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# **MS-13 in the United States and Federal Law Enforcement Efforts**

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## Summary

The Mara Salvatrucha (MS-13) is a violent criminal gang operating both in the United States and abroad—namely Central America. MS-13 was formed on the streets of Los Angeles, CA, in the 1980s by refugees who were fleeing civil conflict in El Salvador. It became a transnational gang as MS-13 members who were deported from the United States to Central America helped establish gang ties and spread U.S. gang culture abroad.

In the United States, MS-13's structure largely consists of loosely organized cells, or “cliques,” that each control specific territory. While some have suggested that the size of MS-13 has grown in the United States, since at least 2005 law enforcement officials have consistently cited its membership to be around 10,000. Domestically, MS-13 has been involved in local crimes including extortion, drug distribution, prostitution, robbery, and murder, as well as transnational illicit activity such as drug trafficking and human smuggling and trafficking. The gang is known for its particularly violent criminality, which has been demonstrated in a reported uptick in violent homicides attributed to MS-13 in certain locales.

Countering gang crime has often been the purview of state and local law enforcement. However, given that gang activity is not constrained by jurisdictional boundaries, and that local law enforcement agencies may not have the capacity to investigate complex gang crimes, federal law enforcement has had a long-standing interest in countering gangs, including MS-13. One element in determining the appropriate federal policy responses to tackle threats posed by MS-13 may be to have a clear conceptualization of the gang. Researchers and criminal justice system authorities have primarily described MS-13 as a criminal gang or a transnational criminal organization (TCO)—concepts that have some overlap in structure, motivation, and criminality. Whether MS-13 demonstrates elements that are uniquely gang or TCO may help inform the federal policy response to its illegal activities.

Another challenge in countering the danger posed by MS-13 is understanding the scope of the threat. Key questions focus on the validity of existing estimates and whether the gang is growing in number or in territory. Thus, policymakers may question how officials define and determine gang membership. While there is no centralized database to track gang membership, a number of agencies maintain datasets that contain gang-related information. Policymakers may also question how this information is shared and utilized.

Oversight bodies such as the Department of Justice's Office of the Inspector General (DOJ OIG) and the Government Accountability Office (GAO) have recommended means by which federal law enforcement could enhance its enforcement efforts against violent criminal gangs such as MS-13, and policymakers may take interest in whether some of these recommendations are still relevant.

There is also a current debate about the relationship between gangs such as MS-13 and unaccompanied alien children (UAC) arriving in the United States. Some have suggested that MS-13's presence in Central America could continue to drive unauthorized migration into the United States by those seeking to escape the gang and its violence. There are also concerns that MS-13 may exploit the U.S. Southwest border by bringing young gang members from Central America to the United States as UAC or may recruit some of the vulnerable UAC to join the gang's ranks once in the United States. Policymakers may seek more data from officials in order to understand the nuances of these potential relationships between MS-13 and UAC.

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The Mara Salvatrucha (MS-13) is a violent criminal gang operating both in the United States and abroad—namely Central America. U.S.-based members have committed both local and transnational crimes ranging from extortion, homicide, and drug distribution to human and drug trafficking. The gang has a reputation for committing particularly violent crimes, which has generated attention from law enforcement, policymakers, and the public.

This report provides a brief background on MS-13 with a focus on its structure and criminal activities in the United States. It highlights U.S. law enforcement initiatives and other federal resources used to counter the gang’s illicit activities. It discusses how the gang is conceptualized by the federal government and how this conceptualization may drive specific policy responses to the gang’s activities. The report also provides an overview of selected domestic policy issues Congress may examine as part of its efforts to counter MS-13.

## Birth and Evolution of MS-13

MS-13 was born on the streets of Los Angeles, CA. It was formed in the 1980s by refugees who were fleeing civil conflict in El Salvador. When these Salvadoran nationals moved into the Los Angeles area, some youth coalesced to form MS-13, in part for protection from existing Latino gangs, such as the 18<sup>th</sup> Street gang, as well as for a way to connect with other Salvadorans.<sup>1</sup> By the 1990s, MS-13 had reached the East Coast, particularly Washington, DC, and Long Island, NY.<sup>2</sup> Historically, MS-13 members were mostly Salvadoran nationals or first-generation Salvadoran-Americans, but the group has expanded to include other Central and South American immigrants. MS-13 has largely focused on creating an identity and community, though members do engage in activities that generate revenue for the gang.

MS-13 became a transnational gang as members who were deported from the United States to Central America established gang ties there.<sup>3</sup> Legislation enacted in the mid-1990s increased the number of foreign nationals subject to detention and removal from the United States.<sup>4</sup> From 2001 to 2010, nearly 130,000 foreign nationals were deported to Central America because of a criminal conviction, primarily to the Northern Triangle countries of El Salvador, Guatemala, and Honduras.<sup>5</sup> The exact number of these deportees who were gang members is unknown, as is the number of deported gang members who were affiliated with MS-13. However, some of these deportees helped to establish MS-13 gang ties in their home countries (where gangs were already present) and assisted in the spread of U.S. gang culture in Central America.<sup>6</sup>

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<sup>1</sup> James C. Howell and John P. Moore, *History of Street Gangs in the United States*, Bureau of Justice Assistance and Office of Juvenile Justice and Delinquency Prevention, National Gang Center Bulletin No. 4, May 2010; InSight Crime and American University, Center for Latin American & Latino Studies, *MS13 in the Americas: How the World’s Most Notorious Gang Defies Logic, Resists Destruction*, 2018.

<sup>2</sup> InSight Crime and American University, Center for Latin American & Latino Studies, *MS13 in the Americas: How the World’s Most Notorious Gang Defies Logic, Resists Destruction*, 2018.

<sup>3</sup> For more information on MS-13 in Central America, see CRS Report RL34112, *Gangs in Central America*.

<sup>4</sup> The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA, P.L. 104-208,) of 1996, among other things, expanded the definition of “aggravated felonies” for which convicted individuals would be subject to deportation. It also put greater constraints on relief from removal.

<sup>5</sup> Department of Homeland Security, Office of Immigration Statistics, *2010 Yearbook of Immigration Statistics*, January 2011, Table 38.

<sup>6</sup> InSight Crime and American University, Center for Latin American & Latino Studies, *MS13 in the Americas: How the World’s Most Notorious Gang Defies Logic, Resists Destruction*, 2018.

## Shifting Structure, Size, and Criminality?

In recent years, law enforcement, the media, and policymakers have shown interest in MS-13 and its violent criminal activities.<sup>7</sup> High-profile incidents of violent behavior committed by gang members have raised questions about whether this reflects a developing organizational structure, increasing size, or changing criminality.

### Organizational Structure

In the United States, MS-13's organizational structure largely consists of loosely organized cells, or "cliques." These cliques vary in size and in the number that may exist in a particular locale, but each clique typically has ties to a particular territory. Researchers have noted that this territory serves two purposes: (1) it contributes to a clique's sense of neighborhood and community, and serves as a place where they can recruit, and (2) it is an area where the gang generates money from illicit activities such as extortion or charging "rent" on local businesses.<sup>8</sup>

In some areas of the country, MS-13 cliques are more organized, and several operate as part of a larger "program." In some instances, in "places where the MS13 is very organized, such as Los Angeles and El Salvador," there may be an additional organizational layer where programs answer to a ruling council.<sup>9</sup> Generally, the U.S. MS-13 structure of relatively diffuse cliques differs from the gang's more organized structure in El Salvador.

Some have suggested that MS-13 may try to consolidate its power structure to exert more direction over the U.S. cliques; this has been attempted unsuccessfully at various times, and the extent to which such control may take hold has been debated.<sup>10</sup> In some instances, leaders in El Salvador, including prison-based leaders, have tried to exert more direction over activities of U.S. programs and cliques; however, researchers have indicated that leadership in El Salvador may have little or no direction over activities of the powerful MS-13 programs and cliques in the United States.<sup>11</sup>

### Membership Estimates

While some have suggested that the size of MS-13 has grown in the United States,<sup>12</sup> since at least 2005 the FBI has consistently estimated the domestic size of the gang to be around 10,000

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<sup>7</sup> See, for example, U.S. Congress, House Committee on Homeland Security, Subcommittee on Counterterrorism and Intelligence, *Combating Gang Violence on Long Island: Shutting Down the MS-13 Pipeline*, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., June 20, 2017; and Department of Justice, "Attorney General Sessions Delivers Remarks on the Administration's Efforts to Combat MS-13 and Carry Out its Immigration Priorities," press release, December 12, 2017.

<sup>8</sup> InSight Crime and American University, Center for Latin American & Latino Studies, *MS13 in the Americas: How the World's Most Notorious Gang Defies Logic, Resists Destruction*, 2018.

<sup>9</sup> *Ibid.*, p. 32.

<sup>10</sup> Steven Dudley and Hector Silva Avalos, *MS13: Hierarchy vs. Federation*, InSight Crime, February 14, 2018. See also Del Quentin Wilber, "MS-13, Violent and Unruly, Is Trying to Organize—Can It?," *The Wall Street Journal*, August 19, 2018.

<sup>11</sup> *Ibid.*

<sup>12</sup> In April, 2017, for example, Attorney General Sessions stated that "MS-13 now has more than 10,000 members in at least 40 states in this country—up significantly from just a few years ago." See Department of Justice, *Remarks by Attorney General Jeff Sessions at Meeting of the Attorney General's Organized Crime Council and OCDETF Executive Committee*, April 18, 2017.

members.<sup>13</sup> Of note, it appears that federal law enforcement may be moving away from generating regular estimates of gang membership in the United States, both in aggregate and for specific gangs. For instance, after 2009 the National Gang Threat Assessments ceased including MS-13 membership estimations.<sup>14</sup> As of June 2018, the FBI had removed from its website the reference to the total estimated number of gang members in the United States.<sup>15</sup>

## Criminal Activities

In the United States, MS-13 gang members have been involved in local crimes including extortion, drug distribution, prostitution, robbery, and murder, as well as in more transnational illicit activity such as drug trafficking and human smuggling and trafficking.<sup>16</sup> While some of the illegal activities help support the gang's criminal finances, others facilitate the maintenance of territory as well as gang brand and unity.

MS-13 has a reputation for particularly violent criminal activity. Some experts see this violence as serving both internal and external purposes. Internally, violence may help recruit—it serves a brand-identifying purpose—in addition to providing discipline and cohesion. Externally, it can help establish territory as well as social and political control.<sup>17</sup>

<sup>13</sup> For example, in a 2005 report, the FBI estimated MS-13 membership to be 8,000-10,000; see Federal Bureau of Investigation, *How We're Ganging Up on MS-13: And What You Can Do To Help*, July 13, 2015. An April 2006 FBI news story on MS-13 estimated U.S. membership to be 10,000; see Federal Bureau of Investigation, *A Close-Up of MS-13, FBI Executive Visits El Salvador*, April 19, 2006. A 2008 FBI threat assessment placed MS-13 membership between 6,000-10,000 individuals; see Federal Bureau of Investigation, *The MS-13 Threat: A National Assessment*, January 14, 2008. The 2009 National Gang Threat Assessment estimated MS-13 membership at 8,000-10,000 individuals in the United States; see National Gang Intelligence Center, *National Gang Threat Assessment 2009*, January 2009. In addition, a 2009 FBI news story noted that domestic MS-13 membership was 10,000 individuals; see Federal Bureau of Investigation, *A Courageous Victim: Taking a Stand Against MS-13*, May 1, 2009. FBI congressional testimony in 2017 reiterated the estimation of 10,000 MS-13 gang members in the United States; see U.S. Congress, House Committee on Homeland Security, Subcommittee on Counterterrorism and Intelligence, *Combating Gang Violence on Long Island: Shutting Down the MS-13 Pipeline*, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., June 20, 2017. Estimates of the total number of MS-13 members internationally has varied. Some estimates place this total at 50,000-70,000. See Steven Dudley and Hector Silva Avalos, *MS13 in the Americas: Major Findings*, InSight Crime, February 16, 2018. The United Nations Office on Drugs and Crime (UNODC) estimated in 2012 that there were about 24,000 MS-13 members in the Golden Triangle of Central America. See UNODC, *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment*, September 2012.

<sup>14</sup> It is unclear why the National Gang Intelligence Center (NGIC) ceased reporting these numbers. There had been critiques of how the NGIC derived membership estimates, citing, for instance, that states contributing data on gang membership may rely on differing definitions of what constitutes a gang. See, for example, U.S. Government Accountability Office, *Better Coordination and Performance Measurement Would Help Clarify Roles of Federal Agencies and Strengthen Assessment of Efforts*, GAO-09-708, July 24, 2009; and U.S. Department of Justice, Office of the Inspector General, *A Review of the Department's Anti-Gang Intelligence and Coordination Centers*, November 2009.

<sup>15</sup> The FBI notes that there are about “33,000 violent street gangs, motorcycle gangs, and prison gangs ... criminally active in the U.S. and Puerto Rico today.” See Federal Bureau of Investigation, *What We Investigate: Gangs*, <https://www.fbi.gov/investigate/violent-crime/gangs>. Previously (as recently as May 2018), the FBI noted that these 33,000 violent street gangs had about 1.4 million members in the United States. As of June 2018, however, the FBI had removed the reference to 1.4 million members.

<sup>16</sup> Federal Bureau of Investigation, *The MS-13 Threat: A National Assessment*, January 14, 2008. See also InSight Crime and American University, Center for Latin American & Latino Studies, *MS13 in the Americas: How the World's Most Notorious Gang Defies Logic, Resists Destruction*, 2018.

<sup>17</sup> InSight Crime and American University, Center for Latin American & Latino Studies, *MS13 in the Americas: How the World's Most Notorious Gang Defies Logic, Resists Destruction*, 2018.

In recent years, this violence has been demonstrated in a reported wave of violent homicides and other criminality attributed to MS-13 in certain locales. For example, authorities have been investigating a spate of killings and other violent activities on Long Island, NY, attributed to MS-13. In May 2017 testimony before the Senate Judiciary Committee, the Suffolk County (NY) police commissioner estimated that since 2016, 38% of murders in the county were attributable to MS-13.<sup>18</sup> In a series of five superseding indictments, federal prosecutors with the Eastern District of New York have indicted two dozen MS-13 members with crimes including at least 15 murders, as well as assaults, arson, and drug distribution.<sup>19</sup> The series of indictments includes charges in the high-profile killings of teenagers Nisa Mickens and Kayla Cuevas.<sup>20</sup>

Illustrating a potential increase in MS-13 activity in the Washington, DC, metro area, some suburban jurisdictions have seen an increase in the number of MS-13 members in their county jails. As of February 2018, the Montgomery County, MD, jail reported a 20% increase in the MS-13 population over the previous year. During that same time, the number of MS-13 members in jail increased by 32% in the Prince William County, VA, jail and doubled in the Fairfax County, VA, jail.<sup>21</sup>

## Federal Domestic Enforcement Efforts

Countering gang crime is generally the purview of state and local law enforcement. However, given that gang activity is not constrained by jurisdictional boundaries, and that local law enforcement agencies may not have the capacity to investigate complex gang crimes, federal law enforcement has had a long-standing interest in contending with gangs, including MS-13. There is no single federal agency charged with investigating crimes committed by gangs, and federal resources for confronting this threat are allocated across several departments and agencies including the FBI, Drug Enforcement Administration (DEA), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and U.S. Immigration and Customs Enforcement (ICE), among others. As the FBI and ICE are often seen as having leading roles in federal gang enforcement efforts, this section largely focuses on their activities.<sup>22</sup>

Within the Department of Justice (DOJ), the FBI is charged with investigating violent gangs and runs a number of anti-gang initiatives. One of the primary tools the FBI uses to counter the gang

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<sup>18</sup> Testimony by Timothy D. Sini, Police Commissioner, Suffolk County, NY, before U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Border Insecurity: The Rise of MS-13 and Other Transnational Criminal Organizations*, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., May 24, 2017. It is unknown, however, the proportion of murders attributable to MS-13 prior to 2016.

<sup>19</sup> Department of Justice, U.S. Attorney's Office, Eastern District of New York, "Two Dozen Ms-13 Gang Members Indicted on Federal Racketeering Charges," press release, June 7, 2018.

<sup>20</sup> Liz Robbins, "Mother of Long Island Gang Victim Invited to the State of the Union," *The New York Times*, January 28, 2018.

<sup>21</sup> Michael Miller, "'Vying for Control': How MS-13 Uses Violence and Extortion in America's Jails," *The Washington Post*, February 4, 2018. While these jailhouse population data may illustrate a significant increase in MS-13 related activity, they could also reflect a law enforcement *focus* on targeting MS-13 in those jurisdictions rather than an actual increase in MS-13 criminality. The data are not clear on whether they reflect single snapshots in time or whether they account for the flow of MS-13 affiliated inmates in and out of the jails. Nor do they illustrate the actual MS-13 or relative total jail population numbers. (One exception is that the Fairfax County jail noted an increase in MS-13 membership from about 20 to about 40.) For these reasons, and others, analysts cannot assess whether these data truly reflect changes in MS-13 criminality in specific jurisdictions.

<sup>22</sup> In addition to federal enforcement initiatives, the federal government also provides grants to state and local law enforcement to help address gang threats—broadly, not specific to MS-13—in those jurisdictions. However, a discussion of these grants is outside the scope of this report.

threat is Violent Gang Safe Streets Task Forces, which focus on countering violent gangs and violent crimes. The FBI established the Safe Streets Violent Crime Initiative in 1992 and, through this program, administers Violent Gang Safe Streets Task Forces across the United States.<sup>23</sup> These gang task forces include federal, state, and local law enforcement officers that investigate crimes ranging from racketeering to drug conspiracy and firearms violations.<sup>24</sup>

In addition to domestic law enforcement initiatives to counter violent gangs such as MS-13, the FBI has transnational policing partnerships. In 2004, the FBI launched an MS-13 National Gang Task Force (NGTF) to coordinate federal, state, and local investigations of MS-13. This has since evolved into the Transnational Anti-Gang Task Force (TAG) initiative that targets transnational gang threats—with a current focus on MS-13 and the 18<sup>th</sup> Street gang. The FBI has established TAG task forces, comprised of FBI agents and vetted local officers, in El Salvador, Guatemala, and Honduras. In addition to being operational task forces, these TAGs facilitate intelligence and information sharing. The TAG initiative also includes the Central American Law Enforcement Exchange (CALEE) program, which helps train local law enforcement in the United States and Central America on gang-related issues and techniques for countering the gang threats.<sup>25</sup>

- Work of the TAG units can be seen in a number of investigations. For example, in September 2017, through Operation Regional Shield, over 3,800 gang members—from MS-13 and the 18<sup>th</sup> Street gang—in the United States, El Salvador, Guatemala, and Honduras were charged with crimes including murder, arson, racketeering, and conspiracy to distribute marijuana; the FBI's TAG units were involved with the investigations in Central America.<sup>26</sup> In the United States, over 70 individuals were charged, including 17 MS-13 members who were alleged to have committed murder and other crimes on Long Island, NY.<sup>27</sup>

The FBI, through the direction of Congress, established the National Gang Intelligence Center (NGIC) in 2005.<sup>28</sup> The NGIC was established to coordinate intelligence information from federal, state, and local policing agencies.<sup>29</sup> It supports law enforcement investigations by providing strategic and tactical analysis of intelligence. Agencies contributing to the NGIC share gang information and resources to identify and respond to the greatest gang threats.

Within the Department of Homeland Security (DHS), ICE Homeland Security Investigations (HSI) has a National Gang Unit (NGU) that works to deter and disrupt domestic gang

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<sup>23</sup> Federal Bureau of Investigation, *FY2019 Authorization and Budget Request to Congress*, February 2018. The FBI administers at least 169 such task forces.

<sup>24</sup> For more information on the Violent Gang Safe Streets Task Forces, see <https://www.fbi.gov/investigate/violent-crime/gangs/violent-gang-task-forces>.

<sup>25</sup> Ibid. See also, testimony by Stephen Richardson, Federal Bureau of Investigation, before U.S. Congress, House Committee on Homeland Security, Subcommittee on Counterterrorism and Intelligence, *Combating Transnational Gangs Through Information Sharing*, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 18, 2018.

<sup>26</sup> Department of Justice, “3,800 Gang Members Charged in Operation Spanning United States and Central America,” press release, September 29, 2017.

<sup>27</sup> Department of Justice, “MS-13 Gang Members Indicted In New York For Murder Of Four Young Men In Park And Killing Of Rival At Deli,” press release, July 19, 2017.

<sup>28</sup> For more information on the NGIC, see <https://www.fbi.gov/investigate/violent-crime/gangs/ngic> and 34 U.S.C. §41507. The NGIC was established by P.L. 109-162.

<sup>29</sup> The NGIC has federal representation from agencies across the federal government, including the FBI, DEA, ATF, U.S. Marshals Service, Department of Defense, and U.S. Customs and Border Protection. It disseminates information to (as well as that received from) the broader law enforcement community and has a web-based information center to facilitate this sharing.



operations—specifically those of transnational criminal gangs, prison gangs, and outlaw motorcycle gangs (OMGs). The NGU also “identifies and develops intelligence on gang membership, associations, activities, and international networks.”<sup>30</sup>

One ongoing HSI gang initiative is known as Operation Community Shield, which ICE launched in 2005 to disrupt and dismantle transnational criminal gangs. ICE HSI reports that in FY2017 it arrested 796 MS-13 gang members and associates (up from 434 in FY2016) through this program.<sup>31</sup> To put these 796 MS-13 arrests in the context of other gang-related arrests, during the same time, “HSI made 4,818 criminal arrests related to gang activity and 892 administrative arrests<sup>32</sup> as a result of gang investigations. Additionally, [ICE Enforcement and Removal Operations] administratively arrested 5,225 gang members and associates” in FY2017.<sup>33</sup>

Operation Community Shield has included a number of operations that specifically target MS-13.

- Through Operation Raging Bull, ICE and its domestic and international law enforcement partners arrested 267 MS-13 members and associates from September through November 2017.<sup>34</sup> Of the 267 arrests, 214 were in the United States; of those, 93 suspects were arrested for criminal violations—such as murder, robbery, and drug possession and trafficking—and 121 were arrested for administrative immigration violations (e.g., unlawful presence).

Elsewhere, federal law enforcement initiatives that are generally not focused on countering gangs could potentially be leveraged to address certain gang threats, such as those posed by MS-13. For instance, led by the DEA, the Organized Crime Drug Enforcement Task Force (OCDETF) program targets major drug trafficking, money laundering, and transnational criminal organizations.<sup>35</sup> Attorney General Sessions has directed the OCDETF program to make countering MS-13 a priority.<sup>36</sup> However, some have suggested that investigating MS-13 may not truly be an OCDETF priority because the gang is more involved in small-scale drug distribution rather than the larger distribution that is traditionally the target of OCDETF investigations.<sup>37</sup>

## Conceptualizing MS-13 for a Policy Response

One challenge in determining the appropriate policy responses to tackle threats posed by MS-13 is developing a clear conceptualization of the gang. There is a range of law enforcement tools and other resources that the federal government could leverage to counter the illicit activities of MS-

<sup>30</sup> For more information on the National Gang Unit, see <https://www.ice.gov/national-gang-unit>.

<sup>31</sup> Department of Homeland Security, “DHS Announces Progress in Enforcing Immigration Laws, Protecting Americans,” press release, December 5, 2017.

<sup>32</sup> ICE describes an administrative arrest as “the arrest of an alien for a civil violation of the immigration laws, which is subsequently adjudicated by an immigration judge or through other administrative processes.” See U.S. Immigration and Customs Enforcement, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*, <https://www.ice.gov/removal-statistics/2017#tab1>.

<sup>33</sup> Department of Homeland Security, “DHS Announces Progress in Enforcing Immigration Laws, Protecting Americans,” press release, December 5, 2017.

<sup>34</sup> Immigration and Customs Enforcement, *ICE’s ‘Operation Raging Bull’ Nets 267 MS-13 Arrests*, <https://www.ice.gov/features/raging-bull>.

<sup>35</sup> For more information, see Department of Justice, Organized Crime Drug Enforcement Task Forces, *FY2019 Interagency Crime and Drug Enforcement Congressional Submission*. Federal participants in OCDETF come from the Departments of Justice, Homeland Security, State, Treasury, Labor, and the U.S. Postal Service.

<sup>36</sup> Department of Justice, “Attorney General Jeff Sessions Gives Key Department of Justice Task Force New Tools to Dismantle MS-13,” press release, October 23, 2017.

<sup>37</sup> Hector Silva Avalos, *US Toughens Rhetoric, Declares MS13 ‘Priority’ Target*, InSight Crime, October 24, 2018.

13. Having a clear conceptualization of MS-13 may help to determine the most appropriate and effective tools and resources to counter their criminal activity. Researchers and authorities have primarily described MS-13 as either a criminal street gang or a transnational criminal organization (TCO); however, policy discussions of the gang often blur these lines.

## Federal Definitions

The federal government has offered descriptions of gangs and transnational criminal organizations that may help facilitate both the conceptualization of MS-13 and policy responses to the gang's criminality. These concepts are working definitions to describe criminal phenomena that sometimes overlap in structure, motivation, and criminality.

### Gangs

DOJ describes a gang as

(1) an association of three or more individuals; (2) whose members collectively identify themselves by adopting a group identity which they use to create an atmosphere of fear or intimidation frequently by employing one or more of the following: a common name, slogan, identifying sign, symbol, tattoo or other physical marking, style or color of clothing, hairstyle, hand sign or graffiti; (3) the association's purpose, in part, is to engage in criminal activity and the association uses violence or intimidation to further its criminal objectives; (4) its members engage in criminal activity, or acts of juvenile delinquency that if committed by an adult would be crimes; (5) with the intent to enhance or preserve the association's power, reputation, or economic resources; (6) the association may also possess some of the following characteristics: (a) the members employ rules for joining and operating within the association; (b) the members meet on a recurring basis; (c) the association provides physical protection of its members from other criminals and gangs; (d) the association seeks to exercise control over a particular location or region, or it may simply defend its perceived interests against rivals; or (e) the association has an identifiable structure; (7) this definition is not intended to include traditional organized crime groups such as La Cosa Nostra, groups that fall within the Department's definition of "international organized crime," drug trafficking organizations or terrorist organizations.<sup>38</sup>

DOJ has described MS-13 as an example of a prominent criminal street gang operating in the United States.<sup>39</sup>

In addition to DOJ's definition of a gang, 18 U.S.C. §521 defines a "criminal street gang" as an ongoing group, club, organization, or association of 5 or more persons" with three elements:

- One of its primary purposes is committing crimes including (1) a federal felony involving a controlled substance for which the penalty is at least five years imprisonment, (2) a violent federal felony that uses or attempts to use force, or (3) a conspiracy to commit one of these felonies.
- In the past five years, its members have engaged in a continuing series of these felony crimes.
- Its activities affect interstate or foreign commerce.

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<sup>38</sup> Department of Justice, *About Violent Gangs*, May 28, 2015.

<sup>39</sup> Department of Justice, *Criminal Street Gangs*, May 12, 2015.

## Transnational Organized Crime

In July 2011, the Obama Administration released the *Strategy to Combat Transnational Organized Crime: Addressing Converging Threats to National Security* (strategy).<sup>40</sup> The strategy provides the federal government's first broad conceptualization of transnational organized crime (TOC), highlighting it as a national security concern. It notes the following:

Transnational organized crime refers to those self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms. There is no single structure under which transnational organized criminals operate; they vary from hierarchies to clans, networks, and cells, and may evolve to other structures. The crimes they commit also vary. Transnational organized criminals act conspiratorially in their criminal activities and possess certain characteristics which may include, but are not limited to:

In at least part of their activities they commit violence or other acts which are likely to intimidate, or make actual or implicit threats to do so;

They exploit differences between countries to further their objectives, enriching their organization, expanding its power, and/or avoiding detection/apprehension;

They attempt to gain influence in government, politics, and commerce through corrupt as well as legitimate means;

They have economic gain as their primary goal, not only from patently illegal activities but also from investment in legitimate businesses; and

They attempt to insulate both their leadership and membership from detection, sanction, and/or prosecution through their organizational structure.<sup>41</sup>

The strategy noted that TOC networks include transnational gangs. Pursuant to Executive Order 13581,<sup>42</sup> which accompanied the 2011 strategy, the Department of the Treasury can sanction listed transnational criminal organizations.<sup>43</sup> In 2012, the Treasury Department designated MS-13 as a significant transnational criminal organization, noting the gang's "involvement in serious transnational criminal activities, including drug trafficking, kidnapping, human smuggling, sex trafficking, murder, assassinations, racketeering, blackmail, extortion, and immigration offenses."<sup>44</sup> More recently, Executive Order 13773, issued in February 2017, directed federal law enforcement to strengthen efforts to combat transnational criminal organizations, including criminal gangs. This indicates that federal enforcement efforts aimed at TOC may also target various forms of criminal gangs, including street gangs.<sup>45</sup>

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<sup>40</sup> The White House, *Strategy To Combat Transnational Organized Crime: Addressing Converging Threats to National Security*, July 2011.

<sup>41</sup> The White House, *Strategy To Combat Transnational Organized Crime: Addressing Converging Threats to National Security*, July 2011, p. ii. This definition originally appeared in Department of Justice, *Overview of the Law Enforcement Strategy to Combat International Organized Crime*, April 2008, p. 2.

<sup>42</sup> Executive Order 13581, "Blocking Property of Transnational Criminal Organizations," 3 C.F.R. § 13581.

<sup>43</sup> Entities originally designated as TCOs as part of Executive Order 13581 were The Brothers' Circle, Camorra, Yakuza, and Los Zetas.

<sup>44</sup> Department of the Treasury, "Treasury Sanctions Latin American Criminal Organization," press release, October 11, 2012.

<sup>45</sup> Executive Order 13773, "Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking," 82 *Federal Register* 10691, February 9, 2017.

Table 1 provides some highlights of these definitions of gangs and TOC.

**Table 1. Gangs and Transnational Organized Crime: Identifying Elements**

	Gangs	Transnational Organized Crime
Structure	<ul style="list-style-type: none"> <li>No singular, defining structure</li> <li>May have an identifiable structure, include rules for joining and ongoing membership, or hold regular meetings</li> <li>May provide members protection from rivals, and control and defend particular territory and/or interests</li> </ul>	<ul style="list-style-type: none"> <li>Self-perpetuating organizations with no singular, defining structure</li> <li>Protect activities with corruption and/or violence or through a transnational organizational structure to exploit transnational commerce or communications</li> <li>Insulate leadership and members from detection, sanction, and/or prosecution through their organizational structure</li> </ul>
Criminality	<ul style="list-style-type: none"> <li>Engage in criminal activity, including with violence or intimidation</li> </ul>	<ul style="list-style-type: none"> <li>Engage in criminal activity, including with violence or intimidation</li> </ul>
Motivations	<ul style="list-style-type: none"> <li>Enhance or preserve the group's power, reputation, or economic resources</li> <li>Maintain a collective group identity and create an atmosphere of fear or intimidation</li> </ul>	<ul style="list-style-type: none"> <li>Obtain power, influence, monetary and/or commercial gains (<b>economic gain is the top priority</b>)</li> <li>May attempt to gain influence in government, politics, and commerce</li> </ul>

**Source:** Department of Justice, *About Violent Gangs*, May 28, 2015. The White House, *Strategy To Combat Transnational Organized Crime: Addressing Converging Threats to National Security*, July 2011.

**Notes:** DOJ's definition of gangs also states that they are distinct from traditional organized crime groups, transnational organized crime groups, drug trafficking organizations, or terrorist organizations, though it does not provide more detail on this distinction.

## Variations in Conceptualizing MS-13

There can be overlap in the criminal activities of TCOs and gangs, which can make distinguishing the two difficult. For example, drug distribution is often a source of income for both TCOs and gangs. As noted by the DEA, “[a]lthough gangs are involved in all avenues of criminal activity, the major source of income for most street gangs remains the trafficking of illegal drugs.”<sup>46</sup> While TCOs are more involved in wholesale-level drug distribution, gangs are more often involved in retail-level distribution; alliances between the two facilitate product movement. MS-13 has mostly been involved in local drug peddling, and these retail-level drug sales are the “most important revenue stream for the gang.”<sup>47</sup> Cliques have developed relationships with transnational drug trafficking organizations to facilitate the flow of drugs within the United States. MS-13’s

<sup>46</sup> Drug Enforcement Administration, *2017 National Drug Threat Assessment*, October 2017, p 17.

<sup>47</sup> InSight Crime and American University, Center for Latin American & Latino Studies, *MS13 in the Americas: How the World’s Most Notorious Gang Defies Logic, Resists Destruction*, 2018, p. 41.

involvement in criminal activity similar to that of TCOs—such as drug distribution—is one factor that may lead to uncertainty in conceptualizing the gang.

Further blurring the lines between gangs and TCOs is the fact that both may have similar motivations. As DOJ notes, a gang’s purpose is, in part, to engage in criminal activity “with the intent to enhance or preserve the association’s power, reputation, or economic resources.”<sup>48</sup> Similarly, as the 2011 strategy notes, TCOs operate for the “purpose of obtaining power, influence, monetary and/or commercial gains” and economic gain is their primary goal.<sup>49</sup> As noted, MS-13 has engaged in various forms of violent criminal behavior; however, the gang has focused more on establishing and maintaining identity, community, and turf than on generating money.

These definitional issues have contributed to inconsistencies in the conceptualization of MS-13, both within the federal government and among researchers. While the gang has been officially designated by the Treasury Department as a significant transnational criminal organization, federal investigative agencies such as the FBI, DEA, and ICE vary on whether they investigate MS-13 under programs targeting violent gangs or those targeting TCOs.<sup>50</sup> In addition, some researchers argue that MS-13 has evolved into a “fully functional transnational criminal organization,”<sup>51</sup> citing the gang’s expansion into drug production and trafficking in Central America. Others disagree with this categorization. These dissents generally relate to MS-13’s structure and criminal capacity. For instance, some contend that “while the group may play a peripheral role in international crimes such as drug trafficking, at its heart it remain[s] a loose-knit network of street gangs.”<sup>52</sup> In addition, those contending that MS-13 has not risen to the level of a TCO note that the gang has not been able to establish a consistent role in international drug distribution, in part because it has been more focused on developing identity, camaraderie, and turf than on creating profit.<sup>53</sup>

### MS-13: Gang or TCO—Does it Matter?

Given the difficulties of clearly distinguishing between gangs and TCOs with existing definitions, policymakers may question whether drawing a distinction and placing MS-13 into just one of these categories is necessary or important for developing policies and strategies to counter the gang.

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<sup>48</sup> Department of Justice, *About Violent Gangs*, May 28, 2015.

<sup>49</sup> The White House, *Strategy To Combat Transnational Organized Crime: Addressing Converging Threats to National Security*, July 2011, p. ii.

<sup>50</sup> The FBI generally targets MS-13 under its violent crime and gangs program; see, for example, Federal Bureau of Investigation, *Gangs*, <https://www.fbi.gov/investigate/violent-crime/gangs>. In addition, the DEA’s National Drug Threat Assessment distinguishes transnational organized crime from gangs and identifies MS-13 as a national gang; see Drug Enforcement Administration, *2017 National Drug Threat Assessment*, October 2017. And, while some ICE cases targeting MS-13 are initiated from the National Gang Unit, ICE established the Transnational Organized Crime Initiative in June 2017 focused on countering MS-13 and other transnational gang activity; see U.S. Immigration and Customs Enforcement, “Joint Operation Nets 24 Transnational Gang Members, 475 Total Arrests under Operation Matador,” press release, March 29, 2018.

<sup>51</sup> Douglas Farah and Kathryn Babineau, *The Rapid Evolution of the MS 13 in El Salvador and Honduras from Gang to Tier-One Threat to Central America and U.S. Security Interests*, National Defense University, Perry Center Occasional Paper, March 2018, p. 5. Notably, this assessment is based largely on MS-13 activities and structure in Central America.

<sup>52</sup> James Bargent, *US Treasury Adds MS-13 Leaders to Economic Sanctions List*, InSight Crime, June 6, 2013.

<sup>53</sup> Steven Dudley, “MS-13 Is a Street Gang, Not a Drug Cartel—And the Difference Matters,” *The Conversation*, March 20, 2018.

In some ways, it may not matter whether the federal government classifies MS-13 as a TCO, a gang, or a hybrid of the two. One argument for why it doesn't matter is that federal law enforcement often divides investigations by criminal violation rather than by actor. Being a gang member in and of itself is not a crime (nor is being a member of a TCO). However, engaging in illicit activities on behalf of or in association with a gang or TCO *is* a crime. As such, members of MS-13 will generally be investigated and prosecuted for crimes committed, not for affiliation.

Another factor in why it may not matter whether MS-13 is consistently categorized as a gang or TCO is that, as noted, the federal government does not have definitions that clearly distinguish criminal gangs from TCOs. There are hazy lines. Categorizing MS-13 as one or the other may demand a more precise distinction between gangs and TCOs—something that may or may not be possible, necessary, or desirable. Because of the differences between each criminal organization—gang or TCO—it may be more important to understand a criminal entity rather than to label it. For instance, the NGIC notes that among the spectrum of gangs, “[u]nderstanding the specific mentality of each gang type is integral to disruption and dismantlement.”<sup>54</sup>

While there are arguments for not strictly categorizing MS-13 as either a TCO or a criminal street gang, there are some policy-focused arguments for doing so. One such discussion involves how federal resources are oriented toward countering TCOs and gangs. Domestic resources aimed at thwarting TCOs are largely enforcement-based.<sup>55</sup> However, there is a mix of enforcement and prevention resources allocated to thwarting gangs.<sup>56</sup> For example, enforcement resources for domestic efforts to counter TCOs include funding for federal law enforcement agency investigation and prosecution priorities, interagency enforcement activities such as the OCDETF program, and Treasury Department efforts to implement sanctions against TCOs. Resources to counter gangs include not only federal investigations, prosecutions, and interagency enforcement activities, but include grants that support prevention and suppression activities like the violent gang and gun crime reduction program<sup>57</sup> and the juvenile justice grants for gang and youth violence education, prevention, and intervention.<sup>58</sup> Following from this, different conceptualizations of a gang—in this case MS-13—implicate different resources available. If officials view MS-13 as a TCO, law enforcement initiatives may be the chief means to counter MS-13. However, if MS-13 is viewed as a criminal street gang, this may open up a range of federal resources, both law enforcement and prevention resources.<sup>59</sup>

Defining MS-13 as a criminal street gang or a TCO may also affect federal investigations and prosecutions of gang members. For instance, 18 U.S.C. §521 provides a penalty enhancement on certain convictions if a defendant is found to be a member of a criminal street gang. There is a no similar enhancement for members of a TCO. However, authorities are not constrained by which criminal statutes they can prosecute members of gangs or TCOs.

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<sup>54</sup> National Gang Intelligence Center, *National Gang Report 2015*, p. 8.

<sup>55</sup> Some international support is allocated to assisting foreign nations counter TOC, but a discussion of this is outside the scope of this report.

<sup>56</sup> Based on CRS review of the Consolidated Appropriations Act, 2018 (P.L. 115-141), and the accompanying Committee Print.

<sup>57</sup> The Violent Gang and Gun Crime Reduction grants are supported by the Byrne Memorial Justice Assistance Grants (JAG) program. For more information about the JAG program, see CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*.

<sup>58</sup> For more information on juvenile justice grant programs to reduce gang and youth violence, among other things, see CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*.

<sup>59</sup> See, for example, Jonathan Blitzer, “Former Gang Members Offer Advice on How to Combat MS-13,” *The New Yorker*, January 30, 2018.

# Evolving Issues for Domestic Gang Enforcement

## Tracking MS-13 membership

In countering the danger posed by MS-13, a foundational challenge is understanding the scope of the threat. Key questions focus on whether the gang is growing in number or in territory. Debate over the number of MS-13 members in the United States raises a question about how U.S. officials determine these numbers. In the past, the NGIC has produced estimates of the number of gangs and the membership numbers.<sup>60</sup> For instance, in 2011 it estimated that there were “approximately 1.4 million active street, prison, and OMG gang members comprising more than 33,000 gangs in the United States.”<sup>61</sup> However, since 2011 the National Gang Report has not made estimates on the number of gangs and gang members in the United States. It is unclear whether the federal government is tracking these data in another manner.

In this context, some have wondered whether federal law enforcement should maintain a centralized database on gang membership/affiliation that could provide counts of gang membership across the country. A number of federal entities collect related information on gangs; however, federal agencies do not appear to maintain databases that *exclusively* collect information on gangs. Some databases used by the FBI and ICE, for example, contain information on gang membership, but the databases are not limited to gangs and gang membership. A few examples are discussed below.

**Federal Bureau of Investigation.** The FBI has noted that “[t]he databases of each component agency are available to the NGIC, as are other gang-related databases, permitting centralized access to information.”<sup>62</sup> The FBI’s website notes that the NGIC shares “timely and accurate information.” However, it is unclear whether law enforcement officials from the component agencies who are assigned to the NGIC have automatic access to each agency database or what the procedures may be to access gang-related data. Policymakers may examine the merits of various forms of gang-related intelligence and information sharing—be it through a centralized database or access to various sources of information.

In addition to the NGIC’s information sharing efforts, law enforcement agencies may be able to obtain certain gang-related information through the FBI’s National Crime Information Center (NCIC). Law enforcement agencies nationwide can query and submit information to the NCIC database, which contains 21 files—7 property files and 14 persons files.<sup>63</sup> One of these files is a gang file, containing information on violent gangs and their members. In looking at gang information sharing, policymakers may have questions about how gang intelligence information is collected, the completeness of the gang file, how data may be removed from the file, how often law enforcement partners query the file, and how the information is used.

<sup>60</sup> National Gang Intelligence Center, *National Gang Report 2015*. This report relies on information from the National Alliance of Gang Investigators’ Associations and the FBI Safe Streets and Gang Unit.

<sup>61</sup> National Gang Intelligence Center, *2011 National Gang Threat Assessment: Emerging Trends*.

<sup>62</sup> Federal Bureau of Investigation, “Statement Before the Senate Judiciary Committee,” press release, September 16, 2009.

<sup>63</sup> The property files contain records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. The persons files are Supervised Release, National Sex Offender Registry, Foreign Fugitive, Immigration Violator, Missing Person, Protection Order, Unidentified Person, Protective Interest, Gang, Known or Appropriately Suspected Terrorist, Wanted Person, Identity Theft, Violent Person, and National Instant Criminal Background Check System (NICS) Denied Transaction. See <https://www.fbi.gov/services/cjis/ncic>.

**U.S. Immigration and Customs Enforcement.** DHS maintains at least two databases in which gang-related information may be stored and accessed. One is the Investigative Case Management (ICM) system, which “serves as the core law enforcement case management tool primarily used by [HSI] special agents and personnel supporting the HSI mission.... Additionally, ICE Enforcement and Removal Operations (ERO) personnel use ICM to manage immigration cases that are presented for criminal prosecution ... and will also use ICM to query the system for information that supports its civil immigration enforcement cases.”<sup>64</sup> Agents can link records and documents associated with particular cases, and ICM has a field to notate an individual’s gang membership/affiliation and role within the gang.<sup>65</sup>

A second system is the Enforcement Integrated Database (EID), which contains “information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations” primarily conducted by ICE and U.S. Customs and Border Protection (CBP).<sup>66</sup> It has records created, modified, and accessed through several software applications including the EID Arrest Guide for Law Enforcement (EAGLE), used by ICE. EAGLE allows officers to process biometric and biographic information of arrested persons, and it contains specific information fields to notate an individual’s gang membership and role.<sup>67</sup> Policymakers may be interested in how the information in these databases may be used by ICE and other law enforcement partners.

## Oversight of Federal Law Enforcement Coordination

There are a number of federal enforcement initiatives, task forces, and centers to counter violent gangs such as MS-13 that are coordinated efforts. Reviews from oversight bodies such as DOJ’s Office of the Inspector General (DOJ OIG) and the Government Accountability Office (GAO) have critiqued areas in which these efforts could be improved.

When the NGIC was established to coordinate intelligence information from federal, state, and local policing agencies, P.L. 109-162 directed that it create a database that would “collect, analyze, and disseminate gang activity information” from participating agencies. In DOJ OIG’s November 2009 review of DOJ’s anti-gang intelligence and coordination centers (including NGIC), it concluded that the NGIC had not created a gang information database, as had been directed by Congress pursuant to P.L. 109-162.<sup>68</sup> It also noted that the “NGIC is perceived as predominately an FBI organization, and it has not developed the capability to effectively share gang intelligence and information with other law enforcement organizations.”<sup>69</sup> There has not been a subsequent report that speaks to whether these criticisms still hold true, and it is unclear whether there is a centralized database at the NGIC that contains information on gang members and associates.

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<sup>64</sup> Department of Homeland Security, *Privacy Impact Assessment for ICE Investigative Case Management*, June 16, 2016, p. 2.

<sup>65</sup> Information provided to CRS by ICE on March 8, 2017.

<sup>66</sup> Department of Homeland Security, *Privacy Impact Assessment Update for the Enforcement Integrated Database (EID)*, April 8, 2014, p. 2.

<sup>67</sup> Information provided to CRS by ICE on March 17, 2017.

<sup>68</sup> U.S. Department of Justice, Office of the Inspector General, *A Review of the Department’s Anti-Gang Intelligence and Coordination Centers*, November 2009, p. iii.

<sup>69</sup> *Ibid.*



A July 2009 GAO report reviewed, among other things, the roles of DOJ and DHS in countering gangs—including their collaborative efforts, and the departments’ assessments of these efforts.<sup>70</sup> While DOJ and DHS implemented the majority of GAO’s recommendations that resulted from this report, one was left outstanding. GAO recommended that DOJ “develop a department wide, strategic-level performance measure for the department’s anti-gang efforts.”<sup>71</sup> However, DOJ informed GAO in 2014 that it ultimately could not develop such a department-wide measure because of the differences in the missions and functions of its component agencies.<sup>72</sup>

Policymakers may look into whether or how federal agencies such as DOJ and DHS have changed their approaches and roles in coordinated efforts to counter violent gangs such as MS-13 in response to these critiques.<sup>73</sup>

## Immigration and Unaccompanied Minors

The relationship between transnational gangs such as MS-13 and unaccompanied alien children (UAC) arriving in the United States has received interest from researchers, policymakers, Administration officials, and the public alike.<sup>74</sup> Some observers have suggested that MS-13’s evolution in Central America—including challenging government legitimacy, committing crimes with impunity, and expanding into more sectors of the global criminal economy—could continue to drive unauthorized migration into the United States by those seeking to escape the gang and its violence.<sup>75</sup> For instance, in 2013 the United Nations High Commission for Refugees interviewed over 400 UAC from all over the world on factors surrounding their displacement to the United States. Of the 104 UAC from El Salvador, 63% reported that they had experienced or been threatened with gang-related violence.<sup>76</sup> More recently, a number of reports suggest that the increased flow of Central American families seeking asylum at and between U.S. ports of entry at the U.S.-Mexico border stems in part from gang violence.<sup>77</sup> In addition, there have been concerns that MS-13 may exploit the U.S. Southwest border in order to bring gang members from Central America to the United States as UAC or may recruit some of the vulnerable UAC to join the gang’s ranks once in the United States.

Understanding the nuances of these potential relationships between MS-13 and UAC can be particularly challenging. For instance, CBP data indicate that in FY2017 it apprehended 310,531 individuals not lawfully present in the United States. Of those, 228 were identified as affiliated with MS-13. (This number was down from 437 MS-13 affiliated individuals apprehended in

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<sup>70</sup> U.S. Government Accountability Office, *Better Coordination and Performance Measurement Would Help Clarify Roles of Federal Agencies and Strengthen Assessment of Efforts*, GAO-09-708, July 24, 2009.

<sup>71</sup> *Ibid.*, p. 48.

<sup>72</sup> U.S. Government Accountability Office, *Better Coordination and Performance Measurement Would Help Clarify Roles of Federal Agencies and Strengthen Assessment of Efforts*, GAO-09-708, July 24, 2009, [https://www.gao.gov/products/GAO-09-708#summary\\_recommend](https://www.gao.gov/products/GAO-09-708#summary_recommend).

<sup>73</sup> There have been congressional requests for updated assessments of federal efforts to counter gang activity in specific criminal domains such as drugs. See, for example, Office of U.S. Senator Bill Cassidy, “Cassidy Calls for Review of Federal Anti-Gang Strategy to Combat Opioid Epidemic,” press release, April 6, 2018.

<sup>74</sup> For more information on the issue of UACs, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

<sup>75</sup> Douglas Farah and Kathryn Babineau, *The Rapid Evolution of the MS 13 in El Salvador and Honduras from Gang to Tier-One Threat to Central America and U.S. Security Interests*, National Defense University, Perry Center Occasional Paper, March 2018, p. 28.

<sup>76</sup> U.N. High Commissioner for Refugees (UNHCR), *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, March 2014, p. 32.

<sup>77</sup> See, for example, Sofia Martinez, “Today’s Migrant Flow is Different,” *The Atlantic*, June 26, 2018.

FY2014,<sup>78</sup> the year in which the number of UAC apprehended at the Southwest border reached a peak.) CBP data also indicate that in FY2017 it apprehended 41,435 UAC along the U.S. Southwest border.<sup>79</sup> However, publicly available CBP data do not reflect whether any of these UAC were affiliated with MS-13 at the time that they arrived in the United States. When CBP has provided data regarding UAC gang affiliation, they have only been estimates that are not based on *confirmed* gang membership. For instance, CBP indicated in June 2017 congressional testimony that since October 2012 there had been about 5,000 individuals apprehended with “confirmed or suspected gang affiliations” and that 159 (3%) of these were UAC. Of these 159 UAC with gang affiliations, “approximately 56 UACs were suspected or confirmed to be affiliated with MS-13.”<sup>80</sup>

Additionally, even if an MS-13 member arrested in the United States is confirmed to have originally arrived in the country as a UAC, it may be difficult to determine whether he or she arrived as a gang member or was recruited once in the United States. Moreover, it remains unclear the extent to which immigrant youth in the United States join MS-13 on their own for a sense of community or brotherhood or whether they are coerced to join to avoid the consequences of being unaffiliated in a gang environment.

In their oversight of federal efforts to counter gang activity, policymakers may be interested in exploring how officials are determining and classifying UAC gang membership and affiliation as well as how this information is tracked.

## Going Forward

As policymakers debate the best path to tackle threats posed by MS-13, a key challenge is developing a clear conceptualization of the gang, including potential changes in its organizational structure, size, and criminality. This conceptualization may help in understanding the scope of the threat and identify the resources available to counter it. Policymakers may then be poised to evaluate law enforcement’s tools and techniques to gather and share gang-related information, conduct anti-gang enforcement initiatives, and respond to evolving threats posed by MS-13 and its affiliates.

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<sup>78</sup> U.S. Customs and Border Protection, *CBP Enforcement Statistics 2018*. Of note, in the first eight months of FY2018, CBP reported 275 MS-13 apprehensions—more than either the entire FY2016 or FY2017.

<sup>79</sup> U.S. Customs and Border Protection, *U.S. Border Patrol Southwest Border Apprehensions by Sector FY2017*. In the first eight months of FY2018, CBP reported 32,372 apprehensions of UAC along the Southwest border.

<sup>80</sup> Department of Homeland Security, *Written testimony of CBP U.S. Border Patrol Acting Chief of Carla Provost for a Senate Committee on the Judiciary hearing titled “The MS-13 Problem: Investigating Gang Membership As Well As Its Nexus to Illegal Immigration, and Assessing Federal Efforts to End the Threat”*, June 21, 2017.