



Mislabeled

Allegations of Gang Membership and
Their Immigration Consequences

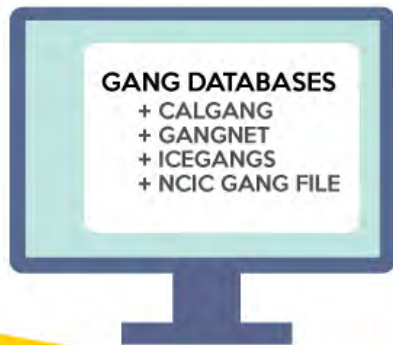
EFFECTS OF GANG ALLEGATIONS: HOW INVESTIGATORY DOCUMENTS HARM PEOPLE



FIELD INTERVIEW CARD (F.I.CARD)
STREET TERRORISM ENFORCEMENT AND PROTECTION NOTICES (S.T.E.P. NOTICES)

INITIAL GANG ALLEGATION

COMPUTERIZED GANG DATABASES



MORE FREQUENT AND MORE CONFRONTATIONAL POLICE CONTACTS



GANG ENHANCEMENTS



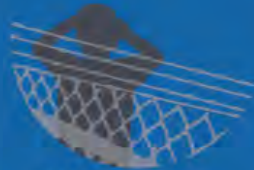
IMMIGRATION CONSEQUENCES OF BEING IN GANG DATABASE



DENIAL OF D.A.C.A.
DEFERRED ACTION FOR CHILDHOOD ARRIVALS



PRIORITIZATION FOR DEPORTATION



WORSE TREATMENT IN IMMIGRATION DETENTION



THREATS OF DEATH IN HOME COUNTRY



DEPORTATION

Mislabeled

Allegations of Gang Membership and Their Immigration Consequences

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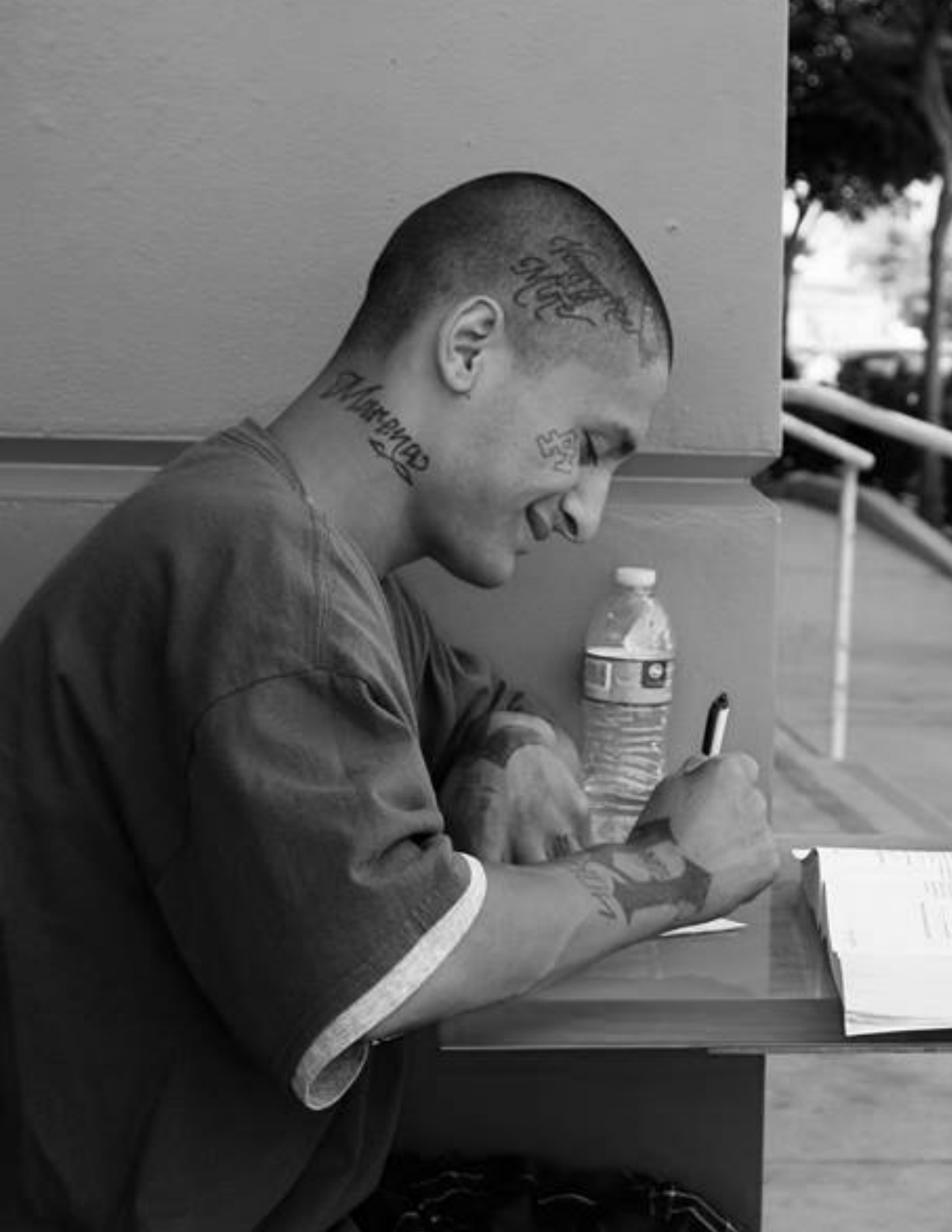
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Handwritten text on the man's forehead, possibly a name or a religious phrase.

Handwritten text on the man's neck, possibly a name or a religious phrase.

Small tattoo on the man's cheek, possibly a religious symbol.



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INTRODUCTION

EXECUTIVE SUMMARY

Gang allegations made by law enforcement agents frequently prevent undocumented immigrants from gaining legal status for which they would be otherwise eligible. These allegations, made without any of the hallmarks of due process, also increase the likelihood an undocumented immigrant will be prioritized for deportation or held in immigration detention. Policy makers, elected officials, and even the law enforcement agents who make these gang allegations are often unaware of the immigration effects of these allegations.

This report documents the findings of the UC Irvine School of Law Immigrant Rights Clinic (IRC) based on the IRC's legal representation of affected immigrants, collaboration with community organizations and other legal service providers, interviews with law enforcement agents, and review of scholarly literature. First, the IRC found that gang allegations have a high risk of error as they are primarily made based on the subjective beliefs of law enforcement agents in the field and are usually made without any connection to a specific crime. This high risk of error is corroborated by the fact that these allegations are overwhelmingly made against African-Americans and Latinos. Second, the IRC learned that these allegations are stored in computer databases that are networked to other agencies, including Immigrations and Customs Enforcement (ICE) and the Department of Homeland Security (DHS). Third, the IRC learned that these allegations negatively affect the eligibility of undocumented immigrants for Deferred Action for Childhood Arrivals (DACA) and other forms of immigration relief. Fourth, the IRC learned that gang allegations also affect the treatment of immigrants held in immigration detention.

Considering these findings, the IRC recommends that law enforcement agencies be required to: (1) provide notice to every person who law enforcement agents document as a gang member, (2) improve existing notice practices, and (3) offer neutral review hearings where people erroneously documented as gang members may contest that documentation. By providing these basic hallmarks of due process to those law enforcement agents suspect of gang membership, the risk of unintended immigration harms to people erroneously documented as gang members can be greatly reduced.

Across California, law enforcement officers routinely document people as gang members based not only on evidence presented in court, but based on the subjective beliefs of officers interacting with people in the field.¹

California's statewide gang database, CalGang, currently holds documentation on approximately 150,000 Californians.² Statistics show that race, gender and age significantly determine who ends up in CalGang. One out of every 40 boys and men of color between the ages of 15 and 34 living in California is documented in CalGang as a gang member.³

Law enforcement officers make allegations of gang membership with little oversight or due process.⁴ This is because documentation is collected primarily for investigative purposes and is not used by prosecutors as direct evidence in court. In many instances, however, this documentation results in significant harms to the people against whom the allegations are made.⁵ One area where this has been particularly true is in the immigration context, where allegations of gang membership can result in serious immigration consequences.⁶

The Immigrant Rights Clinic at UC Irvine School of Law (IRC) provides pro bono legal services to individuals and organizations on critical issues affecting low-income immigrants in Orange County.

In pursuing immigration relief for undocumented clients who are erroneously alleged of gang membership, the IRC has witnessed how existing gang practices create unintended barriers to immigration relief. We have seen our clients endure prolonged stays in detention when detention was otherwise unnecessary, lose eligibility for relief programs such as deferred action, and generally become a priority for deportation in immigration proceedings.

For people facing erroneous allegations of gang membership, these obstacles lead to life-altering consequences, uprooting them from many familial and community relationships with friends and loved ones, places of worship, higher learning institutions, and employers.

Because access to jobs is a vital need for people exiting gangs, creating additional barriers to forms of immigration relief that provide work authorization is counterproductive to the public safety goal of encouraging people to leave gangs.

And for someone who was never a member of a gang, the barriers to immigration relief created by erroneous gang allegations are plainly unfair.

This report will share what we have found in our representation of undocumented immigrants facing erroneous allegations of gang membership and will propose policy recommendations to help protect against future erroneous gang allegations.

We begin with an overview of the processes that California law enforcement agencies use to make gang member allegations, including the ways in which those allegations are stored and accessed. Next, we illustrate how these gang allegations can harm people seeking immigration relief through prosecutorial discretion or who are detained during immigration deportation proceedings.

Finally, we provide recommendations for policy changes to mitigate these harms, including the guarantee of notice and an opportunity to contest the allegations against them. Throughout the report, we have included stories of IRC clients that put a human face to the need for reform of California's gang documentation practices. In these stories, the names of clients have been changed to protect confidentiality.

CALGANG

CALIFORNIA'S STATEWIDE
GANG DATABASE BY THE NUMBERS



THERE ARE APPROXIMATELY



MEN IN CALGANG BETWEEN THE AGES OF 15 AND 34



THAT MEANS THAT OUT OF THE 3,700,000 BOYS AND MEN OF COLOR BETWEEN 15 AND 34





GANG ALLEGATIONS

California law enforcement agencies use multiple processes to document alleged gang membership. In criminal justice proceedings, law enforcement officers and local prosecutors allege gang membership through administrative procedures like arrest documents and plea negotiations. Formal court orders, such as civil gang injunctions, present another way that people are documented as gang members. Typically, however, people are documented as alleged gang members through routine field patrols of law enforcement officers. While due process protections apply to some of these sources, not all of them are subject to regulation or oversight outside of the law enforcement agency itself. Law enforcement agencies also lack regulation and independent oversight regarding how the documentation of alleged gang membership is stored and shared among government offices. Because of the lack of transparency and public accountability, these practices are not well documented.

SOURCES OF GANG ALLEGATIONS

In California, state law enforcement agencies allege gang membership through at least three distinct processes: (1) criminal justice proceedings,⁷ (2) civil gang injunctions,⁸ and (3) field contacts by law enforcement officers.⁹

Criminal Justice Proceedings

There are several ways a person can be identified as an alleged gang member in criminal justice proceedings. Prosecutors or law enforcement agents may allege gang membership when charging someone with a crime, in arrest reports, or in documentation of searches conducted during an investigation. Alternatively, a defendant may admit to gang membership as part of a plea deal, a condition for probation, or in jail or prison intake interviews.

Some types of gang allegations arising from criminal proceedings require law enforcement officers to prove them in court. Examples of such allegations include sentence enhancements for

gang crimes or criminal contempt charges for violations of a gang injunction.¹⁰ However, other types of gang allegations arising from criminal proceedings do not have to be proven in court. For example, law enforcement officers can document gang membership using evidence from arrest reports and search documents.¹¹

There are instances when gang membership is shown relatively clearly by the facts alleged in an arrest report such as when a defendant shouts the name of his or her affiliated gang while perpetrating violence against a rival gang member. But the facts are not usually so straightforward. A law enforcement officer might also allege gang membership in an instance where the officer suspects the criminal defendant committed a domestic battery in retaliation for his victim's romantic affair with a rival gang member. In a situation like this, a prosecutor may charge the crime as a gang crime based solely on the suspicions of investigating officers.

Similarly, alleged gang indicia discovered in searches such as sports gear associated with a local gang, or even gang graffiti, may not be evidence of gang membership. Indicia may be old

or belong to the alleged gang member's friends or family, or it may simply be an expression of urban culture of a type that is commonly mistaken for gang indicia.

In addition to court documents, arrest documents, and search documents, there are other points in criminal proceedings where law enforcement officers document allegations of gang membership. During plea negotiations, prosecutors may offer to reduce a defendant's charges in exchange for a written admission of gang membership or a guilty plea for a charge that demonstrates gang membership. Defendants may find it in their best interests to admit gang

membership in exchange for reduced sentences or immediate release from custody, even if they are not active gang members.

If a person is convicted and incarcerated, jail and prison intake interviews may include questions about gang membership.¹² In these interviews, a person may feel coerced to admit gang membership out of fear of entering jail or prison without the protection of a gang, even if that admission is not true. Admissions of gang membership during an intake interview may be used later as evidence of gang membership.¹³ If a person joins a prison gang for the first time while incarcerated and is only active in the gang during

SERGIO'S STORY – ERRONEOUS ALLEGATIONS

Sergio is an undocumented childhood arrival from Mexico who endured a lengthy immigration detention as a result of erroneous gang allegations. He is currently seeking prosecutorial discretion.

Sergio's parents brought him from Mexico when he was a child. Sergio is now in his twenties and has lived most of his life in a single neighborhood. He is not and has never been a gang member. With the exception of a single arrest for driving without a license, Sergio has never been arrested or charged with a crime. He has a U.S. citizen daughter and, since his own father's deportation, has been a father figure to his younger siblings.

After being arrested and booked for driving without a license, Sergio should have been released but was instead held by police in violation of California's Trust Act and transferred to an immigration detention facility. Once Sergio settled in at the detention facility, he realized that all the other detainees were transferred there as a result of substantially more serious criminal convictions. He was also given a red uniform to wear. Red uniforms are used to signify detainees who pose a greater threat to safety than detainees in orange uniforms.

Sergio wrote a letter to an Adelanto officer asking why he was detained. The officer told Sergio that it was because he was a documented gang member. When Sergio objected that he was not a gang member, the officer told Sergio that ICE believes Sergio is a member of the Hillside gang because he has "H.S." tattooed above one eyebrow. "H.S." is Sergio's daughter's initials. There is no Hillside Gang anywhere in Sergio's county. A Google search of "Hillside gang" reveals two fictional gangs -- Hillside Trece from the movie Training Day and Hillside Posse from the video game Grand Theft Auto. There is also a small, little known gang named Hillside Rivas, but they are in another county.

Despite gang allegations, Sergio is currently out of detention on bond and is petitioning for prosecutorial discretion. His local sheriff's department has admitted they made a mistake when they turned Sergio over to ICE. His case has received a great deal of positive attention, including several news articles and a resolution from his local city council supporting his application for prosecutorial discretion. However, Sergio's alleged gang membership remains an issue in immigration proceedings.

incarceration, that person will remain documented as a gang member even after release.

The final way law enforcement alleges gang membership using criminal procedures is through gang registries similar to sex offender registries. Any defendant who was convicted of a crime with a gang enhancement and who finished serving his or her sentence, must register as a gang member with local law enforcement for 5 years after release, even if that person is no longer a gang member or disagrees they were ever a gang member.¹⁴

Civil Gang Injunctions

The second process through which law enforcement agencies make gang allegations is through civil gang injunctions. Gang Injunctions are civil suits brought by city or county prosecutors against an alleged gang for the purpose of making it easier for law enforcement officers to stop and arrest suspected gang members in a designated "safety zone."¹⁵

Gang Injunctions facilitate law enforcement officers' ability to allege gang membership. A gang injunction will either name alleged gang members individually as parties to the injunction or name the entire gang as a party with a list of people prosecutors allege are active members of the gang.¹⁶ Only recently have courts begun holding hearings to determine whether each person named as a gang member is actually an active participant in the gang.¹⁷ Because these are civil suits, people have no right to a court-appointed attorney in these hearings and rarely come forward to challenge their inclusion in an injunction unless charged with criminal contempt for violating the injunction.¹⁸ Once a court orders an injunction, law enforcement officers may subject new people to the injunction merely by serving them notice.¹⁹

Field Contacts by Law Enforcement Officers

The third method law enforcement agencies use to allege gang membership, field contacts, is by far the most common and usually happens without any court oversight or nexus with a specific crime.²⁰ While law enforcement officers sometimes document people as gang members based on evidence obtained as a result of targeted investigations, documentation is more often based on untargeted consensual or investigatory stops in the field.²¹

In targeted investigations against a gang or an individual, law enforcement agencies may conduct warranted searches, conduct undercover operations, or interview confidential informants.²² Based on the results of these investigatory actions, law enforcement agencies can then allege gang membership not only against the targeted person under investigation, but against anyone else they come to believe is a gang member during the course of their investigation.²³ And during the more common untargeted consensual or investigatory field stops, gang allegations may be made on evidence as slight as wearing a baggy white t-shirt and standing in the courtyard of one's apartment if an officer believes that indicates gang clothing and presence in a gang area.²⁴

Local law enforcement agencies are not bound by any legal limits or state oversight as to who they can document as gang members unless that documentation is entered into a gang database shared with other agencies or a database subject to federal privacy rules.²⁵ If a law enforcement agency enters this documentation into CalGang, the allegation of gang membership must be justified by at least two of nine criteria.²⁶ However, these criteria are as easily met as "seen affiliating with documented gang members," "seen frequenting gang areas," or "seen wearing gang dress."²⁷ Although law enforcement officers maintain this

documentation is collected only in stops that are consensual or supported by reasonable suspicion, alleged gang members and defense attorneys have found that the consensual stops are rarely consensual and the investigatory stops are rarely based on objectively reasonable suspicion.²⁸

RECORDING OF GANG ALLEGATIONS

Allegations of gang membership made in consensual and investigatory stops are documented in what are commonly called field investigation or field interview cards (F.I. cards) or Street Terrorism Enforcement and Protection notices (S.T.E.P. notices).²⁹

F.I. cards are typically index cards that officers fill out after consensual or investigatory stops.³⁰ Officers fill out F.I. cards for many reasons besides gang documentation, but many law enforcement agencies' blank F.I. cards include check boxes for alleging gang membership.³¹

S.T.E.P. notices are typically letter-sized forms that are specifically used to document allegations of gang membership and include more details related to gang membership than F.I. cards.³² Suspects may be asked to sign a S.T.E.P. notice or give consent to be photographed when served with the notice.³³ Alleged gang members complain that officers often ignore the consent requirement and that signatures are rarely, if ever, given knowingly and voluntarily.

Law enforcement agencies retain the F.I. cards and S.T.E.P. notices and may enter the information from them into "gang books" or into electronic databases commonly described as "in-house" or "local" databases.³⁴ So long as this gang documentation is kept within the agency and used solely for investigatory purposes, there is no requirement that agencies give notice of the documentation to the alleged gang member and the alleged gang member has no right to contest the documentation.³⁵

If the documentation is to be shared outside the agency, the documentation may be subject to laws governing the sharing of confidential investigatory documents and the use of shared gang databases.³⁶ However, these laws do not prevent law enforcement agents from sharing this gang documentation directly with other law enforcement agencies when there is a right to know and a need to know.³⁷ This includes providing documentation to Immigration and Customs Enforcement (ICE).³⁸ Agencies have also been accused of unlawfully sharing this documentation directly with housing authorities and employers.³⁹

In addition to providing gang documentation directly to other law enforcement agencies upon request, gang documentation is made available to other agencies through shared gang databases.⁴⁰ Beginning in the 1990s, the Los Angeles County Sheriff began keeping gang documentation in an electronic database called the Gang Reporting Evaluation and Tracking (G.R.E.A.T.) database.⁴¹ This database was replicated by other law enforcement agencies across the state, which was then networked together as the CalGang database.⁴²

CalGang runs on a privately developed software called GangNet which is also used by other law enforcement agencies across the country.⁴³ Through GangNet, a database in one jurisdiction can be searched by a law enforcement agency in another. The databases are networked together so that a law enforcement agent with access to any GangNet database can also search the contents of the other GangNet databases.⁴⁴ For example, a law enforcement agent with access to ICEGangs, the GangNet database managed by ICE, can also search CalGang.⁴⁵

Unlike local law enforcement agencies use of in-house databases for investigatory purposes, there are some restrictions to the use of CalGang.⁴⁶ Juveniles and their parents must be

given notice when a juvenile is documented as a gang member in CalGang and juveniles have the right to contest their inclusion in CalGang.⁴⁸ People have the right to request information about their CalGang file from their local law enforcement agency, though some law enforcement agencies maintain this right extends only to juveniles. It is also unclear whether a local law enforcement agency must share information regarding gang documentation in CalGang entered by a different local law enforcement agency.

CalGang also has purge requirements. If a person has no new gang documentation recorded in a five-year period, that person's information should be purged from CalGang.⁴⁹ However, a single F.I. card entered within that five years will

restart the five year purge period.⁵⁰

Because CalGang is designed with such a low threshold for entry, merely having an entry in CalGang should not alone be used as evidence of gang membership.⁵¹ CalGang developed out of the earlier G.R.E.A.T. database, which was recognized as significantly over-inclusive.⁵² Advocates of the over-inclusive approach to gang databases claim that including a greater number of people makes the database more useful for investigations.⁵³ Those advocates further claim that limiting the use of the database to only law enforcement officers with a right-to-know and a need-to-know provides sufficient protection against harms to people erroneously accused of gang membership.⁵⁴

Because of the risk that CalGang is over-

OMAR'S STORY – NO EFFECTIVE MEANS OF CHALLENGING OLD ALLEGATIONS

Omar is a former gang member who considered petitioning his local District Attorney for removal from a gang injunction. However, because he has no right to notice of allegations of gang membership by law enforcement, he is unable to discover the evidence against him or defend himself against erroneous allegations.

Omar is a migrant from Mexico who lawfully resides in the United States under the Convention Against Torture. When he was a teenager, nearly twenty years ago, Omar was member of a gang and was convicted of crimes resulting from his participation in the gang. After a short prison sentence as a young adult, Omar left the gang and moved out of the neighborhood. Omar still lives away from the neighborhood of his old gang and has worked full time at the same job for most of the last decade. He has not been arrested for a gang crime in nearly twenty years.

Even a few years after leaving the gang and moving to a new neighborhood, Omar was added to a gang injunction against his former gang based on old information. Despite the years since he left the gang, and despite the length of time he has gone without an arrest, Omar still remains subject to a gang injunction and is stopped at least every few years and questioned by police. Based on his visible tattoos, his ethnicity, and his general appearance, Omar believes police continue to erroneously document him as an active gang member after each of these stops. Since he has never gone more than five years without being questioned by the police, Omar believes he has never been purged from the gang database and is unlikely to ever be purged.

Omar would like to take advantage of his county's informal process for requesting removal from the gang injunction. However, he does not know what documentation of erroneous allegations of gang membership is kept in law enforcement files and so he cannot refute any allegations as part of his removal request. Omar had decided not to request removal from the injunction at this time.

inclusive, it is CalGang policy that an entry in the CalGang database should not be used as evidence of gang membership, but CalGang should instead be used only as a way of accessing source documents such as F.I. cards that might independently indicate gang membership.⁵⁵ In fact, it is CalGang policy that the name “CalGang” not be placed in reports, memorandums, correspondence, statements of facts, or similar documents.⁵⁶

In addition to sharing gang documentation through CalGang and its networked GangNet databases, California law enforcement agencies also share gang documentation through the National Crime Information Center’s Violent Criminal Gang File (NCIC Gang File), maintained by the Federal Bureau of Investigation.⁵⁷ The NCIC manages twenty-one separate databases, referred to individually as files.⁵⁸ These files include, for example, a stolen vehicle file, a

missing persons file, an immigration violator file, and the like.⁵⁹ The NCIC files have been described as “the lifeline of law enforcement,” in part because these are the files most commonly accessed by police officers on their patrol cars’ laptop computers.⁶⁰

The NCIC Gang File is populated by records entered by cooperating law enforcement agencies and is searchable by any cooperating law enforcement agency.⁶¹ The NCIC Gang File’s guidelines for entry and purge of gang documentation is similar to those of CalGang, but without the juvenile notice requirement.⁶² While the NCIC criteria for entry includes gang dress and presence in a gang area, the NCIC criteria also demands that at least one of the following additional criteria be met: self-admission, arrests for gang activity, or allegations of membership by an informant.⁶³



IMMIGRATION HARMS RESULTING FROM GANG ALLEGATIONS

Harms that result from erroneous gang allegations range from increased scrutiny by police to enhanced punishment for criminal convictions. For undocumented people seeking immigration relief, erroneous gang allegations can have severe consequences in immigration proceedings. Specifically, we have found such allegations greatly compromise applications for relief such as DACA and unnecessarily prolong people's stays in immigration detention.

HARMS IN APPLICATION FOR PROSECUTORIAL DISCRETION, U VISAS, AND SPECIAL IMMIGRANT JUVENILE STATUS

Allegations of gang membership are particularly problematic for undocumented immigrants who would otherwise have a strong case for prosecutorial discretion and similar immigration relief based on the person's equities. This is because the decision of whether or not to grant relief, as the name prosecutorial discretion implies, relies entirely on the discretion of individual immigration officials and is not subject to judicial review.⁶⁴

Prosecutorial discretion is a type of alternative to deportation granted by the Department of Homeland Security (DHS) in cases where a noncitizen is deemed not to be a priority for deportation.⁶⁵ Prosecutorial discretion can take various forms. For example, DHS could decide not to initiate deportation proceedings against a noncitizen, stay a final deportation order, or move for an administrative closure of deportation proceedings.⁶⁶

For undocumented immigrants with any kind of criminal history, prosecutorial discretion has become an increasingly important opportunity for immigration relief. This is because

immigration law extensively relies on criminal history to make deportation decisions.⁶⁷ In a system that has few outlets for equitable discretion, undocumented immigrants with even minor crimes in their criminal history can easily find themselves facing automatic deportation.

DHS's exercise of prosecutorial discretion impacts populations differently. Undocumented immigrants that DHS deems to present a threat to national security, border security, public safety, or the integrity of the immigration system are not eligible for prosecutorial discretion and receive top priority for deportation.⁶⁸ However, undocumented immigrants with close ties to the United States, such as having family in the U.S., attending school in the U.S., or serving in the U.S. military, receive favorable prosecutorial discretion and are not given top priority for deportation.⁶⁹

One form of prosecutorial discretion is deferred action, which effectively serves as a promise on the part of the federal government that it will not attempt to deport a person for a certain amount of time.⁷⁰ Deferred action does not grant an immigrant any legal status in the United States but temporarily eliminates the threat of deportation. A person with deferred action can also apply for work authorization and other benefits, such as a driver's license.⁷¹ DHS

has created formal procedures to apply for deferred action for immigrants who fall into certain categories -- Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA).⁷² DAPA and an expansion to DACA are currently suspended pending a court challenge.⁷³ However, the previous DACA program is still in effect.⁷⁴

There is a significant risk in applying for prosecutorial discretion.⁷⁵ Applications require

that undocumented immigrants come out of the shadows and present themselves to DHS as undocumented immigrants currently living in the United States.⁷⁶ For undocumented immigrants facing erroneous allegations of gang membership, this could be especially risky. Applications for prosecutorial discretion may bring allegations of gang membership to the attention of DHS that would have otherwise been unnoticed. As a result, DHS could initiate deportation

CLAUDIO'S STORY - FEAR OF APPLYING FOR PROSECUTORIAL DISCRETION

Claudio is a strong candidate for deferred action but has not applied because he fears that erroneous gang allegations will result in a denial of his petition and possibly make him a priority for deportation.

Claudio was brought to America by his family when he was a child. He has never been charged with a crime, but he did join a gang for several years when he was an adolescent. During that time, he received gang tattoos, including tattoos visible on his face and neck. But after marrying and starting a family, Claudio left his gang. Claudio now works full time and is an active father to his children. Despite leaving the gang, Claudio continues to be regularly stopped and interviewed by police. Because of his permanent tattoos and residence in a high crime neighborhood, each of these police contacts could justify restarting the clock on any gang database purge date.

Additionally, there is one officer who Claudio believes has a personal vendetta against him and who could be ensuring that Claudio's gang documentation is never purged. On one occasion when Claudio was driving his daughter to school, this officer arrested Claudio because Claudio fit the description of a murder suspect. During the arrest, the officer spit in Claudio's face. After a commander came out and determined Claudio was not the suspect they were looking for, the commander reprimanded the officer in front of other officers and Claudio. Claudio believes this officer may be regularly and falsely documenting Claudio as an active gang member as an act of retribution.

As a result, Claudio believes it likely that he will continue to be designated as a gang member despite never having been convicted of a crime and no longer being a member of a gang. Because of this, Claudio and his wife avoid letting Claudio drive with his children in the car for fear of police conduct if Claudio is stopped.

As a childhood arrival with no criminal history, Claudio should be a strong candidate for deferred action. But because he worries that the DHS attorney that reviews his petition will discover erroneous gang allegations, Claudio is afraid to apply. His local police department agreed to tell him if they have designated him a gang member in CalGang, but not to tell him if other jurisdictions have designated him or if DHS will know through a shared database that another agency has designated him a gang member. Claudio's local law enforcement agency claims he is not currently entered in CalGang by them. However, because of the many possible ways erroneous allegations of gang membership might be presented to DHS, as of now, Claudio has not applied for deferred action.

proceedings since gang allegations can justify prioritizing a person for deportation.⁷⁷ Furthermore, undocumented immigrants must make the decision whether to apply for prosecutorial discretion without adequate information.⁷⁸ As described above, gang allegations may be made and shared with DHS in a variety of ways. Often, the allegations occur without notice to the person or scrutiny from public disclosure laws. Because prosecutorial discretion is subject to so little review and because so little of the decision making process is shared, it is unknown how often erroneous gang allegations lead to refusals of prosecutorial discretion or to people becoming priorities for deportation from the United States. However, the threat alone is significant enough to prevent many immigrants from applying.⁷⁹

Undocumented immigrants facing erroneous allegations of gang membership face an additional dilemma when applying for DACA relief. The DACA application requires applicants to state whether they are or have ever been a member of a gang.⁸⁰ Not only does DHS prioritize gang members for deportation, DHS also prioritizes the deportation of DACA applicants who make false statements on their applications.⁸¹ If an applicant denies gang membership but is erroneously documented as a gang member, the applicant may be made a priority for deportation if the DHS attorney believes the applicant is lying. Thus, an applicant who has been erroneously documented as a gang member risks being made a priority for deportation whichever answer they give.

Gang allegations can also adversely impact other applications for relief from deportation that use equitable discretion like U Non-Immigrant Status (U Visa) and Special Immigrant Juvenile (SIJ) petitions.⁸² U Visas are visas offered to victims of crimes in the United States, and in some cases, to the victim's children.⁸³ SIJ grants legal status to qualifying unaccompanied

minors.⁸⁴ In both cases, there are some inadmissibility criteria, such as past criminal convictions, that can bar a person from qualifying for legal status.⁸⁵ While courts can waive the inadmissibility requirements, prosecutors may use gang allegations as a reason to oppose a waiver.⁸⁶ As with DACA, it is unknown how often this happens.

EFFECTS OF GANG ALLEGATIONS ON IMMIGRATION DETENTION

Immigration detention is the incarceration of a person while awaiting a determination of his or her immigration status or deportation order. In 1996, Congress required the mandatory detention of noncitizens convicted of a wide range of criminal offenses, including minor ones.⁸⁷ Recent court decisions, however, now allow detainees to receive an individualized bond hearing after 180 days of detention.⁸⁸

At the individualized bond hearings, an immigration judge decides whether a detainee poses a flight risk or is a danger to the community.⁸⁹ If the judge determines that the detainee is not a flight risk or danger to the community, the judge will grant bond and/or place the detainee under supervised release.

A detainee who is erroneously alleged to be a gang member may be unnecessarily detained for long periods of time and foreclosed of the opportunity to be released out on bond because of the gang allegations.

DHS prosecutors may use gang allegations as evidence that the detainee is a danger to the community and should not be released, or should be released only upon posting an extraordinarily large bond.⁹⁰ DHS prosecutors may also point to gang membership as evidence of a support network able to assist the detainee in flight from the court's jurisdiction.

In some courts, DHS prosecutors do not even need to expressly state that a detainee is affiliated

with a gang in order for the allegation to negatively influence a bond determination. Because DHS offices and detention facilities often color code the folders and uniforms of detainees they believe are higher risk, a DHS prosecutor

needs only to call attention to the color of the folder that corresponds to the detainee's case or uniform.⁹¹ A judge might interpret the color of the folder or uniform as evidence of gang membership and either raise or deny bond on

EDUARDO'S STORY – GANG ALLEGATIONS IN IMMIGRATION BOND HEARINGS

Eduardo was deported to Mexico from the United States in 2015 as a result of having been erroneously identified as a gang member by law enforcement.

Eduardo was brought to America by his parents when he was pre-school age. While growing up in America, both parents picked fruits and vegetables full-time in nearby farms. As a result, Eduardo was mostly raised by an older brother who was a hardcore gang member. Eduardo grew up influenced by his brother's style and surrounded by gang graffiti in his home. When Eduardo was still in elementary school, Eduardo began sneaking into neighbors' houses and taking small items. When Eduardo was arrested for this at 13 years old, his home was searched. Based on the gang graffiti his brother left around the house, the city attorney added Eduardo to a gang injunction. Eduardo was not a member of his brother's gang at that time because his older brother considered him too young to be recruited.

Several years after being added to the gang injunction, and after several incidents where Eduardo found himself treated like a gang member by law enforcement agents, Eduardo joined his brother's gang. But after a few years, Eduardo began distancing himself from the gang to spend more time with his girlfriend. Soon after, the two had a son together. Eduardo's son was born with developmental delays and Eduardo began spending all his free time caring for his son and taking his son to therapy sessions. After his son's birth, Eduardo left the gang entirely. Eduardo's girlfriend and son are both U.S. citizens.

During this same time, Eduardo's mother petitioned for deferred action for Eduardo under DACA. This was complicated by several non-gang related criminal convictions Eduardo received as a teenager and young adult, but his family retained a lawyer who was working on Eduardo's application. Then, in 2013, Eduardo was arrested for wearing a borrowed sweater with a Cowboys' football logo and for possession of stolen property. Wearing a Cowboys sweater was a crime because, despite leaving the gang, Eduardo was still named in a gang injunction that considered the Cowboys logo a gang insignia.

These convictions were a setback to his deferred action application, but with some time, they could have been expunged and his application could have gone forward. However, at his first bond hearing in immigration detention, the DHS attorney accused Eduardo of being a danger to the community because he was a gang member. Eduardo was denied bond. Later, Eduardo received a copy of the I-213 form the DHS attorney used in that hearing. That form alleged, in all capital letters, that Eduardo was a gang member but gave no evidence for that allegation. The immigration judge denied bond, thereby speeding up the timeline for Eduardo's deportation and making it impossible for him to expunge his convictions and apply for deferred action before a final deportation order. In 2015, Eduardo was deported to Mexico, a country he had not seen since before kindergarten, separating him from his son and his son's mother.

that basis. Even if the court does not deny bond because of gang allegations but only increases the bond, a prohibitively high bond will force the respondent to remain in detention the same as if bond had been denied.

While detainees can challenge the DHS's allegations of gang membership, most do not because they lack the financial resources to retain attorneys for bond hearings.⁹² Detainees often rely on pro bono legal orientation programs in detention facilities to help them prepare for bond hearings, but these programs are ill-equipped to adequately prepare detainees to argue the admissibility of gang allegations.⁹³

Furthermore, the Sixth Amendment guarantee of the right to confront witnesses does not apply in immigration court and so detainees have no right to question law enforcement officers who document gang allegations.⁹⁴ Additionally, respondents will rarely, if ever be adequately prepared to respond to gang allegations at bond hearings because there is no right to prior discovery of the evidence that will be presented at the hearing.⁹⁵

Not being able to post bond has consequences for the detainee's ability to pursue the merits of his deportation case. Detained respondents who do not post bond will often have years less time to make their case to remain in the United States,

more difficulty accessing legal resources, and greater challenges keeping ties to their community that could be useful for their case.⁹⁶

Moreover, detainees will also have to endure the hardships of being locked up in prison-like conditions — including distance from family, friends, and community; loss of purpose; and traumatizing feelings of humiliation and powerlessness.⁹⁷

Unfortunately, denial of bond or a prohibitively high bond is not the most serious harm a respondent might face as a result of gang allegations. The most serious harm in immigration detention comes when ICE agents threaten to share gang allegations with a detainee's home country.⁹⁸ Alleged gang members originally from Mexico or Central America face an alarming likelihood of extra-judicial murder in their home country or murder by feuding criminal gangs.⁹⁹ While these threats by ICE agents are unlawful, complaints of these threats have been sustained against ICE in court.¹⁰⁰ And even if the ICE agents making these threats have no intention of actually following through on them, the very real possibility of death may compel respondents to agree to voluntary departure or to whatever demands are made of them.



Los Angeles

POLICY RECOMMENDATIONS

Considering law enforcement agencies' practice of sharing investigatory information, the high risk of erroneous gang allegations, and the prejudicial effect of gang allegations, current practices intended to protect the rights of people erroneously accused of gang membership are insufficient.

The right to due process of law for people erroneously accused of gang membership can only be satisfied by requiring that law enforcement agencies give alleged gang members notice of gang documentation and an opportunity to contest allegations of gang membership.

1. Expand Notice Rights

Under current law, notice rights are given to juveniles documented as gang members in CalGang. This right should be expanded to adults and include all documentation of gang membership by law enforcement agencies, not just allegations entered into a shared database.

2. Improve Notice Practices

Ideally, notice should be provided in person, as is the practice of law enforcement agencies that serve S.T.E.P. notices to alleged gang members. However, due to the inherent coerciveness of in-person service by a law enforcement officer, alleged gang members should not be asked to consent to documentation as gang members or asked to waive their right to contest gang allegations when served with notice.

3. Offer Neutral Review Hearings

Contests to gang allegations might begin with a written request for review by the law enforcement agency making the allegation. However, that agency's determination should be

appealable in a hearing before a neutral adjudicator. This adjudicator should not be a law enforcement officer but should instead be an independent arbiter. Hearings should include a right of the alleged gang member to discovery of any evidence to be used against him or her in advance of the hearing. Decisions should be appealable in state court.

We recognize that a requirement of notice and hearings could chill the collection of some investigatory documents that effectively serve the public interest and promote public safety. If law enforcement agencies continue to document hundreds of thousands of people as gang members, providing notice and hearings to all of them could become impossibly burdensome. However, this is only the case if law enforcement agents continue to maintain vastly over-inclusive databases of gang allegations. If law enforcement agencies were to limit the people documented as active gang members only those whose membership can be proven and instead document other people as merely associated with a gang, the burden of notice and hearing rights would be greatly reduced.

Because we at the IRC have found clear, documented harms resulting from allegations of gang membership made by law enforcement agents outside of any judicial process, we believe notice and an opportunity for a hearing must be provided whenever law enforcement agents document a person as an active gang member. Anything less fails to uphold the principles of due process on which our immigration and criminal justice systems depend.

ENDNOTES

¹ See Watkins, Derrick and Richard Ashby, *Gang Investigations: A Street Cops Guide*, AMERICAN SOCIETY FOR LAW ENFORCEMENT TRAINING (2007); Anderson, John and Mark Nye, “Investigating the Gang Case: Law Enforcement’s Impact on Successful Prosecution” in *Gang Prosecution Manual*; NATIONAL YOUTH GANG CENTER (July 2009), available from the U.S. Department of Justice at <https://www.nationalgangcenter.gov/content/documents/gang-prosecution-manual.pdf>; Hufstader, Rebecca, *Immigration Reliance on Gang Databases: Unchecked Discretion and Undesirable Consequences*, 90 NEW YORK UNIVERSITY LAW REVIEW 671 (2015), available from New York University at <http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-90-2-Hufstader.pdf>; Alarcon, Daniel, *How Do You Define a Gang Member?*, NEW YORK TIMES MAGAZINE, May 27, 2015 available from the New York Times at http://www.nytimes.com/2015/05/31/magazine/how-do-you-define-a-gang-member.html?_r=0; Winston, Ali, *You May Be In California’s Gang Database and Not Even Know It*, REVEAL NEWS, March 23, 2016 available from Reveal News at <https://www.revealnews.org/article/you-may-be-in-californias-gang-database-and-not-even-know-it/>.

² As reported in a response to a 2015 Public Records Act request to the CalGang Executive Board, *on file with the UC Irvine School of Law Immigrant Rights Clinic*.

³ This statistic was derived by comparing the 2015 Public Records Act request to the CalGang Executive Board with census data from www.census.gov. According to this data, there are approximately 5,600,000 men in California between the ages of 15 and 34. Subtract from that number the approximately 1,900,000 white, non-Hispanic men between the ages of 15 and 34 and the result is 3,700,000 men of color between the ages of 15 and 34. There are approximately 106,000 men between the ages of 15 and 34 in CalGang. Subtract from that number the approximately 7,000 white men between the ages of 15 and 34 in CalGang and the result is 99,000 men of color between the ages of 15 and 34 in CalGang. Dividing the 99,000 in CalGang from the 3,700,000 total results in approximately one in 40.

⁴ See Hufstader, *supra*; Anderson and Nye, *supra*, (discussing gang documentation regulations and recommendations for agency policies in the absence of regulations).

⁵ See Hufstader, *supra*; Youth Justice Coalition, *Tracked and Trapped: Youth of Color, Gang Databases and Gang Injunctions* (December 2012), available from the Youth Justice Coalition at <http://www.youth4justice.org/wp-content/uploads/2012/12/TrackedandTrapped.pdf>; Brown, Rebecca Rader, *The Gang’s All Here: Evaluating the Need for a National Gang Database*, 42 COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS 293 (Spring 2009); Chacon, Jennifer M., *Whose Community Shield?: Examining the Removal of the Criminal Street Gang Member*, UNIVERSITY OF CHICAGO LEGAL FORUM: Vol. 2007, Article 11 (2007); Wright, Joshua, *The Constitutional Failure of Gang Databases*, 2 STANFORD JOURNAL OF CIVIL RIGHTS AND CIVIL LIBERTIES 115 (November 2005); Leyton, Stacey, *The New Blacklists: The Threat to Civil Liberties Posed by Gang Databases*, in CRIME CONTROL AND SOCIAL JUSTICE: THE DELICATE BALANCE edited by Darnell F. Hawkins, Samuel L. Myers Jr., and Randolph N. Stone (2003).

⁶ Hufstader, *supra*; *Prosecutorial Discretion: How to Advocate for Your Client*, AMERICAN IMMIGRATION COUNCIL (March 18, 2015), available at http://www.legalactioncenter.org/sites/default/files/pd_overview_final.pdf; Cabrera, Yvette, *Troubled Past Force Hard Choices for Some Undocumented Immigrants*, VOICE OF OC, February 8, 2016, available from the Voice of OC at <http://voiceofoc.org/2016/02/troubled-pasts-force-hard-choices-for-some-undocumented-immigrants/>.

⁷ California Penal Code §§ 186.20 et seq; *People v. Lopez*, 66 Cal. App. 4th 615, 623 (1998).

⁸ See Caldwell, Beth, *Criminalizing Day-to-Day Life: A Socio-Legal Critique of Gang Injunctions*, 37 AMERICAN JOURNAL OF CRIMINAL LAW 241(2010); Shiner, Max, *Civil Gang Injunctions: A Guide for Prosecutors*, AMERICAN PROSECUTORS RESEARCH INSTITUTE (2009) available from the National District Attorneys Association at http://www.ndaa.org/pdf/Civil_Gang_Injunctions_09.pdf; Werdegar, Matthew Mickle, *Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs*, 51 STANFORD LAW REVIEW 409 (1999); Atkinson, Scott E., *The Outer Limits of Gang Injunctions*, 59 VANDERBILT LAW REVIEW 1693 (2006).

⁹ Hufstader, *supra*; Watkins and Ashby, *supra*; Anderson and Nye, *supra*; Youth Justice Coalition, *supra*; Brown, *supra*; Wright, *supra*. Joshua, *supra*; Leyton, *supra*.

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- ¹⁰ California Penal Code §§ 186.20 et seq; California Penal Code § 166 (a) (9).
- ¹¹ Watkins and Ashby, *supra*.
- ¹² *Id.*
- ¹³ See Watkins and Ashby, *supra*; *Policies and Procedures for the CalGang System*, CALIFORNIA GANG NODE ADVISORY COMMITTEE (2007), available from the State of California Department of Justice at https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/policy_procedure.pdf?.
- ¹⁴ California Penal Code § 186.30.
- ¹⁵ Caldwell, *supra*; Shiner, *supra*; Werdegar, *supra*; Atkinson, *supra*.
- ¹⁶ Atkinson, *supra*.
- ¹⁷ See Cabrera, Yvette, *Judge: Residents Owed Due Process in Gang Injunction Case*, VOICE OF OC (November 20, 2014), available from the Voice of OC at <http://voiceofoc.org/2014/11/judge-residents-owed-due-process-in-gang-injunction-case/>.
- ¹⁸ Jones, Alexander, *Family Ties or Criminal Contacts: A Case for the Appointment of Counsel in Civil Gang Injunction Proceedings That Affect Family Relationships*, 39 GOLDEN GATE UNIVERSITY LAW REVIEW 41 (2016).
- ¹⁹ Shiner, *supra*.
- ²⁰ See Hufstader, *supra*; Watkins and Ashby, *supra*; Anderson and Nye, *supra*; Youth Justice Coalition, *supra*; Brown, *supra*; Wright, *supra*. Joshua, *supra*; Leyton, *supra*.
- ²¹ See *id.*
- ²² Watkins and Ashby, *supra*; Anderson and Nye, *supra*.
- ²³ See *id.*
- ²⁴ See Watkins and Ashby, *supra*; California Gang Node Advisory Committee, *supra*.
- ²⁵ See Hufstader, *supra*; Anderson and Nye, *supra* (discussing gang documentation regulations and recommendations for agency policies in the absence of regulations); California Penal Code § 186.34; Title 28 Code of Federal Regulations Part 23.
- ²⁶ California Gang Node Advisory Committee, *supra*.
- ²⁷ *Id.*
- ²⁸ See Katz, Charles M. and Vincent J. Webb, POLICING GANGS IN AMERICA at 207-209, Arizona State University (2006).
- ²⁹ See Watkins and Ashby, *supra*; Anderson and Nye, *supra*; Youth Justice Coalition, *supra*; Brown, *supra*; Wright, *supra*; Joshua, *supra*; Leyton, *supra*.
- ³⁰ See Watkins and Ashby, *supra*; Anderson and Nye, *supra*.
- ³¹ See Watkins and Ashby, *supra*; Anderson and Nye, *supra*; for a photograph of an LAPD field interview card showing space for gang allegations see Stoltz, Franke, *LAPD's Elite Metro Squad Swarms High Crime Neighborhoods Armed with 'Reasonable Suspicion'*, KPCC (May 26, 2015), available from KPCC at <http://www.scpr.org/news/2015/05/26/51920/lapd-s-elite-metro-squad-swarms-high-crime-neighbo/>.
- ³² Watkins and Ashby, *supra*; Anderson and Nye, *supra*.
- ³³ *Id.*
- ³⁴ Anderson and Nye, *supra*.
- ³⁵ See Hufstader, *supra*; Anderson and Nye, *supra* (discussing gang documentation regulations and recommendations for agency policies in the absence of regulations); California Penal Code § 186.34; Title 28 Code of Federal Regulations Part 23.

³⁶ See *id.*

³⁷ See *id.*

³⁸ *Memorandum of Understanding Between the Department of Homeland Security, Immigration and Customs Enforcement and California Department of Justice, Criminal Intelligence Bureau Regarding the Sharing of Information Relating to Criminal Street Gangs* (2005), made available in response to a 2015 Public Records Act request to the California Department of Justice, on file with the UC Irvine School of Law Immigrant Rights Clinic.

³⁹ See Youth Justice Coalition, *supra*.

⁴⁰ See Hufstader, *supra*; *Memorandum of Understanding*, *supra*; Anderson and Nye, *supra*.

⁴¹ Anderson, Dacia, *Penal Chapter 797: Un-handcuffing Minors from the Gang Life*, 45 MCGEORGE LAW REVIEW 561 (2014), available from McGeorge University at <http://www.mcgeorge.edu/Documents/Publications/penalty2-3-14.pdf>.

⁴² *Id.*

⁴³ SRA International, Inc., *supra*.

⁴⁴ *Id.*

⁴⁵ See SRA International, Inc., *supra*; *Memorandum of Understanding*, *supra*.

⁴⁶ See California Penal Code § 186.34.

⁴⁷ SRA International, Inc., *White Paper: GangNet Software* (2013) available from CSRA at http://www.csra.com/legacy/media/gangnet/GangNet8_WhitePaper2013.pdf

⁴⁸ *Id.*

⁴⁹ California Gang Node Advisory Committee, *supra*; Hufstader, *supra*.

⁵⁰ See *id.*

⁵¹ See *id.*

⁵² See Ira Reiner, Office of the Dist. Att’y of LA, *Gangs, Crimes, and Violence in Los Angeles* (1992); Charles M. Katz, *Issues in the Production and Dissemination of Gang Statistics: An Ethnographic Study of a Large Midwestern Police Gang Unit*, 49 CRIME AND DELINQUENCY 485 (2003).

⁵³ See Reiner, *supra*.

⁵⁴ See Harold Valentine, *Law Enforcement: Information on the Los Angeles County Sheriff’s Department Gang Reporting, Evaluation, and Tracking System*, available from the National Criminal Justice Reference Service at <https://www.ncjrs.gov/pdffiles1/Digitization/151572NCJRS.pdf>.

⁵⁵ See California Gang Node Advisory Committee, *supra*.

⁵⁶ *Id.*

⁵⁷ See Federal Bureau of Investigation, *About us: National Crime Information Center*, available from the Federal Bureau of Investigation at <https://www.fbi.gov/about-us/cjis/ncic>. The NCIC Gang File was formerly part of the Violent Gang and Terrorist Organization File.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See *Privacy Act of 1974; Notice of Modified Systems of Records*, 64 Federal Register 52343.

⁶³ *Id.*

⁶⁴ Hufstader, *supra*; American Immigration Council, *Prosecutorial Discretion: How to Advocate for Your Client* (March 18, 2015), available from the American Immigration Council at http://www.legalactioncenter.org/sites/default/files/pd_overview_final.pdf.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See Jason A. Cade, *Enforcing Immigration Equity*, 84 FORDHAM LAW REVIEW 661 (2015), available from the Social Science Research Network at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2614149.

⁶⁸ American Immigration Council (2014), *supra*.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ State of Texas, et al v. United States et al.; Memorandum Opinion and Order, Feb. 16, 2015, (No. 1:14- CV-254), available from the American Immigration Council at <http://www.aila.org/infonet/dist-ct-state-of-texas-v-usa-02-16-15> (“Injunction”).

⁷⁴ National Immigration Project, *Requesting Prosecutorial Discretion for Individuals in Removal Proceedings or Detention While the Injunction in Texas, et al. v. United States Remains in Effect* (July 29, 2015), available from the National Immigration Project at https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/pr/2015_29Jul_Request-Pros-Discret.pdf.

⁷⁵ See American Immigration Council (2015), *supra*; American Immigration Council, *Deferred Action for Childhood Arrivals* (August 27, 2014), available from the National Immigration Project at https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/daca/2014_27Aug_daca-revised.pdf.

⁷⁶ *See id.*

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ See Hufstader, *supra*; American Immigration Council (2014) *supra*; *Claudio’s Story*, *infra* at page 10.

⁸⁰ See American Immigration Council (2014), *supra*.

⁸¹ *Id.*

⁸² See Department of Homeland Security, *Victims of Criminal Activity U Nonimmigrant Status*, available from the United States Citizenship and Immigration Services at <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>; Department of Homeland Security, *Special Immigrant Juvenile (SIJ) Status*, available from the United States Citizenship and Immigration Services at <https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status>.

⁸³ Department of Homeland Security, *Victims of Criminal Activity U Nonimmigrant Status*, available from the United States Citizenship and Immigration Services at <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

⁸⁴ Department of Homeland Security, *Special Immigrant Juvenile (SIJ) Status*, available from the United States Citizenship and Immigration Services at <https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status>.

⁸⁵ See Taurel, Patrick, *Screening Potential DACA Requestors for Other Forms of Relief*, AMERICAN IMMIGRATION COUNCIL (2014) available from the American Immigration Council at http://www.legalactioncenter.org/sites/default/files/fin_other_forms_of_relief_0_0.pdf; Abarca, Michelle, Deborah Lee Kathleen Moccio, and Kristin Petri, *The ABCs of Representing Unaccompanied Children* (2011), AMERICAN IMMIGRATION LAWYERS ASSOCIATION, available from the American Immigration Lawyers Association at <http://aijustice.org/docs/AILA-representing-%20unaccompanied-children.pdf>.

⁸⁶ *Id.*; Abarca et al, *supra*.

⁸⁷ See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-546).

⁸⁸ See *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013).

⁸⁹ See *In re Guerra*, 24 I&N Dec. 37 (BIA 2006).

⁹⁰ See *Eduardo's Story*, *infra* at page 11.

⁹¹ Interview with Caitlin Sanderson, Staff Attorney at the ACLU of Southern California and former Legal Director of the Esperanza Immigration Project, March 15, 2016.

⁹² See Srikantiah, Jayashri, David Hausman, and Lisa Weissman-Ward, *Access to Justice for Immigrant Families and Communities: A Study of Legal Representation of Detained Immigrants in Northern California*, 11 STANFORD JOURNAL OF CIVIL RIGHTS & CIVIL LIBERTIES 207 (2015).

⁹³ Sanderson, *supra*.

⁹⁴ See Holper, Mary, *Confronting Cops in Immigration Court*, 23 WILLIAM & MARY BILL OF RIGHTS JOURNAL 675 (2016).

⁹⁵ See *Matter of Khalifah*, 21 I&N Dec. 107 (BIA 1995).

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ Interview with Erika Pinheiro, Staff Attorney at the Central American Resource Center, March 25, 2016 (*describing a client granted amnesty under the Convention Against Torture after an ICE officer threatened to send gang documentation to Honduran police in order to have the client killed by a death squad upon arrival in Honduras*).

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