

Central American-Mexican Gang Claims: Social Group Considerations and Working with  
Expert Witnesses

By: Thomas Boerman, Ph. D.

Identifying and assessing the inter-related factors that account for past threats or harms to Central Americans and Mexicans seeking immigration relief and/or making predictions of future risk to respondents if returned to their home countries 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 and Mexico necessitates day-to-day involvement with the problem and its many dimensions.

Similarly, developing an understanding of the historical, cultural and social factors that affect “visibility” and “recognizability” in Central America and Mexico also requires years of exposure to those societies. Frameworks for determining what constitutes or influences social visibility and recognizability are inherently culture bound; they reflect the beliefs and experiences of those crafting the definitions, and may therefore be limited in terms of the degree to which they apply to social contexts shaped by differing histories, values, traditions, and social dynamics. As such, what constitutes a visible or recognizable social group in one society or culture may be different in another, and making determinations as to what constitutes social visibility and recognizability requires an understanding of the social context in question and the ability to assess the question through a culturally-appropriate lens.

Insofar as it relates to individuals fleeing threats or persecution in Central America and Mexico, the issue of visibility and recognizability is particularly critical with respect to two groups: First, returnees from the U.S. or other countries; and second, those that have challenged gangs or other criminal groups and/or rebuffed their demands.

With respect to returnees, the nature of community life in Central America and many parts of Mexico is such that it is virtually impossible for an individual to return to their previous neighborhood or community without everyone knowing they are back. Alternatively, if they settle in a new area they are immediately recognized as strangers and confronted by gang members, police and local residents to determine who they are, where they are coming from and why they are there; news of their presence is predictably conveyed—often within hours or days—back to their previous neighborhood or small community via overlapping family-social networks. This has obvious implications for anyone that is at risk from criminal groups and is attempting to remain hidden, as those that would cause them harm learn of their whereabouts and renew threats against them.

As it relates to individuals that have challenged or rebuffed gangs or other criminal actors, it is critical to understand that these groups establish and maintain control over physical territory and criminal markets through the use of terror and it is imperative that they know who has rebuffed them and that they subject those individuals—and often their family members—to reprisals that are both predictable and brutal. If these groups

fail to do this, their strategy of terror unravels and they lose their only leverage point, something they cannot and will not allow to happen.

Within the context of Central America and many areas of Mexico, the visibility and recognizability of these two groups is not in question; both are readily and consistently acknowledged by a wide range of stakeholders including police and other government officials, gang specialists, churches, human rights organizations, international development professionals addressing issues of crime and violence and of course, the public at-large.

The family also represents a highly recognizable social group and is often a critical factor because one of the most fundamental tenets of gang and criminal culture and mentality is that threats or animosity toward one individual typically generalize to other members of that person's family. This pattern also applies when a family has been targeted criminally and a member of the family returning from the U.S. is reinserted into the equation. In this situation, the returnee attracts the attention of the criminal group targeting the family and he or she becomes the "lightning rod" for the group's attention. The situation is exacerbated greatly if the group targeting the family concludes that the returnee would have immediate access to cash resources by virtue of having been in the U.S. and/or a family network in this country that could be leveraged for extortion and/or ransom.

Other groups that are often forced to seek immigration relief are women, children and persons of non-conforming sexual orientation. Deeply entrenched patriarchal, "*machista*" values; lack of culturally-sanctioned and legally enforced child rights frameworks; and intolerance toward the lesbian, bi-sexual, gay and transgender community in Central America and much of Mexico affect visibility and recognizability very differently in those countries than in the U.S. First, members of each of these groups tend to be much more visible and recognizable; second, they are far more vulnerable due to perceptions of defenselessness; and third, they are much less likely to seek or receive government protection.

To summarize, insofar as it relates to the issue of social visibility and recognizability, it is critical to assess both the nature of community life in Central America and Mexico, and the nature of gang and criminal culture and mentality. Both of these issues play out very differently than in the U.S. and bear directly on the social visibility and recognizability of returnees from this country.

#### Working with Expert Witnesses

As noted previously, it takes years of study, research and direct experience to develop an expert understanding of gang culture and mentality and the socio-political context in which it exists. Additionally, understanding the historical, cultural and social factors that determine social visibility and recognizability also require years of experience and exposure to the societies in question. Consequently, 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 the facts of any particular case, 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.”<sup>1</sup>*

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, Trial Attorneys, immigration 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 assess the veracity of respondents’ claims and to gather relevant case information.

Assessing the Veracity of Respondents’ Claims.

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<sup>1</sup> Malphrus, G. *Expert Witnesses in Immigration Proceedings*. Immigration Law Advisor. May 2010.

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. This is particularly important because although respondents' lives are often dictated on a day-to-day basis by the ever-present threat from gangs, it gets to be a blur and it never occurs to them to communicate relevant details. Additionally, respondents do not necessarily have any way to know what constitutes important information, so they may fail to pass on critical information. 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 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 husbands, boyfriends of parents, 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.

The "compartmentalization" of information may also make it critical to contact family members in the home country, as once respondents enter the U.S. the general pattern is that communication regarding on-going threats and the unfolding situation ceases. First, their family members in the home country are often terrified to discuss these issues due to poor phone security and the fear that their calls are being monitored; and second, because they do not want to worry their loved ones in the U.S.

(Note: it is imperative that attorneys consider and acknowledge the security risks associated with reaching out to respondents' family members, not only through phone calls but also by asking them to write and send declarations, obtain copies of police reports or gather other supporting documents. These people are often living in extremely tenuous and volatile situations, bringing them into the process place them in significant danger).

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. It may also be important for the expert to participate in discussions with respondents' family members in the home country, assuming that can be done without exacerbating existing dangers.

### Streamlining the Process for Judges

Experts may also be able to assist in streamlining 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.

### Assisting Asylum Officers

In cases where respondents would be deemed worthy of protection from the U.S. government, it is to everyone's advantage to resolve the matter at the earliest stage and in the most non-adversarial method possible. Experts can assist Asylum Officers by presenting an assessment of the factors that explain any past threats and/or persecution, and that provide a both basis for predicting future risk and determining the reasons for that risk, if returned. If the facts make it clear that the respondent is eligible for relief, the respondent is spared further trauma and the government and courts are spared further expense.

### Assisting Trial Attorneys

Having access to an expert affidavit or declaration may assist Trial Attorneys in a number of ways: First, the reports may provide more extensive country condition information than would otherwise be made submitted. Second, expert reports would include an assessment of the particular case, and potentially assist the Trial Attorney to develop a greater understanding of the facts. Third, having an expert report may streamline pre-hearing discussions and negotiations with respondents' attorneys. Forth, access to the expert affidavit or declaration may help to inform decisions regarding prosecutorial discretion. Finally, having access to the expert during cross examination provides Trial Attorneys an opportunity to clarify issues related to the facts of the case, the socio-political context of the country in question, the factors that affect the ability and willingness of the government to protect the respondent if returned, and the viability of internal relocation as a strategy for safe repatriation.

### 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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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 over a dozen private U.S.-based 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 200 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.