

IMMIGRATION AND THE ALIEN GANG EPIDEMIC: PROBLEMS AND SOLUTIONS

HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED NINTH CONGRESS FIRST SESSION

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IMMIGRATION AND THE ALIEN GANG EPIDEMIC: PROBLEMS AND SOLUTIONS

WEDNESDAY, APRIL 13, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 4:22 p.m., in Room 2141, Rayburn House Office Building, Hon. John N. Hostettler (Chair of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

Today's Subcommittee on Immigration, Border Security, and Claims hearing will examine the alien gang epidemic that is facing the United States. At this hearing we will examine the role of aliens in gang crimes, investigate the immigration factors that have shaped the gang epidemic facing this country, and assess the use of the immigration laws in controlling alien gang crime.

While there are an estimated 750,000 to 850,000 gang members in the United States today, there are no firm estimates on how many of those gang members are aliens and how many are citizens. What is apparent, however, is that gang crime is a growing problem. Over 631 gang-related homicides occurred in 2001, and by 2003, the number of gang killings had jumped to 819. In addition to homicide, gang members have been directly linked to the narcotics trade, human trafficking, document fraud, and violent assaults.

It is also apparent that aliens are members of many of the most violent gangs in America. Reports have indicated that 60 percent of California's 18th Street Gang are illegal aliens. This gang is reportedly "involved in many types of criminal activities, including auto theft, carjacking, drive-by shootings, drug sales, arms trafficking, extortion, rape, murder for hire, and murder."

Similarly, Immigration and Customs Enforcement, or ICE, has reported that, "The majority of MS-13 members are foreign nationals in this country illegally." Newsweek has termed MS-13, which has an estimated 20,000 members in the United States, "the most dangerous gang in America." It has even been alleged to be negotiating with al Qaeda to smuggle terrorists into our country.

It is also apparent that aliens are key members of these dangerous gangs. Lester Rivera Paz, the reputed leader of MS-13's Honduran branch, was arrested in Texas in February after escaping from his native country where he's wanted in connection with

a bus ambush. In the past 4 years, Paz has reportedly been deported four times by Federal authorities.

In addition, it is apparent that even younger members of our immigrant communities have become involved in gang violence. For example, the April 6, 2005, Washington Post reported on a ninth grader who was stabbed and beaten with baseball bats outside Manassas Mall. A Prince William County Police Department spokesman stated the victim has been associated with the South Side Locos gang, and that the suspects are believed to be members of the rival gang "Sureno-13."

In response to the threat posed by alien gang members in the United States, in March ICE launched 'Operation Community Shield,' an anti-gang initiative that is targeting members of MS-13 in six cities nationwide. To date, ICE agents, working with their Federal, State, and local counterparts, have arrested more than 150 MS-13 gang members nationwide for immigration violations.

Some critics have complained, however, that flaws in our current immigration system hinder efforts to use the current immigration laws to curtail the alien gang epidemic. For example, some have pointed to so-called 'sanctuary' laws that prohibit State and local law enforcement officers from contacting immigration authorities about illegal aliens, even if they are previously deported criminals. Such laws require the police to wait until those illegal aliens prey on the public before they can act.

Some have asserted that temporary protected status, or TPS, has also protected alien gang members who would have otherwise been deportable. In January, the Government announced an 18-month extension of TPS for El Salvador, the home country of many MS-13 members currently in the United States. The Subcommittee has been told that two of the three alleged MS-13 members charged in the 2002 rape of two deaf girls in Massachusetts had applied for TPS prior to that attack, and that one was actually granted that relief.

Finally, the lack of a ground of removal for gang membership has been cited as a hurdle to using the immigration laws to remove alien gang members from the United States. The Subcommittee will assess whether additional resources or authorities are necessary to make our immigration laws an effective tool for the Government in responding to the gang problem facing our country.

At this time the Chair will now recognize Members for an opening statement, if they have any.

Mr. HOSTETTLER. There being no opening statements, we will now turn to an introduction of our witnesses before us.

Michael Garcia has served as the Assistant Secretary for U.S. Immigration and Customs Enforcement since November 25, 2003. Just prior to his appointment, Mr. Garcia was Acting Commissioner of the former Immigration and Naturalization Service. He has also served as an Assistant U.S. Attorney in New York City working on high-profile terrorism cases. Mr. Garcia is a graduate of the State University of New York at Binghamton. He received his law degree from the Albany Law School, where he was valedictorian.

Now I would to introduce Marsha Garst, but I yield to the gentleman from Virginia to introduce his constituent, Commonwealth's Attorney Marsha Garst.

Mr. GOODLATTE. Mr. Chairman, thank you very much for holding this hearing on this very important issue and for allowing me this privilege.

Marsha Garst is the Commonwealth's Attorney for the County of Rockingham and the City of Harrisonburg, Virginia, and in this position she has prosecuted hundreds of civil and criminal cases with an emphasis on capital murder and narcotics. She has previously worked in the private sector with a law firm in that area, and she has been named the Business and Professional Women's State Young Careerist of the Year in 2000 and Professional Woman of the Year in 2002. She is a graduate of the University of Virginia and George Mason University School of Law, and I am very pleased to welcome a very capable and able Commonwealth Attorney, who is very knowledgeable on this subject.

Mr. HOSTETTLER. I thank the gentleman. We welcome Ms. Garst.

Heather Mac Donald is a John M. Olin Fellow at the Manhattan Institute and a contributing editor to City Journal. Her work at City Journal covers a range of topics including homeland security, immigration, and policing. After clerking for Judge Stephen Reinhardt of the Ninth Circuit Court of Appeals, Ms. Mac Donald served as an attorney-advisor in the General Counsel's Office of the U.S. Environmental Protection Agency. She is a frequent guest on Fox News, CNN, and other television and radio programs. Ms. Mac Donald, a graduate of Yale University, earned her master's degree in English from Cambridge University and her law degree from Stanford Law School.

Mai Fernandez is the Chief Operating Officer of the Latin American Youth Center in Washington, D.C. She has also served as a Special Assistant to the Assistant Attorney General in the Office of Justice Programs. Before working for the Department of Justice, she served as an Assistant District Attorney in Manhattan, and as an aide to Congressmen Mickey Leland and Jim Florio. Ms. Fernandez is a graduate of Dickinson College. She received her law degree from American University and her Master's Degree in Public Administration from Harvard University.

Ladies and gentlemen, we appreciate your attendance here today. Secretary Garcia, you will begin, and you will see that there will be a 5-minute time period for your testimony. If you could stay as close within that as possible, we would appreciate it. Secretary Garcia.

TESTIMONY OF THE HONORABLE MICHAEL J. GARCIA, ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. GARCIA. Thank you very much, Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to speak with you today about U.S. Immigration and Customs Enforcement's response to alien gang activity in the United States. Mr. Chairman, you have very vividly outlined the threat posed by these gangs to our communities. I can assure you that ICE brings to bear all of

its law enforcement and investigative powers to combat violent street gangs.

Ensuring public safety is among the most important homeland security missions at ICE. Gang enforcement is a crucial part of that mission. In the last decade, the United States has experienced a dramatic increase in the number and size of transnational street gangs such as Mara Salvatrucha, commonly known as MS-13. These gangs have a significant, often a majority, foreign-born membership and are frequently involved in human and contraband smuggling, immigration violations, and other crimes with a nexus to the border. Like any street gang, these gangs also have a propensity toward violence. Their members commit such crimes as robbery, extortion, assault, rape, and murder.

In 2003, ICE conducted a comprehensive threat assessment on violent street gang activity in the United States. The threat assessment identified MS-13 as having a presence across the nation, a significant foreign-born membership, and a history of violence.

An example of this violence occurred just outside our nation's Capital. In May 2004, in Alexandria, Virginia, members of MS-13 viciously hacked at a rival gang member with machetes, severing the victim's hands. The victims of gang crime are not limited to rival gang members, however. Entire neighborhoods and sometimes whole communities are held hostage by and subjected to the violence of street gangs. Community members are targeted by gangs for extortion, robberies, carjackings, and home invasions. In drive-by shootings, the bullets fired by street gangs do not discriminate between a rival gang member and a child.

Based on this threat assessment, ICE initiated Operation Community Shield in February 2005, with priority given to targeting MS-13 members. The objective of Community Shield is to gather intelligence, develop sources of information, and to ultimately disrupt, dismantle, and prosecute violent street gangs by applying the full range of authorities and investigative tools available at ICE. In Community Shield, we have designated priorities for apprehension based on whether a gang member is a threat to national security, in a position of leadership, or has a prior violent criminal history.

Since the beginning of Operation Community Shield, more than 150 MS-13 gang members have been arrested for immigration violations. Nine of those arrested have been identified as leaders. More than half of those arrested have violent criminal histories with arrests and convictions for crimes such as robbery, assault, rape, and murder. In one set of arrests, Miami ICE agents apprehended two MS-13 gang members wanted by California authorities on murder charges. These two gang members were also being sought by local authorities for their suspected involvement in home invasions. Twenty-two of those arrested have been criminally charged for illegal reentry after deportation and are subject to sentences of up to 20 years in prison, depending on their criminal history. Examples of illegal reentry arrests include an MS-13 member from Long Island who had convictions for burglary, auto theft, harassment, and sexual abuse of a minor. Additionally, ICE agents in Los Angeles arrested four MS-13 gang members that illegally reentered the U.S., all with convictions for violent crimes ranging from brandishing a firearm to witness tampering. Finally, Newark

agents apprehended an MS-13 gang member for illegal reentry who had prior convictions for armed robbery and grand theft.

ICE's efforts under Operation Community Shield are not limited to immigration violations, and, again, we bring all our authorities, including our financial and criminal investigative authorities, to bear.

Through Operation Community Shield, ICE is taking innovative steps to identify MS-13 gang members. The Law Enforcement Support Center checks MS-13 gang member data provided by State and local authorities against DHS and other databases to locate gang members. In a cooperative effort, ICE and the Bureau of Prisons identified 102 records of MS-13 gang members in the Federal prison system database.

The LESC has also developed an innovative way to help identify MS-13 gang members to first responders. When a State or local police agency makes an inquiry to the LESC through the National Law Enforcement Telecommunications System, the LESC sends certain inquiry responses to ICE headquarters for further analysis. When a match is found, ICE notifies the inquiring law enforcement agency of its findings. You can see what a safety benefit that would have to any officer approaching a car on the side of the road at night who would certainly want to know the person in that vehicle is a suspected gang member.

On December 23, 2004, the Columbus, Ohio, Police Department encountered Nelson Flores following a minor traffic accident and contacted the LESC for information. ICE special agents at the LESC and Columbus officers soon determined that Flores was a previously deported felon linked to a drive-by shooting in Nevada and was a local leader of MS-13. LESC agents immediately lodged a detainer and notified Ohio ICE agents who responded and arrested Flores for illegal reentry after deportation.

I will sum up now, Mr. Chairman, in keeping with your instructions to keep to the 5-minute rule, but I will say that in the final analysis, Operation Community Shield is a homeland security initiative. Every criminal organization that can exploit the border is viewed as a potential national security threat. In recent months, there have been uncorroborated reports in the media and from foreign governments of possible links between al Qaeda and MS-13. While neither ICE nor any other U.S. Government agency that I know of has credible evidence to support these reports, the threat remains that any criminal organization that exploits our borders for profit could, for the right price, bring in terrorists or bring in components of weapons of mass destruction.

Operation Community Shield marks just the beginning of ICE's fight to defeat violent street gangs. I want to thank you, Mr. Chairman, and the distinguished Members of this Committee for the opportunity to speak about this gang initiative before you today, and I look forward to answering all of your questions. Thank you.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF THE HONORABLE MICHAEL J. GARCIA

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, thank you for the opportunity to speak with you today about U.S. Immigration and Customs Enforcement's (ICE) responses to alien gang activity in the United States. ICE brings to

bear all of its law enforcement and investigative powers to combat violent street gangs.

Ensuring public safety is among the most important homeland security missions of ICE. Gang enforcement is a crucial part of that mission. In the last decade, the United States has experienced a dramatic increase in the number and size of transnational street gangs such as Mara Salvatrucha (commonly known as MS-13). These gangs have a significant, often a majority, foreign-born membership and are frequently involved in human and contraband smuggling, immigration violations and other crimes with a nexus to the border. Like any street gang, these gangs also have a propensity toward violence. Their members commit such crimes as robbery, extortion, assault, rape and murder.

In 2003 ICE conducted a comprehensive threat assessment on violent street gang activity in the United States. The threat assessment identified the street gang MS-13 as having a presence across the nation, a significant foreign-born membership and a history of violence.

An example of this violence occurred just outside our nation's Capital. In May 2004 in Alexandria, Virginia, members of MS-13 viciously hacked at a rival gang member with machetes, severing the victim's hands. The victims of gang crime are not limited to rival gang members. Entire neighborhoods and sometimes whole communities are held hostage by and subjected to the violence of street gangs. Community members are targeted by gangs for extortion, robberies, car-jackings and home invasions. In the conduct of drive-by shootings, the bullets fired by street gangs do not discriminate between a rival gang member and a sleeping infant in the same house.

Based on this threat assessment, ICE initiated Operation Community Shield on February 23, 2005, with priority given to targeting MS-13 members. The objective of Community Shield is to gather intelligence, develop sources of information, and to ultimately disrupt, dismantle and prosecute violent street gangs by applying the full range of authorities and investigative tools available to ICE. In Community Shield we have designated priorities for apprehension based on whether a gang member is a threat to national security; in a position of leadership; or has a prior violent criminal history.

Since the beginning of Operation Community Shield, more than 150 MS-13 gang members have been arrested for immigration violations. Nine of those arrested have been identified as leaders. More than half of those arrested have violent criminal histories with arrests and convictions for crimes such as robbery, assault, rape and murder. In one set of arrests, Miami ICE agents apprehended two MS-13 gang members wanted by California authorities on murder charges. These two gang members were also being sought by local authorities for their suspected involvement in home invasions.

Twenty-two of those arrested have been criminally charged for illegal reentry after deportation (8 USC 1326) and are subject to up to 20 years in Federal prison, depending on their criminal history. Examples of illegal reentry arrests include an MS-13 member from Long Island who has convictions for burglary, auto theft, harassment and sexual abuse of a minor. Additionally, ICE agents in Los Angeles arrested four MS-13 gang members that illegally reentered the U.S., all with convictions for violent crimes ranging from brandishing a firearm to witness tampering. Finally, Newark ICE agents apprehended an MS-13 gang member for illegal reentry who has prior convictions for armed robbery and grand theft.

ICE's investigative efforts under Operation Community Shield are not limited to immigration violations. We have the combined authorities for enforcing both customs and immigration laws, which makes our approach to fighting organized criminal activity and gang violence unique, and more effective. By combining immigration enforcement authorities with expertise in financial investigations, we have an additional tool to hit these criminal gangs where it hurts—by going after their money. One example of how these combined authorities can be so effective is in an investigation of a street gang known to transport large quantities of narcotics from Mexico into the United States. This investigation involves pursuing money laundering charges, drug smuggling charges, the use of electronic surveillance and identifying and targeting illicit proceeds for forfeiture.

Through Operation Community Shield, ICE is taking other innovative steps to identify MS-13 gang members and disrupt its organizations. The ICE Law Enforcement Support Center (LESC) has checked MS-13 gang member data provided by our state and local law enforcement partners against DHS and other databases to identify and locate gang members. In a cooperative effort, ICE and the U.S. Bureau of Prisons (BOP) have identified 102 records of MS-13 gang members in the federal prison system database. Through the cross-check, ICE and the BOP hope to identify

MS-13 gang members who may be directing criminal activity from behind bars and prioritize jailed gang members for deportation upon completion of their sentence.

The LESC has also developed an innovative way to help identify MS-13 gang members to first responders. When a State or local police agency makes an inquiry to the LESC through the National Law Enforcement Telecommunications System (NLETS), the LESC forwards inquiry responses that meet a certain criteria to ICE Headquarters for further analysis and comparison with data ICE has on MS-13 gang members. When a match is found, ICE notifies the inquiring law enforcement agency of its findings and coordinates enforcement action to be taken. The goal is to prosecute if possible and ultimately deport these alien gang members from the United States.

On December 23, 2004, the Columbus, Ohio Police Department encountered Nelson Flores following a minor traffic accident and contacted the LESC for information. ICE Special Agents at the LESC and Columbus officers soon determined that Flores was a previously deported felon linked to a drive-by shooting in Nevada and was a local leader of MS-13. LESC agents immediately lodged a detainer and notified Ohio ICE agents who responded and arrested Flores for illegal reentry after deportation.

ICE maintains a close working relationship with Mexico, Honduras, El Salvador and Guatemala in the exchange of intelligence pertaining to MS-13 and other gang activity. ICE established a working relationship with Honduran Law Enforcement Intelligence Units regarding the arrest of Lester RIVERA-Paz in South Texas. RIVERA-Paz, the alleged national leader of the Honduran MS-13 organization, was an international fugitive, wanted by Honduran authorities for his involvement in the massacre of 28 bus passengers in December of 2004 in San Pedro Sula, Honduras. RIVERA-Paz was apprehended by Customs and Border Protection Border Patrol agents and placed into ICE custody pending prosecution for illegal reentry after deportation. ICE Intelligence secured copies of the Honduran arrest warrant, as well as photos and fingerprints of RIVERA-Paz to confirm his identity and fugitive status.

At ICE, we recognize that no single law enforcement agency can win the fight against transnational street gangs. ICE is working closely with a number of agencies and organizations under Operation Community Shield. Such cooperation is critical to the success of this initiative. ICE's Operation Community Shield partners include other agencies within the Department of Homeland Security; the Department of Justice; Department of State; the governments of El Salvador, Honduras, Mexico and Guatemala; and state and local law enforcement agencies throughout the United States. ICE has a long history of working with our partners in law enforcement to leverage our enforcement abilities. Operation Community Shield is no exception.

In the final analysis, Operation Community Shield is a homeland security initiative. Every criminal organization that can exploit the border is viewed as a potential national security threat. In recent months, there have been uncorroborated reports in the media and from foreign governments of possible links between Al-Qaeda and MS-13. Neither ICE nor any other U.S. Government agency has credible evidence to support these reports.

This operation is just the beginning in our fight to defeat violent street gangs. Operation Community Shield is an important public safety initiative for the Department of Homeland Security that targets the proliferation of gang violence throughout the country. By bringing the full range of ICE's immigration and customs authorities in the fight against violent street gangs, we can take hundreds of gang members off the streets and have a significant impact on community safety.

I want to thank the distinguished members of this Committee for the opportunity to speak before you today. I look forward to answering any questions you may have.

Mr. HOSTETTLER. Thank you, Mr. Secretary.
Ms. Garst.

**TESTIMONY OF MARSHA L. GARST, COMMONWEALTH'S
ATTORNEY FOR ROCKINGHAM COUNTY, VIRGINIA**

Ms. GARST. Good afternoon, Mr. Chairman, and honored Members of the House Judiciary—

Mr. HOSTETTLER. Could you push the button there on the box there?

Ms. GARST. Good afternoon, Mr. Chairman, and honored Members of the House Judiciary Committee. It's a pleasure to be here

in the springtime. What a lovely day. As the Congressman introduced me, I'm Marsha Garst from Rockingham County, City of Harrisonburg, and I am serving as Commonwealth's Attorney.

I have been a lifelong resident of Rockingham County and the City of Harrisonburg, as five generations of my family before me. So it's with a sense of urgency that I address you today as I raise my own family in the valley to let you know that with the alien gang problem, our way of life could be lost.

As was the case with my family, many immigrants came to the valley for good jobs, an abundance of good agricultural opportunities. We have a burgeoning poultry industry and agricultural economy. Currently, Harrisonburg is second in the State for English as a Second Language program. We have over 56 different countries of origin in our school system and 38 different languages spoken. Right now, Spanish is the second, of course, primary language in our area, with 72 percent of our program being Spanish-speaking. Many of these immigrants have contributed to the positive growth of this community, but I'm here to address the minority, which is the alien gang group.

When I began prosecution in 1994, there was a new drug on the street called methamphetamine, and there was not one organized gang in our area. We only had 160 students in our ESL program. Now we have over 1,422. We heard of a gang called MS-13 first in 1999 when we had two members apprehended who had fled from Fairfax County, who were staying with family members here in Harrisonburg, regarding a malicious wounding charge they had fled.

Our next contact then came most recently in August of 2003 regarding a woman by the name of Brenda Paz, whom many of you are familiar with. Fairfax investigators advised us that she had been living in our community with family members, and she was a point of contact for local MS-13 gang members. She later cooperated, of course, against MS-13 gang members, rejoined the gang, and was murdered, and, of course, as you all know, she was pregnant as well.

We also had another fatality related to gang opportunities, which was a young woman who was contacted and involved with MS-13. She was involved with stealing vehicles in Northern Virginia and killed in the process of stealing vehicles with MS-13. Her sister, who was only 14 at the time, was later arrested in our local high school system for vandalism and gang participation due to this MS-13 alliance.

I would like to introduce from the City of Harrisonburg, County of Rockingham Gang Task Force, Sergeant Chris Rush, if he would stand a moment. He has provided almost all the facts and has been our local expert in this area. He was instrumental in providing this data. We have ten active gangs currently with 100 documented, meaning certified, members that we're aware of.

Our most powerful gang is Sureno-13. There's at least 75 percent illegal aliens that we approximate in that group, about 40 active members. They have already been tied to and prosecuted for malicious wounding, firearms violations, robberies, abductions, assaults, breaking and enterings, larcenies, and vandalisms.

One case of note was a 15-year-old young lady who was a sister of a Sureno-13 member who was stabbed by a rival gang member, MS-13. She came to school with stab wounds. A guidance counselor saw this. Her family would not cooperate with the prosecution due to, one, illegal status and gang ties.

Another case of note was just recently when we had an abduction and robbery where Sureno-13 members went into the home of a CRIPS member, held all the residents at gunpoint, and robbed them. Several illegal aliens participated in this, and they were not prosecuted due to the lack of cooperation of the victims. The case had to be dismissed because the young man who was the subject of the attack said that he was afraid to prosecute.

Our next most powerful gang is MS-13. There's about 50 percent of the members that we can corroborate to be illegal aliens. The rest are here with political asylum from El Salvador. And this doesn't include all the MS-13 members who come down from Northern Virginia to help participate in these activities. We've already arrested them for malicious wounding, firearms violations, larcenies, vandalisms and taggings. One MS-13 member most recently was hit with a broken bottle and injured pretty badly in February 2005. He went and got a friend who was tied with MS-13, and he and another friend went back and discharged several rounds of ammunition into the crowd, and many people were frightened. Luckily, we didn't have a fatality.

You will find some attached samples of gang taggings. I hope that you have these photographs included in your packet. The first depicts at a local housing project, Harris Gardens, a SUR 13 member executing another rival gang member. Then you see someone proud enough to put their SUR 13 ties and very prominent markings on their back. The most common hand marking of SUR 13 is there, as well as large taggings in a very prominent place showing SUR 13 in the main area of our town, and then taggings for the MS-13 turf.

As I sum this up, I want you to know that local teachers in our second grade have told us that MS-13 and SUR 13 are already recruiting our children. There's a photograph below, gentlemen and ladies, that I'd like you to look at, if you have that, which shows our middle school traveling here to the nation's Capital. You will see two flashing gang signs: the one in the front, CRIPS; the back, with the sign of the Bloods.

There was a significant problem with illegal aliens making up gangs in the Shenandoah Valley. In the past month, ICE has worked very close. We're very lucky to have now a local office. We have ten gang members we identified. Out of these ten, two have been deported and have already reentered the United States. Three are awaiting criminal charges, and upon conviction will be deported.

There is a nexus about to occur that is very important. In Harrisonburg and Rockingham County, 40 percent of the methamphetamine that has been seized in the entire State of Virginia has come from our locality. What we have seen in Shenandoah County, just to the north of us where Ms. Paz was killed, that gang ties are already showing gangs to be actively moving to methamphetamine. We are yet to see that actively in Harrisonburg, but when they re-

alize that they can use methamphetamine for the benefit of the gang, then we're in trouble because it will go from just individual gain to the gain of the gang. Once they decide to do that, then we're going to have a crisis.

I thank you so much for your time this afternoon, and I thank you for your attention to this very important problem.

[The prepared statement of Ms. Garst follows:]

PREPARED STATEMENT OF MARSHA GARST

Good afternoon honored members of the House of Representatives Judiciary Committee and guests. It is a pleasure to be back in our Nation's Capital in the springtime. My name is Marsha Garst and I am the Commonwealth's Attorney of Rockingham County and the City of Harrisonburg. Except for my time at the University of Virginia and here in Washington, D.C., I have also been a lifelong resident of Rockingham County and the City of Harrisonburg. Five (5) generations of my family have made their home in the beautiful Shenandoah Valley and as I now raise my own family there, it is with a great sense of urgency that I ask you to address the Alien Gang crime problem in the Valley of Virginia before our way of life is lost forever.

As was the case with my family, many immigrants have migrated to the Shenandoah Valley for the abundance of jobs and the quality of living. Most recently, many immigrants have come to Rockingham County and the City of Harrisonburg to seek employment in our burgeoning poultry industry and agricultural economy. Currently, the City of Harrisonburg is second in the state for English as a Second Language (ESL) education and has over fifty-six (56) different countries of origin and thirty-eight (38) different spoken languages in our public school system. Spanish as the primary language makes up seventy-two (72) percent of the ESL program attendees. Most immigrants to the community have contributed to the positive growth and well being of our town. However, I am here to address the dangerous minority—that is alien gang members that have come to prey on other immigrants and citizens.

When I began prosecution as in 1994, organized gangs were unheard of and new drug—methamphetamine was making its way to our streets. In 1994, we had 160 students in the ESL program in the City of Harrisonburg. In 2004, we had 1,422 students in the ESL program. We first heard of a gang called MS-13 in 1999 when we apprehended two (2) members of the gang wanted on malicious wounding charges who were staying with family members in Harrisonburg after fleeing Fairfax County.

Our next contact with MS-13 came in August of 2003. Virginia State Police members and Fairfax County Investigators, advised us that a woman by the name of Brenda Paz had been living in Harrisonburg, Virginia, with family members. Ms. Paz served as a point of contact for MS-13 gang members. As many of you know, she later cooperated against other MS-13 gang members and was found brutally murdered in the adjoining county of Shenandoah. Ms. Paz was also pregnant.

Later in 2003, another young woman from Harrisonburg, Virginia died due to her gang contacts when her boyfriend and she were stealing cars in Northern Virginia for MS-13 and died in a car crash. This young woman's surviving sister, who was only 14 years of age at the time, was charged after her sister's death with vandalism and gang participation due to her alliance with MS-13.

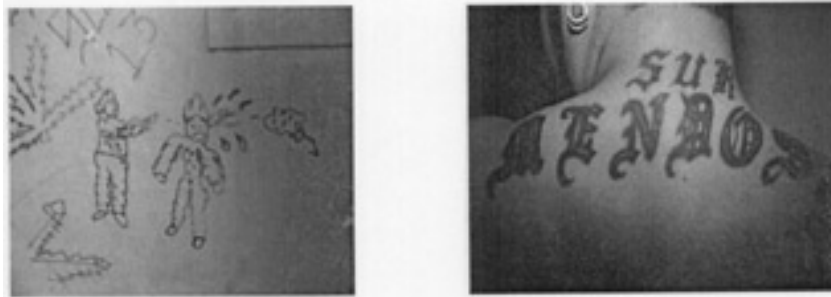
Currently, the City of Harrisonburg and County of Rockingham has a Gang Task Force. This task force has a coordinator with who I have worked for a decade, Sgt. Chris Rush—I would like to introduce him at the time—he was instrumental in providing the following details: The City of Harrisonburg and Rockingham County has ten (10) active gangs with over one-hundred (100) documented members.

The Surenos 13 are currently the most powerful gang over forty (40) members strong. This gang draws its ranks from Mexican citizens. They are comprised of at least seventy-five (75) percent illegal aliens and have been tied to malicious woundings, firearms violations, robberies, abductions, assaults, breaking and enterings, larcenies, and vandalisms in our community. One sad case of note was a fifteen (15) year old sister of a Surenos 13 member was stabbed by a MS-13 member and presented at school with stab wounds, but her family would not cooperate with the prosecution of her attacker because of the families' illegal status and gang ties. Another case of note is the 2004 case of abduction and robbery wherein Sur 13 members went to the home of a CRIPS member and held residents at gunpoint and robbed residents. Several illegal aliens participated in this attack, but could not

be prosecuted due to the lack of cooperation of the victims. The case was dismissed because the victim told his mother he was afraid of SUR 13 members and refused to testify. The abduction and robbery were retaliation for a drug debt. We have also had numerous home invasions of illegal alien homes and citizens by SUR 13. SUR 13 knows that victims will not prosecute because of their illegal status and many cases go unreported.

Our next powerful gang is MS-13 with twenty-five (25) documented local resident members. Approximately fifty (50) percent of these members are illegal aliens. The rest are here on political asylum from El Salvador. This does not include the many MS-13 members that travel down from Northern Virginia to participate in criminal activities. In Harrisonburg and the County of Rockingham, we have had malicious woundings, firearms violation, assault, larcenies, and vandalisms or taggings. One recent case of note, in February 2005, a MS-13 member was assaulted with a broken bottle. This MS-13 member went and got two (2) friends, one with gang ties, and returned and discharged several ammunitions into the area of the crowd where he was assaulted.

Below, please find examples of the gang markings. The first Photograph depicts a tagging on the door of public housing complex—Harris Gardens, in the City of Harrisonburg. It depicts a SUR 13 member executing a local rival gang member. The second photograph depicts a SUR 13 member so proud he would wear his markings in a permanent tattoo.



The first photograph below depicts a common gang tattoo. The second photograph depicts a large tagging by SUR 13.



The photographs below depict recent taggings on well known MS-13 Turf.



Finally, we have evidence from local teachers of the second grade that gang recruiting for MS-13 and SUR 13 has already begun. The photograph below depicts local school children on a field trip to our Nation's Capitol flashing gang signs. This picture was copied from one of our local yearbooks in the Harrisonburg area.



Illegal aliens makeup a significant portion of gang members in the Shenandoah Valley. Within the past month, a list of ten (10) gang members was given to our local ICE office. Out of these ten members, two (2) had all ready been deported and have re-entered the United States and three (3) are awaiting criminal charges and upon conviction will be deported because of their illegal status. There are also other documented cases in which our local police officers have encountered gang members/associates who had been deported and re-entered and were re-arrested.

A dangerous nexus is about to occur. Approximately forty (40) percent of methamphetamine seized in the State of Virginia was seized in Rockingham County and the City of Harrisonburg. Already Shenandoah County has seen gang activity tied to methamphetamine. The City of Harrisonburg and the County of Rockingham are currently seeing gang members in possession of and distributing narcotics. However, it does not appear at this time they are doing it for the benefit of the gang, but for the benefit of their individual gain. Once gangs decide to use the valley drug trade as a profit base, then we will truly have a crisis.

Thank you for your attention to this very serious problem and thank you for your time.

Mr. HOSTETTLER. Thank you, Ms. Garst.
Ms. Mac Donald.

**TESTIMONY OF HEATHER MAC DONALD, SENIOR FELLOW,
THE MANHATTAN INSTITUTE**

Ms. MAC DONALD. Thank you, Mr. Chairman. It's a great honor and privilege to be here today before your Subcommittee, which is an absolute brain trust of information.

Does that affect us or are we having a little security alert?

Mr. HOSTETTLER. We will—no, no security alert.

Ms. MAC DONALD. You never know in the capital.

Mr. HOSTETTLER. We will have a vote in the House of Representatives and so—I don't know if we have a series of votes, but we will have a vote in the House, so we'll probably have to recess for a short time.

Ms. MAC DONALD. Okay.

Mr. HOSTETTLER. Hopefully we will get through yours and Ms. Fernandez's testimony in that time.

Ms. MAC DONALD. So I should continue.

Mr. HOSTETTLER. Yes, please continue.

Ms. MAC DONALD. Okay. I've had the privilege of working with your general counsel in the past, and I'm glad to finally be here to see where all the knowledge is coming from.

My name again is Heather Mac Donald. I'm a fellow at the Manhattan Institute. I've written extensively on immigration issues and policing, with a special emphasis on Southern California and New York City.

Gang crime is the one category of crime that is exploding nationally. It's up 50 percent from 1999 to 2002, and it's going to continue to rise so long as our immigration system remains broken.

As Mr. Garcia told us, nobody knows for certain the percentage of illegal aliens in gangs, thanks in part to sanctuary laws that forbid local police from even inquiring into a criminal's immigration status. But there's a few numbers that I think are suggestive.

In Los Angeles, 95 percent of all outstanding warrants for homicide target illegal aliens, and approximately two-thirds of all felony outstanding warrants target illegal aliens. ICE says Mara Salvatrucha is predominantly or majority illegal. Police officers will tell you it's basically 100 percent illegal. He mentioned the 18th Street Gang or you mentioned the 18th Street Gang, which a California Department of Justice study put at about 60 percent illegal. Again, cops will say otherwise.

Now, given such numbers, leveraging a criminal's illegal status to have him deported would seem to be an essential weapon against gang crime. But in cities and counties across the country, police are prohibited from using the most immediate and straightforward tool to get illegal criminals off the streets: their illegal status.

Here's how it works: Let's say an officer in Hollywood, California, sees a previously deported felon, a member of MS-13, back at Hollywood and Vine hanging out. Now, the officer recognizes him and knows that his mere presence in the country following deportation is a Federal felony. But under the prevailing understanding of Los Angeles' sanctuary law, known as Special Order 40, that cop can't lay a finger on that felon for his immigration felony. Instead, he has to wait and laboriously build up probable cause for, let's say, a murder or an armed assault. But as any prosecutor here knows, it's not always certain that you're going to get that probable cause, especially with gang crime, since witnesses are terrified of retaliation. Using the felon's immigration status now to get him off the street is the surest way of protecting the community.

The damage done by sanctuary laws is clear. Let me just give you a few examples.

In late 2002, four illegal Mexicans brutally abducted and gang-raped a 42-year-old mother of two near a railroad in Queens, New York. Three of these illegal rapists had been arrested numerous times for assault, attempted robbery, criminal trespass, illegal gun possession. But pursuant to New York's sanctuary policy, the police had never notified the INS.

In Los Angeles, 5 months ago, Carlos Barrera, an illegal Mexican, mugged three people, burglarized two apartments, and attempted to rape a 5-year-old girl. He had been deported 4 years ago for crimes of violence but, of course, had reentered. Since his re-entry, he had been stopped twice for traffic violations. But, again, the cops never notified ICE because of L.A.'s sanctuary policy.

Now, L.A. is proposing to issue new guidelines, but it merely shows how perverse our attitudes toward border trespassing are. It would require a cop to go all the way up through his chain of command, then up through ICE's chain of command to get a Federal warrant to make an arrest. Your average citizen street thug is not required—does not have the right to a Federal warrant before being arrested, only illegal aliens.

In conclusion, getting rid of sanctuary laws is only the first step to being able to solve the illegal alien gang crime. ICE has to come up with sufficient deportation resources and detention space, and the Bush administration has to engage in the radical step of actually enforcing the immigration laws, including laws against hiring illegal aliens. As long as the jobs magnet retains its force, we're not going to be able to stop the flood of illegals that are bringing terrorists, undoubtedly, and criminals in their wake.

Sanctuary laws are not pro-immigrant. They're anti-immigrant by keeping violent criminals in the community where they're preying predominantly on law-abiding immigrants.

Thank you very much.

[The prepared statement of Ms. Mac Donald follows:]

PREPARED STATEMENT OF HEATHER MAC DONALD

My name is Heather Mac Donald. I am a senior fellow at the Manhattan Institute for Policy Research, a think tank in New York City. I have analyzed illegal immigration for *City Journal* and the *Los Angeles Times*, among other publications. I have also written a book on policing called *Are Cops Racist?* I appreciate the opportunity to testify today on this important topic.

Sanctuary laws are a serious impediment to stemming gang violence and other crime. Moreover, they are a perfect symbol of this country's topsy-turvy stance towards illegal immigration.

Sanctuary laws, present in such cities as Los Angeles, New York, Chicago, Austin, Houston, and San Francisco, generally forbid local police officers from inquiring into a suspect's immigration status or reporting it to federal authorities. Such laws place a higher priority on protecting illegal aliens from deportation than on protecting legal immigrants and citizens from assault, rape, arson, and other crimes.

Let's say a Los Angeles police officer sees a member of Mara Salvatrucha hanging out at Hollywood and Vine. The gang member has previously been deported for aggravated assault; his mere presence back in the country following deportation is a federal felony. Under the prevailing understanding of Los Angeles's sanctuary law (special order 40), if that officer merely inquires into the gangbanger's immigration status, the officer will face departmental punishment.

To get the felon off the street, the cop has to wait until he has probable cause to arrest the gangbanger for a non-immigration crime, such as murder or robbery. It is by no means certain that that officer *will* successfully build a non-immigrant case against the gangster, however, since witnesses to gang crime often fear deadly retaliation if they cooperate with the police. Meanwhile, the gangbanger is free to

prey on law-abiding members of his community, many of them immigrants themselves.

This is an extraordinarily inefficient way to reduce crime. If an officer has grounds for arresting a criminal now, it is perverse to ask him to wait until some later date when maybe, if he is lucky, he will have an additional ground for arrest.

Sanctuary laws violate everything we have learned about policing in the 1990s. Police departments across the country discovered that utilizing every law enforcement tool in their tool chest against criminals yielded enormous gains. Getting criminals off the streets for seemingly “minor” crimes such as turnstile jumping or graffiti saved lives. Gang crime, which exploded 50% from 1999 to 2002, is too serious a problem to ignore this lesson.

No one knows for certain the percentage of illegals in gangs, thanks in large part to sanctuary laws themselves. But various estimates exist:

—A confidential California Department of Justice study reported in 1995 that 60 percent of the 20,000-strong 18th Street Gang in southern California is illegal; police officers say the proportion is actually much greater. The bloody gang collaborates with the Mexican Mafia, the dominant force in California prisons, on complex drug-distribution schemes, extortion, and drive-by assassinations. It commits an assault or robbery every day in L.A. County. The gang has grown dramatically over the last two decades by recruiting recently arrived youngsters, most of them illegal, from Central America and Mexico.

- Immigration and Customs Enforcement conservatively puts the number of illegals in Mara Salvatrucha as a “majority;” police officers, by contrast, assert that the gang is overwhelmingly illegal.
- Law enforcement officials estimate that 20% of gang members in San Diego County are illegal, according to the *Union-Tribune*.
- The L.A. County Sheriff reported in 2000 that 23% of inmates in county jails were deportable, according to the *New York Times*.
- The leadership of the Columbia Lil’ Cynos gang, which uses murder and racketeering to control the drug market around Los Angeles’s MacArthur Park, was about 60 percent illegal in 2002. Francisco Martinez, a Mexican Mafia member and an illegal alien, controlled the gang from prison, while serving time for felonious reentry following deportation.
- In Los Angeles, 95 percent of all outstanding warrants for homicide in the first half of 2004 (which totaled 1,200 to 1,500) targeted illegal aliens. Up to two-thirds of all fugitive felony warrants (17,000) were for illegal aliens.
- The Los Angeles Police Department arrests about 2500 criminally-convicted deportees annually, reports the *Los Angeles Times*.

Though the numbers of illegal gang members remain elusive, the evidence for the destructive effects of sanctuary laws is incontrovertible. In 2002, for example, four illegal Mexicans, accompanied by one legal immigrant, abducted and brutally raped a 42-year-old mother of two near some railroad tracks in Queens, New York. The New York Police Department had already arrested three of the illegal aliens numerous times for such crimes as assault, attempted robbery, criminal trespass, illegal gun possession, and drug offenses. But pursuant to New York’s sanctuary policy, the department had never notified the INS.

Five months ago, Carlos Barrera, an illegal Mexican in Hollywood, Ca., mugged three people, burglarized two apartments, and tried to rape a five-year-old girl. Barrera had been deported four years ago after serving time for robbery, drugs, and burglary. Since his reentry following deportation, he had been stopped twice for traffic violations. But thanks to special order 40, the police had never mentioned him to the immigration authorities, reports the *New York Times*.

In September, 2003, the Miami police arrested a Honduran visa violator for seven violent rapes. The previous year, Miami cops had had the suspect in custody for lewd and lascivious molestation. Pursuant to Miami’s sanctuary law, however, the police had never checked his immigration status. Had they done so, they would have discovered his deportable status, and could have forestalled the rapes.

Cousins Aneceto and Jaime Reyes committed murder and a car-jacking, respectively, after returning to Los Angeles from Mexico following deportation. The Los Angeles police had encountered them before these most recent crimes, but had to wait for them to commit murder and a car-jacking before they could lay a finger on them for their immigration offenses, according to the *New York Times*.

The Los Angeles Police Department began revisiting special order 40 last month. Its proposed revision merely underlines how perverse our attitudes towards illegal alien criminals remain.

Los Angeles's top brass propose to allow a Los Angeles officer who suspects that a criminal has previously been deported to contact his supervisor about the reentry felony. That supervisor would then contact ICE. ICE officials would next go before a federal judge to get an arrest warrant for the immigration felony. Then, with warrant in hand, the Los Angeles cop may finally arrest the felonious gangbanger-if he can still find him.

This burdensome procedure is preposterous. To arrest an American citizen for a crime, arrest warrants are rarely required; about 95% of arrests of citizens are warrantless. But in L.A., under the new rules, illegal criminals will have due process rights that citizens can only dream of: not just judicial review before they can be taken off the streets, but *federal* judicial review-the gold standard of all constitutional protections. Maybe home-grown criminals should renounce their citizenship and reenter the country illegally. It would be a constitutional windfall for them.

Other jurisdictions that are reconsidering their sanctuary laws are also proceeding with unnecessary timidity. The Orange County, Ca., sheriff plans to train a few deputies to use immigration laws only for special enforcement actions against sexual predators or gangs, reports the *Los Angeles Times*. The Miami Police Department will join with ICE only on high-level gang cases.

These minor tinkering all put unwise limitations on a vital law enforcement power. Local immigration enforcement power should not be limited to the felony of reentry following deportation. Nor should only a small subset of officers be authorized to use it. There are many illegal alien criminals who have not yet reentered following deportation, but who are just as dangerous to their communities. Every officer should have the power to enforce any immigration violation against a criminal suspect, not just immigration felonies.

Nothing demonstrates the necessity of this power better than ICE's March enforcement action against Mara Salvatrucha. Following the March round-up, ICE proudly displayed three of its trophy cases: the founding member of MS-13 in Hollywood, Ca., who had already been convicted for robbery and possession of a dangerous weapon; the leader of MS-13 in Long Branch, NJ, who had a prior criminal history of aggravated arson, weapons possession, grand larceny, and criminal possession of stolen property; and the founder of Port Washington, NY's, MS gang, who had a prior drug conviction.

ICE got all three of these leading gang bangers off the streets through what it calls administrative immigration violations, not felony immigration violations. Local officers in Hollywood, Long Branch, and Port Washington, as elsewhere, should have the power to use any type of immigration violation as well to get a thug (who may also prove to be a terrorist) off the street.

Immigration enforcement against criminals should also not wait upon a major federal-local gang initiative. The majority of opportunities to get criminals off the streets come from enforcing misdemeanors and quality of life offenses. While the police are waiting to make a major federal case against an illegal criminal, they are far more likely to have picked him up for a "petty" theft or an open-container offense. Officers should be empowered at every arrest or lawful stop to check someone's immigration status. If a suspect is committing an immigration offense, the officer should be empowered to arrest him immediately for that offense.

Jails and prisons should routinely check the immigration status of their prisoners. Such an initiative should not be dependent on the presence of an ICE officer stationed in a prison; there are simply not enough federal agents available to cover the relevant facilities. Moreover, ICE agents do not routinely visit local jails where misdemeanor offenders are held, yet those offenders may be as dangerous to the community as someone against whom a felony case has been made. Someone convicted of stealing a jacket today may be shooting a rival tomorrow. And many misdemeanor convicts in jails have been allowed to plead down from more serious felonies.

The standard argument for sanctuary laws is that they encourage illegal aliens to work with the police or seek government services. This argument is based on myth, not evidence. No illegal alien advocate has ever provided a shred of evidence that sanctuary laws actually accomplish their alleged ends. Nor has anyone shown that illegal aliens are even aware of sanctuary laws. The evidence for the destructive effects of sanctuary laws is clear, however.

The idea that sanctuary laws are "pro-immigrant" is perhaps the greatest myth of all. Keeping illegal criminals in the community subjects all immigrants to the thrall of crime and impedes economic growth in immigrant communities.

Obviously, the final prerequisite for ridding immigrant communities of illegal thugs is enough ICE detention space and deportation resources. But providing police officers with every lawful tool to fight crime is a crucial first step to protecting immigrant lives and should be the unanimous recommendation of the Subcommittee.

ATTACHMENT

CITY

City Journal
The Illegal-Alien Crime Wave
Heather Mac Donald
 Winter 2004

Some of the most violent criminals at large today are illegal aliens. Yet in cities where the crime these aliens commit is highest, the police cannot use the most obvious tool to apprehend them: their immigration status. In Los Angeles, for example, dozens of members of a ruthless Salvadoran prison gang have sneaked back into town after having been deported for such crimes as murder, assault with a deadly weapon, and drug trafficking. Police officers know who they are and know that their mere presence in the country is a felony. Yet should a cop arrest an illegal gangbanger for felonious reentry, it is he who will be treated as a criminal, for violating the LAPD's rule against enforcing immigration law.

The LAPD's ban on immigration enforcement mirrors bans in immigrant-saturated cities around the country, from New York and Chicago to San Diego, Austin, and Houston. These "sanctuary policies" generally prohibit city employees, including the cops, from reporting immigration violations to federal authorities.

Such laws testify to the sheer political power of immigrant lobbies, a power so irresistible that police officials shrink from even mentioning the illegal-alien crime wave. "We can't even talk about it," says a frustrated LAPD captain. "People are afraid of a backlash from Hispanics." Another LAPD commander in a predominantly Hispanic, gang-infested district sighs: "I would get a firestorm of criticism if I talked about [enforcing the immigration law against illegals]." Neither captain would speak for attribution.

But however pernicious in themselves, sanctuary rules are a symptom of a much broader disease: the nation's near-total loss of control over immigration policy. Fifty years ago, immigration policy might have driven immigration numbers, but today the numbers drive policy. The nonstop increase of immigration is reshaping the language and the law to dissolve any distinction between legal and illegal aliens and, ultimately, the very idea of national borders.

It is a measure of how topsy-turvy the immigration environment has become that to ask police officials about the illegal-alien crime problem feels like a gross faux pas, not done in polite company. And a police official asked to violate this powerful taboo will give a strangled response—or, as in the case of a New York deputy commissioner, break off communication altogether. Meanwhile, millions of illegal aliens work, shop, travel, and commit crimes in plain view, utterly secure in their de facto immunity from the immigration law.

I asked the Miami Police Department's spokesman, Detective Delrish Moss, about his employer's policy on lawbreaking illegals. In September, the force arrested a Honduran visa violator for seven vicious rapes. The previous year, Miami cops had had the suspect in custody

for lewd and lascivious molestation, without checking his immigration status. Had they done so, they would have discovered his visa overstay, a deportable offense, and so could have forestalled the rapes. "We have shied away from unnecessary involvement dealing with immigration issues," explains Moss, choosing his words carefully, "because of our large immigrant population."

Police commanders may not want to discuss, much less respond to, the illegal-alien crisis, but its magnitude for law enforcement is startling. Some examples:

- In Los Angeles, 95 percent of all outstanding warrants for homicide (which total 1,200 to 1,500) target illegal aliens. Up to two-thirds of all fugitive felony warrants (17,000) are for illegal aliens.

- A confidential California Department of Justice study reported in 1995 that 60 percent of the 20,000-strong 18th Street Gang in southern California is illegal; police officers say the proportion is actually much greater. The bloody gang collaborates with the Mexican Mafia, the dominant force in California prisons, on complex drug-distribution schemes, extortion, and drive-by assassinations, and commits an assault or robbery every day in L.A. County. The gang has grown dramatically over the last two decades by recruiting recently arrived youngsters, most of them illegal, from Central America and Mexico.

- The leadership of the Columbia Lil' Cynos gang, which uses murder and racketeering to control the drug market around L.A.'s MacArthur Park, was about 60 percent illegal in 2002, says former assistant U.S. attorney Luis Li. Francisco Martinez, a Mexican Mafia member and an illegal alien, controlled the gang from prison, while serving time for felonious reentry following deportation.

Good luck finding any reference to such facts in official crime analysis. The LAPD and the L.A. city attorney recently requested an injunction against drug trafficking in Hollywood, targeting the 18th Street Gang and the "non-gang members" who sell drugs in Hollywood for the gang. Those non-gang members are virtually all illegal Mexicans, smuggled into the country by a ring organized by 18th Street bigs. The Mexicans pay off their transportation debts to the gang by selling drugs; many soon realize how lucrative that line of work is and stay in the business.

Cops and prosecutors universally know the immigration status of these non-gang "Hollywood dealers," as the city attorney calls them, but the gang injunction is assiduously silent on the matter. And if a Hollywood officer were to arrest an illegal dealer (known on the street as a "border brother") for his immigration status, or even notify the Immigration and Naturalization Service (since early 2003, absorbed into the new Department of Homeland Security), he would face severe discipline for violating Special Order 40, the city's sanctuary policy.

The ordinarily tough-as-nails former LAPD chief Daryl Gates enacted Special Order 40 in 1979—showing that even the most unapologetic law-and-order cop is no match for immigration advocates. The order prohibits officers from "initiating police action where the objective is to discover the alien status of a person"—in other words, the police may not even ask someone they have arrested about his immigration status until after they have filed criminal charges, nor may they arrest someone for immigration violations. They may not notify immigration authorities about an illegal alien picked up for minor violations. Only if they have already booked an illegal

alien for a felony or for multiple misdemeanors may they inquire into his status or report him. The bottom line: a *cordon sanitaire* between local law enforcement and immigration authorities that creates a safe haven for illegal criminals.

L.A.'s sanctuary law and all others like it contradict a key 1990s policing discovery: the Great Chain of Being in criminal behavior. Pick up a law-violator for a "minor" crime, and you might well prevent a major crime: enforcing graffiti and turnstile-jumping laws nabs you murderers and robbers. Enforcing known immigration violations, such as reentry following deportation, against known felons, would be even more productive. LAPD officers recognize illegal deported gang members all the time—flashing gang signs at court hearings for rival gangbangers, hanging out on the corner, or casing a target. These illegal returnees are, simply by being in the country after deportation, committing a felony (in contrast to garden-variety illegals on their first trip to the U.S., say, who are only committing a misdemeanor). "But if I see a deportee from the Mara Salvatrucha [Salvadoran prison] gang crossing the street, I know I can't touch him," laments a Los Angeles gang officer. Only if the deported felon has given the officer some other reason to stop him, such as an observed narcotics sale, can the cop accost him—but not for the immigration felony.

Though such a policy puts the community at risk, the department's top brass brush off such concerns. No big deal if you see deported gangbangers back on the streets, they say. Just put them under surveillance for "real" crimes and arrest them for those. But surveillance is very manpower-intensive. Where there is an immediate ground for getting a violent felon off the street and for questioning him further, it is absurd to demand that the woefully understaffed LAPD ignore it.

The stated reasons for sanctuary policies are that they encourage illegal-alien crime victims and witnesses to cooperate with cops without fear of deportation, and that they encourage illegals to take advantage of city services like health care and education (to whose maintenance few illegals have contributed a single tax dollar, of course). There has never been any empirical verification that sanctuary laws actually accomplish these goals—and no one has ever suggested not enforcing drug laws, say, for fear of intimidating drug-using crime victims. But in any case, this official rationale could be honored by limiting police use of immigration laws to some subset of immigration violators: deported felons, say, or repeat criminal offenders whose immigration status police already know.

The real reason cities prohibit their cops and other employees from immigration reporting and enforcement is, like nearly everything else in immigration policy, the numbers. The immigrant population has grown so large that public officials are terrified of alienating it, even at the expense of ignoring the law and tolerating violence. In 1996, a breathtaking *Los Angeles Times* exposé on the 18th Street Gang, which included descriptions of innocent bystanders being murdered by laughing *cholos* (gang members), revealed the rate of illegal-alien membership in the gang. In response to the public outcry, the Los Angeles City Council ordered the police to reexamine Special Order 40. You would have thought it had suggested reconsidering *Roe v. Wade*. A police commander warned the council: "This is going to open a significant, heated debate." City Councilwoman Laura Chick put on a brave front: "We mustn't be afraid," she declared firmly.

But of course immigrant pandering trumped public safety. Law-abiding residents of gang-infested neighborhoods may live in terror of the tattooed gangbangers dealing drugs, spraying graffiti, and shooting up rivals outside their homes, but such anxiety can never equal a politician's fear of offending Hispanics. At the start of the reexamination process, LAPD deputy chief John White had argued that allowing the department to work closely with the INS would give cops another tool for getting gang members off the streets. Trying to build a homicide case, say, against an illegal gang member is often futile, he explained, since witnesses fear deadly retaliation if they cooperate with the police. Enforcing an immigration violation would allow the cops to lock up the murderer right now, without putting a witness's life at risk.

But six months later, Deputy Chief White had changed his tune: "Any broadening of the policy gets us into the immigration business," he asserted. "It's a federal law-enforcement issue, not a local law-enforcement issue." Interim police chief Bayan Lewis told the L.A. Police Commission: "It is not the time. It is not the day to look at Special Order 40."

Nor will it ever be, as long as immigration numbers continue to grow. After their brief moment of truth in 1996, Los Angeles politicians have only grown more adamant in defense of Special Order 40. After learning that cops in the scandal-plagued Rampart Division had cooperated with the INS to try to uproot murderous gang members from the community, local politicians threw a fit, criticizing district commanders for even allowing INS agents into their station houses. In turn, the LAPD strictly disciplined the offending officers. By now, big-city police chiefs are unfortunately just as determined to defend sanctuary policies as the politicians who appoint them; not so the rank and file, however, who see daily the benefit that an immigration tool would bring.

Immigration politics have similarly harmed New York. Former mayor Rudolph Giuliani sued all the way up to the Supreme Court to defend the city's sanctuary policy against a 1996 federal law decreeing that cities could not prohibit their employees from cooperating with the INS. Oh yeah? said Giuliani; just watch me. The INS, he claimed, with what turned out to be grotesque irony, only aims to "terrorize people." Though he lost in court, he remained defiant to the end. On September 5, 2001, his handpicked charter-revision committee ruled that New York could still require that its employees keep immigration information confidential to preserve trust between immigrants and government. Six days later, several visa-overstayers participated in the most devastating attack on the city and the country in history.

New York conveniently forgot the 1996 federal ban on sanctuary laws until a gang of five Mexicans—four of them illegal—abducted and brutally raped a 42-year-old mother of two near some railroad tracks in Queens. The NYPD had already arrested three of the illegal aliens numerous times for such crimes as assault, attempted robbery, criminal trespass, illegal gun possession, and drug offenses. The department had never notified the INS.

Citizen outrage forced Mayor Michael Bloomberg to revisit the city's sanctuary decree yet again. In May 2003, Bloomberg tweaked the policy minimally to allow city staffers to inquire into immigration status only if it is relevant to the awarding of a government benefit. Though Bloomberg's new rule said nothing about reporting immigration violations to federal officials, advocates immediately claimed that it did allow such reporting, and the ethnic lobbies went ballistic. "What we're seeing is the erosion of people's rights," thundered Angelo Falcon of the

Puerto Rican Legal Defense and Education Fund. After three months of intense agitation by immigrant groups, Bloomberg replaced this innocuous “don’t ask” policy with a “don’t tell” rule even broader than Gotham’s original sanctuary policy. The new rule prohibits city employees from giving other government officials information not just about immigration status but about tax payments, sexual orientation, welfare status, and other matters.

But even were immigrant-saturated cities to discard their sanctuary policies and start enforcing immigration violations where public safety demands it, the resource-starved immigration authorities couldn’t handle the overwhelming additional workload.

The chronic shortage of manpower to oversee, and detention space to house, aliens as they await their deportation hearings (or, following an order of removal from a federal judge, their actual deportation) has forced immigration officials to practice a constant triage. Long ago, the feds stopped trying to find and deport aliens who had “merely” entered the country illegally through stealth or fraudulent documents. Currently, the only types of illegal aliens who run any risk of catching federal attention are those who have been convicted of an “aggravated felony” (a particularly egregious crime) or who have been deported following conviction for an aggravated felony and who have reentered (an offense punishable with 20 years in jail).

That triage has been going on for a long time, as former INS investigator Mike Cutler, who worked with the NYPD catching Brooklyn drug dealers in the 1970s, explains. “If you arrested someone you wanted to detain, you’d go to your boss and start a bidding war,” Cutler recalls. “You’d say: ‘My guy ran three blocks, threw a couple of punches, and had six pieces of ID.’ The boss would turn to another agent: ‘Next! Whaddid your guy do?’ ‘He ran 18 blocks, pushed over an old lady, and had a gun.’” But such one-upmanship was usually fruitless. “Without the jail space,” explains Cutler, “it was like the Fish and Wildlife Service; you’d tag their ear and let them go.”

But even when immigration officials actually arrest someone, and even if a judge issues a final deportation order (usually after years of litigation and appeals), they rarely have the manpower to put the alien on a bus or plane and take him across the border. Second alternative: detain him pending removal. Again, inadequate space and staff. In the early 1990s, for example, 15 INS officers were in charge of the deportation of approximately 85,000 aliens (not all of them criminals) in New York City. The agency’s actual response to final orders of removal was what is known as a “run letter”—a notice asking the deportable alien kindly to show up in a month or two to be deported, when the agency might be able to process him. Results: in 2001, 87 percent of deportable aliens who received run letters disappeared, a number that was even higher—94 percent—if they were from terror-sponsoring countries.

To other law-enforcement agencies, the feds’ triage often looks like complete indifference to immigration violations. Testifying to Congress about the Queens rape by illegal Mexicans, New York’s criminal justice coordinator defended the city’s failure to notify the INS after the rapists’ previous arrests on the ground that the agency wouldn’t have responded anyway. “We have time and time again been unable to reach INS on the phone,” John Feinblatt said last February. “When we reach them on the phone, they require that we write a letter. When we write a letter, they require that it be by a superior.”

Criminal aliens also interpret the triage as indifference. John Mullaly a former NYPD homicide detective, estimates that 70 percent of the drug dealers and other criminals in Manhattan's Washington Heights were illegal. Were Mullaly to threaten an illegal-alien thug in custody that his next stop would be El Salvador unless he cooperated, the criminal would just laugh, knowing that the INS would never show up. The message could not be clearer: this is a culture that can't enforce its most basic law of entry. If policing's broken-windows theory is correct, the failure to enforce one set of rules breeds overall contempt for the law.

The sheer number of criminal aliens overwhelmed an innovative program that would allow immigration officials to complete deportation hearings while a criminal was still in state or federal prison, so that upon his release he could be immediately ejected without taking up precious INS detention space. But the process, begun in 1988, immediately bogged down due to the numbers—in 2000, for example, nearly 30 percent of federal prisoners were foreign-born. The agency couldn't find enough pro bono attorneys to represent such an army of criminal aliens (who have extensive due-process rights in contesting deportation) and so would have to request delay after delay. Or enough immigration judges would not be available. In 1997, the INS simply had no record of a whopping 36 percent of foreign-born inmates who had been released from federal and four state prisons without any review of their deportability. They included 1,198 aggravated felons, 80 of whom were soon re-arrested for new crimes.

Resource starvation is not the only reason for federal inaction. The INS was a creature of immigration politics, and INS district directors came under great pressure from local politicians to divert scarce resources into distribution of such "benefits" as permanent residency, citizenship, and work permits, and away from criminal or other investigations. In the late 1980s, for example, the INS refused to join an FBI task force against Haitian drug trafficking in Miami, fearing criticism for "Haitian-bashing." In 1997, after Hispanic activists protested a much-publicized raid that netted nearly two dozen illegals, the Border Patrol said that it would no longer join Simi Valley, California, probation officers on home searches of illegal-alien-dominated gangs.

The disastrous Citizenship USA project of 1996 was a luminous case of politics driving the INS to sacrifice enforcement to "benefits." When, in the early 1990s, the prospect of welfare reform drove immigrants to apply for citizenship in record numbers to preserve their welfare eligibility, the Clinton administration, seeing a political bonanza in hundreds of thousands of new welfare-dependent citizens, ordered the naturalization process radically expedited. Thanks to relentless administration pressure, processing errors in 1996 were 99 percent in New York and 90 percent in Los Angeles, and tens of thousands of aliens with criminal records, including for murder and armed robbery, were naturalized.

Another powerful political force, the immigration bar association, has won from Congress an elaborate set of due-process rights for criminal aliens that can keep them in the country indefinitely. Federal probation officers in Brooklyn are supervising two illegals—a Jordanian and an Egyptian with Saudi citizenship—who look "ready to blow up the Statue of Liberty," according to a probation official, but the officers can't get rid of them. The Jordanian had been caught fencing stolen Social Security and tax-refund checks; now he sells phone cards, which he uses himself to make untraceable calls. The Saudi's offense: using a fraudulent Social Security number to get employment—a puzzlingly unnecessary scam, since he receives large sums from

the Middle East, including from millionaire relatives. But intelligence links him to terrorism, so presumably he worked in order not to draw attention to himself. Currently, he changes his cell phone every month. Ordinarily such a minor offense would not be prosecuted, but the government, fearing that he had terrorist intentions, used whatever it had to put him in prison.

Now, probation officers desperately want to see the duo out of the country, but the two ex-cons have hired lawyers, who are relentlessly fighting their deportation. "Due process allows you to stay for years without an adjudication," says a probation officer in frustration. "A regular immigration attorney can keep you in the country for three years, a high-priced one for ten." In the meantime, Brooklyn probation officials are watching the bridges.

Even where immigration officials successfully nab and deport criminal aliens, the reality, says a former federal gang prosecutor, is that "they all come back. They can't make it in Mexico." The tens of thousands of illegal farmworkers and dishwashers who overpower U.S. border controls every year carry in their wake thousands of brutal assailants and terrorists who use the same smuggling industry and who benefit from the same irresistible odds: there are so many more of them than the Border Patrol.

For, of course, the government's inability to keep out criminal aliens is part and parcel of its inability to patrol the border, period. For decades, the INS had as much effect on the migration of millions of illegals as a can tied to the tail of a tiger. And the immigrants themselves, despite the press cliché of hapless aliens living fearfully in the shadows, seemed to regard immigration authorities with all the concern of an elephant for a flea.

Certainly fear of immigration officers is not in evidence among the hundreds of illegal day laborers who hang out on Roosevelt Avenue in Queens, New York, in front of money wire services, travel agencies, immigration-attorney offices, and phone arcades, all catering to the local Hispanic population (as well as to drug dealers and terrorists). "There is no chance of getting caught," cheerfully explains Rafael, an Ecuadoran. Like the dozen Ecuadorans and Mexicans on his particular corner, Rafael is hoping that an SUV seeking carpenters for \$100 a day will show up soon. "We don't worry, because we're not doing anything wrong. I know it's illegal; I need the papers, but here, nobody asks you for papers."

Even the newly fortified Mexican border, the one spot where the government really tries to prevent illegal immigration, looms as only a minor inconvenience to the day laborers. The odds, they realize, are overwhelmingly in their favor. Miguel, a reserved young carpenter, crossed the border at Tijuana three years ago with 15 others. Border Patrol spotted them, but with six officers to 16 illegals, only five got caught. In illegal border crossings, you get what you pay for, Miguel says. If you try to shave on the fee, the coyotes will abandon you at the first problem. Miguel's wife was flying into New York from Los Angeles that very day; it had cost him \$2,200 to get her across the border. "Because I pay, I don't worry," he says complacently.

The only way to dampen illegal immigration and its attendant train of criminals and terrorists—short of an economic revolution in the sending countries or an impregnable militarized border—is to remove the jobs magnet. As long as migrants know they can easily get work, they will find ways to evade border controls. But enforcing laws against illegal labor is among government's lowest priorities. In 2001, only 124 agents nationwide were trying to find

and prosecute the hundreds of thousands of employers and millions of illegal aliens who violate the employment laws, the Associated Press reports.

Even were immigration officials to devote adequate resources to worksite investigations, not much would change, because their legal weapons are so weak. That's no accident: though it is a crime to hire illegal aliens, a coalition of libertarians, business lobbies, and left-wing advocates has consistently blocked the fraud-proof form of work authorization necessary to enforce that ban. Libertarians have erupted in hysteria at such proposals as a toll-free number to the Social Security Administration for employers to confirm Social Security numbers. Hispanics warn just as stridently that helping employers verify work eligibility would result in discrimination against Hispanics—implicitly conceding that vast numbers of Hispanics work illegally.

The result: hiring practices in illegal-immigrant-saturated industries are a charade. Millions of illegal workers pretend to present valid documents, and thousands of employers pretend to believe them. The law doesn't require the employer to verify that a worker is actually qualified to work, and as long as the proffered documents are not patently phony—scrawled with red crayon on a matchbook, say—the employer will nearly always be exempt from liability merely by having eyeballed them. To find an employer guilty of violating the ban on hiring illegal aliens, immigration authorities must prove that he knew he was getting fake papers—an almost insurmountable burden. Meanwhile, the market for counterfeit documents has exploded: in one month alone in 1998, immigration authorities seized nearly 2 million of them in Los Angeles, destined for immigrant workers, welfare seekers, criminals, and terrorists.

For illegal workers and employers, there is no downside to the employment charade. If immigration officials ever do try to conduct an industry-wide investigation—which will at least net the illegal employees, if not the employers—local congressmen will almost certainly head it off. An INS inquiry into the Vidalia-onion industry in Georgia was not only aborted by Georgia's congressional delegation; it actually resulted in a local amnesty for the growers' illegal workforce. The downside to complying with the spirit of the employment law, on the other hand, is considerable. Ethnic advocacy groups are ready to picket employers who dismiss illegal workers, and employers understandably fear being undercut by less scrupulous competitors.

Of the incalculable changes in American politics, demographics, and culture that the continuing surge of migrants is causing, one of the most profound is the breakdown of the distinction between legal and illegal entry. Everywhere, illegal aliens receive free public education and free medical care at taxpayer expense; 13 states offer them driver's licenses. States everywhere have been pushed to grant illegal aliens college scholarships and reduced in-state tuition. One hundred banks, over 800 law-enforcement agencies, and dozens of cities accept an identification card created by Mexico to credentialize illegal Mexican aliens in the U.S. The Bush administration has given its blessing to this *matricula consular* card, over the strong protest of the FBI, which warns that the gaping security loopholes that the card creates make it a boon to money launderers, immigrant smugglers, and terrorists. Border authorities have already caught an Iranian man sneaking across the border this year, Mexican *matricula* card in hand.

Hispanic advocates have helped blur the distinction between a legal and an illegal resident by asserting that differentiating the two is an act of irrational bigotry. Arrests of illegal aliens inside the border now inevitably spark protests, often led by the Mexican government, that feature signs

calling for “no más racismo.” Immigrant advocates use the language of “human rights” to appeal to an authority higher than such trivia as citizenship laws. They attack the term “amnesty” for implicitly acknowledging the validity of borders. Indeed, grouses Illinois congressman Luis Guterrez, “There’s an implication that somehow you did something wrong and you need to be forgiven.”

Illegal aliens and their advocates speak loudly about what they think the U.S. owes them, not vice versa. “I believe they have a right . . . to work, to drive their kids to school,” said California assemblywoman Sarah Reyes. An immigration agent says that people he stops “get in your face about their rights, because our failure to enforce the law emboldens them.” Taking this idea to its extreme, Joaquín Avila, a UCLA Chicano studies professor and law lecturer, argues that to deny non-citizens the vote, especially in the many California cities where they constitute the majority, is a form of apartheid.

Yet no poll has ever shown that Americans want more open borders. Quite the reverse. By a huge majority—at least 60 percent—they want to rein in immigration, and they endorse an observation that Senator Alan Simpson made 20 years ago: Americans “are fed up with efforts to make them feel that [they] do not have that fundamental right of any people—to decide who will join them and help form the future country in which they and their posterity will live.” But if the elites’ and the advocates’ idea of giving voting rights to non-citizen majorities catches on—and don’t be surprised if it does—Americans could be faced with the ultimate absurdity of people outside the social compact making rules for those inside it.

However the nation ultimately decides to rationalize its chaotic and incoherent immigration system, surely all can agree that, at a minimum, authorities should expel illegal-alien criminals swiftly. Even on the grounds of protecting non-criminal illegal immigrants, we should start by junking sanctuary policies. By stripping cops of what may be their only immediate tool to remove felons from the community, these policies leave law-abiding immigrants prey to crime.

But the non-enforcement of immigration laws in general has an even more destructive effect. In many immigrant communities, assimilation into gangs seems to be outstripping assimilation into civic culture. Toddlers are learning to flash gang signals and hate the police, reports the *Los Angeles Times*. In New York City, “every high school has its Mexican gang,” and most 12- to 14-year-olds have already joined, claims Ernesto Vega, an illegal 18-year-old Mexican. Such pathologies only worsen when the first lesson that immigrants learn about U.S. law is that Americans don’t bother to enforce it. “Institutionalizing illegal immigration creates a mindset in people that anything goes in the U.S.,” observes Patrick Ortega, the news and public-affairs director of Radio Nueva Vida in southern California. “It creates a new subculture, with a sequela of social ills.” It is broken windows writ large.

For the sake of immigrants and native-born Americans alike, it’s time to decide what our immigration policy is—and enforce it.

http://www.city-journal.org/html/14_1_the_illegal_alien.html

Mr. HOSTETTLER. Thank you, Ms. Mac Donald.
Ms. Fernandez.

**TESTIMONY OF MAI FERNANDEZ, CHIEF OPERATING OFFICER,
LATIN AMERICAN YOUTH CENTER**

Ms. FERNANDEZ. Good afternoon, Mr. Chairman and Members of the Committee. It is a pleasure to be here before you today to speak on the issues related to gang memberships and immigration.

Before I go into the substance of my testimony, I would like to tell you a bit about the Latin America Youth Center where I work. The Latin America Youth Center is based in D.C. in the Columbia Heights neighborhood just up the street on 14th and Columbia Road. It is a community-based, multicultural, multi-lingual youth and family development center. We provide many educational programs and tutoring for youth who are in school as well as GED and vocational training for those who have dropped out. Additionally, we offer substance abuse counseling for young people in need of these services and housing for homeless youth.

We serve about 3,000 youth through our programs. I think that it is safe to say that a majority of our youth are gang-involved or have been gang-involved. However, I need to point out that only a small number of our kids are involved in criminal activity.

Let me explain. Many of the parents of our youth immigrated to the United States to find safety and a better way of life. Upon arriving in the U.S., many of these adults find themselves in need of working two to three jobs to make ends meet. Keeping the family clothed, fed, and housed becomes the priority. Unfortunately, this means that children are not provided the supervision they need.

The lack of supervision often leads to boredom and a sense of insecurity which causes the children to join gangs. Joining a gang gives a youth a group of friends to hang out with and a sense of security they cannot elsewhere find in their lives. These kids are not super-predators. They are kids looking for a sense of belonging. Most of the youth who are in gangs are not criminals. It would be inappropriate to punish all immigrant youth who are in gangs by taking away their immigration status.

Having said this, I am a former prosecutor from Manhattan and do believe that when a gang member gets involved in criminal activity, there needs to be a decisive law enforcement response. Two years back, Columbia Heights, D.C., where I work, was plagued with a spree of gang-related murders. There was a swift law enforcement response which investigated the cases and apprehended the perpetrators. Several of these young people are now serving life sentences. The law enforcement response sent a clear message to other gang-involved youth: If you commit crimes, you will be punished.

After the spree of homicides, both the community and the police realized that they should not only respond to gang-related criminal activity, but should also work together to prevent it. As a result, the Gang Intervention Partnership, the GIP, was created. The GIP brings together police, probation officers, prosecutors, and community social service providers to develop intervention strategies for youth who are at high risk of committing crimes. What often occurs is that a community member will find out that a youth is in some

kind of trouble. The members of the GIP come together to ensure that the youth is supervised and that he or she is involved in structured activities. If the youth faces real security problems, arrangements have been made that the youth be placed in a witness protection program. The outcome has been that there have been no gang-related homicides in Columbia Heights in the last 2 years.

I'd also like to make the point that a youth who has been involved in a gang-related criminal activity can turn around his or her life. At the Latin America Youth Center, we have several programs that work with youth who have a criminal record. We have reentry programs whereby probation officers assign us newly released youth, and we help them find jobs, educational opportunities, and counseling. In other instances, the youth come to us freely looking for opportunities to change their lives. Every year we graduate approximately 70 youth from our programs who have advanced their education and who are ready to find jobs.

Our community has been able to tailor an effective and appropriate response to gang-related crime in our area. This experience has brought me to believe that a Federal response to the gang issue may be inappropriate, particularly an immigration response. Although we still have a steady influx of immigrants coming to our community, the majority of youth are born in the United States. Consequently, an easier way of deporting youth would not solve our particular gang problem.

Moreover, the character of gangs can change from neighborhood to neighborhood, and it most definitely changes from State to State. I know that the panel here has talked to you about the atrocities of MS-13. Despite the MS-13's visible presence in Virginia, it has a very small presence in D.C. And I should add that the majority of our Latino youth are Salvadorean. Different tactics need to be used to address the gang problems in different jurisdictions. Federal solutions are too wide-sweeping to address the unique problems of a particular area.

Lastly, I'd like to point out that the gang situation in this country has to be kept in perspective. Despite the media attention received by the issue, serious youth crime has fallen. The most recent crime survey from the FBI's Uniform Crime reporting program that breaks down the age of people arrested for serious offenses in 2003 showed that the number of people under 18 arrested declined by 30 percent. Moreover, between 1993 and 2003, youth homicide arrests declined 75 percent. Gang crime is serious, but the response needs to be proportionate to the problem. Enacting legislation that would imperil the immigration status of countless people but may have little effect on decreasing crime is not a wise response to the problem.

Thank you very much, and I am here to answer any questions.
[The prepared statement of Ms. Fernandez follows:]

PREPARED STATEMENT OF MAI FERNANDEZ

Good afternoon, Congressman Hostettler, Congresswoman Jackson Lee and members of the Committee. It is a pleasure to be before you today to speak on issues related to gang memberships and immigration.

Before I go into the substance of my testimony, I would like to tell you a bit about the Latin American Youth Center (LAYC) where I work. The LAYC is based here in DC in the Columbia Heights neighborhood. It is a community-based, multi-cul-

tural and multi-lingual youth and family development center. We provide many educational programs and tutoring for youth who are in school as well as GED and vocational training for those who have dropped out. Additionally, we offer substance abuse counseling for young people in need of those services and housing for homeless youth.

We serve about 3,000 youth through our programs. I think that it is safe to say that a majority are gang involved or have been gang involved at some point in their life. However, only a small number of our kids are involved in criminal activity.

Let me explain. Many of the parents of our youth immigrated to the United States to find safety and a better way of life for their children. Upon arriving in the U.S. many of these adults find themselves needing to work 2 to 3 jobs just to make ends meet. Keeping the family clothed, fed and housed becomes the priority. Unfortunately, this means that children are not provided the supervision that they need.

The lack of supervision often leads to boredom and a sense of insecurity which cause the children to join gangs. Joining a gang gives a youth a group of friends to hang out with, and a sense of security which they cannot get elsewhere in their lives. These kids are not super-predators—they are kids looking for a sense of belonging. Most youth who are in gangs are not criminals. It would be inappropriate to punish all immigrant youth who are in gangs by taking away their Temporary Protection Status.

Having said this, I am a former prosecutor from Manhattan, and do believe that when gang members get involved in criminal activity there needs to be a decisive law enforcement response. Two years back, Columbia Heights, D.C., where I work, was plagued with a spree of gang related murders. There was a swift law enforcement response which investigated the cases and apprehended the perpetrators. Several of these young people are now serving life sentences. The law enforcement response sent a clear message to other gang involved youth—if you commit crimes you will be punished.

After the spree of homicides, both the community and the police realized that they should not only respond to gang related criminal activity, but should also work together to prevent it. As a result the Gang Intervention Partnership—the GIP—was created. The GIP brings together police, probation officers, prosecutors and community social service providers to develop intervention strategies for youth who are highly at risk of committing crimes. What often occurs is that a community member will find out that a youth is in some kind of trouble. The members of the GIP come together to ensure that the youth is supervised and that he/she is involved in structured activities. If the youth faces real security problems arrangements have been made to place the youth in witness protection programs. The outcome has been that there have been no gang-related homicides in Columbia Heights in the last two years.

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Moreover, the character of gangs can change from neighborhood to neighborhood and it most definitely changes from state to state. I know that many of you have heard about the atrocities committed by MS13 members. Despite MS13's visible presence in Virginia, it has a very small presence in DC. Different tactics need to be used to address the gang problems in different jurisdictions. Federal solutions are too wide sweeping to address the unique problems of a particular area.

Lastly, I'd like to point out that the gang situation in this country has to be kept in perspective. Despite the media attention received by this issue, serious youth crime has fallen. The most recent crime survey from the FBI's Uniform Crime reporting program that breaks down the age of people arrested for serious offense in 2003 showed that the number of people under 18 arrested declined by 30%. Moreover, between 1993 and 2003, youth homicide arrests declined by 75%. Gang crime is serious but the response needs to be proportionate to the problem. Enacting legis-

lation that would imperil the immigration status of countless people but may have little effect in decreasing crime is not a wise response to this problem.

Thank you for your time. I am available to answer questions at this time.

Mr. HOSTETTLER. Thank you, Ms. Fernandez.

The Subcommittee will now recess for approximately 30 minutes. We have two votes in the House, and I assume we will be 30 to 35 minutes, and we appreciate your indulgence.

We are recessed.

[Recess.]

Mr. HOSTETTLER. The Subcommittee will come to order. We will now turn to questions from Members of the Subcommittee. The Chair recognizes himself for 5 minutes.

Secretary Garcia, nationals of three countries that are reportedly sources of large numbers of gang members—Nicaragua, Honduras, and El Salvador—currently are eligible for temporary protected status, or TPS, in the United States. This Subcommittee has been told that two of three purported gang members accused of raping two deaf girls in a Massachusetts park in 2002 were Salvadorans who had applied for temporary protected status. How many criminal gang members that ICE has arrested in its anti-gang efforts had TPS?

Mr. GARCIA. Thank you, Mr. Chairman. I will use the Operation Community Shield universe, so to speak, and that was 5,000 members, gang members in a database that we compiled for Operation Community Shield. Of that number, the following numbers of aliens had been granted temporary protected status: for El Salvador, 291; for Honduras, 43; and for Nicaragua, one. So somewhere in the neighborhood of 350.

Mr. HOSTETTLER. Thank you. Have TPS grants to nationals of those three countries made it more difficult for ICE to use the immigration laws to remove alien gang members from the United States? And if so, in what ways?

Mr. GARCIA. If someone has been granted TPS, in order to remove them from the United States, in effect to take away that status, you have to show certain criminal convictions.

In the case of Operation Community Shield, ICE had arrested three gang members who had TPS status. In spite of that status, they are subject to removal. So it really depends on the history, particularly the criminal history, of the particular gang member.

Mr. HOSTETTLER. Thank you.

Ms. Mac Donald, in your testimony, you state that, "Sanctuary laws are a serious impediment to stemming gang violence." In what ways do sanctuary laws impede law enforcement's anti-gang efforts?

Ms. MAC DONALD. Sanctuary laws impede local law enforcement's anti-gang effort because they deprive cops of often their only tool to get a gang member off the street. As I said, it's often very difficult to build a typical criminal case against a gang member because a witness fears that he's going to get shot if he testifies against him.

We've learned in New York City that the best way to fight crime is to use every single law on the books. Mayor Giuliani brought crime down 70 percent by using things like turnstile-jumping laws, the graffiti laws, and he found that there's a great chain of being

in criminal activity. Somebody who is stealing a coat one day is shooting somebody the next day, or somebody who's spraying graffiti one day is robbing somebody of their wallet in Central Park the next day.

Somebody who is in the country illegally and is committing crime, if you can leverage that immigration offense now to get him off the streets, to my mind it's insane to require the police department to laboriously build up a criminal case against them because that may never happen. We all know that a huge majority of crimes never get reported. Police officers in L.A., in particular, chafe every single day under Special Order 40 because they know how it ties their hands to making communities safe.

Mr. HOSTETTLER. Thank you. In your testimony, you discuss the need for resources to deal with this issue of gang violence. Last year, in the National Intelligence Reform Act, we included provisions that the President signed into law calling for effectively tripling the number of ICE agents, 4,000 over 5 years; doubling the number of Border Patrol agents, 10,000 more over the next 5 years; and tripling the number of detention beds, 40,000 over the next 5 years.

Do you think these resources would be helpful in this fight against gang violence?

Ms. MAC DONALD. Chairman Hostettler, they're essential. They're absolutely essential. I've talked to border agents, especially on the Canadian border, who are picking up the category of OTMs on a weekly basis, other than Mexicans, Bangladeshis, Iranians. They have no idea who these guys are. They have no place to put them, and it's catch-and-release policy. They catch them and they release them. They say, Please, Mr. Illegal Alien, show up in 6 months for your deportation hearing.

We all know what happens. Eighty-five percent never show up again, and people from terrorist-sponsoring countries have about a 96-percent no-show rate.

So giving police or ICE greater resources to arrest people for immigration crimes is meaningless if we simply release them back into the country. And I cannot understand why the Bush administration has not followed the will of Congress in that in budgeting for the positions and the beds that Congress so clearly passed in the intelligence reform bill.

Mr. HOSTETTLER. Thank you.

At this time the Chair now recognizes the gentlelady from Texas, the Ranking Member, for purposes of an opening statement and questions.

Ms. JACKSON LEE. Mr. Chairman, first of all, thank you very much for yielding me the time, and let me for the open record indicate that I serve on two Committees dealing with this question. And at the beginning of the hearing, I was in the Homeland Security Committee with the new Secretary. And inasmuch as that was our first time with him on some very important management issues and policy issues, I ask and thank the Committee for its indulgence, and thank you very much for the opportunity for my opening statement.

Mr. Chairman, what I would like—I see that there's another Member here. I'd like to give the opening statement and then have

you yield to the other Member for his questioning, and then I'll come back to my questioning at that time. Thank you very much.

It seems that we have been encountering the question of immigrants, immigration, and a series of changes that have come about over the last couple of weeks. The border States in the Northern border and Texas in particular in the Southern border are up in arms about new policies suggesting that passports need to be utilized for what has been a comfortable relationship in those States, partly in the United States in terms of commerce and exchange. But we realize that it's important for policies to be established so that we can in a comprehensive manner secure our borders and secure the homeland.

As we look at the different issues, I think that it is important to establish priority for what is important. Obviously, someone in the policy sector thought that as an expansion of the 9/11 intelligence bill that possibly the use of passports might be helpful. I, on the other hand, question whether or not another focus could be utilized to ensure that people who cross the border, at least those who are interested or involved in commerce, might be able to use another document and be more flexible.

This speaks in particular to where we are today on this particular hearing. I wonder whether or not this is a crisis, whether this is an emergency, whether or not this is not an area that could be handled in a totally different way or over an extended period of time to review what has become, I understand, an increasing membership in gangs.

I recall some maybe 10, almost 15 years ago being a member of the Houston City Council, and our own youngsters were engaged in gang activity. It was raging all over the nation. We began to use what I think Ms. Fernandez has mentioned—intervention. And it's interesting that you mentioned, Ms. Fernandez, that the participation in crime among adolescents and youth has substantially gone down, as I understand your testimony. So allow me just to share a few thoughts about this particular hearing and what I think needs to be a balanced approach.

The Department of Justice has mentioned that we have more than 25,000 gangs in the United States. The most recent national youth gang survey indicates that there are more than 750,000 gang members. Some of these gangs resemble organized crime syndicates. They commit gun violence, gun trafficking, drug trafficking, and other serious crimes.

Needless to say, I'm not diminishing the impact of gangs and that they can be extremely dangerous. I certainly am reminded of what I think was an urban gang, a citizen-based gang, if you will, that plagued the streets of Baltimore and caused the loss of life of a mother, a father, and five of her children, only because she wanted to stand up to them and told the police that they were trafficking drugs in the community.

I am not here to promote the Gang for a Day Program. But the gang we hear most about at this hearing is, of course, the MS-13. Composed mainly of Salvadoreans and other Central Americans, this gang has an estimated 8,000 to 10,000 members in the United States. MS-13 was established in Los Angeles in the 1980's by Salvadoreans fleeing from a civil war. When they came to Los An-

geles, Mexican gangs preyed on them. The response was to band together in a mara or posse, and it was to engage in, if you will, conflict.

According to the ICE Bureau, the need to respond to the proliferation of MS-13 gangs is becoming a public safety priority. In January of 2005, ICE launched Operation Community Shield. The goal of this operation is to dismantle the MS-13 organization by targeting its members' financial assets, et cetera.

To do this, ICE will bring to bear all of its law enforcement investigative powers, including criminal prosecution, immigration authorities, financial investigation, asset seizures. ICE will work with partners in the Federal law enforcement community, including U.S. Attorney's Offices, the FBI, DEA, ATF, and ICE will also work with foreign governments to identify known gang members. ICE agents have arrested more than 135 MS-13 gang members nationwide.

The gang problem is being addressed at the local level, too. In 1997, the Fairfax Police Department made youth gang crime a priority and established a Gang Investigation Unit. In 2003, funding from the U.S. Congress enabled the creation of a Northern Virginia Gang Task Force, and that task force worked very closely with ICE.

It is important to emphasize that Northern Virginia does not limit its effort to law enforcement activities. The task force also does public education, awareness presentations, provides gang activity awareness training to school resource officers and Fairfax County Public School personnel, and has established diversion programs such as GREAT, Gang Resistance Education and Training.

I'm pleased to also acknowledge that out of the siege of gangs in Houston, we established a gang office and gang task force.

I say that in conclusion to acknowledge this—and might I say, Mr. Garcia, that the Secretary was very complementary of ICE and the enforcement activities when I probed him about the funding problems with ICE. He has offered that he looks forward to raising the profile of ICE. And when we hear about what they've done in this gang effort, I too applaud this.

My problem is that if we have this hearing to write more legislation, to take young people who are associating with gangs for the very reason that Ms. Fernandez has said, to be part of something, to find a family base, to find comfort in a foreign land, then I think we're doing the wrong thing.

Many of these individuals who are not citizens may, in fact, however, have come here in very early life. That means the same problem that we had when we passed the 1996 immigration reform bill where one strike, one criminal incident, one juvenile incident caused individuals to be prospectively deported to places where they had never lived, this to me is the beginning of a wrong direction.

I believe if there is a consistent criminal history of some gang member, then rightly so on a case-by-base basis a determination of deportation can be made. But if this is a web of—if you will, sort of a fishnet being thrown out to the local gang on the street corner, and in comes 13-year-olds and 14-year-olds and 15-year-olds and 16-year-olds and 17-year-olds who are associated by a membership or a desire to belong or because they don't speak the language here

in the United States, then I think we make a grave mistake by yielding and allowing those intervention efforts to be utilized and passing massive immigration reform that includes—and I've been sort of generous with my words—immigration laws. I don't consider it reform—and start labeling and deporting masses of young people in an unnecessary effort.

And so, Mr. Chairman, I welcome this hearing, but I hope that we will have a hearing on the President's guest worker program that I think needs more than tinkering with. I hope we'll have a hearing on my earned access to legalization and comprehensive reform which allows undocumented aliens in the United States to be able to stand in line and access legalization.

I hope we will complete the CASE Act, which part of the legislation that's dealing with anti-smuggling, got into the intelligence bill, but I believe that we need to put in place a reward system that will allow more evidence to come in and more information to come in to stop smuggling of individuals into the United States. This, I think, speaks to real immigration reform.

So I look forward to questioning the witnesses, and at the time of my questioning, I will submit into the record or ask to the submit into the record a letter from the city of Houston Anti-Gang Task Force. I look forward to working with you, but let's look at the crisis and the serious issues and let's try to find common ground on issues like this.

I yield back.

Mr. HOSTETTLER. I thank the gentlelady.

The Chair now recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. I thank the Chair, and I thank the witnesses for their testimony today.

As I listened to this testimony, there are a few things that caused me to raise my eyebrows, and I thought I had a feel and an understanding of some of the magnitude. But as we debated the gang act earlier in full Committee and as I listened to your testimony and Ms. Garst, as I recall that testimony, say gangs are about 75 percent illegals in the region that you would be familiar with, and as I see some of your—I think your written testimony says that about 50 percent may well be El Salvadoreans. And if I remember correctly, Ms. Mac Donald, you may have stated that in the high 90th percentile was illegal gang activity in the region that you're familiar with. Would that still be correct? Did I get that right?

Ms. MAC DONALD. I think the number you're referring to is 95 percent of outstanding homicide warrants in Los Angeles.

Mr. KING. I do recall that statement.

Ms. MAC DONALD. Are illegal aliens, right. But according to police, say, something like MS is overwhelmingly illegal, far more than a mere majority.

Mr. KING. So would that number be in the 90's, would you expect?

Ms. MAC DONALD. I would say, yes.

Mr. KING. And I know that's probably impossible to nail that down factually.

Ms. MAC DONALD. You know, the sanctuary laws prevent us from knowing that, and, of course, the denominator is unknown either because we don't really know the number of gangs, period. So it's all a speculation game.

Mr. KING. Another piece that came out of the testimony is that even if that number were 100 percent illegals involved in gang activity—I don't expect that they're actively and aggressively recruiting others, which would be American citizens, children, our children who are being victimized by this kind of gang activity, and I'd just ask you this: In an ideal world, the world I thought I grew up in, we would have enforced these laws a long time ago. And could you maybe just—by the look on your face, maybe you speculated the same thing, and I'd ask you to paint the picture of the way the world would be if we had gone back 20 years and enforced our immigration laws the way we all expected that we would.

Ms. MAC DONALD. Well, I think you would have more respect for the rule of law. You would not have the smuggling trade if people in countries bordering us knew that when they came to this country illegally, they were not entering a safe zone. You would not have criminal syndicates able to get across the border because the demand wouldn't be there.

The failure over decades to enforce laws on the books has given rise to the fact that we now have, since 9/11, made no progress in controlling illegal immigration. This is a scandal. A terrorist cannot commit damage on our soil if he's not here. But we have not been able to stop the half a million net that come across the border every year. And that's because we have decided not to enforce immigration laws for decades. Republicans haven't enforced them; Democrats haven't enforced them. And this has basically sent a message to the world that if you can cross our border, you're home free.

Mr. KING. Thank you, Ms. Mac Donald.

And, Ms. Garst, would you inform this Committee as to what ICE would need to do to deport an alien gang member who has been granted asylum?

Ms. GARST. The position that we're put in, sir, is unenviable, and that often we don't know the status until we're at a bond hearing on a criminal charge. Then we are blessed now by Congressman Goodlatte to have local ICE agents. When I began my prosecution career in 1994, we had no support in that regard. We would call the local office here.

What we do is contact our local ICE agents. A number of hearings are held. Our primary concern on our level, on a small, rural, local level is can I hold these individuals without bond on violent crimes. And I will tell you, unless we can get a very fast answer regarding their immigration status, often they're not held and they're bonded.

So we don't even get to the deportation process in many cases.

Mr. KING. I have another question that I'm very curious about, and that is this culture of the illegal ethnic enclave that tends to be a community. Has that culture of that illegal ethnic enclave, has that been the environment that has produced this gang violence? Ms. Mac Donald first.

Ms. MAC DONALD. Yes, it's a very odd type of underclass that we're generating. You have guys that are working as day laborers during the day, and then they gang-bang at night. And the police basically, you know, know where they're getting off their pizza parlor job, and then they go join their gang members and sometimes, as Ms. Jackson Lee suggests, it's simply community activity, but often it's criminal activity.

And what you're seeing, as you yourself suggested, second and third generation immigrants at an ever younger age are also getting sucked up into the gang culture.

Mr. KING. Thank you.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. The gentleman's time has expired.

The Chair now recognizes the Ranking Member for 5 minutes for questions.

Ms. JACKSON LEE. Thank you very much.

Ms. Fernandez, why don't I start with you. You've heard the exasperation, I think, of Ms. Mac Donald and Ms. Garst with respect to the violence or the criminal activity. I'm opposed to a broad brush to that—to those representations. I do believe that we've got to find ways of enforcing immigration laws or finding laws to enforce. At the same time, I believe that there is danger to broad-brushing these groups known as gangs and also danger in a broad-brush removal, for example, of a TPS status rather than looking at the pattern of the individual's activity or looking at it maybe on a case-by-case determination.

Tell me again through your testimony how you would—how you would help decipher, if you would, how you would part the waters on who could be saved, what intervention does versus the criminal activity that the two other witnesses are speaking of.

Ms. FERNANDEZ. Thank you. Prior to coming here, I met with the Gang Task Force, which is—the Metropolitan Police Department has a Gang Task Force here. And I said, okay, truly, what do you think has stopped the fact—the homicides in the Columbia Heights area, because if any of you were watching the Washington Post, the news 2 years back, we just had kid after kid after kid killed. And they said we have 85 of the gang heads in prison right now, five of which are serving life sentences. That is a very decisive law enforcement response, which I completely and totally agree with. Those kids have committed horrible crimes, and they should be in prison.

However, we've got lots of young people, young adults that are working for us, that are with us, that have been in one way or another associated with a gang. And so if you lump murderers and kids who want to be cool and say that they're a member of a gang because it's cool when you're 16, 17 years old to say that you're part of something that's bigger than yourself, then you can't lump those two groups of people together. One's a teenager and the other one's a criminal. And you have to have different kinds of interventions for both. One's a very strict law enforcement intervention. The other one is let's find something for you to do, remain cool and remain feeling like you're belonging to something, but yet let's not put you in a category where we're going to throw you into a category of criminals.

You know, I also need to take some issue with what Ms. Mac Donald said, that, you know, we've got day laborers that are then becoming gang members. That may be true in certain specific instances, but if anybody has worked as a day laborer where you're laying bricks every day, probably chances are that in your evening job you don't have the energy to pick up and then start doing gang activity. Most—many of our parents, many of the people who we work with, work two to three jobs. They're the people who clean, you know, offices at night. They're the people who do work that other people in this country don't want to do.

So I think that we've got to be very careful of lumping everybody with a Latino surname into the category of a person who's doing bad. So I think that we've got to be very careful of not doing broad-brush type sweeps.

MS. JACKSON LEE. Mr. Garcia, if you would, we've made a very strong point in separating responsibilities of the Federal Government from State government, and one of those has been immigration. That is a Federal responsibility. We forged the Homeland Security Committee—excuse me, Homeland Security Department in order to bring more focus on immigration and other aspects of securing the homeland.

If we were to change the sanctuary laws and begin to engage local law enforcement of every level, I would think that maybe the good work that Ms. Fernandez discovered at the Washington Metropolitan Police Department might not have been such good work because, frankly, law enforcement locally, whether they're constables or sheriffs, are overburdened. Is it the position of the Justice Department to want to rid the system of the sanctuary laws and begin to pierce into local jurisdictions for them to begin to do Federal immigration work? First question.

The second question is, which plays into this: If we are to blanket the war or the fight against gangs, which, as Ms. Fernandez has said, would come in all shapes and sizes, some of them will have a violent history and should be incarcerated. You indicated a criminal history. Should we be blanketing treatment toward them on the basis of overall violent acts? If we are to do that—then this may not have the nexus that I'd like it to have—what do we do about citizens who are taking up arms on the Arizona border and setting themselves up independently to be of assistance, albeit out of frustration? If we lose control over one, we lose control over another.

MR. GARCIA. Thank you, Congresswoman. Your first question, certainly immigration enforcement is a Federal responsibility. There are statutes that States and local jurisdictions can take advantage of to actually participate in the enforcement of immigration law in a formal way, under 287(g) as the provision. Florida has taken advantage of that statute, as has Alabama. So there's a legal mechanism for actually State and local officials to get training from the Department of Homeland Security, from ICE, and become in essence deputized under our supervision, again, with the appropriate training and go out and enforce the—

MS. JACKSON LEE. And that's the choice of that particular jurisdiction.

Mr. GARCIA. Opt in, so to speak, that's correct, in certain jurisdictions. I believe L.A. County recently has passed legislation to do that as well.

So there are specific provisions for affirmative enforcement by local jurisdictions.

In terms of the sanctuary laws and piercing the sanctuary laws, I have some trouble understanding the concept. We enforce the law. We have good working relationships with State and local jurisdictions. There are natural partnerships there. Some jurisdictions, mainly at a political level, have passed statements and representations that they are sanctuaries in terms of immigration law. As an overall matter I think it's a very bad message, but I don't know what the specific impact would be within the jurisdiction on our enforcement capabilities. We would still go in. We would still have the right to enforce the law, whatever law, immigration law in this case, in those jurisdictions, and we do that.

And in most cases—and I come from New York—I know we have a very good working relationship with the NYPD up there, and there are many ways in which our interests intersect in enforcement. So I'm not sure what it would mean in terms of piercing sanctuary laws. You know, we look at each jurisdiction, we exercise our authorities, and we always seek to work with our partners.

In terms of the Minutemen, I believe you're speaking about on the Arizona border, the Department of Homeland Security has come out very strongly against any vigilantism. It's distracting resources on the border for us to have to watch the watcher, so to speak. Very fortunate and very grateful that there have been no violent incidents on the border, but—

Ms. JACKSON LEE. Grateful is the word.

Mr. GARCIA. But the situation is being monitored very carefully primarily by Customs and Border Protection with the Border Patrol and other assets down at the border. And again, as you point out, borne of frustration as well, but we're keeping a careful eye on that.

Ms. JACKSON LEE. On those sanctuary laws—just as a final point, on these sanctuary laws, you are still doing the Federal task of enforcing immigration laws. I think the point that I was making is that we write legislation to eliminate or to pierce an individual State's determination about how they want to not be engaged in that. You know, we are pressing upon State jurisdictions by any Federal law the responsibility of the Federal Government. That's just my point.

Mr. GARCIA. You're saying it's odd to have a Federal law that a State law says we're not going to enforce or allow anyone to enforce the law. So as again, I said, I think the sanctuary laws are a very bad message. I think luckily we've been able to forge relationships in most jurisdictions.

Mr. HOSTETTLER. I thank the gentlelady.

The Chair now recognizes the gentleman from Virginia, Mr. Goodlatte, for 5 minutes.

Mr. GOODLATTE. Mr. Chairman, thank you very much.

Ms. Garst, you noted in your testimony that the number of victims of gang violence, a number of them have been reluctant to come forward because of their illegal status, and I wonder if you

might comment on that and tell us what you think the United States could do to help make that easier for you to get the cooperation of illegal aliens?

Ms. GARST. One of the heartbreaking situations that we face in prosecution are very violent cases like the case of the young girl whose brother was a Sureno-13 member and was stabbed by MS-13. Not only did she not receive medical care because her family would not take her to the hospital for fear of police intervention, but it was only when a teacher and a guidance counselor saw her openly having the wounds, that we even got to hear about the case. They would not let her speak to the police about the case in any detail. They would not permit testimony and actually refused any cooperation whatsoever because not just the legal status but also gang ties.

One of the issues that we discussed and Sergeant Rush and I have discussed, we even had a homicide regarding many illegal witnesses that would not come forward and the result was an acquittal. And the sad situation in that case was certainly had we been able to send a message that our local ICE agents have told us that, look, if you're a victim of crime, we're not targeting you for deportation.

There has to be a public awareness or education campaign that we can get into the community and let people know, and we've started doing on a smaller scale, as you're aware, at the local poultry industry and also at schools, and as you participated in our gang forum at our local high school, is to educate the community that, yes, what Congresswoman Lee is talking about, intervention through Boys and Girls Club is there, and that also prosecution is there to help you when you're a victim. When you're a victim of the home invasion when a gang member comes in and holds you at gunpoint and takes your jewelry or demands money, we will be there to help you. If there is a way that ICE can help us, perhaps, I don't know, through pamphlets in a bilingual way, to help people know that the criminal justice system will be there for when they're victims as well.

We have been seeing some limited success in cases, where people of illegal status have come forward in a recent case, as I had told you and Senator Warner, but it's been a great struggle.

Mr. GOODLATTE. Have you been able to work with the immigration authorities? Have you talked to them about this concern and have they offered any—

Ms. GARST. We have, and they have told us that their focus is not on victims of crime, that they are not focusing on illegal victims of crime. But I will be very earnest with you, Congressman, there is a distrust somewhat of ICE certainly within the community, so it will be very important for us to continue to forge the relationship that we need to to help the illegal alien. But what's important is the gang members know this and they are picking people that are illegal to prey on them, to go into their homes, because just in the case of the stabbing and the home invasion that we spoke about regarding them going into the home, the MS-13 members, they know these people will, one, either not report, or two, not testify. So they're home free.

Mr. GOODLATTE. Let me ask you. In your testimony you've mentioned—I found this very interesting—that gangs, rival gangs were attempting to recruit children as young as second graders. Why are gangs interested in people that young?

Ms. GARST. That is the greatest fear that we have in our community. I'm working very closely, I'm on the Board of Directors of the Boys and Girls Club, and a lot of this information has been verified through teachers in the school system. What happens is, as Ms. Fernandez spoke about, many of these people are working two and three jobs, and the children are relying on community members to help in the evenings and other things or programs. What these gang members are doing in our community—and I can only speak on our community, and again I think it is different in other places—are coming in and selecting children at an early age to be the banner carriers, to tell other people about the gang, to pledge their loyalty early.

They're actually even—we have instances of children within elementary schools actually beating up other students who had family members or themselves were showing other gang signs. What they're doing is they're recruiting at an early age to set the stage for other criminal activity, and it's not so much that these children are criminal gang members yet, they're being primed for that. They're being taught the gang system. They're being taught the gang loyalties. And what we're seeing locally is that they're sending these kids to do the vandalisms, to do the break-ins because they know that the juvenile system will not be as tough on these children, and therefore the gang will be much better off because they continue to perpetuate their profit motive.

Mr. GOODLATTE. Thank you. I believe my time has expired.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. Thank the gentleman.

The Chair now recognizes the gentlelady from California, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman, and Members. For this session of Congress I asked to serve on this Committee because I come from Los Angeles, a city, a district and an area where we have a growing number of immigrants. We have legal immigrants and we have illegal immigrants. We have a very, very complicated problem in the greater Los Angeles area, and in some communities it's about to explode.

In the South Los Angeles area it is about to be a confrontation between black and Mexican gangs. The Mexican gangs are directed from inside the prisons. I've heard nobody talk about the influence of the Mexican mafia or the prisons on what is going on on the street. The territories that are being fought over are being decided by the leaders inside the prisons. And as many of the Mexican gangs advance into the black neighborhoods to take over these territories, they are simply killing each other. They just—now it's not even who are you and where are you from? They're just walking up and shooting dead in the head, Mexicans shooting blacks and blacks shooting Mexicans. And I'm told, just as a few days ago, by folks on the street that it is about to get really bad because the black gangs, the Bloods and the CRIPS are about to combine to

face off with the Mexican gangs that are being directed from inside the prisons.

So as I sit here and I listen to all of this, I just can't—I just wonder if we really understand what is going on and how bad it is. I mean it is, it is bad. And while we talk about—we try to talk about it in ways that certainly will protect people's rights, that will not simply just drag young people into a broad net, as it is being referred to. We got to do something, we got to do something.

I am very angry at the Administration for not protecting the border. I'm very angry that the President of the United States, who promised 2,000 more border guards, came up with 200 in the budget. I just think this business about whether or not we're protecting the border cannot be played with politically. You know, this Administration, or given that it is the Administration, I wouldn't care whether it was a Democrat or Republican administration, we're going to have to do something to protect the border.

And let me tell you what's wrong with the gang members from across the border who are causing problems. They're apprehended, and if they're not apprehended if they commit a crime, they're crossing back and forth across the border. They leave and they come back because we don't have any protection on the border.

I would hope that everybody would be frightened enough, I mean absolutely frightened enough about what is going on and how it is spiraling out of control, that some very decisive action is taken which will include some harsh measures. Again, you know, like I said earlier, you don't get any more liberal than I am. I mean I'm a liberal with a big L, okay? And I proudly say it. And my life has been about protecting people's rights, about making sure that we have a criminal justice system that just doesn't incarcerate innocent people. I don't want innocent people incorporated, but we've got gang bangers, black, white, and I want to tell you we had Jamaican gangs, some of the worst. I mean drug dealing killers. I want them off the street. I don't care where they come from. I don't care if they're black, green, purple, white, I want them off the street. I'm sick and tired of what is going on in Los Angeles in my community. I'm sick and tired of law enforcement not being able to make sense out of this. I'm sick and tired of people who commit crimes over and over again, and the gangs that are walking up shooting people in the head remaining on the street.

Now, I guess we can pontificate and we can sit in these Committees all day long, but unless Democrats and Republicans alike are willing to join hands, say to this Administration, we want the resources on the border, we want the border protected, we want to go after the gang dealers. They call them shot callers, the shot callers. Everybody knows who they are. They're making the decisions. I want to know why don't we have the information from the prisons to know who's sending their orders out on the streets. I never hear that talked about. It's time to get serious about this business. It is time to get very serious about the business.

And that's all I have to say. I'm not trying to relate to this flim-flam. That's all I have to say.

Mr. HOSTETTLER. Thank the gentlelady.

The Chair now recognizes the gentleman from California for 5 minutes, Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman.

Many of us have been involved in this effort on trying to deal with gangs for a long time, and Ms. Fernandez's suggestion that it needs to be an all-encompassing approach is absolutely true. I had a gang prevention task force where we brought people from all disciplines together to try and figure out what it was, and we came up, as many people have, with tougher penalties, but we also came up with an effort to give young people who would otherwise be attracted to gangs alternatives. I mean I read these analyses of what gangs are all about and from the National Alliance of Gang Investigators Association. There seems to be a consistency or consensus on the fact that in many cases, gangs take the place of other authority figures, particularly family and adults. These kids sometimes get into these gangs because they're looking for that which they won't find anywhere else—discipline in a very strange way, reinforcement in a very strange way. And we have been trying to deal with that.

That is primarily a local and State responsibility. There's no doubt about it. We have more cops on the local and State level than we'll ever have on the Federal level.

But to exacerbate that problem with illegal alien gang members is obviously to make it just far worse, and it is a question that I've often thought of. We spend so much time setting up cops programs where we try and take credit for getting police officers on the street; and then we don't fund our border patrol, and we don't do internal enforcement.

So, Mr. Garcia, I would like to ask you if you could give me an idea why we haven't enforced employer sanctions? I was the Republican floor manager of the Simpson-Mazzoli bill in 1987. We thought that employer sanctions would be half of the balance that they would allow us to have that hook into the attraction, or the magnet, that draws most people here. Most people don't come here for welfare benefits. They come here to find a job—jobs that Americans have not or will not take.

So we thought employer sanctions would be a way of doing it. And yet—I'm not trying to find fault with this Administration because it's been Democrat and Republican administrations, Democrat and Republican Congresses that haven't done it, but I just wonder, from your standpoint as a former prosecutor and your standpoint as the Assistant Secretary of Immigration and Customs Enforcement, whether you can give me some insight into that?

Mr. GARCIA. Thank you, Congressman. I'll try. Certainly we do employer sanctions, and certainly it's a problem, and you're absolutely right in the expression of your frustration and also in the expression of it as the magnet or an attraction for people coming into the United States. And certainly it's somewhat a resource issue, as you point out. We have to use our resources as effectively as possible, whether it's public safety and gangs and predators or whether it's employer sanctions. So what do we do? We go after a number of employers on different levels, either large employers where we'll have the greatest impact, and there are a number of cases recently lumped under the Wal-Mart heading which actually involved Wal-Mart in a civil settlement and contractors for Wal-Mart in a criminal settlement with the Government, as a case leading to a pro-

gram that will hopefully get people to voluntarily comply with the employment regulations.

We look at critical industries. There's been a number of cases recently that have gotten attention by ICE under the umbrella of Operation Tarmac. So you're looking at not only airports and people with access badges who are employed by those airports, but military facilities, defense contractors, ports where people, illegal aliens without documentation are again getting access to very sensitive facilities, and that has become a priority. We're looking at abusive employers, people who hold their illegal employees, illegal alien employees in conditions that would be equivalent to bondage or slavery, so we prioritize our efforts in that area.

So if you're looking at resources and the greatest effect that you can get from the resources you have in any given program, whether that's drug enforcement or employee sanctions enforcement, that's where we have our resources. Under the President's '06 budget—and I don't have the figure, I apologize, offhand here—but there is a requested enhancement before this Congress for increased funding for employer sanction investigations, which I think is very important, and hopefully by combining those additional resources as requested with our prioritization and again some compliance programs, we can have a greater impact than we have had.

Mr. LUNGREN. Thank you. Could you tell me how many arrests were made last year on employer sanctions?

Mr. GARCIA. I'm sorry. I don't know the number.

Mr. LUNGREN. Would you—could you give me an idea? Would it be more than 1,000?

Mr. GARCIA. Honestly, Congressman, I don't want to guess, but I can certainly have our staff give your staff the number.

Mr. LUNGREN. Right. I mean I understand you are doing things, but in terms of what we anticipated would be the case when we passed the bill in 1987, we're not doing anything. I'm not directing that at you. I'm directing that at all of us. I happen to believe in the President's idea that we ought to have a guest worker program because I think once we have a real workable guest worker program, we, the United States determines who comes here and under what circumstances and what jobs. Then we would actually have no excuse for not enforcing employer sanctions, and I think you'll get the kind of support for that which is necessary.

Back in '87, we were talking about it being largely a California problem or a Southwest problem. Illegal immigration is a problem all over the United States. Gangs now you're experiencing in the Shenandoah Valley. And I don't wish that on anybody. But if you look at the numbers you have versus the numbers we've been experiencing in other parts of the country for some time, I hope that's not my way of saying "you ain't seen nothing yet." I hope it's my way of saying we've had some real problems. Maybe we can get support from other parts of the country for the problem that we've got, in terms of funding that is necessary. It's a multi-faceted problem that needs a multi-faceted approach. But part of that, it seems to me, is to try and get rid of this exacerbating problem, which is illegal alien gang members. We have enough problems with home-grown gang members. We don't need to add to it, and that is a true Federal responsibility.

Thank you very much, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman.

The question period now over, I want to thank the members of the panel for your input——

Ms. JACKSON LEE. Mr. Chairman?

Mr. HOSTETTLER. Yes? I recognize the gentlelady from——

Ms. JACKSON LEE. Would you please? Just if they can answer this yes or no, I ask the Chairman to indulge me 1 minute, ask unanimous consent for 1 minute.

Mr. Garcia, in the MS-13, have you in the course of—I'm not sure if there's any firsthand knowledge, but any of the MS-13 engage in any terrorist activity?

Mr. GARCIA. Congresswoman, great question. We have seen reporting, I think some Boston reporting linking MS-13 and al Qaeda specifically. I have not seen that. I will tell you though that any organized criminal enterprise that's exploiting our border, as MS-13 is, to bring in contraband, to bring in illegal aliens, certainly is a national security risk, profit-driven, for the right amount of money could bring in terrorists, could bring in components of weapons of mass destruction. We have to accept that risk and address it. But I have not seen a specific link between that gang or other gangs and terrorist organizations.

Ms. JACKSON LEE. And you're aware that the MS-13, in addition to the hardened criminals that exist, recruits at the level of 13-, 14-, 15-year-olds?

Mr. GARCIA. I'm not an expert on their recruitment. I would accept that representation from people who are familiar with gangs, but I'm not familiar with what age limit they begin targeting recruits.

Ms. JACKSON LEE. Ms. Fernandez, just quickly, what would you do with legislation——

Mr. HOSTETTLER. If the gentlelady will yield, we're really not going to be able to do a second round of questioning.

Ms. JACKSON LEE. Let me have her do that in writing then.

Mr. HOSTETTLER. Yes, please.

Ms. JACKSON LEE. Would you please respond to potential legislation that would add a deportation provision to anyone who is a member of a gang, that if they were here, that their membership would equate to an automatic deportation?

Mr. HOSTETTLER. I want to thank the panel, the witnesses for your presence here today and your very valuable contribution to this discussion.

Ms. JACKSON LEE. And I've got a submission. Ask——

Mr. HOSTETTLER. Unanimous consent?

Ms. JACKSON LEE. Yeah, ask unanimous consent to put in the letter from the City of Houston dated April 14, Anti-Gang Task Force.

Mr. HOSTETTLER. Without objection.

Mr. HOSTETTLER. The business before the Subcommittee being complete, we are adjourned.

[Whereupon, at 6:23 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

The subject of this hearing is, "Immigration and the Alien Gang Epidemic: Problems and Solutions." According to the Department of Justice, we currently have more than 25,000 gangs in the United States. The most recent National Youth Gang Survey indicates that there are more than 750,000 gang members. Some of these gangs resemble organized crime syndicates. They commit gun violence, gun trafficking, drug trafficking, and other serious crimes.

The gang we will hear the most about at this hearing is the Mara Salvatrucha, or MS-13 organization. Composed mainly of Salvadorans and other Central Americans, this gang has an estimated 8,000 to 10,000 members in the United States. MS-13 was established in Los Angeles in the 1980s by Salvadorans fleeing from a civil war. When they came to Los Angeles, Mexican gangs preyed on them. Their response was to band together in a mara, or posse, composed of salvatruchas, which means street-tough Salvadorans.

According to the Bureau of Immigration and Customs Enforcement (ICE), the need to respond to the proliferation of MS-13 gangs has become a public safety priority. In January of 2005, ICE launched Operation Community Shield. The goal of this operation is to dismantle the MS-13 organization by targeting its members, financial assets, and operations. To do this, ICE will bring to bear all of its law enforcement and investigative powers, including criminal prosecutions, immigration authorities, financial investigations, and asset seizures.

ICE will work with partners in the federal law enforcement community, including U.S. Attorneys' offices; the FBI; the Drug Enforcement Administration (DEA); and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). ICE also will work with foreign governments to identify known gang members. ICE agents have arrested more than 135 MS-13 gang members nationwide.

The gang problem is being addressed at the local level too. In 1997, the Fairfax police department made youth gang crime a priority and established a gang investigations unit. In 2003, funding from the U.S. Congress enabled the creation of the Northern Virginia Gang Task Force. The Task Force works closely with the FBI, ATF, and ICE.

It is important to emphasize that Northern Virginia does not limit its efforts to law enforcement activities. The Task Force also does public education and awareness presentations; provides gang activity awareness training to school resource officers and Fairfax County public school personnel; and has established diversion programs such as GREAT (Gang Resistance Education and Training) and youth mentoring programs.

I am pleased to say that we have a good gang intervention program in Houston too. In response to the rise in gang-related crime in the early 1990's, Houston's mayor established an Anti-Gang Office and Gang Task Force. The office's mission is to develop a comprehensive mechanism to reduce gang-related violence and crime. To meet this goal, the Anti-Gang Office and Gang Task Force has established prevention, intervention, and suppression program partnerships with law enforcement, criminal justice agencies, schools, youth service providers, and the public. It coordinates citywide anti-gang efforts, including the gathering and sharing of information on gang intervention and prevention activities related to gang violence.

Our witness today is Mai Fernandez, the Chief Operating Officer of the Latin American Youth Center (LAYC). The LAYC family of organizations includes two youth centers in Washington, D.C. and one about to open in Langley Park, Maryland; three public charter schools; an Art & Media House; transitional housing; and two social enterprises—all with a shared commitment to helping youth become successful and happy young adults who have the skills they need to succeed education-

ally, professionally, and personally. These services assist youth in breaking the cycle of crime and violence in their lives.
Thank you.

LETTER FROM THE LATIN AMERICAN YOUTH CENTER SUBMITTED BY THE HONORABLE
SHEILA JACKSON LEE



April 18, 2005

Hon. Sheila Jackson Lee
2435 Rayburn
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Jackson Lee:

It was an honor to testify before the Subcommittee on Immigration, Border Security and Claims regarding the issues related to gang membership and immigration. With regards to your question whether changes to immigration legislation would reduce gang violence in our communities, the answer is no.

Allow me to explain. While gangs often attract the children of immigrants, the vast majority of gang members were born in the United States and are not involved in crime. When young gang members do commit crimes, there must be a decisive law enforcement response. However, federalizing youth gang crimes will not help—and may hinder—law enforcement and community protection. Federal courts are not equipped to address the issues of youth offenders, and federal prisons lack programs for young people.

Before enacting draconian measures, Congress needs to take a close look at gangs and the programs already at work to manage them. Gangs operate in all 50 states. State and local governments are best informed about how to address local law enforcement problems, including those involving young gang members. As I mentioned in my testimony, the character of gangs can vary from neighborhood to neighborhood, and certainly from state to state. MS13, a Virginia-based gang notorious for committing recent atrocities, has a very small presence just across the Potomac River in Washington, D.C. Different jurisdictions require different tactics; heavy-handed federal solutions are not the best way to address unique circumstances.

As I stated in my testimony, in Washington, D.C., a swift local law enforcement response ended a rash of gang-related murders in the Columbia Heights neighborhood two years ago. Today several of the perpetrators are serving life sentences, sending a clear message to other gang-involved youth that crimes will be punished. But the local response did not end with law enforcement. To prevent gang-related crime, not just punish it after the fact, the community formed the Gang Intervention Partnership (GIP). Together, police, probation officers, prosecutors, and community social service providers work out strategies to help high-risk youth turn away from gang involvement.

1500 Columbia Road NE
Washington, DC 20002
Telephone: 202-546-1235
Facsimile: 202-546-1235
Email: info@layc.org
Web: www.layc.org

Additional Locations:
Baltimore

1500 Columbia Road NE
Washington, DC 20002

South Department
3000 14th Street NW
Washington, DC 20005

Residential Services
3423 1st Street NW
Washington, DC 20007

Art & Media Center
3423 1st Street NW
Washington, DC 20007

United Way 9-1-1 Day

With the help of GIP, Columbia Heights has had no gang-related homicides in two years. This program and countless other community-based efforts could use a federal hand—funding, technical assistance, collaboration, and national conferences where state and local programs can share effective strategies for controlling gang violence. Congress should find ways to build on local successes before turning to the blunt instruments of federal immigration and criminal law.

Again, thank you for the honor of testifying before the Subcommittee.

Sincerely,

Mai Fernandez
Chief Operating Officer
Latin American Youth Center

LETTER FROM THE CITY OF HOUSTON SUBMITTED BY THE HONORABLE SHEILA JACKSON
LEE



CITY OF HOUSTON
Mayor's Anti-Gang Office

Bill White

Mayor

Patricia Harrington
Administrative Manager/Director
P.O. Box 1582
Houston, Texas 77251-1562

T. 713-247-1576
F. 713-247-1340
Patricia.Harrington@cityofhouston.net

April 13, 2005

The Honorable Sheila Jackson Lee
House of Representatives
2435 Rayburn Building
Washington, DC 20515

Dear Representative Jackson Lee:

In response to your research request on local efforts towards gang activity, I would like to offer you the following information on efforts by the City of Houston, Texas. Gang activity and juvenile delinquency are best addressed through prevention, intervention, education, and suppression strategies. To support this comprehensive approach, the City of Houston Mayor's Anti-Gang Office develops and implements grant funded programs that establish collaborations among law enforcement, criminal justice agencies, schools, social service agencies, and the public. Anti-Gang Office programs not only provide support to the Houston Police Department to enhance and expand their ability and resources to carry out suppression activities, it also provides prevention and intervention services to youth and their families to assist them in addressing delinquency, as well as linking them to additional resources and services.

For example, through the Department of Justice's Gang Free Schools project, the Anti-Gang Office is working to implement the Office of Juvenile Justice and Delinquency Prevention's Comprehensive Gang Model in Houston's East End neighborhood. The model holds that community mobilization, provision of opportunities, social intervention, suppression, and organizational change and development are necessary to decrease gang crime and involvement. Using this model, the Anti-Gang Office has developed an outreach team to identify gang members, and an Intervention Team comprised of police officers, juvenile probation officers, youth service providers, and outreach team members to provide services and monitor client's progress, be it referral to GED classes, tattoo removal to joint police-probation home visits to insure that conditions of probation are being followed.

Some youth are ready to make the change from gang involvement to more conventional behavior; those who are not must be dealt with accordingly. The Law Enforcement Assistance Program (LEAP), a component of the Gang Free Schools Project, was developed by Anti-Gang Office staff along with area police officers, to determine specific gangs and gang members to target for suppression activities. It also specifies days of the week and times of the day in which to implement their initiatives to insure that their overtime resources are being utilized to their maximum potential (i.e. If activity is high at DeZavala Park on Friday and Saturday nights between midnight and 3 am, that's when we request the officers work).

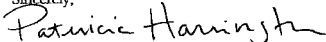
Gang intelligence is also important to solving and reducing gang related crime. One way of obtaining this information is through direct contact with gangs and gang members. Gang intervention specialists in the Anti-Gang Office encourage gang members towards lawful use of the criminal justice system to deter retaliation and future gang violence.

Council Members: Toni Lawrence Carol Mims Galloway Mark Goldberg Ada Edwards Addie Wiseman M.J. Khan Pam Holm Adrian Garcia Carol Alvarado
Mark Ellis Gordon Quan Shelley Sekula-Gibbs, M.D. Ronald C. Green Michael Berry Controller: Anlise D. Parker

Public awareness is critical to the prevention of gang involvement, juvenile delinquency, and victimization in our city. The ability to keep youth safe relies on the accuracy of information and training about the nature and scope of the issues that threaten them. The Anti-Gang Office serves as a gang education and awareness training resource for parents, teachers, law enforcement, criminal justice agencies, service agencies, and the general public. These groups must be educated on warning signs of gang involvement, reasons youth join gangs, and ways they can assist youth who are at-risk of gang involvement, as well as those who are already gang involved. Youth aged from elementary school to college are also provided with information on the dangers, negative consequences, and risks of gang involvement.

Gang activity, like most other crime concerns, is complex and there are no easy answers, but I hope we have demonstrated that it can be dealt with. I thank you and the committee for recognizing its importance as well as for taking the time to debate the merits of different ways to address it. Please feel free to contact me if I can be of additional service to you in this endeavor.

Sincerely,


Patricia Harrington

