



## WASHINGTON OFFICE ON LATIN AMERICA

*Celebrating 30 years of promoting democracy, human rights and social justice in Latin America.*

To: Colleagues  
From: Geoff Thale, Program Director, Washington Office on Latin America  
Elsa Falkenburger, Program Officer, Central American Gangs Program  
RE: "Criminal Street Gang" Provisions in the Comprehensive Immigration Reform Bill  
Date: March 1, 2006

There is no doubt that youth gangs in Central America, and youth gangs in the United States composed primarily of Central American immigrants or the children of immigrants, pose serious challenges to public security in the U.S. and in Central America. These challenges have to do primarily with domestic law enforcement and violence prevention programs.

The draft Comprehensive Immigration Reform Act of 2006 now in the Senate Judiciary Committee addresses this youth gang problem in two places: in the context of border security and in the context of who can be denied admission to the United States. But youth gangs are a complicated phenomenon, and public policy responses to them need to be carefully considered. The provisions in the immigration bill on youth gangs need to be rethought.

### **Background**

Media treatment sometimes sensationalizes the problem of youth gang violence. Nonetheless, the problem is real, and serious. In Central America, gangs like the Mara Salvatrucha or MS-13, and the 18<sup>th</sup> Street gang engage in extortion, and other criminal activities. And similar groups are a police and public security issue in the United States.

While there is no evidence that these gangs have a coordinated national or international structure, it is clear that gang members and local gang cliques in the U.S. and in Central America are in contact with one another by internet and phone.

**But there is no evidence that there are major issues with gangs based in Central America seeking to penetrate or set up offshoots in the United States. In fact, MS-13 and the 18<sup>th</sup> Street Gang, the two biggest criminal street gangs in Central America, did not originate there. Their roots are in Los Angeles.** Gang researchers agree that 18<sup>th</sup> Street and MS-13 developed in LA in the 1980s among Central Americans who fled the civil wars of that era.

While neighborhood youth gangs have long existed in Central America, groups bearing the names of MS-13 and 18<sup>th</sup> Street don't appear in Central America itself until the mid-1990s. Contacts between gangs in the United States and in Central America developed as Central Americans returned from the U.S., and were strengthened by aggressive U.S. deportation policies that targeted non-citizens who have been convicted of what are legally classified as "violent" crimes. This resulted in the deportation of many young men who were involved in gang activity in the United States; those returns strengthened the ties between gang cliques in the region and in the United States.

In the United States today, many members of gangs made up of Central American immigrant youth grew up here. They may have come without documents as young children accompanying their parents, or they may have been born in the United States of immigrant parents, but they grew up in this country. Many members of gangs like MS-13 and 18<sup>th</sup> Street are not youth who immigrate to the U.S. illegally, then quickly joined gangs. They are long-time residents.

There is no question that some gang members from Central America enter the United States illegally, either to flee from local police, or to become part of U.S. gangs. But most information about this is anecdotal; there is no evidence that the United States is experiencing a major influx of Central American gang members seeking to enter the country, legally or illegally.

It is in the interest of the United States, and in the interest of Central America nations to control gang activity within their borders, and to cooperate in law enforcement across borders. But migration by gang members, while a real issue, is not a major one, and should not be a major topic in the immigration discussion.

## **Immigration Bill Provisions**

### **Border Security**

Youth gangs emerge as an issue in the discussion on border security, in Title One of the bill proposed by Senator Specter. The provisions in Section 114 (c), direct the Secretary of State, in coordination with the Secretary of Homeland Security and the Director of the FBI to cooperate with officials of the Mexican, Guatemalan, Belizean governments, and with “the governments of other Central American countries” to:

- 1) “assess the direct and indirect impact on the United States and Central America of deporting violent criminal aliens;”
- 2) “establish a program and database to track individuals involved in Central American gang activities;”
- 3) develop a mechanism “acceptable” to Mexican and Central American governments to notify those governments when an individual suspected of gang activity will be deported back to those countries, and to “provide support for the reintegration” of deportees;” and
- 4) “develop an agreement to share all relevant information” on individuals connected with Central American gangs.

These provisions could be substantially strengthened in the following ways:

- 1) make more explicit and detailed the “assessment” of the impact in Central America of the policy of deporting “criminal aliens.” Central American governments feel very strongly that the aggressive U.S. deportation strategy has returned to their countries many gang involved young men who have brought U.S. gang culture and gang contacts to Central American, and whose presence has worsened existing problems for them. Scholars in the U.S. have argued that the impact of this deportation policy in terms of both public security and political stability in Central America is severe, and that there are negative implications of that instability for the United States itself.

A useful assessment would gather some factual information from DHS, looking at the deportation of criminal aliens to Mexico and Central America over the last ten years, and distinguishing whether the deportee was an undocumented alien or a non-citizen legal resident, and determining some specifics about the type of crime that made them eligible for deportation.

It would consult with organizations in the Central American immigrant community in the United States to gather their views about the impact on their community of aggressive deportation strategies.

It would consult with U.S. officials, both in the FBI and in local law enforcement agencies, about the extent to which deportation strategies have improved local public security, or strengthened contact between gang cliques transnationally.

It would consult with Ministries of Justice and Public Security, as well as with Foreign Affairs officials in Central America, to assess their views of the impact.

It would make its results public.

- 2) It would be helpful to assess the extent to which Central American street gang members are crossing the border illegally, from Guatemala into southern Mexico, and from Mexico into the United States, rather than depending on anecdotal information. A useful report would gather information from Mexican government officials (and would consult with academic researchers in Mexico who are currently studying this question) about the extent of Central American gang members crossing illegally from Guatemala into Mexico. It would also look at DHS figures on numbers of illegal entrants identified as “gang-involved”, and would seek assessments from local police forces in major cities and from the FBI about the extent of this problem.
- 3) Take into account civil liberties concerns in developing programs and databases to track “individuals involved in Central American gang activities.” Strengthening police and FBI cooperation across borders in order to identify and prosecute gang leaders is an important goal. And keeping appropriate immigration officials in the U.S. and in Central America aware of cross-border migrants who might have criminal records or gang involvement would be helpful in controlling the problem. At the same time, gang membership is not in and of itself a crime, and databases that can be used to exclude people from the United States or identify targets for criminal investigation or prosecution ought not have arbitrary criteria. The draft legislation has two separate provisos that address information sharing on gang members. They should be consolidated, and the concern for civil liberties noted.

- 4) The concern for providing “support for the re-integration of deportees” into their countries should be separated out for emphasis. Many deportees have been young people who lived most of their lives in the United States, and were returned to countries they had left as young children. Re-integration was very difficult for them. Support for re-integration programs is crucial to reducing the likelihood that these young people will return to crime, or seek to return illegally to the United States.

### **Denial of Entry**

Senator Specter’s draft of a Comprehensive Immigration Reform bill includes a section on denial of entry to members of “criminal street gangs;” Senator Coburn may propose amendments to the Specter provisions. Senator Specter’s provision (Section 205) would deny entry to the United States to any alien who “is or has been a member of a criminal street gang” or who has “participated in the activities of a criminal street gang, knowing . . . that such activities promoted . . . the illegal activity of the criminal gang.”

The second clause appropriately denies admission to persons who have engaged in or assisted illegal activity. But the first clause is unnecessarily broad. It makes membership in a gang grounds for denial of admission, without requiring proof that the individual alien engaged in any illegal activity. This is a form of guilt by association.

Because, as noted above, there is no evidence that gangs based in Central America are seeking to send members to the U.S. to organize criminal gangs here, there is no reason to make gang membership *per se* grounds for inadmissibility. The more limited restriction in Section 205 that would make inadmissible any alien who has participated in the activities of a criminal street gang is appropriate and sufficient to deal with the scope of the problem.

Senator Coburn’s suggested amendments would go further. He would deny admission to any alien who is “a member of a criminal street gang and has committed, conspired, or threatened to commit, or seeks to enter the United States to engage solely, principally, or incidentally in a gang crime or any other unlawful activity.” Again, this is an unnecessarily broad restriction. A prohibition that denied admission to an alien who had “participated in the activities of a criminal street gang” would be sufficient.

Senator Coburn offers an extremely broad definition of a “criminal street gang,” then allows the Attorney General to designate groups as “criminal street gangs” and deny admission to any individual who is a member of such a designated group. Again, there is no reason to reach so broadly.

### **Alternative language on border security:**

**The Secretary of State, in coordination with the Secretary and the Director of the Federal Bureau of Investigation, shall work to cooperate with the appropriate officials of the Government of Mexico, the Government of Guatemala, the Government of Belize, and the governments of other Central American countries**

**(1) To conduct an assessment of the extent to which Central American street gang members are crossing the border illegally, from Guatemala into southern Mexico, and from Mexico into the United States. Such an assessment shall consult governmental and academic sources in Mexico, and shall review data from U.S. law enforcement and Department of Homeland Security sources.**

**(2) To conduct an assessment of the direct and indirect impact on the United States and Central America of deporting violent criminal aliens. The assessment shall include a review of the extent of such deportations, the legal status of the deportees, and the types of crimes for which they were deported. It shall assess the impact on the legal Central American immigrant community in the United States, on reducing gang violence in the United States, and on public security and political stability in Central America. It shall be based on consultations with relevant officials in the United States and in Central America, including local law enforcement officials, and its results shall be made available to the U.S. Congress.**

**(3) To develop a mechanism that is acceptable to the governments of Belize, Guatemala, Mexico, the United States and other appropriate countries to notify such a government if an individual suspected of gang activity will be deported to that country prior to the deportation;**

**(4) To develop programs to support the re-integration of such deportees into that country, including working with non-governmental organizations.**