Conceptual and Empirical Obstacles in Defining MS-13

Law-Enforcement Perspectives

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Research Summary

Past and present gang scholarship is marked by debate as to the appropriate criteria for defining gangs and gang membership. Mara Salvatrucha, or MS-13, highlights some obstacles in conceptualizing gangs and operationalizing gang membership. Although MS-13 has generated attention in recent years, little systematic criminological research exists on the gang. Drawing on in-depth interviews and surveys of law-enforcement gang experts, we link

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long-standing issues of gang definition and measurement to MS-13 in the Washington, D.C., metropolitan area.

Policy Implications

Gang and immigration enforcement are inextricably linked in the case of MS-13. The ambiguous, contested, and varied means by which gangs are defined and labeled may result in the overpolicing and overcriminalization of young immigrants of color and youth of color in general. Beyond unsubstantiated police stops, arrests, convictions, and gang enhancements, such labeling practices may lead to collateral immigration consequences including deportation and permanent bars to reentry into the United States.

Keywords

gangs, policing, Mara Salvatrucha, MS-13

La Mara Salvatrucha, commonly referred to as "*las Maras*" or MS-13, is a gang composed primarily of Salvadorans and their U.S.-born descendants. The gang emerged in 1970s Los Angeles as a "stoner gang," eventually evolving into a traditional street gang (Martinez D'Aubuisson, 2015; Ward, 2013). Although membership figures vary in their accuracy and reliability, the Department of Justice (DOJ)'s National Gang Intelligence Center estimates that MS-13 currently has more than 30,000 members worldwide, of which around 10,000 reside in the United States (Federal Bureau of Investigation [FBI], 2017).

MS-13 has been framed as the "most dangerous" and "most violent" gang in the United States (Campo-Flores & Romano, 2005; Logan, 2009; McGuire, 2007; Ward, 2013; Wolf, 2012, 2014), and the "most notorious" street gang in the Western Hemisphere

(Velásquez, 2011). Discourse on MS-13 can, increasingly, be found in a variety of outlets, including electoral politics (Davis & Chokshi, 2018; Dreier, 2018; Robbins & Shear, 2018), federal, state, and local policy (see Arana, 2005; Blitzer, 2017; Mather et al., 2018; Ryan, 2018; whitehouse.gov, 2018), and journalistic inquiry (Chakraborty, 2018; Velásquez, 2011).

The gang is typically presented as an organization that both transcends and is external to the United States—as evidenced by MS-13's formal designation as a Transnational Criminal Organization (U.S. Treasury, 2012) and public discourse on the "threat" of MS-13 sending members to the United States from El Salvador. Yet, even though MS-13 cliques can be found around the world, with the largest concentrations in El Salvador and the United States, the extent to which these cliques operate under a unified organizational structure is unclear. Put another way, it remains to be seen whether MS-13 is a "chain," a "franchise," or neither.

Some might argue that the political rhetoric surrounding MS-13 is arguably indicative of a *moral panic* (see Paarlberg, 2017), or when a generalized feeling of fear—paired with a disproportionate allocation of resources—is attributed to a perceived but overstated threat (see Cohen, 1972; Eitle & Taylor, 2008; Jones, 1997; McCorkle & Miethe, 1998; Skogan, 1995; Zatz, 1987). Although MS-13 is a source of interpersonal violence and victimization among Latino communities in the United States, it also serves as a pretext for policies to restrict migration and criminalize migrants (Beckett & Evans 2015; Zilberg, 2007, 2011).

Indeed, many conversations about MS-13 have little to do with actual crime. General references to MS-13 have been interpreted, by some, as part of an instrumental partisan strategy for associating Democratic migration policies with perceived Latino dangerousness (Davis & Chokshi, 2018; Díez, 2018; Valverde, 2018; Vozella & Nirappil, 2017; Zilberg, 2011). Renewed debate over immigration, combined with high-profile cases of MS-13

violence in the past 5 years, has led to several policies and programs intended to address the crimes of immigrants.

The recently launched Victims of Immigration Crime Engagement Office, or VOICE, for example, "support[s] victims of crimes committed by criminal aliens through access to information and resources" (U.S. Immigration and Customs Enforcement, 2019). Similarly, in 2017, the House of Representatives passed H.R. 3687, The Criminal Alien Gang Member Removal Act, to facilitate deportations of individuals whom law enforcement "has reason to believe" are associated with gang activity (H.R.3697, 2017). A year late, exceptionally violent homicides in Long Island, NY, prompted New York Governor Cuomo to announce an $18.5 million-dollar initiative that emphasizes youth programs and intervention services intended to disrupt gang recruitment efforts (Cuomo, 2018). Disentangling anti-immigration sentiment from ostensibly race- and ethnicity-neutral justice interventions is beyond the scope of this article, but such policies and programs underscore how real and perceived activities of MS-13 can have profound effects on human lives and the allocation of millions of dollars.

At a minimum, public discourse and recent policy seem to be heavily influenced by outliers—sensationalized but unusual cases of immigrant violence. In general, foreign-born populations in the United States exhibit lower crime rates compared with native-born populations—a fact that has remained unchanged for more than a century (Ousey & Kubrin, 2018; Sydes, 2017; Vaughn et al., 2014; Wickersham Commission, 1931). Nevertheless, MS-13 does raise substantive concerns for criminology and criminal-justice stakeholders.

Some argue that MS-13 activity and criminal violence are on the rise in the United States (De Avila, 2017; Morse, 2017), and that high-profile incidents of MS-13 violence require strategic law-enforcement interventions. The FBI believes that gang leadership in El Salvador has taken strategic advantage of the recent "wave" of unaccompanied minors, also

known as "unaccompanied alien children" (UACs), ostensibly sending youth members to the United States illegally to regain control of local MS-13 cliques (FBI, 2017). This narrative of a cohesive, well-organized, transnational organization that operates across borders is unrepresentative of how most street gangs function in the United States, and such claims have yet to be substantiated empirically in the case of MS-13 (see Aguilar, 2006; McGuire, 2007; Ranum, 2006; Wolf, 2014). Furthermore, many UACs are fleeing gang-related violence, not engaging in it (Stinchcomb & Hershberg, 2014). Ultimately, more knowledge is needed to determine the scale and scope of MS-13 activity in the United States.

There has been an increase in scholarly attention to gangs generally (American Society of Criminology, 2018; Conway, 2017) and MS-13 specifically (see Diaz, 2009; Katz et al., 2016; Martínez d'Aubuisson, 2015; McGuire, 2007; Roque, 2017; Ward, 2013; Wolf, 2014, 2017; Zilberg, 2004, 2007, 2011). Little empirical research on the gang has been conducted to date, however. There is also a paucity of research on law-enforcement perceptions of and responses to MS-13. The availability of data on MS-13 is of substantive import not only to policy stakeholders but also to the lives and livelihoods of various communities. Uninformed policy will likely do little to prevent crime and victimization. Instead, it may facilitate the criminalization of immigrant communities and communities of color and coincide with support for expanded use of police powers (see Pickett 2016; see also Provine et al., 2016).

To expand research in this area, we draw from in-depth interviews and surveys with law-enforcement gang experts in the Washington, D.C., metropolitan area to empirically demonstrate how law enforcement in this region operationalize gang membership. Using this lens, we illustrate the ways in which MS-13 offers both conventional and novel challenges for law enforcement, researchers, and policy makers. Although gang identification is, generally, an imperfect process, properly identifying and labeling MS-13 is further

complicated by virtue of its transnational branding, non–English-speaking constituencies, and

relevance to immigration policy debates. By integrating historical and contemporary

obstacles in conceptualizing "the gang" and operationalizing gang membership (Ball &

Curry, 1995; Esbensen et al., 2001), our findings on law-enforcement reactions to MS-13

speak to basic measurement issues from gang scholarship. Findings also highlight the ways in

which immigration status, race and ethnicity, and violence may be conflated in the course of

MS-13 identification and labeling practices. The article concludes with a brief and

empirically informed discussion of the legal, political, and social complexities of policing and

researching MS-13. We call for continued integration of justice practitioner perspectives with

scholarship on crime, race, and migration.

Defining Gangs

The history of gang scholarship is marked by the absence of a universal definition for the

word "gang" (Fraser & Atkinson, 2014; National Institute of Justice, 2011; Spergel, 1984;

Sullivan, 2005). As far back as the mid-1970s, researchers stressed that "at no time has there

been anything close to consensus on what a gang might be—by scholars, criminal justice

workers, and the public" (Miller, 1975, p. 115; see also Ball & Curry, 1995, p. 225). Terms

used to describe gangs have varied significantly across street-based populations, law-

enforcement and criminal-justice organizations, stakeholders, and research communities

(Fraser & Atkinson, 2014; Miller, 1975). One study in particular, for instance, identified

nearly 1,500 different characteristics that could constitute a gang (see Miller, 1975).

Not only does colloquial use of the word *gang* differ from its legal operationalization,

but also legal definitions vary from jurisdiction to jurisdiction. In some U.S. states, gang-

related laws rely on modifiers like *criminal street* gang to differentiate between other group-

level categories (e.g., clique, set, or crew) that may vary in terms of criminal activity, level of

organization, and size. Factors determining how groups and activities become formally

codified as *gang-related* remain somewhat ambiguous (Needle & Stapleton, 1983).

Because gang identity has political dimensions, its conceptualization involves both

ascribed and attained status. A "gang" can reflect a territorial jurisdiction, a community, or a

shared identity among a group of adolescent friends. Shared experiences of—and about—

offending and victimization often form the foundation of gang identity (Ayling, 2011; Decker

& Van Winkle, 1996; Fleisher, 1998; Klein, 1971, 1995; Klein & Maxson, 2006). Gangs

"take on a mythic status as participants, actions, and outcomes are recounted, embellished,

and retold to add to the shared history of the gang" (Pyrooz et al., 2014, p. 318).

Although gang members and the communities within which they reside actively

participate in the construction of gang identity, "gang" is a label that is often applied

"downwardly" (see Black, 1976). This happens when an external authority labels an

underprivileged, politically disenfranchised, or marginalized group as a "gang" independent

of what the group does (see Chambliss, 1996; Coughlin & Venkatesh, 2003; Dumke, 2018).

In such cases, the gang serves as "an invisible symbol on to which our worst fears and

prejudices are projected" (Fraser & Atkinson, 2014, p. 156).

Within-group understandings of gang definition are no less complex. Individuals vary

in the symbolic and linguistic lexicon for *how, if,* and *whether* they self-identify as gang

members, as well as whether their social network qualifies as a gang (see Spergel & Curry,

1993). As White (2008) noted, targeting gangs is difficult and problematic as a result of the

"complexity of social belonging and social identity pertaining to how young people live their

lives … young people have multiple identifications, and can be simultaneously gang

members and non-gang members" (p. 149). Fraser and Atkinson (2014) explained that

adolescents commonly engage in experimental deviance, including "a great deal of posturing,

experimentation and fluidity," making determinations of gang membership "a highly fraught and contingent process, with clear potential for error and misrecognition" (p. 155). For some adolescents, gang membership is merely a phase of social participation involving "a series of overlapping social networks of friendship, neighborhood cliques, and romantic relationships" (Papachristos, 2013, p. 51; see also Fleisher, 1998). Consistent with the age–crime curve in criminological research and theory, members generally "come and go … [or] age out of the group, move away, get jobs, and so on" (Papachristos, 2013, p. 51; see also Melde et al., 2012; Pyrooz, 2013).

The tension between legalistic and sociological conceptualizations of gangs reflects various power dynamics (Ball & Curry, 1995, pp. 225–226; Fraser & Atkinson, 2014; see also Michalowski, 2016). Official gang labels are problematic in the sense that "the gang," like "the felon," must be politically and legally constructed *before* such abstractions can be said to exist (see Hillyard & Tombs, 2007). Ball and Curry (1995), for instance, posited that gang definitions "tend to be veiled expressions of bourgeois disapproval" (p. 227). This may explain why many gang definitions emphasize the commission of "street crimes" as opposed to "suite crimes," or crimes of the powerful (Rothe & Kauzlarich, 2016), which can be greater in scope and severity than interpersonal crimes (see Leon & Ken, 2019; Michalowski, 2016; Reiman & Leighton, 2012; Tombs & Whyte, 2015). In sum, these wide-ranging definitional and conceptual nuances reflect Katz and Jackson-Jacob's (2004) assertion that quibbling over the term *gang* is "essentially an argument over the correct description of a ghost" (p. 106).

Indeed, academics, criminal-justice practitioners, and gang members have offered up a slew of competing legal and social definitions of gangs and membership. Whereas researchers may prioritize arriving at conceptual clarity and the identification of necessary and sufficient conditions in defining gangs, the criminal-justice system gets on with

pragmatic understandings of gangs as actionable phenomena. Yet, accurate gang classification matters. "Wrongly designating, or not designating, a group as a gang or an individual as a gang member can [have serious consequences]" (Kennedy, 2009, p. 711). Misdesignation occurs in two ways: "false positives" and "false negatives" (see Barrows & Huff, 2009). False positives occur when law enforcement inaccurately designates an individual or group of persons as gang affiliated and subsequently "overpolices" a corresponding social group. False negatives result in the absence of deserved criminal-justice attention. This is the case, for instance, when a gang member's affiliation "slips through the cracks" and is undetected by correctional authorities, presenting issues of interpersonal safety for various parties in a jail or prison. Inaccurate classifications of gang affiliation can have a detrimental impact on public safety, due process, procedural justice, police–community relations, and the rights of the accused (Kennedy, 2009, p. 711).

Understanding how law-enforcement agencies and officers apply the "MS-13" label is important in framing—and responding to—the crime and safety concerns that MS-13 poses. It also highlights the nexus of criminal-justice and immigration policies emerging from gang labeling and enforcement and their potential effects (i.e., revocation of Green Cards, deportation, and travel bans).

Data and Method

From 2015 to 2017, we collected data as part of a bilingual, multi-site, mixed methods study of the transnational capacity of MS-13 in the United States and El Salvador (funded by National Institute of Justice, Award #2013-R2-CX-0048). The broader project relied on four instruments that were adapted from the pioneering gang research methodology of the Eurogang Project (see Decker & Weerman, 2005; Weerman et al., 2009). The instruments

were applied to two distinct populations: law-enforcement "gang experts" and MS-13 gang

members (both alleged and self-identified) in three sites linked to MS-13—the metropolitan

Washington, D.C., region; Los Angeles, California; and San Salvador, El Salvador. Here, we

limit our analysis to law-enforcement perspectives on the development and activities of MS-

13 in the Washington, D.C., metropolitan region, which is home to nearly 3,000 of the

estimated 10,000 active MS-13 members and affiliates across the United States (FBI, 2017).

Gang definitions and their application are, in part, shaped by local legal culture or

prevailing practitioner norms in a given jurisdiction or court community (Church, 1985;

Eisenstein et al., 1988; Gould & Leon, 2017; Silbey, 2010). By focusing our attention on law

enforcement in the D.C. metropolitan area, this article provides insight into local law-

enforcement practices of defining, labeling, measuring, and responding to MS-13. Informed

by the "Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area"

(Office of Management and Budget, 2009), Washington Metropolitan Area Transit Authority

(WMATA, 2019) transportation routes, we define the D.C. metropolitan region to include

Washington, D.C., as well as neighboring parts of Maryland and Virginia. Specifically, the

jurisdictions under study include Washington, D.C.; Arlington, Fairfax, Loudon,

Montgomery, Prince George's, and Prince William counties in Maryland and Virginia; and

the independent cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, all

in Virginia.

The D.C. metropolitan area presents a unique analytical case given the number and

variety of law-enforcement jurisdictions (local, state, and federal) operating within this small

region. Law-enforcement agencies across the region regularly collaborate, cooperate, and

share information—at least with regard to gang enforcement. This includes the long-standing

presence of a regional gang taskforce with representatives from local, state, and federal law-

enforcement agencies (including the FBI).

Law-enforcement agencies serve as our unit of analysis. Excluding military and immigration agencies, as well as the CIA, we sampled from 22 agencies that operate within the region, as defined.[1] We completed surveys and interviews with 19 separate law-enforcement agencies (including the FBI). Of these, 17 agencies reported the presence of MS-13 cliques, whereas two agencies reported the presence of MS-13 members but not cliques. Agencies were recruited by phone or e-mail.[2] Initial recruiting efforts were carried out with the assistance of former high-ranking police officers, along with the support of the Department of Justice, Office of Justice Programs.

Surveys and interviews of gang experts were conducted in person at police stations and sheriff's departments, with the exception of one interview by phone. The highest ranking official in each participating agency was asked to identify at least one "gang expert" who was "very familiar with street gangs or cliques" operating in their jurisdiction and who had a minimum of 2 years of related experience in said jurisdiction, to be surveyed and interviewed. We surveyed and interviewed a total of 21 individuals: one lieutenant, one corporal, two deputies, three individuals within the FBI, three officers, three sergeants, and eight detectives. Identifying information—of both individual respondents and law-enforcement organizations—is omitted as part of our human subjects research protocol. In all cases, field researchers read survey questions aloud to participants. In all cases, the same individuals who completed the survey portion of the study also completed the interview. With

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[1] Alexandria Police Department; Alexandria Sheriff's Office; Arlington County Police Department; Arlington County Sheriff's Department; DC Metropolitan Police Department; Dumfries Police Department; Fairfax City Police Department; Fairfax County Sheriff's Department; Fairfax County Police Department; FBI—El Salvador Gang Task Force; FBI—DMV/NOVA Gang Task Force; Herndon Police Department; Loudoun County Sheriff's Office; Manassas City Police Department; Manassas Park Police Department; Metro Transit Police Department; Montgomery County Police Department; Prince George's County Police Department; Prince William County Police Department; TAG—EL Salvador (works with FBI); U.S. Park Police; Vienna Police Department.

[2] A formal proposal letter with supporting documents from the Department of Justice, Office of Justice Programs, was shared during recruitment as well.

the exception of one phone interview, surveys and interviews were completed consecutively.

Our survey instrument[3] was modeled after the Eurogang Expert Survey.[4] The Eurogang survey comes from the Eurogang Project and consists of a questionnaire constructed to inventory youth groups in specific areas by polling those who are familiar with them—such as police officers—and includes questions that systematically capture group size, durability, membership demographics, street orientation, and association with illegal activity (Decker & Weerman, 2005). It has been tested extensively and applied in various forms in Europe, the United States, and the Caribbean (Decker & Weerman, 2005; Esbensen & Maxson, 2012; Katz et al., 2011). As compared with traditional methods of gang study, which tend to be ethnographic in nature, the Eurogang Survey allows for the collection of information that is comparable across time and geographic locales (Decker & Weerman, 2005).

Our adaptation of the Eurogang Survey consisted of a series of open- and closed-ended questions to be completed at the jurisdiction level, along with a clique-specific series of open- and closed-ended questions to be completed for each clique present in the jurisdiction. "Clique" refers to any durable, street-oriented group consisting primarily of youth or young adults, whose involvement in illegal activity is part of their group identity. "Durability" is considered to be several months or more and refers to the group itself, not to the turnover among individual participants. "Youth or young adults" includes people predominantly between the ages of 10 and 30 years old, although some members may fall outside this range. "Illegal activity" generally means delinquent or criminal behavior, not just bothersome activity. "Identity" refers to the group as opposed to individual self-image.

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[3] Our survey instrument is available at the following URL: http://edmaguire.net/Instruments
[4] Eurogang instruments available in iterative forms via the University of Missouri—St. Louis, Department of Criminology and Criminal Justice: https://www.umsl.edu/ccj/Eurogang/instruments.html.

Jurisdictions reporting no MS-13 clique activity in the past 3 months were not asked to fill out the clique-specific questions.

Survey questions covered law-enforcement agency size, general criminal activity within the jurisdiction, and changes in MS-13 corruption, crime, and violence within the jurisdiction over the past 2 years, as well as clique presence and rivalries, composition, and activity, with special attention to identity, leadership structure, criminal activity, and international ties. Questions about inter- and intra-clique conflict were also asked. The gang expert interview instrument[5] consisted of 33 open-ended questions intended to build on the survey and garner a deeper understanding of how MS-13 operates in the United States and abroad. Questions ranged from gang culture, finances, and hierarchy to membership, methods of communication, rules, and rivalries. Special attention was also paid to transnational criminal activity. On average, the completion of the survey and interview took approximately 45 minutes to 2 hours.

Interview data form the crux of this analysis and were analyzed using *Atlas.ti.* Two researchers conducted a pilot coding process to inductively convert themes into primary codes. Two primary codes independently generated from both researchers are central to the present study: *defining gang membership* and *differentiating MS-13 from other gangs.* Upon completing the pilot coding session, the two researchers recoded project data to generate exhaustive subcodes for these two primary themes. Qualitative excerpts highlighted herein were selected on the basis of their representativeness. Where necessary, we have altered identifying details to prevent the unmasking of respondents.

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[5] Our interview instrument is available at the following URL: http://edmaguire.net/Instruments.

Defining Gangs on the Ground

Gang expert surveys and interviews reveal important details about MS-13's presence in the D.C. metropolitan region. Participating law-enforcement agencies identified at least 25 distinct cliques, ranging in size from 2 to 50 members, residing in the region. Experts generally agreed that MS-13 members were overwhelmingly young males in their teens and twenties, a finding generally consistent with those reported in the gang literature (Coughlin & Venkatesh, 2003; Esbensen & Carson, 2012; Huff, 1998; Vigil, 2003).

Consistent with that reported in the literature, gang experts with whom we spoke primarily invoked top-down, state-centered definitions of gangs and gang membership (Black, 1976; Fraser & Atkinson, 2014; Michalowski, 2016; Rothe & Kauzlarich, 2016; Schwendinger & Schwendinger, 1970). More than half of these experts underscored a working familiarity with two major components of the operationalized legal definition of a gang (NIJ, 2011). When asked to define gangs and gang membership, these experts described some version of the following: that a gang consists of two or more individuals who (a) share some common identifier and (b) commit crimes in furtherance of that collective identity.

For example, as one officer explained, a gang consists of "three or more individuals with a name, symbol, or sign, and [with] the primary objective of the commission of criminal activities." Another stated that a gang is "two or more individuals who, together, commit criminal acts for the benefit of the group." Beyond having a common identity, it was stressed that participants must engage in criminal activity on behalf of the gang. As one expert joked, without the criminal activity you could "include boy scouts" under the gang umbrella. He continued, "so the criminal act is what makes them a gang, and the criminal act has to be for the benefit of the gang."

A minority of respondents highlighted the contingent nature of gang membership. For example, when asked for his definition of a gang member, one officer replied, "Well our

definition of member? Their definition of member? Your definition of member? It's weird—everybody has a different definition." Another officer spoke to the possibility that select groups of youth who are considered to be gang members by police do not self-identify as such. "[These groups] don't even necessarily have names," he said, continuing, "we give them the [gang] names."

A third officer provided the following perspective illustrating the difference between *legal* definitions of gangs and their utilization in practice:

So, we have a bunch of White kids that walk around and commit assaults. They'll break into houses. They vandalize stuff. But, it's not something that we will look at as far as charging them for active gang participation. … Just on that definition alone,[6] I would say yes, but from an enforcement standpoint, I would say [this does not constitute a gang].

Comments like this exemplify Hillyard and Tomb's (2007) assertion that criminal-justice concepts and definitions are as much political as they are legal. Moreover, they are consistent with Ball and Curry's (1995) claim that the application of gang labels can function to signal "veiled disapproval" of certain groups as much as they identify expected sources of criminal activity. As the officer implies, despite engaging in collective offending as part of a cohesive group identity, this "bunch of White kids" is not considered to be a gang. Nor are the offenses committed by this group considered to be gang crimes. This underscores the power dimensions—as well as the racial and ethnic dimensions—embedded in the social and official practice of labeling gangs (Ball & Curry, 1995; Chambliss, 1996; Coughlin & Venkatesh, 2003; Dumke, 2018; Fraser & Atkinson, 2014; Spergel & Curry, 1993).

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[6] The respondent is referring to the working definition used by the researchers in this study: any durable, street-oriented group consisting primarily of youth or young adults, whose involvement in illegal activity is part of their group identity.

MS-13 Hierarchy, Identity, and Membership

Given the arguably vague, discretionary practices of gang identification, how do law-enforcement experts define MS-13 membership and label MS-13 members? All of those with whom we spoke stated that MS-13 has (a) a shared core identity and that its members (b) engage in criminal activity (c) for the betterment of the gang—three of the central principles found in most gang definitions.

For some respondents, this shared core identity manifests in the form of clothing, tattoos, and symbols. There was general agreement among experts that MS-13 has a preference for the colors blue and white or red; symbols involving the numbers "1," "3," and "13"; Catholic rosary beads; Nike Cortez sneakers; and Chicago Bulls' paraphernalia—especially hats and jerseys.

Several of the more "seasoned" gang experts pointed out that MS-13 frequently changes style of dress and choice of gang symbols to evade police detection. "They've gotten smart. They key in on what we key in on," explained one officer. These experts noted that the use of gang-related tattoos has declined dramatically in recent years, part of an intentional strategy to fly under the radar, so to speak. "Some of them still [wear these traditional colors and symbols, or have tattoos], but they're trying to be a little less conspicuous," one respondent shared. He continued, "[They] will still have some sort of blue and white [on], but you don't see the tattoos like [before]. They'll carry a bandana, or their socks will be blue and white, or they'll have a number '13' on something."

For others, the gang's core identity was linked to its rigid hierarchy and multi- or transnational ethos. Gang experts often described this transnational hierarchy in pyramid form. At the top sits a governing counsel (*consul*) that oversees global MS-13 operations. Operations are divided into several zones (*zonas*), regional programs (*programas*), and

individual cliques (*clicas*). Clique composition and hierarchy varies; however, cliques generally consist of a first in command in charge of clique-level operations and soldiers who carry out orders. Cliques may also have a second in command, a treasurer, or other duty-specific clique-level actors (e.g., one clique member may be designated as "rent," or extortion, collector). Gang experts could not verify, with certainty, the level of transnational coordination and organization between and across MS-13 cliques operating within and outside their jurisdictions (see also Aguilar, 2006; Ranum, 2006).

As one officer emphasized, "A gang like MS-13 has a structure, different roles for different members, and rules." As another expert explained, "MS-13 members have to pay dues, they have to attend meetings …[in comparison,] African American gangs [are] not as structured … [and when] you see fighting in the Latino gangs like MS-13 and 18th Street, this is about rule-breaking and punishing those who have violated the [group's] rules."

A handful of gang experts described the gang's hierarchy in detail, parsing out the nuanced differences between MS-13 members, recruits, associates, and "hang-arounds," as well as noting the complex path to full-fledged membership. These experts were aware of internal variations in gang labeling and membership practices (see also Spergel & Curry, 1993). As one respondent recounted:

It's kind of difficult to get in [to MS-13]. They have to study you. You have a mentor [of sorts]. You have to commit certain [crimes] with them just to hang out [with them]. They test you just to see what you do. Then the jump-in comes in. Once that happens, you're in … [but] it doesn't take a few weeks [to become a member], it takes some time.

As another expert reviewed:

You have *paros*, *chequeos*, and [full] members. You have to go through steps to [become a member] ... [A] *paro* would be like a kid who is—I hate to use

the word "hang-around," but that's kind of what they are. They're a hang-

around. The gang allows them to hang out with them. They're not allowed to

go to meetings. They're not allowed to be privy to any of the business or

what's going on. A *chequeo* is the next step up. Those tend to be your

lookouts, but they're not jumped in yet and they're not allowed at meetings

and not allowed to be privy to the business that's going on ... they're not

actively jumped in as members yet.

Thus, before one is able to embark on the path to membership, he must go through a brief

"probationary" period of investigation:

So, in order for you to become an MS-13 member you [first] come under

observation. That's when the gang investigates you. They investigate your

background. They investigate your family. If you had any run-ins with the

police, they actually investigate the case, see if you snitched [for example].

Only after one "passes" the probationary period and makes his way through these levels of

gang association and recruitment can he then become a member of MS-13. For gang experts

like those mentioned earlier, questions of gang membership and identification involved many

shades of gray, making gang enforcement more difficult (see also White, 2008, 1990).[7]

Despite some experts distinguishing between "hang-arounds," recruits, and members,

just as many experts lumped anyone associated with the gang together under the umbrella

label "MS-13." In the words of one officer:

[T]hey have different levels of membership. To be a full-fledged member,

[well] there just aren't that many full-fledged members. Now, they have their

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[7] For further discussion of gang hierarchy, organization, and membership, as well as differentiation between gangs, "splinter groups," and "groupies," see Huff (1989). For a discussion of "regular," "peripheral," "temporary," and "situational" gang participation, see Vigil (1988).

recruits, so to speak, or people that they consider helpers, which we consider

most likely as associates. But even their recruits, we would consider them

members in the law-enforcement community.

Many gang experts had difficulty clearly distinguishing between "recruits," "helpers,"

"associates," and others who have not yet been "jumped in" to MS-13. Lacking clear

conceptual distinctions between members and nonmembers, the accuracy of MS-13 labels in

the D.C. metropolitan area is questionable.

Contradictions in MS-13 Identification: Soccer, Side Hustles, and Murder

Certainly, criminal activity—the characteristic that sets gangs apart from the Boy Scouts and

political parties—plays a role in MS-13 identification. When asked to report on MS-13

activity, gang experts were generally in agreement across agencies and jurisdictions. Experts

reported that more than three quarters of MS-13 cliques in the D.C. metropolitan area were

known to engage in murder (excluding murder for hire), prostitution, and/or drug sales, and

that more than half of the cliques in the area were known to engage in drug, firearms, and/or

sex trafficking, money laundering, and the extortion of businesses. Experts also reported that

approximately one in five cliques in the area were known to engage in the extortion of

individuals (see also Miller & Morse, 2017). Similarly, approximately one in five cliques was

known to engage in kidnapping and/or human smuggling.

Survey data highlight the variety of criminal activity in which MS-13 engages,

including serious violent offenses. Interview data, however, suggest that MS-13 violence is

infrequent and primarily directed at the gang's own members. Most gang experts described

the average MS-13 member as attending school, working one or more minimum wage jobs,

and passing time playing soccer and partaking in low-level deviance, such as the

consumption of drugs and alcohol (see similar findings by Hagedorn, 1994, 1998; Huff, 1989; Klein, 1995; Vigil, 1988).

Indeed, even though many law-enforcement experts characterized MS-13, overall, as a menacing and ever-threatening entity that seeks to harm Americans, this frequently conflicted with their lived experiences with the gang. For instance, consider the benign picture painted in the following statement:

When we catch groups of kids in our parks, we may get a couple that are identified as MS-13, or maybe one who is, and the others are just guys that are hanging around him. It's not as organized as it [may seem]—it is just a group hanging out. … They'll be up there selling drugs, or they're up there using drugs or drinking. On a nice day, you'll catch them up there kicking a soccer ball around and they'll be sneaking in there, drinking as well.

It is unclear how, if at all, the activities described earlier are substantially different from more conventional forms of adolescent deviance (see also Huff, 1989; Vigil, 1988). It is also unclear, how, if at all, the scenario described connotes gang membership.

One of the practical difficulties in gang enforcement stems from the ambiguous distinction between "action-based" and "agent-based" crimes in the gang context (see Maxson & Klein, 1996). As McGuire (2007) asserted, using behavior—or dress, as previously discussed—to profile MS-13-involved youth is "fraught with ethical concerns," and distinguishing between gang activities "that should be prosecuted" and "cultural behaviors of Latino youth which are similar to or associated with gang activities" is essential to prevention, intervention, and rehabilitation (p. 30). Although most criminal offenses govern specific acts independent of the traits of the actor(s), collective identity is explicitly built into gang crimes. Tracking gang membership and viewing gang membership alone (whether real or perceived) as an actionable crime can lead to contradictions in the way

substantive acts are perceived—and charged. Although gang membership, itself, is not

illegal, many jurisdictions have laws on the books that treat gang affiliation as an add-on

offense replete with sentence enhancements that can be imposed at conviction (Howell,

2011).

A handful of gang experts characterized some MS-13 members in their jurisdictions as

seemingly law-abiding and pleasant, at least during encounters with law enforcement. One

officer mused:

> [MS-13 members] are personable. They're not standoffish. It's almost as if
>
> they know the game. "If I'm respectful, if I'm nice, if I'm funny, we can have
>
> a good time" and it's going to get you out of here. You know, "Yes, sir. No,
>
> sir." There's no conflict when we're on the scene. ... It seems like most of the
>
> MS-13 guys that we have contact with, they're respectful. They cooperate.
>
> They also know that if they go to see the magistrate, and we say that they're
>
> cooperative, and they don't have a record, they're going to go home. So,
>
> they're smart. They're quiet. They're cooperative. [Why are they coming to
>
> your attention?] You can go to somebody's house on a domestic—two people
>
> are arguing, they're loud, their neighbor calls [or some] third party complains.
>
> [Then] you see something [gang-related] in the car.[8]

Or, consider the following discussion of MS-13 and its rival gang, 18th Street, by another

gang expert:

> We have a number of gang members ... that live in this jurisdiction, but they
>
> don't commit any offenses in this jurisdiction. So, it's hard for us to say, 'Oh,

---

[8] Chicago Bulls memorabilia, as well as items depicting the Salvadoran flag, were highlighted by officers as possibly gang related.

that guy, he's MS-13 ... because I've never identified him as a gang member.

… [For example] we have one house that's full of 18th Street members and

they are absolute model citizens. When it snows their sidewalks are shoveled,

their driveways are shoveled. Their cars are all registered, titled appropriately,

parked off the street. They don't have any junk in their yard. So, our gang

members [here] tend to be cleaner. They tend to be—I mean they'll have their

parties and we'll get a noise complaint, but that's generally the sum total of the

gang interaction that our patrol officers have.

The 18th Street gang members described here are portrayed as "model citizens" who do not

"commit any offenses" in the referenced jurisdiction. The gang expert here implied that these

individuals had committed criminal offenses elsewhere but did not elaborate. Remarks such

as these prompt reflections on the open-textured relationship between formal criminal labels

and otherwise prosocial identities.

Murder

It should be stressed that positive characterizations of MS-13 seemed to be the exception—

not the rule. Again, gang expert surveys revealed many MS-13 cliques in the region engage

in serious crimes, if only occasionally. Gang experts with whom we spoke agreed that most

MS-13 violence, including murder, is directed in one of two places: at rivals or at MS-13

members themselves (also reported by Pyrooz et al., 2014) as punishment for various internal

rule violations. In the words of one expert:

99% of [MS-13] crime is gang-on-gang. I say 99% because every once in a

while, you have an innocent bystander that happens to be in the wrong place at

the wrong time. [MS-13] targets rivals, or each other when they're enforcing

their own rules. …When they do attack a citizen [intentionally, it's because] at some point they [mistakenly] perceived that citizen to be a rival.

During the 2-year period that our research was conducted, there were 11 MS-13-related homicides across the D.C. metropolitan area. For the jurisdictions experiencing MS-13 homicides, these murders stood out as significant. As one expert emphasized:

[This area] has [over a million people]. We usually average 15-20 murders a year total. Last year we had 10, which isn't bad, but most were gang related. … Of these, MS is responsible for more than half. We have had a couple MS murders already this year. … [Since 2001], we've never had a year with more than three gang-related murders, total, [until last year].

This recent increase in murders was troubling for most gang experts as they thought it could be indicative of a lasting trend.

Drug Trafficking

Although gang expert surveys suggest that MS-13 in the region is involved in drug trafficking, interviews contradicted this. Most experts, instead, agreed that even though some MS-13 members in their jurisdictions sell drugs, they tend to engage in this criminal activity "on the side"—not as part of organized deviance for the benefit of the gang. Most characterized MS-13 drug activity, which was said to exist in nearly all jurisdictions under study, as occurring on a small scale. In the words of one officer:

[This area] What we're seeing as far as the drug trade [in this region] is that they are doing it, [but] it's very [limited]. ... Some [money] will go to the gang [as membership dues], but the rest they keep. And they're not the cartel. They're not moving kilos. You may have an exception to the rule, but if you have a couple gang members dealing, it's more for their personal benefit.

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This is consistent with Hagedorn's (1994) study of drug sales among gang members, in which he finds that most gang members move sporadically between conventional labor markets and drug dealing, preferring even low-wage conventional work to drug dealing. Similarly, MS-13 members in the jurisdictions under study seem less like transnational drug cartels and more similar to the gang members studied by Huff (1998), who engaged in some drug sales but did not control drug trafficking.

Other Illegal Activity

Prostitution and extortion seem to be the most common MS-13 crimes in the region. As gang experts explained, it is not uncommon for members to "turn out," or prostitute, women who associate with the gang. More often, however, MS-13 involvement with prostitution was described as indirect and in the form of extortion. Indeed, several gang experts explained that area cliques were given explicit directives from leadership in El Salvador to increase extortion activities (see also Dudley & Lohmuller, 2015; Pachico, 2012). Illegal businesses, such as local prostitution or drug rings, as well as unlicensed restaurants and bars that operate out of immigrant homes, were said to be among MS-13's favorite targets. Likewise, Central American immigrants lacking legal status or those with relatives in Central America also provide viable targets for the gang. Such targets, officers noted, are deemed by MS-13 as less likely to report victimization to the police (see discussions by Goffman, 2014; Vigil, 1988, 2002).

Yet, when asked how much money local cliques bring in from all criminal activity and dues collection combined, there was general agreement among experts that the amount is likely small:

[Gang Expert] A lot of them work so that they can still manage to live their

lives. …You've got construction. You've got landscapers. You have guys

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working at restaurants. They do it all. Some of them [are involved with]

prostitution. Some of them deal their drugs. … [But] they're not making a lot

of money from any of that stuff, [the crime].

[Interviewer] So, they're not really making money by being part of the gang

then?

[Gang Expert] No … [These are] working people ... every once in a while, you

have a few of them that are dealing drugs—most of them for their own benefit.

To paraphrase several gang experts, nobody is getting rich by being part of MS-13, at least

not anyone belonging to any of the cliques in the D.C. metropolitan area.

Not only did experts reveal that MS-13 cliques and members in their jurisdictions

engaged in little crime, many suggested that much of this crime might be inconsistent with

the transnational activity associated with the gang. As one officer explained:

I think that they're smuggling more and more people across the border. I think

that MS is involved in that aspect. They're making money off of it at the

border. I mean that's what we're being told. As far as them making that money

on this end [in the United States and in our area], we don't see that very often.

Although this officer had received intelligence about MS-13's transnational activities—such

as smuggling—he had not seen significant evidence of transnational activity at the local level.

This was not unique. We heard similar statements from nearly all the law-enforcement agents

with whom we spoke, highlighting the stark contrast between national MS-13 rhetoric and the

lived experiences of gang experts in the D.C. metropolitan area. As one expert summed up,

the Treasury's declaration of MS-13 as a transnational criminal organization was a "terrible

idea."

The limited nature of MS-13 activity in the D.C. metropolitan area was, at times, rationalized by respondents, perhaps in an attempt to resolve the disparities between MS-13 rhetoric and realities. As one respondent argued:

> They drink a lot. They like to be at the clubs. They're always fighting at the clubs, stabbing each other. … But then you have to remember that a lot of these victims are "illegals" and they are not going to report [their victimization] to us, so I'm sure there's a lot more [MS-13] crime that isn't being reported.

Explanations for the lack of reported MS-13 crime, such as this, often rested on uncorroborated narratives of unreported interpersonal violence and victimization among this immigrant community. Although this may be the case (see Miller & Morse, 2017), it is also possible that MS-13 does not engage in a high volume of criminal activity in the D.C. metropolitan area.

Ultimately, gang experts in our study reported that the average MS-13 member in the region spends as much, if not more, time engaged in everyday activities and low-level deviance as they do committing serious violent crimes. Our findings are consistent with those of Ward (2013), who completed a comprehensive ethnography of LA-based MS-13 members spanning two decades. Ward summarized, "Were it not for the occasional fight or shoot-out, gang life would be unmitigated tedium. Obviously, the media are not going to report this, because it is not newsworthy. … Police and gang members themselves do nothing to dispel this image because doing so would diminish the status of [both the] 'gangsters' and the cops who fight to keep them off the streets … [like most gang members, MS-13 members, too,] spend most of their time hanging out" (pp. 103–104). Such inconsistencies between public discourse on MS-13—which casts MS-13 as both spreading and exceptionally violent (see

also McGuire, 2007)—raises important questions for gang identification and classification practices in the context of MS-13.

History, Immigrant Identity, and Labeling

If criminal activity need not be a primary criterion for being labeled "MS-13," what is? Although not explicitly stated, interviews suggest that the individuals may be presumed as "MS-13 involved" by virtue of their membership in—or perceived affiliation with—Central American migrant communities. For example, many gang experts tied the gang's evolution and membership to the Salvadoran immigrant diaspora in the United States. In the words of one respondent:

> MS-13 [was] built because a lot of the people that escaped [civil war in] El
> Salvador were getting picked on in their [Los Angeles] neighborhoods, so they
> had to form [for protection]. ... So, now these guys here [in the DC
> metropolitan area], they're in the school and they know, "hey, I need to [be]
> with people that are more like me." Okay, if I'm Salvadoran and I need to go
> hang out with guys that are Salvadoran, well they're MS-13 [so that's who I
> will hook up with].

Similarly, another expert explained:

> [Historically] I would say the majority of them were Central American. I
> won't say all Salvadoran because this area has a huge Central American
> population, but Salvadoran and Honduran were probably primarily the
> membership…There are some that were born here—not a lot. Most were
> immigrants here. And a lot of them were not here legally. [Now] we're
> [looking at] third generation, so you're going to see a lot more [MS-13
> members] that were born here.

Although officers generally agreed that, today, several U.S.-born MS-13 members exist, the

remarks of many gang experts suggested an ongoing link between MS-13 and immigration.

Several officers highlighted the presence of undocumented gang members, with some

connecting MS-13 to the UAC "crisis." For example, consider the following:

> I may not be politically correct, but the fact is that we have a lot of
>
> undocumented kids that have come across the border and are here. We have
>
> our fair share of them who are living with quote unquote family members.
>
> And the problem is that MS-13 has exploited that to the point where they're
>
> sending members across the border with the sole purpose of reorganizing MS
>
> in this region.

As another stated:

> I'd rather not to get too politically into this, but that wave of juveniles that
>
> came in? A lot of gangs were involved in that ... I was talking to my
>
> counterparts in El Salvador and they said you're going to see a large influx of
>
> juvenile gang members coming across and somehow that's what's gonna
>
> happen … I talked to somebody who worked down at the border and when this
>
> wave of juveniles was coming in and when they would be detained to be
>
> processed into the country they started seeing gang graffiti at the detention
>
> centers and all that.

Linkages between MS-13 and UACs were generally framed by gang experts as intelligence

from the FBI or other collaborating agencies, not intelligence that law-enforcement

participants had corroborated in their own jurisdictions.

One gang expert offered the following historical context, elucidating the connections

between gang identification, enforcement, and immigration:

> Early on our unit paired up with immigration so we had an ICE agent assigned
> to us almost from day one. Back when Immigration would actually deport
> people, they would usually call our ICE guy out and if [the person in custody
> was] a gang member, they were gone. That's all that it took.

As this officer explained, transferring suspected gang members to immigration custody (when
possible) in lieu of pursuing criminal charges was one method of gang enforcement (i.e.,
incapacitation through deportation) employed during the 1990s and into the early 2000s.

Although most gang experts agreed that being Salvadoran or Central American was a
core component of MS-13 identity, a minority highlighted the importance of disentangling
ethnic or immigrant identity from gang identification practices. As a seasoned gang expert
summarized, determining MS-13 membership is a complex endeavor and is rather ill-served
by stereotypes:

> A while ago it was pretty [easy] to pick them out. …You saw them on the
> street and you could say, "that's a gang member." Why? Look at 'em. … So
> many of the kids that are out on the street [today], it's hard to tell [if they're
> MS-13]. ... People just assume—you see more than two or three Hispanic kids
> together, well that's a gang right there. You know, that's far from the
> truth…you show me a gang member and I'll show you ten kids that are *not*
> gang members.

Criminalizing Through Discretion

Findings reveal that the application of official definitions of gangs and gang membership
vary across law-enforcement officers and agencies, as well as across contexts and groups. In
the case of MS-13, the complex path to becoming a fully-fledged member makes it difficult
to discern just who is part of the gang and who is not. Although nuanced understandings of
the gang's hierarchy and recruitment practices seem to aid in MS-13 identification and

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labeling, matters are further complicated by a disconnect between public discourse and official gang intelligence, on the one hand, and documented gang activity at the regional level, on the other. Specifically, the lack of frequency and severity of MS-13's criminal activity in the D.C. metropolitan region reported by gang experts raises important questions about just how gang determinations are made.

Gang expert surveys and interviews reveal how the complexities of defining gang membership and identifying gang members, coupled with law-enforcement discretion, may lead to inaccurate gang labeling. Gang experts' tendency to deemphasize the role of documented criminal activity and emphasize the role of ascribed characteristics and symbolic markers—such as the adoption of certain styles of dress or participation in an immigrant community—when determining gang membership could indicate an overapplication of gang labels. These labels, in turn, might reflect an improper prioritization of types of people as opposed to types of criminal actions. As presented here, MS-13 exemplifies many traditional obstacles in gang identification and enforcement, including variation across legal and applied definitions of gang membership by law enforcement; divergence between out-group and in-group membership definitions; the dynamic nature, as well as impermanence, of most gangs; and the possibility of overpolicing certain social groups, leading to both false positives and negatives.

Deportation, Gang Databases, and Policy

In previous decades, criminological research has promoted the idea that police gang units (see Decker, 2007) and gang injunctions—among other approaches—can offer "strategic suppression of gang member activities [which] may translate into modest immediate improvements in community safety and well-being" (Maxson et al., 2005, p. 577). We respectfully challenge law-enforcement administrators and criminologists to evaluate the

degree to which such practices are counterproductive from a community policing and procedural justice perspective or, relatedly, the desire to gather accurate gang intelligence. This is particularly salient in the case of MS-13, which—unlike most street gangs in the United States—has been conflated with broader political debates about immigration policy. Indeed, the unique nature of MS-13 enforcement is further augmented by its role in instrumental "law-and-order" discourse that uses MS-13 as a means toward an end of more restrictive immigration policies and practices. It is for this reason, among others, that a review of MS-13 identification and labeling practices is so important.

For instance, the Trump administration has cited MS-13 violence numerous times in calls for immigration reform (Blitzer, 2017; Nixon et al., 2018). Similarly, members of Congress have referenced MS-13 in connection with immigration reform efforts (Comstock, 2017). Although attempts to pass immigration reforms *vis-a-vis* actual and overexaggerated linkages of immigration and crime in popular discourse are nothing new (Hing, 2004; Schrag, 2010; Wickersham Commission, 1931), recently revitalized interest in MS-13 has helped fuel the anti-immigration debate.

The Criminal Alien Gang Member Removal Act (H.R. 3697) is just one of the most recent attempts to capitalize on antigang sentiment in the realm of immigration reform. The bill, introduced by six Republican Congressmen and passed by in the House of Representatives in the fall of 2017, constructs the criminal alien as someone that the Department of Homeland Security (DHS) or Department of Justice (DOJ) "knows or has reason to believe ... is or has been a member of a criminal gang or has participated in criminal gang activities" (H.R. 3697). The bill highlights the dynamic nature of defining gangs but fails to address law-enforcement discretion over gang affiliation determinations, as highlighted by our study. As the bill reads:

A "criminal gang" is defined as an ongoing group, club, organization, or association of five or more persons: (1) one of the primary purposes of which is the commission of specified criminal offenses and the members of which engage, or have engaged within the past five years, in a continuing series of such offenses; or (2) that has been designated as a criminal gang by DHS. Such offenses include: (1) felony drug offenses, (2) bringing in and harboring certain aliens, (3) assisting certain aliens to enter the United States, (4) importing aliens for immoral purposes, (5) crimes of violence, (6) obstruction of justice or witness tampering, (7) identification document fraud, (8) slavery and trafficking in persons, (9) money laundering, and (10) interstate or foreign travel in connection with a racketeering enterprise.

The bill renders members of "criminal gangs" (a) inadmissible to the country; (b) ineligible for asylum, temporary protected status (TPS), special immigrant juvenile status (SIJ), and parole; (c) subject to mandatory detention if in DHS custody; and (d) deportable simply on these grounds alone. H.R. 3697's sister bill, S. 2380, was introduced in the Senate in early 2018 (S. 2380, 2018). At the date of this writing, no further action has happened in the Senate.

This bill is provocative for several reasons. First, although there has long been a connection between gangs and immigration in the United States (Howell, 2018), incorporating the "criminal gang" in a piece of immigration-specific legislation further solidifies the link between immigration and crime. Second, expanding the "criminal gang" definition to include individuals *suspected* of current or former gang membership justifies

targeting anyone who may be linked to a gang, a slippery slope toward authorizing racial and

ethnic profiling.[9]

Moreover, as defined in the bill, the "criminal gang" label is broad enough to capture

mere "associations" or "groups" of individuals who have facilitated the entry of "aliens" into

the United States. Yet, "alien" has a specific meaning under the Immigration and Nationality

Act (INA), the federal law that governs all immigration within the United States. The INA

defines an "alien" as "any individual who is not a citizen or national of the United States"

(INA). Even though the bill implies both a criminality and an illegality of people (i.e.,

immigrants) involved, its text does not specify that the "aliens" in question need lack legal

status (e.g., Green Card, visa, or TPS). Nor does the bill require that members of "criminal

gangs" engage in activities that the average American thinks of when asked to define

"crime." Although unlikely, applying the label of "criminal gang" to a family or religious

organization that has supported individuals in their attempts to come to the United States or,

once they have arrived, is not outside the purview of this bill.[10]

Interestingly, this bill also replicates existing policy and practice under the auspices of

novel, gang-focused legislation. Federal law already contains provisions regarding the

harboring and transportation of aliens (8 U.S. Code § 1324). Similarly, the INA contains

provisions for the mandatory detention and the removal (deportation) of aliens—with or

without legal status—with criminal convictions, including some state-level misdemeanors

(Johnson et al., 2015). Moreover, the government already has the power to detain and deport

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[9] Arizona's infamous S.B. 1070 included similarly ambiguous language that, in effect, authorized such profiling (Sinema, 2012). Although challenged, this section of the bill was upheld in *Arizona v. United States* (2012).
[10] On September 14th, a debate ensued on the House floor to amend H.R. 3697 to include language protecting "innocent religious workers" from deportation; the subsequent motion to include this amendment failed, 220-184 (H.R. 3697 (2017–2018).

immigrants who are suspected of gang membership, even when they have not been convicted or arrested for gang related crimes.

Deportation of alleged (and convicted) MS-13 members throughout the 1990s and into the 2000s, such as that described by some of the gang experts surveyed and interviewed for this study, has been well documented (Diaz, 2009; Funes, 2008; Hagan et al., 2008; Immigrant Legal Resource Center, 2017, 2018; Martinez D'Aubuisson, 2015; McGuire, 2007; Ward, 2013; Wolf, 2014; Zilberg, 2002, 2004, 2007, 2011). Although gang experts with whom we spoke stated that enforcement through deportation in the D.C. metropolitan area is less common than it once was, local news coverage has documented increasing arrests of alleged MS-13 members "only for immigration violations" as opposed to substantive gang-related charges (Miller, 2017; see also Blitzer, 2017; Miroff, 2017).

Nationwide, there is evidence to suggest that gang enforcement through deportation has become institutionalized. Under the Bush administration, Immigration and Customs Enforcement (ICE) launched Operation Community Shield, which prioritized the deportation of gang members from the United States, beginning with MS-13 (Diaz, 2009; McGuire, 2007; Wolf, 2014). The program's stated purpose was the removal of gang members; however, it resulted in the removal of nongang–affiliated immigrants too (Diaz, 2009; Wolf, 2014).

Under the Obama administration, ICE continued prioritizing the deportation of "criminal aliens," including gang members (Conway, 2017; Denvir, 2016). To be deemed a "gang member" in immigration court, the government must provide documentation from police that *suggests* the individual in question *could* be a gang member (Immigration Legal Resource Center, 2017, 2018; Johnson et al., 2015; Narea, 2017; National Immigration Law Center, 2017). The accuracy and verifiability of identifying potential gang members in this context has been repeatedly challenged as insufficient (Thompson, 2017; for a parallel

discussion on suspected gang affiliation and pretrial detention in the criminal courts, see

Howell, 2011). The Trump administration has incorporated these preexisting practices into its

own migration policies (Conway, 2017; see also Lind, 2018; The Economist, 2017; Winston,

2016).

As many have posited (see Cepeda et al., 2012; Menjívar, 2006, 2011; Peguero, 2009;

Saint-Fort et al., 2012; Villalón, 2010; Zatz & Rodriguez, 2015), police collaboration with

ICE—whether through gang enforcement initiatives or otherwise—reduces the likelihood

that victims of, and witnesses to, crime will turn to the police for assistance. More to the

point, as Provine et al. (2016) recently demonstrated, the policing of immigrant communities

to advance deportation-related actions threatens to undermine the core principles of effective

community policing.

Immigration policy aside, our findings hold important implications in regard to both

the quality of gang intelligence and the efficacy of gang databases. Concerns regarding the

validity of law-enforcement gang identification practices have only multiplied in the age of

digital file storage (Howell, 2011; Jacobs, 2009; Katz et al., 2000; Kennedy, 2009; Spergel,

2009). Recording gang affiliation in an intelligence database is controversial because such

databases are the result of discretionary choices by police agencies based on information that

may be limited, ambiguous, dated, or simply inaccurate. Additionally, law enforcement's

"bare allegations" of gang membership are, generally, "tremendously over-inclusive of young

men of color" (Howell, 2011, p. 622). Thus, as Kennedy (2009) outlined, the liabilities with

gang database systems are stark:

> Such databases can be over inclusive, under inclusive, poorly conceived in
>
> particular places, inconsistent from place to place, guided by statutes and
>
> policies that are themselves all of the foregoing, and often implemented in
>
> practice in ways that are inconsistent with these statutes and policies. (p. 711)

Records that are erroneously created are difficult to remove, and the multiple points of access

for a gang database (e.g., local, state, and federal) present a serious challenge to data integrity

and subsequent criminal-justice policy choices (Garland, 2009; Winton, 2016; Wolf, 2014).

MS-13 identification and measurement practices, as described by this study's

respondents, are not spared such concerns (see also Diaz, 2009; Wolf, 2014). The often

ambiguous and discretionary gang identification practices highlighted by gang experts in the

Washington metropolitan area may lead to erroneous gang intelligence and database entries,

which are often difficult to correct (McGuire, 2007). For instance, during one of our gang

specialist interviews, a correctional officer noted—but quickly shrugged off—the

misidentification of an individual's gang affiliation in the agency's gang database. "Someone

must have entered this [incorrectly] at some point," he mused, explaining that while

designated as "MS-13," the individual self-identified as a member of a more localized gang,

with body tattoos and personal artwork as supportive evidence. From a pragmatic standpoint,

current gang identification and labeling practices in the Washington metropolitan area may be

in need of improvement.

To address issues of gang identification and labeling outlined here, law enforcement

might adopt a more nuanced approach to MS-13 interventions. This includes developing a

deeper knowledge of MS-13 recruitment practices and membership as defined by affiliated

individuals, along with the ability to differentiate—in a meaningful way—between members,

recruits, "hang-arounds," and family, friends, and neighbors of individual gang members. The

most senior experts among law enforcement with whom we spoke were able to do just this

and noted the value of using different approaches to crime and safety with these various

groups of interest.

For example, several socio-cultural and linguistic obstacles are involved in accurately

identifying MS-13 members and obtaining related intelligence. The ability of law

enforcement to interact with—and extract information from—identified and alleged MS-13 members and associates is significantly influenced by agencies' Spanish-language capacity. Given the decentralized and localized structure of U.S. law enforcement, Spanish language skills were highly variable across the police agencies with which we spoke. Anecdotally, agencies with demonstrable Spanish-language and cultural competency skills seemed to have more reliable gang intelligence on MS-13, 18th Street, and other local and regional Latino gangs. One gang expert stressed that increasing Spanish-language representation on staff greatly facilitated police work—both that related to MS-13 and in general. "Back [in the 90s we'd get a call and] it was like, 'Can you send a Spanish-speaking officer?' Now we have Spanish-speaking supervisors, patrol officer[s], even a canine. …We have it all. It's like the agency realized we needed those resources [to do our job], so they went out and recruited." Such a nuanced understanding should not only influence law-enforcement approaches toward known and suspected MS-13 members but may also yield improved availability and quality of data.

At the local level, the data from this analysis provide the basis for recommending that law-enforcement organizations review and revise their operationalizations of gang definitions in the context of MS-13 enforcement, as well as generally. Although these definitions seem neutral and straightforward, in practice, the ambiguity that surrounds them may facilitate inaccurate or overinclusive methods of gang member identification. Given the actual and perceived connections between Salvadoran ethnic and immigrant identities and MS-13, this approach to MS-13 enforcement may, unintentionally, result in an overpolicing of young persons of color, who already exist at the intersections of multiple marginalities.

At the state and national level, our findings present a challenge to the use of anti-MS-13 rhetoric as a justification for more restrictive immigration policies aimed at (a) further limiting legal entry to the United States (e.g., visa quotas and refugee and asylum criteria);

(b) expanding the grounds for removal (deportation) from the United States; or (c) limiting immigrants' rights and abilities to participate in society (e.g., restrictions on banking and loans, driving, education, employment, housing, insurance, and welfare assistance). Restrictive immigration policies as a means of gang enforcement may, indeed, facilitate MS-13 recruitment, offending, and victimization (Diaz, 2009; Hagan et al., 2008; Martinez D'Aubuisson, 2015; McGuire, 2007; Ward, 2013; Wolf, 2014; Zilberg, 2004, 2011). Such policies push immigrant communities further into the shadows, creating vulnerable pools of potential gang victims; this is especially true for individuals lacking legal status and their family members (including citizens and those with legal authorization).

As the gang experts with whom we spoke repeatedly stressed, MS-13 in the D.C. metropolitan area targets Central American immigrants because they are less likely to report victimization to the police, fearing that this could lead to their own or a family member's deportation (see also Miller & Morse, 2017). Moreover, restrictive immigration policies often translate to a lack of economic, educational, family, and social support for immigrants and second-generation immigrant youth, which may make them more vulnerable to MS-13 recruitment.

Limitations

U.S. law enforcement is fragmented and decentralized, which presents both virtues and limitations for social science research. Consistent with policing literature involving any form of human subjects research, access is limited to specific law-enforcement agencies whose activities and observable phenomena are unique to those jurisdictions. Substantive

ethnographic and qualitative studies on gangs are similarly difficult to execute.[11] The findings

presented in this article are limited to the voices of law-enforcement professionals from the

handful of law-enforcement agencies operating in the D.C. metropolitan area.

The long-standing presence of a regional gang taskforce, as well as linkages between and

across state and federal law-enforcement agencies in the area under study, may impact these

findings. There seemed to be a substantial amount of collaboration, communication, and

information sharing between law-enforcement agencies that participated in this study,

possibly accounting for some of the agreement and response consistency found across

agencies. It is possible that MS-13 activity elsewhere in the country is qualitatively and

quantitatively different from the data presented here. It is also important to underscore how

interview data reflect the perceptions and self-reported views of the respondents, which may

or may not reflect the true scope and nature of MS-13 activity.

Conclusion

The overcriminalization of people of color has been well documented (Brewer & Heitzeg,

2008; Coates, 2003; Golash-Boza & Hondagneu-Sotelo, 2013; Muhammad, 2011; Simon,

2017; Ward, 2015). Similarly, the overcriminalization of immigrants reflects an ongoing and

iterative historical process of maintaining citizenship—and corresponding national identity—

through the maintenance of variously situated noncitizens (see Allen, 2005; Bosworth et al.,

2018; Golash-Boza, 2015; Hester, 2015; Pickett, 2016). The degree to which MS-13

interventions exacerbate these broader patterns merits further discussion, especially

considering the violence and victimization attributed to this gang. This study speaks to the

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[11] Methodologically strong, data-rich ethnographic studies of gangs, however, do exist (e.g., Flores, 2013; Garot, 2010; Lopez-Aguado 2018; Mendoza-Denton, 2008; Stuart, 2020; Venkatesh, 2008), including a handful of such studies on MS-13 (Martinez d'Aubuisson, 2015; Ward, 2013; Zilberg, 2004, 2007, 2011).

inherent challenges of disentangling efforts to curb gang violence without overpolicing a problematic and overinclusive notion of gang members.

Some Latino immigrants face a double bind: As people of color and immigrants, they are subject to increased suspicion of gang activity and violating immigration laws. Given the gang labeling practices discussed here, it is possible that some arrests, detentions, and deportations on the grounds of MS-13 membership are not justified and that the resources used to accomplish them are misplaced. If the goal of such enforcement actions is to reduce acts of violence attributable to MS-13 in the United States, there is ample room for both incremental and structural reforms.

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