand-to-mouth criminal enterprise precisely because of its unprofessional approach and emphasis on group cohesion over financial reward.”²⁸

It was in this same period, in the 1990s and early 2000s, that cliques formed along the Eastern seaboard, including in the Washington, D.C. area, Boston, Massachusetts, and on Long Island, New York.²⁹ Some East Coast members came from El Salvador, while others were recruited locally and held more loyalty to the neighborhoods where they lived and where the clique originated.³⁰ Thus, MS-13 evolved in the United States in a less centralized and controlled manner than in El Salvador.

Recent efforts to double down on law enforcement-only measures against MS-13 will most likely not only perpetuate these failures, but risk growing MS-13's size and influence in the United States, while simultaneously violating rights and traumatizing already vulnerable communities.

During the Bush and Obama administrations, the government responded to the spread of MS-13 on the East Coast with multi-prong law enforcement tools to decimate cliques, which were somewhat effective in the moment, but ultimately unsuccessful.³¹ In 2012 under President Obama, the Treasury Department labeled MS-13 a “Transnational Organization,”³² only the fifth group to be given that title, although many experts do not believe the gang fits that particular definition.³³

Additionally, in 2014, priority lists for removal were set by DHS to implement the enforcement priorities pursuant to Obama’s immigration executive actions, including prioritizing non-citizens with criminal convictions.³⁴ The Obama administration used state gang membership databases via data-sharing agreements between DHS and state/local law enforcement for enforcement purposes, thereby placing “non-citizens accused of gang membership, regardless of their underlying conduct, at a greater risk of removal from the country than other non-citizens.”³⁵ These

decisions, along with President Obama’s tendency to create a “distinction between the good, hardworking immigrants and the bad criminals, fed the criminalizing stigma attached to immigrants” and has been continued and accelerated by the Trump administration today.³⁶

Nearly 40 years of law-enforcement driven approaches to stopping MS-13 have not been successful.³⁷ Recent efforts to double down on law enforcement-only measures against MS-13 will most likely not only perpetuate these failures, but risk growing MS-13’s size and influence in the United States, while simultaneously violating rights and traumatizing already vulnerable communities.



Chapter Two

The 2014 Northern Triangle Humanitarian Crisis

Although the current national focus on the threat posed by MS-13, specifically the attempt to inextricably link MS-13 and immigration policy, is in large part a direct result of the Trump campaign and ensuing administration,³⁸ the narrative seeds were planted during the Obama administration.³⁹

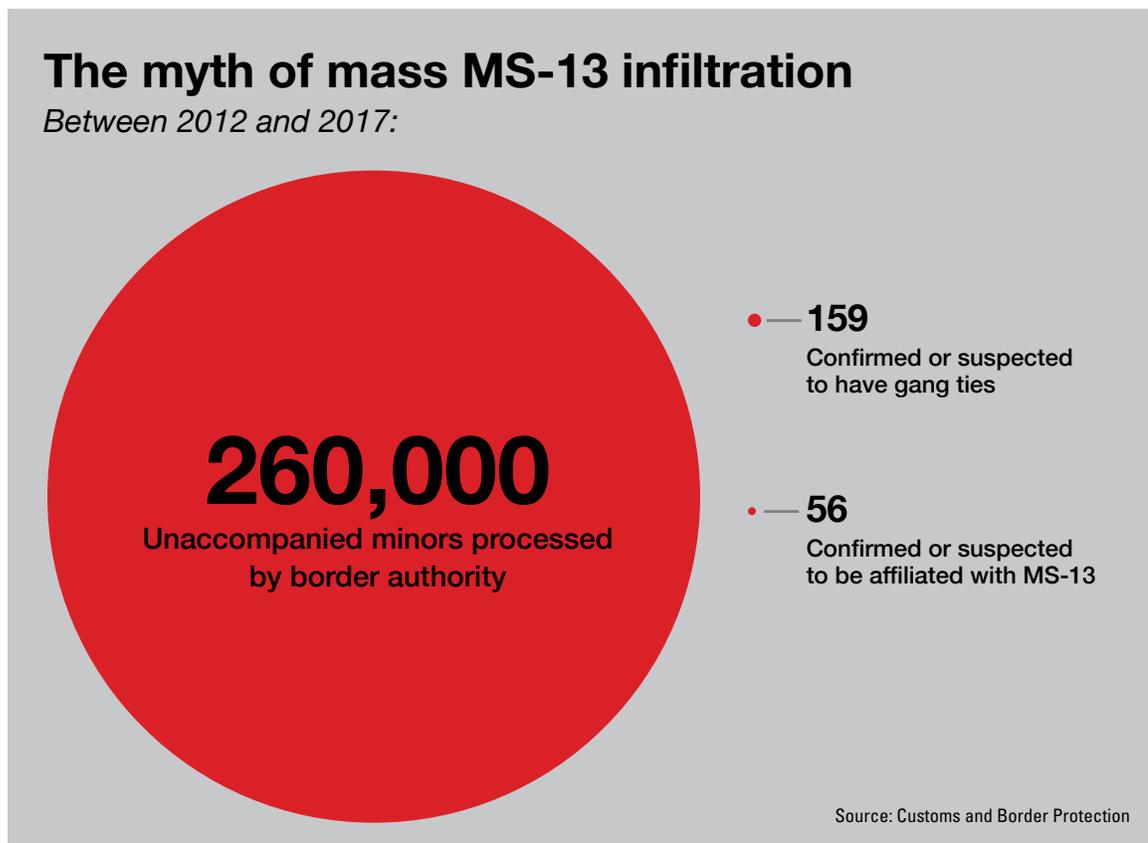
Starting in 2011, the United States experienced a dramatic increase in the number of unaccompanied alien children (UAC) apprehended at the country's southern border by Customs and Border Patrol (CBP) agents, with the highest spike coming in the summer of 2014.⁴⁰ The largest percentage increases of apprehended UAC came primarily from three Central American countries: Honduras, Guatemala and El Salvador.⁴¹ This represented a significant shift in the makeup of unaccompanied children coming to the border. Prior to 2012, more than 75 percent of unaccompanied children were from Mexico; now that number is closer to 25 percent.⁴²

The escalation in the movement of unaccompanied children was a regional humanitarian crisis driven primarily by the rapid growth in crime, specifically the proliferation of gang violence, and the inability of the Salvadoran government to protect its citizens.⁴³ This humanitarian crisis affected not only the United States, but the entire Central American region. The UN High

Commissioner for Refugees (UNHCR) reports that Mexico, Panama, Nicaragua, Costa Rica and Belize all experienced a spike in migrants coming to their countries to seek asylum.⁴⁴ UNHCR reports that from 2008 to 2013, there was a 435 percent increase in asylum applications from nationals of El Salvador, Guatemala and Honduras to countries such as Mexico, Panama, Nicaragua, Costa Rica and Belize.⁴⁵ Even today, the life threatening dangers these refugees face in the Northern Triangle have not diminished. In 2016, the Obama administration carried out several enforcement actions against these recent arrivals.⁴⁶

The United States' approach toward those fleeing persecution and Congress' desire to ensure that children were treated fairly under the law are principally embodied in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA)⁴⁷ and the Flores Settlement Agreement.⁴⁸ The TVPRA offers limited but necessary protections for vulnerable children from non-contiguous countries who travel thousands of miles to flee their countries and find safety.⁴⁹ The TVPRA requires CBP to transfer care and custody of these children to the Office of Refugee Resettlement (ORR).⁵⁰ The children are also informed of their rights and can ask for legal protection.⁵¹ Then, ORR is required to care for these children in the "least restrictive setting appropriate to the minor's age and special needs . . . and to protect the minor's well-being and that of others."⁵² Most often, this means reuniting the minors with family residing in the United States; since the New York City metropolitan area has some of the country's largest Central American communities, many unaccompanied children settle in New York, primarily Long Island.⁵³

Although the raw number of unaccompanied children presenting at the border is still objectively low (260,000 over the five year period from 2012-2017),⁵⁴ and the number of these children flagged as gang affiliated is miniscule (1 in 5000),⁵⁵ still, "the idea that so many migrants were being received at the border and then released into the United States seem[s] to many like a security crisis—even a slow motion invasion."⁵⁶ This perception, in part, is what has allowed the Trump administration to be successful in exploiting the fear of M-13 to advance their agenda.





Chapter Three

Creating Fear: The Distortion of the MS-13 Threat

The need for services, support, and protection for unaccompanied children from the Northern Triangle is vast.⁵⁷ Even so, the Trump administration chooses to focus on the threat of MS-13, disproportionate to its actual impact.⁵⁸ There is little reason to believe that MS-13 is controlling migration patterns or taking advantage of perceived lax migration policy to further its criminal goals;⁵⁹ however, it is clear that MS-13 activity has adversely affected areas in the United States with high immigrant, particularly Central American, populations.⁶⁰

The portrait painted by the Trump administration of MS-13 as a dangerous transnational criminal organization responsible for the flow of drugs, criminal activity, and violence across our borders is contradicted by other agencies within the government itself. The Drug Enforcement Agency classifies MS-13 as a transnational gang, which is distinct from a Transnational Criminal Organization (TCO).⁶¹ Similarly, the Congressional Research Service has found that “the term *Transnational Criminal Organization*, or TCO might be misleading when used to describe the *maras* across the [Central American] region.”⁶²

Even among experts on gangs and TCOs, there is no consensus as to what MS-13 is or how sophisticated it is exactly.⁶³ Relationships between MS-13 and TCOs “are based more on location and familial, personal, and business relationships rather than strict affiliations.”⁶⁴ Unlike most TCOs, MS-13

makes money mainly through small time deals,⁶⁵ indicating to some experts that MS-13 is a transnational gang, not a TCO: “[MS-13] is a small, part-time role player in international criminal schemes.”⁶⁶

It is likely more accurate to view MS-13 as “an internationally franchised street gang” that distinguishes itself by the brutality of its actions.⁶⁷ “MS-13 is a complex phenomenon”—a social organization first, and a criminal organization second.⁶⁸ “The gang is not about generating revenue as much as it is about creating a collective identity that is constructed and reinforced by shared, often criminal experiences, especially acts of violence and expressions of social control.”⁶⁹ “Violence is at the heart of the MS-13”⁷⁰ and controlling territory is central to the gang’s social, political and economic power.⁷¹ But it is that very violence that has made it hard for the gang to grow in organization and influence, because unpredictable violence has made it difficult to enter into more sophisticated money-making enterprises with potential partners who see MS-13 as unreliable.⁷²

Obstacles to MS-13’s growth and dominance in the United States are particularly acute in the East Coast cliques where there is weak leadership structure.⁷³ Generally, leadership in MS-13 in the United States is chaotic and actual control over gang members’ actions is sporadic at best.⁷⁴ What is more, attempts to unify the U.S.-based cliques and impose organizational control over them have generally failed,⁷⁵ resulting in no real coordination between East Coast and West Coast cliques.⁷⁶ For instance, there is no Ruling Council overseeing cliques on the East Coast.⁷⁷ This lack of single leadership means that East Coast cliques take direction from leaders in El Salvador, but because those individuals are imprisoned, they are never fully in control.⁷⁸ “East Coast cliques are rudimentary, unsophisticated facsimiles of their Los Angeles and Salvadoran counterparts, and have become a near constant source of chaos within the gang’s larger structure, even by the MS-13’s own standards.”⁷⁹ The Trump administration’s narrative centered on a sophisticated criminal machine importing dangerous criminals into American suburbs is further undermined by experts who have found that “in places like Long Island, Maryland, and Massachusetts, the gang appears to be flailing, with little purpose other than to commit barbarous, often symbolic acts of violence.”⁸⁰

While the Trump administration has turned Long Island into “ground zero” in the fight against MS-13, in reality the gang’s presence there is limited compared to other parts of the country,⁸¹ and minuscule compared to Central America.⁸² There are less than 10,000 MS-13 members in the

[I]n 2017, Border Patrol arrested 228 MS-13 members, as opposed to 437 in 2014. These numbers represent less than one percent of the total of unaccompanied children who came to the United States that year, and even less when compared to the total migration from Central America.

United States.⁸³ Of those, an approximate 400 are in Suffolk County, Long Island, where the bulk of Operation Matador and other related enforcement efforts have taken place.⁸⁴ Although MS-13 has been responsible for a high percentage of the violent crimes committed in Suffolk County (14 of 22 murders in 2017 were attributed to the gang), “MS-13 has not reversed nationwide trends of declining violent crime.”⁸⁵

Inasmuch as President Trump and Attorney General Sessions have sought to tie the rise of MS-13 to the influx of unaccompanied minors over the last few years, there appears to be little, if any, correlation between the gang’s presence in the United States and the intended destinations of Central American refugees. Long Island has 10 identified cliques, as compared to 20 cliques in Los Angeles and 12 in the Washington, D.C. area (and 250 in El Salvador).⁸⁶ By contrast, the top destinations for unaccompanied minors in Fiscal Year 2017 were California (6,252), Texas (5,374), Florida (4,054), New York (3,918), and Maryland (2,953),⁸⁷ meaning that two of the top

five receiving destinations have no-known or negligible MS-13 presence. Border Patrol apprehension numbers also dispute a direct link between migration and MS-13’s presence in the United States; in 2017, Border Patrol arrested 228 MS-13 members, as opposed to 437 in 2014.⁸⁸ These numbers represent less than one percent of the total of unaccompanied children who came to the United States that year, and even less when compared to the total migration from Central America.

Office of the Attorney General

The U.S. attorney general heads the U.S. Department of Justice pursuant to 28 U.S.C. § 503.⁸⁹ The U.S. immigration courts are designed to give the attorney general substantial power to direct how immigration law is interpreted in the United States.⁹⁰

The position of attorney general was created by the Judiciary Act of 1789.⁹¹ In June 1870 Congress enacted a law entitled “An Act to Establish the Department of Justice.”⁹² This Act established the attorney general as head of the Department of Justice and gave the attorney general direction and control of U.S. attorneys and all other counsel employed on behalf of the United States.⁹³ The Act also vested in the attorney general supervisory power over the accounts of U.S. attorneys and U.S. marshals.⁹⁴

The Office of the Attorney General (OAG) supervises and directs the administration and operation of the Department of Justice, including, *inter alia*, the Executive Office for Immigration Review (EOIR), whose primary mission is to adjudicate immigration cases.⁹⁵ Under delegated authority from the attorney general, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings.⁹⁶ The attorney general has the authority to direct judges on how to interpret the law, which cases to hear, and has the power to fire immigration judges.⁹⁷ Through a process called certification, an attorney general can review a case, assuming jurisdiction over it, *sua sponte*,⁹⁸ review is *de novo*.⁹⁹

In describing his efforts to combat MS-13 and carry out the Trump administration’s immigration priorities, Attorney General Jeff Sessions has said:

We have sent additional prosecutorial resources to the Southwest Border and created Border Security Coordinators in each

of our U.S. Attorney’s Offices—to enforce immigration laws with a special emphasis on criminals, like MS-13, that have a nexus to the Southern Border. I have designated MS-13 as a priority for our Organized Crime Drug Enforcement Task Forces. These task forces bring together a broad coalition of federal law enforcement—from DEA, FBI, and ATF to ICE, the Coast Guard, Secret Service, and the IRS But we must also recognize that transnational gangs like MS-13 have taken advantage of our porous Southern Border and previously lax immigration law enforcement.¹⁰⁰

Attorney General Jeff Sessions, has indicated he plans to be heavily involved in setting policies aimed at reducing lax immigration law enforcement and immigration court backlogs.¹⁰¹ New Justice Department directives will “pressure judges to process cases faster by establishing a quota system tied to their annual performance reviews,” penalizing those who refer more than 15 percent of certain cases to higher courts or schedule hearing dates too far apart in their calendars.¹⁰² On the southwest border, Sessions mandated federal prosecutors “to adopt a ‘zero tolerance’ policy against anyone who enters or attempts to enter the country illegally”—an order that “supersedes any prior directives.”¹⁰³ Sessions personally vacated a precedent-setting ruling that said most asylum seekers have a right to a hearing in front of a judge before their claim could be rejected.¹⁰⁴ Sessions is also reviewing whether victims of “private crime” should qualify for asylum.¹⁰⁵ Sessions intervened in a case, which launched a review of administrative closures, “a lifeline to immigrants” shielding them from deportation as petitions are pending.¹⁰⁶

Therefore, the size of gang factions appear to depend on law enforcement efforts and migration movements that are *unrelated* to the gang.¹⁰⁷ Ultimately, “while there is clearly some communication, coordination and, in some instances, intent to commit criminal acts across borders, there is little to suggest that the migration of members and potential recruits is controlled in a top-down, coordinated fashion.”¹⁰⁸

Nevertheless, the Trump administration continues to tie MS-13 violence to immigration policy. Within the first year of the administration, the Departments of Justice and Homeland Security have devoted significant resources and pushed for more legal charges against alleged MS-13 members and affiliates.¹⁰⁹ Largely ICE has led these efforts by bringing civil immigration charges against individuals rather than bringing criminal arrests and charges. Such efforts further demonstrate the administration's attempt to link the issues of gang violence and immigration enforcement.¹¹⁰

"The Trump administration has used the MS-13 as a bogeyman to draw support for its policy of searching out and deporting more undocumented migrants."¹¹¹ The administration has done so mainly by "conflating the dangers of undocumented migrants in the United States with gang violence."¹¹² Indeed, there is a clear pattern of Trump and other administration officials elevating the gang in speeches to stoke fears¹¹³ and allowing the President to seize "on the gang's brutality and violence to symbolize the risks of illegal immigration" to justify hard-line immigration policies.¹¹⁴ In other words, the gang is "part of the national discourse on immigration policy" because President Trump "put it there, front and center."¹¹⁵

Media coverage in certain outlets has also exacerbated the view of MS-13 as a dangerous, invading army of foreigners. For example, one outlet describes MS-13's presence on Long Island with the following paragraph:

*Obama's illegal DACA amnesty has turned out to be a nightmare for American schools. At a time when we are encountering ubiquitous threats to school safety from our own troubled youth, even the Washington Post has now realized that DACA and the promise of "amnesty for children" have brought in some of the most violent "kids" from Latin America. Is it too much to ask that Republicans actually "do something" about the gratuitously imported danger of the Central American invasion, MS-13, rather than uphold sanctuary cities? Rather than grant even more amnesty? Is it too much to ask that they finally block the lower courts from unilaterally continuing a policy that has turned beautiful suburbs into MS-13 war zones?*¹¹⁶

The impact of this growing narrative in the media is sowing fear around the country, even in places where there is no known MS-13 presence.¹¹⁷ For example, in justifying his decision to enter into a so-called "287(g) Agreement" with ICE, which would deputize county jail officers as immigration enforcement agents, an upstate New York sheriff cited the possible threat of MS-13 expansion in his area. However, "[a]ccording to the State Police, there is no MS-13 activity in [Rensselaer] county. 'And we want to keep it that way,' [Sheriff Patrick] Russo said."¹¹⁸ Notably, such an agreement risks "civil rights abuses"¹¹⁹ and undermines community trust in law enforcement by sending the message that "they are out to send into deportation anyone who gets arrested for any incident."¹²⁰ The trend of conflating immigration and gang enforcement sets a dangerous path, sweeping up people not involved in gang activity and risking repeating the historical mistakes that led to the creation, growth, and 40-year longevity of MS-13.



U.S. Citizenship and Immigration Services

Chapter Four

A Dangerous Path: Conflating Gang and Immigration Enforcement

Operation Matador: Trump Administration's Crackdown on MS-13 on Long Island

One of the most prominent current examples of conflating immigration and gang enforcement is Operation Matador (Matador), launched in 2017 as a part of Operation Community Shield, led by ICE and meant to use “broad authority” against MS-13 in New York.¹²¹ Matador specifically seeks to “target violent gang members and their associates, eradicate the violence they inflict upon our communities and stop the cash flow to transnational organized crime groups.”¹²² It uses the resources of ICE Homeland Security Investigations (HSI), ICE Enforcement and Removal Operations (ERO), Customs and Border Protection (CBP), and local police departments to target MS-13 gang activity in the New York metropolitan area, including Long Island and the Hudson Valley.¹²³ Matador places many immigrants at greater risk of detention and deportation and thus creates an environment where immigrants and their families are too afraid to interact with law enforcement to assist them in addressing crime in their communities.¹²⁴

Perhaps the most troubling aspect of Matador is the far-ranging latitude federal agents have in using existing local law enforcement gang databases as a tool in their immigration enforcement duties. The criteria these databases use to label individuals as gang members vary from county to county, are notoriously unregulated, and are rife with errors.¹²⁵ Effectively, these databases have created a wide dragnet in which innocent individuals, erroneously labeled, many fleeing persecution from the same gangs in their own countries, are caught, often with life-changing consequences.¹²⁶ One clear outcome of Matador has been the increase of unwarranted and unsubstantiated gang allegations being used as a basis to detain immigrants, or to deny applications for benefits such as Special Immigrant Juvenile Status (SIJS) or asylum.¹²⁷

Targeting the most vulnerable: informant recruitment in immigrant communities

Frequently, key witnesses in MS-13-related prosecutions have been confidential informants, often immigrant Latino men from Northern Triangle nations.¹²⁸ For those seeking an exit from gang activity, a promise of law enforcement protection, and/or a placement into witness protection in exchange for information may be a tempting proposition.¹²⁹ In the context of “terrorism investigations,” law enforcement has long used an “immigration relief dangle” as leverage to recruit individuals to become informants: offering S-visa certifications, “help” with immigration proceedings or applications, or recommendations of release on bond to those who offer information, infiltrate community spaces and surveil suspected groups.¹³⁰

As is repeatedly seen in the context of alleged gang and national security investigations, local law enforcement, DHS officials (including HSI, CBP and ICE), and the FBI share information and coordinate to approach individuals at their most vulnerable moments: targeting travelers experiencing invasive questioning, threatening those with tenuous immigration status with deportation or delay of their applications, and even threatening to place individuals on no-fly lists.¹³¹

Rarely has cooperation with law enforcement resulted in protection or help. S-visa certifications are multi-step and complex processes, leaving the law enforcement agency multiple chances to withdraw their offer of certification. Further, not only were many who declined law enforcement invitations to cooperate referred to ICE, but many who became informants were also referred to ICE by law enforcement when they felt the informant had served their purpose.¹³² Crucially, even those who cooperated with law enforcement found that information they had provided to law enforcement was used against them to initiate or support removal proceedings, making them even more vulnerable to immigration enforcement and deportation.¹³³ For some this meant being sent back to the countries where they fled the very gangs they were told to infiltrate and surveil.

Along with preying on already vulnerable individuals, informant recruitment in immigrant communities furthers racial and religious profiling.¹³⁴ The impact of confidential informants on communities is grave, often chilling constitutional activity and damaging the very fabric of community institutions.¹³⁵

ICE agents themselves have made comments appearing to confirm the agency’s intention to pretextually use gang enforcement work to pursue its anti-immigrant agenda and policies.¹³⁶ During a Matador-connected sweep in the fall of 2017, the ICE-HSI agent in charge told a reporter shadowing the team that one of their targets was not classified as a gang member yet and, in fact, had no criminal record.¹³⁷ According to the agent, “the purpose of classifying him as a gang member or a gang associate is because once he goes in front of an immigration judge, we don’t want him to get bail, because the whole point of this operation is to get these known gang members off the street.”¹³⁸

This circular reasoning shows how the Trump administration has sought to confuse immigration enforcement and gang enforcement to further its narrative that immigrants are dangerous to the United States. While Matador has focused on immigrants, large Operation Community Shield sweeps suggest far fewer prevalence of immigrants involved in gangs.¹³⁹ For example, in the last nationwide sweep (May 2017) two-thirds of those arrested were U.S. citizens and only seven percent of the total were members of MS-13.¹⁴⁰ Meanwhile, immigration attorneys are forced to spend extensive amounts of time seeking evidence and developing arguments to rebut baseless or tenuous gang affiliation accusations.

“[T]he purpose of classifying him as a gang member or a gang associate is because once he goes in front of an immigration judge, we don’t want him to get bail, because the whole point of this operation is to get these known gang members off the street.”

From the perspective of ICE and the White House, Matador and the crackdown on MS-13 has been successful. According to ICE’s own statistics, there were 796 “suspected” MS-13 members arrested by ICE in 2017, compared to 429 in 2016, and 5,300 deportations of “suspected” members in 2017, a number more than twice that of 2016’s 2,000 deportations.¹⁴¹ However, it is not specified how someone is determined to be a “suspected gang member.” In March 2018, ICE reported the total arrested under Matador was at 475.¹⁴²

In November 2017, the New York Immigration Coalition filed requests under the Freedom of Information Act and New York’s Freedom of Information Law to ICE, USCIS, CBP, the NYPD, and New York’s Nassau County,

and Suffolk County police departments to understand the scope and resources of Operation Matador.¹⁴³ At the date of writing this report, only limited information has been provided by CBP, and ICE has denied the request in its entirety claiming the information is exempt from disclosure under FOIA rules.

Living Under Siege: The Devastating Consequences of Gang-Policing on Immigrants

In pursuing its crackdown on MS-13, ICE uses vague information collected by law enforcement agencies, school administrators, and courts in New York State.¹⁴⁴ Since its inception, Operation Community Shield and Matador have partnered with local law enforcement to identify and share information on street gangs, including MS-13.¹⁴⁵

Individuals are questioned by law enforcement about their gang affiliation, gang activity in the area, and their immigration status. Law enforcement often relies on questionable methods and unreliable evidence to assert that Latinx individuals are gang members, based on scant evidence and overbroad criteria.¹⁴⁶ Accusations that Latinx students are gang-affiliated also arise in the school context.¹⁴⁷ In turn, DHS uses these over-broad gang allegations and scant evidence as a pretext to detain and deport non-citizens, raising significant due process concerns.

Gang membership itself is not a crime¹⁴⁸ and is not, in and of itself, a basis under which the government can deport an individual (called “grounds of removability” in immigration law).¹⁴⁹ Yet, immigrants who are alleged to be involved in gangs remain top enforcement priorities for DHS,¹⁵⁰ even if they have no criminal convictions or arrests.¹⁵¹ Essentially, the government is classifying large swaths of Central American immigrants as gang-members and then using that classification to deport them by any means possible.

DHS often supports these gang-related allegations with its own internally created “reports” or “memoranda” containing information or tips received by federal agencies, local law enforcement, school officers, and/or by relying on gang databases.¹⁵² These allegations are seldom corroborated by independent evidence and thus the evidence presented raises serious reliability issues in any court of law.¹⁵³ Moreover, as constitutional evidentiary protections are significantly weakened for immigrants who are applying for immigration benefits before USCIS or defending themselves before an Immigration Judge, gang-related allegations in this context are often accepted even when they are unsubstantiated.¹⁵⁴

The result? Immigrants are deported or denied immigration benefits based on baseless, unverified allegations of gang involvement without access to basic constitutional protection and with no right to counsel. Such allegations have dire consequences for both undocumented immigrants and immigrants with legal status.

Allegations of gang membership may impact non-citizens in a variety of ways. If gang-related allegations are raised against a non-citizen seeking an immigration benefit (such as asylum or a green card), that person may be denied the benefit. Consequently, the non-citizen may be placed in removal proceedings based on the adjudicator's discretion.¹⁵⁵ Gang allegations can also be used as a basis to justify detention or re-detention of non-citizens.¹⁵⁶ Once detained, they may be used to deny bond or increase bond amounts, leading to the detention of individuals throughout the pendency of immigration proceedings thereby significantly lessening their chances of fighting deportation.¹⁵⁷ Because gang membership or affiliation are not criminal offenses and no immigration consequences are specifically tied to gang involvement, decisions to deny benefits or deport individuals based on such allegations are made in the relevant agency's discretion, generally shielding the determination from judicial review.¹⁵⁸

Furthermore, receiving a tip from local law enforcement that an immigrant is a "gang member" often provides ICE knowledge of the whereabouts and of the presence of undocumented immigrants and their families; such information-sharing between local law enforcement and immigration officials is a systematic tactic used to facilitate immigration enforcement in vulnerable communities.¹⁵⁹

The LE Interactions Survey sheds light on these practices.

Of the 43 immigration attorneys, advocates, and community members in New York who completed the LE Interactions Survey, about 70 percent of respondents reported working on Long Island or having clients from Long Island.¹⁶⁰ The remaining respondents reported serving the Lower Hudson Valley and New York City (five boroughs).¹⁶¹

Survey respondents generally report a substantial increase of law enforcement targeting immigrant communities in 2017 than in prior years.¹⁶² **78 percent of survey respondents report interactions where law enforcement made gang-related allegations or implied suspicions against immigrant community members.** This corroborates media reports of a significant increase in law enforcement patrolling, policing and arrests of Latinx communities, especially on Long Island. Practitioners described interactions connected to gang allegations primarily with ICE and with local police departments; a portion also involved the FBI.¹⁶³

When asked where interactions connected to gang-related allegations or suspicions occur, half of respondents specify that interactions take place "on the streets," a third indicate home raids by law enforcement, and a third indicate in schools. Some report interactions occurring in government buildings, in court houses, in criminal custody, during the course of interviews with USCIS, while traveling by car or public transportation, and even over the phone.¹⁶⁴

Because those who are subject to these sorts of gang allegations are given little to no information about the source of the information being used against them, it is often difficult to isolate what triggered the gang-related allegations. For example, Andrea Saenz of Brooklyn Defender Services explains:

Our clients have been the subject of gang allegations after clients are [already] in removal proceedings or in Requests for Evidence¹⁶⁵ from USCIS. It's not always clear what the original interaction that triggered the allegations was, except that we sometimes know that a police department passed allegations to ICE in some way. Sometimes it's based on alleged on-the-street observations of clothing or who a client is seen standing with, or allegations from unnamed informants. We have had at least one client questioned by ICE about his tattoos after being arrested.

Gang Databases

Lena Graber, an attorney at the Immigrant Legal Resource Center (ILRC) has said that, “[g]ang databases essentially criminalize non-criminal activity” and “what gang identification does is that it says we don’t have evidence that you’ve committed a crime or broken the law—we’re going to stop short of the Fourth Amendment and charg[e] you with a crime and add you to this database that has criminal justice consequences without any due process.”¹⁶⁶

Although membership in a gang is not a crime,¹⁶⁷ federal law defines “gangs” because membership in one impacts adjustments at criminal sentencing.¹⁶⁸ Local jurisdictions have discretion to determine their own criteria for inclusion in gang databases and “are almost entirely unrelated to criminal conduct or even to active participation in gang activities.”¹⁶⁹

In the criminal context, advocates have long criticized the broad criteria used to classify individuals as gang members as problematically over-inclusive and disproportionately targeting young black and brown men. Nationally, advocates have pushed back on the use of gang databases and have brought to light the systemic racial profiling, overly-aggressive enforcement techniques, and serious lack of reliability concerns.¹⁷⁰

Gang databases are notoriously flawed, inaccurate, encourage biased policing, and have been repeatedly shown to be unreliable.¹⁷¹

Databases have minimal inclusion criteria. Simply living in a neighborhood or a building where there are gang members, wearing certain colors or speaking to people law enforcement believe to be gang members are some of the many ways people have been added to gang databases.¹⁷²

What is more, gang databases are perversely circular. Once an individual is listed in one jurisdiction’s gang database, whether justified or not, other jurisdictions can also list that individual in their own databases, classifying that person as a gang member simply because the original jurisdiction labeled the individual as such.¹⁷³ Most gang databases do not appear to have any mechanisms to purge erroneous or outdated information, and most do not require notification to the individual that their name is being added to the database.¹⁷⁴

Inclusion criteria for gang databases



THE NEW YORK POLICE DEPARTMENT

gang database does not require any information regarding criminality.

An individual will be entered if:

1. He/she admits to membership during debriefing OR
2. Through the course of an investigation an individual is reasonably believed to belong to a gang and is identified as such by two independent sources. (Ex. Precinct Personnel, Intel, School Safety, Dept. of Correction, or Outside Agency) . . . OR
3. Meets any two below mentioned criteria
 - a. Known Gang Location
 - b. Scars/Tattoos Associated with Gangs
 - c. Gang Related Documents
 - d. Colors Associated with Gangs
 - e. Association with Known Gang members
 - f. Hand Signs Associated with Gangs¹⁷⁵



NASSAU COUNTY POLICE DEPARTMENT

Gang Identifiers (from 2010) require the following to be classified as a gang member:

1. Self admission of gang membership
- OR-

Any three of the following, not necessarily on the same day:

2. Tattoos depicting gang affiliation
3. Style of dress consistent with gang membership
4. Possession of gang graffiti on personal property or clothing
5. Use of hand signs or symbols associated with gangs
6. Reliable informant identified person gang member
7. Associates with known gang members
8. Prior arrests with known gang members: Crimes consistent with usual gang activity
9. Statements from family members indicating gang membership
10. Other law enforcement agencies identifying the subject as a gang member
11. Attendance at gang functions or known gang hangouts
12. Identified by other gang members or rival gang members¹⁷⁶

The NYPD and Nassau County police department gang criteria, which are substantially similar to other gang database criteria throughout the country, are error prone. Professor Babe Howell notes that an individual not affiliated with any gang, but seen spending time with gang members, regardless of the relationship, and dressed as an urban youth may be included in a database despite no gang membership or plans to commit any crimes.¹⁷⁷ Notably, in New York, no mechanism exists to challenge inclusion in a gang database, which raises due process concerns.¹⁷⁸

In Chicago, a report by the Policing in Chicago Research Group highlighted significant concerns with Chicago's gang database, including the fact that 11 percent of all of Chicago's black population is included.¹⁷⁹ A state audit of California's state-wide database, CalGang, revealed glaring errors, including information that violated individuals' privacy rights, names that should have been purged, and inaccurate information.¹⁸⁰ One particularly troublesome finding showed that 42 individuals were entered into the system before they turned one year old; bizarrely, 28 of these infants were entered for admitting to gang membership.¹⁸¹ Activists in New York have urged the NYPD Inspector General to similarly probe NYPD's gang databases, surveillance, and sweeps.¹⁸²

Nevertheless, these kinds of databases are being used by local law enforcement on Long Island in reliance on these same questionable methods and unreliable evidence.¹⁸³ Some examples of such questionable and/or unreliable evidence, as identified by the LE Interactions Survey respondents, include: wearing certain kinds of clothes, doodling an area code from a Latin American country in a school notebook, being seen with people who are alleged gang members, or living in neighborhoods known to suffer from gang activity.¹⁸⁴

Arresting individuals based on suspected gang status, rather than actual conduct, is a violation of due process.¹⁸⁵ Despite the prevalent use of gang databases to track alleged gang membership, New York law does not prohibit association with gang members.¹⁸⁶ "The [N.Y.] Penal Code is intended to establish rules that clearly define prohibited conduct and to unambiguously direct law enforcement as to what constitutes a criminal act."¹⁸⁷ Yet, most of the criteria used to allege gang affiliation has "nothing to do with actual criminal conduct," which compounds the significant accuracy issues of gang allegations.¹⁸⁸ Howell explains that "the criteria for determining gang membership do[es] not require engaging in crime on behalf of a gang or with other gang members, paying dues, attending meetings, undergoing a gang initiation, or other specific gang activity. Rather, the criteria focus on symbols and association."¹⁸⁹ Consequently, while some overbroad and facially vague state anti-gang statutes have survived constitutional attack,¹⁹⁰ some anti-gang city ordinances have been held void for vagueness because they give officers "too much discretion in every case."¹⁹¹ These are some of the reasons why reliance on gang status to arrest and detain people, with all its inaccuracies, overbreadth, and vagueness, violates due process.

The danger of an erroneous gang classification is even greater in the immigration context, where there are fewer safeguards to challenge these allegations than in the criminal sphere.¹⁹² The Immigration and Naturalization Act (INA) does not define gangs or gang members and does not provide specific immigration consequences for alleged or proven gang membership.¹⁹³

Although evidence presented in immigration proceedings must conform to Fifth Amendment due process requirements, challenges to the use of gang allegations are not subject to a full range of constitutional protections.¹⁹⁴ Immigration enforcement takes advantage of this disconnect to use laxer standards in immigration proceedings to target people they suspect of gang affiliation for detention and removal when they are unable to make a criminal arrest.¹⁹⁵ "While this might be viewed as an effective form of preventative prosecution by some, it creates a greater risk of abuse than law enforcement efforts more clearly constrained by the parameters of the criminal law."¹⁹⁶ Indeed, with no legal safeguards to "limit the discretion of state and local officials, Operation Community Shield relies on the discretion of state and local law enforcement for investigative purposes, and purported gang members and their associates are identified without any governing legal standards."¹⁹⁷

Advocates see that sometimes gang allegations by ICE are initially brought without the client's or community member's knowledge, such as through inclusion in a gang database. For example, LE Interactions Survey, Anonymized Response # 3 notes that:

Local police in one particular town maintained local "gang lists" and would put young men on this list based on whether they thought these young men were involved with the north side gang, e.g., clothes, neighborhood, who they were seen interacting with in and outside school, etc.

In the documentary *The Gang Crackdown*, Timothy Sini, Suffolk County Police Commissioner from 2015-2017, illustrates law enforcement’s strategic pursuit of those classified as gang members or associates, regardless of any reported criminal conduct:

For example, if we have intelligence that they are a gang member, that’s not necessarily a crime, right? Certainly, being a gang member is not a crime, and the intel that we may have may not indicate a significant state crime. We may have something small on them, but nothing that’s going to keep them in jail. So if we perceive someone as a public safety threat, we utilize all of our tools, which include immigration tools. So we’ll partner with the Department of Homeland Security to target them for detention and removal.¹⁹⁸

Police Commissioner Sini’s comment indicates that local police departments are partnering with DHS to detain immigrants perceived to be a “public safety” threat in hopes that DHS will target them for detention and removal. Effectively, Sini is admitting that local police departments bypass local criminal law, which does not criminalize gang association itself and requires more than vague criteria and non-criminal conduct to justify arrest or imprisonment.¹⁹⁹ Sini does not clarify whether the “public safety threat” assessment to which he refers is rooted in any actual conduct or whether it is merely based on a hunch that someone is a gang member because they doodled a picture in a notebook, wore certain clothing, or other kinds of scant evidence.²⁰⁰

Case Example

Yasmine Farhang of Make the Road New York had a client, R, who was on probation in Suffolk County. His probation officer was a member of the FBI Gang Task Force. During R’s probation period, R provided some information that could help the Gang Task Force with local investigations. HSI on Long Island then intercepted R at the courthouse during an appearance on a summons even though R’s probation officer informed HSI that R was not a gang member. HSI did not further question R during detention. ICE believed they could deport R immediately since he had a prior removal order from when he was a child. Ultimately, R’s removal proceeding was reopened and R was released on bond—only to be re-detained 3 months later in a systematic pattern of targeted redetentions. R now has another upcoming bond hearing.

Law Enforcement Stops and Questioning

“Are you a member of a gang? (no)
What is your name and phone number?
Do you know where [person] is? (no)
Why did you make that handshake?
Why are you wearing that shirt?”

—Cheryl Keshner of Empire Justice Center

LE Interactions Survey results indicate that when subject to stops as well as custodial and non-custodial interviews, individuals are questioned by law enforcement not only about their own gang affiliation, but also about gang activity in the area, and frequently, their immigration status.²⁰¹

Practitioners report that clients were asked directly whether they were affiliated with a gang or had friends, family or acquaintances who were affiliated. They were further asked about shoes and clothing items, tattoos and handshakes. In one reported instance, local law enforcement noted, without basis, that an individual was a self-admitted gang member.²⁰²

“One of my clients was asked about his tattoos and if he knew who certain men were in a photo.... later ICE claimed client said he answered affirmatively that he was part of the gang (even though this was false).”

–LE Interactions Survey, Anonymized Response # 35

Data indicates a significant correlation between gang-related allegations and eventual arrests, with many of the respondents reporting their clients who had been questioned about gangs were eventually arrested or, if already arrested, further detained. A majority of these arrests were based on immigration charges, many were based on gang related criminal charges, and some were based on misdemeanor, felony charges, or infractions unrelated to gang allegations.²⁰³

LE Interactions Survey, Anonymized Response # 35

“The two clients were arrested by ICE not directly for their gang involvement but for being undocumented. The gang allegations came up in ICE’s attempt to prevent the I[m]migration J[udge] from setting bond.”

The targeted and aggressive questioning described above was often used against immigrants interfacing with DHS, including crime victims, unaccompanied children, and asylees. Where allegations are brought against an individual, their friends, family, and community members may also be vulnerable to questioning. Information-sharing between various government agencies (local, state and federal) and immigration enforcement is pervasive²⁰⁴ as DHS is developing mechanisms to “expand collaboration and information-sharing with law enforcement partners.”²⁰⁵ Private companies also actively collaborate with DHS and share information about immigration status.²⁰⁶ Schools have shared information with local law enforcement about students and some of that information has ended up in the hands of DHS.²⁰⁷ In summary, prevalent information sharing means that regardless of who is questioning immigrants about their gang activity and/or involvement, that information may be shared with immigration authorities.²⁰⁸

Information sharing between law enforcement & immigration authorities in practice

LE Interactions Survey, Anonymized Response #3 shares that when their client was denied a U Visa adjustment, the “denial stated that client was a ‘known gang member’ and that this had been verified by the local gang expert in the local police department.” In fact, USCIS called the local police department and a police officer disclosed confidential information from the client’s file. They explained that “the file was confidential because the case records were from when the client was a juvenile and had interactions with police.” The police officer said he “verified gang membership” because he saw the person in “gang attire” and “hanging out with the wrong crowd.”

Questioning by DHS Regarding Gang-Related Allegations

LE Interactions Survey responses support that allegations of gang association are raised and investigated by DHS at various stages and in various interactions with the agency.²⁰⁹ Identification or allegations of gang membership by DHS may arise as a result of disclosures made during agency interviews, evidence presented during bond and individual hearings in immigration court, or during custodial and non-custodial interviews by DHS officers.²¹⁰

Practitioners report instances where state prosecutors, DHS prosecuting attorneys, USCIS adjudicators, asylum officers, and/or judges have questioned clients or community members regarding gang membership during various proceedings and interviews.²¹¹ LE Interactions Survey results show that gang allegations are raised against immigrants through a variety of contexts in their immigration-related interactions, including:

During USCIS adjudication of affirmative benefits, i.e.:

- Special Immigrant Juvenile Status (SIJS) adjudication by USCIS,
- Asylum interview before an asylum officer,
- Deferred Action for Childhood Arrivals (DACA) adjudication before USCIS,
- Adjustment status before USCIS.

Alexander Holtzman of Safe Passage Project/Immigration Justice Corps recalls how a client underwent a “gang affiliation line of questioning” during the first 20-30 minutes of an interview for asylum and “nothing about substantive merits of [the] asylum claim” was asked. David Mullins of the New York Legal Assistance Group reports that during various check-ins with ICE officials, multiple clients “were asked general questions about whether they’ve ever been affiliated with a gang and if they have any friends, family, acquaintances who are [affiliated with a gang].” David is unaware if ICE had any basis to ask if these clients had any gang affiliation.

Similarly, such accusations can be raised to deny Special Immigrant Juvenile Status (SIJS) applications. SIJS allows undocumented children under the age of 21 who have been abused, neglected, or abandoned by one or both parents to obtain lawful permanent immigration status.²¹² “Since every grant of an immigration benefit, such as the SIJS visa, is subject to [the] government’s discretion for approval, authorities could use the gang allegations to raise public safety or national security concerns and deny applications.”²¹³

During ICE check-ins

During court proceedings, i.e.:

- EOIR bond hearings,
- Guardianship/Custody Proceedings in pursuit of a Special Findings Order in New York State Family Courts,
- Merit's Hearings and Master Calendar Hearings before EOIR,²¹⁴ and
- During release from Office of Refugee Resettlement (ORR) custody.²¹⁵

Using Gang Allegations to Allege “Public Safety Concerns”

To Deny Bond

“ [Client] was not asked questions directly, but gang allegations were argued in the bond hearing.”

–Emily Torstveit Ngara
Hofstra Deportation Defense Clinic

“ ICE accused two clients of gang membership/affiliation in their bond proceedings.”

–LE Interactions Survey, Anonymized Response #35

Multiple LE Interactions Survey respondents note that their clients were accused of gang membership during bond hearings.²¹⁶ Immigration law provides for the discretionary release on bond or parole of those immigrants not deemed subject to mandatory detention which include “criminals,” “terrorists,” or “arriving aliens.”²¹⁷ A person who is not subject to mandatory detention should be released on bond unless the immigration judge deems that the individual is a threat to national security, likely to abscond, or a poor bail risk.²¹⁸

In one reported instance an Immigration Judge granted bond after finding the evidence of gang-involvement insufficient:

“ [T]he I[m]migration J[udge] acknowledged that the gang evidence against one of our clients was insufficient and that in the totality of the circumstances, she did not believe he was a danger.”²¹⁹

However, survey results suggest that individuals who were otherwise eligible for bond, were held without bond when DHS presented overbroad and unsubstantiated gang related allegations to allege dangerousness.²²⁰ Because individuals who are detained are exponentially more likely to be deported, the denial of bond has far-reaching impacts on the success of an individual's defense from removal.²²¹

Case Example: Mauricio

The Deportation Defense Clinic (DDC) at Hofstra Law School serves Long Island residents who are at imminent risk of removal, including detainees, on issues including bond, motions to suppress evidence obtained in violation of an individual's constitutional rights, motions to reopen in absentia orders, motions to reconsider, and appeals.

The DDC represents Mauricio,²²² who was arrested by ICE in conjunction with Operation Matador as part of a raid at an establishment in Suffolk County. Officers with the Suffolk County Sheriff's Department entered the establishment and ordered everyone—patrons and employees alike—not to move. The officers then demanded identification from everyone present. After running Mauricio's name and determining that he had no criminal record, the officers made him remove his shirt to check for tattoos. Mauricio had no tattoos and no previous contact with law enforcement or immigration. The

officers had no grounds to make a criminal arrest. They instructed Mauricio to go outside and speak with ICE, whose officers were waiting directly outside the bar. Mauricio was not free to leave. The ICE agents again checked for tattoos, photographed his torso, and arrested him.

Mauricio was accused of being a member of MS-13 based on the following evidence: He was arrested in an establishment that ICE and the Suffolk County Sheriff claimed was a "known MS-13 hang out," he was wearing blue and white, and he had lines shaved into one of his eyebrows. ICE also confiscated his phone and went through his Facebook account. There, they found a photo of Mauricio wearing a t-shirt with the numbers "503," the country code of El Salvador. After several months in detention, an immigration judge determined that Mauricio was not a danger to the community and ordered him released on bond.

To Deny Discretionary Relief in Court

Similarly, LE Interactions Survey respondents indicate that gang allegations are being raised in immigration court during merits hearings while someone is applying for relief from removal.²²³ Even if an applicant is eligible for the form of relief they are applying for, (i.e. asylum, lawful permanent residency) most forms of relief are discretionary, meaning that a judge has the freedom to deny the application in their own judgment.²²⁴ Here too, vague gang affiliation assertions without substantiated evidence or criminal conduct have been used by judges to justify denials of defensive applications for relief.

Evidence Used by the Department of Homeland Security to Allege Gang Involvement

In the immigration context, accused individuals often have no meaningful opportunity to rebut allegations of gang-activity because evidence is frequently presented without prior notice. In many circumstances, DHS relies on internal notes to make allegations without any evidentiary support. Further, since the Federal Rules of Evidence do not apply in immigration proceedings, evidence is admitted without substantiation or authentication as would be expected in most other courts of law.²²⁵

LE Interactions Survey respondents report a variety of types of “evidence” DHS uses to support allegations of gang affiliation:

- match in a national, state or local gang database or gang list,
- pictures or posts from social media,
- police reports,
- prior arrest records,
- citations,
- RAP sheets,
- client’s or community member’s supposed oral statements under examination,
- school records,
- ICE interview notes (including I-213 form),²²⁶
- client’s or community member’s declaration or affidavit to EOIR,
- testimony of lay person,
- Homeland Security Investigations (HSI) report,
- detention records,
- personal notes and drawings,
- tattoos and other bodily markings,
- clothing items,
- news articles, and
- ORR records.

One LE Interactions Survey respondent reports: “ICE submitted news articles about a Mexican gang . . . [and] alleged in the [internally created] I-213 form that the client admitted to being [a] member of that specific gang.”²²⁷

Surveillance and Use of Social Media Accounts

Information from social media is used as evidence of gang affiliation (in both criminal and immigration contexts), and social media accounts are increasingly monitored by law enforcement and immigration officials.²²⁸

Many LE Interactions Survey respondents shared instances where information allegedly obtained from social media sources was used to support gang-related allegations made by DHS.²²⁹ Frequently, evidence used to make such allegations are personal photos lifted from social media sources. However, some practitioners indicate that generic images/memes/GIFs were also used, such as “[l]iking, sharing, or retweeting” an organization’s or someone else’s post, to suggest gang affiliation. Survey respondents report that clients or community members have been asked by immigration officials to provide their social media handles and/or phone passwords (to unlock their phones).²³⁰

LE Interactions Survey, Anonymized Response #21 reports that New York State judges presiding over preliminary hearings seeking a special findings order in Special Immigrant Juvenile Status cases have questioned her clients about their involvement in gangs based upon social media pictures, posts, school records, police reports, prior arrests, citations, rap sheets, and information from law enforcement agency’s gang databases.

Local law enforcement and immigration officials have increasingly been using social media to monitor communities. For example, New York Police Department policy states that NYPD’s Gang

Squads collaborate with other members of law enforcement, community groups and schools.²³¹ The squads “closely monitor social media to identify members of gangs and crews, and dismantle these organized criminal groups through actionable intelligence, targeted enforcement, and coordinated federal and local prosecutions.”²³²

DHS is also collecting and scrutinizing the social media of certain immigrants and foreign visitors.²³³ Recently, DHS published a notice that it will store social media information in Alien Files (A-Files)²³⁴ including “social media handles, aliases, associated identifiable information, and search results.”²³⁵ In May 2017, the Trump administration approved a new questionnaire for visa applicants that requests social media handles for the past five years, as well as biographical information going back 15 years.²³⁶

Survey respondents indicate that their clients are having their electronics searched by immigration officials.²³⁷ Social media information gathered from these searches have been introduced as evidence by the government to allege gang membership.²³⁸ While outside the scope of our survey, non-citizens at the border are particularly susceptible to this kind of questioning.²³⁹

The Fourth Amendment to the U.S. Constitution protects individuals from unreasonable government searches and seizures, and this protection extends to computers and portable devices.²⁴⁰ The easiest way for police to search an individual’s phone or computer is to ask for permission; if consent is granted, the police need not obtain a warrant.²⁴¹ Fourth Amendment protections are not as strong at the border where immigration officials can inspect phones, computers, and electronic equipment, even if they have no reason to suspect illegality.²⁴²

Emily Torstveit Ngara of the Hofstra Deportation Defense Clinic states that her “client’s phone was taken and his Facebook account searched without permission. The phone was not password protected.” Personal photos obtained from the Facebook account were later used to allege gang affiliation and the allegations were based upon specific clothing items or style (hats, sneakers, sporting teams, etc.) and colors of clothing.

Allegations based on physical appearance

Practitioners consistently report that both law enforcement officers and immigration officers rely on physical observations of their clients to make assumptions about gang-affiliation.²⁴³ Aspects of appearance that survey respondents note as bases for gang allegations, include specific clothing items or style (hat, sneakers, sporting team, etc.), colors of clothing, hand signals, display of weapons and tattoos. The emphasis on physical appearance dangerously results in stereotyping Latinx communities and inherently encourages race-based policing.

Gang allegations based on appearance

LE Interactions Survey, Anonymized Response #2 states that when their client was denied a U visa adjustment, USCIS relied on the local police department's opinion that their client was a "known gang member" because a police officer saw the client in "gang attire" and "hanging out with the wrong crowd." When the police were confronted about this allegation, the police department "admitted they had no way of knowing whether [the] client was a gang member." The police relied merely on the facts that the client was "picked up as a juvenile on suspicion of vandalism (graffiti), had red colored clothing, and had been seen with known gang members."

Elizabeth Rieser-Murphy of The Legal Aid Society reports that immigration officials relied on these

specific items to support a finding of gang affiliation: Chicago Bulls paraphernalia; [] specific colors (blue, white, black); Adidas hard top shoes; Nike Cortez shoes; rosary beads; plaid shirt; flat-brimmed baseball hats."

LE Interactions Survey, Anonymized Response #12 reports that an Asylum Officer (AO) asked about their client's tattoos which they reported had familial significance . . . the Asylum Officer asked their client to roll up his sleeves so that the AO could inspect the tattoo. The tattoo had familial significance, but no relation to gangs. The AO asked the attorney for their thoughts on the significance of the tattoo, but they did not engage with the AO.

In November 2017, Electronic Frontier Foundation (EFF) filed suit against the Department of Justice, the Department of Commerce, and the Department of Homeland Security demanding records about the agencies' work on developing a federal Tattoo Recognition Technology program which would rapidly detect tattoos, identify people by their tattoos, match people to others with similar body art, and flag tattoos of religious or ethnic significance.²⁴⁴ Advocates are greatly concerned about the consequences of such a program, because of the risk of making erroneous assumptions about a person or falsely associating someone with criminal activity based on tattoos.²⁴⁵

Use and Impact of Gang Allegations by the Department of Homeland Security Arising in the School Context

LE Interactions Survey respondents have especially noticed a substantial increase in gang-related allegations arising at schools, mainly on Long Island.²⁴⁶ This has transformed a trusted place where a student should be supported in their learning to a place of fear and distrust. Practitioners report students being questioned about gang affiliation by school administrators, school resource officers (SROs), teachers and other personnel.²⁴⁷

SROs are law enforcement officers deployed by an employing police department or law enforcement agency to work in collaboration with schools.²⁴⁸ Beyond law enforcement, they can play additional roles, including developing relationships with students and families, thus giving SROs an opportunity to gather information that could later be used against the student and/or family.²⁴⁹ One-third of survey respondents report that they had noticed a change since 2017 with how SROs interacted with students from immigrant backgrounds.²⁵⁰ The role of SROs in these incidents is particularly concerning given that they are uniformed police personnel.²⁵¹

“[N]obody knows how many SROs there are in the United States, because SROs are not required to register with any national database, nor are police departments required to report how many of their officers work as SROs, nor are school systems required to report how many SROs they use.”²⁵²

LE Interactions Survey respondents note that questioning takes place in administrative offices, school hallways, and suspension hearings,²⁵³ and one youth was told he would be detained if he failed to cooperate.²⁵⁴ Although parents are sometimes notified and invited when a student is being questioned regarding gang allegations, parents are often neither notified nor invited, or notified but not invited.²⁵⁵ In one reported instance, parents were later notified of the questioning and invited, but only after the fact.²⁵⁶ For children in schools who are accused of gang affiliation, parental presence potentially provides an extra layer of protection when being labeled as gang-affiliated is at stake.

Rationale for Questioning

The stated reasons for questioning students about gang allegations in the school setting varied by survey respondent.²⁵⁷ Students were generally questioned about their interactions with other classmates or about their interactions with school administration.²⁵⁸ However, inquiries were also made about clothing choice, in one case, for having shaved eyebrows, and about online or social media activity.²⁵⁹ In one instance, a student who was a victim of a crime was questioned about gang affiliation.²⁶⁰

In the documentary *Gang Crackdown*,²⁶¹ Sergio Argueta, Founder and Board President of S.T.R.O.N.G. Youth located in Long Island, New York, explains that he started to hear more frequently from parents whose children have been suspended from school for allegedly engaging in gang activity: “I really think a number of these schools panicked. You may rationalize with all these reasons as to why you felt you had to label these kids or why you felt that they were gang members, right? I’ve heard things like, ‘Oh, well, they scribble 503 in their notebooks.’ Duh. That’s the area code of where they come from.”²⁶²

The concerning bases for allegations have been underscored by news coverage as well as survey respondents. “On Long Island, where gang members, their victims, and scores of other kids with no connections to gangs share the same background and ‘frequent’ the same places—including the same schools—it’s unclear what can make one a gang member or affiliate in the eyes of ICE and Police.”²⁶³ In Brentwood High School, for example, cameras have been installed in the hallways.²⁶⁴ If a student is seen talking to a known gang member, a school administrator or SRO may assume that student is involved with MS-13, as well, even without knowing the content of the conversation.²⁶⁵

During questioning, the extent to which students’ immigration status is referenced or to the extent students are asked about it remains unclear. However, some LE Interactions Survey respondents confirm that students were asked about their immigration status, though the exact questions or statements made by officials are not known.²⁶⁶

Information Sharing

A few LE Interactions survey respondents had reason to believe SROs share information or suspicions about clients or community members with others.²⁶⁷ One LE Interactions Survey respondent reports Nassau and Suffolk County SROs “getting disciplinary info and sharing with police department and ICE.”²⁶⁸ In at least one instance, a survey respondent shares that SROs served as a

source of intelligence for a local police gang task force leading to the surveillance of a particular student and school for over one year.²⁶⁹

One LE Interactions Survey respondent reports that “a youth was questioned [in a school administrative office]” and told if he “did not provide the information [] requested he would be detained.”²⁷⁰ The student’s parent was notified of this questioning, but not invited to attend.²⁷¹ The exact stated reason for questioning the student about gang allegations is unknown.²⁷²

In one case documented by Hannah Dreier in *ProPublica*, a gang-affiliated student was seeking to exit the gang and disclosed information he possessed regarding local MS-13 activity to his teacher at Brentwood High School.²⁷³ The teacher then shared this information with the local SRO stationed in the school. From there, the SRO provided the information to a Suffolk County Police Department detective who was associated with the FBI Gang Task Force.²⁷⁴ The SRO encouraged the student to disclose everything he knew about the gang’s local activities because the FBI could provide him safety and protection to exit MS-13.²⁷⁵ The student cooperated for months and assisted law enforcement in the investigation and arrest of various MS-13 leaders.²⁷⁶ Later, the student was arrested in his home by ICE, which is now using the same information he provided to law enforcement to try to deport him. ICE has in its possession the information he disclosed to the school and law enforcement.²⁷⁷



How information is shared with ICE is not often clear, but the presence of SROs in schools and collaboration by local law enforcement with ICE provides an environment ripe for facilitating information sharing with dire consequences for young immigrants.²⁷⁸ Long Island attorneys argue that information makes its way informally to ICE, with SROs being a key vehicle.²⁷⁹ According to Bryan Johnson, a Long Island attorney representing several accused children, the school officials are “very reckless about the privacy of these students. They’ll share things with the SRO and not even think about what the consequences might be. It goes from the school to the SRO, then the police directly share it with ICE.”²⁸⁰ This suspicion is validated by comments from former Suffolk County Police Commissioner Timothy Sini to WNYC that “there are a number of ways” for officers to gather intelligence in schools “and kudos to school resource officers for being diligent.”²⁸¹

School districts maintain that they do not share student records with SROs.²⁸² Indeed, students have protections against the sharing of their records through the federal Family Educational Rights Privacy Act (FERPA).²⁸³ These protections are underscored by important joint guidance from the New York State Office of the Attorney General and the New York State Education Department, which advises that “upon receipt of a request from immigration officials to access student education records, school districts should immediately consult with their attorneys, as compliance with such request through disclosure may violate FERPA” as it appears that “a request from ICE or other federal immigration officials to access student . . . education records does not appear to satisfy any of the FERPA exceptions to the general rule that a parent or eligible student must consent to disclosures to third parties.”²⁸⁴

Devastating Impact of Gang Allegations

Within schools' hallways, security cameras, SROs, and teachers provide information to New York State Troopers stationed around the school and the local police departments, who themselves cooperate with ICE investigations on a routine basis, according to *The Intercept*.²⁸⁵ Indeed, LE Interactions Survey respondents on Long Island report that they believe SROs may have shared information or suspicions about students.²⁸⁶ Consequently, students have wrongly been identified as MS-13 members and have suffered the consequences.²⁸⁷

In her March 2018 publication, *The School to Deportation Pipeline*, Laila Hlass posits that gang allegations involving non-citizen youth are a new key component of the school to deportation pipeline.²⁸⁸ Hlass explains that "children are particularly vulnerable to becoming entangled in

[...][T]he presence of School Resource Officers in schools and collaboration by local law enforcement with ICE provides an environment ripe for facilitating information sharing with dire consequences for young immigrants]

the ever-expanding crimmigration complex because of over-policing in the juvenile and criminal systems and biases against Latinx youth."²⁸⁹ Hlass argues that zero-tolerance policies in schools have "disproportionately impacted racial and ethnic minority youth, with Latinx youth 1.5 times more likely to be suspended than whites."²⁹⁰

The impact of arrests and detentions of children accused of gang affiliation has been all the more devastating because these arrests and detentions have not generally withstood judicial scrutiny.²⁹¹ On July 27, 2017, the New York Civil Liberties Union (NYCLU) sent a letter to local and federal law enforcement officials expressing concern that children are being unfairly labeled as gang members and detained.²⁹² On August 11, 2017 the American Civil Liberties Union (ACLU) filed a lawsuit that challenged the detention of children based

on unfounded gang allegations.²⁹³ While the total number of youth detained after incidents at schools is unknown,²⁹⁴ at the time of writing of this report, twenty-seven of the thirty-four plaintiffs named in the ACLU's lawsuit have been released because a judge found there was not sufficient evidence to establish their gang affiliations.²⁹⁵

In the end, the co-opting of schools as settings for indiscriminate dragnets has devastating consequences on students' educations and on immigrant family engagement in their schools.²⁹⁶ Families' ability to feel safe and to trust their teachers and school leaders are essential ingredients in student learning.²⁹⁷ According to advocates, the absence of a clear articulation of what constitutes grounds for suspicion of gang activity and the shoddy, racist foundations for allegations, put students at the mercy of school staff and SROs who very often lack guidelines and training on processes that ensure protection of students' rights as well as their safety.²⁹⁸ Such an environment is deeply detrimental to closing achievement gaps in New York State and to preparing students for success in college and future careers.²⁹⁹ According to a joint letter from Commissioner Elia and former Attorney General Schneiderman:

At a time when so many questions are being raised on what immigrant-related actions will be taken by the federal government, it is vital that we, as educators and government officials, remind our school communities about the importance of inclusiveness and the right of all students to receive an education without fear of reprisal simply by being in school. Our classrooms must remain safe havens for all children.³⁰⁰



Chapter Five

Swept up in the Sweep

Community Tensions

The irony is, of course, that the tactics employed by the Trump administration in their alleged pursuit of MS-13—overreaching and broad gang allegations, aggressive federal law enforcement, bullying of local law enforcement and governments to cooperate in immigration enforcement, and demonization of victims—are actually counterproductive to genuine anti-MS-13 efforts, most notably because victims are reluctant to cooperate.³⁰¹ Against the backdrop of aggressive enforcement and public demonization of immigrants, trust in law enforcement by immigrant communities has significantly dropped.³⁰² First and foremost, because the communities in which MS-13 operate have high-immigrant populations, the victims are likely to be immigrants or children of immigrants themselves.³⁰³ MS-13 has used this knowledge to their advantage: “The gangs target what U.S. law enforcement experts call ‘gray-market’ businesses owned or managed by [undocumented] immigrants who are less likely to report extortion to the authorities.”³⁰⁴

Further, by focusing on Long Island, the Trump administration has chosen a region where confidence in law enforcement is already down, fueled by decades of racial tensions.³⁰⁵ In the late 2000’s, the Department of Justice found racial profiling of, and discrimination against, Latinx communities” by the Suffolk County Police Department.³⁰⁶ As recently as August 2014, a local KKK chapter dropped pamphlets calling on U.S. troops to “stop the flood of illegal aliens” in every driveway of Hampton Bays, a blue collar town on the outskirts of more affluent Hampton communities.³⁰⁷

Local law enforcement has expressed concerns about the effect the federal policies will have on their ability to keep their communities safe, with some noting to *The New York Times* that the effort against MS-13 is “out of proportion to the threat,”³⁰⁸ and mentioning concerns that the Trump administration is using other gang arrests to inflate their MS-13 numbers.³⁰⁹

Long Term Impact: Muslim Communities in a Post-9/11 America

Although the long-term impacts of the federal government's profiling and categorizing of Latinx individuals on Long Island as gang members or affiliates is still to be determined, it is instructive to look at the ongoing negative impacts of religious, ethnic and racial profiling (also in the name of national security) on the Muslim American community.

In the aftermath of September 11, 2001, the U.S. national security apparatus dramatically expanded its use of terror watchlists, including the No-Fly list—the country went from having 16 people on a No-Fly list pre-September 11th to over 44,000 people just five years later.³¹⁰ Importantly, “[s]uch dramatic growth does not reflect a commensurate increase in terrorist activity inside the United States during that time. In fact, terrorist activity in the United States since 2001 has been historically low and declining.”³¹¹ The government's own “rules for putting individuals on its main terrorist database, as well as the no fly list as selectee list,” leaked to *The Intercept* in July 2014, offer a compelling explanation for this dramatic increase.³¹²

“[N]either ‘concrete facts not ‘irrefutable evidence’ [are needed] to designate an American or foreigner a terrorist.”³¹³

According to the document, “neither ‘concrete facts’ nor ‘irrefutable evidence’ [are needed] to designate an American or foreigner as a terrorist.”³¹³ And, according to United States District Judge Anna Brown, the processes to remove oneself from the watchlist “are wholly ineffective and, therefore, fall short of the ‘elementary and fundamental requirement of due process’ to be afforded ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present objections.’”³¹⁴

“Of the 680,000 individuals on that FBI master list, roughly 40% have ‘no recognized terrorist group affiliation,’” meaning these individuals “don’t even have a connection—as the government loosely defines it—to a designated terrorist group, but are still branded as suspected terrorists.”³¹⁵

Arjun Sethi, a civil rights lawyer and expert in policing, counter terrorism, and racial and religious profiling, comments, “watchlisting is being used arbitrarily under a cloud of secrecy.” He continues, “[a] watchlist saturated with innocent people diverts attention from real, genuine threats,” and instead “disproportionately targets Arab and Muslim Americans or other minorities [and] stigmatizes innocent people and alienates them from law enforcement.”³¹⁶ One can be branded a “terrorist” based on a single social media post, which means that law enforcement and the intelligence community have immense discretion to arbitrarily label someone a terrorist and abuse the system.³¹⁷

The consequences of being designated a terrorist are many. If one's name is shared with a foreign power it could result in torture or even death.³¹⁸ In the United States, it could lead to the loss of employment, separation from family, invasion of privacy, abusive encounters with law enforcement, and the deferment of dreams.³¹⁹ The watchlist system is part of a broader architecture of programs that seek to marginalize and disenfranchise American Muslims and chill their expression of basic civil and human rights.³²⁰

Unfortunately, even as the “the standards that the government uses to place people on these various blacklists are vague, overbroad, and riddled with exceptions that can swallow the rules” the list is being used as a stand-in to assess character or safety concerns in other arenas.³²¹ In June 2016, the U.S. Senate voted on four separate bills, two put forward by Democrats and two put forward by Republicans, to ban the sale of guns to people based on their inclusion on a terrorist watchlist.³²² During the 2016 presidential campaign, former New York City Mayor Rudy Giuliani commented that “he would be in favor of forcing Muslims on the federal government's terrorism watch list to wear electronic monitoring tags or bracelets for authorities to track their whereabouts. ‘I would think that's an excellent idea,’ said Giuliani, an adviser to Republican presidential

nominee Donald Trump. ‘If you’re on the terror watch list, I should you know you’re on the terror watch list. You’re on there for a reason.’”³²³

Watchlisting also hurts individuals applying for immigration benefits, and in particular, Muslims and individuals of Middle Eastern and South Asian descent, through the Controlled Access Review and Resolution Program (“CARRP”) managed by USCIS.³²⁴ USCIS created CARRP in 2008 to adjudicate certain immigration applications that allegedly raise “national security concerns.”³²⁵ Upon information and belief, CARRP imposes “vague and overbroad criteria that often turn on national origin and lawful activities or associations” for determining whether an individual should be labeled as a “national security concern.”³²⁶ Placement in the Known or Suspected Terrorist (KST) file³²⁷ or the Terrorist Screening Database (TSDB)³²⁸ will automatically result in an applicant being labeled a “national security concern.”³²⁹ The criteria also include many lawful activities such as donating to Muslim charities or traveling to Muslim-majority countries.³³⁰ As a result of being labeled a “national security concern,” applicants that meet all the statutory requirements for citizenship or adjustment of status will face interminable delays and/or pre-textual denials.³³¹ USCIS officers are instructed to “conduct a thorough review of the record” so they may deny the application “on any legally sufficient grounds.”³³² Officers are instructed to hold an application in abeyance if there is no legally sufficient ground to deny, even if an applicant is otherwise eligible for the benefit, “Officers are not authorized to approve applications with confirmed KST NS [National Security] concerns.”³³³

Sethi’s recommendations for reforming the watchlist address many of the criticisms made in this report regarding gang databases. Namely that “[t]he standards for inclusion [on the watchlist] should be appropriately narrow, the evidence relied upon credible and genuine, and the redress and review procedures consistent with basic constitutional requirements of fairness and due process.”³³⁴

Case Example from the CLEAR Project

Ms. Mariam Ahmed³³⁵ is originally from a Muslim-majority country. She came to the United States several years ago and shortly thereafter applied for asylum. After protracted hearings on her asylum application, an immigration judge finally granted her asylum.

A year later, like many asylees, Mariam applied for adjustment of status. Unbeknownst to Mariam, her name was on a watchlist and as a result her application was subject to CARRP. In addition, because her name was on a watchlist she was rejected in her applications for government employment because her background checks wouldn’t “clear.” Mariam faced extra scrutiny, screening, and delays while traveling because of her placement on this list. Mariam has never been able to find out why she has been added to this list, nor has she been successful in her attempts so far to remove her name from this list.

When Mariam finally received an interview notice after a long delay, two officers questioned her in a video-recorded interview—even though the regulations do not require an interview for asylum-based applicants for adjustment.³³⁶ The officers had her detail her address history in the United States, her employment history, immigration history, etc. A Freedom of Information Act/Privacy Act request yielded information that external law enforcement agents had submitted questions to USCIS to ask Mariam during this interview. Overall, the FOIA results showed that the officers were looking for any and every reason to catch Mariam with an inconsistency and use it against her. Separately, DHS officers approached several of Mariam’s acquaintances and attempted to question them about her. All of this happened because Mariam had been placed on a watchlist—without notice or an adequate mechanism to challenge her placement.

The destructive long-term impacts of broad-based profiling and subsequent enforcement of the American Muslim community should serve as a warning to all levels of government on the dangerous path they tread by pursuing the same profiling practices and policies against the Latinx community.

Conclusion: Lessons Learned and Recommendations

Across the country, communities, advocates and lawyers are confronting and organizing to protect impacted individuals. These efforts can provide important lessons for New York communities struggling with the use of broad profiling by immigration enforcement.

In Chicago, over 128,000 residents are currently included in a gang database maintained by the Chicago Police Department that is accessible by many different federal, state, and local law enforcement agencies, including ICE.³³⁷ Much like the databases used on Long Island, the exact criteria that land a person in the database are murky, and no clear mechanism exists for someone to remove themselves from the database, even though being listed in the database can have far reaching implications.³³⁸ According to a February 2018 report from the Policing in Chicago Research Group, *Tracked and Targeted: Early Findings on Chicago's Gang Database*, these implications include harassment by law enforcement, targeting by immigration enforcement, including for those with permanent or temporary legal status, and basic barriers to employment and housing.³³⁹

The Policing in Chicago Research Group make a number of recommendations to address the due process and civil rights violations of the city's gang database, including recommending that the "Chicago Police Department and Illinois State Police should reveal and review data that is accessible or shared with Immigration and Customs Enforcement (ICE) and other federal law enforcement agencies."³⁴⁰ It also recommends that "the City of Chicago should begin a process of inquiry independent from the Chicago Police Department, such as the Office of the Inspector General, to investigate the current procedures, civil rights protections, and training pertaining to the gang database and determine whether the gang database violates the constitutional and civil rights of U.S. born and immigrant Chicagoans."³⁴¹

In March of 2018, the Office of the Inspector General of Chicago announced that they would conduct such a review.³⁴² "The decision of the Office of Inspector General to review the City of Chicago for the use of the Gang Database confirms what our communities have been saying for months: That the Chicago Police Department has a dangerous tool they use to criminalize communities of color," said Janae Bonsu, Black Youth Project 100 (BYP100) and principal author of the Report.³⁴³ "These practices have devastating effects on our communities, from decreasing job opportunities, to increasing risk of deportation. The database needs to be eliminated and we will continue to work to make sure that the City has policies that prioritize the safety of our communities instead of policing and incarceration," she concluded.³⁴⁴

Alex Sanchez, a former MS-13 member, recently told the *New Yorker* that the best way to combat the gang is to end the isolation of the communities. Indeed, successful efforts, where they have taken place, have largely been structured around more tolerant and community-centric approaches. For example, S.T.R.O.N.G. Youth, a Long Island-based group founded by former gang members, has relied on an inclusive approach bringing together law enforcement, community, members, victims, and gang members to collaborate on various initiatives and, ultimately, steer youth away from violence.



Recommendations for State and Local Jurisdictions

As immigration advocates, law students, and attorneys we have seen the tremendous adverse impact a “gang member” or “gang affiliate” label can have on an individual. Such labelling has led to arrest and deportation by immigration, detention in horrible conditions causing hardship to individuals and their families, and exclusion from attending school.

For these reasons we³⁴⁵ recommend the following:

Gang Databases

We oppose the creation or maintenance of any local, state, or federal databases to catalog known or suspected gang affiliates or members. We advocate for the abolishment of gang databases.

However, if these databases are to be maintained we suggest they have the following minimum for individual inclusion:

- a. Gangs: Minimum age for inclusion shall be 16 years old.
- b. Must require conviction for one gang-motivated violent misdemeanor offense or gang-motivated felony offense.
- c. Must contain full document of the sources and bases of the gang membership conclusion.

The criteria used for inclusion should be published and publicly available.

There must be a process by which to ensure the accuracy of the allegation of gang affiliation, including but not limited to:

- a. Periodic auditing of database by neutral third party to review entries and to purge individuals from the database when necessary.

- b. Notice shall be provided to all individuals included in “gang databases.” A process for individuals to appeal their inclusion before a neutral adjudicator must be created.
- c. Criminal defense and immigration counsel must be provided with full and timely discovery as to the sources and bases of the gang membership conclusion.

The State Legislature should consider passing a law implementing confidentiality measures to limit information sharing from any gang database to ensure that the constitutional and civil rights of all New Yorkers are protected.

Schools

School Resource Officers’ presence in schools has proven deeply problematic and troubling in instances reported by survey respondents. At minimum SROs, as well as State Troopers, must be prohibited from sharing information with ICE. In general, decisions about law enforcement and their presence in schools should be made in consensus with impacted communities.

Clear guidance and training is needed to support school districts’ development and implementation of best practice-based codes of conduct and procedures for dealing with suspected gang activity.

- a. Codes of conduct must clearly articulate grounds for suspicion of gang membership. Moreover, codes of conduct should contain provisions protecting students’ rights, for example, ensuring students of particular ethnic backgrounds are not singled out for speaking with certain individuals or for wearing certain colors.
- b. Codes of conduct must be translated and explained to students and their families in a language they understand upon enrollment at the school.
- c. Guidance should also address students’ files and again remind districts of requirements under the Family Educational Rights and Privacy Act (FERPA). FERPA is a federal law that protects the privacy of student educational records. Districts must abide by their FERPA obligations before handing over student documents to law enforcement or immigration officials. Nonetheless, in the event a student file is provided without a family’s consent or in response to a lawful court order, schools must ensure not to include unfounded suspicions of gang association or information about a student’s immigration status in a student’s file.
- d. School staff should be specifically trained and reminded of confidentiality of student records and that they should not share any immigration information with other staff or SROs.

School districts need support to productively address gang-related issues, including more guidance and mental health resources for vulnerable youth and robust partnerships with community-based organizations that have cultural and linguistic competency and expertise in addressing root causes.

State Troopers should be kept out of schools. Districts should implement robust, best practice protocols³⁴⁶ and criteria around any violation of the Sensitive Locations policy and attempts by ICE to access school campuses.

ENDNOTES

- 1 Immigrant and Non-Citizen Rights Clinic, City Univ. of N.Y. (CUNY) Sch. of Law, The Law Enforcement Interactions Survey (last updated Mar. 31, 2018) [hereinafter LE Interactions Survey, Responses as of Mar. 31, 2018] (unpublished report) (on file with institutional author).
- 2 Throughout, report use of the term “respondents” refers to survey respondents and not non-citizens in removal proceedings.
- 3 For more on the Salvadoran civil war and the broader Western Hemisphere geopolitical context at the time, please see ÓSCAR MARTÍNEZ, *A HISTORY OF VIOLENCE: LIVING AND DYING IN CENTRAL AMERICA* (2016).
- 4 INSIGHT CRIME & CENTER FOR LATIN AM. & LATINO STUDIES, *MS-13 IN THE AMERICAS: HOW THE WORLD’S MOST NOTORIOUS GANG DEFIES LOGIC, RESISTS DESTRUCTION* 13–14 (2018) [hereinafter *MS-13 IN THE AMERICAS*], <https://www.insightcrime.org/wp-content/uploads/2018/02/MS13-in-the-Americas-InSight-Crime-English-3.pdf>.
- 5 Jose Miguel Cruz, *Central American Gangs Like MS-13 Were Born Out of Failed Anti-Crime Policies*, CONVERSATION (May 8, 2017, 9:17 PM), <http://theconversation.com/central-american-gangs-like-ms-13-were-born-out-of-failed-anti-crime-policies-76554>.
- 6 See Dara Lind, *MS-13, Explained*, Vox (Feb. 26, 2018, 9:00 AM), <https://www.vox.com/policy-and-politics/2018/2/26/16955936/ms-13-trump-immigrants-crime>; Cruz, *supra* note 5.
- 7 See Lind, *supra* note 6 (“In the early 1990s, California passed laws mandating life sentences for a third felony and allowing minors to be charged as adults if they were determined to be gang members.”); Cruz, *supra* note 5 (explaining the history of the creation of MS-13).
- 8 *MS-13 IN THE AMERICAS*, *supra* note 4, at 14-16.
- 9 See *id.* at 13-14.
- 10 See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Division C of Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (federal statute amending Title 8 of the United States Code to include more minor offenses as deportable ones, facilitate cooperation between state and local and federal authorities, among other things including restricting states’ abilities to offer in-state tuition to undocumented students); Dara Lind, *The Disastrous, Forgotten 1996 Law That Created Today’s Immigration Problem*, Vox (Apr. 28, 2016, 8:40 AM), <https://www.vox.com/2016/4/28/11515132/iirira-clinton-immigration> (“But the ‘96 law essentially invented immigration enforcement as we know it today—where deportation is a constant and plausible threat to millions of immigrants.”).
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- 15 Lind, *supra* note 6.
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 *Id.*
- 21 SEELKE, *supra* note 13, at 10.
- 22 *MS-13 IN THE AMERICAS*, *supra* note 4, at 17.
- 23 See Lind, *supra* note 6.
- 24 *Id.*
- 25 *MS-13 IN THE AMERICAS*, *supra* note 4, at 9.

- 26 *Id.* at 17.
- 27 *Id.* at 16, 31.
- 28 *Id.* at 35, 39-47.
- 29 Lind, *supra* note 6; *see also* Carlos García, *The Birth of the MS13 in New York*, INsIGHT CRIME (Mar. 9, 2018), <https://www.insightcrime.org/news/analysis/birth-ms13-new-york>.
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- 31 Lind, *supra* note 6 (“It worked—until it didn’t.”).
- 32 Definition of a “Transnational Organization” (in part): Transnational organized crime refers to those self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms. The White House, President Barack Obama, Strategy to Combat Transnational Organized Crime: Definition, <https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime/definition> (last visited Apr. 1, 2018).
- 33 Lind, *supra* note 6 (“But most analysts agree that MS-13 doesn’t really belong in that company. Those other organizations are sophisticated global syndicates with several different illegal revenue streams crossing borders; MS-13 is more of an internationally franchised street gang.”); *see also* CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., GANGS IN CENTRAL AMERICA 5 (2016), <https://fas.org/sgp/crs/row/RL34112.pdf> (“Still, the term *transnational criminal organization*, or TCO might be misleading when used to describe the *maras* across the region.”); *see also* U.S. DEP’T OF JUSTICE DRUG ENF’T ADMIN., 2017 NATIONAL DRUG THREAT ASSESSMENT 18-19 (DEA-DCT-DIR-040-17) (2017), https://www.dea.gov/docs/DIR-040-17_2017-NDTA.pdf.
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- 37 MS-13 IN THE AMERICAS, *supra* note 4, at 70 (“The question is how to respond to the gang. Authorities have routinely emphasized a law enforcement approach. From *mano dura* in Central America to more recent efforts in the United States to round up alleged gang members, the focus has been on arresting or removing gang members from the communities where they operate. However, that approach has not worked. The MS13, now nearly 40 years old, continues to operate and some would say thrive. It seems time to try alternative ways of thinking through this problem.”).
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- 41 *See* Rocio Cara Labrador & Danielle Renwick, *Central America’s Violent Northern Triangle*, COUNCIL ON FOREIGN REL. (Jan. 18, 2018), <http://www.cfr.org/transnational-crime/central-americas-violent-northern-triangle/p37286> (indicating that the Northern Triangle includes El Salvador, Guatemala, and Honduras and noting that El Salvador was the “world’s most violent country not at war” in 2015).
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- 48 “The Flores Settlement Agreement imposed several obligations on the immigration authorities, which fall into three broad categories: 1. The government is required to release children from immigration detention without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody. 2. If a suitable placement is not immediately available, the government is obligated to place children in the “‘least restrictive’ setting appropriate to their age and any special needs. 3. The government must implement standards relating to the care and treatment of children in immigration detention.” Human Rights First, *The Flores Settlement: A Brief History and Next Steps* (Feb. 19, 2016), <https://www.humanrightsfirst.org/resource/flores-settlement-brief-history-and-next-steps>.
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- 144 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 145 See Preston Huennekens, *Operation Matador Nabs 475 Gang Members in N.Y. City Area*, CTR. FOR IMMIGR. STUDIES (Apr. 4, 2018), <https://cis.org/Huennekens/Operation-Matador-Nabs-475-Gang-Members-NY-City-Area>.
- 146 Latinx is the gender-neutral or non-binary alternative to the terms Latino and Latina and typically refers to a person or people of Latin American origin or descent. Tanisha Love Ramirez & Zeba Blay, *Why People Are Using the Term 'Latinx'*, HUFFINGTON POST (July 5, 2016), https://www.huffingtonpost.com/entry/why-people-are-using-the-term-latinx_us_57753328e4b0cc0fa136a159 (describing the meaning, usage, and issues with using the term Latinx); Emmanuel Felton, *Gang Databases Are a Life Sentence for Black and Latino Communities*, PACIFIC STANDARD (Mar. 15, 2018) <https://psmag.com/social-justice/gang-databases-life-sentence-for-black-and-latino-communities>.
- 147 See *The Gang Crackdown*, PBS Frontline, Season 36: Episode 5, <https://www.pbs.org/wgbh/frontline/film/the-gang-crackdown> (profiling student from Honduras accused of displaying gang signs and threatening another student by school, which student denies); LE Interactions Survey, Responses as of Mar. 31, 2018 (showing survey respondents noticed a substantial increase in the use of gang allegations towards immigrant students in schools).
- 148 The Supreme Court held decades ago that it is not a crime to be a member of a gang. *Lanzetta v. New Jersey*, 306 U.S. 451, 457-58 (1939). In *Lanzetta*, the Court invalidated a New Jersey law criminalizing gang membership as unconstitutionally vague under the Due Process Clause. *Id.* at 452, 458. Nevertheless, states have been enacting anti-gang legislation since that time. New York's penal code does not include a specific definition of "criminal street gang" either as a criminal act or as a sentence enhancer; however, it does give police and prosecutors "ample grounds" on which to prosecute for harm caused by street gang violence. Rahul Saksena, Testimony before the New York Council's Committee on Public Safety, NYCLU (Dec. 3, 2009), <https://www.nyclu.org/en/publications/criminal-street-gang-activity-initiation-and-solicitation> ("Individuals who commit crimes in concert with one or more persons can be prosecuted under the state's conspiracy laws. An individual who solicits a crime in concert with one or more persons can be prosecuted under the state's conspiracy and solicitation laws. An individual who engages in harmful initiation activities can be prosecuted for facilitations."). For example, gang assault in the first degree provides that "a person is guilty of gang assault in the first degree when with intent to cause serious physical injury to another person and when aided by two or more persons actually present, he causes serious physical injury to such person or to a third person." N.Y. PENAL LAW § 120.07 (1996). Gang membership alone cannot sustain a conviction under N.Y. PENAL LAW § 120.07 because it requires that a person be *aided by two or more persons actually present*. See *id.* (emphasis added).
- 149 Under INA § 237(a), classes of deportable "aliens" include any "alien" inadmissible at time of entry or of adjustment of status or violates status is considered deportable. 8 U.S.C. § 1227(a) (2008). Under INA § 212(a)(3)(A)(ii), specifying inadmissibility grounds, gang-activity may be deemed inadmissible as "any other unlawful activity" under the security grounds. 8 U.S.C. § 1182(a)(3)(A)(ii) (2013).
- 150 White House, *Trump Administration Immigration Policy Priorities* (Oct. 8, 2017), <https://www.whitehouse.gov/briefings-statements/trump-administration-immigration-policy-priorities> (clarifying that Trump Administration Immigration Policy Priorities include enhancing border security and closing 'legal loopholes' that encourage illegal immigration, enforcing immigration laws and returning visa overstays, which includes "prevent[ing] gang members from receiving immigration benefits," and implementing a merit-based immigration system); U.S. Dep't of Homeland Sec., *DHS Announces Progress in Enforcing Immigration Laws, Protecting Americans* (Dec. 5, 2017), <https://www.ice.gov/news/releases/dhs-announces-progress-enforcing-immigration-laws-protecting-americans> ("The executive orders also prioritized to dismantle transnational gangs, with a specific focus on MS-13, one of the most violent gangs in the United States. In FY2017, ICE Homeland Security Investigations (HSI) arrested 796 MS-13 gang members and associates, compared to 434 in FY2016—an 83 percent increase.").

- 151 U.S. Dep't of Homeland Sec., *Written Testimony of ICE Homeland Security Investigations Acting Executive Director Derek Benner, and ICE Enforcement and Removal Operations Executive Associate Matthew Albence for a Senate Committee on the Judiciary Hearing titled "The MS-13 Problem: Investigating Gang Membership as Well as Its Nexus to Illegal Immigration, and Assessing Federal Efforts to End the Threat"* (June 21, 2017), <https://www.dhs.gov/news/2017/06/21/written-testimony-ice-senate-committee-judiciary-hearing-titled-ms-13-problem> ("ICE ERO also plays a significant role in combating the MS-13 gang through the identification, arrest, and removal of gang members who are in the country illegally. Because ICE ERO also focuses its arrests on U.S. Code Title 8 (Aliens and Nationality), ICE ERO may target MS-13 and other gang members on the basis of their immigration status, without the need to establish additional criminality."); Tina Vasquez, *Trump's 'Smart and Strategic' Immigration Approach: Everyone Is Deportable*, REWIRENEWS (Feb. 21, 2017), <https://rewire.news/article/2017/02/21/trumps-smart-strategic-immigration-approach-everyone-deportable/> ("And now under Trump's executive orders, immigrants can be ordered regardless of whether or not they've actually been charged or convicted of a crime or admitted to any wrongdoing.").
- 152 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 153 See Mary Holper, *Confronting Cops in Immigration Court*, 23 WM. & MARY BILL RTS. J. 675, 698-700 (2015) ("With respect to the arrest report for alien smuggling, absent a conviction or corroborating evidence of the allegations contained therein . . . Considering that prosecution was declined and that there is no corroboration, from the applicant or otherwise, we give the apprehension report little weight. . . . Dicta from the Ninth Circuit and the Fifth Circuit suggests that police reports, when no conviction resulted, should not be given any serious weight in immigration court. . . . [I]n *Avila-Ramirez v. Holder*, the Seventh Circuit recently held that it was error for an immigration judge to consider an arrest report that did not result in a conviction to deny discretionary relief. The court chastised the judge and Board for failing to follow *Arreguin*, a binding agency decision. No court, however, has held that an immigration judge impermissibly *admitted* a police report in a discretionary case; at most, courts have instructed immigration judges to give an uncorroborated police report no weight in its discretionary decision.").
- 154 Immigration proceedings are not bound by strict rules of evidence. See *Matter of Wadud*, 19 I. & N. Dec. 182 (BIA 1984) (holding strict rules of evidence are not applicable in deportation proceedings); see also *Baliza v. INS*, 709 F.2d 1231 (9th Cir. 1983); *Dallo v. I.N.S.*, 765 F.2d 581 (6th Cir. 1985); *Longoria-Casteneda v. I.N.S.*, 548 F.2d 233 (8th Cir. 1977), *cert. denied*, 434 U.S. 854 (1977).
- 155 INA § 236(a), 8 U.S.C. § 1226(a) (1996); INA § 236(c), 8 U.S.C. § 1226(c) (1996).
- 156 Once a non-citizen has been released, the law prohibits federal agents from re-arresting him merely because he is subject to removal proceedings unless federal agents present evidence of materially changed circumstances that the non-citizen is dangerous, has become a flight risk, or is now subject to a final removal order. See *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1177 (N.D. Cal. 2017) ("If federal agents have probable cause to believe that a minor is a member of a criminal gang, certainly that could be a 'changed circumstance' that would justify detention, even if the government previously determined that the minor was not dangerous.").
- 157 JENNIFER STAVE ET AL., VERA INST. OF JUSTICE, *EVALUATION OF THE NEW YORK IMMIGRANT FAMILY UNITY PROJECT: ASSESSING THE IMPACT OF LEGAL REPRESENTATION OF FAMILY AND COMMUNITY UNITY* (2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-immigrant-family-unity-project-evaluation/legacy_downloads/new-york-immigrant-family-unity-project-evaluation.pdf. Individuals who are either detained, unrepresented, or both, are exponentially more likely to be deported. See Steering Committee of the New York Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings, New York Immigration Representation Study Report: Part 1*, 33 CARDOZO L. REV. 357, 363-64 (2011), <http://cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf> ("Represented and released or never detained: 74% have successful outcomes. Represented but detained: 18% have successful outcomes. Unrepresented but released or never detained: 13% have successful outcomes. Unrepresented and detained: 3% have successful outcomes."). There are significant immigration backlogs. For FY 2018, the immigration backlog for the entire U.S. is 684,583 cases, and of those, 92,484 are in New York. TRAC Immigr., *Immigration Court Backlog Tool*, http://trac.syr.edu/phptools/immigration/court_backlog (last visited Apr. 1, 2018).
- 158 *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, et al., 467 U.S. 837 (1984) (holding that deference must be given to agencies in charge of interpreting administrative statutes unless such interpretations are unreasonable).
- 159 See e.g., Natasha Bach, *Motel 6 Employees in Arizona Tipped Off Ice About Undocumented Immigrants—Leading to At Least 20 Arrests*, FORTUNE (Sept. 14, 2017), <http://fortune.com/2017/09/14/motel-6-employees-tipped-off-ice-about-undocumented-immigrants>; Alastair Boone, *Motel 6 Is Probably Not the Only Company Tipping Off Immigration Agents*, CITYLAB (Sept. 15, 2016), <https://www.citylab.com/equity/2017/09/motel-6-tipped-off-immigration-agents-about-guests/540021>.
- 160 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 161 *Id.*

- 162 *Id.*
- 163 *Id.*
- 164 *Id.*
- 165 Requests for Evidence (RFEs) are requests issued by USCIS to request more proof from those petitioning for immigrant and nonimmigrant visas, adjust status or applying for naturalization. Often RFEs ask for factual information and a failure to respond will usually result in a denial of the application or petition.
- 166 Maryam Saleh, *Chicago's Promise: Caught in a Gang Dragnet and Detained by ICE, an Immigrant Tests the Limits of a Sanctuary City*, INTERCEPT (Jan. 28, 2018, 10:00 AM), <https://theintercept.com/2018/01/28/chicago-gangs-immigration-ice>.
- 167 *Lanzetta v. New Jersey*, 306 U.S. 451, 457-58 (1939) (holding it is not a crime to be a member of a gang).
- 168 Under federal law, “criminal street gangs” are defined as an ongoing group of five or more individuals who have as a primary purpose the commission of federal felonies involving certain drug crimes or physical force against another person. BRIEF REVIEW OF FEDERAL AND STATE DEFINITIONS OF THE TERMS “GANGS,” “GANG CRIME,” AND “GANG MEMBER” (AS OF DEC. 2016), NATIONAL GANG CENTER, <https://www.nationalgangcenter.gov/Content/Documents/Definitions.pdf> (last visited Mar. 31, 2018).
- 169 Howell, *supra* note 125, at 649-50.
- 170 Emmanuel Felton, *Gang Databases are a Life Sentence for Black and Latino Communities*, PACIFIC STANDARD (Mar. 15, 2018), <https://psmag.com/social-justice/gang-databases-life-sentence-for-black-and-latino-communities> (“While many in law enforcement hail gang databases as policing breakthrough, civil rights advocates have attacked these programs since their conception . . . Reformers argue these databases function like black boxes and demand more information be made public about how someone gets on—or off—these lists. The lists’ opaqueness, they say, make them a prime tool for racial profiling. From what limited information advocates have been able to gather, a familiar pattern has emerged around the country: Black and Latino communities constitute a disproportionate number of individuals on gang lists.”).
- 171 Babe Howell, *Gang Policing: The Post Stop-And-Frisk Justification for Profile-Based Policing*, 5 UNIV. DENV. CRIM. L. REV. 1, 15 (2015) (describing and criticizing the various criteria used by law enforcement in classifying gang members, including the classification of non-gang members and former gang members erroneously as gang members); *see id.* at 11-12 (“The announcement of a new menace to society, however, together with frightening rhetoric about kids who would hurt you for invading their turf, served both to give the NYPD a new justification for intensively policing young men of color and to overshadow any argument that stop and frisk was not a deterrent to crime.”); Emmanuel Felton, *Gang Databases are a Life Sentence for Black and Latino Communities*, PACIFIC STANDARD (Mar. 15, 2018), <https://psmag.com/social-justice/gang-databases-life-sentence-for-black-and-latino-communities> (“While many in law enforcement hail gang databases as policing breakthrough, civil rights advocates have attacked these programs since their conception . . . Reformers argue these databases function like black boxes and demand more information be made public about how someone gets on—or off—these lists. The lists’ opaqueness, they say, make them a prime tool for racial profiling. From what limited information advocates have been able to gather, a familiar pattern has emerged around the country: Black and Latino communities constitute a disproportionate number of individuals on gang lists.”).
- 172 Howell, *supra* note 171, at 15 (“[I]ndividuals can be certified as gang members or associates, based on appearance, association, location, law enforcement ‘intelligence’ or informants”). An individual can be certified by 1) admitting to membership, 2) being identified as such by two independent sources, and 3) meets any two of the following criteria: known gang location, scars/tattoos associated with gangs, gang related documents, colors associated with gangs, association with known gang members, and hand signs associated with gangs; none of the criteria requires any arrest or criminal conduct. *Id.* at 16.
- 173 Howell, *supra* note 125, at 651.
- 174 Howell, *supra* note 125, at 649-50 (“[U]niform and regular standards for purging and maintaining the gang databases often do not exist or may be ignored where they do. Finally, it is not clear whether law enforcement agencies even follow their own criteria [for purging]. Thus, databases include those who were never gang members, as well as those who joined and then quit gangs.”); *see e.g.* Richard Winton, *California Gang Database Plagued with Errors, Unsubstantiated Entries, State Auditor Finds*, L.A. TIMES (Aug. 11, 2016, 9:10 PM), <http://www.latimes.com/local/lanow/la-me-ln-calgangs-audit-20160811-snap-story.html>.
- 175 Howell, *supra* note 171, at 15-16 (“Indeed, the NYPD gang database does not require any information regarding criminality whatsoever.”).
- 176 Nassau Cty. Police Dep’t, Task Force Against Gangs, Coordinators Office, Gang Identifiers (produced to CUNY School of Law Professor Babe Howell in response to Freedom of Information Law request, postmarked July 26, 2010) (on file with authors).
- 177 Howell, *supra* note 171, at 17.

- 178 *Id.* at 15 (“There is no notification of inclusion in gang databases and no right to challenge inclusion.”); The Legal Aid Society, *Defenders, Community Groups & Activists Announce “FOIL Yourself” Campaign Against NYPD Gang Database* (Feb. 19, 2018), <https://www.legalaidnyc.org/news/2018/2/26/defenders-community-groups-activists-announce-foil-yourself-campaign-against-nypd-gang-database>.
- 179 THE POLICING IN CHICAGO RESEARCH GROUP, *TRACKED AND TARGETED: EARLY FINDINGS ON CHICAGO’S GANG DATABASE 2* (2018), <http://erasethe database.com/wp-content/uploads/2018/02/Tracked-Targeted-0217.pdf> [hereinafter *TRACKED AND TARGETED*].
- 180 Richard Winton, *California Gang Database Plagued with Errors, Unsubstantiated Entries, State Auditor Finds*, L.A. TIMES (Aug. 11, 2016, 9:10 PM), <http://www.latimes.com/local/lanow/la-me-ln-calgangs-audit-20160811-snap-story.html>.
- 181 Chris Sommerfedt, *Audit Discovers Toddlers in California Gang Database*, N.Y. DAILY NEWS (Aug. 15, 2016), <http://www.nydailynews.com/news/national/audit-discovers-toddlers-california-gang-database-article-1.2751798>.
- 182 Jillian Jorgensen, *Activists Urge Inspector General to Probe NYPD’s Gang Databases*, N.Y. DAILY NEWS (May 16, 2017), <http://www.nydailynews.com/new-york/manhattan/activists-urge-inspector-general-probe-nypd-gang-databases-article-1.3171323>.
- 183 *See id.* at 14-19; *see also* JUDITH GREENE & KEVIN PRANIS, JUSTICE POL’Y INST., *GANG WARS: THE FAILURE OF ENFORCEMENT TACTICS AND THE NEED FOR EFFECTIVE PUBLIC SAFETY STRATEGIES* (2007), http://www.justicepolicy.org/uploads/justicepolicy/documents/07-07_rep_gangwars_gc-ps-ac-jj.pdf.
- 184 Howell, *supra* note 125, at 657; LE Interactions Survey, Responses as of Mar. 31, 2018.
- 185 *See* Howell, *supra* note 171, at 15 (“There is no notification of inclusion in gang databases and no right to challenge inclusion.”).
- 186 *See id.*
- 187 *Criminal Street Gang Activity, Initiation and Solicitation*, NEW YORK CIVIL LIBERTIES UNION (Dec. 9, 2009), <https://www.nyclu.org/en/publications/criminal-street-gang-activity-initiation-and-solicitation>.
- 188 *See* Howell, *supra* note 125, at 637-38; *see also* Julianne Hing, *ICE Admits Gang Operations are Designed to Lock Up Immigrants*, NATION (Nov. 20, 2017), <https://www.thenation.com/article/ice-admits-gang-operations-are-designed-to-lock-up-immigrants/> (“ICE inadvertently admitted exactly what critics have accused the Trump administration of: In order to make so many arrests, ICE collaborates with local law enforcement agencies that stack gang databases with the names of people who not only are not gang members but who also pose no public safety threat. But by leveraging the fearsome reputation of MS-13 as political cover ICE and collaborating law-enforcement agencies are able to identify, criminalize, detain, and eventually deport large numbers of immigrants of color.”).
- 189 *See* Howell, *supra* note 125, at 638.
- 190 *See* U.S. v. Petrillo, 332 U.S. 1 (1947).
- 191 *See* City of Chicago v. Morales, 527 U.S. 41, 44 (1999).
- 192 *See generally* Wong Wing v. U.S., 163 U.S. 228, 237 (1896) (prohibiting the imposition of punishment without a judicial trial and discussing how the Constitution provides that non-citizens within the United States may not be deprived of their liberty or property without due process of law).
- 193 *See* Jennifer M. Chacon, *Whose Community Shield?: Examining the Removal of the Criminal Street Gang Member*, 2007 U. CHI. LEGAL F. 317, 330-31 (2007).
- 194 Salgado-Diaz v. Gonzales, 395 F.3d 1158, 1162 (9th Cir. 2005) (as amended) (“[F]ailing to afford petitioner an evidentiary hearing on his serious allegations of having been unlawfully stopped and expelled from the United States, aborting his pending immigration proceedings and the relief available to him at the time, violated his right to due process of law.”).
- 195 *See* CBS News, *Inside ICE’s Controversial Crackdown on MS-13*, CBS NEWS (Nov. 16, 2017), <https://www.cbsnews.com/news/ms-13-gang-ice-crackdown-thomas-homan/> (wherein CBS News correspondent Margaret Brennan’s interview with Jason Molina, HSI assistant special agent in charge, who admitted that the gang classification when the only knowledge HSI had was that the suspect had unlawfully entered the United States. “‘So his known crime is entering the country illegally?’ Brennan asked. ‘Correct,’ Molina said. ‘But that’s it at the point, that’s all you definitely know?’ Brennan asked. ‘That’s correct. The purpose of classifying him as a gang member or a gang associate is because once he goes in front of an immigration judge, we don’t want him to get bail, because the whole point of this operation is to get these known gang members off the street,’ Molina said.”).
- 196 Jennifer M. Chacon, *Whose Community Shield?: Examining the Removal of the Criminal Street Gang Member*, 2007 U. CHI. LEGAL F. 317, 333 (2007).

- 197 *See id.* at 332.
- 198 *The Gang Crackdown*, PBS Frontline, Season 36: Episode 5 (Feb. 13, 2018), <https://www.pbs.org/wgbh/frontline/film/the-gang-crackdown>.
- 199 The New York Court of Appeals established “a graduated four-level test for evaluating street encounters initiated by the police” under the New York Constitution. *People v. DeBour*, 40 N.Y.2d 210, 223 (1976). In applying the probable cause standard, “the standard to be applied is that it must appear to be at least more probable than not that a crime has taken place and that the one arrested is its perpetrator, for conduct equally compatible with guilt or innocence will not suffice.” *People v. Vandover*, 20 N.Y.3d 235, 237 (2012). Determinations of applications for recognizance or bail sometimes must be as a matter of law granted, denied, or may be discretionary based on factors considered in determining a defendant’s attendance in court. N.Y. CRIM. PROC. LAW § 510.30 (McKinney 2017).
- 200 Letter from Faiz Shakir, Director, ACLU Washington Legislative Office & Lorella Praeli, ACLU Director of Immigration Policy and Campaigns, to Representatives, Vote “NO” on H.R. 3697, the “Criminal Alien Gang Member Removal Act” (Sept. 12, 2017), https://www.aclu.org/sites/default/files/field_document/2017-12-9_aclu_vote_rec_in_opposition_to_hr_3697_criminal_alien_gang_removal_act_final.pdf.
- 201 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 202 *Id.* at Anonymized Response # 35.
- 203 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 204 *See e.g.*, Nat’l Immigr. Law Ctr., *Documents Obtained Under Freedom of Information Act: How U.S. Immigration & Customs Enforcement and State Motor Vehicle Departments Share information* (May 2016), <https://www.nilc.org/issues/drivers-licenses/ice-dmvs-share-information> (“[T]here is a complex network of relationships and systems of communication between state driver’s license agencies and law enforcement agencies, including ICE.”).
- 205 U.S. Immigr. & Customs Enf’t, *Law Enforcement Information Sharing Initiative*, ICE (Jan. 3, 2018), <https://www.ice.gov/le-information-sharing>.
- 206 Alastair Boone, *Motel 6 Is Probably Not the Only Company Tipping Off Immigration Agents*, CITYLAB (Sept. 15, 2016), <https://www.citylab.com/equity/2017/09/motel-6-tipped-off-immigration-agents-about-guests/540021>.
- 207 *See e.g.*, Sarah Gonzalez, *MS-13 Gang Crackdown Relies on ‘Questionable’ Evidence From Schools*, WNYC (Aug. 7, 2017), <https://www.wnyc.org/story/ms13-gang-police-crackdown-schools>.
- 208 SEAN GARCIA-LEYS, MEIGAN THOMPSON & CHRISTYN RICHARDSON, *MISLABELED: ALLEGATIONS OF GANG MEMBERSHIP AND THEIR IMMIGRATION CONSEQUENCES*, UNIV. OF CAL. IRVINE SCH. OF LAW 5, 7 (Apr. 2016), <http://www.law.uci.edu/academics/real-life-learning/clinics/ucilaw-irc-MislabeledReport.pdf>.
- 209 *See id.* at 2, 15.
- 210 *See* IMMIGRANT LEGAL RES. CTR., *PRACTICE ADVISORY, UNDERSTANDING ALLEGATIONS OF GANG MEMBERSHIP/AFFILIATION IN IMMIGRATION CASES 8* (2017), https://www.ilrc.org/sites/default/files/resources/ilrc_gang_advisory-20170509.pdf.
- 211 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 212 *See* INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(j) (2014).
- 213 Esther Yu Hsi Lee, *‘Inflated’ Allegations of Gang Affiliation Used to Detain Immigrants, Advocacy Group Charges*, THINKPROGRESS (Dec. 4, 2017, 9:31 AM), <https://thinkprogress.org/immigration-enforcement-gang-database-58512b0f4bcd>.
- 214 The Merits Hearings and Master Calendar Hearings are two different types of hearings during removal proceedings. The Master Calendar Hearing is a short, preliminary hearing to resolve scheduling issues and assess the legal grounds for removability as well as legal grounds for relief. Meanwhile, a Merits Hearing resolves questions of fact related to legal grounds of relief through documentary evidence and witness testimony. *See* U.S. Dep’t of Justice, Office of Chief Immigration Judge Practice Manual §§ 4.15(i), 4.16(a), (d) (Nov. 2, 2017), <https://www.justice.gov/sites/default/files/pages/attachments/2017/11/02/practicemanual.pdf#page=73> [hereinafter OCIJ Practice Manual]; *see generally* Immigration Equality, *26. Immigration Court Proceedings*, in IMMIGRATION EQUALITY ASYLUM MANUAL (2006), <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/immigration-court-proceedings/#.WstoVNPwAlI>.
- 215 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 216 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 217 *See* INA § 236(a), 8 U.S.C. § 1226(a) (1996); *see also* INA § 236(c), 8 U.S.C. § 1226(c) (1996).

- 218 See Matter of Hussam Fatahi, 26 I. & N. Dec. 791 (BIA 2016).
- 219 LE Interactions Survey, Responses as of Mar. 31, 2018, Anonymized Response # 25.
- 220 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 221 See *id.*
- 222 See *id.* Note: Name has been changed to protect the client's identity.
- 223 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 224 See, e.g., Kate Aschenbrenner, *Discretionary (In)Justice: The Exercise of Discretion in Claims for Asylum*, 45 U. MICH. J.L. REFORM 595 (2012) (discussing judicial discretion in asylum cases); U.S. Citizenship & Immigr. Servs., *Chapter 9—Legal Analysis and Use of Discretion*, in U.S.C.I.S. POLICY MANUAL: ADJUSTMENT OF STATUS POLICIES AND PROCEDURES, U.S.C.I.S., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartA-Chapter9.html> (last visited Apr. 30, 2018) (overviewing adjustment of status discretion); Maritza I. Reyes, *Constitutionalizing Immigration Law: the Vital Role of Judicial Discretion in the Removal of Lawful Permanent Residents*, 84 TEMPLE L. REV. 637, 665-66 (2012) (judicial discretionary relief in cancellation of removal); Caitlin Dickerson, *How U.S. Immigration Judges Battle Their Own Prejudice*, N.Y. TIMES (Oct. 4, 2016), <https://www.nytimes.com/2016/10/05/us/us-immigration-judges-bias.html> (overviewing potential for immigration judge prejudice and bias when issuing discretionary decisions in immigration court).
- 225 *Nyama v. Ashcroft*, 357 F.3d 812, 816 (8th Cir. 2004) (“[T]he traditional rules of evidence do not apply to immigration proceedings.”).
- 226 Form I-213, “Record of Deportable Alien,” is a recording of an immigration officer’s encounter with a non-citizen when detained by ICE. See Mary Holper, *Confronting Cops in Immigration Court*, 23 WM. & MARY BILL RTS. J. 675, 695 (2015). The I-213 usually includes criminal history, various information obtained from the non-citizen or from other sources, and conclusions about deportability. See Dree K. Collopy, Melissa Crow & Rebecca Sharpless, *Challenges and Strategies Beyond Relief*, *American Immigration Lawyers Association, Immigration Practice Pointers*, AILA (2014), <http://www.aila.org/File/Related/11120750b.pdf> (specifying what is contained in Form I-213). Form I-213 is often the basis for the charging document in immigration court and is often used to meet the government’s burden of showing alienage. *Id.* Form I-213 is error-prone, see *id.* at 524, yet it has a presumption of reliability, see *Iran v. I.N.S.*, 656 F.2d 469, 472 (9th Cir. 1981), and therefore is admissible in removal proceedings. The burden is on the non-citizen to prove it is unreliable. *Espinoza v. I.N.S.*, 45 F.3d 308, 310-11 (1995) (“The burden of establishing a basis for exclusion of evidence from a government record falls on the opponent of the evidence, who must come forward with enough negative factors to persuade the court not to admit it.”) (citing *Johnson v. City of Pleasanton*, 982 F.2d 350, 352 (9th Cir. 1992)).
- 227 LE Interactions Survey, Responses as of Mar. 31, 2018, Anonymized Response # 35.
- 228 Meredith Broussard, *When Cops Check Facebook*, ATLANTIC (Apr. 19, 2015), <https://www.theatlantic.com/politics/archive/2015/04/when-cops-check-facebook/390882>.
- 229 LE Interactions Survey, Responses as of Mar. 31, 2018, Anonymized Response # 40 (discussing the inclusion of Facebook, Snapchat, and Instagram posts to support gang-related allegations by DHS).
- 230 LE Interactions Survey, Responses as of Mar. 31, 2018.
- 231 *Detectives*, New York City Police Dep’t, <http://www1.nyc.gov/site/nypd/bureaus/investigative/detectives.page> (last visited Apr. 2, 2018).
- 232 *Id.*
- 233 OFF. OF INSP. GEN., DHS’ PILOTS FOR SOCIAL MEDIA SCREENING NEED INCREASED RIGOR TO ENSURE SCALABILITY AND LONG-TERM SUCCESS (2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-40-Feb17.pdf>.
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- 241 *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).
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- 265 *Id.*
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- 268 *Id.* at Anonymized Response # 42.
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- 287 See Press Release, Class Action Challenged Indefinite Detention of Immigrant Children by Trump Administration, NEW YORK CIVIL LIBERTIES UNION (Feb. 20, 2018), <https://www.nyclu.org/en/press-releases/class-action-challenges-indefinite-detention-immigrant-children-trump-administration>; see also Victor Manuel Ramos, *Lawyer: Students at Bellport High Wrongly Accused of MS-13 Ties*, NEWSDAY (June 23, 2017), <https://www.newsday.com/long-island/suffolk/lawyer-students-at-bellport-high-wrongly-accused-of-ms-13-ties-1.13759086>.
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