



DEPORTATION BY ANY MEANS NECESSARY:

How Immigration Officials are Labeling Immigrant Youth as Gang Members

Findings of a National Survey Regarding Gang Allegations in Immigration Proceedings





The Immigrant Legal Resource Center (ILRC) is a national nonprofit that works with immigrants, community organizations, legal professionals, and policymakers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training & technical assistance, and policy development & advocacy, the ILRC’s mission is to protect and defend the fundamental rights of immigrant families and communities.

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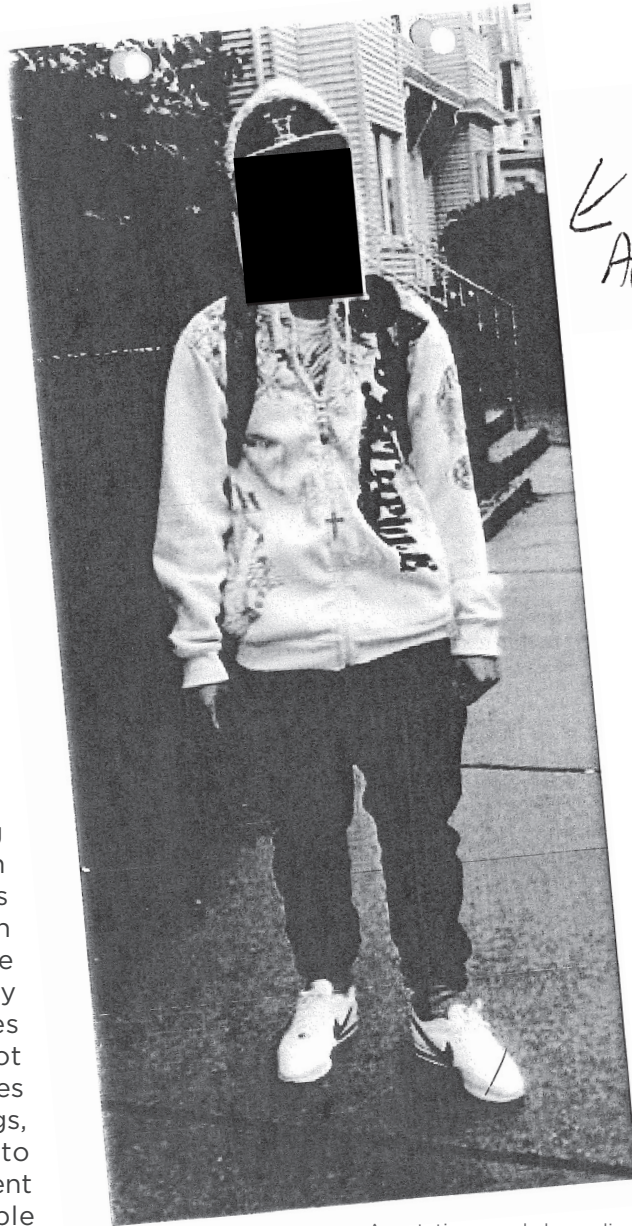
INTRODUCTION

In the fall of 2017, amidst increased anti-immigrant rhetoric from the Trump administration, the authors observed a rising trend of immigration officials targeting young immigrants based on alleged gang involvement. With data lacking on this trend, the authors embarked on a national survey of immigration attorneys to quantify the perceived rise in gang allegations against immigrants.

What they found was a three-pronged problem: First, immigration officials across various sub-agencies of the Department of Homeland Security are falsely accusing immigrant youth of gang involvement, leading to their detention, deportation, and/or denial of immigration benefits. Second, young immigrants with prior gang involvement are in some cases being denied immigration benefits they are otherwise eligible for at the discretion of immigration officials, even when they provide evidence of rehabilitation and community involvement. Lastly, immigration law provides no clear definition of what does and does not constitute gang involvement nor are there rules of evidence present in immigration proceedings, opening the door for immigration officials to offer flimsy or false evidence of gang involvement and to take a wide and largely uncontested interpretation of the term at will.

As a result, young Latinx youth are being racially profiled by immigration officials under the pretense of gang involvement, denied second chances even if they have turned their lives around from past gang affiliation, and as a whole, being refused their right to a fair day in court.

This report details those findings with the goal of informing immigration attorneys across the country as they defend their clients against the often-baseless nature of these allegations. In addition, the report shares emerging best practices to fight against unfounded gang allegations, as well as to mitigate the impact of prior gang involvement.



← MS-13
Apparel

Annotations made by undisclosed immigration officials.

The School-to-Deportation Pipeline: David's Story

David, a high schooler with a mental disability, lived with his father when the Department of Homeland Security's Immigration and Customs Enforcement (ICE) agents arrested him as a "verified gang member." Abandoned as a toddler by his mother and targeted by violence in his home country, David had dreams of the United States of America—of reuniting with family and feeling safe. Instead, David began living a nightmare, spending a year and a half in immigration jail.

As "evidence" of his alleged gang membership, ICE produced Facebook pictures and a boilerplate Homeland Security Investigations (HSI) report that briefly mentioned the existence of a police report and a school incident report with "details" of gang membership. In the Facebook pictures, David wore a Chicago Bulls cap his cousin gave him, a pair of Nike shoes, and some blue clothes, including a mandatory school uniform t-shirt. The social media pictures had handwritten scribbles from an unidentified source with comments such as "MS-13 Gang apparel 'Bulls' hat." This information was enough for David to be placed in deportation proceedings in immigration court, where an immigration judge denied David's request to set a bond that would have allowed him to be released from custody. The judge did not allow him to testify, and decided David was a danger to the community.

Although the underlying police report and school incident report were not provided at the bond hearing,

David's attorneys later obtained them through records requests. The police report used, in part, to build the government's case that David is involved in gang activities, made no mention of gang membership, but only mentioned David as someone who was previously misidentified in an investigation and completely cleared of blame. A school safety officer described David as a gang associate in the school incident report, which David had never been shown, nor disciplined for. The safety officer explained the basis of the gang association label as David standing next to another student at school believed to be in a gang, and because one high school student reported they had heard from a third high school student David was involved with a gang. With this information, the immigration judge eventually found that David was gang-involved, denied his lawful permanent resident application as well as an application for asylum, and ordered him deported to a country where he feared for his life.¹

David's story is not unique. In the past two years, reports of immigration officials making gang allegation — based on flimsy or no evidence—appears to be on the rise. Based on these accounts, the authors conducted a first-of-its-kind survey of immigration attorneys to learn more about their experiences and perceptions of this emerging trend.

¹ E-mail from Sarah Sherman-Stokes, Assoc. Dir., Immigrants' Rights and Human Trafficking Clinic, Bos. Univ., to Laila L. Hlass (Feb. 9, 2018) (on file with author).

How Is the Government Using Gang Allegations to Target Youth in Immigration Enforcement Actions?

President Trump has increasingly targeted young immigrants by attempting to publicly link gang violence to the “surge” of unaccompanied minors who have entered the United States. Attorney General Jeff Sessions claimed, “[w]e are now working with the Department of Homeland Security and HHS [Department of Health and Human Services] to examine the unaccompanied minors issue and the exploitation of that program by gang members who come to this country as wolves in sheep clothing.”²

Attorneys have decried the use of gang allegations in immigration proceedings as the New Red Scare,³ where flimsy evidence can result in automatic deportation.

This report details findings from a national survey and qualitative interviews of immigration attorneys who have represented individuals accused of gang affiliation in immigration proceedings, concluding that gang allegations against immigrants are on the rise across the country, are predominantly against Latinx⁴ youth, and that evidence, if presented, is often suspect, involving reliance on a single individual’s accusation, and/or social media pictures depicting youth wearing popular brands and sports paraphernalia.

“Gang allegations are an easy way to target these kids—just slap on a gang allegation, and they’re likely deportable. There’s little you can do because judges won’t hear it.”

Alexandra Peredo Carroll, Esq.,
Pro Bono Coordinating Attorney,
Kids in Need of Defense (KIND)

Neither gang membership nor gang association are defined in the immigration statute, and definitions of a “gang” differ among law enforcement agencies and other state and federal agencies.⁵

Gang allegations matter because immigrants with alleged gang involvement are the focus of enforcement actions by the Department of Homeland Security (DHS).⁶ Gang allegations can impact immigration status in a variety of ways. In addition to gang-related convictions making immigrants ineligible for various forms of relief from deportation, gang allegations may

2 Jeff Sessions, U.S. Attorney Gen., Remarks to Federal Law Enforcement in Boston About Transnational Criminal Organizations (Sept. 21, 2017) (transcript available at <https://www.justice.gov/opa/speech/attorney-general-sessions-gives-remarks-federal-law-enforcement-boston-about>).

3 Telephone Interview with Adina Applebaum, Senior Attorney, Immigration Impact Lab, Capital Area Immigrants’ Rights (CAIR) Coal. (Nov. 30, 2017) (“It’s like the communist scare.”).

4 Latinx refers to a person of Latin American origin or descent (used as a gender-neutral or non-binary alternative to Latino or Latina). *Latinx*, OXFORD LIVING DICTIONARIES, <https://en.oxforddictionaries.com/definition/latinx> (last visited Mar. 11, 2018).

5 Immigrant Legal Res. Ctr., *Practice Advisory: Understanding Allegations of Gang Membership/Affiliation in Immigration Cases* 1, 3 (April 2017), https://www.ilrc.org/sites/default/files/resources/ilrc_gang_advisory-20170426.pdf; Laila Hlass, *The School to Deportation Pipeline*, GA. ST. U. L. REV. (forthcoming 2018), draft available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3132754 (manuscript at 6).

6 Hlass at 3; Jeff Sessions, U.S. Attorney Gen., Remarks Announcing the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement (Apr. 11, 2017) (transcript available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-announcing-department-justice-s-renewed>).

also increase chances of immigrants being detained during the pendency of their immigration cases,⁷ which has devastating consequences for the likelihood of fighting deportation.⁸ Additionally, most pathways to lawful permanent residence are discretionary, so a mere allegation can be sufficient for an adjudicator to negatively exercise their discretion.⁹ In practice, even the “mere perception of criminality” can impact immigration status because so many decisions turn on credibility determinations.¹⁰



“Gang allegations make it easier for the government to criminalize and deport people”

Sarah Gavigan, Staff Attorney, CARECEN-SF

Gang allegations can arise in a myriad of settings in immigration cases, including during removal proceedings when deciding whether to grant immigration relief, when adjudicating affirmative immigration applications for protections like asylum and other pathways to lawful permanent residence, during immigration raids to prioritize who will be arrested and detained, or while in immigration detention when making decisions about release or security level of the detention setting.¹¹

Sources for information underlying gang allegations include ICE investigations, interviews in the field or in detention, arrest or conviction records, probation reports, information gathered by public school officials, and information provided in immigration applications.¹² One common source of such information is “gang databases,” or shared indexes that track alleged gang affiliation. These databases include personal details such as addresses, identifying physical characteristics, photographs, nationality and alleged affiliation to or role in a gang, among other information.¹³ The information is then shared across state governments, federal government agencies and some areas of Canada.¹⁴ Commonly used databases include the privately owned GangNET,¹⁵ the FBI’s National Crime Information Center,¹⁶ and local and state versions such as California’s CalGang¹⁷ and Chicago’s CLEAR Data Warehouse.¹⁸

Gang databases have come under criticism as they are notoriously unreliable.¹⁹ In particular, gang databases have been criticized for having vague criteria for designation of individuals as gang-involved, lack of oversight and review, as well as lack of transparency or notice, so that inaccurate data practicably cannot be challenged.²⁰ For example, a 2016 audit of the CalGang database found numerous inaccuracies and issues, including 42 entries of individuals who were supposedly under the age of one at the time of entry into CalGang.²¹ Following the auditor’s report, the California legislature passed a law requiring a moratorium on the use of CalGang until the Attorney General certifies that a purge of unsupported data has been completed.²²

7 *Practice Advisory* at 9.

8 See generally Ingrid V. Eagley & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1 (2015).

9 *Id.* They are also a factor in applications for the Deferred Action for Childhood Arrivals (DACA) program, though the Trump administration announced in September 2017 they were rescinding this program.

10 Hlass at 5.

11 *Practice Advisory* at 3-4, 8-9.

12 *Id.* at 3, 5-6.

13 *Id.* at 4.

14 See *id.* at 4-6 for a more thorough exploration of the role and operation of gang databases.

15 *About GangNET*, CSRA, <https://www.csra.com/gangnet> (last visited Jan. 2, 2018).

16 *National Crime Information Center (NCIC)*, FBI, <https://www.fbi.gov/services/cjis/ncic> (last visited Jan. 2, 2018).

17 *CalGang*, STATE OF CAL. DEPT. OF JUSTICE, <https://oag.ca.gov/calgang> (last visited Jan. 2, 2018). The CalGang database has been temporarily disabled as of January 1, 2018. The website indicates that database access will be restored but provides no timeframe for when this is to occur.

18 *Online Services: CLEAR*, CHI. POLICE, <https://portal.chicagopolice.org/portal/page/portal/ClearPath/Online%20Services/ICLEAR> (last visited Jan. 2, 2018).

19 See, e.g., Joshua D. Wright, *The Constitutional Failure of Gang Databases*, 2 STAN. J. C.R. & C.L. 115 (2005).

20 Hlass at 35.

21 ELAINE M. HOWELL, CAL. STATE AUDITOR, No. 2015-130, *THE CALGANG CRIMINAL INTELLIGENCE SYSTEM* (2016) <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>.

22 See Cal. Assemb. Bill No. 90 (2016-2017 Reg. Sess.), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB90.

Findings of a National Survey on Accusations of Gang Involvement and Outcomes for Youth

With news of the Trump administration's targeting of young immigrants in mind, the authors embarked upon a study to learn more about this emerging trend. Through word of mouth, news stories, social media, and attorneys' networks, the authors observed growing numbers of reports of gang allegations being used as a means to detain and deport immigrant youth. While it appeared that regionally some attorneys were beginning to identify common tactics, there was not yet scrutiny at a national level of this new phenomenon.

Therefore, the authors conducted a national online survey of immigration attorneys asking about their perceptions and experiences regarding the use of gang allegations in immigration proceedings against both children and adults; they also conducted 11 qualitative interviews of immigration attorneys to elicit more details of cases involving gang allegations, against children and adults.²³ The survey was open between August 9, 2017 and December 15, 2017 and was distributed through a number of national and regional immigration attorney networks.²⁴ Seventy-three individuals, who practice primarily or secondarily in 21 states and the District of Columbia, completed the survey. The states with the highest numbers of responses included California (23%), Massachusetts (11%), Virginia (12%), New York (12%), Maryland (5%), and New Jersey (4%). Most responses were from pro bono attorneys (62%), with 14% of survey responses from attorneys who charge a regular fee. Twenty-one percent of survey respondents provide a mix of pro bono and payment plans, and 4% charge a reduced fee.

Where and against whom are gang allegations being made?

Gang allegations are appearing in immigration proceedings from coast to coast. Attorneys from 21 states and the District of Columbia completed the survey. Seventy-nine percent of respondents had handled at least one case that involved allegations of gang involvement. Fifteen percent had handled ten or more cases with allegations of gang involvement. Respondents reported that in 40 cases, their immigrant clients were accused of being gang members; in 25 cases, they were accused of being gang associates or affiliates; and in 17 cases, they were accused of being both a gang member and an associate. In seven other cases, the clients were not directly alleged to be gang members or associates, but were probed on issues such as whether they had prior affiliation with a cartel, or whether they had any acquaintances or family members that were gang members.

Gang allegations are increasing, according to survey respondents: 50% of respondents felt that allegations of gang involvement were increasing; 18% responded that they felt they have generally remained the same; and no respondents perceived that allegations of gang involvement were decreasing.²⁵ In certain states (Massachusetts and New York), an even higher percentage of respondents felt that gang allegations were on the rise, with 63% of respondents from Massachusetts and 66% of respondents from New

23 Interviews were conducted with Adina Applebaum, Senior Attorney, Immigration Impact Lab, Capital Area Immigrants' Rights (CAIR) Coalition; Elizabeth Badger, Senior Attorney, Kids in Need of Defense (KIND); Shanti Brown, Staff Attorney, KIND; Alexandra Peredo Carroll, Pro Bono Coordinating Attorney, KIND; Yasmine Chahkar Farhang, Staff Attorney, Make The Road New York; Julio Henríquez, Law Offices of Julio Henríquez; Sarah Sherman Stokes, Associate Director, Immigrants' Rights and Human Trafficking Clinic, Boston University Law School; Desireé C. Hernández, Deputy Executive Director & Lenni Benson, Professor of Law and Director Safe Passage Project Clinic, Safe Passage Project; Hena Mansori, Supervising Attorney, National Immigrant Justice Center; Nanya Thompson, Esq., Nanya Thompson Law, Inc.; Sarah Gavigan, Staff Attorney, CARECEN-SF.

24 Attorney networks, or listservs, where the survey was posted include Childimmigration (a national listserv for lawyers serving immigrant youth); VAWAUpdates (a national listserv of legal advocates serving survivors of domestic violence, sexual assault and human trafficking); iclinic (a national listserv of immigration clinical law teachers); crimimm (a national listserv of immigration advocates focused on the intersection of criminal and immigration law); gang-imm (a national listserv of immigration advocates focused on gang related immigration issues); nationalimmigrationproject (the listserv for the National Lawyers Guild's National Immigration Project); CAIR coalition listserv (a DC/Virginia/Maryland based listserv administered by the CAIR coalition); AILA MidSouth (a listserv of the American Immigration Lawyers Association for the MidSouth including Mississippi, Louisiana, Tennessee, and Arkansas); Masslawlist's Immigration listserv (a Massachusetts immigration advocate listserv), Child-immigrant-nonprofits-collaborative (a DC/Virginia/Maryland based listserv of lawyers serving immigrant youth); SIJS-NY (a New York City based listserv of immigration lawyers serving immigrant youth); SIJSTaskforce (a California Bay Area listserv of immigration lawyers serving immigrant youth); SIJS (a Los Angeles area listserv of immigration lawyers serving immigrant youth); SFILDC (a San Francisco area listserv of immigration lawyers representing people in removal proceedings); and SIJS (a national listserv of legal advocates representing immigrant youth in seeking Special Immigrant Juvenile Status).

25 Thirty-two percent of respondents were unsure. Note that not every survey respondent responded to every question, so percentages are calculated based on how many answered that particular question.

York indicating that they had observed an increase in allegations of gang involvement in immigration courts. In more in-depth telephone interviews the authors conducted with 11 attorneys following the survey, a majority of the interviewees (73%) noticed the increase in gang allegations in the last one to two years.²⁶

Young people are those most impacted, according to survey respondents. Half of survey respondents revealed that their cases were ones in which the impacted individual was between the age of 18 and 20. The next most common age range was 15 to 17 years old, followed by 21 to 25 years old. This is not surprising since most gang membership—alleged or real—is perceived to occur in adolescence.²⁷ Further, the current administration has publicly tied gang violence in the United States to recently arrived unaccompanied immigrant children, which may be fueling the Department of Homeland Security’s allegations of gang involvement in immigration cases of youth.²⁸ Information gathered through phone interviews was consistent with this—most interviewees said that the most common age range in which they had seen DHS allege gang membership or association was mid-teens to early 20s.

While the survey did not collect information regarding ethnicity of noncitizens subject to gang allegations, this question was asked during the 11 in-depth interviews conducted following the survey. All 11 attorneys reported that in all of their cases involving allegations of gang involvement, the clients were Latinx, mostly Central American.



“You hang out in a soccer field, are Latino, and get in a local gang database that then gets in the hands of immigration, and there’s nothing you can do about it.”

Shanti L. Martin Brown, Esq.,
Immigration Staff Attorney, Ayuda

How are gang allegations impacting individual immigration cases?

Attorneys reported that their noncitizen clients faced questions regarding gang involvement in cases both before US Citizenship and Immigration Services (USCIS), where individuals file affirmative applications for immigration benefits, and in immigration court, where they are defending against deportation, in nearly equal degree. Fifty-seven percent of survey respondents reported experiencing USCIS adjudicators asking clients about gang affiliation in an interview, and 53% of survey respondents reported ICE prosecutors or an immigration judge questioning their client regarding gang membership in immigration court.

There are also patterns regarding the types of cases and legal issues raised. Most commonly, gang allegations have arisen in the adjudication of bond—where individuals seek to be released from immigration detention pending the outcome of their court proceedings (62% of respondents reported at least one bond case), adjustment of status (47% of respondents had an adjustment case before USCIS and/or EOIR), asylum or related protection (41% of respondents had a case before the asylum office, 43% of respondents had at least one asylum/withholding or Convention Against Torture [CAT] case before the Immigration Court), and Special Immigrant Juvenile Status (19%).²⁹ Attorneys have also reported the increased use of gang allegations in adjudications involving cases of immigrant youth seeking protection through Deferred Action for Childhood Arrivals (DACA); survivors of domestic violence, serious crimes, and human trafficking seeking protection from deportation; legal permanent residents seeking citizenship; and even in competency hearings.³⁰ Lastly, attorneys also noted gang allegations may arise after or during an arrest, as well as while the noncitizen is in the custody of the Office of Refugee Resettlement.³¹

Gang allegations against an immigrant may give rise to a number of different consequences under immigration law, depending on the procedural posture of the case. For bond cases, the legal issue raised when an individual is alleged to be gang-involved is whether he is a danger

²⁶ The attorneys who noted this recent trend had been practicing immigration law for an average of 6.5 years. One other attorney noticed the increase in 2014, and two attorneys responded that they were unsure.

²⁷ *Frequently Asked Questions: What proportion of adolescents join gangs and how long do they stay in?*, NAT’L GANG CTR., <https://www.nationalgangcenter.gov/About/FAQ#q10> (last visited Feb. 15, 2018).

²⁸ See, e.g., Lauren Dezenski, *Sessions: Many unaccompanied minors are ‘wolves in sheep’s clothing,’* POLITICO (Sept. 21, 2017, 6:19 PM), <https://www.politico.com/story/2017/09/21/jeff-sessions-border-unaccompanied-minors-wolves-242991>.

²⁹ Survey respondents mentioned gang allegations arising at the I-360 and adjustment of status phases for Special Immigrant Juveniles.

³⁰ There were no responses from the survey, but one interviewee noted this issue. Telephone Interview with Sarah Sherman-Stokes, Assoc. Dir., Immigrants’ Rights and Human Trafficking Clinic, Bos. Univ. (Dec. 18, 2017).

³¹ The Office of Refugee Resettlement is part of the Department of Health and Human Services, and has responsibility for the custody of unaccompanied immigrant children by statute.

to the community.³² For adjustment of status, asylum, and deferred action, the legal issue is often discretion, and therefore if the judge or USCIS officer finds gang affiliation, the question is whether the negative factor of that association outweighs positive factors.³³ One interviewee reported gang allegations being linked to the legal issue of the noncitizen's credibility,³⁴ which is particularly relevant in asylum adjudications.³⁵ In another interview, one advocate noted that gang affiliation arose in a Special Immigrant Juvenile case,³⁶ where the USCIS office found that the underlying family court order that stated that the youth's best interests would not be served by being returned to the home country was invalid. USCIS purported the state court's finding was uninformed as the noncitizen is a member of a gang and had the state court known about the alleged gang membership, the court would not have made their finding.³⁷

What “evidence” is being used to support gang allegations?

The attorneys interviewed were troubled by the evidence used to support gang allegations, as it often lacked transparency and reliability. Evidence, in some cases, consisted simply of investigatory notes, meaning a single school, police or immigration official's speculation may decide the immigrant youth's future; the author of the investigatory note is rarely made available for examination, and therefore the basis for the allegation may remain unknown. As one attorney stated, the trend of using allegations is “an absolute violation of due process. ICE uses unsubstantiated evidence. The biggest problem is the burden of proof falls on someone to prove a negative.”³⁸

Attorneys reported a variety of evidence being used to support gang allegations, as well as a number of common questions that were directed at the noncitizens in interviews and hearings relating to gang membership. The most common questions were around supporting or helping gang members (21), followed by whether the noncitizen knows gang members (17), whether the noncitizen him or herself is a gang member or former gang member (15), or whether the noncitizen has a tattoo (15). Other questions include: questions about specific or daily activities related to gang membership (11), questions about knowledge of hand signs, clothing and symbols purportedly related to gangs (10), questions about gang affiliation of a family member (six), questions relating to social media (seven), and questions about whether the client has been involved in criminal activity (five). Questions run the gamut from asking about specific information relating to the noncitizen to incredibly broad questions, such as “what do you know about gangs?” Please see Appendix A for a list of reported questions by topic area.



“ICE is using gang allegations to try to keep people in custody so they can't bond out; then... they're stuck in detention and that ends up being the end of the line for them.”

Hena Mansori, Supervising Attorney,
National Immigrant Justice Center

32 See *Matter of Fatahi*, 26 I. & N. Dec. 791 (B.I.A. 2016).

33 U.S. CITIZENSHIP AND IMMIGRATION SERVS., 7 POLICY MANUAL (Aug. 23, 2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartA-Chapter9.html>. Benefits that are discretionary include asylum, adjustment of status, and naturalization, and depending on the procedural posture, the adjudication may be done by USCIS, or an immigration judge. CHARLES A. WIEGAND, III, FUNDAMENTALS OF IMMIGRATION LAW 113 (2016).

34 Telephone Interview with Sarah Sherman-Stokes, Assoc. Dir., Immigrants' Rights and Human Trafficking Clinic, Bos. Univ. (Dec. 18, 2017).

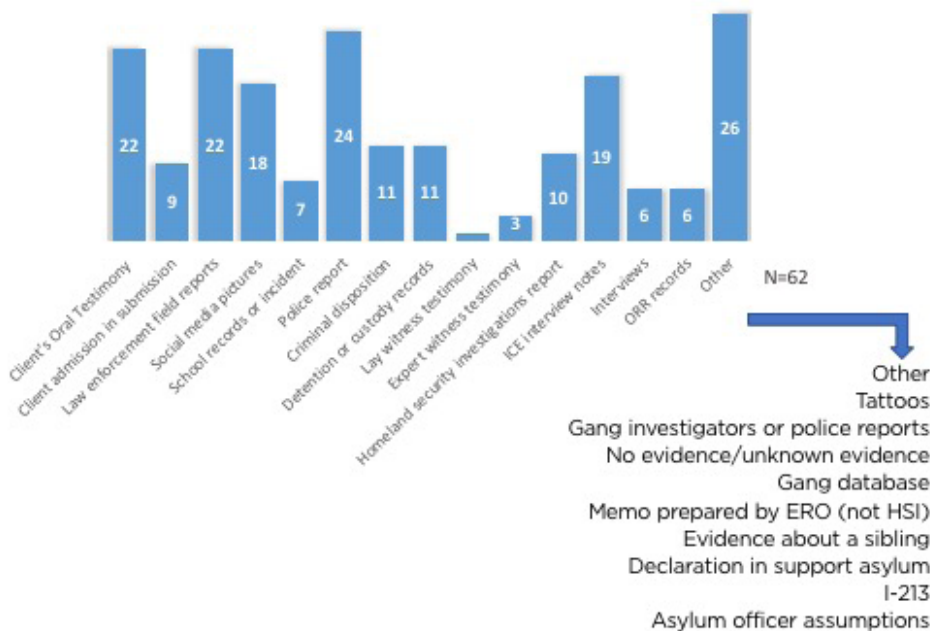
35 DREE K. COLLOPY, AILA'S ASYLUM PRIMER, 323-328 (7th ed. 2015).

36 Special Immigrant Juveniles are children who have been abandoned, abused or neglected, put into the custody of an individual or entity, and whose best interests a court has found not to be served by returning to their home country. 8 U.S.C. § 1101(a)(27)(J).

37 Telephone Interview with Yasmine Chahkar Farhang, Staff Attorney, Make The Road N.Y. (Dec. 13, 2017). Note that USCIS's reasoning is misguided at best. See, e.g., *Leslie H. v. Superior Court*, 168 Cal. Rptr. 3d 729, 737 (Cal. Ct. App. 2014) (“A state court's role in the SIJ process is not to determine worthy candidates for citizenship, but simply to identify abused, neglected, or abandoned alien children under its jurisdiction who cannot reunify with a parent or be safely returned in their best interests to their home country.”).

38 Telephone Interview with Alexandra Peredo Carroll, Pro Bono Coordinating Attorney, Kids in Need of Def. (KIND) (Dec. 20, 2017).

TYPE OF EVIDENCE USED



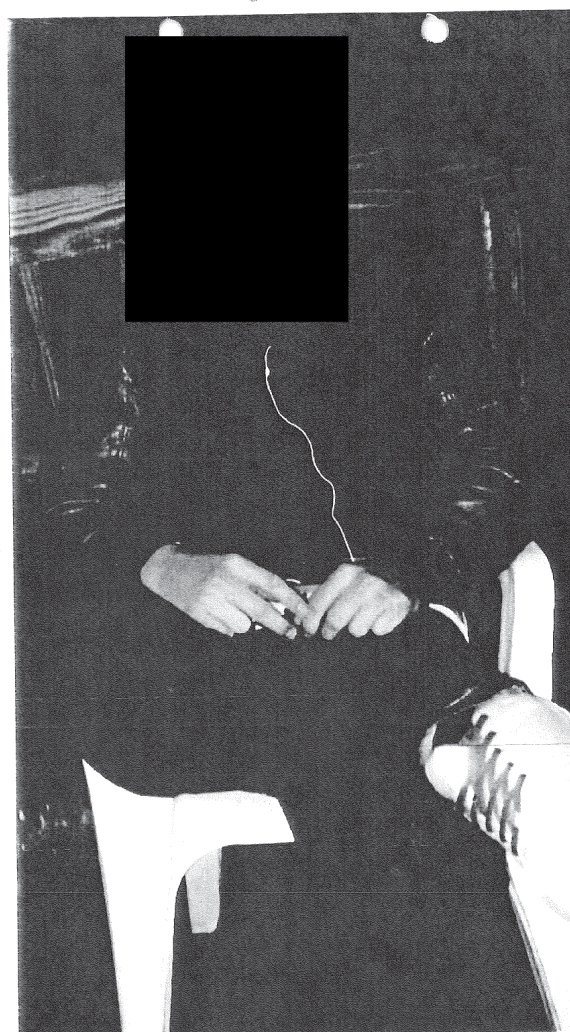
Examples of Questions Regarding Gang Involvement From Immigration Judges and USCIS Adjudicators:

- 1 Even if you did not want to, did you ask anyone to give things to a gang, like money?
- 2 Do you know anyone associated with MS-13?
- 3 Do you have family members/friends/housemates associated with gangs?
- 4 How do you know information about gangs if you were not a gang member?
- 5 Plenty of people come arguing they are fleeing gangs and they are gang members themselves...are you a gang member?
- 6 If gangs wear Vans shoes, why are you wearing Vans shoes?

For a fuller list of questions, see Appendix A

In some cases, no evidence was put forward, or allegations were simply made directly by the immigration agency, such as a Homeland Security Investigations report, ICE interview notes including the Form I-213, asylum-related interview notes, or Office of Refugee Resettlement records. Social media pictures were frequently used, often showing the young person wearing certain clothing items, and hanging out with friends. Other evidence included some aspect of the noncitizen's oral testimony or written submission, school records, field office police notes or criminal dispositions, detention or custody records, tattoos or clothing, as well as other witness testimony.

According to survey responses, the most commonly used types of evidence are police reports, immigration records, social media, tattoos, gang database results, client testimony/admission, criminal records, Homeland Security Investigation reports, memos from federal law enforcement, clothing, and ORR records. Criminal and law enforcement records in many cases did not indicate the young person was accused of a crime. In interviews, attorneys described many instances where local law enforcement wrote vague reports that a young person was stopped and frisked in a "known gang area," which could include an entire neighborhood, or that the young person was in the company of "gang members," thereby making them a gang associate.³⁹ In interviews, many attorneys related that they were not certain of the original source of the gang allegation. Some interviewees stated they believed state or local police had made an original investigatory note which was later shared with immigration officials either through gang databases or more informally, and others believed ICE or USCIS was the source of the allegation. Immigration officials have even alleged gang membership because the young people were themselves victims of gang violence, reasoning that the victimization must be because of rival gang membership.⁴⁰ Living in a certain neighborhood, being seen in a particular public park, and associating with people who are accused of gang membership, even if it is not a voluntary association, are all factors attorneys identified as reasons for a gang allegation.⁴¹



Annotations made by undisclosed immigration officials.

39 Telephone Interview with Elizabeth Badger, Senior Attorney, Kids in Need of Def. (KIND) (Dec. 28, 2017); Telephone Interview with Alexandra Peredo Carroll, Pro Bono Coordinating Attorney, Kids in Need of Def. (KIND) (Dec. 20, 2017); Telephone Interview with Julio Henríquez, Law Offices of Julio Henríquez (Dec. 20, 2017).

40 Telephone Interview with Elizabeth Badger, Senior Attorney, Kids in Need of Def. (KIND) (Dec. 28, 2017); Telephone Interview with Sarah Sherman-Stokes, Assoc. Dir., Immigrants' Rights and Human Trafficking Clinic, Bos. Univ. (Dec. 18, 2017).

41 Telephone Interview with Sarah Sherman-Stokes, Assoc. Dir., Immigrants' Rights and Human Trafficking Clinic, Bos. Univ. (Dec. 19, 2017).



SARAVIA v. SESSIONS

While this survey did not specifically gather information related to the *Saravia v. Sessions* case, the authors note that during our research for this report, the ACLU filed a lawsuit against several agencies within the federal government for using dubious claims of gang affiliation to illegally detain teenagers in jail-like conditions in California. The federal district court provisionally certified a class, so that the lead plaintiffs could represent a broader class of immigrant children and their families. See *Saravia v. Sessions*, No. 17-CV-03615-VC, 2017 WL 5569838 (N.D. Cal. Nov. 20, 2017). The judge ordered in *Saravia* that there must be a hearing for affected children in custody as of November 20, 2017 to determine if they should continue to be held in custody. Many of the *Saravia* class members were youth who lived and went to school in Long Island but were detained far from home in California, Texas, Washington, and Virginia. The ACLU reported that as of December 20, 2017, twenty-two out of thirty-four teenagers originally identified as class members had been released, while other hearings were still in process.⁴² As one of the attorneys in the *Saravia* suit stated:

“When these teenagers were given a chance to dispute the charges against them, it became crystal clear that the government’s accusations weren’t backed up by evidence.”⁴³

42 Press Release, ACLU, Twenty-two Immigrant Teens Freed after Wrongful Arrests by the Trump Administration (Dec. 20, 2017), <https://www.aclunc.org/news/twenty-two-immigrant-teens-freed-after-wrongful-arrests-trump-administration>.

43 *Id.*

Social media pictures are commonly used as evidence, according to survey respondents. When asked more specifically about social media, survey respondents said the types of evidence pulled from social media were most commonly photographs taken by the noncitizen or their peers (19 of 26 responses), but also one individual reported only a stock photograph was used, or that there was a combination of stock photos and personal ones (six of 26 responses). The aspects of the photographs that the accusations were based upon were most commonly hand signals, specific items of clothing or colors of clothing, and friends or associations in the photograph. Tattoos or weapons

were also listed, as well as other items such as drugs, rosaries, or doodles from a notebook.

In follow up interviews, attorneys explained social media evidence was often flimsy. For example, the hand signals may simply be gestures, or the popularly used peace sign. Certain brands and sports teams purported to be gang apparel by ICE are very popular amongst certain Latino youth music culture.⁴⁴ Attorneys reported hats bearing the logos of popular sports teams had been the basis of gang allegations—including the Chicago Bulls, Los Angeles Lakers, and Brooklyn Nets.⁴⁵ Popular brands and styles of clothes, including Nike Cortez

44 Telephone Interview with Elizabeth Badger, Senior Attorney, Kids in Need of Def. (KIND) (Dec. 28, 2017).

45 Telephone Interview with Julio Henríquez, Law Offices of Julio Henríquez (Dec. 20, 2017); see also Telephone Interview with Yasmine Chahkar Farhang, Staff Attorney, Make The Road N.Y. (Dec. 13, 2017).

sneakers and Michael Jordan shoes or shirts have also been the basis of allegations.⁴⁶ Similarly, gang colors cited are two popular colors for clothes, including blue for MS-13, which is also a color of the Salvadoran flag, as well as red, for 18th Street Gang. Contradictorily, in one case, the same youth was targeted for wearing both blue and red.

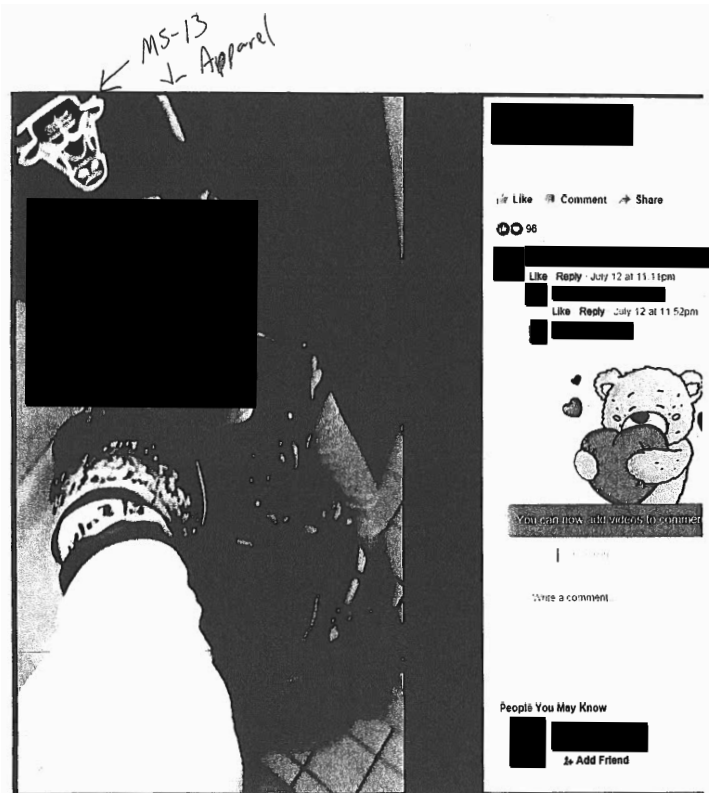


“[S]ocial media [is used] to allege facts, [and] the judges then just accept [them] without asking for more.”

Lenni Benson, Professor of Law and Director
Safe Passage Project Clinic, Safe Passage Project

Attorneys have noted lack of transparency as a hallmark of the federal government’s evidence of gang allegations in immigration proceedings. Often attorneys cannot determine the original source of a gang allegation. For example, an ICE agent may state the client is a “verified” or “known” gang member through the I-213 or an Homeland Security Investigations report,⁴⁷ but there is no information regarding how that determination was made.⁴⁸ Similarly, attorneys also report that they’ve never been provided a formal definition of gang member, associate or affiliate in a hearing or adjudication, so it is not clear if there are even standards regarding what or how many factors must be present for a determination to be made.⁴⁹ Even when the evidence is social media pictures, some respondents noted that the pictures which were submitted as evidence of gang membership had handwritten markings on the photographs indicating what was supposed to be significant, but the source of handwriting was undisclosed, and therefore it was unclear whether the author had the expertise to make that determination.⁵⁰ A central complaint from attorneys was that not only are accused immigrants left to prove a negative (lack of gang membership,

association, or affiliation), but they are saddled with the herculean task of proving an undefined negative: that they are not gang-involved, whatever that term or idea may mean to the government.



Annotations made by undisclosed immigration officials.



“Once DHS throws it [the gang allegation] out there, it becomes the Respondent’s burden to prove a negative which is almost impossible.”

Nanya Thompson, Esq., Nanya Thompson Law, Inc.

46 Telephone Interview with Sarah Sherman-Stokes, Assoc. Dir., Immigrants’ Rights and Human Trafficking Clinic, Bos. Univ. (Dec. 18, 2017); Telephone Interview with Julio Henríquez, Law Offices of Julio Henríquez (Dec. 20, 2017); Telephone Interview with Yasmine Chahkar Farhang, Staff Attorney, Make The Road N.Y. (Dec. 13, 2017).

47 See Appendix B for a sample HSI report alleging gang affiliation.

48 Telephone Interview with Adina Applebaum, Senior Attorney, Immigration Impact Lab, Capital Area Immigrants’ Rights (CAIR) Coal. (Nov. 30, 2017).

49 *Id.*; Telephone Interview with Elizabeth Badger, Senior Attorney, Kids in Need of Def. (KIND) (Dec. 28, 2017); Telephone Interview with Alexandra Peredo Carroll, Pro Bono Coordinating Attorney, Kids in Need of Def. (KIND) (Dec. 20, 2017); Telephone Interview with Julio Henríquez, Law Offices of Julio Henríquez (Dec. 20, 2017); Telephone Interview with Sarah Sherman-Stokes, Assoc. Dir., Immigrants’ Rights and Human Trafficking Clinic, Bos. Univ. (Dec. 18, 2017); Telephone Interview with Yasmine Chahkar Farhang, Staff Attorney, Make The Road N.Y. (Dec. 13, 2017).

50 Telephone Interview with Elizabeth Badger, Senior Attorney, Kids in Need of Def. (KIND) (Dec. 28, 2017) (referring to “handwritten scribbles” on the photos); Telephone Interview with Sarah Sherman-Stokes, Assoc. Dir., Immigrants’ Rights and Human Trafficking Clinic, Bos. Univ. (Dec. 18, 2017).

What strategies have attorneys used to fight allegations of gang involvement?

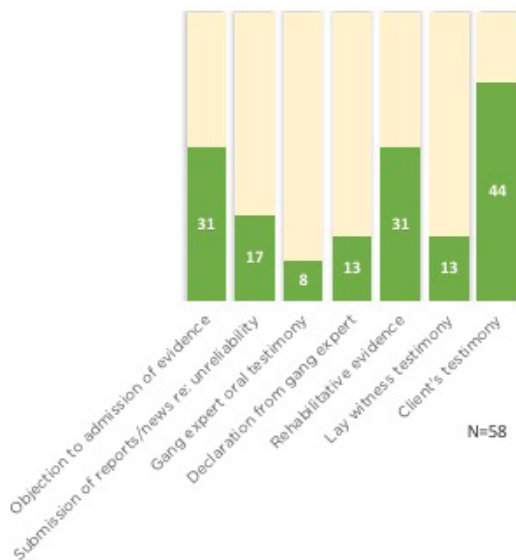
Attorneys reported a number of strategies they are employing to fight gang allegations, including: conducting public records searches to prove lack of gang involvement, objecting to evidence, submitting evidence to prove the client's positive community involvement, and putting forth evidence to show the unreliability of the government's gang claims. The most common strategy used by attorneys was having their client testify regarding the allegations against them: more than three-quarters of survey respondents reported having their clients testify when accused of gang involvement. The next most common strategies employed were submitting counteracting, positive evidence and objecting to the admission of evidence submitted by ICE counsel.

The most common grounds for objections that attorneys reported relying upon were (in order of frequency): unreliability of the documents the government sought to introduce (especially the ICE police report, Form I-213); hearsay contained in documents the government sought to introduce without the ability to cross-examine the author; a lack of foundation for documents (in other words, seeking to introduce a document without providing "evidence sufficient to support a finding that

the item is what the proponent claims it is"⁵¹), including photos from social media; and objecting on the basis that the I-213 contained information from the juvenile delinquency system obtained in violation of state confidentiality laws.

In in-depth interviews the authors conducted with 11 attorneys following the national survey, practitioners reported using the following types of counteracting evidence: client testimony, school attendance records, evidence of employment, letters of support/affidavits from community members, live lay witnesses, attorney affirmations from public defenders making clear any criminal history was not gang-related, and character references from school and church. Attorneys also reported submitting reports and/or news sources regarding the unreliability and over-inclusiveness of gang databases or gang allegations. See Appendix C for select resources regarding the unreliability of gang databases and allegations. In addition, other strategies employed were: submitting a declaration from a gang expert, having oral testimony from a gang expert, filing state records requests to verify that there was no underlying evidence of gang allegations that ICE could be relying upon, and arguing that state privacy laws or the Family Educational Rights Privacy Act had been violated in improperly sharing information with ICE and the evidence should therefore be suppressed. Gang experts were used to provide testimony that

STRATEGIES TO FIGHT ALLEGATIONS



OBJECTIONS MADE
Unreliable
Hearsay
Lack of foundation
Unavailable to cross-examine
Burden of proof
Character witness
Evidence not authenticated
Inaccurate
Juvenile confidentiality
Overbroad
Vague

51 FED. R. EVID. 901. Although the Federal Rules of Evidence do not strictly apply in removal proceedings, *Singh v. Holder*, 638 F.3d 1196, 1209 (9th Cir. 2011), they are viewed as the benchmark for fair handling of evidence in adversarial proceedings.

indicators of gang membership were not present in a particular case, as well as to debunk ICE’s faulty and over-inclusive generalizations about clothing choice or particular hand gestures, which were the basis for allegations.⁵²



“Due process is out the window once the gang allegation comes in”

Julio Henríquez, Law Offices of Julio Henríquez

Through in-depth interviews with 11 attorneys—all of whom have handled multiple cases involving allegations of gang involvement—the authors learned that in only one case had a judge sustained an objection to the admission of the I-213 based on unreliability; in other cases, judges either simply admitted the evidence or admitted the evidence but stated that they would take the objection into account in determining what weight to give to the evidence. In other cases, attorneys had not objected or had not yet had occasion to object to the admission of evidence.

What strategies have attorneys employed to bolster their client’s case when gang membership (either former or current) was uncontested?

While the vast majority of survey respondents discussed cases of unsubstantiated gang membership, some survey respondents discussed experiences of representing former gang members. There is extensive research about children who have been forcibly recruited by gangs, who then later renounce and flee the gangs, but are marked for death as a result. In a leading federal case out of the Fourth Circuit, Julio Ernesto Martinez sought protection in the US after renouncing MS-13 when he was 16 years old.⁵³ After being stabbed repeatedly and left for dead by the gang in El Salvador, Julio fled to the United States, where he was eventually granted asylum.⁵⁴

In these cases in which prior gang membership was uncontested, attorneys reported employing the following strategies to bolster their client’s application: having the client testify as to their rehabilitation, putting on lay witness testimony regarding the client’s rehabilitation, providing evidence of their client’s involvement with a gang prevention group, submitting expert written or oral testimony, and putting forth other evidence of the client’s rehabilitation, such as employment records, proof of community involvement, letters from pastors and employers, and the like.

When gang membership was uncontested, respondents reported that it was used against clients in the following ways: to support an allegation that the security related inadmissibility ground was triggered; to support issuance of a Request for Evidence in the U visa context; as a basis to deny on discretion in a lawful permanent resident application; to argue that the client lacked “good moral character”; to argue against a bond due to “dangerousness”; to argue that the asylum applicant triggered the serious nonpolitical crime bar; to argue against discretion for asylum; and to argue that the asylum applicants had committed a particularly serious crime or serious nonpolitical crime in the home country, despite the applicants being children at the time of the activities.

52 Telephone Interview with Sarah Sherman-Stokes, Assoc. Dir., Immigrants’ Rights and Human Trafficking Clinic, Bos. Univ. (Dec. 18, 2017); Telephone Interview with Julio Henríquez, Law Offices of Julio Henríquez (Dec. 20, 2017).

53 *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014). See also, Pamela Constable, *Former Salvadoran Gang Member Says He’s Living Right and Deserves U.S. Protection*, THE WASHINGTON POST (May 18, 2014), https://www.washingtonpost.com/local/former-salvadoran-gang-member-says-hes-living-right-and-deserves-us-protection/2014/05/18/1aa2e7e6-dacd-11e3-8009-71de85b9c527_story.html?utm_term=.30f37fba7e48

54 *Id.*



Affirmative Measures Attorneys are Employing to Decrease the Risk of Gang Allegations

Many attorneys have started taking preventative measures, warning their clients of the sweeping nature of gang allegations, and dangers of using social media, even if they are simply posting pictures of themselves and other classmates, as well as performing more intensive screenings and public records requests to detect the risk of allegations. Eighty-four percent of respondents indicated that they ask questions to identify possible gang allegations or accusations when they are screening their clients; 63% provide know your rights information to their clients about the consequences of gang allegations, including social media and related risks; 54% employ Freedom of Information Act (FOIA) requests to try to obtain information about any possible gang allegations in the immigration file (such as an allegation of gang membership in a detention record or in the ICE police report, Form I-213); and 40% check their clients' social media accounts for possible indicators that the government may allege gang involvement.

In “know your rights” presentations to young people, attorneys reported focusing on the use of social media, explaining what is public, what could be accessible by immigration officers, and why seemingly benign use of social media can present risks for immigrant youth. Other affirmative measures that attorneys have taken include: doing school records requests or public records requests to regional intelligence centers or gang databases, educating school officials about the risks to noncitizen youth when allegations of gang involvement are shared with ICE, discussing tattoos with clients and considering having them removed, and educating clients not to speak to DHS without counsel present. In addition, attorneys reported exercising increased discretion in terms of which cases to file affirmatively (in other words, when the client is not actively facing deportation but wants to apply for some kind of immigration status), and in framing claims where the client has had any prior contact with gangs, however minor and regardless of whether it was consensual.

From Facebook to Deportation: Oscar's Story

Oscar fled El Salvador when he was 14, after his mother abandoned him and his grandmother became too elderly to care for him any longer. He eventually reunited with his father in Massachusetts, and his father filed for sole custody over him, as Oscar began the process to seek Special Immigrant Juvenile status.⁵⁵

When Oscar neared age 16, ICE arrested him and transferred him to a youth detention facility hours away from his father and his immigration lawyer. Oscar had no prior contact with law enforcement—he had never been arrested, or even suspended from school. His immigration lawyer described feeling like Oscar was thrown into a black hole, where everyone gave the

attorney the run around. Eventually, ICE's gang unit shared the basis for his detention—print outs from Facebook, showing Oscar wearing certain clothing and hanging out with certain friends. Also, a photograph of Oscar at a soccer game where allegedly some gang members hung out was used.

In the detention facility, Oscar was bullied and beaten up, and as a result, he was transferred twice—to New York, and then Virginia. After eventually being transferred to an adult ICE facility on his 18th birthday and losing a bond hearing, Oscar asked to be deported. As his attorney said, “anyone would break after being in prisons like this.”⁵⁶

⁵⁵ For more on Special Immigrant Juvenile Status, see *supra* note 37.

⁵⁶ Telephone Interview with Talia J. Barrales, Law Offices of Talia Barrales, P.C., (Feb. 14, 2018).

Conclusion and Recommendations

Over his campaign and presidential administration, President Trump has relentlessly attacked immigrant communities across the United States and has maintained a focus on deporting immigrant youth of color, who he erroneously equates with the threat of gang violence and the destruction of American communities.

Some immigration officials have taken the administration's rhetoric as carte blanche to increase their own use of allegations of gang involvement as a tool to pursue immigration enforcement against Latinx youth. The findings of this survey demonstrate the disturbing trend of xenophobic "Trumpism" trickling down throughout the far reaches of the Department of Homeland Security.

Gang allegations are appearing in immigration proceedings from coast to coast. Immigration law and policy lacks standards for what level of evidence must be provided before labeling someone as a gang

member or associate, and even lacks definitions of these basic terms. Allegations are pervasive—cropping up in various parts of the federal government—from officials within the Office of Refugee and Resettlement (ORR), US Citizenship and Immigration Services, and Immigration and Customs Enforcement to the immigration courts. Allegations may adversely affect immigrant youth in seeking any number of immigration protections, and often result in detention in jail-like facilities. This survey also found that the evidence immigration officials are employing is wildly erratic and often unfounded, or simply emblematic of what it means to be a poor, young person of color residing in a community suffering from gang violence.

As a result, families are being torn apart by deportation, immigrant youth are seeing their futures destroyed at the hands of an often-false allegation or past mistake, and this country's stated commitment to fairness, due process and equality is being called into question.



“My overarching concern is the increasing criminalization of prototypical teenage behavior, and the idea that black and brown young people engaging in typical teenage behavior automatically raises gang allegations.”

Sarah Sherman-Stokes, Associate Director, Immigrants' Rights and Human Trafficking Program,
Boston University School of Law

Conclusion and Recommendations (continued)

The authors offer the following recommendations for immigration attorneys representing young clients impacted by gang allegations or involvement:

Emerging Best Practices for Immigration Attorneys Representing Clients with Gang Allegations:

- 1 Screen clients for possible gang allegations or accusations and provide know your rights information about the consequences of gang allegations.
- 2 Discuss preventative measures with immigrant youth by warning them about the dangers of gang allegations and the various consequences of social media.
- 3 Perform intensive records requests.
- 4 Effective strategies shared by immigration attorneys who represent immigrant youth facing allegations of gang involvement include:
 - a. Fighting gang allegations by conducting public records searches to prove lack of gang involvement; objecting to evidence; submitting evidence to prove the individual's positive community involvement; putting forth evidence to show the unreliability of the gang allegations; having individuals testify about the allegations against them; submitting evidence from gang experts; arguing privacy law protections.
 - b. In cases where immigrant youth were involved with gangs: having individuals testify about how their lives have changed; presenting witnesses that can talk about how an individual's life has changed; showing evidence of involvement with a gang prevention group; and submitting employment records, proof of community involvement and other equities.
- 5 Support local campaigns to protect individuals facing deportation and work collaboratively with community-based organizations and immigrant rights organizers.
- 6 Develop advisals for clients wishing to engage with media or other storytelling practices. Share tips and learnings on representing individuals facing gang allegations with other practitioners.



The authors also call on policymakers to reject and build opposition against legislative proposals that seek to expand the harshness of immigration law to target immigrant youth based on gang allegations. Lastly, the authors ask that journalists investigate and report on immigrant youth impacted by gang allegations or gang involvement from a nuanced lens, one that takes into account the attempts by this administration to use the policies and practices of its immigration agency to push forth its agenda of racially motivated exclusion.

Important work continues to ensure that this country's immigration laws and policies accurately reflect the society's values of fairness, justice and ensuring all young people, regardless of immigration status, can access a future of opportunity and growth.

Appendix A

Questions From Immigration Judges and USCIS Adjudicators about Gang Affiliation reported by Survey Respondents

Supporting/Helping the Gang

- Did you [or a family member] give the gang money, or pay fees?
- Have you ever carried anything for the gang?
- Did you ever help anyone in a gang in any way?
- Even if you did not want to, did you give food or money to a gang?
- Even if you did not want to, did you ask anyone to give things to a gang, like money?
- Did you ever do any favor for a gang even if you did not want to?
- Even if you did not want to, did you ever run errands for gang members?
- Did you buy or transport anything for a gang?

Knowledge of Gangs

- How do gangs initiate people?
- What do you know about gangs?
- Do you know what MS-13 is? What is it?
- What was the name of the gang?
- How do you know information about gangs if you were not a gang member?

Current or Former Gang Member

- Plenty of people come arguing they are fleeing gangs and they are gang members themselves... Are you a gang member?
- Have you ever joined a gang?
- Isn't it true you were a member of the 18th Street/MS-13 gang?

Clothing/Hand Signals

- Ask about clothing worn in Facebook pictures (i.e. Bulls hat, Nike Cortez sneakers, blue and white Salvadoran shirt, rosary beads)
- If gangs wear vans shoes, why are you wearing vans shoes?
- Is that haircut something that gangs wear?
- Do you know any gang hand signs?
- Have you ever worn a shirt with an 18 on it?
- Can you do the hand signs?
- What colors do the gangs wear?

Social Media

- Who is this [Facebook friend]?
- Who are the people in this photo [from client's Facebook page]?

Associate/Affiliate

- Have you hung out with gang members or been affiliated with a gang?
- Were you aware that the men you were spending time with were in a gang?
- Do you know gang members? [sometimes specify a name of someone]
- Do you know who the leader of the gang in your town was?
- Do you know anyone associated with MS-13?
- Have you ever had contact with 18th Street Gang?
- Do you know anyone who became a gang member?
- Have you ever had any contact with a gang member?
- Do you have family members/friends/housemates associated with gang?
- Have you ever been involved with a gang?

Renounce/Refuse Recruitment

- Have you ever been recruited or approached by gang members?
- If not joining the gang meant death, why did you refuse to join the gang?
- Why did you put up with the gang recruitment for so long?
- Have you asked anyone to join a gang?
- Have you formally renounced gang membership?
- Why didn't the gang beat you out?
- Why do you think that the gang let you leave?

Gang Activities

- What gang activities were you involved with in prison?
- What did you do for the gang?
- Were you a gang lookout?
- Did you do any spying or watching for a gang?
- Did you collect money for the gang?

Tattoos

- Do you have a tattoo? Tell me about it.
- What is the significance of that tattoo?
- Is your tattoo gang-related?

Appendix B

Sample HSI Report with Social Media Pictures

Homeland Security Investigations
Special Agent in Charge

10 Causeway Street, Suite 722
Boston, MA 02222



Homeland Security

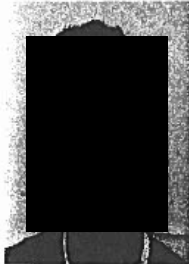
[REDACTED]

MEMORANDUM: TO ALIEN FILE A [REDACTED]

FROM: [REDACTED]
Special Agent

SUBJECT: Verified Gang Affiliation of [REDACTED]

Name: [REDACTED]
DOB: [REDACTED]
A#: [REDACTED]
FBI#: [REDACTED]
COB: El Salvador
COC: El Salvador
LKA: [REDACTED]



[REDACTED] is a native and citizen of El Salvador who was initially apprehended by U.S. Border Patrol after having entered the United States illegally on [REDACTED], by crossing the southwest border at a place not designated as a port of entry having never been admitted or paroled by an Immigration Officer of the United States. [REDACTED] was served a Notice to Appear and released to a sponsor/father [REDACTED].

Homeland Security Investigations Boston Intelligence has determined [REDACTED] to be a VERIFIED and ACTIVE member of the MS-13 gang in the Boston metro area.

The Mara Salvatrucha MS-13 gang is a large transnational criminal organization with thousands of members and associates throughout the United States. The MS-13 gang is among the most violent transnational street gangs in the United States specializing in crimes of violence including murder, attempted murder, violent armed assaults, firearms offenses, weapons related crimes, drug distribution, intimidation and robbery. In Massachusetts MS-13 operates in a number of communities including: Boston, Chelsea, East Boston, Somerville, Everett, Revere, Lynn and Nantucket.

www.ice.gov

Annotations made by undisclosed immigration officials.

Page 2

- [REDACTED] has been identified as an MS-13 gang member Boston School Police Department, Boston Police Department, and Homeland Security Investigations.
- [REDACTED] has documented associations with MS-13 gang members by the Boston Police Department and the Boston School Police Department.
- [REDACTED] has been documented wearing MS-13 gang clothing/apparel by the Boston Police Department and Homeland Security Investigations.

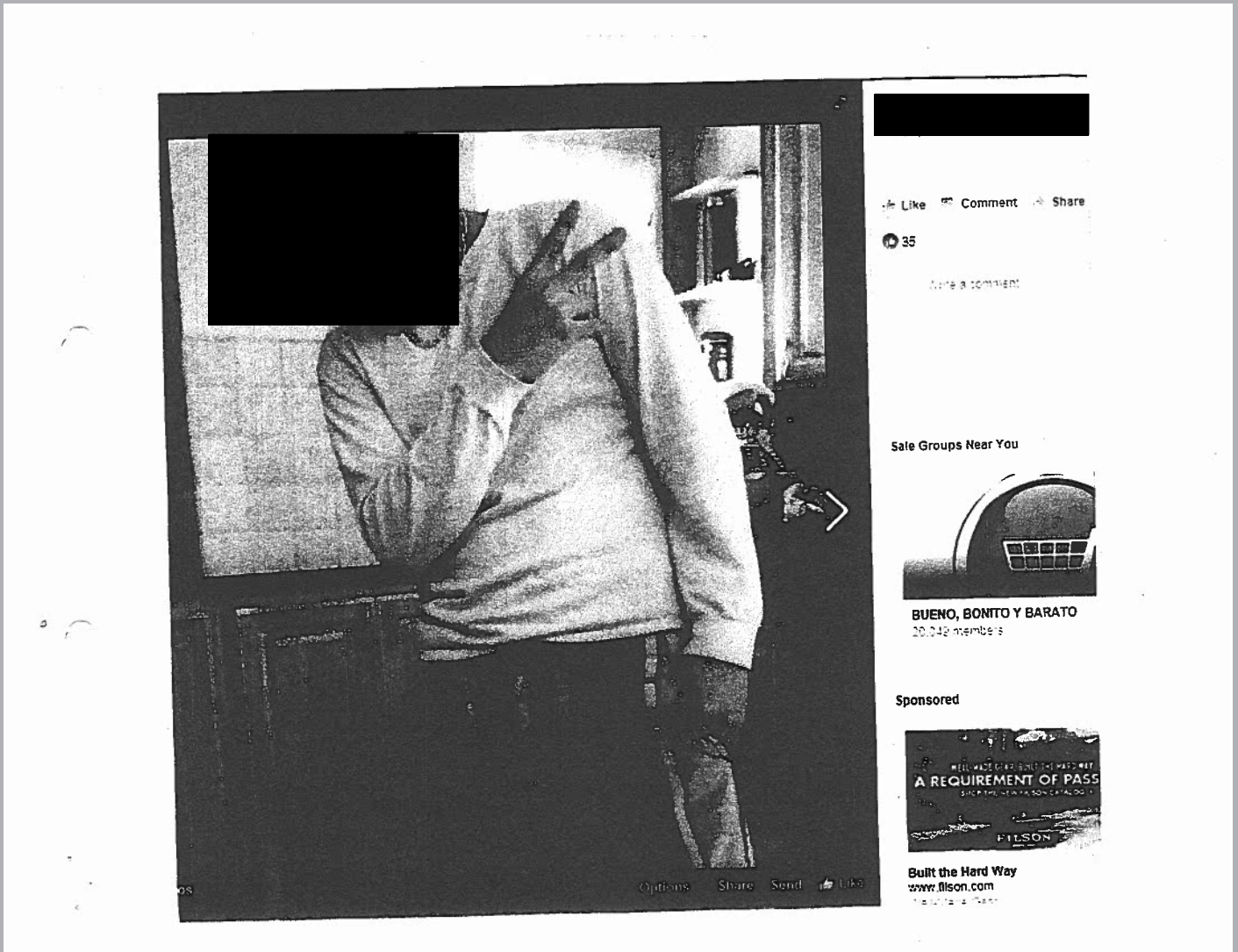
Supporting Information

Details of [REDACTED] MS-13 gang membership are contained within:

- Boston Police Department [REDACTED] Report [REDACTED].
- Boston School Police Department incident report [REDACTED].
- Boston School Police Department MS-13 gang intelligence bulletin.
- Social media investigative findings.

www.icc.gov

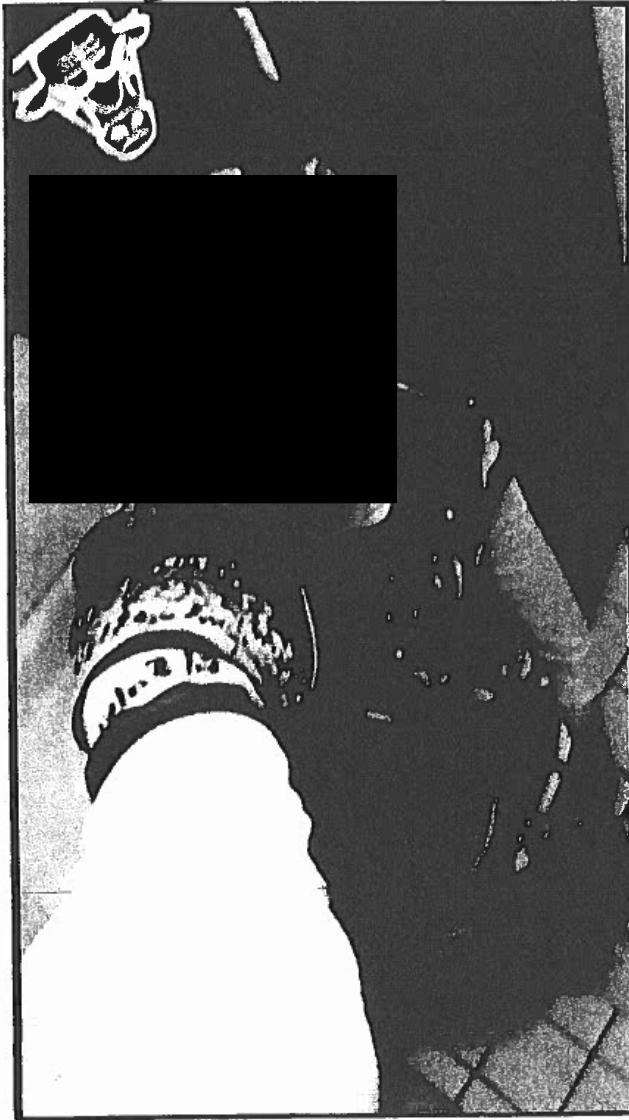
Annotations made by undisclosed immigration officials.



Annotations made by undisclosed immigration officials.

Appendix B (continued)

MS-13
↓ Apparel




[Redacted]

Like Comment Share

96

Like Reply July 12 at 11:11pm

Like Reply July 12 at 11:52pm



You can now add videos to comment

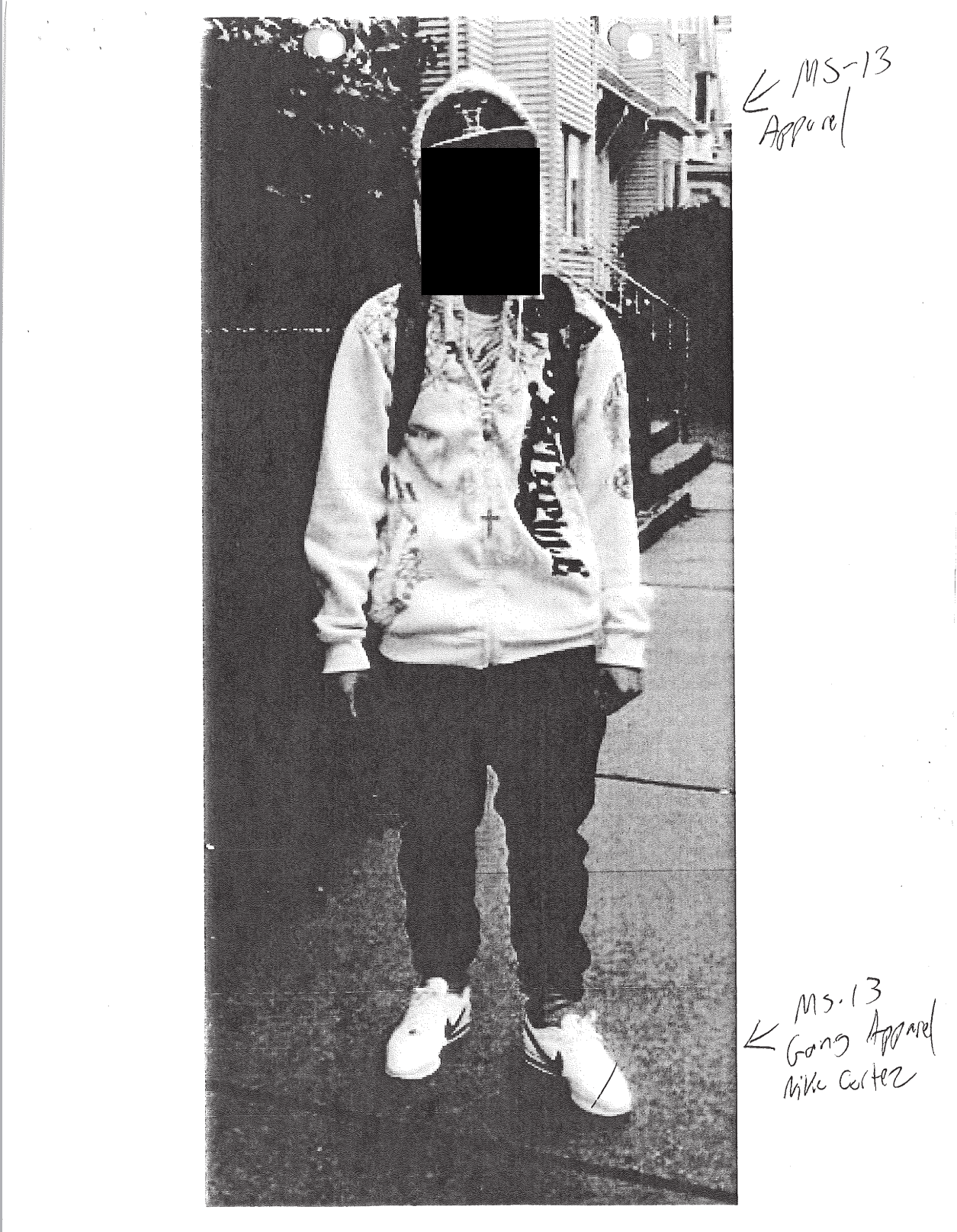
Write a comment

People You May Know

[Redacted] Add Friend

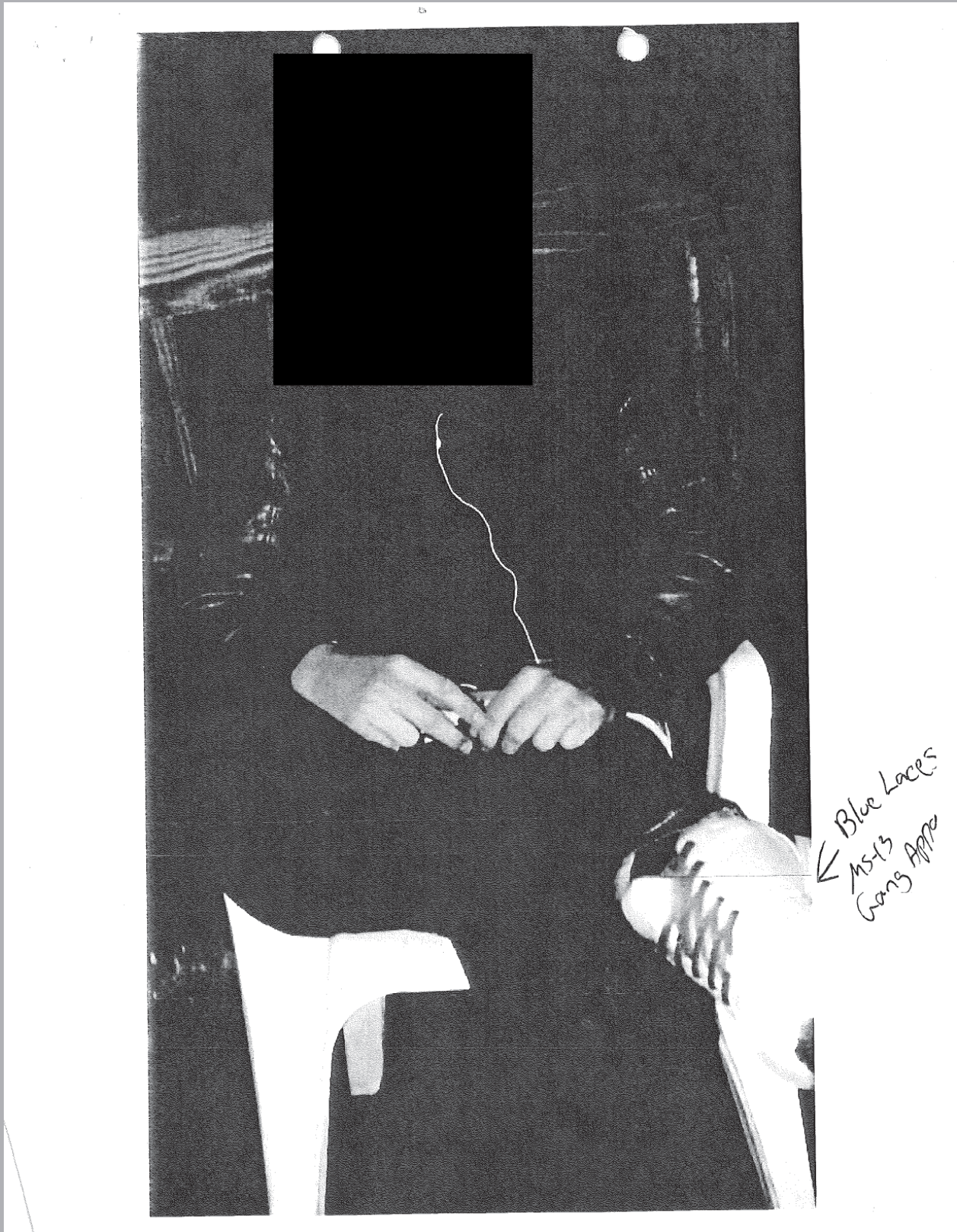
Annotations made by undisclosed immigration officials.

Appendix B (continued)



Annotations made by undisclosed immigration officials.

Appendix B (continued)



Annotations made by undisclosed immigration officials.

Appendix C

Select resources regarding the unreliability of gang databases, fusion centers and gang allegations

Reports and Complaint

MICHAEL GERMAN & JAY STANLEY, *WHAT'S WRONG WITH FUSION CENTERS?* (ACLU ed., 2007) https://www.aclu.org/files/pdfs/privacy/fusioncenter_20071212.pdf.

KUMAR KIBBLE, *DHS PRIVACY IMPACT ASSESSMENT FOR THE ICEGANGS DATABASE 6* (DHS ed., 2010) https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ice_icegangs.pdf (“ICEGangs may contain records about individuals who are neither gang members nor associates . . . It is important to note that ICEGangs data is never used directly as evidence to prosecute crimes . . . ICEGangs is solely a data repository with limited search and analytical tools that help user identify individuals and organizations that may be involved in gang-related criminal activity.”).

SEAN GARCIA-LEYS, MEIGAN THOMPSON & CHRISTYN RICHARDSON, *UNIV. CAL. SCH. L. IMMIGRANT RIGHTS CLINIC, MISLABELED ALLEGATIONS OF GANG MEMBERSHIP AND THEIR IMMIGRATION CONSEQUENCES 1* (Sameer Ashar & Annie Lai, eds., 2016), <http://www.law.uci.edu/academics/real-life-learning/clinics/ucilaw-irc-MislabeledReport.pdf>.

ELAINE M. HOWELL, *CAL. STATE AUDITOR, No. 2015-130, THE CALGANG CRIMINAL INTELLIGENCE SYSTEM* (2016) <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>.

First Amended Petition for Writ of Habeas Corpus & Class Action Complaint for Injunctive and Declaratory Relief at 1, 10-11, 17-18, *Gomez v. Sessions*, No. 3:17-cv-03615-VC (N.D. Cal. Aug. 11, 2017), https://www.aclunc.org/docs/20170811-first_amended_petition.pdf.

STAFF OF S. COMM. ON HOMELAND SEC. & GOV'TAL AFFAIRS, PERMANENT SUBCOMM. ON INVESTIGATIONS, 112TH CONG., *REP. ON FEDERAL SUPPORT AND INVOLVEMENT IN STATE AND LOCAL FUSION CENTERS*, (2012) www.hsgac.senate.gov/download/report_federal-support-for-and-involvement-in-state-and-local-fusions-centers&sg=AOvVaw1NtmH7JCVM1ISUo3N5Jz8I (“In interviews, current and former DHS officials involved in the fusion center reporting process stated they were aware that ‘a lot of [the reporting] was predominantly useless information,’ as one DHS official put it.”).

Law Review Articles

Laila L. Hlass, *The School to Deportation Pipeline*, *Ga. St. U.L. Rev.* (forthcoming 2018), draft available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3132754.

Rebecca A. Hufstader, *Note: Immigration Reliance on Gang Databases: Unchecked Discretion and Undesirable Consequences*, 90 *N.Y.U.L. REV.* 671 (2015).

Kevin Lapp, *Databasing Delinquency*, 67 *HASTINGS L.J.* 195 (2015), <http://www.hastingslawjournal.org/wp-content/uploads/Lapp-67.1.pdf>.

Joshua D. Wright, *The Constitutional Failure of Gang Databases*, 2 *STAN. J. C.R. & C.L.* 115 (2005).

Appendix C (continued)

News Articles

Beware of Gangster Babies: California Database Slammed, CBS (Aug. 15, 2016), <https://www.cbsnews.com/news/calgang-california-gang-database-slammed-listing-babies-privacy-concerns/>.

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/?utm_source=tw&utm_medium=social&utm_content=wnyc.

ICE Releases Brentwood Student Accused of MS-13 Affiliation, NEWS 12 LONG ISLAND (Aug. 8, 2017, 7:35 PM), <http://longisland.news12.com/story/36090140/ice-releases-brentwood-student-accused-of-ms-13-affiliation>.

Jennifer Medina, *Gang Databases Criticized for Denying Due Process May Be Used for Deportations*, N.Y. TIMES (Jan. 10, 2017, 9:10 PM), <https://www.nytimes.com/2017/01/10/us/gang-database-criticized-for-denying-due-process-may-be-used-for-deportations.html?pagewanted=all&r=0>.

Joel Rose & Sarah Gonzalez, *Despite Escaping to the U.S., These Brothers Are Still Terrorized by the MS-13 Gang*, NPR (Aug. 16, 2017, 5:04 AM), <http://www.npr.org/2017/08/16/543830343/ms-13-creates-fear-from-central-america-to-the-u-s>.

Christie Thompson, *How ICE Uses Secret Police Databases to Arrest Immigrants*, MARSHALL PROJECT (Aug. 28, 2017), <https://www.themarshallproject.org/2017/08/28/how-ice-uses-secret-police-databases-to-arrest-immigrants#.jmpx7G02U>.

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>.

Ali Winston, *Marked for Life: U.S. Government Using Gang Databases to Deport Undocumented Immigrants*, INTERCEPT (Aug. 11, 2016, 10:34 AM), <https://theintercept.com/2016/08/11/u-s-government-using-gang-databases-to-deport-undocumented-immigrants/>.

Ali Winston, *Obama's Use of Unreliable Gang Databases for Deportations Could Be a Model for Trump*, INTERCEPT (Nov. 28, 2016, 12:24 PM), <https://theintercept.com/2016/11/28/obamas-use-of-unreliable-gang-databases-for-deportations-could-be-a-model-for-trump>.