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## Removal of Central American Gang Members: How Immigration Laws Fail to Reflect Global Reality

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# NOTES

## Removal of Central American Gang Members: How Immigration Laws Fail To Reflect Global Reality

FREDDY FUNES†

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### I. INTRODUCTION

To combat illegal immigration, the United States removes violent, criminal aliens to their home countries.<sup>1</sup> In 1996, Congress expanded the offenses that constitute an “aggravated felony” and eliminated relief from removal of such crimes.<sup>2</sup> These laws had radical effects on the

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† Executive Editor of the *University of Miami Law Review*. I dedicate this note to my parents, Miriam and Jesus, whose diligence, bravery, and kindness I can never match. I thank Professor Abraham for his input. I am also grateful for the editing help of Jarrod Martin and Jennifer Maurer. Special thanks to Melissa Kiedrowicz and Kristin Stasny.

1. Before April 1, 1997, the United States “deported” aliens physically present in the United States. After April 1, 1997, an alien may be either “deportable” or “inadmissible” when physically inside the United States. The word “removed” captures removal of an alien on “deportation” and “inadmissibility” grounds. See 8 U.S.C. § 1229a (2000). I use “removed” for any removal, whether based on “deportation” or “inadmissibility,” that occurred after April 1, 1997. However, most people still use “deportation” in the wider sense. Thus, some quotations might use “deported” or “deportation,” when, in reality, the proper legal terms are “removed” and “removal.”

2. Specifically, the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546, changed the immigration laws.

removal of aliens to Central America. Generally, the miniscule number of removed criminal aliens fails to change the socioeconomic realities in the criminals' home countries. Central America differs in two aspects. First, Central America has a large population of aliens in the United States.<sup>3</sup> Second, Central American nations have small,<sup>4</sup> indigent populations.<sup>5</sup>

As such, the United States' removal of violent aliens to Central American nations disturbs the socioeconomic reality in those countries. This disruption creates consequences both abroad and in the United States. In the Central American nations,<sup>6</sup> the removals have promoted a violent gang culture.<sup>7</sup> Specifically, two Central American gangs, *Mara Salvatrucha* (MS-13) and *Calle 18* (18th Street),<sup>8</sup> became the largest and most infamous gangs.<sup>9</sup> The removal policy still perpetuates the gang culture. This culture creates havoc among the local population and creates brutal responses to the increasing crime by the Central American governments.<sup>10</sup> Furthermore, the havoc in Central America creates incentives for Central Americans to migrate illegally to the United States.<sup>11</sup> Worse, previously removed gang members migrate to the United States as well.<sup>12</sup> As such, the ties between Central American and homegrown

3. See U.N. OFFICE ON DRUGS AND CRIME, CRIME AND DEVELOPMENT IN CENTRAL AMERICA at 41 U.N. Sales No. B.07.IV.5 (2007) (noting that some claim that nearly twenty percent of El Salvador's population lives in the United States).

4. As of 2005, El Salvador had about 6,880,000 inhabitants; Guatemala 12,600,000; and Honduras 7,200,000. INT'L MONETARY FUND, INTERNATIONAL FINANCIAL STATISTICS 277, 323, 336 (2006).

5. See Melissa James, *Fleeing the Maras: Child Gang Members Seeking Refugee Status in the United States*, 25 CHILD. LEGAL RTS. J. 1, 4 (2005).

6. Throughout this paper, "the Central American nations" refers to El Salvador, Guatemala, and Honduras. The gang problem has hit these three nations the hardest.

7. Tara Pinkham, Note, *Assessing the Collateral International Consequences of the U.S.' Removal Policy*, 12 BUFF. HUM. RTS. L. REV. 223, 234 (2006).

8. Many simply call MS-13 "Mara Salvatrucha," and many simply call 18th Street "Mara 18." See *Violence in Central America: Hearing Before the Subcomm. on the W. Hemisphere of the H. Comm. on Foreign Affairs*, 110th Cong. 2 (2007) [hereinafter *Violence in Central America*] (statement of José Guillermo Castillo Villacorta, Ambassador of Guatemala to the United States). Since sources use the different nomenclatures, this paper uses "MS-13" and "Mara Salvatrucha" interchangeably. It also uses "18th Street" and "Mara 18" interchangeably.

9. See Lainie Reisman, *Breaking the Vicious Cycle: Responding to Central American Youth Gang Violence*, SAIS REV., Summer-Fall 2006, at 147, 148.

10. Concerning Central American reaction to the gang violence, El Salvador has passed laws that outlaw membership in gangs. Juan J. Fogelbach, Note, *Mara Salvatrucha (MS-13) and Ley Anti Mara: El Salvador's Struggle To Reclaim Social Order*, 7 SAN DIEGO INT'L L.J. 223, 225 (2005). Honduras has also outlawed gang membership. James, *supra* note 5, at 5.

11. See Tyche Hendricks, *San Salvador's Mayor Uses Visit To Address Transnational Gang Issue*, S.F. CHRON., Dec. 5, 2007, at B12 (noting that the mayor of San Salvador believes youths escape El Salvador because of the gangs).

12. See *Gangs and Crime in Latin America: Hearing Before the Subcomm. on the W. Hemisphere of the H. Comm. on Int'l Relations*, 109th Cong. 44 (2005) [hereinafter *Gangs and*

gangs strengthen, and the problem swells.

While recognizing the problem of the *maras*, the United States does little to mitigate the problem. The United States continues to remove any aggravated felon under the expanded definition of "aggravated felony," regardless of the alien's ties to the United States. Furthermore, even when aliens confront legitimate violence at the hands of the *maras*, the asylum legal frame refuses to recognize the peril of these aliens.

This article explains the faults of the current removal policy and offers solutions to mitigate the growing violence in Central America. Part II discusses the United States' removal policy. Part III explains the myriad problems that this removal policy produces in Central America and within the United States. Part IV discusses how the United States' current law fails to further the United States' interests and how courts refuse to mitigate this damage through asylum. Part V offers possible solutions.

## II. THE UNITED STATES' CURRENT POLICY OF CENTRAL AMERICAN REMOVAL

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIR)<sup>13</sup> and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).<sup>14</sup> These laws expanded the definition of "aggravated felony" and obliterated avenues of relief from removal.<sup>15</sup> Even though Los Angeles gave life to the *maras*,<sup>16</sup> the United States ships the gang members to Central America. Additionally, the United States does not generally give an alien's criminal history to the nations to which the United States removes the alien.<sup>17</sup> Some estimate that Immigration and Customs Enforcement (ICE) never criminally charges seventy percent of gang members that ICE arrests for removal.<sup>18</sup> Thus, even though the United States gives a removed alien's

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*Crime in Latin America*] (prepared statement of Stephen C. Johnson, Senior Policy Analyst for Latin America, Kathryn and Shelby Cullom Davis Institute for International Studies, Heritage Foundation).

13. Pub. L. No. 104-208, 110 Stat. 3009-546.

14. Pub. L. No. 104-132, 110 Stat. 1214.

15. See 110 Stat. at 3009-594, -627 to -628.

16. NAT'L ALLIANCE OF GANG INVESTIGATORS ASS'NS, 2005 NATIONAL GANG THREAT ASSESSMENT 8-9 (2005), available at [http://www.ojp.usdoj.gov/BJA/what/2005\\_threat\\_assessment.pdf](http://www.ojp.usdoj.gov/BJA/what/2005_threat_assessment.pdf).

17. *Deportees in Latin America and the Caribbean: Hearing Before the Subcomm. on the W. Hemisphere of the H. Comm. on Foreign Affairs*, 110th Cong. 24-26 (2007) [hereinafter *Deportees in Latin America*] (testimony of Gary Mead, Assistant Director for Management, Office of Detention and Removal Operations, Bureau of U.S. Immigration and Customs Management, U.S. Department of Homeland Security).

18. *Criminal Gangs in the Americas: Out of the Underworld*, *ECONOMIST*, Jan. 7, 2006, at 23, 24.

criminal record when the alien's crime caused the removal,<sup>19</sup> numerous gang members end up in Central America without the Central American nations' knowledge. Facing these criminals without a decent justice system, Central America reacted with repressive, draconian laws.

### A. *The Central American Gangs' History and Organization*

Composed of Central Americans,<sup>20</sup> the *maras* are originally an American phenomenon. For example, MS-13, one of the better-known Central American gangs,<sup>21</sup> began when Salvadoran aliens in Los Angeles formed to defend themselves from other Hispanic gangs.<sup>22</sup> The "13" in MS-13 comes from California gang nomenclature.<sup>23</sup> Indeed, the "13" signifies that the MS align themselves with the gangs of Southern California.<sup>24</sup> Similarly, the "18" in 18th Street signifies the gang's birth on Los Angeles's Eighteenth Street.<sup>25</sup> Originally created in the 1960s without any ethnic or national-origin prerequisites, the 18th Street gang began to recruit Salvadorans who sought defense from Mexican gangs. As Salvadoran aliens made a decision to join either the multiethnic 18th Street or the newly formed—and primarily Salvadoran—MS-13, a rivalry between 18th Street and MS-13 exploded.<sup>26</sup>

From Los Angeles, these gangs expanded throughout the United States. Now, MS-13 has members in thirty-one states and the District of Columbia.<sup>27</sup> Through the United States' removal policy, the gangs spread to El Salvador, Guatemala, and Honduras. Estimates vary on the size of Central American gangs. Some estimates state that gangs have "an estimated 25,000 members in El Salvador . . . [with] comparable numbers in Guatemala, Honduras, and the United States."<sup>28</sup> Honduran officials estimate that Honduras has 20,000 active gang members.<sup>29</sup> Esti-

19. *Deportees in Latin America*, *supra* note 17, at 26 (testimony of Gary Mead, Assistant Director for Management, Office of Detention and Removal Operations, Bureau of U.S. Immigration and Customs Management, U.S. Department of Homeland Security) ("We provide the information on the criminal charges that lead to [the alien's] deportation.").

20. For example, Salvadorans, Guatemalans, and Hondurans primarily compose MS-13. *Gangs and Crime in Latin America*, *supra* note 12, at 20 (prepared statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

21. See Fogelbach, *supra* note 10, at 224.

22. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 39.

23. See *Gangs and Crime in Latin America*, *supra* note 12, at 19 (prepared statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

24. See *id.*

25. James, *supra* note 5, at 3.

26. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 59.

27. *Gangs and Crime in Latin America*, *supra* note 12, at 18 (testimony of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

28. *Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 23.

29. *Violence in Central America*, *supra* note 8, at 8 (statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

mates on the number of gang members in Guatemala vary from 14,000 to 100,000.<sup>30</sup> Estimates of total Central American gang membership extend from 70,000 to 300,000.<sup>31</sup> Other sources place the number of gang members in Central America as high as 500,000.<sup>32</sup> While estimates of Central American gang sizes vary, people agree that the gang members tend to be young males. As an example, of the gang members in Honduras, nearly ninety-eight percent fall within the twelve- and twenty-five-year-old range.<sup>33</sup> Additionally, Guatemalan gang members usually join gangs when only thirteen-years-old.<sup>34</sup> Shockingly, the gangs even recruit eight-year-old children.<sup>35</sup> Moreover, gang recruitment of these youths need not arise peacefully.<sup>36</sup> Still, although young, the Central American gangs execute various crimes.

These gangs traffic in drugs, guns, and people.<sup>37</sup> Distinctly, connections exist between gang members and organized crime. Although gang members do not directly become organized-crime members, "narco-bosses work closely with leaders of the most sophisticated transnational gangs."<sup>38</sup> In Honduras, the gangs steal guns, act as murderers-for-hire, kidnap, and extort taxes.<sup>39</sup>

This rampant crime requires organization. The *maras* organize themselves around "cliques."<sup>40</sup> For MS-13, a local leader called the "shot caller" leads the clique.<sup>41</sup> Usually, the cliques stand as discrete, independent cells.<sup>42</sup> However, some cliques engage in meetings with other cliques, and, at these meetings, gang members pay attendance fees, share intelligence on law enforcement, and organize transactions.<sup>43</sup> This

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30. *Id.* at 6 (prepared statement of José Guillermo Castillo Villacorta, Ambassador of Guatemala to the United States).

31. *Id.* at 2 (statement of José Guillermo Castillo Villacorta, Ambassador of Guatemala to the United States).

32. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 60.

33. *Violence in Central America*, *supra* note 8, at 8 (statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

34. *Id.* at 6 (prepared statement of José Guillermo Castillo Villacorta, Ambassador of Guatemala to the United States).

35. *Id.* at 12 (prepared statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

36. *See* James, *supra* note 5, at 6 ("Child gang members are frequently coerced into joining a *mara* by virtue of their child status and factors defining their social context.").

37. *Violence in Central America*, *supra* note 8, at 5 (prepared statement of José Guillermo Castillo Villacorta, Ambassador of Guatemala to the United States).

38. *Id.* at 6.

39. *Id.* at 12 (prepared statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

40. *See Gangs and Crime in Latin America*, *supra* note 12, at 20 (prepared statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

41. *Id.*

42. *See* Chris Kraul et al., *L.A. Violence Crosses the Line*, L.A. TIMES, May 15, 2005, at A1.

43. *Gangs and Crime in Latin America*, *supra* note 12, at 20 (prepared statement of Chris

interaction between cliques includes gang leaders from the United States and El Salvador.<sup>44</sup>

In addition, this interaction has bolstered MS-13's ability to infiltrate other cities around the United States. Unlike other gangs, the *maras* have shown a willingness to create new cliques in other cities. For example, the MS-13 cliques in the Washington, D.C. metropolitan area resulted from Los Angeles MS-13 members' effort to recruit in D.C.<sup>45</sup> MS-13 entered Seattle when Los Angeles MS-13 members traveled to Seattle to sell drugs.<sup>46</sup> MS-13's ability to expand might help explain its ability to communicate throughout the United States.<sup>47</sup>

A quick panoramic of the *maras* indicates gangs born in the United States, which then spread to Central America. The *maras* have overwhelming numbers in Central America. These members are young. The gangs partake in crimes, including crimes usually undertaken only by organized crime. While consisting of independent cells, the cells of the *maras* show a tendency to communicate among themselves and even hold meetings.

#### B. *The United States Removes Gang Members to Central America*

While no single reason created the gang-violence surge in Central America, the United States' removal policy certainly fed the violence.<sup>48</sup> In 1996, Congress passed IIRIR<sup>49</sup> and AEDPA.<sup>50</sup> These laws expanded the definition of "aggravated felony." For example, AEDPA added offenses such as commercial bribery and obstruction of justice to the definition of "aggravated felony."<sup>51</sup> Under the new definition of "aggravated felony," the United States can remove an alien for committing an "aggravated felony" even if the alien only committed a misdemeanor.<sup>52</sup>

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Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation); see also Robert J. Lopez et al., *Gang Uses Deportation to Its Advantage To Flourish in the U.S.*, L.A. TIMES, Oct. 30, 2005, at A1.

44. Kraul et al., *supra* note 42 ("Gang leaders in the U.S. and El Salvador have shared information on informants, discussed punishing rivals and plotted an ambush to free an accused murderer.").

45. *Gangs and Crime in Latin America*, *supra* note 12, at 18 (testimony of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

46. Kraul et al., *supra* note 42.

47. See discussion *infra* Part III.B.

48. See *Violence in Central America*, *supra* note 8, at 13 (prepared statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States) ("A contribution to the surge of gangs in Honduras has been the deportation of active members from gangs from the United States, as well as their circulation and movement through Central America and Mexico to return legally or illegally from and to the United States.").

49. Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

50. Pub. L. No. 104-132, 110 Stat. 1214 (1996).

51. *Id.* at 1277-78 (codified at 8 U.S.C. § 1101(a)(43) (2000)).

52. *Guerrero-Perez v. INS*, 242 F.3d 727, 737 (7th Cir. 2001) ("Congress, since it did not

Furthermore, because of the new laws, crimes of violence, theft, or burglary became aggravated felonies if accompanied with a sentence of one year, in contrast to the five years previously required.<sup>53</sup> After these laws, a one-year suspended sentence resulting from shoplifting may result in an "aggravated felony."<sup>54</sup> AEDPA applied similar changes in imprisonment terms for obstruction-of-justice charges,<sup>55</sup> gambling offenses,<sup>56</sup> and commercial bribery.<sup>57</sup> Because of the change in the definition of "aggravated felony," along with a bar on relief for aggravated felons,<sup>58</sup> the United States has "deported more than 670,000 immigrants because of criminal convictions."<sup>59</sup>

The statutory changes caused a radical shift in the United States' removals. In the early 1990s, the United States deported about 40,000 aliens per year.<sup>60</sup> Presently, the United States removes over 200,000 aliens each year.<sup>61</sup> In 1991, the Immigration and Naturalization Service (INS) deported 33,189 aliens.<sup>62</sup> By 1995, the INS deported 50,924 aliens.<sup>63</sup> Although the number of deportations increased, it did so at an average of 3547 aliens per year.<sup>64</sup> In contrast, in 1997, after the immigration-law reforms, the number of removals jumped nearly sixty-four percent to 114,432.<sup>65</sup> Furthermore, removals based on criminal reasons soared to 34,113 by 1997.<sup>66</sup> That constitutes more than a 135% increase over the 1991 number of criminal deportations. Unsurprisingly, the pattern of increasing removals and criminal removals also applies to the Central American nations.

In 1996, deportations to El Salvador numbered 2360.<sup>67</sup> Depor-

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specifically articulate that aggravated felonies cannot be misdemeanors, intended to have the term aggravated felony apply to the broad range of crimes listed in the statute, even if these include misdemeanors.").

53. See Pub. L. No. 104-208, 110 Stat. at 3009-627 (codified at 8 U.S.C. § 1101(a)(43)(F)-(J)).

54. Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936, 1939 (2000).

55. See Pub. L. No. 104-132, 110 Stat. at 1278 (codified at 8 U.S.C. § 1101(a)(43)(S)).

56. *Id.* at 1277 (codified at 8 U.S.C. § 1101(a)(43)(J)).

57. *Id.* at 1278 (codified at 8 U.S.C. § 1101(a)(43)(R)).

58. See 8 U.S.C. §§ 1101(f)(8), 1229b(a)(3), (b)(1)(B).

59. *Deportees in Latin America*, *supra* note 17, at 1 (statement of Rep. Eliot L. Engel, Chairman, Subcomm. on the Western Hemisphere of the H. Comm. on Foreign Affairs).

60. *Id.* at 5.

61. *Id.*

62. INS, U.S. DEP'T OF JUSTICE, 1999 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 217 tbl.62 (2002).

63. *Id.*

64. See *id.*

65. See *id.*

66. *Id.*

67. INS, U.S. DEP'T OF JUSTICE, 1996 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 188 tbl.69 (1997).



tions to Guatemala numbered 1980, and deportations to Honduras numbered 2693 that same year.<sup>68</sup> These numbers showed increases from earlier in the 1990s. In fact, in 1993, El Salvador numbered 1975 deportations, Guatemala numbered 1256 deportations, and Honduras numbered 1605 deportations.<sup>69</sup> Between 1992 and 1995, the 1975 deportations El Salvador faced constituted the highest number of deportations for any of the three nations.<sup>70</sup>

While the number of deportees hovered between 1137 and 1975 for the Central American nations between 1992 and 1995,<sup>71</sup> the numbers spiked, and all three nations had over 3000 removals or deportees in 1997.<sup>72</sup> In 1998, the INS removed or deported 5315 Salvadorans, 5120 Guatemalans, and 5105 Hondurans.<sup>73</sup> Notably, the INS only deported 1001 Salvadorans,<sup>74</sup> while the INS removed 4314 Salvadorans.<sup>75</sup> Thus, the INS removed over four times the number of Salvadorans under the law as amended by the IIRIR and AEDPA than it deported using the previous laws.<sup>76</sup> The same pattern appears for Guatemalans and Hondurans.<sup>77</sup> In 2001, the INS removed nearly 12,000 Salvadorans, Guatemalans, or Hondurans;<sup>78</sup> in 2003, the INS removed over 19,000 Salvadorans, Guatemalans, or Hondurans;<sup>79</sup> and, by 2006, the number of Salvadoran, Guatemalan, or Honduran removals increased to 55,000.<sup>80</sup>

Not only has the United States increased removals to Central America, but it has also increased criminal removals. The Central American nations have confronted an increasing wave of criminal removals. For example, in 1996, the INS removed only 1025 Salvadorans for crim-

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68. *Id.*

69. *Id.* at 187 tbl.68.

70. *See id.*

71. *Id.*

72. *See* INS, U.S. DEP'T OF JUSTICE, 1997 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 179 tbl.64 (1999).

73. INS, U.S. DEP'T OF JUSTICE, 1998 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 217 tbl.65 (2000).

74. *See id.* This means that the INS deported 1001 Salvadorans under the law in effect prior to April 1, 1997. *See id.* at 217 n.2.

75. *See id.* at 217 tbl.65. This indicates that, although only capable of deporting 1001 Salvadorans under the old laws, the INS removed 4313 Salvadorans under the new laws. *See id.* at 217 n.3.

76. *See id.* at 217 nn.2-3.

77. *See id.* at 217 tbl.65.

78. INS, U.S. DEP'T OF JUSTICE, 2001 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 257 tbl.65 (2003).

79. OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., 2004 YEARBOOK OF THE IMMIGRATION STATISTICS 173 tbl.43 (2006).

80. *See Deportees in Latin America*, *supra* note 17, at 13 (prepared statement of Gary Mead, Assistant Director for Management, Office of Detention and Removal Operations, Bureau of U.S. Immigration and Customs Management, U.S. Department of Homeland Security).

inal or narcotic convictions.<sup>81</sup> The number of criminal Hondurans and Guatemalans removed numbered 1049.<sup>82</sup> By 1998, the number of criminal removals of Salvadorans increased by more than 600 to 1711.<sup>83</sup> The criminal removals of Guatemalans and Honduras that year nearly doubled from the 1996 removals;<sup>84</sup> and, by 2003, criminal removals averaged nearly 1776 to each of the countries.<sup>85</sup> Fiscal year 2006 saw 5559 criminal removals to Honduras, 3589 criminal removals to Guatemala, and 3679 criminal removals to El Salvador.<sup>86</sup> Indeed, between 1998 and 2005, the United States sent about 46,000 convicts to Central America.<sup>87</sup> As these removals from the United States increased, Central Americans gained a view that the United States flooded Central America with criminals.

The view that the United States flooded Central America with criminals expanded to incorporate the notion that the United States refuses to share its criminal information with the Central American nations. This perception by the Central American nations has foundation. When the United States removes a criminal, ICE has claimed that the United States gives the removed criminal's nation a form detailing the alien's criminal history.<sup>88</sup> But the nations receiving a removed criminal alien only receive information concerning the criminal charges that caused the removal.<sup>89</sup> Thus, the United States does not give the nation an alien's entire criminal history when removing the alien.<sup>90</sup>

Nor do the insufficiencies halt there. Because the United States only "provide[s] the information on the criminal charges that lead to [an alien's] deportation,"<sup>91</sup> the Central American nations get no information if the United States removes a gang member for non-criminal reasons. As some estimate that nearly seventy percent of Central American gang members removed never face criminal charges,<sup>92</sup> the United States' pol-

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81. INS, *supra* note 67, at 188 tbl.69.

82. *See id.*

83. *See* INS, *supra* note 73, at 225 tbl.66.

84. *See id.*

85. *See* OFFICE OF IMMIGRATION STATISTICS, *supra* note 79, at 173 tbl.43.

86. *Deportees in Latin America*, *supra* note 17, at 13 (prepared statement of Gary Mead, Assistant Director for Management, Office of Detention and Removal Operations, Bureau of U.S. Immigration and Customs Management, U.S. Department of Homeland Security).

87. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 40.

88. *Gangs and Crime in Latin America*, *supra* note 12, at 31 (written response from John P. Torres, Deputy Assistant Director, Human Smuggling and Public Safety Division, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security).

89. *Deportees in Latin America*, *supra* note 17, at 25–26 (testimony of Gary Mead, Assistant Director for Management, Office of Detention and Removal Operations, Bureau of U.S. Immigration and Customs Management, U.S. Department of Homeland Security).

90. *Id.* at 24.

91. *Id.* at 26.

92. *Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 24.

icy of providing criminal information only for criminal removals leaves the Central American nations uninformed. Unfortunately, no alternative exists to removing gang members without bringing charges, since many gang members came to the United States illegally and no evidence exists with which to prosecute them.<sup>93</sup> Certainly, many gang members that the United States removes lack any criminal history. Thus, the Central American nations may still feel uninformed about the massive removal of aliens from the United States.<sup>94</sup> This sense of misinformation, along with Central America's limited resources, can only fuel hopelessness.

### C. *Central America Cannot Cope with the Removals*

If the United States struggles with its gang problem, the Central American nations certainly falter in their attempt to combat the gang problem. El Salvador, Guatemala, and Honduras constitute impoverished nations. According to a 2000 survey, about thirty-one percent of El Salvador's population lived on less than one dollar a day.<sup>95</sup> Fifty-eight percent of El Salvador's population lived on less than two dollars a day.<sup>96</sup> About twenty percent of Honduras's population lived on less than one dollar a day, and forty-four percent lived on less than two dollars a day.<sup>97</sup> Similarly, sixteen percent of Guatemalans lived on less than one dollar a day, and thirty-eight percent lived on less than two dollars a day.<sup>98</sup> Thus, the populations of El Salvador, Guatemala, and Honduras are impoverished, even when compared to neighboring Latin American nations.<sup>99</sup>

Moreover, underemployment averages about sixty-five percent in El Salvador, Guatemala, and Honduras.<sup>100</sup> In 2004, unemployment reached over 45,000 Salvadoran men between the ages of twenty and

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93. *Id.* at 26.

94. See *Violence in Central America*, *supra* note 8, at 21–22 (testimony of Roberto Flores Bermudez, Ambassador of Honduras to the United States) (stating that the United States gave Honduras no information regarding gang membership); *Gangs and Crime in Latin America*, *supra* note 12, at 30 (statement of Rep. Robert Menendez, Member, Subcomm. on the Western Hemisphere of the H. Comm. on International Relations) (noting that Latin Americans tell him that criminals end up in Central America without warning); Pinkham, *supra* note 7, at 235 (noting that Central American nations blame crime rates on the United States' removals).

95. WORLD BANK, WORLD DEVELOPMENT REPORT 2006: EQUITY AND DEVELOPMENT 278 tbl.A1 (2005).

96. *Id.*

97. *Id.*

98. *Id.*

99. James, *supra* note 5, at 4 ("According to the World Bank, the countries of El Salvador, Guatemala, Honduras, and Nicaragua are among the poorest countries in the world, and they are certainly the poorest in the Americas.").

100. *Gangs and Crime in Latin America*, *supra* note 12, at 44 (prepared statement of Stephen C. Johnson, Senior Policy Analyst for Latin America, Kathryn and Shelby Cullom Davis Institute for International Studies, Heritage Foundation).

twenty-nine.<sup>101</sup> Another 24,200 fifteen- to nineteen-year-old males lacked jobs in El Salvador in 2004.<sup>102</sup> Considering that people under twenty-four years of age constitute over half of El Salvador's population,<sup>103</sup> that people under eighteen constitute nearly half of Honduras's population,<sup>104</sup> and that people under twenty-nine constitute seventy percent of Guatemala's population,<sup>105</sup> such levels of underemployment and unemployment among youths causes disharmony. This disharmony manifests itself as gangs and crime. Ominously, the U.S. Census Bureau estimates that Guatemala's population will increase by sixty percent from 2000 levels by 2020 and estimates that El Salvador's population will increase by forty percent in the same span.<sup>106</sup> As such, the unemployment and underemployment problem will not simply dematerialize. This, along with poverty, leads to the continuation of the crime waves.

Beyond the crime, poverty leads to lackluster police and legal infrastructures. Where in the United States 326 police officers exist for every 100,000 citizens, between El Salvador, Guatemala, and Honduras, only El Salvador has a comparable rate.<sup>107</sup> For example, Guatemala has 119 officers per 100,000 citizens, and Honduras has 104 police officers for every 100,000 citizens.<sup>108</sup> Already facing problems from post-civil war and unemployment crime problems,<sup>109</sup> undermanned police forces in the Central American nations faced about 5000 criminal removals from the United States each year between 1998 and 2002.<sup>110</sup> Far worse, the police in those nations struggle to solve homicides.<sup>111</sup> With such conditions,

101. See INT'L LABOUR OFFICE, 2006 YEARBOOK OF LABOUR STATISTICS, VOLUME 1: TIME SERIES 466 tbl.3B (2006).

102. *Id.*

103. S. Lynne Walker, *Gang Members Deported from U.S. Take Deadly Culture to Their Home Countries*, SAN DIEGO UNION-TRIB., Jan. 16, 2005, at A1.

104. *Violence in Central America*, *supra* note 8, at 8 (statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

105. *Id.* at 6 (prepared statement of José Guillermo Castillo Villacorta, Ambassador of Guatemala to the United States).

106. WILLIAM C. PRILLAMAN, CRIME, DEMOCRACY, AND DEVELOPMENT IN LATIN AMERICA 16 (2003), available at [http://www.csis.org/media/isis/pubs/ppcrime\\_democracy\\_inlatinamerica%5B1%5D.pdf](http://www.csis.org/media/isis/pubs/ppcrime_democracy_inlatinamerica%5B1%5D.pdf).

107. See U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 31 fig.14 (showing El Salvador has 362 officers for every 100,000 citizens).

108. *Id.*

109. See *Gangs and Crime in Latin America*, *supra* note 12, at 43–44 (prepared statement of Stephen C. Johnson, Senior Policy Analyst for Latin America, Kathryn and Shelby Cullom Davis Institute for International Studies, Heritage Foundation).

110. See INS, U.S. DEP'T OF JUSTICE, 2000 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, at 255 tbl.66 (2002); OFFICE OF IMMIGRATION STATISTICS, *supra* note 79, at 169 tbl.43.

111. El Salvador had a forty-four percent "clearance rate" of homicides. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 30–31. Guatemala had an absurd seven percent "clearance

crime soared.<sup>112</sup>

Lacking the enforcement and legal means to stem gang violence, the Central American countries enacted highly repressive laws.<sup>113</sup> For example, Honduras made "illicit association" a legal crime, punishable with twelve years in prison.<sup>114</sup> Under this crime, simply belonging to a gang meant years in prison. El Salvador passed a similar law that associates men with tattoos to gangs.<sup>115</sup> One expert stated, "If, say, former Secretary of State George Schultz were to go to El Salvador today and somehow reveal the fact that he got a tattoo in the Navy during World War II, he might be subject to arrest."<sup>116</sup> Although the expert probably exaggerated, the laws passed by Honduras and El Salvador endanger civil liberties.

The Central American governments began enforcing these laws, with Honduras arresting over 1500 tattooed men only seventeen months after passing its laws.<sup>117</sup> Not to be outdone, El Salvador made over 19,000 gang-related arrests between 2003 and 2004.<sup>118</sup> Expectedly, El Salvador's prison population doubled between 2000 and 2005.<sup>119</sup> Unsatisfied with civilian power, Guatemala deployed army troops to crime-infested neighborhoods in Guatemala City.<sup>120</sup> Because of the United States' removal policy<sup>121</sup> and because of the Central American nations' policies of mass arrest, Central American prisons flooded. Unfortunately, the Central American nations not only lack sufficient resources to combat crime but also lack the resources to incarcerate such volumes of gang members.

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rate" of homicides in 2000. *Id.* "Clearance rate" is the percentage of crimes solved by the police. *Id.*

112. See *Violence in Central America*, *supra* note 8, at 9 (statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States) ("Honduran police estimate that from 1998 to 2003 law violations by gang members under age 18 increased 250 percent.").

113. Walker, *supra* note 103.

114. *Violence in Central America*, *supra* note 8, at 15–16 (prepared statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

115. See Walker, *supra* note 103.

116. *Gangs and Crime in Latin America*, *supra* note 12, at 67 (testimony of Stephen C. Johnson, Senior Policy Analyst for Latin America, Kathryn and Shelby Cullom Davis Institute for International Studies, Heritage Foundation).

117. Walker, *supra* note 103.

118. See *Gangs and Crime in Latin America*, *supra* note 12, at 46 (prepared statement of Stephen C. Johnson, Senior Policy Analyst for Latin America, Kathryn and Shelby Cullom Davis Institute for International Studies, Heritage Foundation).

119. Pinkham, *supra* note 7, at 236.

120. *Gangs and Crime in Latin America*, *supra* note 12, at 46 (prepared statement of Stephen C. Johnson, Senior Policy Analyst for Latin America, Kathryn and Shelby Cullom Davis Institute for International Studies, Heritage Foundation).

121. Salvadoran officials claimed that "[a]bout 60% of the gang members in the national prison system . . . are U.S. deportees or had fled the U.S. to avoid criminal prosecution." Lopez et al., *supra* note 43.

The high influx of criminals overwhelms the Central American nations' prison systems. For instance, officials built one Salvadoran prison to hold 500 inmates. It now holds nearly 1000 inmates.<sup>122</sup> Prisons in Central America hold 125% of their capacity, and El Salvador's prisons hold 169% of their capacity.<sup>123</sup> Similarly, prisons in Honduras have an occupancy rate of 219.71%.<sup>124</sup> Guatemala has a lower overcrowding rate, but Guatemalan prisons still hold 122% of their capacity.<sup>125</sup>

Thus, Central America finds itself with hardened criminals that grew and learned their trade in the United States, an American policy that seeks to remove criminals out of the United States, and insufficient resources to combat crime. The quick "solution" to the crime curtailed civil liberties and created over-crowded prisons. Yet, the quick solution resolved nothing.<sup>126</sup> Violent crimes in Central America have not changed, Central America's problems have helped foster criminal ties between Central America and the United States, and the problems have exacerbated the United States' illegal immigration problems.<sup>127</sup>

### III. THE EFFECTS OF THE REMOVAL POLICY

Passing oppressive laws in the hopes of undermining the burgeoning gang culture,<sup>128</sup> the Central American nations still face rising homicide rates.<sup>129</sup> Central America further faces overwhelmed prisons, in which death, escape, and prisoner collusion frequently occur. Passing broad removal immigration laws, the United States now faces an international criminal organization with ties to drug, arms, and human trafficking.<sup>130</sup> Furthermore, the *maras* continue to expand in the United States. MS-13 now has a presence in Los Angeles,<sup>131</sup> Maryland,<sup>132</sup> Bos-

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122. *Id.*

123. *Better Education for Youth Cuts Crime in Central America*, STATES NEWS SERVICE, Dec. 12, 2007.

124. JUSTICE STUDIES CTR. OF THE AMS., REPORT ON JUDICIAL SYSTEMS IN THE AMERICAS 2004–2005, at 254 (2006).

125. *Id.* at 231. Part III, section B of this paper explains how this overcrowding has allowed the gangs to augment their international communications.

126. See discussion *infra* Part III.A.

127. See discussion *infra* Part III.A–B.

128. Walker, *supra* note 103.

129. See Inés Benítez, *Guatemala: Homicide Rate Soars, Except in Indigenous Areas*, IPS/GIN, Dec. 13, 2007.

130. See *Violence in Central America*, *supra* note 8, at 5 (prepared statement of José Guillermo Castillo Villacorta, Ambassador of Guatemala to the United States).

131. See Ari B. Bloomekatz, *32 Alleged Gang Members Arrested in L.A.*, L.A. TIMES, Nov. 16, 2007, at B4.

132. See Ruben Castaneda, *3 MS-13 Leaders Convicted in Killings*, WASH. POST, Apr. 28, 2007, at B2.

ton,<sup>133</sup> and Omaha.<sup>134</sup>

### A. Uncontrolled Gang Violence

Despite laws enacted to curtail gang membership, violent crime has swelled in Central America. In 2005, El Salvador's homicide rate increased about twenty-three percent above 2004 levels. In that period, Honduras and Guatemala had similar increases in the homicide rate. Indeed, in 2004, Honduras had a murder rate of forty-six persons per 100,000 people, El Salvador had a rate of forty-one persons per 100,000 people, and Guatemala had a rate of thirty-five persons per 100,000 people.<sup>135</sup> In 2005, Honduras's murder rate increased to 59.6 persons per 100,000 people, El Salvador's murder rate increased to 59.9, and Guatemala's murder rate increased to forty-seven. In aggregate numbers, Guatemala had 2655 murders in 1999, and, by 2006, Guatemala had 5885 murders.<sup>136</sup> "[T]he violence . . . has been increasing since the *mano dura* plan has been established."<sup>137</sup> As one analyst described these murder rates, El Salvador and Guatemala both claim "the dubious distinction of being high on the top-ten list" of intentional homicide rates.<sup>138</sup> Similarly, in El Salvador, extortion and kidnapping have reached record levels.<sup>139</sup> Thus, the harsh laws did not abate the crime rate in Central America but did create prison overcrowding,<sup>140</sup> which has created chaos within prisons.

In regard to havoc inside Central American prisons, in El Salvador's La Esperanza prison, thirty-one inmates died in a battle between Mara 18 members and other inmates.<sup>141</sup> La Esperanza does not stand alone. In August 2005, MS-13 inmates planned an attack against Mara 18 inmates across several Guatemalan prisons.<sup>142</sup> The gang used hand grenades in its first attack.<sup>143</sup> Thirty-five Mara 18 inmates died.<sup>144</sup> During the seventeen months that Honduras arrested 1500 tattooed youths,

133. See Michele McPhee, *ICE Aims To Freeze Gangs*, BOSTON HERALD, Oct. 10, 2007, at 7.

134. Lynn Safranek, *Arrests Aimed at Dismantling Gang*, OMAHA WORLD-HERALD, Oct. 24, 2007, at 1A.

135. *Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 24.

136. Benítez, *supra* note 129.

137. *Gangs and Crime in Latin America*, *supra* note 12, at 67 (testimony of Manuel Orozco, Senior Associate, Inter-American Dialogue) (emphasis added).

138. *Violence in Central America*, *supra* note 8, at 41 (prepared statement of Lainie Reisman, Director, Inter-American Coalition for the Prevention of Violence).

139. Hector Tobar, *Salvadoran Gangs Push Violence to Record Level*, L.A. TIMES, Apr. 1, 2007, at A16.

140. See discussion *supra* Part II.C.

141. Mary Jordan, *Central America's Gang Crisis*, WASH. POST, Sept. 17, 2004, at A1.

142. *Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 26.

143. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 34.

144. *Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 26.

200 died in prison fires.<sup>145</sup> In May of 2004, “103 prisoners, most of them gang-members, died when fire swept through a grossly overcrowded prison in San Pedro Sula.”<sup>146</sup> In fact, in 2005, Salvadoran prisons averaged two or three gang-member deaths each day.<sup>147</sup> Obviously, such chaotic administration of a prison system cannot properly control inmates. As a result, in October of 2005, sixteen gang members escaped Salvadoran prisons.<sup>148</sup> While Central America’s repressive laws inundate Central America’s prisons, the laws have had little effect on preventing crime. Thus, the reactionary response of Central American governments seems to have created new problems by hindering the Central American nation’s prison systems.

Furthermore, Central America’s prison problem encouraged the gangs “to reorganize themselves, regroup into more violent organizations.”<sup>149</sup> In San Pedro Sula, Honduras, MS-13 members stopped a bus and used a machinegun on the passengers. Twenty-eight people died. Brazenly, the gang members left a letter warning the President of Honduras.<sup>150</sup> This letter indicated that the gang slaughtered the riders in retaliation for Honduras’s laws.<sup>151</sup> Since then, MS-13 has clearly taken responsibility for the bus massacre.<sup>152</sup> As a further highlight of the overall prison problem, Lester Rivera-Paz, a participant in the massacre,<sup>153</sup> had previously escaped from a Honduran prison.<sup>154</sup> With such bold tactics, the argument that the *mano dura* has thwarted the Central American gangs seems flimsy.

The surging crime and overpopulated prisons apparently convinced the Central American nations that the *mano dura* plan could not, alone, eradicate the gang problem. For instance, in November of 2005, Manuel Zelaya won Honduras’s presidential election.<sup>155</sup> Zelaya argued that ending poverty and unemployment would stymie gang violence, and he sup-

145. Walker, *supra* note 103.

146. *After the Massacre*, ECONOMIST, Jan. 15, 2005, at 36, 36.

147. *Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 26.

148. *Id.*

149. *Gangs and Crime in Latin America*, *supra* note 12, at 67 (testimony of Manuel Orozco, Senior Associate, Inter-American Dialogue).

150. *After the Massacre*, *supra* note 146, at 36.

151. *Gangs and Crime in Latin America*, *supra* note 12, at 21 (prepared statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

152. *Violence in Central America*, *supra* note 8, at 42 (prepared statement of Lainie Reisman, Director, Inter-American Coalition for the Prevention of Violence).

153. *Gangs and Crime in Latin America*, *supra* note 12, at 25 (prepared statement of John P. Torres, Deputy Assistant Director, Human Smuggling and Public Safety Division, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security).

154. Kraul et al., *supra* note 42.

155. Sam Enriquez & Alex Renderos, *In Gang-Plagued Honduras, the Softer Stance Takes the Presidency*, L.A. TIMES, Nov. 29, 2005, at A3.



ported job training to combat crime.<sup>156</sup> Now, Honduras enforces, prevents, and rehabilitates in its effort to halt gang violence.<sup>157</sup> In 2005, Honduras established over forty programs directed at gangs, education, health, occupational training, and housing.<sup>158</sup> These programs reflect the Central American nations' realization that the high crime rates undermine democracy and governmental institutions.

The crime also affects the Central American nations' economies and faith in democracy. A United Nations' report declared that Central America's crime creates obstacles to regional investment.<sup>159</sup> One study estimates that El Salvador's violence costs El Salvador up to fifteen percent of its GDP.<sup>160</sup> Another study estimates that violence in El Salvador cost El Salvador \$1.7 billion in 2003.<sup>161</sup> One poll found that over eighty percent of Guatemalan businesses believed crime constrained their business. Likewise, sixty-one percent of Honduran businesses agreed that crime constrained their businesses. Regarding businesses that believed crime constrained them, no country had a higher percentage than Guatemala, and, besides Guatemala, only Kenya had a percentage higher than Honduras.<sup>162</sup>

Salvadoran businesses had a similar view. For example, in El Salvador, eighty percent of the businesses in San Miguel's Chamber of Commerce and Industry claim to pay extortion taxes to the *maras*.<sup>163</sup> The crime does not only harm businesses, but it also forces the Central American nations "to channel a disproportionate percentage of their scarce resources into security."<sup>164</sup> This prevents investment in other projects.<sup>165</sup>

In addition, the violence erodes support for democratic governments in the region. A poll of Latin America found that support for democracy had the largest drop in El Salvador and Honduras.<sup>166</sup> Moreover, the populations of El Salvador, Guatemala, and Honduras thought

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156. *Id.*

157. *Violence in Central America*, *supra* note 8, at 14 (prepared statement, Roberto Flores Bermudez, Ambassador of Honduras to the United States).

158. *Id.*

159. *Better Education for Youth Cuts Crime in Central America*, *supra* note 123.

160. *Violence in Central America*, *supra* note 8, at 45 (prepared statement of Lainie Reisman, Director, Inter-American Coalition for the Prevention of Violence).

161. *Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 24.

162. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 76.

163. *Id.* at 64.

164. Reisman, *supra* note 9, at 149.

165. *Id.* As one analyst noted, "only about 1.5 percent of the region's gross domestic product is used for education programs, compared to much higher percentages for law enforcement." *Better Education for Youth Cuts Crime in Central America*, *supra* note 123.

166. *The Latinobarómetro Poll: A Warning for Reformers*, *ECONOMIST*, Nov. 17, 2007, at 45, 45.

public order more important than civil liberties.<sup>167</sup> In fact, a majority of Guatemalans favor authoritarian governments to democratic ones.<sup>168</sup> Given the *mano dura* plans, such a shift in views becomes comprehensible, though obviously worrisome.

Central Americans also distrust their national institutions. A survey by the United Nations Development Programme found that Guatemalans distrust their justice system and police.<sup>169</sup> The same survey indicated that fifty-nine percent of Guatemalans think it futile to report crimes to the police.<sup>170</sup> Honduras contains a similar distrust of the police. Forty-one percent of Hondurans believe one can bribe a police officer in Honduras.<sup>171</sup> Similarly, forty-five percent of Guatemalans believe one can bribe a Guatemalan police officer.<sup>172</sup> Certainly, these rates of crime and violence have strained the Central American nations' tolerance for democracy.<sup>173</sup> Thus, Central Americans have a large distrust of their governments.

This distrust arises from high crime rates, high unemployment, and an inability to combat crime. With high unemployment and an ineffective legal infrastructure, El Salvador, Guatemala, and Honduras attempted drastic actions to combat the invading crime. These drastic actions further undermined democracy by marketing notions of security above notions of civil liberties. This opposition to democracy undoubtedly leads to precariousness in a critical region. Finally, the Central American nations could not halt the violence and crime through *mano dura*.

### B. Harm to the United States

Obviously, the United States' removal policy harms Central America more than it harms the United States. Unlike the Central American nations, the United States has a working legal system, has functioning enforcement agencies, and lacks the abject poverty that afflicts El Salvador, Guatemala, and Honduras. Still, the United States' policy also harms the United States. Specifically, the United States' removal policy has helped create an international gang with strong ties throughout the

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167. See U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 79 ("[T]he Central American countries (with the exception of Panama and Nicaragua) . . . prioritise public order over civil liberties, in contrast with the rest of Latin America . . .").

168. *The Latinobarómetro Poll: A Warning for Reformers*, *supra* note 166, at 45.

169. Benítez, *supra* note 129.

170. *Id.*

171. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3, at 30 fig.13.

172. *Id.*

173. See *Gangs and Crime in Latin America*, *supra* note 12, at 9 (testimony of Adolfo Franco, Assistant Administrator, Bureau of Latin America and the Caribbean, U.S. Agency for International Development).

United States. In addition, since Central America links the drug-producing countries of South America to the drug-consuming United States, the gangs in Central America become hired muscle for drug cartels. Hence, beyond causing crime, entrenching poverty, and undermining democracy in Central America, the United States' removal policy fuels the United States' gang and drug problems.

MS-13 has influence in the United States. According to the Department of Justice, the United States has about 21,500 gangs and 730,000 gang members.<sup>174</sup> The MS-13, while only one of those gangs, has created a name for itself. MS-13 exists in 31 states.<sup>175</sup> In the United States, MS-13 traffics cocaine, crack cocaine, methamphetamine, and heroin.<sup>176</sup> MS-13 also murders, rapes, extorts, steals cars, smuggles aliens, and launders money.<sup>177</sup> In fact, in Los Angeles, extortion constitutes the primary crime of both MS-13 and 18th Street.<sup>178</sup>

Beyond this criminal activity, MS-13 also has a propensity for gruesome violence, even in the United States. While not as brutal as the bus slaughter in San Pedro Sula, Honduras,<sup>179</sup> MS-13's affinity for violence appears in the United States as well as in Central America. In September of 2007, MS-13 shot a merchant who refused to pay MS-13's fifty-dollar extortion fee.<sup>180</sup> A stray bullet from that incident killed a twenty-three-day-old baby.<sup>181</sup> In Dallas, MS-13 members robbed, shot, and sodomized an innocent young man. MS-13 female members befriended the victim, Javier Calzada, and asked him for a ride. The ride was a ploy, which MS-13 used to assault and murder Calzada.<sup>182</sup> In Virginia, MS-13 gang members used machetes to hack a rival gang member.<sup>183</sup> Other MS-13 members hacked and killed a seventeen-year-old who was four-months pregnant.<sup>184</sup> The gang members stabbed her sixteen times.<sup>185</sup> Authorities accused another alleged MS-13 member of stabbing a woman forty times, carving MS-13's insignia into her body,

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174. NAT'L ALLIANCE OF GANG INVESTIGATORS ASS'NS, *supra* note 16, at ix.

175. *Id.* at 8-9.

176. *Gangs and Crime in Latin America*, *supra* note 12, at 18 (testimony of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

177. *Id.* at 21 (prepared statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

178. Ari B. Bloomekatz, *Sad Price of Gang 'Rent,'* L.A. TIMES, Oct. 7, 2007, at B1.

179. *See After the Massacre*, *supra* note 146, at 36.

180. Bloomekatz, *supra* note 178.

181. *Id.*

182. Kraul et al., *supra* note 42.

183. *Gangs and Crime in Latin America*, *supra* note 12, at 22 (testimony of John P. Torres, Deputy Assistant Director, Human Smuggling and Public Safety Division, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security).

184. Kraul et al., *supra* note 42.

185. *Id.*

and leaving her body on a sidewalk.<sup>186</sup> Clearly, MS-13 has the will to perform heinous, violent crimes. This propensity, along with MS-13's international connections, makes MS-13 a dangerous organization.

Not only does the United States' removal policy "play a major role in the gang culture in Central America,"<sup>187</sup> but the policy also made MS-13 and other gangs international phenomena. First, the United States' removal policy clearly created ties between gang members in the United States and those removed to Central America. Second, because removed Central Americans travel through Mexico on their way to the United States, the gangs have spread into Mexico and have begun smuggling aliens and drugs.

Since many of the removed youths lived in the United States their entire childhood and know little Spanish,<sup>188</sup> the removal policy gives incentives for those removed youths to return to the United States. Indeed, "[a]ccording to Salvadoran police, 90 percent of deported gang members return to the [United] States as fast as they can."<sup>189</sup> One survey discovered that thirty-eight percent of all removed Salvadorans planned to return to the United States.<sup>190</sup> Twenty-three percent indicated that the United States had deported them at least once before.<sup>191</sup> "It is not at all uncommon for a deported gang member, having benefited from newly established links to the drugs, weapons, and other criminal networks in Central America, to make his way back to the United States within a matter of months."<sup>192</sup> In one notorious case, the Federal Bureau of Investigation (FBI) and Border Patrol caught an MS-13 leader wanted by Honduran authorities.<sup>193</sup> The MS-13 leader had ties to a Los Angeles clique of MS-13, and the United States had removed him four times before.<sup>194</sup> The MS-13 does not confine its activities to the United States and Central America but, increasingly, acts in Mexico as well.

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186. John Stevenson, *Jury: Honduran Guilty of Murder*, HERALD-SUN (Durham), Oct. 20, 2007, at C1.

187. *Deportees in Latin America*, *supra* note 17, at 17 (prepared statement of Charles Shapiro, Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State).

188. See Reisman, *supra* note 9, at 149.

189. *Gangs and Crime in Latin America*, *supra* note 12, at 44 (prepared statement of Stephen C. Johnson, Senior Policy Analyst for Latin America, Kathryn and Shelby Cullom Davis Institute for International Studies, Heritage Foundation).

190. *Deportees in Latin America*, *supra* note 17, at 49 (statement of Nestor Rodriguez, Ph.D., Chairman, Department of Sociology, University of Houston). Twenty-eight percent did not answer that question. *Id.*

191. *Id.* at 49–50.

192. Reisman, *supra* note 9, at 149.

193. *Gangs and Crime in Latin America*, *supra* note 12, at 21 (prepared statement of prepared statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

194. See Kraul et al., *supra* note 42.

Regarding the growing connection with Mexico, the Mexican state of Chiapas began a campaign against MS-13.<sup>195</sup> Chiapas began the campaign as a response to robberies committed by MS-13 members against migrants traveling through Mexico.<sup>196</sup> MS-13 also has a presence in Mexican border towns.<sup>197</sup> Additionally, MS-13 has an infrastructure that allows different cliques to communicate. This communications infrastructure arose partly from the prisons of Central America. With overcrowded, understaffed, and ineffective prisons, the Central American nations abdicated control of the prisons to the gangs. The FBI has characterized the Central American prisons as “college for MS-13.”<sup>198</sup> And Beat Rohr of the United Nations Development Programme said, “The jails are nothing more than schools of crime.”<sup>199</sup> Because of the Central American nations’ inability to prevent fights between rival gang members, Salvadoran officials placed all MS-13 members in Ciudad Barrios and one other prison.<sup>200</sup> Such a concentration of allied gang members had a negative impact. One study found that, while originally unstructured, the number of arrests and duration of arrests in Central America allowed “gang members from cliques around [Central America to] . . . create rudimentary national structures [used] for co-ordination between different cliques.”<sup>201</sup>

Now, partly because of the Central American prisons, MS-13 cliques have contacts and ties with other cliques around the world and around the United States. For example, members in the Washington, D.C. area pay dues, which occasionally go to MS-13 members in El Salvador.<sup>202</sup> As another example, MS-13 leaders in El Salvador have sent other members to run MS-13 enterprises in Maryland.<sup>203</sup> Similarly, MS-13 leaders imprisoned in El Salvador have ordered murder hits in Maryland.<sup>204</sup> In another case, an MS-13 leader imprisoned in Texas wrote a letter to an MS-13 clique in Virginia. That letter revealed a woman’s status as federal informant.<sup>205</sup> The MS-13 clique murdered the

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195. *Id.*

196. *See Gangs and Crime in Latin America*, *supra* note 12, at 44–45 (prepared statement of Stephen C. Johnson, Senior Policy Analyst for Latin America, Kathryn and Shelby Cullom Davis Institute for International Studies, Heritage Foundation).

197. Kraul et al., *supra* note 42.

198. Lopez et al., *supra* note 43.

199. *Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 26.

200. Lopez et al., *supra* note 43.

201. *Violence in Central America*, *supra* note 8, at 51 (prepared statement of Geoff Thale, Program Director, Washington Office on Latin America).

202. Lopez et al., *supra* note 43.

203. Castaneda, *supra* note 132.

204. Ruben Castaneda, *MS-13 Case Adds Salvadoran Inmates*, WASH. POST, June 6, 2007, at B6.

205. Kraul et al., *supra* note 42.

informant.<sup>206</sup> Thus, unlike normal gangs, MS-13 cliques now communicate with each other.

MS-13's willingness to communicate with different cliques, along with Central America's geographic location between the drug-producing countries of South America and the drug-consuming United States, have raised concerns about MS-13 and the drug trade. Over half of the cocaine destined for the United States travels through Central America and Mexico.<sup>207</sup> Guatemala, for example, is "a major transshipment and storage point for South American drugs en route to the United States."<sup>208</sup> El Salvador and Honduras face similar drug transactions.<sup>209</sup> With such opportunities, the *maras*, while not in charge of drug trafficking, have begun to capitalize on the drug trade. The United States Agency for International Development (USAID) discovered connections at high levels between Central American gang members and organized drug traffickers.<sup>210</sup> One Mexican, organized-crime prosecutor has noted the increasing involvement of the Central American gangs in the Mexican drug trade.<sup>211</sup> In Honduras, drug trafficking sits on both 18th Street's and MS-13's top five most frequently committed crimes.<sup>212</sup> While the gangs do not currently control the drug trade in Central America, they "are the future drug traffickers, and they are far worse than anything that [the Drug Enforcement Administration is] confronting today."<sup>213</sup> Considering the Central American nation's inability to combat the gangs, a growing relationship between those gangs and organized narco-traffickers causes only worry.

The Central American gangs also play a role in the smuggling of aliens. In Honduras, 18th Street's most frequently committed crime consists of trafficking persons.<sup>214</sup> The Central American "gangs are astride alien smuggling routes in Central America and Mexico."<sup>215</sup> Worried of

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206. *Id.*

207. *The Illicit Drug Transit Zone in Central America: Hearing Before the Subcomm. on the W. Hemisphere of the H. Comm. on Int'l Relations*, 109th Cong. 17 (2005) [hereinafter *The Illicit Drug Transit Zone*] (prepared statement of Michael A. Braun, Chief of Operations, U.S. Drug Enforcement Administration).

208. *Id.* at 19.

209. *See id.* at 20.

210. *Violence in Central America*, *supra* note 8, at 6 (prepared statement of José Guillermo Castillo Villacorta, Ambassador of Guatemala to the United States).

211. Richard Marosi, *Mexico's Cartels Escalate Drug War*, L.A. TIMES, June 23, 2006, at A1.

212. *Violence in Central America*, *supra* note 8, at 12 (prepared statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

213. *The Illicit Drug Transit Zone*, *supra* note 207, at 39 (testimony of Michael A. Braun, Chief of Operations, U.S. Drug Enforcement Administration).

214. *Violence in Central America*, *supra* note 8, at 12 (prepared statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

215. *The Illicit Drug Transit Zone*, *supra* note 207, at 9 (testimony of Jonathan D. Farrar,

the gang's role in alien smuggling, the Mexican state of Chiapas enacted a plan to share intelligence with the FBI regarding MS-13's use of railways to smuggle aliens.<sup>216</sup> MS-13 members act as guides and charge \$1500 to bring illegal aliens into the United States.<sup>217</sup> In turn, the gangs use some of these illegal aliens to sell drugs on the streets of the United States.<sup>218</sup>

In total, the United States' policy created an international gang with the capability of communicating across different nations. This gang now has grown bonds in the drug and illegal-alien trade. While the United States clearly has the resources to combat the MS-13 now, the battle against these international gangs will continue so long as the United States follows its current policy.

#### IV. CURRENT LAW CANNOT MITIGATE THE PROBLEM

Central America is relatively close to the United States, the United States has a significant Central American population,<sup>219</sup> and many of those removed have lived exclusively in the United States.<sup>220</sup> Therefore, many removed Central American gang members still have connections to the United States.<sup>221</sup> Simple removal of Central American gang members does little to halt the re-immigration of those same felons and creates incentives for Central Americans to enter the United States.

##### A. *Continuation of the Same Policy, and Courts' Refusal To Grant Asylum*

The United States continues to use the expanded definition of "aggravated felony" and continues to bar relief for aliens who committed an "aggravated felony."<sup>222</sup> Furthermore, the United States' rate of

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Deputy Assistant Secretary, Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State).

216. Kraul et al., *supra* note 42.

217. *Id.*

218. *See Criminal Gangs in the Americas: Out of the Underworld*, *supra* note 18, at 26 (noting that, in Los Angeles, the gangs make aliens whom they brought into the United States illegally sell drugs).

219. *See* MICHAEL HOFER ET AL., U.S. DEP'T OF HOMELAND SEC., ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2006, at 4 tbl.3 (2007), available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ill\\_pe\\_2006.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ill_pe_2006.pdf). About 510,000 illegal aliens came from El Salvador, while 430,000 came from Guatemala, and 280,000 came from Honduras. *Id.*

220. *See* Reisman, *supra* note 9, at 149.

221. *See* Ruben Castaneda, *Teen Linked to MS-13 Convicted in Killing*, WASH. POST, June 23, 2007, at B4 (noting that gang leaders in Salvadoran prisons ordered gang members in Maryland to murder and commit other crimes).

222. *See* 8 U.S.C.A. §§ 1101(a)(43), 1182(a)(9)(A)(ii), (iii) (West 2007).

alien removal to Central America has continuously increased.<sup>223</sup> But this policy simply helps sustain the above-mentioned problems. Moreover, barring the Attorney General's consent to the alien's reapplication for admission, any alien removed based on an aggravated felony is inadmissible to the United States.<sup>224</sup> And, again, this change came about through the IIRIR.<sup>225</sup>

Furthermore, under current law, cancelling removal is a difficult task. If the United States finds an alien removable, eligibility to cancel the removal requires that the alien, if she has permanent legal resident status, have resided seven continuous years in the United States.<sup>226</sup> For an alien who is not a permanent legal resident, eligibility for cancellation requires ten years of continuous residence.<sup>227</sup> As changed by IIRIR, current immigration law "'stops' an alien's accrual of continuous presence in the United States at the time that he commits a crime."<sup>228</sup> The "continuous" aspect is critical. For example, in one case, the alien had good moral character, showed that a parent would face extreme and unusual hardship if the United States removed her, and had lived in the United States for over ten years.<sup>229</sup> But, because the alien had left the United States for five months, she had not resided continuously as required by § 1229b(b)(1)(A).<sup>230</sup> Indeed, for a nonpermanent resident to continuously reside within the United States, the alien cannot leave the United States for more than ninety days.<sup>231</sup> More severely, anyone charged with an "aggravated felony" cannot seek removal.<sup>232</sup> "Nor is an aggravated felon eligible for asylum."<sup>233</sup>

Beyond cancellation of removal, aliens can seek asylum. But the United States refuses to recognize asylum claims by young Central Americans who fear gangs. For an alien to qualify for asylum, the alien must be a refugee.<sup>234</sup> Thus, to gain eligibility for asylum, the alien must

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223. For example, the United States removed around 12,000 Salvadorans, Guatemalans, and Hondurans in 2001. INS, *supra* note 78, at 257 tbl.65. In 2003, the number of removed Salvadorans, Guatemalans, and Hondurans increased to 19,000. OFFICE OF IMMIGRATION STATISTICS, *supra* note 79, at 173 tbl.43. In 2006, the number had swollen to 55,000. *Deportees in Latin America*, *supra* note 17, at 13 (prepared statement of Gary Mead, Assistant Director for Management, Office of Detention and Removal Operations, Bureau of U.S. Immigration and Customs Management, U.S. Department of Homeland Security).

224. 8 U.S.C. § 1182(a)(9)(A)(ii), (iii) (2000).

225. See Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-575 to -576 (1996).

226. 8 U.S.C. § 1229b(a)(2) (2000).

227. *Id.* § 1229b(b)(1)(A).

228. *Valencia-Alvarez v. Gonzales*, 469 F.3d 1319, 1321 (9th Cir. 2006).

229. *Sabido Valdivia v. Gonzales*, 423 F.3d 1144, 1146 (10th Cir. 2005).

230. *Id.* at 1146-47, 1149.

231. *Id.* at 1149.

232. *Lopez v. Gonzales*, 127 S. Ct. 625, 628 (2006).

233. *Id.*

234. 8 U.S.C. § 1158(b)(1)(A) (2000).



have "a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."<sup>235</sup> Here, the first inquiry consists of whether an alien has a well-founded fear of persecution, while the second inquiry asks whether the fear of persecution arises from one of the five stated reasons.

To prove a well-founded fear of persecution, "an applicant must demonstrate a fear that is both subjectively genuine and objectively reasonable."<sup>236</sup> Due to this subjective element, a probability of persecution need not exist for an alien to gain asylum.<sup>237</sup> In regard to the subjective aspect, youths who faced prior threats by the Central American gangs or who belonged to the Central American gangs can easily prove a well-founded fear. For instance, in one case, a sixteen-year-old Guatemalan fled his country after a gang threatened him and his cousin.<sup>238</sup> The gang had previously killed the alien's brother for refusing to join the gang, and, eventually, the gang killed the alien's cousin for refusing to join the gang.<sup>239</sup> The Immigration Judge found the alien had a well-founded fear of persecution, and the Board of Immigration Appeals "did not disturb his holding."<sup>240</sup> However, this subjective sense of persecution does not suffice to show all aspects of persecution necessary to obtain asylum.

To obtain asylum, an alien must show that the persecution comes from the government or comes from the government's inability to protect the alien from the persecutor.<sup>241</sup> Hence, the First Circuit Court of Appeals refused to decide whether aliens who had testified against gangs in their native lands constituted a particular social group, because the alien could not show that the persecution arose from El Salvador's actions or inactions.<sup>242</sup> Even though nationals of Honduras distrust their police force and Central American police forces have paltry crime-solving rates, one court held that, because the alien did not report her rape by a gang member, the alien could not show "that the government of Honduras is unable or unwilling to control rape in that country."<sup>243</sup> In a

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235. *Id.* § 1101(a)(42).

236. *Cigaran v. Heston*, 159 F.3d 355, 357 (8th Cir. 1998) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-31 (1987)).

237. See *Cardoza-Fonseca*, 480 U.S. at 431 ("One can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place.").

238. *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 231-32 (4th Cir. 2004).

239. *Id.*

240. *Id.* at 234.

241. *Id.* ("[T]o qualify for asylum, one must show: (1) a well-founded fear of persecution . . . by an organization that the government is unable or unwilling to control." (emphasis added)); see also *Valdiviezo-Galdamez v. Attorney Gen.*, 502 F.3d 285, 288 (3d Cir. 2007) (noting that the persecution is caused by the government or by forces the government is "unable or unwilling" to dominate).

242. *Ortiz-Araniba v. Keisler*, 505 F.3d 39, 41-42 (1st Cir. 2007).

243. *Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005).

similar case, a court upheld an Immigration Judge's decision that no persecution existed, because the police arrested the gang member who harassed and threatened the alien who sought asylum.<sup>244</sup> Of course, at times, Immigration Judges do hold that governments cannot control their native gangs.<sup>245</sup> Still, even if an alien proves that she faces persecution at the hand of uncontrolled gangs, aliens must also show that the alien has "a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."<sup>246</sup> Likely due to the difficulty of selling any persecution by gangs based on race, religion, nationality, or political opinion,<sup>247</sup> most cases argue that the *maras* persecute because of an alien's particular social group.<sup>248</sup>

Under current asylum law, to show membership in a particular social group, an alien "must (1) specify the particular social group, (2) show that he is a member of that group, and (3) show that he has a well-founded fear of persecution *based* on his membership in that group."<sup>249</sup> "[D]efining what constitutes such a group for purposes of the [Immigration and Nationality Act] remains elusive and inconsistent."<sup>250</sup> Still, under current interpretation, courts refuse to recognize innocent children who fear gangs in Central America as a particular social group. For example, the Third Circuit Court of Appeals refused to recognize street children as a particular social group in a case where gangs harassed, stole, and physically abused one child.<sup>251</sup> Indeed, the court stated that "the persecution cannot be what defines the contours of the [particular social] group."<sup>252</sup>

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244. *Menjivar v. Gonzales*, 416 F.3d 918, 921–22 (8th Cir. 2005).

245. See *Lopez-Soto*, 383 F.3d at 235 (asserting that the immigration judge found that Guatemala could not protect its citizens from the *maras*).

246. 8 U.S.C. § 1101(a)(42) (2000).

247. In two recent cases, the Board of Immigration Appeals refused to grant Honduran and Salvadoran aliens asylum based on their political opinions. *Matter of E-A-G-*, 24 I. & N. Dec. 591, 596 (2008); *Matter of S-E-G-*, 24 I. & N. Dec. 579, 588–89 (2008). Both times, the Board of Immigration Appeals underscored that no nexus existed between the aliens' refusal to join the gangs, the gangs' violent reprisals, and the aliens' political beliefs. *Matter of E-A-G-*, 24 I. & N. Dec. at 597; *Matter of S-E-G-*, 24 I. & N. Dec. at 589.

248. See, e.g., *Escobar v. Gonzales*, 417 F.3d 363, 364 (3d Cir. 2005) (deciding whether Central American street children persecuted by gangs constituted a particular social group); *Menjivar*, 416 F.3d at 920 (stating alien argued that the gang persecuted her based on a particular social group); *Castellano-Chacon v. INS*, 341 F.3d 533, 538 (6th Cir. 2003) (deciding whether former gang members constituted a particular social group upon which an alien could seek asylum).

249. *Lopez-Soto*, 383 F.3d. at 235 (emphasis added).

250. *Castellano-Chacon*, 341 F.3d at 546.

251. *Escobar*, 417 F.3d at 364.

252. *Id.* at 367; see also *Lukwago v. Ashcroft*, 329 F.3d 157, 172 (3d Cir. 2003) ("We agree that under the [law] a 'particular social group' must exist independently of the persecution suffered by the applicant for asylum.").

Even where courts recognize membership in a particular social group, the courts have shown reluctance to recognize that the persecuting gang's actions resulted because of the particular social group. Courts have recognized groups such as "family" as particular social groups, but those courts have refused to find that the alien's familial membership caused the gangs to target the alien. For example, in *Lopez-Soto v. Ashcroft*, the Fourth Circuit Court of Appeals recognized "family" as a "particular social group," but upheld the immigration judge's refusal to find the necessary link between the group and the gang's persecution.<sup>253</sup> The court upheld the refusal to find the necessary link despite the gang's previous murder of the alien's brother for refusing to join the gang and despite the gang's threats to the alien that, if he did not join, the gang would kill him.<sup>254</sup>

Recently, the Board of Immigration Appeals shattered any asylum hopes that innocent victim of the *maras* held. In two cases, the Board of Immigration Appeals refused the argument that innocent victims who feared the gangs composed a particular social group. In the first case, *Matter of S-E-G-*, three Salvadoran aliens requested asylum and indicated that the MS-13 had beaten them and threatened them with violence and rape.<sup>255</sup> The Salvadoran aliens argued that they belonged to a particular social group: "Salvadoran youth[s] who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang's values."<sup>256</sup> In *Matter of S-E-G-*, a case of first impression,<sup>257</sup> the Board of Immigration Appeals noted that a particular social group demands well-defined boundaries and a certain level of social visibility.<sup>258</sup> The Board of Immigration Appeals refused the aliens' argument for two reasons.

First, although the aliens sought to limit the group to male, lower-to middle-class children who lacked stable families, lived in *mara*-controlled areas, and refused recruitment, the Board of Immigration Appeals somehow found the group's boundaries amorphous. Thus, Salvadoran youths who refused to join MS-13 lacked particularity and did not constitute a particular social group. Highlighting a more credible argument, the Board of Immigration Appeals also reasoned that this group lacked particularity because "the motivation of gang members in recruiting and

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253. 383 F.3d at 231 & n.3, 239.

254. *Id.*

255. 24 I. & N. Dec. 579, 579-80 (2008).

256. *Id.* at 581.

257. *See id.* at 582 ("We have not previously addressed whether . . . Salvadoran youths who have resisted gang recruitment . . . constitute[ ] a 'particular social group . . .'").

258. *Id.*

targeting young males could arise from motivations quite apart from any perception that the males in question were members of a class.”<sup>259</sup>

Second, unwilling to dismiss the argument merely on particularity grounds, the Board of Immigration Appeals found that Salvadoran youths who refuse recruitment also lack social visibility.<sup>260</sup> With bizarre logic, the Board of Immigration Appeals underscored that gang violence engulfs all of El Salvador. Since gang violence terrorized all Salvadorans, Salvadorans could not differentiate the general terror with the terror inflicted upon youths who refuse to join gangs.<sup>261</sup> Chaos is chaos, and terror is terror. The extra danger involved in refusing to join a gang does not suffice to make one stand apart from the general chaos in Central America.

The second case mimicked *Matter of S-E-G-*. Dealing with a Honduran who feared gang reprisal for his refusal to join a gang, the Board of Immigration of Appeals in *Matter of E-A-G-* also refused to grant a Central American youth asylum.<sup>262</sup> An immigration judge found the Honduran eligible for asylum, holding that he fell within a particular social group. The Honduran, the immigration judge held, belonged to youths perceived to be affiliated with gangs.<sup>263</sup> The Board of Immigration Appeals disagreed and held that “[t]reating affiliation with a criminal organization as being protected membership in a social group is inconsistent with the principles underlying the bars to asylum . . . based on criminal behavior.”<sup>264</sup> Unfortunately for the Board of Immigration Appeals, the Honduran never involved himself in any gang activity. The Board of Immigration Appeals worried not. For the Board of Immigration Appeals, since “membership in a criminal gang cannot constitute a particular social group,” the Honduran could not “establish particular social group status based on the incorrect perception by others that he is such a gang member.”<sup>265</sup> Never does the Board of Immigration Appeals notice that the logic behind preventing actual ex-criminals from claiming asylum fails when a person is merely perceived as a criminal but has actually committed no wrong. Regardless, the Board of Immigration Appeals refused to grant asylum.

Clearly, the courts take harsher positions when the United States seeks to remove an alien for convictions and that alien seeks asylum. In one case, a Salvadoran permanent resident sought withholding of

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259. *Id.* at 585.

260. *Id.* at 588.

261. *See id.* at 587.

262. 24 I. & N. Dec. 591–92, 598 (2008).

263. *Id.* at 591–92.

264. *Id.* at 596.

265. *Id.*

removal, arguing "that because he [was] marked with indelible tattoos indicating his gang membership [he] may therefore be persecuted by rival gang members if returned to his home country."<sup>266</sup> The alien sought to define the group as United States gang members, but the Ninth Circuit Court of Appeals rejected his claim.<sup>267</sup> Actually, the court stated that one should not "become misled by expansive and abstract definitions of the term 'social group' to the extent that the application of such a definition fails to comport with the manifest legislative purpose of the law and its language."<sup>268</sup> Similarly, another court refused to accept "tattooed youths" as a social group to which it could grant asylum.<sup>269</sup> The court stated that, while "social group" was a flexible concept, "it is also apparent that the term cannot be without some outer limit, outside of which tattooed youth surely falls."<sup>270</sup> Thus, considering this legal landscape, few aliens who sincerely fear persecution from gangs can obtain asylum.

The courts refuse to grant asylum to children who fear returning to Central America. Since withholding has a higher burden than asylum,<sup>271</sup> courts do not grant withholding either. As such, the government removes young aliens who fear that Central American gangs will conscript them. These new conscripts have ties to the United States, bolstering the links between the Central American gangs and the United States.

The United States has a nonsensical policy. Asylum claims filed by young Central Americans suggest that gangs respond to refusals of gang membership with threats and violence.<sup>272</sup> Gangs use coercion for recruitment purposes, and "some gangs may be so intimidating that for non-members to fail to claim membership is perceived as dangerous."<sup>273</sup> Therefore, the United States' policy only removes an avenue of escape for Central Americans who refuse joining the *maras*. Linked with the economic pressures of unemployment, the physical pressures exerted by

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266. *Arteaga v. Mukasey*, 511 F.3d 940, 942 (9th Cir. 2007).

267. *Id.*

268. *Id.*

269. *Castellano-Chacon v. INS*, 341 F.3d 533, 549 (6th Cir. 2003).

270. *Id.*

271. *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 239 n.14 (4th Cir. 2004).

272. *See, e.g., Bautista v. Keisler*, 249 F. App'x 488, 489 (8th Cir. 2007) (*per curiam*) (noting gangs attempted to force alien into gang); *Valdiviezo-Galdamez v. Attorney Gen.*, 502 F.3d 285, 286 (3d Cir. 2007) (noting that the *mara* threatened to kill the youth if he did not join the gang); *Lopez-Monterroso v. Gonzales*, 236 F. App'x 207, 208 (7th Cir. 2007) (noting that alien was allegedly threatened and beaten by gangs for his refusal to join); *Escobar v. Gonzales*, 417 F.3d 363, 364 (3d Cir. 2005) (noting the gangs threatened street children with violence if they refused to join); *Lopez-Soto*, 383 F.3d at 231-32 (noting that gang threatened youth with death if he did not join the gang).

273. *James, supra* note 5, at 4.

the Central American gangs on the removed youths only creates recruits and conscripts for the *maras*.

### B. *Creating Incentives for Illegal Immigration*

Beyond creating an international drug and alien smuggling organizations, and beyond failing to prevent crime's stronghold in the United States, the United States' removal policy creates incentives for Central Americans to migrate illegally to the United States. Already facing overwhelming indigence, underemployment, and unemployment, the rising crime can only create further reasons for the trek to the United States. In that sense, the United States' current removal policy counteracts any efforts by the United States to control illegal migration.

Concerning illegal immigration from Central America to the United States, the INS estimated that 335,000 Salvadoran nationals lived illegally within the United States as of October of 1996.<sup>274</sup> By 2000, 430,000 Salvadorans lived in the United States illegally.<sup>275</sup> By 2006, 510,000 Salvadorans lived in the United States illegally.<sup>276</sup>

Guatemalan and Honduran migration follows a similar pattern. As of October 1996, 165,000 Guatemalans resided inside the United States illegally, while 90,000 Hondurans did the same.<sup>277</sup> By 2000, the number had shifted to 290,000 Guatemalans and 160,000 Hondurans living inside the United States illegally. As of 2006, 430,000 Guatemalans live in the United States illegally, while 280,000 Hondurans do likewise. Indeed, while the number of illegal immigrants in the United States increased by thirty-seven percent between 2000 and 2006, the number of illegal Guatemalans in the United States increased by forty-eight percent, and the number of illegal Hondurans in the United States increased by seventy-five percent.<sup>278</sup> The yearly rate of illegal immigration has also increased. For example, in 1992, an estimated 28,000 Central Americans migrated without authorization to the United States.<sup>279</sup> By 1999, the number of Central Americans that migrated to the United States without authorization grew to 82,000.<sup>280</sup>

The data suggest a growing wave of illegal immigration to the

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274. INS, U.S. DEP'T OF JUSTICE, 1995 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 183 tbl.P (1997).

275. HOEFER ET AL., *supra* note 219, at 4 tbl.3.

276. *Id.*

277. INS, *supra* note 274, at 183 tbl.P.

278. HOEFER ET AL., *supra* note 219, at 4 tbl.3.

279. OFFICE OF POLICY AND PLANNING, U.S. INS, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: 1990 TO 2000, at 13 chart 3 (2001), available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/III\\_Report\\_1211.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/III_Report_1211.pdf).

280. *Id.*

United States from El Salvador, Guatemala, and Honduras. While impossible to point at one factor causing the increase in illegal migration to the United States, common sense dictates that the increasing gang crime in Central America helped increase the flow of illegal migration. Indeed, the mayor of San Salvador recognized, "And now we have youths fleeing from El Salvador because of the gangs."<sup>281</sup> As economic opportunities diminish and violence increases, people will have more reasons to migrate. If the United States seeks to alleviate illegal migration from Central America, it must partially focus on the gang violence that grips El Salvador, Guatemala, and Honduras.

## V. POSSIBLE SOLUTIONS

As of 2008, El Salvador, Guatemala, and Honduras lack the resources to incarcerate all the gangs, to combat the illegal-drug trade, or to rehabilitate ex-gang members. Hence, no simple solution exists. Foremost, however, the United States must rethink its current removal policy.

### A. *Current Efforts To Help the Central American Nations*

Recently, the United States has undergone efforts to undermine the Central American gangs in the United States. For instance, in 2005, ICE began Operation Community Shield, which attempt to enforce immigration laws against gang members.<sup>282</sup> The operation sought to "dismantle the MS-13."<sup>283</sup> Federal agencies arrested 1053 illegal aliens in the three months prior to October of 2007 through Operation Community Shield.<sup>284</sup> The operation snatched 204 MS-13 members in Boston.<sup>285</sup> MS-13 constituted the gang who lost the most members to arrest in the national operation.<sup>286</sup> Likewise, the FBI created an MS-13 National Gang Task force to coordinate different enforcement agencies and take action against the gang.<sup>287</sup>

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281. Hendricks, *supra* note 11.

282. Beth Walton, *Gang Suspects Arrested, Face Deportation*, LAS VEGAS REV.-J., Oct. 10, 2007, at 7B.

283. *Immigration and the Alien Gang Epidemic: Problems and Solutions: Hearing Before the Subcomm. on Immigration, Border Sec., and Claims of the H. Comm. on the Judiciary*, 109th Cong. 32 (2005) (statement of Rep. Sheila Jackson Lee, Member, Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on the Judiciary).

284. Walton, *supra* note 282.

285. McPhee, *supra* note 133.

286. Bloomekatz, *supra* note 131.

287. *Gangs and Crime in Latin America*, *supra* note 12, at 21 (prepared statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation). Along with Customs and Border Patrol, the MS-13 National Gang Task Force arrested Lester Rivera-Paz, who involved himself in the notorious bus massacre in San Pedro Sula, Honduras. *See*

While the United States has taken domestic action to combat the Central American gangs, it has done minimal work in helping combat the Central American gangs' international trait. The United States has begun to assist Central America in law enforcement, but it has done little to help the Central American nations in gang prevention and rehabilitation. Indeed, one commentator noted, "The national budgets for [gang] prevention activities in Central America are virtually nonexistent [*sic*], and our own development assistance in this area is minimal."<sup>288</sup> Still, the United States does give some aid. For example, the United States helps fund the International Institute for Law Enforcement in El Salvador. An academy, the International Institute for Law Enforcement mainly trains police agents and prosecutors.<sup>289</sup> The United States has also attempted to improve the information received by the nations to which the United States removes aliens. For example, the Department of Homeland Security created a system that provides biographical information on removed aliens in Guatemala and plans to expand it to El Salvador and Honduras.<sup>290</sup> The FBI and Department of State want to help train Central American law enforcers to acquire fingerprints of gang members. Theoretically, the fingerprints would create a database in which the United States and the Central American nations could share gang information.<sup>291</sup> Furthermore, individual U.S. law-enforcement agencies now work with law-enforcement agencies in Central America to combat the gangs.<sup>292</sup>

While the United States has recently increased its law-enforcement interaction with Central America, one should not overestimate the success of these programs. For example, in the first three years, the law academy trained forty-eight Honduran enforcement professionals.<sup>293</sup>

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*id.* at 23–24 (testimony of John P. Torres, Deputy Assistant Director, Human Smuggling and Public Safety Division, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security).

288. *Violence in Central America*, *supra* note 8, at 40 (statement of Lainie Reisman, Director, Inter-American Coalition for the Prevention of Violence).

289. *Id.* at 9 (statement of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

290. *Deportees in Latin America*, *supra* note 17, at 16 (prepared statement of Charles Shapiro, Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State).

291. *Violence in Central America*, *supra* note 8, app. at 75 (statement of the Bureau of Western Hemisphere Affairs of the U.S. Department of State).

292. *See, e.g., Gangs and Crime in Latin America*, *supra* note 12, at 23 (testimony of John P. Torres, Deputy Assistant Director, Human Smuggling and Public Safety Division, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security) ("ICE maintains a close working relationship with Mexico, Honduras, El Salvador and Guatemala in the exchange of intelligence pertaining to MS-13 and other gang activity.").

293. *Violence in Central America*, *supra* note 8, at 29 (testimony of Roberto Flores Bermudez, Ambassador of Honduras to the United States).



That hardly constitutes a law enforcement hub that will change enforcement practices throughout Central America. Furthermore, while the United States attempted to provide removed aliens' biographical information,<sup>294</sup> the Department of Homeland Security acknowledged that it only provided the Central American nations records concerning the crime for which the Department of Homeland Security removed the alien.<sup>295</sup> Moreover, the United States has done little to help the Central American nations prevent, rehabilitate, or cement the rule of law.

Since the United States offers little aid in prevention and rehabilitation, some of the Central American nations' prevention and rehabilitation programs have small budgets. For example, the Honduras Institute of Youth, which attempts to rehabilitate ex-gang members, had an annual budget of \$756,000 in 2006; Honduras's program for "Prevention, Rehabilitation and Social Reinsertion of Persons Belonging to Gangs" had a budget of \$329,000 that same year; and Honduras had an annual budget of \$286,000 to build recreational centers for youths.<sup>296</sup> Nor do the Central American nations receive aid to bolster the rule of law. Only about five percent of the United States' aid to Latin America goes to fortifying justice systems.<sup>297</sup> International aid falters equally. For example, the World Bank allocated less than one percent of all development assistance sent to Latin America in 2001 to increase the rule of law.<sup>298</sup> Thus, neither the United States nor international organizations help bolster rehabilitation or the rule of law in the Central American nations.

### B. *Amending the Immigration Laws*

The United States' removal policy created startling consequences. These consequences harm interests both at home and abroad. As such, no single solution can renormalize all of Central America, end gang violence, and undermine gang influence in the United States. Any solution includes increasing law-enforcement cooperation with Central America, as well as increasing funding to prevention programs. The Central American nations must end the virulent underemployment and unem-

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294. *Deportees in Latin America*, *supra* note 17, at 16 (prepared statement of Charles Shapiro, Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State).

295. *Id.* at 24–26 (testimony of Gary Mead, Assistant Director for Management, Office of Detention and Removal Operations, Bureau of U.S. Immigration and Customs Management, U.S. Department of Homeland Security).

296. *Violence in Central America*, *supra* note 8, at 33–34 (testimony of Roberto Flores Bermudez, Ambassador of Honduras to the United States).

297. *Gangs and Crime in Latin America*, *supra* note 12, at 70 (testimony of Manuel Orozco, Senior Associate, Inter-American Dialogue).

298. PRILLAMAN, *supra* note 106, at 19.

ployment among the nations' youths. The region also needs a systematic plan to control the gang violence. Nevertheless, any plan also requires modifications of the United States' current removal policy.

In an attempt to control the gang violence in Central America, Human Rights Watch recently asked Congress to return to the immigration laws before 1996.<sup>299</sup> However, politics probably undermines any solution that keeps criminals in the United States.<sup>300</sup> Still, solutions to mitigate the problem abound. First, the United States may forego removal to the Central American nations via bilateral treaties, or, if the United States finds foregoing removal altogether unpalatable, the United States may forego removal to the Central American nations in certain circumstances. Second, the United States need not stop the removal of violent criminals but may simply seek to amend the definition of "aggregated felony." Also, it may allow relief from removal when the alien has lived almost exclusively in the United States. Lastly, while a minor solution, the United States may adjust asylum claims such that youths who fear persecution at the hands of the *maras* may get asylum.

In regard to treaties, the United States has the authority to enter bilateral treaties curtailing removal. Indeed, the United States has previously entered treaties with nations curtailing the United States' plenary immigration powers.<sup>301</sup> Hence, the United States has the ability to enter treaties with nations concerning immigration matters. In fact, the United States has realized the importance of the Central American region and entered into treaties with nations in Central America. The United States has entered treaties with Central American nations regarding common defense,<sup>302</sup> technical assistance,<sup>303</sup> and radio transmissions.<sup>304</sup> The

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299. *Deportees in Latin America*, *supra* note 17, at 55 (statement of Allison Parker, Esq., Senior Researcher, United States Program, Human Rights Watch).

300. For example, one Congressman stated, "Of course I certainly didn't go to my district and my community advocating that we bring the prisoners back to my neighborhood. I mean that wouldn't have gone over too big." *Gangs and Crime in Latin America*, *supra* note 12, at 37 (statement of Rep. Donald M. Payne, Member, Subcomm. on the Western Hemisphere of the H. Comm. on International Relations).

301. Among the most well-known immigration treaties is a treaty between United States and China. The treaty prevented the United States from barring the immigration of Chinese laborers into the United States. Treaty Between the United States and China Concerning Immigration, U.S.-China, Oct. 5, 1881, 22 Stat. 826. The United States later violated this treaty, causing a Chinese laborer barred from re-entering the United States to seek a writ of habeas corpus. The Chinese Exclusion Case, 130 U.S. 581, 581-82 (1889). This suit led to the Supreme Court's holdings that the courts cannot review Congress's decision to exclude aliens. *Id.* at 602.

302. Bilateral Military Assistance Agreement, U.S.-Hond., May 20, 1954, 5 U.S.T. 843.

303. Agreement for Economic, Technical and Related Assistance, U.S.-El Sal., Dec. 19, 1961, 13 U.S.T. 266.

304. Agreement Relating to the Reciprocal Granting of Authorizations To Permit Licensed Amateur Radio Operators of Either Country To Operate Their Stations in the Other Country, U.S.-Guat., Dec. 11, 1967, 20 U.S.T. 2883.

United States has shown a willingness to help Central American nations through treaties.<sup>305</sup> Moreover, the United States has entered treaties with some of the Central American nations for security reasons. For example, the United States entered a treaty with Honduras, in which the United States and Honduras agreed to combat the illegal-drug trade.<sup>306</sup> Thus, the United States has shown a willingness to enter bilateral treaties with Central American nations, thereby helping the Central American nation and securing United States interests.

Uniting the United States' willingness to combat violence and drug trafficking in Central America with the United States' capability of entering immigration agreements, the United States can viably alter some of its removal procedures when they concern Salvadorans, Guatemalans, and Hondurans. Hence, the United States can enter treaties with the Central American nations to postpone removal until Central America stabilizes. Alternatively, the United States can craft special immigration laws for the Central American nations that more easily grant cancellation of removal. Or the United States can enter agreements to further regional rehabilitation, prevention, and enforcement programs.

Some may argue that the United States, by entering specific immigration agreements, would show favoritism and would open the gates to requests by other nations for similar treatment. Such an argument ignores two aspects of the United States' immigration policies. Initially, the United States' current immigration policies clearly favor some nations over others as a matter of foreign policy. Moreover, some of the United States' policies that have attempted to apply equal policies among all nations have failed.

Currently, the Visa Waiver Program illustrates the United States' favoritism in immigration policy. Most tourists must apply to obtain a visa for pleasure.<sup>307</sup> But the United States waives such requirements for nationals of certain countries.<sup>308</sup> The nations to which the Visa Waiver Program applies include France, Germany, Italy, Japan, and the United Kingdom.<sup>309</sup> The Visa Waiver Program, then, reflects an understanding of the unlikelihood that tourists from affluent nations will stay in the United States beyond their visa time limit. Thus, arguing that the United

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305. For example, the United States entered an agreement with Guatemala to encourage investment in Guatemala. Agreement Relating to Investment Guaranties, U.S.-Guat., Aug. 9, 1960, 13 U.S.T. 2008.

306. Agreement on Mutual Cooperation To Combat the Production of and Illicit Trafficking in Drugs, U.S.-Hond., Nov. 14, 1988, T.I.A.S. No. 11632.

307. See 8 U.S.C. §§ 1101(a)(15)(B), 1201(a) (2000).

308. 8 C.F.R. § 217.2 (2007). Indeed, nationals of twenty-seven nations have such privilege under the Visa Waiver Program. See *id.*

309. *Id.*

States, by entering agreements with El Salvador, Guatemala, or Honduras indicates favoritism ignores that immigration policy reflects foreign affairs and domestic preferences.

Additionally, attempts by the United States to create an equally distributed immigration policy have led to chaotic outcomes. In 1952, Congress placed a ceiling on immigration from the Eastern Hemisphere, but not the Western Hemisphere.<sup>310</sup> In 1965, Congress placed a ceiling on immigrants from the Western Hemisphere<sup>311</sup> and, thus, created a more congruent policy. But, “[t]he legislation did not accomplish its goal regarding Western Hemispher [*sic*] immigraiton [*sic*] without substantial costs.”<sup>312</sup> Indeed, speaking of the legislation, the House Judiciary Committee noted, “When repealing the national origins quota system, the 89th Congress did not provide an adequate mechanism for implementing the Western Hemisphere ceiling.”<sup>313</sup> Furthermore, there was “considerable hardship for intending immigrants from this hemisphere who until 1968 enjoyed the privilege of unrestricted immigration.”<sup>314</sup> The legislation had an unbalanced effect.

[I]n the Western Hemisphere spouses and children of permanent resident aliens, other labor certification-exempt relatives and labor certified immigrants all waited together in a single list for lengthy periods of time to immigrate. In the Eastern Hemisphere, however, immigrants were admitted within preference categories, under which close relatives of persons in the United States were generally admitted expeditiously.<sup>315</sup>

Therefore, even policies that attempt to achieve balance create unbalanced outcomes when the policies ignore legitimate differences. Nations in the Western Hemisphere had closer ties and a closer proximity than nations in the Eastern Hemisphere. Thus, the United States policy created unforeseen problems when it assumed equivalent situations among the two regions. Similarly, reality here shows that the Central American nations differ in numerous aspects to other nations. If the United States ignores these facts, what appears to be a balanced policy will not be.

Concerning changes to the definition of “aggravated felony,” many have noted that, after 1996, the United States removes both vicious thugs and minor offenders.<sup>316</sup> For instance, the New York misdemeanor

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310. STAFF OF THE SELECT COMM’N, STAFF REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY 203–04 (1981).

311. *Id.* at 208.

312. *Id.* at 209.

313. *Id.*

314. *Id.*

315. *Id.* at 338.

316. See generally Morawetz, *supra* note 54 (discussing the impact of the 1996 changes to immigration laws).

of petty theft, if joined with a one-year sentence, may constitute an "aggravated felony."<sup>317</sup> Although the removal of such an alien does not increase the security of the United States, the removal exacerbates the Central American nations' problem. Aliens who committed misdemeanors probably do not export gang tactics and violence to Central America. Still, removed aliens need not be gang members to join gangs once in El Salvador, Guatemala, or Honduras. Among a survey of removed Salvadorans, the removed Salvadorans reported difficulty finding a job, and the removed Salvadorans' families complained of the removed Salvadorans' problematic behavior.<sup>318</sup> In an indigent nation, with few employment options, and with unfamiliarity of their country of origin, even convicts of misdemeanors may seek to join the *maras*.

Some may argue that criminal aliens, even criminals that commit misdemeanors, should be removed. The problem, the argument might go, belongs to the Central American nations, not the United States. This argument ignores reality. Beyond the ethical issues of removing people who have lived in the United States without considering those persons' families, the removal policy harms the United States' interests. The United States has the resources to create operations to take down notorious and dangerous gang members,<sup>319</sup> while the Central American nations can only pass laws that outlaw any youth with a tattoo.<sup>320</sup> The United States can imprison law violators;<sup>321</sup> the Central American nations cannot.<sup>322</sup> The current policy closely imitates this purported solution. Not only has this policy caused more violence in Central America, but it has created connections between gangs in the United States and gangs in Central America. Therefore, the current policy worsens the problem. As such, the United States must aid Central America in terms of law enforcement, crime prevention, and rehabilitation. Without it, what appeared a violent but distant threat might become a recalcitrant, entrenched organization causing the United States problems in drug trafficking, illegal migration, and crime.

Lastly, the United States may attempt to stymie this problem through asylum claims. The United States may change federal regulations so that courts uphold asylum claims by Central American youths

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317. *Id.* at 1939.

318. *Deportees in Latin America*, *supra* note 17, at 51 (prepared statement of Nestor Rodriguez, Ph.D., Chairman, Department of Sociology, University of Houston).

319. *See* Walton, *supra* note 282.

320. *See* Walker, *supra* note 103.

321. *See Gangs and Crime in Latin America*, *supra* note 12, at 23-24 (prepared statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation) (noting that the United States would imprison Lester Paz-Rivera before sending him back to Honduras).

322. *See* Jordan, *supra* note 141.

with legitimate fear of gang violence or reprisal in their native lands. Under current law, courts clearly cannot grant asylum to youths that fear gang retaliation or gang pressure to join *maras*. While changing the odds of granting asylum to Central American youths will not cure the problem, changing the odds may alleviate it.

## VI. CONCLUSION

El Salvador, Guatemala, and Honduras form an impoverished land mass, which unemployment, gangs, crime, and corruption have swallowed. Though international organizations cannot calculate human tragedy as easily as lost economic investments, no reason exists to overlook the human tragedies that occur in Central America. In 1996, Congress radically altered the United States' immigration laws and began wholesale removal of aliens who committed misdemeanors and aliens who committed major felonies. The aliens had no avenue of relief, since Congress labeled them guilty of committing "aggravated felonies," and arrived at, to some, a strange land. Having grown up in the violent ghettos of the United States, many began to use their criminal skills in their native lands. Poor, corrupt, and weakened by civil war, their native lands could not stop the new criminal techniques. In a land with few opportunities for advancement, the removed aliens and the young men in Central America used the new criminal and intimidation techniques as an outlet. Those aliens deported for minor crimes also felt the impact of unemployment. To them, joining the *maras* became an exit. The governments of Central America, unable to stop the crime and violence, eroded civil liberties in the hopes of achieving security.

The story does not stop there. These gangs, born in Los Angeles, have now migrated throughout Central America and the United States. Although not monolithic organizations, the gangs contain traits contrasting those of most gangs. The *maras* speak to each other. A member in El Salvador can order the death of an individual in Maryland. The *maras* engage in drug trafficking, alien trafficking, and extortion. The gang leaders have ties to organized crime. The *maras* have international contacts. Police in Mexico, the United States, Honduras, Guatemala, and El Salvador have all faced these gang members. No one suggests that the United States' removal policy alone causes the record crime in Central America. Similarly, no one suggests that the *maras* will become the new wave of organized crime. Still, the United States' removal policy played a critical role in unleashing the *maras* in Central America, and the *maras* have a feel different from that of most gangs. The United States, as a moral imperative, as a security decision, and as a policy reflection of reality, must act quickly.