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Report RL34233

*The MS-13 and 18th Street Gangs: Emerging Transnational  
Gang Threats?*

Celinda Franco, Domestic Social Policy Division

January 30, 2008

**Abstract.** Two predominantly Latino gangs, Mara Salvatrucha (MS-13) and the 18th Street gang (M-18), have raised concern among policy makers for several reasons: (1) membership in these gangs has spread from the Los Angeles area to other communities across the United States; (2) these gangs are becoming "transnational," primarily because MS-13 and M-18 cliques are being established in Central America and Mexico; (3) evidence suggests that these gangs are engaged in criminal enterprises normally associated with better organized and more sophisticated crime syndicates; and (4) MS-13 and M-18 gang members may be involved in smuggling operations and, by extension, could potentially use their skills and criminal networks to smuggle terrorists into the United States. To date, however, no evidence exists establishing a link between MS-13 and M-18 members and terrorists.

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# The MS-13 and 18<sup>th</sup> Street Gangs: Emerging Transnational Gang Threats?

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January 30, 2008

<http://wikileaks.org/wiki/CRS-RL34233>

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## Summary

Two predominantly Latino gangs, Mara Salvatrucha (MS-13) and the 18<sup>th</sup> Street gang (M-18), have raised concern among policy makers for several reasons: (1) membership in these gangs has spread from the Los Angeles area to other communities across the United States; (2) these gangs are becoming “transnational,” primarily because MS-13 and M-18 cliques are being established in Central America and Mexico; (3) evidence suggests that these gangs are engaged in criminal enterprises normally associated with better organized and more sophisticated crime syndicates; and (4) MS-13 and M-18 gang members may be involved in smuggling operations and, by extension, could potentially use their skills and criminal networks to smuggle terrorists into the United States. To date, however, no evidence exists establishing a link between MS-13 and M-18 members and terrorists.

Nevertheless, some observers maintain that these two gangs may develop the capacity to become organized criminal enterprises capable of coordinating illegal activities across national borders. Yet, others find them to be no more criminally organized or sophisticated than other street gangs. At issue for Congress is whether the MS-13 and M-18 gangs constitute an emerging transnational criminal threat.

The federal response to the MS-13 and M-18 gang problem has largely involved the enforcement of criminal and immigration laws, including the deportation of alien gang members. More recently, federal efforts have focused on prosecuting gang members under the Racketeer Influence and Corrupt Organizations (RICO) statute. Deported alien gang members have established MS-13 and M-18 gang cliques in their home countries, and some experts suggest that U.S. deportation policies have effectively transported U.S.-styled gang culture to parts of Central America and Mexico. Moreover, evidence shows that deported alien MS-13 and M-18 gang members have established a “revolving door” migratory pattern of repeat illegal reentry into the United States, raising concerns that these “migratory” alien gang members may become involved in narco-trafficking, smuggling, and other criminal activities along the U.S.-Mexico border.

Legislation has been introduced in the 110<sup>th</sup> Congress (and one such proposal has been passed by the Senate) that would strengthen the enforcement of immigration law directed at alien gang members and provide additional tools to federal prosecutors to pursue members of violent gangs. Such legislation includes H.R. 880, H.R. 1582, H.R. 1645, H.R. 2954, H.R. 3150, H.R. 3156, H.R. 3547, H.R. 4165, S. 330, S. 456, S. 990, S. 1348, S. 1639, S. 1860, and S. 2294.

This report will be updated as legislative activity warrants.

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## Introduction

Street gangs have long been a concern to policy makers. The more recent emergence, growth, and expansion of two Latino street gangs, the Mara Salvatrucha (MS-13)<sup>1</sup> and the 18<sup>th</sup> Street Gang (also known as the Mara 18 or M-18), have raised concern among policy makers for several reasons.<sup>2</sup> First, membership in these gangs has spread from the Los Angeles area to other communities across the United States. Second, there are concerns that these gangs are becoming transnational, primarily because MS-13 and M-18 cliques are being established in Central America<sup>3</sup> and Mexico. Third, evidence suggests that these gangs are engaged in criminal enterprises normally associated with better organized and more sophisticated crime syndicates. Fourth, and perhaps most disturbingly for policy makers in a post-9/11 world, alarms have been sounded in some circles that international terrorist organizations like al-Qaeda could exploit alien and narcotics smuggling networks controlled by these gangs to infiltrate the United States. To date, however, no evidence suggests that these gangs and international terrorist groups are cooperating with one another.<sup>4</sup> Nonetheless, at issue for Congress is whether the MS-13 and M-18 gangs constitute an emerging transnational criminal threat.

This report provides an overview of the MS-13 and M-18 gangs,<sup>5</sup> examines how MS-13 and M-18 gangs are different from other gangs and organized crime groups, and discusses what constitutes a transnational gang. The report also explores whether MS-13 and M-18 gangs are transnational gangs, discusses the various federal responses to these gangs, and examines legislation that would target alien gang members specifically, and members of violent gangs in general. The report concludes with a discussion of selected issues.

## Defining the Issue

There is no single definition of what characteristics constitute a transnational gang.<sup>6</sup> Various definitions have cited one or more of the following characteristics in defining a transnational gang: (1) such gangs are criminally active and operational in more than one country; (2) criminal activities committed by gang members in one country are planned, directed, and controlled by

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<sup>1</sup> The word *mara* is a Spanish word for a gang, and *marero* means gang member. These terms are more commonly used in El Salvador. In the recent literature on Latino transnational gangs, the term *maras* has come to refer specifically to the MS-13 and M-18 gangs.

<sup>2</sup> Although there are other domestic gangs with transnational members, MS-13 and M-18 are the focus of this report because they have been the most prominently discussed by the media and policy makers.

<sup>3</sup> For more information, see CRS Report RL34112, *Gangs in Central America*, by Clare Ribando Seelke, hereafter cited as *Gangs in Central America*.

<sup>4</sup> Personal communication with Brian Truchon, FBI, Director of the MS-13 Gang Task Force, June 2007, hereafter cited as "CRS communication with Truchon."

<sup>5</sup> This report addresses the domestic aspects of the MS-13 and M-18 gangs. The international perspective on these and other gangs in Latin America is beyond the scope of this report. For information on the international perspective, see *Gangs in Central America*.

<sup>6</sup> Transnational gangs are not a new phenomena in the United States and have included gangs composed of members of Asian, Russian, African, Serbian, Bosnian, Jamaican, and other races, ethnicities, and nationalities. Some of these transnational gangs have evolved into highly organized and sophisticated criminal enterprises known for influencing government officials and the judiciary in the countries in which they operate. In the United States, the most well-known example of this type of crime syndicate is the Mafia, or *La Cosa Nostra*, composed of members of Sicilian descent.

gang leaders in another country; (3) such gangs tend to be mobile and adapt to new areas; and (4) the criminal activities of such gangs tend to be sophisticated and transcend borders. For a gang to be considered transnational, it would appear that the gang would have more than one of the aforementioned characteristics; however, with respect to the MS-13 and M-18 gangs, much of the literature characterizes these gangs as transnational merely because they are present in more than one country.

## Background on the MS-13 and M-18 Gangs

Two predominantly Latino gangs, MS-13 and M-18, have taken a place on the national policy agenda, as membership in these gangs has spread from Los Angeles to other parts of the United States. Although street gangs are largely an urban phenomenon, MS-13 and M-18 cliques have emerged among disaffected Latino youth in suburban and rural areas across the country. According to a national gang survey, the MS-13 and M-18 gangs have an established presence in Washington DC; Northern Virginia; certain cities in Maryland; Nashville, Tennessee; New York, New York; Houston, Texas; and other rural and urban areas.<sup>7</sup> The M-18 gang is a much larger gang than the MS-13 in terms of overall membership, with approximately 30,000 members nationwide, compared with 8,000-10,000 MS-13 members nationwide in 2005;<sup>8</sup> however, the MS-13 gang has generated greater media coverage and congressional attention.<sup>9</sup>

In recent years, federal law enforcement authorities have targeted MS-13 and M-18 alien gang members for deportation, an action that some argue has contributed to the development and proliferation of U.S.-styled gangs in Central America and Mexico.<sup>10</sup> Although membership in the MS-13 gang is largely Salvadoran and membership in the M-18 gang is largely Mexican, both gangs have recruited members in the United States from other Central American countries. Some have argued that as a result of this inter-mixed membership, both gangs have established gang cliques in El Salvador, Honduras, Guatemala, and Mexico that are modeled on, and perhaps linked to, U.S. MS-13 and M-18 gangs.<sup>11</sup> According to some, Central American and Mexican MS-13 and M-18 gangs maintain elements often referred to as “LA-style” gang culture commonly found among Los Angeles-based gangs.<sup>12</sup> Because the gangs are present in multiple countries, some contend that these gangs are transnational.

<sup>7</sup> The National Youth Gang Center (NYGC) survey does not include gang-specific estimates. More information on the NYGC analysis is available at <http://www.iir.com/NYGC/nygsa>, accessed on October 25, 2007.

<sup>8</sup> The National Alliance of Gang Investigators Association (NAGIA), *2005 National Gang Threat Assessment*, p. 31, available at [http://www.ojp.usdoj.gov/BJA/what/2005\\_threat\\_assesment.pdf](http://www.ojp.usdoj.gov/BJA/what/2005_threat_assesment.pdf), accessed on October 22, 2007.

<sup>9</sup> Although it is unclear whether the MS-13 gang engages in more violent or different types of criminal acts than M-18 or other gangs, MS-13 cliques appear to have presence in almost every state. According to Federal Bureau of Investigation (FBI) estimates, the MS-13 gang is active in 42 states and the M-18 gang is active in 36 states. U.S. DOJ, FBI, Headline Archives, *Violent Gang—Officials Discuss Fight Against Violent Crime*, FBI Web page, available at <http://www.fbi.gov/page2/jan07/gangs011607.htm>, accessed on September 1, 2007, hereafter cited as *Violent Gang—Officials Discuss Fight Against Violent Crime*.

<sup>10</sup> Gloria Goodale, “LA’s Latest Export: Gangs,” *Christian Science Monitor*, February 10, 2006.

<sup>11</sup> Ibid.

<sup>12</sup> These adopted LA-style gang cultural elements include distinctive modes of dress, such as wearing certain colors or bandanas or certain sports jerseys; using gang-specific identifying hand signs; getting gang-identifying tattoos; using gang-specific graffiti to mark a gang’s territory; participating in gang-specific initiation practices, often referred to as getting “jumped-in” or “beaten-in,” where initiates are beaten by current gang members for a specified length of time or in a particular way; and being required to commit a violent criminal act in order to prove one’s loyalty to the gang. (continued...)

## Origins of Mara Salvatrucha (MS-13)

The MS-13 gang reportedly originated in Los Angeles in the 1980s. During this period, thousands of Salvadorans fled the civil war in their country.<sup>13</sup> By the end of the 1980s, some estimates indicate that more than 300,000 Salvadorans had settled in Los Angeles.<sup>14</sup> One hypothesis on the gang formation asserts that Salvadorian immigrants during this period banded together and formed the MS-13 gang.<sup>15</sup>

MS-13's early membership is reported to have included former guerrillas and Salvadoran government soldiers whose combat experience during the Salvadoran civil war contributed to the gang's notoriety as one of the more brutal and violent Los Angeles street gangs.<sup>16</sup> Moreover, the gang developed a widely reported reputation of employing unusual methods of violence, including using machetes in gang attacks.<sup>17</sup> Despite the gang's reputation, sources in law enforcement indicate that little evidence exists to substantiate that the MS-13 gang is more violent than other street gangs.<sup>18</sup>

## Origins of 18<sup>th</sup> Street Gang (M-18)

The 18<sup>th</sup> Street gang (M-18) was originally formed by Mexican migrants in the 1960s in the Rampart neighborhood of Los Angeles who were blocked from joining other native-born Mexican-American gangs.<sup>19</sup> The 18<sup>th</sup> Street gang grew by expanding its membership to other nationalities and races, and it was among the first multiracial, multiethnic gangs in Los Angeles.<sup>20</sup>

## Are MS-13 and M-18 Different from Other U.S. Street Gangs?

According to research, gangs can be characterized as either first-generation, second-generation, or third generation.<sup>21</sup> First-generation gangs are characterized as traditional street gangs. These

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(...continued)

Ibid.

<sup>13</sup> Hundreds of thousands of Central Americans, including Salvadorans and Guatemalans, migrated to the United States during the 1980s, fleeing civil war, repression, and economic devastation that plagued the region. See *Central Americans and Asylum Policy in the Reagan Era*, by Susan Gzesh, Migration Policy Institute, Migration Information Source, April 1, 2006, and CRS Report 98-3, *The Nicaraguan Adjustment and Central American Relief Act: Hardship Relief and Long-Term Illegal Aliens*, by Larry M. Eig (available from the author).

<sup>14</sup> Mary Helen Johnson, "National Policies and the Rise of Transnational Gangs," *Migration Information Source*, Migration Policy Institute, April 1, 2006.

<sup>15</sup> Fred Burton, "Mara Salvatrucha: The New Face of Organized Crime?" Stratfor, March 29, 2006, available at [http://www.stratfor.com/products/premium/read\\_article.php?id=264131](http://www.stratfor.com/products/premium/read_article.php?id=264131), accessed on October 18, 2007.

<sup>16</sup> *The Economist*, "Special Report: Criminal Gangs in the Americas," January 7, 2006, p. 23.

<sup>17</sup> Ibid.

<sup>18</sup> Personal communication with Wesley D. McBride, Executive Director of the California Gang Investigator's Association.

<sup>19</sup> Al Valdez, Investigator, Orange County, California, District Attorney's Office, "18<sup>th</sup> Street: California's Most Violent Export," NAGIA, Gang Profiles, available at <http://www.nagia.org/Gang%20Articles/18th%20Street.htm>, accessed on October 22, 2007.

<sup>20</sup> Ibid.

<sup>21</sup> See, for example, John P. Sullivan, "Third Generation Street Gangs: Turf, Cartels and Net Warriors," *Crime and Justice International*, vol. 13, issue 10 (November 1997), hereafter cited as "Sullivan." This concept is further explored (continued...)

gangs are turf-oriented and localized, lack sophistication, engage in unsophisticated criminal activities, and tend to have a loose leadership structure. First-generation gangs participate in “opportunistic criminal activity and intergang rivalry.”<sup>22</sup>

Second-generation gangs are characterized as having an organized structure similar to a business. They tend to “assume a market rather than a turf orientation.”<sup>23</sup> Second-generation gang activities tend to be drug-centered. Moreover, these gangs tend to operate in broader areas and have a centralized leadership.<sup>24</sup>

Third-generation gangs are characterized as highly sophisticated, “mercenary-type group[s] with goals of power or financial acquisition and a set of fully evolved political aims.”<sup>25</sup> Third-generation gangs tend to operate in a global environment and “may embrace quasi-terrorism or true terrorism” to advance their goals.<sup>26</sup>

Most urban gangs fit into the first- and second-generation characterizations.<sup>27</sup> Some researchers believe, however, that the MS-13 gang *in some Central American countries* has characteristics of a third-generation gang.<sup>28</sup> Although such researchers do not link the MS-13 gang to terrorist groups, they assert that the MS-13 gang and terrorist groups have similar characteristics, such as having “a propensity for indiscriminate violence, intimidation [and] coercion [that] transcend[s] borders, and target[s] nation-states.”<sup>29</sup>

In the United States, the MS-13 gang does not appear to have escalated to a third-generation gang; however, evidence suggests that the gang’s presence in multiple states, as discussed above, and its criminal activities indicate that the gang is evolving. This point is underscored by the 2004 National Drug Intelligence Center (NDIC) threat assessment report. Despite the generally loose organization of the MS-13 gang, the NDIC’s 2004 report warned that the gang was increasing its coordination between chapters in Los Angeles, Washington DC, Northern Virginia, and New York, perhaps indicating efforts to create a national command structure.<sup>30</sup>

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(...continued)

in *Street Gangs: The New Urban Insurgency*, by Max G. Manwaring, pp. 8-11, available at <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB597.pdf>, accessed on October 2, 2007, and Robert J. Bunker, ed., “Non-State Threats and Future Wars” (Portland, OR: Frank Cass, 2003), pp. 48-50, hereafter cited as “Bunker.”

<sup>22</sup> See Sullivan.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> See Sullivan.

<sup>27</sup> Ibid.

<sup>28</sup> Gary I. Wilson and John P. Sullivan, *On Gangs, Crime, and Terrorism*, Special to Defense and the National Interest, February 28, 2007, hereafter cited as “Wilson and Sullivan.” Available at [http://www.d-n-i.net/fcs/pdf/wilson\\_sullivan\\_gangs\\_terrorism.pdf](http://www.d-n-i.net/fcs/pdf/wilson_sullivan_gangs_terrorism.pdf), accessed October 2, 2007.

<sup>29</sup> Ibid., p. 9.

<sup>30</sup> U.S. DOJ, National Drug Intelligence Center, *National Drug Threat Assessment*, June 2004, report no. 2004-Q0317-008, p. 10.

## Street Gangs, Transnational Gangs, and Organized Criminal Enterprises

As previously mentioned, no single, widely accepted definition of what constitutes a transnational gang exists, and the lines between street gangs, transnational gangs, and organized criminal enterprises can be blurred. The following section highlights some of the major distinctions between these criminal groups.

### How Are Transnational Gangs Different from Street Gangs?

Generally, most researchers agree that the *primary* distinction between transnational gangs and other domestic street gangs is that transnational gangs are criminally active and operational in more than one country. In some cases, they may be characterized as gangs in which members in one country typically commit crimes that could have been substantially planned, directed, and controlled by the gang's leaders in another country.<sup>31</sup> Other researchers characterize transnational gangs as "very mobile, highly adaptable to new geographic areas, and [maintaining] connections in their native countries."<sup>32</sup>

As previously mentioned, most street gangs are either first- or second-generation gangs. Transnational gangs, however, share some of the same characteristics as a third-generation gang. For example, transnational and third-generation gangs tend to operate in a global environment—that is, their criminal activities transcend borders. Moreover, with respect to their criminal activities, both types of gangs tend to have a level of sophistication that closely resembles organized criminal syndicates.

### What Is an Organized Criminal Enterprise?

Organized crime is defined by the Federal Bureau of Investigation (FBI) as any group having a formalized structure whose primary objective is to obtain money through illegal activities.<sup>33</sup> Such groups tend to have a vertical hierarchy, strong leadership, sanctions for failure of its members to abide by codes of loyalty, and a level of entrepreneurial expertise. The specific criminal acts that organized criminal enterprises tend to engage in are specified in statute as part of the Racketeer Influenced and Corrupt Organizations (RICO)<sup>34</sup> and the Violent Crimes in Aid of Racketeering (VICAR)<sup>35</sup> statutes. According to the FBI, organized criminal enterprises maintain control of their illegal activities through tactics such as actual or threatened violence, graft, and extortion. The activities of organized crime syndicates can be sophisticated enterprises capable of adversely effecting localities, regions, and, in some cases, the nation as a whole.

<sup>31</sup> James O. Finckenaer, "Meeting the Challenge of Transnational Crime," *National Institute of Justice Journal*, July 2000, p. 3.

<sup>32</sup> Claude Arnold, U.S. ICE, Human Rights violators and Public Safety Office, "Immigration Authorities and Gang Enforcement," *United States Attorneys' Bulletin*, May 2006, p. 42.

<sup>33</sup> U.S. Department of Justice, Federal Bureau of Investigation, Investigative Programs, Organized Crime, Glossary, available at <http://www.fbi.gov/hq/cid/orgcrime/glossary.htm>, accessed on October 22, 2007.

<sup>34</sup> 18 U.S.C. § 1961(1).

<sup>35</sup> 18 U.S.C. § 1959.

## How Are Street Gangs Different from Organized Crime?

With the exception of third-generation gangs, street gangs are generally considered distinct from organized criminal enterprises because they typically lack the hierarchical leadership structure, organizational structure, capital, and manpower required to run a sophisticated criminal enterprise. Street gangs are generally more horizontally organized, with lots of small cliques with their own leadership and no centralized, overarching leadership setting strategy and enforcing discipline. Most often, gang leaders are easily and quickly replaced by other gang members without disruption to the gang's activities.

Street gangs often engage in some of the same types of criminal activity as organized criminal enterprises, but generally at much lower levels and not always strictly driven by entrepreneurial objectives. Research indicates that most street gang crime tends to be opportunistic and improvised. As previously discussed, street gangs tend to be concerned with issues such as neighborhood territory or turf protection and maintaining respect for the gang and its members.

Another key difference between street gangs and organized criminal enterprises is evident when comparing federal prosecutions of organized crime with federal prosecutions of street gang offenses. In gang cases, the prosecution can face obstacles prosecuting these cases under the existing RICO statute, which has been instrumental in hampering, if not dismantling, organized criminal enterprises. Generally, when a federal criminal gang case is being developed for a RICO prosecution, prosecutors must demonstrate that the crimes were committed or were connected to the interests of a criminal enterprise.<sup>36</sup> Although many cases against organized criminal enterprises have been successfully prosecuted under the RICO statute, it is more difficult to develop a RICO case against street gangs.

## MS-13 Gangs and Organized Crime

The Washington Office on Latin America (WOLA)<sup>37</sup> researched and interviewed MS-13 members in the Washington DC area over a period of a year.<sup>38</sup> As a result of the research, WOLA issued a report in February 2007, in which it concluded that MS-13 and M-18 members in the Washington DC area were not engaged in a systematic effort to become more involved in organized crime. The report found that the area's MS-13 membership was sizable, although the members' criminal activity was largely limited to petty theft and neighborhood extortion. The analysis of the MS-13 gang in the Washington DC area concluded that active gang "hot spots" existed, but that the *maras* did not constitute a major public security issue.

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<sup>36</sup> To investigate and prosecute organized criminal enterprises, the FBI relies on the Enterprise Theory of Investigation (ETI). Under this investigative model, the investigation and prosecution are focused on the criminal activities of the entire criminal enterprise rather than on just those committed by any single individual. This approach targets all aspects of the criminal operation to disrupt and ultimately destroy the entire structure of the enterprise. In fact, an essential part of the ETI strategy is to show that the individuals in such an organization commit criminal acts "solely to benefit their criminal enterprise." Using the ETI, the FBI can support the prosecution of the criminal enterprise under RICO statutes or its related statute, VICAR, and seize the enterprise's assets to seriously disrupt or dismantle entire criminal organizations.

<sup>37</sup> WOLA is a non-governmental organization focused on democracy, human rights, and social and economic justice in Latin America.

<sup>38</sup> Washington Office on Latin America, *Transnational Youth Gangs in Central America, Mexico, and the United States*, February 8, 2007.

In contrast to the WOLA report, law enforcement officials point to evidence that the Washington DC area's gangs are indeed criminally active and may show signs of increasing criminal sophistication.<sup>39</sup> For example, they assert that in the Washington DC area, Immigration and Customs Enforcement (ICE) agents reported arresting 233 known violent gang members, 190 of which were MS-13 members, in 2006. In addition, a milestone case for the federal prosecution of gang members under the RICO statute was based on MS-13 members committing crimes in the Washington DC area. Two MS-13 gang members were convicted of murdering six people and attempting to kill four others in a federal case prosecuted in Prince George's County, Maryland.<sup>40</sup> The two convicted MS-13 members were part of an indictment brought against 22 MS-13 members. Successfully prosecuting a racketeering conviction against MS-13 members is seen by some analysts as evidence that the gang's criminal activities are becoming increasingly organized and sophisticated.<sup>41</sup>

## Are MS-13 and M-18 Transnational Gangs?

As previously mentioned, MS-13 and M-18 gangs are generally considered to meet at least one of the characteristics attributed to transnational gangs—they are present in more than one country. And with respect to the MS-13 gang, evidence suggests that the gang is becoming more organized, which is another characteristic of transnational gangs. For example, recent criminal cases involving MS-13 defendants have included information and testimony that gang members in Maryland were in telephone contact with other MS-13 members in cities across the country and, on occasion, with MS-13 members in El Salvador.<sup>42</sup> Criminal cases brought against MS-13 also indicate that the gang members share information and, in some cases, that cliques in one area have loaned weapons to members of an MS-13 clique in another area.<sup>43</sup> This evidence of contact, communication, and perhaps criminal cooperation is seen by some experts as an indication that the MS-13 gang could evolve from a street gang into a more sophisticated transnational gang.<sup>44</sup>

Some critics contend that the transnationalization of the MS-13 and M-18 gangs began with the deportation of alien gang members from the United States in the mid-1990s. They assert that the increase in deportations of aliens to Central America and Mexico initiated by changes made to immigration law in the mid-1990s<sup>45</sup> led to the establishment of MS-13 and M-18 cliques in those countries. However, the actual number of alien gang members that were deported is not clear from the immigration removal data. Others assert that these countries already had a gang problem and that MS-13 and M-18 cliques were not formed in Mexico and Central American countries as the result of a gang migration or as an effort to establish new gang franchises or otherwise further

<sup>39</sup> James C. Spero, U.S. DHS, ICE, testimony before the U.S. House of Representatives, Committee on Government Reform, "MS-13 and Counting: Gang Activity in Northern Virginia," no. 109-194, July 14, 2006.

<sup>40</sup> Ruben Castaneda, "Two MS-13 Members Convicted of Racketeering," *Washington Post*, November 15, 2006, p. B02.

<sup>41</sup> Additional RICO prosecutions of MS-13 are underway in other parts of the country, although as of October 26, 2007, the cases have not been decided.

<sup>42</sup> Department of Justice press release, *MS-13 Leader Sentenced to Life in Prison*, September 24, 2007.

<sup>43</sup> Ibid.

<sup>44</sup> Samuel Logan and Ashley Morse, "The Mara Salvatrucha Organization and the U.S. Response," *Power and Interest News Report (PINR)*, January 31, 2007.

<sup>45</sup> See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C) and the Anti-Terrorism and Effective Death Penalty Act of 1996 (P.L. 104-132).

gang-related criminal enterprises of the U.S.-based gangs.<sup>46</sup> Instead, deported gang members banded together for social and economic advantage, as a way to compete with existing Central American and Mexican gangs, and to survive in a foreign environment on income obtained through familiar criminal means. Once established, these MS-13 and M-18 cliques recruited new local members, and their ranks continued to be supplemented with new native recruits and additional U.S. alien gang deportees.<sup>47</sup>

## **Prevalence of MS-13 and M-18 Gangs in Central America**

Estimates of the number of MS-13 and M-18 gang members in Central America and Mexico range from 70,000 to 100,000, depending on the source of the information, and at least one report claims that MS-13 and M-18 cliques have established a growing presence in 24 of Mexico's 32 states.<sup>48</sup> MS-13 and M-18 gangs in Central America and Mexico are reported to have larger total memberships and are reportedly more structured than their U.S. counterparts, although these differences are difficult to corroborate.<sup>49</sup>

## **Evidence of a Transnational Gang Threat?**

Since the 9/11 terrorist attacks, attention has been focused on securing the U.S. borders and ports of entry. The long, porous southern border with Mexico is considered a vulnerability, in part because of the relative ease with which illegal aliens, narcotics, and contraband are smuggled into the United States, as well as the extent to which people cross into the United States illegally. Policy makers have been concerned about human and narcotic smuggling rings and the possibility that such profit-driven enterprises could be used by terrorists to enter the country undetected.<sup>50</sup> Although there is no data linking the MS-13 and M-18 gangs with organized smuggling activities, there are concerns that the gangs may become more organized and sophisticated in their criminal activities.

## **Federal Response to Gangs**

In general, gang-related crimes fall within the jurisdiction of state and local law enforcement. As gangs have spread across the country, and as their threat has become more national in nature, the interest in finding adequate solutions to the problem has increasingly included all levels of government. In the mid- to late 1980s and early 1990s, Congress passed legislation federalizing certain gang-related crimes and providing additional penalties for individuals convicted under

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<sup>46</sup> See *Gangs in Central America*.

<sup>47</sup> Scott Wallace, "You Must Go Home Again: Deported L.A. Gangbangers Takeover El Salvador," *Harper's Magazine*, August 2000.

<sup>48</sup> Diego Cevallos, *Mexico: Spread of Central American Youth Gangs Uncurbed*, Inter Press Service News Agency, Wednesday, June 13, 2007.

<sup>49</sup> U.S. Agency for International Development, Bureau for Latin American and Caribbean Affairs, Office of Regional Sustainable Development, *Central America and Mexico Gang Assessment*, April 2006, pp. 6, 14.

<sup>50</sup> It should be noted that illegal smuggling also occurs at the northern border and that there are reports of MS-13 gang members in Canada; however, the MS-13 presence in Canada is smaller than in Mexico and Central America. See U.S. Department of Homeland Security, Immigration and Customs Enforcement, Office of Inspector General, Office of Audits, *Detention and Removal of Illegal Aliens*, OIG-06-33, April 2006, p. 7.

these laws.<sup>51</sup> Moreover, in the mid-1990s, Congress passed legislation that changed immigration enforcement laws and made more aliens deportable.<sup>52</sup> In addition, the federal government has taken an active role in helping state and local jurisdictions develop anti-gang responses through support for research on gangs and through grant programs to help jurisdictions develop effective gang prevention and intervention strategies.<sup>53</sup>

Two federal agencies are directly involved in the fight against gangs through the enforcement of criminal and immigration laws. The Department of Justice (DOJ) administers the primary federal efforts to investigate, apprehend, and prosecute domestic criminal gang activities. The Department of Homeland Security (DHS) also plays a role through the enforcement of immigration and criminal law. The following two sections discuss some of these DOJ- and DHS-led initiatives. The sections do not discuss gang/crime prevention initiatives.<sup>54</sup>

## Department of Justice Agencies and Initiatives

Several federal offices and bureaus within DOJ are engaged in fighting gang criminal activities. For example, as the primary criminal investigative agency in the federal government, the Federal Bureau of Investigation (FBI) is responsible for investigating criminal violations of federal law. The Drug Enforcement Agency (DEA) is the lead agency charged with enforcing the controlled substance laws and regulations of the United States. The agency is also charged with stemming the production, manufacture, distribution and trafficking into the country of illicit drugs and, as such, is the lead agency in several initiatives. In its role as federal prosecutor, the U.S. Attorney's Office (USAO) Criminal Division prosecutes federal gang cases investigated by the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In addition, the USAO Criminal Division has a section known as the "gang squad," which is a part of ATF-headed gang task force. Because gang crime often involves the use of guns, the ATF is directly involved in investigating both domestic and transnational gangs. These and other DOJ agencies also participate in anti-gang task forces established to combat gang crime and various forms of international organized crime, some of which specifically target transnational gangs.

## FBI's Criminal Investigations of Gangs

In September 2005, the DOJ Office of the Inspector General (OIG) released a report on how terrorism and the September 11, 2001, terrorist attacks transformed the FBI's investigative priorities.<sup>55</sup> Among the FBI's traditional criminal investigations, the OIG reported that the FBI did

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<sup>51</sup> 18 U.S.C. § 521, added by P.L. 103-322 (the Violent Crime Control and Law Enforcement Act of 1994), Title XV § 150001(a).

<sup>52</sup> The two laws are the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (P.L. 104-208, Division C) and the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA, P.L. 104-132). IIRIRA broadly reformed exclusion and deportation procedures. It consolidated exclusion and deportation into a single removal process, expanded the definition of "aggravated felonies" to make more aliens subject to removal, and tightened the standards for relief from removal. AEDPA expanded the class of crimes designated as aggravated felonies, which would subject an alien to expedited removal.

<sup>53</sup> For more information on federal anti-gang grant programs, see CRS Report RL33400, *Youth Gangs: Background, Legislation, and Issues*, by Celinda Franco, hereafter cited as *Youth Gangs: Background, Legislation and Issues*.

<sup>54</sup> For discussion of these initiatives, see *Youth Gangs: Background, Legislation and Issues*.

<sup>55</sup> U.S. Department of Justice Office of Inspector General, *The External Effects of the Federal Bureau of Investigation's Reprioritization Efforts*, Audit Report 05-37, (September 2005).

not reduce the number of agents involved in combating violent gangs between FY2000 and FY2004.<sup>56</sup> Despite the “reprioritization” of the FBI’s operations to focus on preventing terrorist attacks, the number of FBI field agents investigating violent gangs increased from 266 in FY2000 to 315 in FY2004.<sup>57</sup> The number of violent gang cases opened by the FBI increased from 495 in FY2000 to 784 in FY2004, an increase of 58% during a period when the number of all other criminal enterprise cases declined.<sup>58</sup>

### **FBI’s MS-13 National Gang Task Force**

The FBI established the MS-13 National Gang Task Force (NGTF) in December 2004 to coordinate the investigative efforts of federal, state, and local law enforcement agencies targeting MS-13 gang members and their associates. By increasing and speeding the flow of intelligence and information to support and coordinate investigative efforts, the MS-13 NGTF provides information to help law enforcement agencies identify trends in gang activities.<sup>59</sup>

According to DOJ, the MS-13 NGTF is designed to manage the flow of information nationally and internationally to help coordinate investigations. Reportedly, the FBI’s MS-13 NGTF works with international law enforcement agencies to collect and share intelligence on transnational gangs.<sup>60</sup> The FBI has also launched the Central American Fingerprint Exploitation (CAFE) initiative, which is designed to merge criminal records from Central American partner law enforcement agencies with FBI fingerprint database to help identify gang members with criminal histories.<sup>61</sup> According to the FBI, more than 100,000 fingerprint cards (sets of fingerprints) have been entered into the database, and of those, 20,000 cases have come to the attention of law enforcement agencies in the United States.<sup>62</sup>

### **FBI’s Safe Streets and Violent Crimes Initiative**

The Safe Streets and Violent Crimes Initiative (SSVCI) permits the Special Agent in Charge of each FBI field division to establish long-term, proactive task forces focused on reducing violent crime.<sup>63</sup> The task forces place specific emphasis on the identification of major violent street gangs and drug enterprises of national scope by applying the same methods used to successfully fight traditional organized crime. According to FBI testimony before the Senate Judiciary Committee, one of the first gangs to be targeted by the gang task force was the MS-13 gang.<sup>64</sup> Moreover, the

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<sup>56</sup> Ibid., p. 68.

<sup>57</sup> Ibid., p. 56.

<sup>58</sup> Ibid., p. 57.

<sup>59</sup> U.S. DOJ, FBI, Headline Archives, *How We’re Ganging Up on MS-13*, FBI Web page, at <http://www.fbi.gov/page2/july05/ms071305.htm>, accessed on September 1, 2007.

<sup>60</sup> Ibid.

<sup>61</sup> U.S. DOJ, FBI, Headline Archives, *Violent Gang—Officials Discuss Fight Against Violent Crime*, FBI Web page, available at <http://www.fbi.gov/page2/jan07/gangs011607.htm>, accessed on September 1, 2007.

<sup>62</sup> Ibid.

<sup>63</sup> Testimony of FBI Special Agent Grant Ashley, Assistant Director, Criminal Investigative Division, in U.S. Congress, Senate Committee on Judiciary, *Combating Gang Violence in America: Examining Effective Federal, State, and Local Law Enforcement Strategies* (September 17, 2003).

<sup>64</sup> Ibid.

work of the task force enabled the U.S. Attorney for the Central District of California to successfully use statutes to prosecute the leaders of the 18<sup>th</sup> Street Gang and the Mexican Mafia.<sup>65</sup>

According to the FBI, the task force concept increases the effectiveness and productivity of limited personnel and logistical resources, avoids duplication of investigations, and expands cooperation and communication among law enforcement agencies. In response to the threat from gangs, the FBI established the Safe Streets Violent Gang Task Forces (SSVGTF) to coordinate the efforts of law enforcement at all levels of government and to use the same statutes, intelligence, and investigative techniques against violent gangs that are used to fight organized crime. The FBI's Safe Streets and Gang Unit administers 139 task forces nationwide.<sup>66</sup>

### **FBI's National Gang Strategy**

The FBI's National Gang Strategy (NGS) incorporates the investigative and prosecutorial practices that have been successful in the Organized Crime/Drug Program National Strategy.<sup>67</sup> The NGS promotes the sharing of information among federal, state, and local law enforcement agencies, which in turn helps the FBI identify violent gangs with coordinated investigations that support prosecutions. The NGS is a component of DOJ's overall Anti-Violence Crime Initiative, which is designed to promote cooperative strategies and information sharing on gang-involved offenders among corrections, parole and probation, and law enforcement agencies.

### **FBI's National Gang Intelligence Center**

In 2005, pursuant to P.L. 108-447, Congress provided funding for the FBI to establish the National Gang Intelligence Center (NGIC), a coordinating center for information and intelligence on gangs that could be shared with law enforcement. According to testimony at a congressional hearing, the NGIC "will enable the FBI and its local, state, and federal partners to centralize and coordinate the national collection of intelligence on gangs in the United States and then analyze, share, and disseminate" the information to the law enforcement community.<sup>68</sup> Staffed with intelligence agents, the NDIC provides law enforcement agencies with information on gang growth, criminal activities, gang migrations, and emerging trends based on national and international gang intelligence.<sup>69</sup>

### **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)**

The ATF is the principal law enforcement agency within DOJ responsible for enforcing federal criminal laws and regulations relating to the firearms and explosives industries. Working directly

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<sup>65</sup> Ibid.

<sup>66</sup> For more information on specific Violent Crime/Gang Task Forces administered by the FBI, see <http://www.fbi.gov/hq/cid/ngic/natgangtfs.htm>, accessed on September 1, 2007.

<sup>67</sup> *In the Spotlight—Gangs*, U.S. Department of Justice, Office of Justice Programs, National Criminal Justice Reference Service, available at <http://www.ncjrs.gov/spotlight/gangs/summary.html>, accessed on September 1, 2007.

<sup>68</sup> Swecker, FBI testimony, April 20, 2005.

<sup>69</sup> U.S. Congress, House of Representatives, Report 108-792, *Making Appropriations for Foreign Operations, Export Financing, and Related Programs for the Fiscal Year Ending September 30, 2005, and For Other Purposes*, Conference Report to Accompany H.R. 4818, November 20, 2004, p. 728; U.S. DOJ, FBI, Headline Archives, *Violent Gang—Officials Discuss Fight Against Violent Crime*, FBI Web page, available at <http://www.fbi.gov/page2/jan07/gangs011607.htm>, accessed on September 1, 2007.

and in partnerships with other law enforcement agencies at all levels of government, the ATF investigates and works to reduce crime involving firearms and explosives, act of arson, and illegal trafficking of alcohol and tobacco products. ATF is the lead DOJ agency in the Regional Area Gang Enforcement (RAGE) Task Force, which includes agents and officers from ATF, FBI, ICE, and other state and local law enforcement agencies. In addition, ATF is the lead agency in the 15 Violent Crime Impact Teams (VCITs), 13 of which focus on gang activity tied to homicides.<sup>70</sup> The ATF is also involved in several federal task forces and leads the investigations of violent gang crime through its firearms tracing system and the National Tracing Center (NTC), as well as through the Regional Crime Gun Centers (RCGCs) located in major cities plagued by gang violence. The ATF also provides national training programs for federal, state, and local law enforcement officers and prosecutors as part of the Project Safe Neighborhoods (PSN)<sup>71</sup> program on street-level gun recoveries, enforcement tactics, and firearms identification and tracing procedures.

### **Gang Targeting Enforcement Coordinating Center**

The national Gang Targeting Enforcement Coordinating Center (Gang TECC) is a unified federal effort to coordinate anti-gang efforts among several DOJ agencies.<sup>72</sup> Gang investigators from the ATF, Federal Bureau of Prisons (BOP), FBI, U.S. Marshals, the DEA, and ICE share intelligence to coordinate anti-gang investigations at the federal, state, and local levels. In addition, investigative efforts are coordinated with prosecutors from the U.S. DOJ Criminal Division to provide direct support, guidance, and assistance with anti-gang efforts.

### **DOJ Joint Initiative with El Salvador**

In February 2007, the Attorney General announced an initiative to collaborate with the government of El Salvador to fight transnational gangs operating in El Salvador, Central America, and Mexico. The initiative, led by the FBI and the Department of State (DOS), provides assistance to El Salvador's civilian police (Policia Nacional Civil, or PNC). As part of the initiative, a transnational Anit-Gang (TAG) unit was created to pursue and prosecute gang members. The TAG units include investigators from the PNC in El Salvador, imbedded prosecutors from El Salvador's Attorney General's office, special FBI teams assigned to El Salvador, and support from DOS.<sup>73</sup> FBI agents provide training, information sharing, and other support to increase the capacity of PNC detectives to identify, arrest, and prosecute gang offenders. In a second part of the initiative, the FBI will accelerate the implementation of the CAFE initiative (described above), designed to improve the identification, tracking, and apprehension of gang members.

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<sup>70</sup> U.S. DOJ, ATF, *ATF's Gang Initiatives*, December 2004, p. 50.

<sup>71</sup> More information on PSN is available at <http://www.psn.gov/>, accessed on September 1, 2007.

<sup>72</sup> U.S. DOJ, Press Release, *Attorney General Alberto R. Gonzales Announces Aggressive New Joint Initiatives with El Salvador to Combat Transnational Gangs*, February 5, 2007.

<sup>73</sup> WebWire Internet Press Release Resource, "Three Salvadoran Nationals Indicted on Racketeering Charges for Participation in Violent International Gang," June 6, 2007, available at <http://www.webwire.com/ViewPressRel.asp?aId=38434>, accessed on September 1, 2007.

## Department of Homeland Security Agencies

Agencies within the Department of Homeland Security (DHS) also engage in federal anti-gang initiatives. Efforts to deport alien gang members who reside illegally in the United States, or who have committed certain crimes, are a significant part of ICE's strategy. Customs and Border Protection (CBP) leads the charge of enforcing immigration and criminal law at the border.

### Immigration and Customs Enforcement (ICE)

ICE initiated Operation Community Shield in February 2005 to address the threat posed by the MS-13 gang.<sup>74</sup> This initiative was based on a 2003 ICE assessment of violent street gang activity in the United States. The ICE assessment identified MS-13 as a street gang "having a presence across the United States, a significant foreign-born membership and history of violence."<sup>75</sup>

The initiative was expanded to include other violent gangs. Under the expanded initiative, ICE has investigated the violent criminal activities of several other gangs, including the 18<sup>th</sup> Street gang. Since the initiative was launched, more than 4,800 gang members and associates have been arrested, representing over 350 different gangs, including 1,374 MS-13 members.<sup>76</sup> In conjunction with the gang arrests, ICE has seized more than 215 firearms (as of May 22, 2007).<sup>77</sup>

### Customs and Border Protection

According to CBP, the MS-13 gang is engaged in smuggling drugs and illegal aliens, as well as extortion, kidnapping, and murder for hire.<sup>78</sup> The border patrol has been required to collect intelligence information on the MS-13 gang since October 2004.<sup>79</sup> In FY2006, the border patrol apprehended 294 gang members nationally; of those, 208 were MS-13 members.<sup>80</sup> Moreover, in 2006, the border patrol's Rio Grande Valley sector (in Texas) had the highest number of MS-13 apprehensions nationally.<sup>81</sup>

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<sup>74</sup> Operation Community Shield has since been expanded to include "all criminal street gangs that pose a threat to national security and public safety." See ICE website, available at <http://www.ice.gov/pi/investigations/comshield/index.htm>, accessed on September 1, 2007.

<sup>75</sup> U.S. House, Hearing before the Committee on International Relations Subcommittee on the Western Hemisphere, "Gangs and Crime in Latin America," testimony by John P. Torres, Deputy Assistant Director, Human Smuggling and Public Safety Division, U.S. DHS, April 20, 2005, p. 1.

<sup>76</sup> U.S. DHS, ICE, Protecting National Security and Upholding Public Safety, News Release, "Paisas" Gang Member Arrested, May 23, 2007.

<sup>77</sup> U.S. DHS, ICE, "Operation Community Shield," May 22, 2007.

<sup>78</sup> U.S. DHS, CBP, *CBP Today*, "CBP Confronts U.S.'s 'Most Dangerous Gang,' MS-13 Will Commit 'Any Crime at Any Time,'" by Linda Kane, Office of Public Affairs, October/November 2006.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

## Legislation Related to Transnational Alien Gangs

This section briefly discusses legislation introduced in the 110<sup>th</sup> Congress that would target alien gang members by strengthening immigration enforcement laws and would provide additional law enforcement tools to pursue members of violent gangs. This section does not discuss anti-gang prevention legislation, witness protection proposals, or proposals that would bolster Central America and Mexico's efforts to stem gangs in those countries.<sup>82</sup>

As previously discussed, an unknown number of MS-13 and M-18 gang members are thought to be unauthorized aliens. As a result, several legislative proposals have been introduced in the 110<sup>th</sup> Congress that would impose immigration sanctions on alien gang members. For example, several bills would make alien members of gangs inadmissible and deportable (H.R. 1645, H.R. 2954, H.R. 4065, S. 330, and S.Amdt. 1184 to S. 1348<sup>83</sup> S. 1639, and S. 2294). At least one bill would subject "suspected" aliens who are members of a criminal street gang to mandatory detention (H.R. 2954). Other bills would make alien gang members ineligible for Temporary Protective Status (TPS),<sup>84</sup> asylum,<sup>85</sup> or other forms of relief from deportation (H.R. 1645, H.R. 2954, S. 330, S. 1639, S. 2294). At least two bills would enhance federal criminal penalties for crimes of violence and drug trafficking crimes committed by illegal aliens (H.R. 1582 and S. 456).<sup>86</sup>

Several bills introduced in the 110<sup>th</sup> Congress (and one that has passed the Senate) would amend Title 18 of the U.S. Code to further define a criminal street gang and crimes committed by criminal street gang members (H.R. 880, H.R. 1582, H.R. 3156, H.R. 3547, S. 456, and S. 990). In addition, some of these bills would amend the RICO statute by expanding the definition of racketeering activity to include gang crime. These bills also would provide for increased penalties for racketeering activities and other crimes.<sup>87</sup>

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<sup>82</sup> For a discussion of this legislation, see *Youth Gangs: Background, Legislation, and Issues; Gangs in Central America*, and CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 110th Congress*, by Nathan James.

<sup>83</sup> S.Amdt. 1184 failed by a recorded vote of 46-51. In addition, on June 7, 2007, the Senate failed to invoke cloture on S. 1348.

<sup>84</sup> TPS is a form of relief from removal under current immigration law that permits otherwise deportable aliens from certain designated countries that have experienced armed conflict or natural disaster to seek such relief from removal. A large number of MS-13 members are from El Salvador, a country that is designated, qualifying its nationals for TPS unless they have been convicted of a crime within the United States, which is a disqualification for TPS. For more information, see CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester.

<sup>85</sup> Aliens may seek asylum to the United States if they can demonstrate a well-founded fear that if returned home, they will be persecuted based on one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion. See CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

<sup>86</sup> Both bills would enhance penalties for certain violent felony crimes committed by illegal aliens to include (1) a fine and up to 20 years, or both, if the felony crime of violence committed carried an imprisonment term of more than one year or was a drug trafficking crime, or (2) a fine and up to 30 years imprisonment, or both, if the offender was an illegal alien who had been previously deported.

<sup>87</sup> See *Youth Gangs: Background, Legislation and Issues*.

## Selected Legislative Issues

Whether the MS-13 and M-18 gangs pose a threat to the domestic security of the United States is not definitively known. Moreover, with the exception of established MS-13 and M-18 cliques in Central America and Mexico, it is not altogether clear whether these two gangs pose a transnational threat. It is noteworthy, however, that despite the transnational aspects of the MS-13 and M-18 gangs—they are criminally active in more than one country—in many respects, they are no different than other domestic street gangs. Nevertheless, MS-13 and 18<sup>th</sup> Street gang members pose a criminal threat to the communities where they reside and conduct their criminal activities. In addition, evidence suggests that previously deported members of these two gangs reenter the United States illegally across the U.S.-Mexico border.

### Criminal Prosecution of Gang Members

Several anti-gang bills introduced in the 110<sup>th</sup> Congress would specify certain offenses as gang crimes that would carry higher penalties for offenders convicted of such crimes. These bills would also amend current law by expanding the RICO statute to include certain gang-related crimes.

### Sentencing Enhancements and Mandatory Minimums

Several anti-gang bills introduced in the 110<sup>th</sup> Congress would permit or require (in the case of mandatory minimum sentences) longer imprisonment for those convicted of certain serious crimes if they are committed by gang members. Proponents of these types of anti-gang measures argue that such enhanced federal penalties are needed to address the rising gang crime in communities across the country. They contend that longer sentences will deter violent gang-related crime and encourage greater cooperation by gang members with law enforcement and prosecutors—the rationale being that gang members facing a longer prison sentence will be more inclined to cooperate with prosecutors, providing useful information on the gang and its members in exchange for a shorter prison sentence.<sup>88</sup>

Critics of harsher criminal penalties and mandatory minimum sentences argue against these proposals on several fronts. On the broadest level, some critics oppose the further federalization of laws that have been traditionally under the sole jurisdiction of states and localities. These critics cite the growing number of new federal laws, recently estimated at almost 4,000.<sup>89</sup> They also argue that state and local law enforcement officers have the necessary experience and local intelligence sources to investigate and prosecute gang crimes, which may vary greatly by state, region, and locality, whereas federal sources are strained as they cope with investigating and prosecuting national threats.<sup>90</sup> Opponents of mandatory minimum sentences for gang-related crime also point to the greater expense of imprisonment versus the costs of prevention and

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<sup>88</sup> Supported by the Fraternal Order of Police, the National Sheriffs' Association and the National Association of Police Officers, statement by Rep. John Gingery, *Congressional Record*, May 11, 2005, p. H3120.

<sup>89</sup> Paul Rosenzweig, "The Gang Act Needs Modification," Heritage Foundation, WebMemo, May 3, 2004, available at <http://www.heritage.org/Research/Crime/wm494.cfm?>, accessed on September 1, 2007.

<sup>90</sup> *Ibid.*

rehabilitation efforts.<sup>91</sup> Moreover, critics question the deterrence effect of these harsher penalties, arguing that in certain situations, individuals break the law *notwithstanding* severe criminal penalties.<sup>92</sup> In addition, researchers have often noted that imprisonment can serve to strengthen gang allegiances and function as criminal “finishing schools” for gang members.<sup>93</sup>

## Gang-Specific RICO Act Provisions

Under current law, the RICO statute provides for prosecution in cases where the goal is to effectively dismantle the criminal enterprise. As previously mentioned, federal prosecutors have successfully prosecuted organized criminal syndicates under the RICO statute and have recently sought the prosecution of several MS-13 gang members.

Proponents of expanding the federal RICO statute to include violent gang-related crimes argue that having gang-specific RICO provisions is necessary to pursue violent gangs such as the MS-13 and M-18 gangs. They contend that such provisions would provide law enforcement with an important tool to investigate and prosecute gang-related crime. Moreover, they contend that gang-specific RICO provisions will help federal prosecutors pursue gangs that have moved drug trafficking and other criminal activity onto federal land to avoid detection and state or local prosecution.

Opponents argue that existing RICO laws are sufficiently broad to provide for the successful prosecution of gang-related crime. Despite the obstacles faced in developing successful RICO-gang cases, gang members have recently been successfully convicted under existing federal RICO statutes. The recent conviction of three MS-13 gang members in Hyattsville, Maryland,<sup>94</sup> adds credence to the argument that existing RICO laws are sufficient. In addition, other gang cases have been federally prosecuted under RICO statutes in the past, and several states have enacted state-versions of RICO-like laws for prosecuting gang conspiracy cases.<sup>95</sup>

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<sup>91</sup> For example, see *Diverting Children from a Life of Crime: Measuring Costs and Benefits*, by Peter W. Greenwood, Karyn E. Model, C. Peter Rydell, and James Chiesa, RAND Corporation, 1996; *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law*, by Peter W. Greenwood, C. Peter Rydell, Allan F. Abrahamse, Jonathan P. Caulkins, James Chiesa, Karyn E. Model, and Stephen P. Klein, RAND Corporation, December 10, 2005; Justice Policy Institute, *Gangs*, “Real Solutions to Youth Violence: Evidence Based Practices,” available at [http://www.justicepolicy.org/reports\\_jl/7-10-07\\_gangs/Gangs-Ch8solutions.pdf](http://www.justicepolicy.org/reports_jl/7-10-07_gangs/Gangs-Ch8solutions.pdf), accessed on September 1, 2007; *Longitudinal Study: Alternatives to Incarceration Sentencing Evaluation, Year 2, Full Report*, State of Connecticut, Judicial Branch, April 1996, pp. 84, 89-91.

<sup>92</sup> Dan M. Kahan, Yale Law School, John M. Olin Center for Studies in Law, Economics, and Public Policy Working Paper Series, *The Logic of Reciprocity: Trust, Collective Action, and Law*, Paper 281, 2002, p. 23.

<sup>93</sup> Ana Arana, “How the Street Gangs Took Central America,” *Foreign Affairs*, May/June 2005.

<sup>94</sup> A federal indictment of 30 MS-13 members under existing RICO statutes recently led to the conviction of 3 gang members, who could face sentences of life in prison or the death penalty. According to the superseding indictment of June 4, 2007, the three defendants “conspired to participate in a racketeering enterprise in the United States and El Salvador that involved murder, robbery, obstruction of justice, and witness tampering” as members of MS-13. For more information, see Ruben Castaneda, “Two MS-13 Members Convicted of Racketeering,” *Washington Post*, November 15, 2006, p. B02; Ruben Castaneda, “MS-13 Leaders Convicted in Killings,” *Washington Post*, April 28, 2007, p. B02, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/27/AR2007042702108.html>; and Jim Kouri, “Two MS-13 Leaders in El Salvador Ordered Gang Killings in the U.S.” *American Daily*, June 10, 2007.

<sup>95</sup> California’s Street Terrorism Enforcement and Prevention (STEP) law, enacted in 1988, is an often-discussed example of such a law.

## **Immigration Enforcement and Border Security<sup>96</sup>**

As previously discussed, one of the more overt tools used to dismantle gangs has been the enforcement of immigration law. Because street gangs such as MS-13 and M-18 may have some number of foreign-born members, immigration enforcement (i.e., deportation) is a direct method for disrupting these gangs. ICE “sweeps” of alien gang members have netted both MS-13 and M-18 members with criminal histories, as well as alien gang members without criminal histories.

Some critics contend that the gang problem cannot be resolved through immigration enforcement alone. They argue that not all gang members are foreign nationals, and such a policy could lead to ethnic and racial profiling. Furthermore, they assert that deportation is not a long-term solution to the gang problem because evidence suggests that alien gang members are crossing illegally back into the United States. They also argue that by deporting alien gang members, the United States is deporting its gang culture to other countries.

## **Data Improvements on Transnational and Alien Gang**

Data on gangs in general, and the MS-13 and M-18 gangs specifically, are limited. The organizational strength of MS-13 and M-18 gangs across national borders, and their ability to carry out serious criminal offenses, is an important indicator of their potential threat to the domestic security of the United States. Currently, the National Youth Gang Center (NYGC)<sup>97</sup> authors a survey on youth gangs. While the survey includes responses from major law enforcement jurisdictions (i.e., urban areas), it does not include every rural and suburban law enforcement jurisdiction. As gangs spread to nontraditional areas in the country (i.e., rural and suburban areas), the need to capture data in these areas becoming increasingly critical. More detailed reporting of gang crime could help develop more refined information on the incidence of such crime and the migration patterns of these gangs.

## **Conclusion**

The concept of transnationalism was coined in the aftermath of the First World War in a discussion of America’s composition as an immigrant “melting-pot” and the implications for assimilation and maintaining a cultural connection to one’s previous homeland.<sup>98</sup> More recently, the concept of transnationalism has been used to describe the ideals of globalization, the free movement of people, the sharing of culture, and improved communications across national boundaries, and generally has been considered a positive concept. However, in the context of crime policy, particularly after the terrorist attacks of September 11, 2001, transnationalism has assumed a more ominous connotation, and the potential for gangs in the United States to become transnational has become a concern to lawmakers.

The phenomena of gangs is complex, multifaceted, and constantly evolving. The allure of gangs has traditionally been thought to be a response to issues associated with poverty and disparities in

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<sup>96</sup> See CRS Report RL33351, *Immigration Enforcement Within the United States*, by Alison Siskin et al.

<sup>97</sup> The NYGC survey is administered by DOJ’s Office of Juvenile Justice and Delinquency Prevention.

<sup>98</sup> Randolph Bourne, “Trans-National America,” *Atlantic Monthly*, issue 118, July 1916, pp. 86-97.

social opportunities. Although gangs have always been in existence, gangs today are more violent, more organized, and more widespread.

The problems associated with stemming the spread and sophistication of MS-13 and M-18 gang activities may reflect current limitations to addressing what is now generally considered a multinational and regional problem. The problems associated with these two gangs cannot be solved by arrests, prosecution, imprisonment, and immigration enforcement alone. The fact that these two gangs exist and operate outside of the United States and beyond the reach of domestic law enforcement agencies indicates that domestic responses may not fully address the broader problems presented by these gangs, and that a multilateral and multinational approach in combination with domestic efforts may be warranted. Recent efforts of various federal agencies, working together with the governments of other countries, particularly El Salvador, on their problems with MS-13 and M-18 indicate that the federal response is moving toward a bilateral approach to addressing the problem.

Whether the problem of these two gangs continues to be approached as a domestic social issue, a domestic security issue, a multinational/regional issue, or a combination of these concerns has yet to be determined. Congress may consider these and other issues in shaping a legislative response to this complex policy concern.

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