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Central America Updates: Gang and Organized Crime-Based Immigration Claims and the Growing Importance of Expert Witnesses

by [Thomas Boerman](#)

While in a certain sense the socio-political context of El Salvador, Honduras and Guatemala remain largely unchanged in recent years, in other respects the situation has evolved substantially and in ways that require an updated understanding on the part of Asylum Officers, attorneys and immigration judges. In general, country conditions have deteriorated significantly in of the Northern Triangle countries despite increasing infusions of aid from U.S. and other international donors, technical assistance, and fledgling efforts to establish a regional approach to crime and violence. The following sections provide a brief overview of relevant changes in each of the countries:

El Salvador. The most significant update from El Salvador is the much-ballyhooed "Gang Truce." In March 2012, the Mara Salvatrucha (MS13) and the Mara 18 agreed to a truce intended to reduce inter-gang violence. In exchange for directing lower level gang members to reduce the killings, incarcerated gang leaders were granted concessions. Most notably those involved transfers from harsh maximum-security prisons to more comfortable lower security facilities and increased privileges.^[1] These privileges include conjugal visits, cell phone access and opportunities to communicate directly with other gang leaders and members on the street.

For six months after its implementation the Salvadoran government denied any involvement in the truce or its negotiations, reporting that a former congressman and a representative from the Catholic Church facilitated the process. It was later revealed publicly, however, that high-ranking government security officials, including the president, were directly involved in the process from the beginning.

Initial reports indicated that the homicide rate had dropped by 60 percent following implementation of the truce, although the actual end-of-year statistics demonstrate that the decline was just over 40 percent.^[2] Determining the actual reduction is difficult however, because while *reported* homicides have decreased since implementation of the truce the number of disappearances has grown substantially, leading analysts to conclude that gangs are simply burying their dead as opposed to leaving the bodies in the street.^[3] An MS13 gang member interviewed during research into the truce was quoted as saying, "What truce? We have orders not to leave bodies, but the

killings continue."^[4]

It is also critical to point out that since the truce was intended to reduce *inter-gang violence* (i.e., between MS13 and 18th St.) it does not necessarily apply to the general public nor does it affect gang criminality. Security Minister David Munguía Payes states that despite the truce gangs continue to engage in violence and have been responsible for half the country's murders since its implementation.^[5] The PNC reports that gangs have developed more sophisticated extortion practices, and that rates of extortion have increased significantly since the truce was implemented.^[6] According to a gang expert in the Salvadoran *Fiscalía* (Attorney General's Office), "[t]he truce is a sham. It's a lie, the gangs continue to operate, people continue getting killed, people keep disappearing and the gangs get stronger and stronger."^[7] In a statement issued by the Catholic Conference of Bishops, the church hierarchy lamented the fact that the truce has not led to a reduction in extortions, robberies or rapes and has not translated to a benefit to the public.^[8]

As opposed to a long-term reduction of crime and violence, it is more realistic to conclude that the truce reflects gangs' strategies to maintain their criminal enterprises while leveraging the government in order to gain greater degrees of political power.^[9]

Evidence of gangs' intention to leverage the truce and the government to gain increased political power has become increasingly evident. On July 12, 2012, high-ranking members of the Organization of American States (OAS)-including the head of the OAS, General Secretary José Miguel Insulza-met with incarcerated MS13 and 18th St. leaders so the gangs could present demands for what they refer to as the "Second Phase" of negotiations with the Salvadoran government. Their demands included: 1) a cessation of police anti-gang operations in areas under MS13 and 18th St. control; 2) a withdrawal of military troops a deployed to combat gangs, and 3) repeal of El Salvador's current anti-gang legislation, *la Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal* (Law Prohibiting Gangs, Groups, Associations, and Organizations of a Criminal Nature) *a.k.a. the Proscripción de Pandillas*.^[10]

The fact that gang leaders would be granted an audience with the OAS reflects not only gangs' political aspirations, but also the degree to which they now wield power in El Salvador, and how in critical respects may hold the Salvadoran government hostage. In August 2012, the Salvadoran Security Minister announced that the government would be scaling back police operations against gangs, a complete reversal of the position he articulated prior to gang leaders' meeting with the OAS.^[11]

Analysts are concerned that as opposed to the truce increasing the Salvadoran government's power over gangs, it has increased gangs' power over the state.^[12] Reductions in the homicide rate, whatever they may be in actuality, have not been achieved through actions of the Salvadoran government but because it was perceived as advantageous to gang leaders. Not surprisingly, there is significant concern that if the process does not proceeded in a manner gang leaders see as advantageous they will simply abandon truce and the murder rate will increase to previous levels. In the words of one member, "If we want something, we threaten to put bodies on the street. Then we get what we want."^[13] Stated differently, it is realistic to conclude that gang leaders now have the Salvadoran government in a disadvantaged position and may be able to wring concessions from the state by threatening to rescind the truce and instantly drive rates of violence to previous levels, or higher.

Based on assessment of currently available information, I concur with other experts that although the truce represents a potential opening that must be fully leveraged, one must take a position of very guarded optimism. It

is far too early to ascertain the actual reductions in violence associated with the truce, to conclude that those reductions will be sustainable over time, or to assess what if any improvements occur in terms of public security. Further, the implications in terms of the political dynamic between gangs and the Salvadoran government have yet to be ascertained with certainty, but initial assessments suggest that gangs may have gained power at a cost to the state.

Honduras. The 2009 coup d'état that ousted President Manuel Zelaya was a boon for gangs and other organized crime groups. President Zelaya had paid little attention to the problem of crime and violence, but the interim government of Roberto Micheletti was focused on suppressing internal political dissent and it ignored entirely, resulting in significant openings for organized criminal groups to deepen their hold on the country.^[14] Consequently, as bad as things were before the coup, by the time Porfirio Lobo Sosa was inaugurated as the post-coup president in January 2010, the situation had deteriorated even further and remains in a downward spiral.

One of the most significant changes of late relates to the increased flow of narcotics through the country. Honduras has served as a transit point for drugs moving from South America to North America since the 1970s, but recently the problem has worsened significantly. According to the U.S. State Department, nearly 80 percent of cocaine smuggling flights from South to North America now pass through Honduras.^[15] With this has come a substantial increase in violence, and official corruption. The Honduran Attorney General recently stated publicly that the country has no structure for investigating crimes and that only 20 percent of homicides are investigated.^[16] This is particularly significant in that Honduras, a country roughly the size of Virginia, recorded 7,102 murders in 2012, almost 20 per day or 85.2 per 100,000, the highest in the world.^[17] Putting this figure in context, the U.S. homicide rate is roughly 6 per 100,000, and Canada's is less than 2 per 100,000.

Not surprisingly, within this context of impunity gangs have become increasingly emboldened. In one particularly outrageous example gang members actually imposed a curfew in areas of the capital, Tegucigalpa, forcing businesses, churches and public transport to shut down by 7:00 p.m.^[18] Fear, frustration and anger over such brazen acts continues to manifest in the extrajudicial killing of known and suspected gang members; an average of three young people per day are murdered extrajudicially in Honduras, bodies often cut into pieces and left in garbage bags on the streets. According to one of Honduras' most recognized human rights defenders, of those few extrajudicial executions that are investigated police are believed to be involved in 30 percent of the cases.^[19] In 2013 Honduran officials released a report citing police involvement in 149 homicides during the previous 23 months.^[20]

The Honduran government now freely acknowledges that in addition to the police, organized criminal groups have infiltrated the judiciary and military and gained substantial control over ten of the country's eighteen departments (states); home to seventy-five percent of the Honduran population.^[21] According to a 2011 disclosure by the Vice-President of the Honduran National Congress, 40 percent of the country's police officers and ten percent of its legislators are directly linked to organized crime.^[22]

During a 2012 visit to Honduras, I met with the director of National Police, Juan Carlos "El Tigre" (The Tiger) Bonilla, who was appointed in May 2012 because of his strong anti-corruption position. It is important to note that in addition to his anti-corruption stance, while serving as a regional police commander Bonilla was accused of extrajudicial execution, including the killing of minors. After being implicated in three counts of extrajudicial murder and involvement in 11 other deaths and disappearances he went into hiding, later turning himself into

authorities. He was tried and acquitted in 2004 but when questioned about his role in the killings Bonilla responded to prosecutors' by saying, "*There are things that one takes to the grave. What I can tell you is that I love my country, and I am ready to defend it at all costs, and I have done things to defend it. That is all that I will say.*"^[23] His statement was generally considered to be an admission of guilt but because vigilantism and extrajudicial execution are considered legitimate responses to crime and violence, his likely involvement was largely forgotten. Bonilla was sacked in April 2011 and it is rumored that he intends to flee Honduras.

Recent attempts to root out corruption have thus far not produced any meaningful results. Since President Lobo Sosa took office in January 2010, not one state official has been brought to justice, nor has the *Plan de Transparencia y Lucha Contra la Corrupción* (Plan of Transparency and Fight against Corruption), passed in 2011, had any discernible effect.^[24] Efforts to clean up the National Police have not been effective, either. When Director Bonilla announced the firing of 100 police officers over corruption charges in October 2012, officers sought to remove him from his position through judicial action and threatened a take over of police headquarters if the judicial approach was not successful.^[25] At this point, 230 officers of all ranks-including department heads-that failed vetting process remain in their positions, and the head of Honduras' Independent Commission on Public Security Reform has called the National police "unreformable."^[26]

Guatemala. The combined effects of crime, violence and official corruption have brought Guatemala to the brink of being a "failed state." In 2009 analysts from the Brookings Institute referred to the country as "Guatemalastan," a clear comparison between Guatemala and Afghanistan.^[27] Unfortunately, while there have been a few notable successes, overall the situation has deteriorated since that time. The public's anger and frustration over the inability and unwillingness of post-war non-authoritarian governments' failure to rein in crime and violence manifested in the election of retired war-era general President Otto Pérez Molina, who promoted, and has now implemented, a military-driven *Mano Dura* (tough hand) approach since being inaugurated in January 2012. In a land characterized by atrocious human rights abuses committed by military and pro-government forces, this reflects the depth of the public's clamoring for security, even if it involves a return to "the good old bad days."

Of the various noxious factors contributing to the deterioration in Guatemala, one of the most significant relates to the continued incursion of transnational drug tracking organizations, namely Los Zetas and the Sinaloa Cartel from Mexico. The Zetas influence is so pervasive that in a highly publicized and radical step, then-President Alvaro Colom imposed a state of siege in the province of Alta Verapaz in 2010 because the Zetas had made the region ungovernable. The siege managed to flush out members of the Zetas and send them packing temporarily but they returned once the siege ended, set up shop again and have since become even more entrenched than before. In a well-publicized and particularly hideous display of their barbarism and audacity, the Zetas massacred 30 people, including 27 innocent farm laborers, after their cattle ranching boss stole a drug shipment from Los Zetas. Most of the victims were dismembered.

The extent of police corruption also continues to grow. As examples, twelve anti-narcotics officers were arrested in March 2013 after swapping out 25 kilos of cocaine worth over three million dollars with bicarbonate of soda.^[28] In September 2012, authorities arrested 19 other officers over their involvement in extortion, kidnapping, robbery, car***** and money laundering.^[29] The list of examples such as these is virtually without end. The situation has become extreme that officials have considered "microchipping" police officers to track their movements due to on-duty involvement in criminal activities.^[30]

Corruption has also grown in the courts. A recent report identified and exposed 18 judges over rulings favorable to organized crime and corrupt officials.^[31] According to the report, some of those named were already under investigation or on trial, including one that was running an illegal adoption ring and another that thwarted efforts to prosecute former Guatemalan President Alfonso Portillo, who embezzled millions and was sought by the U.S. government.

President Molina has authorized an extension of the U.N. *Comisión Internacional contra la Impunidad en Guatemala*- CICIG (International Commission against Impunity in Guatemala), which was established in 2007 to: 1) dismantle the *Cuerpos Ilegales y Aparatos Clandestinos de Seguridad* (Illegal Corps and Clandestine Security Apparatus), a well known group that facilitates much of the country's organized crime activities; 2) investigate government officials' involvement in organized criminal activity; 3) assist the *Ministerio Publico* (Attorney General's office) to prosecute cases; and 4) enact reforms to address the problem.^[32] Predictably, the commission's attempts to implement reforms have been largely stonewalled and its first director resigned in 2010 because of the government's refusal and inability to act upon the commission's recommendations. The current director states forcefully that efforts are being made at every turn to reverse the CICIG's successes. Guatemala is the only country in the world that has a U.N. mission of this type.

Continued Importance of Expert Witnesses

Identifying and assessing the inter-related factors that account for past threats or harms and/or making predictions of future risk to respondents if returned typically requires years of dedicated study, research and direct involvement in the gang and organized crime issue. Further, maintaining a current understanding of country conditions and the ever-shifting criminal landscape in Central America necessitates day-to-day involvement with the problem and its many dimensions. As such, it is generally unrealistic to expect that immigration professionals would have had the opportunity to gain the level of expertise necessary to conduct comprehensive analyses of particular case facts, or to remain abreast of the continually evolving situation on the ground in Central America. The Executive Office for Immigration Review seems to support this position:

"Immigration Judges, like other trial judges generally, are often required to determine factual disputes regarding matters on which they possess little or no knowledge or substantive expertise, and, in making such determinations, they typically rely on evidence, including expert testimony, presented by the parties."^[33]

The article goes on to say:

Because of their specialized knowledge, "[e]xpert witnesses are often uniquely qualified in guiding the trier of fact through a complicated morass of obscure terms and concepts," and they can provide conclusions and inferences drawn from facts that lay persons are not qualified to make.

Within this specialized and complex field, gang and organized crime experts fulfill a number of critical functions, one of the most important of which is to assist all parties-Asylum Officers, immigration and government attorneys and judges-to view the facts of any given case through the lens of gang culture and mentality and with an understanding of the socio-political of the given country. Stated differently, experts may play a critical role in assisting immigration professionals to *contextualize* the facts of any given case, thereby assisting decision makers in determining if, when and how those facts fit within the framework of the law.

As in any case in which expert witnesses are called upon, to the greatest extent possible Central American gang

and organized crime specialists should base their opinions on credible, objective and verifiable sources. Unfortunately, many critical dimensions of the problem remain under-researched or even entirely undocumented and in those instances experts are able to be of service to judges and other immigration professionals by drawing on their experience to fill in the "knowledge gaps."

In addition to providing country conditions information and assisting immigration professionals to contextualize the facts of a case experts are also able to provide a framework for assessing any past threats or persecution, and for making predictions of future risk to respondents beyond that of the general public, if returned.

Finally, experts are able to contribute in ways that relate directly to the needs of decision makers by assisting immigration attorneys to:

1. Assess the veracity of respondents' claims; and
2. Gather relevant case information.

Assessing the Veracity of Respondents' Claims.

Although there are attorneys with significant experience handling Central American gang and organized crime-based claims, the majority of lawyers involved with these cases are largely unfamiliar with the historical, social and political context of the region and the nuances of gang culture and mentality. As such, it may be difficult for them to assess the credibility of claims, especially because in the vast majority of cases respondents have no ability to document their experiences through police reports, newspaper accounts, medical records, etc.

Experts can assist attorneys to assess certain fundamental questions: Are the facts as presented consistent with realities on the ground in the country in question? Do those facts fit with expert's experience? Does the timelines of events as described fit with historical fact? In short, does the story "hang together" and appear plausible, or is there reason to question the truthfulness of the respondent. If questions still remain, experts may be able to recommend additional steps the attorney might take to further investigate the veracity of the claim, and/or interview the respondent directly in order to gain a more personal perspective on the legitimacy of the claim.

Guidelines for Gathering Relevant Information

Those experienced in working with Central Americans recognize that for a number of reasons it is often difficult to get a full disclosure of facts from respondents. As such, it is important that experts inform attorneys not familiar with Central American culture of these factors and if able, offer guidance as to how they may best address them, as they relate directly to the attorney's ability to obtain all the relevant information and to respondents' ability and willingness to present the facts of their case in a complete manner during Asylum Office interviews and merits hearings. This does not mean the expert would become involved in witness preparation in any way; that would constitute a serious breach of their professional neutrality and objectivity, but assisting attorneys to understand and navigate these communication challenges is often an important function and one that clearly supports the needs of decision makers.

First among these challenges is a cultural communication pattern that plays out like this: "If you don't ask I won't tell, but if you do ask I will." This means that questions must be specific and informed by an understanding of gangs and the socio-political context in which they exist. Without this type of pointed questioning there is a significant possibility that respondents may fail to convey information that is critical to the case and of interest to the court.

Second, because of the communication networks between the U.S. and Central America, respondents are often afraid to disclose information—even to their attorneys or to the court—for fear that the information will make its way into the network and be communicated back to their country of origin, thereby increasing their risk if returned. In addition to increasing their own risk, respondents are often afraid that disclosing information may result in danger to other members of their family. Compounding issues related to trust and safety is the fact that respondents from El Salvador, Honduras and Guatemala do not necessarily feel trust in attorneys or the legal system in the first place. Taken together, these issues underscore the importance of building trust and demonstrating an understanding of the society and culture of the individual respondent.

Related to respondents' fear of disclosing information is the fact that many are affected by post-traumatic stress disorder (PTSD) and in such fear of return that they are not functioning at full capacity. From the standpoint of neuroscience it is clearly recognized that among other things, PTSD affects regions of the brain responsible for cognitive information processing and recall, and that those brain centers may essentially shut down under stress. This has clear implications for respondents' ability to provide information and testify in a coherent and comprehensive manner, and may necessitate the involvement of psychological experts and/or therapists.

Third, there is a frequent tendency for information to be "compartmentalized" within families. Children being recruited, harassed, threatened and assaulted often don't communicate their experiences to their parents; husbands and wives being extorted don't tell their spouses; women that are raped often don't tell their boyfriends and husbands, or even seek medical attention for fear that their family (and assailants) will learn they have done so. In part this is intended to spare one's family members worry and grief, and in part it is because information is often perceived as dangerous. For instance, if a father learns that gang members raped his daughter he may seek vengeance or go to police, either of which may set the stage for further violence not only toward the victim, but also to others in her family. As such, it is often important to contact members of the respondent's family while gathering basic case information, as the individual may not be aware of all the relevant facts. This is particularly true because once in the U.S. or Canada, family members at home often chose not to communicate information about on-going development or threats.

For the reasons cited above, unless it is logistically impossible (e.g., when the respondent is detained and has no phone access, or would be overheard by other detainees) it is imperative that experts conduct interviews with respondents, with their attorneys present. Not only does this better ensure that information relevant to their cases and of interest to decision makers will be disclosed, but it also provides the expert a direct opportunity to assess the veracity of the individual's account and share any concerns with the attorney.

Streamlining the Process for Judges

Experts may also be able to assist in streamlining their testimony during merits hearings by making immigration attorneys aware of the critical facts that judges need in terms of: 1) country conditions, 2) the nuances of gang culture and mentality, 3) factors that influence governments' ability and willingness to control criminal groups and to address respondents' potential security issues if returned, and 4) issues that affect the viability of internal relocation as a strategy for safe repatriation.

In cases involving immigration attorneys experienced with Central American gang and organized crime-based claims this of course may not be necessary. But in my experience a significant percentage of cases, if not the majority, are handled by attorneys with little or no experience with these types of claims. As such, it is often difficult for them to recognize what constitutes the most salient information and to structure experts' direct examination questions in the most efficient manner. Generally speaking, I have found that all critical foundational

information can be presented to judges with eight to ten questions but many times attorneys have presented me with lists of over 50 direct examination questions, and that may not even include questions specific to the particular case. My experience is that judges genuinely appreciate the input of experts but given the demands upon them, if direct examination questions are structured so as to limit experts' testimony to the most relevant information, delivered in the most efficient manner, it is clearly of service to judges and the court.

Conclusion

Gangs and other organized criminal groups in Central America have grown in their sophistication and violence in recent years while at the same time the capacity and willingness of governments throughout the region to contain these groups and to protect the public has diminished. In light of the increasing complexity and volatility of the situation, experts continue to play a critical role in terms of their ability to assist immigration and government attorneys, Asylum Officers and immigration judges to accurately assess the many dimensions of the problem and to contextualize case facts in order to arrive at fully informed decisions.

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[Dr. Thomas Boerman](#) has been involved with the gang issue in the U.S. and Latin America since 1995. He has worked as a consultant to numerous governmental and non-governmental organizations addressing the gang phenomenon in El Salvador, Honduras, Guatemala, Panama, and Mexico including the U.N. High Commissioner for Refugees, the U.S. Agency for International Development and its subcontractors, The World Bank, Save the Children-United Kingdom, and numerous private development organizations. In addition to numerous non-publically available documents, he has authored or contributed to several reports and articles on gangs in general and in Central America in particular, and presented on a broad range of issues related to gangs at approximately 150 events throughout the U.S. Since 2006, he has been credentialed as an expert and provided testimony in over 100 Central American-Mexican gang, organized crime, gender-based and/or sexual orientation immigration matters in U.S. and Canadian immigration courts and provided numerous trainings to a broad range of immigration professionals. He can be contacted at boermanthomas@gmail.com.

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