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**Making Reentry Possible: Tattoo Removal as a Mechanism To Legally Establish  
Non-Active Status in a Street Gang**

This paper deals with the necessity of establishing mechanisms accepted in a court of law that determine that an individual is no longer an active or current gang member. As gang membership rather than criminal activity becomes an increasing focus for repression, exclusion, and punishment, establishing accepted means for determining inactive status as a gang member becomes increasingly important. For a variety of reasons, tattoo removal presents itself as a good candidate for such a mechanism. It is a long-term, painful and arduous process that by definition involves medical professionals and often counselors as well. It must be medically documented, and thus medical records as well as the testimony of medical and other professionals would presumably be available for court. Finally, it is an act extremely unlikely to be undertaken by an active gang member, as it clearly indicates dissociation from the gang that could be dangerous if perceived as disrespect by others.

Recent directions in U.S. legislation point to a hardening of attitudes toward individuals suspected of being or having been involved in gangs, with more potential penalties on the immediate horizon not just for gang-related criminal activity but for membership itself. This follows developments in the last few years in Central American

nations, notably El Salvador, Honduras, and Guatemala where gang membership itself, as determined by gang-related tattoos, hand signs, association and the like, has been criminalized. This has generally led to long prison terms for suspected gang members even in the absence of other criminal behavior, and has greatly increased the incidence of summary police or vigilante shootings of perceived gang members in Central America.

In writing this paper, I have narrowed my original focus, which was to speak about various institutional and bureaucratic roadblocks which together seem to conspire to make the path difficult for those individuals who are attempting to distance themselves from a street gang and utilize mainstream economic and social mechanisms. I have had an opportunity to witness these roadblocks up close for many years, and particularly since 2000, when I first began to research, implement, and actively manage a tattoo removal program in East Los Angeles, serving a great many Chicano former gang members. In 2002, I opened another office as well, serving many Central American former gang members in the mid-Wilshire area as well as Cambodian former gang members who travel some distance from Long Beach to participate in a special program.

I have had an opportunity to witness the roadblocks at close quarters because in addition to tattoo removal, our office serves as an information and advocacy clearinghouse for former gang members from all over Los Angeles County. Each week is a mix of court and immigration advocacy, dealing with a maze of DMV regulations, helping translate skills used in the street economy or learned while detained into workable resumés for employment, leading tours and registering people into local community colleges and public universities, and serving as a go-between in insurance agencies, clinics, and lawyers' offices, among other places. The lack of cultural capital

spoken about by Bourgois<sup>1</sup>, combined with a fear of rejection and of being made to feel inadequate and/or insignificant, can serve as powerful barriers in all the above locations, particularly with individuals who have spent much of their adolescence and young adulthood on a cycle in and out of detention.

Recently, it has come to my attention that the issue of bureaucratic and institutional roadblocks, while certainly highly relevant and under-discussed, has been dwarfed by the danger of the increasing permanent criminalization of gang membership itself, without regard to whether an individual has any criminal record. The methods by which gang membership is determined currently in the Los Angeles area are varied, and include something as simple as a law enforcement officer spotting a youngster, often as young as 11 or 12 years of age, in the company of another youngster who has previously been found to be connected to a gang and filling out a Field Information card. These cards are often inputted into a state database; in California this is the CalGang Database. Once gang membership or association has been determined, there are currently no legally accepted methods for claiming non-membership or inactive status in the gang. As a matter of fact, individuals are not permitted to know if they are indeed in the database; only in a court with a case pending is that information made available as a tool to use against them. By then, of course, it is both too late and not the ideal circumstance in which to launch a protest against inclusion in the database.

Field information cards and state gang databases have until recently been of most consequence in police investigations as well as in court, where they are used as a tool with which to add sentence enhancements to previously determined sentences. In California, a jury, with the exception of cases in juvenile court, must decide on the merits

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<sup>1</sup> Bourgois, Phillippe 1995. *In Search of Respect: Selling Crack in El Barrio*. Cambridge University Press.

of such enhancements. In juvenile court, the judge will make the sole determination of both guilt and the merit of any enhancements. Pursuant to Proposition 21, passed in 2001, in California gang members may also be forced to register with a local law enforcement agency for 5 years. Currently, this provision is rarely enforced in Los Angeles County, but other counties sometimes use it. Although gang registration is generally used in conjunction with gang-related sentence enhancements, the judge is also entitled to impose registration requirements for “any crime that the court finds is gang related at the time of sentencing or disposition.”<sup>2</sup> Since there is no longer a jury at sentencing, the judge will have sole discretion in both adult and juvenile courts to determine if said crimes are gang related, and can even order gang registration if a jury has refused to impose a gang sentence enhancement. A 2002 decision in the California Appellate Court also extended the possibility of having gang members register retroactively for crimes committed before the 2001 passage of Proposition 21.<sup>3</sup> The rationale for allowing this retroactive decision was that registration constituted only a burden, but did not rise to the level of a punishment.

With the recent heightened tensions in the United States surrounding the question of immigrants, the anti-immigrant lobby has sought to push bills through Congress making it easier to deport more undocumented people without judicial interference, and to strip more documented people of their right to remain in the United States. In order to begin the process of stripping away judicial protections and civil liberties of immigrants, the anti-immigrant lobby takes the safer political route of attacking those considered pariahs: sex offenders, convicted felons, and increasingly gang members.

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<sup>2</sup> California Penal Code 186.30

<sup>3</sup> The People v. Brian Thomas Bailey; Court of Appeal of the State of California, Sixth Appellate District. Opinion filed July 16, 2002. Published order was filed August 15, 2002.

The Alien Gang Removal Act of 2005, which was passed by the House of Representatives before being voted down by the Senate was designed as “a bill to amend the Immigration and Nationality Act to render inadmissible and deportable aliens who have participated in criminal street gangs...”<sup>4</sup> One of the accepted criteria for such inadmissibility or deportation in the Act is simply if the Secretary of Homeland Security “knows, or has reasonable ground to believe that” the alien is a member of a designated street gang. Presumably the Secretary of Homeland Security would rely on such measures as the CalGang database, which increasingly incorporates the Field Information data gathered on associations of inner-city youths over years of growing up in the neighborhoods.<sup>5</sup> If the Alien Gang removal Act had passed, or if a similar act passes in the future, people’s deportation (some of whom have grown up in the United States and know no other country) will hinge upon unreliable and outdated information.

Until now, law enforcement in California has shown an incredible reluctance to compromise on the CalGang database. A few years ago there was an attempt to forge a compromise where young people in the CalGang database would undertake a stringent set of leadership classes at California State University, Los Angeles in exchange for having their CalGang records purged. This agreement, which was painstakingly arrived at in conjunction with law enforcement, social scientists, and counselors, was first agreed to and then reneged on by the Los Angeles County Sheriffs Department. Note that a CalGang purge would have been most useful for those individuals without a criminal

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<sup>4</sup> The Alien Gang Removal Act of 2005, House of Representatives Bill # 2933, 109<sup>th</sup> Congress, 1<sup>st</sup> Session, was signed by the House of Representatives but not by the Senate and thus never became law.

<sup>5</sup> See letter from County of Los Angeles Sheriff Lee Baca to the Los Angeles Board of Supervisors dated January 21, 2004 regarding LARGIN (the Los Angeles Gang Information Network) which states that “(p)art of the LARGIN concept is to gain agreement of all local law enforcement agencies to input gang information into the CalGang system, a state sponsored gang intelligence network.” LARGIN became operational on December 1, 2003 and has grown exponentially since then.

record, since adult records, even when expunged, are still visible to law enforcement.<sup>6</sup>

Although CalGang records are supposed to be purged after 5 years with no criminal activity, there is no independent oversight to ensure that this is indeed happening.

Another factor in the increasing criminalization of gang membership is the proliferation of gang injunctions. These injunctions operate within specific boundaries of neighborhoods and now cover over 60 square miles within the city of Los Angeles alone.<sup>7</sup> Within these bounds, all individuals served with the injunction suffer misdemeanor charges for what is ordinarily constitutionally protected behavior such as freedom of movement in public places and freedom of association. These injunctions are served upon anyone whom the local authorities deem to be a member of a criminal street gang. No one has ever managed to remove him or herself from the list in the 13 years since the practice of serving individuals with injunctions began in Los Angeles.<sup>8</sup> When pressed by community advocates and intervention workers to suggest an acceptable mechanism for proving inactive gang status, some in law enforcement have mentioned a public statement by an individual renouncing the gang would be acceptable to them.<sup>9</sup>

Gang intervention workers have denounced such public repudiation as potentially dangerous to the former gang member as well as his family. I would add another caveat. Public denunciation is not a method currently engaged in by former gang members to successfully exit gang life; rather, more attention to family, work, and sometimes church

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<sup>6</sup> As a matter of fact, expunged records are still visible in Los Angeles County and can viewed instantly on the Internet (along with acquittals and other arrests which never resulted in conviction) if one has only the name and birthdate of the person involved along with the nominal fee of \$4.75.

<sup>7</sup> Lahniser, David. Hahn vs. Hahn: Janice Tries to Invite Reason into Her Brother's Gang Injunctions. Los Angeles Weekly – March 22, 2006. <http://www.laweekly.com/news/news/hahn-vs-hahn/12945/>

<sup>8</sup> Ibid.

<sup>9</sup> Information derived from an October 2006 interview with Alex Sanchez, founder and Acting Executive Director of Homies Unidos, a nonprofit agency dedicated to gang prevention and intervention. Although Homies Unidos is open to everyone, the organization specializes in issues pertinent to Central American families.

activities allow a former gang member the leeway to slowly exit gang life without causing disrespect or recriminations. During this period, former gang members may choose to begin the process of tattoo removal. The laser process is slow, unlike the suddenness of a public announcement. Over a period of something like 18 to 24 months the tattoos gently fade, just as the former gang member gently fades out of the gang's everyday activities. Needless to say, the commitment inherent in undergoing such a painful, long-term process implies a far more serious commitment to change than any cursory pronouncement, whether public or private.

In conclusion, I hope that our courts will begin to allow for the possibility that individuals can choose to leave the gang lifestyle and that there are certain indicators, among them tattoo removal, which can safely be taken as proof of that choice and commitment. The idea that gang membership is an immutable state-of-being is not supported by my personal experience at the clinics, through which hundreds of people each year pass in a quest for a different way of life. Nor, in fact, does the U.S. government, which steadfastly refuses to accept gang members as a "social group" for purposes of immigration benefits such as Convention Against Torture, believe that gang members cannot change.<sup>10</sup> In the interests of justice and advocacy, these issues must be addressed before purported "gang membership" is used as a tool to deport and otherwise punish thousands of people who have in fact made courageous and fundamental changes in their lifestyles, and are positive contributing members of our communities.

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<sup>10</sup>February 2002 personal interview with Alan Diamante, immigration attorney in Los Angeles, CA.