



Statement for the Record

The American Civil Liberties Union (ACLU), Immigrant Justice Network, Immigrant Defense Project, Immigrant Legal Resource Center, National Immigrant Justice Center, and the National Immigration Project of the National Lawyers Guild

Senate Judiciary Committee, Subcommittee on Border Security and Immigration

**“TVRA and Exploited Loopholes Affecting Unaccompanied Alien Children”
May 23, 2018**

Chairman Cornyn, Ranking Member Durbin and members of the Subcommittee, we are a coalition of organizations advocating for justice for immigrants, including immigrants who have had contact with the criminal justice system. We have prepared this statement because we are deeply concerned that today’s hearing—purportedly held to investigate the conditions facing unaccompanied children fleeing violence and trauma in Central America—focuses on the Criminal Alien Gang Member Removal Act, sponsored by Senator Heller, and other constitutionally-suspect policies that promote widespread racial profiling and targeting by law enforcement of Latino youth. Moreover, it is both disingenuous and inaccurate to refer to protections for trafficked persons and the entire asylum system—grounded in international human rights law and a shared responsibility to uphold the dignity of all persons—as “loopholes.”

When the President of the United States calls suspected gang members “animals,”¹ it becomes impossible to ignore the context in which Senator Heller’s bill arises. The use of dehumanizing language should raise major concerns for those looking for serious solutions to address gang violence. Guided by a president who regularly uses a hostile and dehumanizing narrative about immigrants, Senator Heller’s bill is yet another tool for normalizing ICE’s targeting of immigrant youth. This subcommittee’s consideration of Senator Heller’s bill portends a future of extreme bills to further empower ICE and fuel the Trump narrative that attempts to erase the humanity and dignity of immigrants.

While communities confronting gang violence are eager to find real solutions, the public debate surrounding unaccompanied minors and gangs has distracted from real evidence-based solutions. Federal policies, focused on deportation and suppression tactics, have further fractured damaged relationships between police and the communities they serve. The singular

¹ Alana Abramson, [“They Aren’t People.’ President Trump Calls Deported Gang Members ‘Animals.’](#) TIME, May 16, 2018.

focus on deportation as a solution to gang violence further destabilizes communities and threatens the public safety.

S. 2380, the Criminal Alien Gang Member Removal Act Makes Communities Less Safe

Senator Heller's bill, The "Criminal Alien Gang Member Removal Act," which is framed as "law and order" legislation, is duplicative of existing law, erodes basic due process protections for immigrants, and, if passed, would lead to unchecked racial profiling and other unconstitutional police practices. The federal government, as well as states, have ample authority to arrest and convict individuals for gang-related offenses. In addition, our immigration laws already provide the government with numerous, far-reaching tools to deport individuals engaged in or alleged to be engaged in relatively minor criminal activity, including even mere suspicion of gang affiliation.

Overbroad Application

Sen. Heller's bill defines a "criminal gang" as any group, club, or association of five or more people who, within the last five years, violate state, federal, or foreign law by engaging in conduct relating to certain designated offenses. This definition of criminal gang is far broader than most state definitions of criminal gangs and the federal definition of "criminal street gang." This overbroad definition could encompass groups as varied as churches and fraternities for designation as a criminal gang. For example, the government could attempt to designate a church group that shelters an undocumented immigrant as a gang.

This bill impacts all noncitizens, including legal permanent residents, Temporary Protected Status holders, unaccompanied immigrant children fleeing violence, and refugees. The bill also targets immigrants for detention and deportation even if they have not committed any crime or been suspected of committing a crime. Its provisions impose guilt by association by targeting people not for their own individual conduct, but for their mere association with "groups" considered to be dangerous or otherwise disfavored.

Unfair Standards and Unreliable Gang Databases

This bill does not require an individual to be convicted of any crime in order to be considered a gang member. All that is required is that an immigration officer have a "reason to believe" an individual is associated with a gang. Consider the case of Mr. Daniel Ramirez Medina. On May 16, 2018, a federal judge enjoined ICE from terminating Daniel Ramirez Medina's DACA benefits, characterizing ICE's attempts to label Mr. Medina as a gang member as "most troubling" because it "provided no evidence specific to Mr. Ramirez." Mr. Ramirez was arrested and detained for nearly two months based on ICE's contention that he was in a gang. Mr. Medina consistently maintained that he was not in a gang and was forced to file a lawsuit to secure his release. When ICE was asked to produce evidence of the affiliation, no evidence was provided.

Further, under this bill, if an individual lives in a neighborhood known for gang activity, they could be considered a gang member. There is no waiver for the new ground of removability, it is retroactive in its application, and it provides no exceptions for actions committed as a juvenile or under duress.

In addition, this bill will encourage DHS to rely upon data gathered by local law enforcement in gang databases. Law enforcement employ overbroad criteria to identify gang members, including alleged indicators of gang involvement such as gang dress or tattoos, frequenting “gang areas,” or being seen with gang members. Based on this and other information, law enforcement often label individuals as being gang-involved and enter their names and information into gang databases. Depending on the database, a wide variety of state, local, and federal law enforcement authorities may be able to access them and add individuals suspected of gang membership. Some databases only track individuals convicted of gang related crimes, while many others are so expansive that they also include persons alleged to be gang “affiliates” or “associates.”² For example, Wilmer Catalan-Ramirez, a young father of two, was arrested for his gang affiliation. ICE relied on erroneous information in the Chicago gang database, information that the Chicago Police Department admitted was erroneous.³

Gang databases and other information-sharing arrangements between local law enforcement and federal immigration authorities are riddled with error and encourage biased policing. In California, an audit of CalGangs found that many law enforcement agencies could not substantiate a significant proportion of entries they had put into CalGangs.⁴ In fact, 42 individuals found in CalGang were supposedly younger than one year of age at the time of entry—28 of whom were entered on the basis of “admitting to being gang members.”⁵ Most individuals never become aware that they are in a database. Once an individual is placed in a gang database, it is incredibly difficult to challenge that determination.

The use of gang databases by law enforcement authorities is problematic for a multitude of other reasons. Many databases have very low thresholds for inclusion, including criteria such as living in a certain neighborhood, appearing in photographs with gang members, talking to gang members, or merely wearing certain colors, which can disproportionately target individuals who live in areas with significant gang activity—often lower socio-economic neighborhoods with high numbers of immigrants.⁶

² See NATIONAL INSTITUTE OF JUSTICE, U.S. DEPARTMENT OF JUSTICE, What is a Gang? Definitions (Oct. 28, 2011), <http://www.nij.gov/topics/crime/gangs/pages/definitions.aspx> (Affiliate” refers to individuals loosely connected to a gang.)

³ Nereida Moreno, [Chicago settles suit with immigrant falsely accused of gang ties](#), Chicago Tribune, Dec. 7, 2017.

⁴ California State Auditor, The CalGang Criminal Intelligence System, Report 2015-130 (August 2016) at 2.

⁵ Id. at 3.

⁶ See California Gang Node Advisory Committee, Office of the California Attorney General, Policy and Procedures for the CalGang System (Sept. 27, 2007), available at http://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/policy_procedure.pdf; Wright, supra note 4, at 121.

Lack of Due Process and Detention

This bill casts U.S. Immigration and Customs Enforcement as arresting officer, jailer, and judge, stripping away any effective due process protections. The bill does not allow individuals to challenge a group's designation as a gang in immigration court even if the designation triggers the person's detention and deportation. Individuals facing deportation through application of this Act are not permitted to challenge the criminal gang designation in any hearing or trial associated with their removal proceeding. Indeed, an immigrant suspected of being a gang member faces the possibility of detention, deportation, and permanent separation from family and community in the U.S.

In addition, individuals facing deportation through application of this Act are subjected to no-bond mandatory detention. This bill would greatly expand the population of immigrants in detention without any opportunity to seek release, at a time when deaths in detention are occurring with alarming frequency⁷ and rates of representation from detention are alarmingly low.⁸

Impact on Vulnerable Populations

This bill bars entire communities from nearly any form of immigration benefit or protection and precludes many refugees and individuals fleeing abuse from seeking legal protection. In addition, this bill will result in the deportation of people fleeing gang violence back to harm or death at the hands of the very persecutors they fled. This bill renders anyone suspected of gang association or membership ineligible for asylum, withholding of removal, Temporary Protected Status (TPS), Special Immigrant Juvenile Status (SIJS), or parole (unless presence is required to assist law enforcement operation). For many youth fleeing forced gang recruitment, this bill will be a death sentence. This bill will disproportionately harm children and youth because of the rampant misidentification of youth as gang members. Teenagers and children would undoubtedly trigger these bars for mere association with friends and family such as lending someone a car for a ride or for youthful indiscretions like trespassing. Because there is no way to challenge a gang "finding" under this bill, these children will be permanently separated from their families and returned to countries with skyrocketing levels of violence.

Federal Response and its Impact on Communities

Local law enforcement has long advocated that local communities should have the power to decide what strategies work best for them. In 2012, the Police Executive Research Forum published a report offering findings from meetings with police chiefs and other stakeholders, including mayors, state officials, and immigrant advocacy groups, about the effects federal

⁷ Human Rights Watch: [Systemic Indifference: Dangerous & Substandard Medical Care in Immigration Detention](#), May 8, 2017.

⁸ Ingrid Eagly and Steven Shafer, American Immigration Council, [Access to Counsel in Immigration Court](https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court) (2016), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

immigration policy was having on their communities.⁹ One of the main reasons local law enforcement agencies cited for wanting to limit their role in enforcing federal immigration laws was the belief that “aggressive enforcement will erode the trust that police have worked to develop with communities, and especially immigrant communities.”¹⁰ Similarly, the International Chiefs of Police issued a statement opposing initiatives that would force state and local law enforcement agencies to play a role in immigration enforcement, declaring that such participation is “an inherently local decision that must be made by law enforcement executives, working with their elected officials, community leaders, and citizens.”¹¹

Real solutions for unaccompanied minors require investments in local programs to support the ability of these young people to stabilize and rebuild their lives. Addressing gang violence requires a comprehensive approach that goes beyond suppression to address prevention and intervention, using a trauma responsive approach.

⁹ See Police Executive Research Forum, *Voices From Across the Country: Local Law Enforcement Officials Discuss The Challenges of Immigration Enforcement* (2012).

¹⁰ *Id.* at 42.

¹¹ See *International Association of Chiefs of Police, Statement on Immigration Related Executive Orders* at <https://theiacpblog.org/2017/01/30/iacp-statement-on-immigration-related-executive-orders/> (January 30, 2017).