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A Credible Fear: The Politics of Gang Violence in the Northern Triangle

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A CREDIBLE FEAR:
THE POLITICS OF GANG VIOLENCE IN THE NORTHERN TRIANGLE

by

JANE DOWD

A master's thesis submitted to the Graduate Faculty in International Migration Studies in partial fulfillment of the requirements for the degree of Master of Arts,
The City University of New York

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A Credible Fear:
The Politics of Gang Violence in the Northern Triangle
A Case Study

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Jane Dowd

This manuscript has been read and accepted for the Graduate Faculty in International Migration Studies in satisfaction of the thesis requirement for the degree of Master of Arts.

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Abstract: This thesis will create an argument for how the victims of gang violence from the Northern Triangle nations of El Salvador, Guatemala, and Honduras qualify for asylum in the United States based on a well-founded fear of persecution. An analysis of the legal framework of the asylum system in the United States, profiles of the two largest gangs in the Northern Triangle the *Mara Salvatrucha* and *Barrío 18*, a profile of the asylum seekers arriving at the United States border, the criminal activity that the gangs engage in, and the way that this activity is political in nature will form the argument that gang violence is inherently political in the Northern Triangle. UNHCR reports and local Northern Triangle police data will illustrate the circumstances of de facto gang rule in the region and DHS statistics will show how the growing numbers of Central American asylees necessitate a U.S. policy change regarding victims of gang violence.

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Introduction

On February 15th, 2019 President Trump stood in the White House Rose Garden and shared his views on the influx of Central Americans at the Southern border, stating: “We’re talking about an invasion of our country with drugs, with human traffickers, with all types of criminals and gangs”¹ This rhetoric is not new for the Trump administration and discussions of a border wall, a border crisis, and gang infiltration of the United States have been popular in U.S. media since his inauguration. What the Trump administration gets wrong about this “invasion” is that the threat of gang violence is not present at U.S. at the Southern Border, on the contrary the migrants at the border are in fact the gangs’ victims. Trump’s labeling of asylees at the border as “criminals and gangs” is an effort to fund a wall that will keep out the region’s most vulnerable migrants, the asylee victims of gang violence. Seven months prior to President Trump’s Rose Garden proclamation, on June 11, 2018 then-Attorney General Jeff Sessions stated: “Generally, claims by aliens pertaining to... gang violence perpetrated by non-governmental actors will not qualify for asylum.”² This statement ignores the complicated reality of how the gangs and the government in the Northern Triangle nations of El Salvador, Guatemala, and Honduras are related, and how they are both perpetrators of the gang violence that the Central American asylees are fleeing. Post-war gang proliferation and rampant government corruption in the Northern Triangle have blurred the line separating governmental actors from gang members, and civilian opposition to gang violence has become inherently political. Refusing to be extorted, recruited, or sexually assaulted are political acts in the context of de facto gang rule and should be treated as such in the U.S. immigration system.

¹ Paletta, Damien, Mike DeBonis, and John Wagner. "Trump Declares National Emergency on Southern Border in Bid to Build Wall." *The Washington Post*, February 15, 2019.

² Sessions, Jeff. 27 I&N Dec. 316 (A.G. 2018).

A Credible Fear: The Politics of Gang Violence in the Northern Triangle
A Case Study by Jane Dowd

A history of societal upheaval and social unrest has created an environment in which criminal organizations and government entities in the Northern Triangle nations often lack clear boundaries. The region was ravaged by civil wars and economic dependence on foreign aid in the twentieth century and the aftermath of decades of brutality created a migration surge of Central American migrants into the United States. When immigration policies in the 1990s led to record numbers of deportations, gang ties that were created in the U.S. were exported to the weakened societies of El Salvador, Guatemala, and Honduras and security and economic forces were easily manipulated to the advantage of criminal organizations. The governments' attempts at hardline anti-gang policies backfired, creating an impetus for higher gang recruitment and more widespread government mistrust. As a result, "Gangs in Central America ended up more violent and more organized because government responses compelled them to strengthen, as well as provided the opportunities and resources to do it through the areas of illegality and the networks of crime broadened by such policies."³ The gangs have been able to recruit, adapt, and fortify their structures in response to these failed policies and their political intrusions have become a threat to democracy in the region. This thesis will argue that the failure of state governments' and transformation of the gangs into political entities gives the asylees coming to the United States a legitimate claim to asylum based on a well-founded fear of political persecution.

This thesis will explain how the gang violence in the Northern Triangle constitutes legitimate political persecution by first establishing the legal definitions of asylum, political persecution, and gangs in "Chapter I. Central Definitions" using historical definitions rooted in the United Nations Universal Declaration of Human Rights, the United Nations 1951 Convention

³ Bruneau, Thomas C., Lucía Dammert, and Elizabeth Skinner. *Maras: Gang Violence and Security in Central America*. Austin, TX. University of Texas Press. 2012. 139.

Relating to the Status of Refugees, and the United States Immigration and Nationality Act. The second chapter, “Northern Triangle Gangs,” will outline the major gangs in the region and will use historical accounts of the region’s civil unrest, the migration of Central Americans to the United States, and their subsequent deportations back to the Northern Triangle to show how the gangs were formed. Various National Police reports will then explain the demographics of the gangs in question. “Chapter III. Asylum Trends & Demographics” will create a profile of the asylum seekers relevant to this analysis using Department of Homeland Security data and United Nations High Commissioner for Refugees reports. After profiling the perpetrators and victims of gang violence in the region the fourth chapter, “Well-Founded Fear” will then describe how said violence constitutes a well-founded fear of persecution and describe the conditions that the Central American asylum seekers are fleeing using FBI reports, detailed Insight Crime reports regarding gang activity in the region, World Bank, and United Nations High Commissioner for Refugees reports. The fifth and final chapter of this thesis, “The Politics of Gangs,” will elaborate on how the combination of the inefficiency of government forces, the widespread regional corruption, and the politicization of the gang actors makes the persecution political by using various United Nations High Commissioner for Refugees reports of corruption, reports from the Due Process of Law Foundation, and AmericasBarometer studies of public trust in the government. The variety of data and sources used in this thesis serve to argue that the asylum applications in the United States from victims of gang violence in the Northern Triangle are based on a legitimate political persecution and their asylum claims should be adjudicated as such.

Chapter I. Central Definitions

An effective analysis of asylum, persecution based on political opinion, and gang violence necessitates the establishment of certain definitions. Starting with “asylum,” this thesis will

explain how the laws governing U.S. immigration law are set in the Immigration and Nationality Act, (INA) whose definitions are based on the United Nations High Commissioner of Refugees (UNHCR) and the United Nations Universal Declaration of Human Rights (UDHR) definitions of a refugee. Using these documents, this chapter will define asylum by looking at the definition of a refugee offered by the UNHCR 1951 Convention Relating to the Status of Refugees and how this definition is built upon Article 14 of the 1948 UDHR, where the right to asylum is first recognized internationally. In order to clarify a definition of “persecution based on political opinion,” this chapter also sets out to establish what the definition of political opinion is with regards to asylum and immigration legal precedence in the United States. Finally, this chapter will define who the relevant actors are in this analysis of gang violence by defining “gangs” in accordance with U.S. law and detailing which specific gang actors are at work in the Northern Triangle nations. A brief historical background will accompany each definition to provide context for the analysis that follows.

Asylum

The history of the asylum system in the United States begins with the 1948 United Nations Universal Declaration of Human Rights. Drafted three years after the initial establishment of the United Nations, the document outlines the basic human rights that will be protected universally. The first of its kind, the signatories to the UDHR believed that “the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”⁴ Among the protected rights listed in the document are rights to security, protection from torture, religious freedom, and freedom of movement. The Declaration also explicitly declares the universal right to asylum in Article 14:

⁴ United Nations General Assembly. "Universal Declaration of Human Rights." Paris. 1948. 1.

“Article 14: 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations”⁵

Points 14.1 and 14.2 of the UDHR are relevant to this analysis because the first part explicitly states that “everyone” has the right to seek asylum, but the second part sets limits to this by excluding the victims of “non-political crimes.” This point is important in regard to this thesis because it shows how gang violence must be considered political in order to serve as grounds for asylum, as per the Universal Declaration of Human Rights.

The United Nations High Commissioner for Refugees (UNHCR) was created in 1950, just two years after the publication of the UDHR and five years after the founding of the United Nations. Initially established as a response to the refugee crisis facing Europe at the end of World War II, the office has since been involved in numerous international crises of forcibly displaced communities, stateless persons, and refugee crises. The UNHCR 1951 Convention Relating to the Status of Refugees explicitly defines the term “refugee” and sets out to define refugee rights and national obligations to refugee protection. Article 1 (A) (2) of the Convention defines a refugee as:

“Any person who... owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”⁶

The particular parts of this definition that are of interest to this analysis are the concepts of “well-founded fear of persecution” and “political opinion,” as the basis of this thesis will be to explore how victims of gang violence in the Northern Triangle have legitimate political asylum claims in

⁵ U.N. “Universal Declaration of Human Rights.” 4.

⁶ United Nations High Commissioner for Refugees. “The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.” Geneva. 1951. 14.

the U.S. Showing that the violence they face constitutes a “well-founded fear” and how refusing to cooperate with the de-facto rule of the gangs in the region constitutes a “political opinion” is central to this argument and will be explored in greater detailing in forthcoming chapters. In addition to defining a refugee, the 1951 Convention emphasizes the need for international commitment to refugee protection by mandating the concept of “non-refoulment.” Echoing the language of the Article 1 definition of a refugee and central to the Convention’s principals, non-refoulment is defined in Article 33 as follows:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”⁷

Non-refoulment is an important aspect of the 1951 Convention as it introduces legal protection for refugees from being forcibly returned to their home country. The definition of a refugee and the concept of non-refoulment as outlined in the UNHCR 1951 Convention Relating to the Status of Refugees form the foundation for the international definitions of and legal protections afforded to refugees and asylees.

The United States is a signatory to the 1951 Convention Relating to the Status of Refugees and therefore its immigration laws relating to asylum and refugees reference the Convention’s language as well. U.S. immigration law is dictated by the Immigration and Nationality Act (INA), the first Act in U.S. history to organize immigration and citizenship laws into one document. While there have been numerous amendments to the Act since it was first enacted in 1952, the current definition of an asylee in the INA section 1158(b)(1)(A) states that an alien may be granted asylum if they fall under the definition of a refugee. The INA definition of a refugee is then found

⁷ U.N.HC.R. “The 1951 Convention.” 30.

in section 1101(a)(42)(A) and is almost the verbatim definition of a refugee under the UNHCR 1951 Convention, with the INA text as follows:

“Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁸

While listing these separate definitions may seem redundant, it is important to trace the roots of the definition of asylum in this manner because asylees are not explicitly defined in the UDHR, UNHCR, or INA. Asylees and refugees differ in their manner of arrival to the receiving nation, with asylees applying for asylum either at the port-of-entry or once within the receiving nation's borders and refugees are processed in a third-party nation and arrive at the receiving nation with a pre-determined refugee status. Nonetheless, in U.S. asylum law all legal definitions of an asylee are rooted in the United Nations' historical definitions of a refugee, and for the purpose of this thesis the precise legal definition of an asylee in the U.S. must be made clear.

Persecution Based on Political Opinion

The definition of “persecution based on political opinion” in relation to asylum law is legally elusive; not in any of the documents and laws governing asylum is there a clear definition of what constitutes political persecution. When no legal definition is mandated in law, a legal definition relies on case precedents and in the case of asylum law in the U.S. there has been little regarding gang violence. An asylum practice advisory issued by the National Immigrant Justice Center succinctly explains the current state of legal precedence regarding asylum for victims of

⁸ United States of America. “Immigration and Nationality Act, with Amendments and Notes on Related Laws: Committee Print for the Use of the Committee on the Judiciary.” House of Representatives. United States. Washington. 1980. Section 1158(b)(1)(A).

gang violence. The advisory explains how Jeff Sessions' 2018 decision regarding asylum for survivors of domestic violence and violence perpetrated by non-state actors overrules a prior decision granting asylum for these victims in particular situations. The advisory then explains, "While the decision gives the impression that these claims are foreclosed, nearly all the damaging language is dicta, and the Refugee Convention, the Immigration and Nationality Act (INA), and precedential case law at the Courts of Appeals and Board of Immigration Appeals (BIA) continue to support much of what the BIA previously held in [the previous precedent]. In short, the holding... is narrow and much of the damage done is a matter of optics, not law."⁹ This means that while then-Attorney General Sessions intended to create a precedent that would exclude victims of domestic and gang violence from asylum in the U.S., the legal framework regarding these groups is still rooted in the 1951 Convention Relating to the Status of Refugees and the INA and is generally favorable to the populations in question.

Gangs

The United States Code defines the subject matter of all of the laws in the United States; the document is divided by subject and published every six years by the Office of the Law Revision Counsel of the U.S. House of Representatives. According to the U.S. Code Title 18 (Crimes and Criminal Procedure), under Part 1 (Crimes), Chapter 26 (Criminal Street Gangs), Section 521 a gang is defined in U.S. Federal Law as:

"An ongoing group, club, organization, or association of 5 or more persons—
(A) that has as 1 of its primary purposes the commission of 1 or more of the criminal offenses described in subsection (c);
(B) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subsection (c); and
(C) the activities of which affect interstate or foreign commerce."

⁹ National Immigrant Justice Center. "Applying for Asylum After Matter of A-B: Matter of A-B-Changes the Complexion of Claims Involving Non-State Actors, but Asylum Fundamentals Remain Strong and Intact." Asylum Practice Advisory. June 2018. 1.

The offenses referenced in subsection (c) include felonies involving controlled substances felonies involving crimes of violence, any offense involving human trafficking or sexual abuse, and conspiracy to commit any of the previously mentioned crimes. This federal definition is used by both the Department of Justice for U.S. interior crime enforcement and the Department of Homeland Security for immigration-related crime enforcement. Following this provided language, the two main gangs in the Northern Triangle nations that will be analyzed in this thesis, *Mara Salvatrucha*, also known as MS-13 and *Barrio 18*, also known as La 18 can be legally classified as gangs in U.S. federal law. Both gangs are involved in extensive criminal activities and networks, and the members of the gangs engage directly with the crimes. Additional details on the history and demographics of MS-13 and La 18 as well as the activities they engage in will be detailed in Chapter II of this thesis.

While the definitions provided in Chapter I of this thesis are somewhat repetitive, it is necessary to include the explicit definitions of “asylum,” “persecution based on political opinion,” and “gangs” because they are the topics most central to an exploration of political asylum for victims of gang violence in Central America. The inclusion of the exact language that informs immigration law and outlining the general history of the codification of these terms creates a framework that can be referenced when looking at the modern understanding of asylum and gang persecution.

Chapter II. Northern Triangle Gangs

The violence that asylum seekers are fleeing in Central America can be largely attributed to the two main gangs in the region, *Mara Salvatrucha*, or MS-13, and *Barrio 18*, or La 18. The initial formation and subsequent proliferation of these two gangs throughout Central America is directly tied to unrest in the region in the twentieth century and to changes to U.S. immigration

policy in the 1990s. A brief historical context of both follows in order to provide a thorough definition of the main gang actors and to show the conditions that allowed for their rise to power.

History of MS-13 and La 18

The twentieth century in Central America was marked by widespread civil unrest. In El Salvador, a civil war raged from 1979 until 1992 and was a brutally violent power struggle between the military-led government of El Salvador and the Farabundo Marti National Liberation Front (FMLN), a group of leftist guerilla organizations. In an effort to curb the FMLN, the Salvadoran military received \$3.5 billion in aid from the U.S. government¹⁰, fueling a war that saw an unknown number of disappearances and the deaths of at least 75,000 Salvadorans.¹¹ The brutality of the Salvadoran Civil War was mirrored in Guatemala in the Guatemalan Civil War that lasted from 1960 until 1996. Conservative reports of over 200,000 deaths of indigenous Maya have been reported and the military-led atrocities of the war have since been labelled a genocide.¹² While Honduras did not experience an official civil war like those of El Salvador and Guatemala during this time, the effect of the neighboring nations' instability led to a financial crisis and increasing reliance on U.S. aid. In need of economic support, the Honduran government allowed the Reagan administration to use Honduras as a military training ground for the El Salvadoran military and

¹⁰ United States General Accounting Office. *El Salvador: Accountability for U.S. Military and Economic Aid: Report to the Chairman, Subcommittee on Western Hemisphere Affairs, Committee on Foreign Affairs, House of Representatives*. Washington, DC: Office, 1990. 8.

¹¹ Wilson, Leah, and Alexis Stoumbelis. "'Removing the Veil': El Salvador Apologizes for State Violence on 20th Anniversary of Peace Accords." *North American Congress in Latin America*, January 12, 2012.

¹² Rothenberg, Daniel. *Memory of Silence: the Guatemalan Truth Commission Report*. New York: Palgrave Macmillan. 2012. 17-23.

the Contras in Nicaragua,¹³ making the economic, political, and military relationships in the region even more complicated and strained.

The history of civil wars and economic unrest in the region created conditions for mass migration from the Northern Triangle to the United States. Those who migrated were often at an economic disadvantage upon arriving in the U.S. and relied on the support of their ethnic enclaves abroad. Ultimately, some of the newly displaced Central Americans in the U.S. ended up joining or forming gangs in order to protect themselves in an unfamiliar country.¹⁴ The passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996 during the Clinton administration increased the immigration consequences for engaging in criminal activities and resulted in the deportation of thousands of these gang members back to the Northern Triangle. The gangs then regrouped and fortified their relations in the post-war political vacuums of El Salvador, Guatemala, and Honduras. The concentration of gang members in Central America skyrocketed in the 1990s and early 2000s as a result of this spike in deportations of criminal offenders back to their native countries in the region.

The two main gangs in power in Central America are *Mara Salvatrucha* and *Barrio 18*. These two gangs are bitter rivals and while their territory spans throughout Central America, Mexico, and the U.S., their power and their power struggles are concentrated in the Northern Triangle. Their structure is difficult to analyze, as MS-13 and La 18 are characterized by their “fluid, dynamic organization and complex, clandestine hierarchies.”¹⁵ Although their structures

¹³ Rosenberg, Mark B. *Honduras in the Central American Conflict: Trends and Recent Developments*. Florida International University Latin American and Caribbean Center. July 1988. 4.

¹⁴ Miller, Spring, and James Cavallaro. *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*. Cambridge, MA: Harvard Law School, 2010. 51.

¹⁵ Miller, et al. *No Place to Hide*. 57.

are intentionally covert, their fundamental features have been shown to involve sophisticated and transnational organizational structure, consolidation of territorial presence and power, and extreme violence against those who refuse recruitment or those who live in gang-controlled territories.¹⁶ Locals in gang-controlled areas live in fear of being violently recruited or subject to a threatening gang presence in their hometowns, and the fact that MS-13 and La 18 are at war with each other only further exacerbates the fear of violence among the Northern Triangle's population. This perpetual inter-gang war creates an incredibly hostile race for domination and recruitment amongst the youth in the region, and protection from the violence of one gang often means joining its rival.

The gangs are prominent in both rural and urban areas alike and often serve as the de facto law and order where the police are unwilling or unable to work against them. In fact, MS-13 and La 18 have been able to act as “despotic, de facto governments with commercial and criminal motives, with a ‘political agenda to control state governing and security institutions’ and ‘an agenda to control people and territory.’”¹⁷ The power and control that the gangs are able to exercise is a relatively new, post-IIRIRA phenomena and was intensified by the Salvadoran, Guatemalan, and Honduran government's employment of an aggressively harsh anti-gang program called *mano dura*, or “iron fist,” in the early 2000s. The main focus of the *mano dura* plan was to “arrest away” the gangs and take them off the streets, however this was done in increasingly violent manners, and has itself been seen as a form of legal violence. Legal violence perpetrated by the state “refers to the state's legitimate use of force and its capacity to expand its limits in order to fight crime. It can entail the alteration of laws to provide discretionary powers to state institutions.”¹⁸ *Mano dura*

¹⁶ Miller, et al. *No Place to Hide*. 56-88.

¹⁷ Uchimaya, Diane. "Falling through the Cracks: Gang Victims as Casualties in Current Asylum Jurisprudence." *Berkeley La Raza Law Journal* 23 (2015). 109-62. 147-148.

¹⁸ Cruz, José Miguel. "Criminal Violence and Democratization in Central America: The Survival of the Violent State." *Latin American Politics and Society* 53, no. 04 (Winter 2011). 1-33. 21.

policies manifested in police and military forces further terrorizing the people in their territories under the guise of rooting out gang members. This policy ultimately led to prison overcrowding, strengthening of gang ties, and the recruitment of new gang members behind bars, as it has been reported that those who were wrongfully arrested for being a gang member were successfully recruited after they were put in prison.¹⁹ The failure of the *mano dura* policies in the region will be elaborated on further in Chapter V.

The political context that led to the formation of MS-13 and La 18 are useful in understanding how and why the gangs have spread and gained power in the region and how the history of gang-rule in the region impacts the general demographics of both MS-13 and La 18.

Gang Demographics: El Salvador

Gang membership in El Salvador grew rapidly following the post-IIRIRA deportations of gang members back to El Salvador, and MS-13 and La 18 membership soared. The first comprehensive analysis of gang demographics in El Salvador was completed by undergraduate students, Margarita Mancía and María de Los Ángeles Salgado at the Universidad Centroamericana “José Simeón Cañas in San Salvador in 1991. Studying gang membership the year that the Salvadoran Civil War concluded, the students discovered that over three-quarters of gang members were lower to lower-middle class males between the ages of seven and thirty-one years old;²⁰ the demographic makeup of the gangs largely remains the same. The past two decades have seen a surge in membership and geographic spread of both MS-13 and La 18 in El Salvador. A 2004 dataset published by the El Salvador *Policia Nacional Civil* showed that there were roughly 10,200 gang members spread across the fourteen departments of El Salvador, and a 2009 report

¹⁹ Uchimaya, Diane. "Falling through the Cracks: Gang Victims as Casualties in Current Asylum Jurisprudence." *Berkeley La Raza Law Journal* 23 (2015): 109-162. 129.

²⁰ Bruneau, et. al. “*Maras*.” 44.

increased this population to 16,000.²¹ The history of the nation's power struggles during its civil war and the instability left in its aftermath have contributed to the rise in numbers and the geographic spread of gang members in El Salvador.

Gang Demographics: Guatemala

Neighbor to El Salvador is Guatemala, a country similarly ravaged by civil war in the twentieth century and home to comparable social, economic, and political turmoil. It follows that the demographic makeup of gang members is similar to that of El Salvador. While there are other gangs in Guatemala that engage in criminal activities and violent behaviors, a 2006 USAID assessment showed that MS-13 and La 18 accounted for 95% of all gang membership in Guatemala.²² The *Policia Nacional Civil* in Guatemala has estimated that gang membership in 2006 was between 8,000 and 10,000 individuals²³ and a separate report gives the average age of a Guatemalan gang member to be 14.7 years old.²⁴ The youthfulness of the gang members in Guatemala has been attributed to the lack of social programs available in the country. In the aftermath of the 36 yearlong civil, war Guatemala is one of the poorest nations in Latin America with half of the country living in poverty and only one in three citizens enrolled in educational programs.²⁵ These post-civil war societal conditions serve as a main contributing factor to membership in MS-13 and La 18 in Guatemala.

Gang Demographics: Honduras

Honduras, the central neighbor to both nations, has an even equally rampant gang issue. The Community Police of Honduras has estimated that gang membership in the nation is between

²¹ Bruneau, et. al. "*Maras.*" 46.

²² Bruneau, et. al. "*Maras.*" 72.

²³ Bruneau, et. al. "*Maras.*" 72.

²⁴ Bruneau, et. al. "*Maras.*" 79

²⁵ Bruneau, et. al. "*Maras.*" 75.

10,000 and 15,000 individuals.²⁶ Located at the center of the Northern Triangle, Honduras shares large borderlands with both El Salvador and Guatemala and its gang membership may be attributed to its geographic location. Its borders are vulnerable to a largely unchecked migratory flow between the three nations of both gang members and gang activities. Thousands of *mareros*, or gang members, are at work within Honduras' borders and "From terrorizing local businesses with demands for protection 'taxes' and threats of violence to intra-gang warfare, hired hits, armed robberies and assaults on public transport, the two predominant *maras*... simply outman security forces in Honduras."²⁷ Not unlike its neighbors, MS-13 and La 18 have been able to get a strong foothold in Honduras by overwhelming security and political forces in the nation. The lasting economic effects of the region's twentieth-century tumult has left Honduras ill-equipped to deal with the transnational nature of gang activities.

In conclusion, Chapter II of this thesis details the history and demographics of the two major gangs in the Northern Triangle in order to give a clear profile of who is involved in the gangs and where the two gangs function.

Chapter III. Asylum Trends & Demographics

Chapter I of this thesis followed the language in the UDHR, UNHCR, and INA to offer a legal definition of an asylee, however did not elaborate on the process of applying for asylum in the U.S. In order to provide a full picture of the experience of Central American asylees it is necessary to give a brief overview of the ways one can apply for asylum and what the steps of the process are.

Asylum Process

²⁶ Bruneau, et. al. "*Maras*." 89.

²⁷ Bruneau, et. al. "*Maras*." 88.

As stated earlier, the difference between a refugee and an asylee is the manner in which they arrive to the receiving country; in the U.S., refugees apply for refugee status abroad and arrive to the receiving country as an approved refugee, while asylees can apply for asylum affirmatively when they arrive at a port of entry or defensively when have already been apprehended by immigration officials for entering the U.S. without documentation. Affirmative asylum applications are processed by the United States Citizenship and Immigration Services (USCIS) arm of the Department of Homeland Security (DHS) and defensive applications are processed by DHS' judicial branch, the Executive Office for Immigration Review (EOIR). Affirmative asylum applications can be made immediately at a port of entry, such as a border crossing station or marine entry, or can be made voluntarily within one year of initial authorized entry into the U.S. If someone has been detained or placed in removal proceeding and applies for defensive asylum in front of an EOIR judge then the applicant must pass a "credible fear" interview, where a judge determines the veracity of a persecution claim. If the claim is deemed credible, the applicant can receive asylum status. If the claim is denied, the applicant will likely be deported back to their native country.

Asylum applicants from the Northern Triangle nations apply for defensive asylum much more often than affirmative asylum, and defensive asylum claims are significantly less likely to be approved. Data from the DHS "Annual Flow Report: Refugees and Asylees: 2017" shows that in 2017, affirmative asylum applicants from El Salvador had a 17.98% approval rate while defensive asylum applicants had a 3.76% approval rate.²⁸ Similar data is reported for applicants from Guatemala and Honduras, with 16.58% and 15.98% approval rates for affirmative applications,

²⁸ United States of America. Department of Homeland Security. Office of Immigration Statistics. *Annual Flow Report: Refugees and Asylees: 2017*. By Nadwa Mossad. March 2019. 8-9.

respectively, and 4.41% and 4.72% approval rates for defensive applications.²⁹ The fact that defensive applications from all three Northern Triangle nations have a significantly lower approval rate than affirmative applications is important because applicants from all three countries are significantly more likely to apply for defensive asylum than affirmative asylum. In fact, in 2017 defensive asylum applications from El Salvador, Guatemala, and Honduras made up 75.79%, 63.55%, and 73.90% of all asylum claims, respectively, from each nation.³⁰

A possible factor in the low approval of defensive asylum applications is that non-citizens in immigration court are not afforded the right to counsel; data from Syracuse University's Transactional Records Access Clearinghouse (TRAC) shows that between 60% and 80% of those appearing in immigration court who have never been detained are represented by counsel, compared to 10% to 30% of those appearing in immigration court who have been detained appearing with counsel.³¹ Since apprehension and detention are usually the prerequisite for defensive asylum applications it follows that previously detained defensive applicants are less likely to be represented in front of an EOIR judge and therefore more likely to be denied asylum. The high proportion of defensive applications from each nation, the lower likelihood of defensive asylum approvals, and the low levels of detained individuals appearing in EOIR court without counsel negatively affects asylum trends in the region.

Asylum Trends by Nation

Looking at the most recently published DHS data from 2015, 2016, and 2017 each of the three Northern Triangle nations have experienced a significant increase in asylum applicants in the

²⁹ United States. *Annual Flow Report*. 8-9.

³⁰ United States. *Annual Flow Report*.. 8-9.

³¹ Transactional Records Access Clearinghouse (TRAC) - Comprehensive, Independent, and Nonpartisan Information on Federal Enforcement, Staffing and Funding. October 16, 2017.

U.S. while approval of their asylum claims has decreased. The following chart is compiled from the most recent data available in the DHS “Annual Flow Report: Refugees and Asylees: 2017,” showing the past total number of affirmative and defensive asylum applications received and approved from El Salvador, Guatemala, and Honduras.

Table 1. Affirmative and Defensive Asylum Data from El Salvador, Guatemala, and Honduras 2015 – 2017.

	2017			2016			2015		
	Received	Approved	Rate	Received	Approved	Rate	Received	Approved	Rate
E.S.	47,260	3,471	7.34%	28,372	2,148	7.57%	18,864	2,164	11.48%
Gua.	33,398	2,954	8.84%	22,960	1,916	8.34%	16,657	2,069	12.42%
Hds.	26,736	2,048	7.66%	17,193	1,482	8.62%	14,492	1,407	9.71%

All data in Table 1 is gathered from the Department of Homeland Security’s Office of Immigration Statistics and Office of Strategy, Policy & Plans March 2019 “Annual Flow Report: Refugees and Asylees: 2017.”³²

Compared with its 2015 applicants, data from 2017 shows a 150.53% increase in total asylum applications received from El Salvador compared to 2015 and a difference of -4.14% in the asylum approval rates. Similarly, data for Guatemala shows that DHS received 100.50% more applications in 2017 than in 2015 and the asylum approval rate decreased -3.58%. In 2017 there were 84.49% more applications for asylum from Honduras than there were in 2015 and the claims were -2.05% less likely to be approved. The percentage shifts in these asylum trends are indeed important to note for trend analysis, however it cannot be forgotten that every number evaluated in this study is an actual person. In 2017 alone 107,394 applications for asylum were processed from Northern Triangle nations and only 8,473 were approved; 98,921 Central American asylum seekers were denied.

³² United States. *Annual Flow Report.*”

When analyzing this table, it is important to include the population of the asylee's native country in mind. For example, El Salvador has a population of 6.378 million people and a total of 47,260 asylum applicants in the U.S. in 2017: these applicants make up .75% of the nation's entire population. For comparison, another top nation in terms of asylum applications received in the U.S. is China, and in 2017 DHS received 19,606 applications from the nation of 1.386 billion, making up .00001% of their population.³³ What's more, 28.30% of the 19,606 applications received from China were approved in 2017 compared to between 7% and 9% of total applications for the Northern Triangle nations. El Salvador, Guatemala, and Honduras remain three of the top six nations applying for affirmative asylum and three of the top four nations applying for defensive asylum in the U.S., and while the quantity of applications from the Northern Triangle continue to climb, approval rates are declining. This discrepancy in asylum adjudication trends signals a need for a policy change that reflects the changing frequency of asylum applications from Central America.

Asylee Demographic Shift

Not only are the numbers of asylum applications from the Northern Triangle shifting, the demographics of the applicants are changing as well. In the twentieth century most migrant groups from Central America, not necessarily asylees, were younger men fleeing the violence and instability of the region's civil wars and seeking economic opportunity to support their families at home. Since the rise of the gangs in the region, this demographic has changed to include huge numbers of women and children travelling both together and separately.

The twenty-first century has seen a major focus in immigration-related media on the crisis of unaccompanied minors from the Northern Triangle and Mexico at the southern U.S border. The

³³ United States. *Annual Flow Report*.. 8-9.

numbers of unaccompanied minors being apprehended at the border has been increasing exponentially, and in 2013 U.S. Customs and Border Patrol (CBP) has reported 21,537 of apprehensions of unaccompanied minors from El Salvador, Guatemala, and Honduras compared to 4,059 in 2011.³⁴ This 430% increase in apprehensions of unaccompanied minors from the Northern Triangle can be directly attributed to the increased violence and criminal behavior of the region's gang forces. When asked why they fled their home in a study conducted by the UNHCR in 2014, 66% of children from El Salvador, 20% of children from Guatemala, and 44% of children from Honduras cited the fear of violence from armed criminal actors as their primary motivation for migrating.³⁵

Minors migrating from the Northern Triangle are not always unaccompanied and recent migration trends from the region show that many women and mothers are migrating with their children to seek safety in the U.S. DHS reports refer to a mother and child migrating together as a family unit, and "US Government statistics show that over 66,000 families arrived in the United States in fiscal year 2014."³⁶ The majority of the women migrating from Central America have listed the fear of gang violence, extortion, and sexual assault as the main reasons for moving their families to the U.S. The UNHCR conducted a study of female migrants from the Northern Triangle and Mexico in 2015 and found that 85% of the women interviewed were leaving gang-controlled neighborhoods, where "they described being raped, assaulted, extorted, and threatened by members of criminal armed groups, including gangs and drug cartels."³⁷ The first response many

³⁴ United Nations High Commissioner for Refugees. "Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection." 2014. 15.

³⁵ UNHCR. "Children on the Run." 9-10

³⁶ United Nations High Commissioner for Refugees. "Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico." 2015. 3.

³⁷ UNHCR. "Women on the Run." 4.

of the women interviewed had was to report their assaults to the police, however the 60% of the interviewees that reported attacks received insufficient or no protection from the police and 40% refused to report to the authorities at all citing the futility of reporting to inept and corrupt authorities.³⁸ Receiving no protection at home, two-thirds of the women interviewed reported being internally displaced at one or more points in an attempt to move to a gang-free area within their own country to no avail.³⁹ The widespread gang violence and the lack of protection from the government and law enforcement authorities in their countries left these women with no alternative than to migrate.

Chapter III has utilized data on asylum applications and asylum demographics from both DHS reports and UNHCR studies to show that there have been major shifts in asylum trends in the Northern Triangle nations in the past ten years. All three nations have shown an increase in both affirmative and defensive applications for asylum, a decrease in approval of both affirmative and defensive claims, and a surge in unaccompanied minor, women, and family units arriving at the U.S. Southern border. Though the data from the DHS and UNHCR reports clearly shows the drastic shifts that asylum trends for Central Americans have undergone from 2011 until 2017, there has been no policy shift in asylum adjudication in response to these new demographics. The rise in MS-13 and La 18 power, influence, and control in the Northern Triangle is directly correlated to the increase in migrants and asylum seekers from the region. The extortion, recruitment techniques, physical and sexual assault that the gangs perpetuate in the region has created a new refugee crisis in Central America and U.S. asylum policy should reflect that. Having established relevant legal definitions, a profile of the main gang actors, and a profile of recent migration and

³⁸ UNHCR. "Women on the Run." 4.

³⁹ UNHCR. "Women on the Run." 4.

asylum trends in the region, the following chapters will explore how victims of gang violence from the Northern Triangle have a legitimate “well-founded fear of persecution” and why victims of this persecution qualify for political asylum.

Chapter IV. Well-Founded Fear

Referencing the definition of asylum provided in Chapter I, one qualifies for asylum in the U.S. if they are able to establish a “well-founded fear of persecution” in their native country. Therefore, in order to analyze the veracity of an asylum claim, it is important to give explicit details about the threat that the asylee is fleeing; in the case of claims to asylum for victims of gang violence in the Northern Triangle that means that the “well-founded fear” of gang violence from gangs must be proven. While Chapter II of this thesis offered historical context and general demographics for the development and spread of both MS-13 and La 18 in the Northern Triangle nations of El Salvador, Guatemala, and Honduras, this chapter will elaborate on the most common crimes and forms of violence that the victims profiled in Chapter III are fleeing in order to show that the threat of gang violence does indeed constitute a well-founded fear of persecution.

Common Crimes

The rise to power that the two main gangs in the Northern Triangle experienced in the twentieth century are “both a symptom and a cause of a deteriorating security environment,”⁴⁰ as the gangs have been overpowering the weak post-war economies and governments in the region. Gang ranks have swelled due to widespread economic and social insecurity and they engage in a number of violent criminal activities. According to an FBI assessment, MS-13 members in particular are engage in “drug distribution, murder, rape, prostitution, robbery, home invasions,

⁴⁰ Bruneau, et. al. “*Maras.*” 88.

immigration offenses, kidnapping, carjackings/auto thefts, and vandalism.”⁴¹ Most of these criminal offenses referenced by the FBI are inherently violent and threatening in nature and are known to affect anyone in the gang’s vicinity, *marero* or not. Serving as an economic and social rival to MS-13, La 18 engages in most of the same criminal activity and is shown to have a very similar hierarchical structure. The rivalry itself seems to be the main difference between the gangs, as animosity towards MS-13 created “a reason to join, a reason to fight, a reason to celebrate when one of the other gang’s members was dead”⁴² for La 18. Local factions of both gangs, also called *clicas*, are equally represented in the Northern Triangle nations and the violent enmity between them only adds to the violent crimes that they bring to the region. Both gangs engage in the same kinds of regional control tactics, further fueling their conflict, and the two main activities that both MS-13 and La 18 employ to exploit their territories are *la renta*, a form of extortion, and physical assault.

Extortion

One of the main sources of income for both MS-13 and La 18 in all three Northern Triangle countries is the collection of *la renta*, a “security” tax and form of extortion. Members of MS-13 and La 18 will charge local business owners a tax for the gang’s “protection” of the business – protection from whom is unclear. The amount of rent a business owner is charged depends on the kind of business the owner is involved in and the amount of revenue the business brings in, with the fee usually oscillating somewhere between 10 and 40 percent of total revenue.⁴³ The amount

⁴¹ Federal Bureau of Investigations. "The MS-13 Threat: A National Assessment." January 14, 2008.

⁴² InSightCrime. *MS13 in the Americas: How the World’s Most Notorious Gang Defies Logic, Resists Destruction*. Publication. Center for Latin American & Latino Studies, American University. Washington D.C.: American University, 2018. 1-90. 24.

⁴³ InSightCrime. *MS13 in the Americas*. 40.

that the two gangs have made off of charging *la renta* alone has been estimated to be closed to \$31 million per year, with some *clicas* making up to \$17,000 per month from extorting businesses.⁴⁴ In Honduras, an InSight Crime survey of extortion victims has shown that a single *clica* could make upwards of \$2.5 million a year through extorting taxi and bus companies alone.⁴⁵ The victims of extortion are exclusively private citizens, and the corruption of government and local police forces, discussed in greater detail later, gives the citizens little alternative than to pay *la renta*. Locals know that there is no real option other than to cooperate with regard to *la renta*, as “complaints to the police about gang extortion are reportedly often relayed back to the gangs, which then exact severe retribution on the complainants.”⁴⁶ The extent that extortion remains un- or under-reported is vast, and it has been shown in a recent study that roughly 84% of businesses in El Salvador declined to report the extortion demands they faced for fear that the local authorities will relay the information back to the gangs.⁴⁷ Faced with the choice between an economic loss or a physical assault, the extent of which varies depending on the gang and the amount of *la renta*, most business owners are forced to cooperate at the expense of their livelihood.

Assault

Members of MS-13 and La 18 are the main perpetrators of sexual and physical assaults throughout the Northern Triangle. While the warring gangs engage in transnational inter-gang violence, civilians are nevertheless often victim to gang-related physical and sexual assaults. Civilian victims of physical assault are often targeted due to failed attempts at recruitment or

⁴⁴ InSightCrime. *MS13 in the Americas*. 40.

⁴⁵ Ibid. 40.

⁴⁶ United Nations High Commissioner for Refugees. “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador.” 2016. 24.

⁴⁷ Cantor, David James. “As Deadly as Armed Conflict? Gang Violence and Forced Displacement in the Northern Triangle of Central America’.” *Agenda Internacional* 23, no. 34 (2016). 77-97. 88.

collection of *la renta*, as “those who resist or thwart gangs’ efforts to gain financial, territorial, or political control suffer the consequences; gangs intimidate, coerce, torture, murder, and decapitate in service of these goals.”⁴⁸ The price for resisting or rebuking either gang’s activities is one’s physical security, and the retribution is swift. The frequency of demands for violent revenge exacted by gang leaders can be seen in a 2016 recording of an MS-13 meeting in El Salvador, where fourteen homicides of gang members, recruits, and civilians were authorized by gang leaders in the course of an hour; the same recording shows that five days later another 12 murders were authorized.⁴⁹ Whether the victims of these homicides were involved in gang activities or not is unclear, but it is likely that civilians were among the victims because a study conducted by the Guatemalan *Procuraduría de Derechos Humanos* [Attorney General for Human Rights] showed that 27.4% of deaths of those 25 and under from July 2002 to August 2003 were the result of gang attacks on civilians.⁵⁰ Murder is an extreme form of violence that civilians in gang-controlled areas are victim and witness to, however other physical and sexual assaults are similarly common. The victims of sexual assaults perpetrated by gang members are not limited by gender or involvement; men, women, civilians, and gang-members alike have fallen victim to assault by high ranking *mareros*: “Women are routinely abused and raped within the gang community... Gang members inside jail have been known to take advantage of their privilege with younger, incarcerated members, and gang members on the outside have been known to rape women without any consequences.”⁵¹ With gender and gang membership being of little consequence to who suffer

⁴⁸ Uchimaya, “Falling Through the Cracks.” 121.

⁴⁹ InSightCrime. *MS13 in the Americas*. 54-55

⁵⁰ World Bank. Sustainable Development Department and Poverty Reduction and Economic Management Unit Latin America and the Caribbean Region. *Crime and Violence in Central America: A Development Challenge*. By Rodrigo Serrano-Berthet and Humberto Lopez. 2011. 16.

⁵¹ World Bank. *Crime and Violence*. ” 26.

physical and sexual assaults committed by *mareros* there are few options to avoid becoming a victim.

MS-13 and La 18 engage in various criminal activities and forms of violence in the region, targeting *mareros* and civilians alike. The widespread violence that the citizens of the Northern Triangle nations face from the gangs has a direct link to the migratory trends of the region, and contributes to the growing number of Central American asylum seekers in the U.S. Given the demand of *la renta* and the widespread homicides, physical, and sexual assaults in the region, the asylum qualification of a “well-founded fear of persecution” has been met by the victims of gang violence in the Northern Triangle. The impunity that *mareros* are able to utilize in the Northern Triangle is a result of the state and security force’s failure to protect their citizenry and the following chapter will explore the ways in which the gang activities in the region constitute a “well-founded fear of persecution based on political opinion” by analyzing the gang infiltration of and widespread corruption within the region’s governments.

Chapter V. The Politics of Gangs

Violence in the Northern Triangle is rampant and perpetrated by two main armed groups, the gangs of MS-13 and La 18 and the state security forces. Both the gangs and the security forces in El Salvador, Guatemala, and Honduras foster a culture of violence by engaging in extremely violent confrontations with each other and civilians are often caught in the crossfire. The forces that are meant to protect victims of gang violence in the region spread violence similar to the gangs and have been shown to be either inefficient or corrupted by gang bribery. By being both unwilling and unable to protect their citizenry, the state has failed the victims of gang violence and has allowed the gangs to function as de facto political entities. The four previous chapters of this thesis have set out to define historical and legal definitions of asylum, to profile both the perpetrators and

victims of gang violence in Central America, and to show that the criminal activity threatening asylum-seekers from Central America constitutes a “well-founded fear of persecution.” This chapter will outline the ways in which gang violence constitutes political persecution in the Northern Triangle by showing how the government forces have failed to protect their citizens, how they have been corrupted by gang influence, and how the gangs have become legitimized political entities.

Failed Policies

The governments of the Northern Triangle nations have consistently failed in their efforts to combat gang violence in the region. Their attempts at combating MS-13 and La 18’s territorial control is evidence in the failure of the region’s *mano dura*, or “iron fist,” policies. The laws were first introduced in 2003 by then-President of El Salvador Francisco Flores Pérez and subsequently adopted by then-President of Guatemala Otto Pérez Molina and then-President of Honduras Ricardo Maduro. An extreme effort to eliminate the gang threat in Central America, the *mano dura* policies gave power to local police and federal security agents to arrest and interrogate individuals with impunity. In the first years of the program in the early 2000s El Salvador, security forces “carried out mass arrests without legal basis and made excessive and arbitrary use of detention, especially of youth suspected of being gang members. The security forces have reportedly subjected suspected gang members in their custody to severe physical mistreatment. Newspaper journalists reporting on these stories have reportedly received death threats.”⁵² Police and military forces in the region used *mano dura* as an excuse to propagate the same the widespread violence and fear-mongering tactics of the gangs in the name of security. Not only was the policy controversial for its contribution to the culture of violence in the Northern Triangle, but it did not

⁵² UNHCR. “Eligibility Guidelines.” 22.

have a marked effect on the criminal activities or influence of the gangs. When the *mano dura* policy was ultimately declared unconstitutional by the Salvadoran Supreme Court, an undeterred President Flores introduced the policy of *super mano dura*, a fortified version of the original policy. The policy was similarly unsuccessful, and *super mano dura* “is reported to have provided the impetus for gangs to become more organized and ruthless, whilst at the same time engendering among members of the security forces a lack of respect for the human rights of youth suspected of being gang members.”⁵³ As evidenced by the failed violent and overreaching tactics of *mano dura* and *super mano dura*, the Salvadoran, Guatemalan, and Honduran state security forces have not only failed to protect their civilian populations but their failure has resulted in an increase in gang organization and recruitment.

Despite the condemnation of *mano dura* policies by the United Nations, the heavy-handed approach remains popular with the current governments in the region. In El Salvador, for example, current Salvadoran President Salvador Sánchez Cerén has been criticized for continuing *mano dura* policies and being ineffective at combatting gang violence. The criticism comes after analysis of his anti-gang policies shows that homicide rates in 2018 reached levels comparable to the peak homicide rate in 2015.⁵⁴ Recent anti-gang policies in Guatemala have also failed, and in 2006 the United Nations and the Guatemalan government created the *Comisión Internacional contra la Impunidad en Guatemala* (CICIG) to create an international body in the nation to help prosecute organized crime and other complicated cases. The agreement came to an end on January 7th, 2019 when Guatemalan President Jimmy Morales’ expelled of CICIG despite objections from

⁵³ UNHCR. “Eligibility Guidelines.” 5.

⁵⁴ Silva Ávalos, Hector. "El Salvador Gangs Influence Local Politics in the Capital: Report." *InsightCrime*, July 9, 2018.

his country's Constitutional Court.⁵⁵ In 2019 Honduran President Juan Orlando Hernández has largely focused his anti-gang policies on continuing the ineffective *mano dura* policies by sending military and national police forces into the streets to arrest suspected gang members, and his presidency remains engulfed in controversy surrounding his avoidance to target drug-traffickers in Honduras and the violent suppression of protesters against his presidency.⁵⁶ The Northern Triangle nation's governments continued reliance on *mano dura* policies that have proven to be both repressive and ineffective and have allowed the ranks of MS-13 and La 18 to continue to grow.

Regional Corruption

It is not only policy failures that have contributed to government ineffectiveness in the Northern Triangle as the governments failures are further complicated by the region's extensive political corruption. The World Bank's Governance Indicators from 2008 show that levels of public trust in the governments of three nations are some of the lowest in the world and have continued to decline. Global measurements of the Indicator for Control of Corruption places Honduras in the bottom quintile and global measures of the Rule of Law places El Salvador in the bottom third of the world and Guatemala in the bottom 10%.⁵⁷ Corruption in the region is spearheaded by gang influences and interests and has been reported in the police, military, and judicial branches of each Northern Triangle nation.

Police Corruption

⁵⁵ Malkin, Elisabeth. "Guatemala Expels U.N.-Backed Anti-Corruption Panel, Claiming Overreach." *The New York Times*, January 07, 2019.

⁵⁶ Asmann, Parker. "Honduras President Selective When Targeting Criminal Crackdowns." *InsightCrime*, February 27, 2019.

⁵⁷ World Bank. *Crime and Violence*. " 11.

The corruption of police forces in the Northern Triangle is a widespread and critical problem; victims of gang violence are unable to trust the forces designated to protect them. As of 2010, 48.8% of Salvadorans, 65.9% of Guatemalans, and 47.2% of Hondurans surveyed in an AmericasBarometer study believe that their local police are involved in criminal activities.⁵⁸ This public distrust of police forces is due to frequent media reports of police officers' involvements in homicides, physical assaults, and gang activities and has created an environment where gang victims are unable to report criminal activity to the police. Recalling the description of *la renta* in Chapter IV, victims of extortion very rarely report the crime to the police for fear that the officer will report their complaint directly back to the gang that extorted them. What is more, "frequent arrests of high-level police officers who have been involved in organized crime rings while themselves leading the all-out war against gangs suggest, for example, that the scope of police reforms have been hindered by the very efforts expended in carrying out draconian wars against gang-led crime."⁵⁹ The policy failures mentioned earlier have contributed to levels of police corruption in the Northern Triangle nations and have intensified public distrust of security forces. The corruption of police forces further oppresses victims of gang violence and is one of the signs of the significant role that MS-13 and La 18 play in the politics in the region.

Military Corruption

Military forces in post-civil war Central America maintain a tense relationship with the public. The civil wars in El Salvador and Guatemala were marked by tumultuous military coups, widespread violence, and repression. Honduras was used as a military training ground for various C.I.A. backed counter-insurgent forces and the Battalion 3-16, a Honduran army unit that tortured

⁵⁸ Cruz, Jose Miguel. "Police Misconduct and Democracy in Latin America." *AmericasBarometer Insights* 33 (2010): 1-5. 2.

⁵⁹ Cruz. "Police Misconduct." 4.

and murdered political insurgents. In the twenty-first century, civilians still maintain a wary perception of the military and must frequently interact with the military since soldiers are often deployed to carry out police functions. The public's relationship to the military has not improved since this intense period in the twentieth century and the reported MS-13 and La 18 infiltration of military forces has done nothing to improve public trust. The relationships between the militaries and the gangs in the Northern Triangle are reciprocal as gang infiltration of the military is offset by military presence in the gangs and for most "it is no coincidence that many criminal syndicates there are run by retired military officers with political connections."⁶⁰ Furthermore, in 2002 the Guatemalan military's entire Anti-Narcotics Operation Department had to be disbanded after 320 officials were found to be on the payroll of local criminal leaders, aiding rather than eliminating the influence of drug traffickers and gangs in the country.⁶¹ The mutually beneficial relationship between the major gangs in the Northern Triangle and the military forces tasked with combatting them shows that the gangs are powerful enough to wield great influence over governmental security forces, further jeopardizing the safety of victims of gang violence.

Judicial Corruption

Corruption in the Northern Triangle is not limited to its security forces; should a crime reach a judiciary in the region its adjudication will still be subject to gang influence. The low level of prosecutions and indictments of gang members for their involvement in extortion, drug trafficking, or assault have shown that MS-13 and La 18 have influence in the courts. The Insight Crime analysis of MS-13 in the Northern Triangle references the case of *marero* Moris Alexander Bercián Manchón, a.k.a. "El Barney," tried for drug trafficking in El Salvador in 2009: "Since his

⁶⁰ Arana, Ana. "How the Street Gangs Took Central America." *Foreign Affairs* 84, no. 3 (2005): 98-110. 108.

⁶¹ Arana. "How the Street Gangs." 108.

capture, judges designated to hear the case have postponed hearings, suddenly become ill and even released Barney on his own recognizance only to have him flee when they reissued orders to capture him.”⁶² The case of “El Barney” in 2009 is one of many examples where gang influence results in judicial ineptitude in the Northern Triangle. It has been reported that in cases involving the prosecution of gang members, “various organs of the justice system appear to be acting in criminal complicity by lending a veneer of legitimacy to acts of judicial corruption... This has implications for other public agencies and sometimes involves illicit ties to individual attorneys or law practices.”⁶³ The expansion of corruption ties to attorneys and law practices shows that the entire criminal justice systems in place in El Salvador, Guatemala and Honduras are susceptible to corruption from MS-13 and La 18 influences. The strength of the gangs has allowed them to manipulate police, military, and judicial forces in the region and has aided in creating an environment of lawlessness surrounding gang activity. The victims of gang violence and gang crimes are left with little plausible recourse in pursuing justice for their suffering.

The impact that MS-13 and La 18 exert on security forces and judicial systems in the Northern Triangle shows that their influence in the region is inherently political. Having preferential influence within the very forces that are tasked with arresting and indicting the *mareros*, MS-13 and La 18 have established a firm standing within the political systems of El Salvador, Guatemala and Honduras.

Political Aspirations

⁶² InSightCrime. *MS13 in the Americas*. 43.

⁶³ *Evaluation of Judicial Corruption in Central America and Panama and the Mechanisms to Combat It: Executive Summary & Regional Comparative Study*. Washington, DC: Due Process of Law Foundation, 2007.4.

The first step that shows how MS-13 and La 18 are becoming more political in their structures is the establishment and maintenance of influence within the security forces and judicial systems in the Northern Triangle. The second step of their political transformation is made evident by "...their willingness to form a coalition with rival factions, by new tactics aimed at influencing the political process, and by their stated objectives to do more than earn money."⁶⁴ Factions of both MS-13 and La 18 are cooperating with one another in order to overpower political opponents that hinder their goals of financial and territorial gains. The structures and rivalries of the gangs are adapting in response to *mano dura* policies and their ability to infiltrate governmental forces and they are leveraging their power into political influence.

Gang Truce

The first time that members of MS-13 and La 18 were brought to the same negotiating table was the 2012 San Salvador gang truce. The truce was supported by the El Salvador government and the Catholic Church and lasted from 2012 until 2013, a year that saw a 50% decline in the nation's homicide rate.⁶⁵ The truce was mediated by government and church officials and was reached by negotiating less gang violence for more freedom for gang leaders in prisons. During the 2012 negotiations, "the Government recognized that all parties had a legitimate role in the dialog to ease the violence... the truce provided a framework for separate criminal organizations to create a single opposition political movement."⁶⁶ By involving gang-leaders in official negotiations the Salvadoran government recognized and therefore legitimized the role of gangs in the nation's security and politics. As part of the truce the Salvadoran government lessened

⁶⁴ Mcnamara, Patrick J. "Political Refugees from El Salvador: Gang Politics, the State, and Asylum Claims." *Refugee Survey Quarterly* 36, no. 4 (2017): 1-24. 8.

⁶⁵ Arce, Alberto. "El Salvador Throws Out Gang Truce and Officials Who Put It in Place." *The New York Times*, May 20, 2016.

⁶⁶ Mcnamara. "Political Refugees." 10.

restrictions on gang-leaders in prison and decreased raids on gang-led neighborhoods, thus establishing a political route for MS-13 and La 18 to join together and bargain for more favorable treatment from the state. When the truce ultimately dissolved in 2013, the gangs knew that they had influence within the government and used violent means to bring the government back into negotiations by proclaiming a transport strike and murdering city bus drivers who disobeyed.⁶⁷ Having negotiated with the government in an official capacity during the 2012 truce, the political roles of MS-13 and La 18 in El Salvador were essentially confirmed. As fundamentally transnational organizations, the gangs have continued to solidify their political status throughout the Northern Triangle.

Mara 503

The negotiations of the 2012 truce in El Salvador brought high-ranking members of MS-13 and La 18 together on the same side of the table, in effect producing a coalition of gang interests in the region. The power of their role in the negotiations has led some members from both gangs to deflect and create a supra-organization of both gangs' political interests called *Mara 503*: "Mara 503 spokespersons stated that they intended to seek greater political influence by participating in elections, controlling local elected officials, especially mayors, infiltrating police and military forces and taking over civilian associations."⁶⁸ While the influence of gangs in political structures in the Northern Triangle have since been based on more clandestine infiltration and corruption of political forces, *Mara 503* presents itself as an intentionally political group that means to exert even greater influence and control over political and security forces in the region. *Mara 503* is mostly active in El Salvador, however the Salvadoran government has issued alerts to authorities

⁶⁷ UNHCR. "Eligibility Guidelines." 6.

⁶⁸ Mcnamara. "Political Refugees." 12.

in Guatemala and Honduras regarding the likely spread of the gang over their borders. The 2018 account of a member of *Mara 503* being apprehended by U.S. Customs and Border Patrol shows that the influence of this new organization is spreading transnationally.⁶⁹ While the inter-gang cooperation and formation of *Mara 503* are recent to the twenty-first century, gangs have pursued political influence in the Northern Triangle since their introduction into the region's post-war government instability.

Law & Order

The inability and unwillingness of the governments of El Salvador, Guatemala, and Honduras to effectively combat MS-13 and La 18 within their borders is exacerbated by their institutional weaknesses. The instability and inefficiency of the region's governments has made it difficult for their citizens to access basic services and protections and in these instances' *clicas* of MS-13 and La 18 have stepped in to fill the void. The extent of the role that the gangs play in local services is dependent on the political and social capital that they have gained in the area. In areas that a faction has a strong foot-hold on *la renta* and territorial control, gang members have been shown to "act as an effective arbiter in domestic or neighborly disputes; participate directly in community associations or non-governmental organizations; provide votes (or impede them) in elections as well as other services for local political actors; and open the door to economic opportunity."⁷⁰ The absence of any police or government influence in gang-controlled areas creates an opportunity for the *mareros* to act as de-facto political organizations and provide services for the people living in their territory. In these areas the gangs are paid *la renta*, they engage in their criminal activities and export violence freely and are able to structure society to

⁶⁹ United States. Department of Homeland Security. Customs and Border Patrol. *MS-503 Gang Member Apprehended by Yuma Border Patrol Agents*. March 15, 2018.

⁷⁰ InSightCrime. *MS13 in the Americas*. 49.

their preferences. The corruption and inefficiency of state police, military, and judicial forces have created a political vacuum that members of MS-13 and La 18 have been all-too-willing to fill.

Chapter V has shown the extent to which factions of MS-13 and La 18 have influenced politics in the Northern Triangle. The combination of the failure of the Salvadoran, Guatemalan, and Honduran governments *mano dura* policies, the corruption of security and judicial forces in the region, and the politicization of MS-13, La 18, and *Mara 503* show that the current role of gangs in the Northern Triangle is inherently political. They have infiltrated standing government forces, begun to establish a semblance of a political party to export their ideals, and functioned as de facto governments in neglected territories. Following the UNHCR interpretation of political opinion to include ‘any opinion on any matter in which the machinery of State, government, society, or policy may be engaged,’⁷¹ victims of gang violence from the Northern Triangle qualify for political asylum in the U.S. based on a well-founded fear of persecution based on anti-gang political opinion.

Conclusion

The topic of analysis of this thesis merits further research regarding precedential case law concerning asylum and previous claims of political persecution. An analysis of adjudication of asylum claims for victims of terrorist organizations could be used in a comparison of the structure of terrorist organizations and international gangs. Additionally, any advocacy for the rights of gang victims in the U.S. would need to be judged against the current political environment and popular immigration-related rhetoric in the U.S.

⁷¹ United Nations High Commissioner for Refugees.” Guidance Note on Refugee Claims Relating to Victims of Organized Gangs.” March, 2010. 15

The right to asylum has been internationally protected in the Universal Declaration of Human Rights for over 71 years. The United States has been a signatory to the refugee protections codified in the 1951 Convention Relating to the Status of Refugees for 68 years. Turning our back on asylum seekers at our Southern border is not only amoral, it goes against international regulations that our nation agreed to over half a century ago. It would appear that our nation has always had a questionable asylum adjudication process, as a 1970 piece by famed refugee advocate Arthur Helton raises critiques that ring true today. Helton argued 39-years-ago that “The right to asylum itself is under attack. We hear often of a "crisis" in asylum in America. That crisis, however, lies not in the increasing numbers of asylum seekers, but rather in whether the right of asylum can withstand the expedient policy solutions which have until now governed the process.”⁷² The asylum process in the U.S. is not reflective of the conditions that asylum seekers flee, and the historical preference for communism defectors and European nations shows this. Not only is the U.S. a signatory to the 1951 Convention Relating to the Status of Refugees and therefore obligated to protect the world’s most vulnerable migrants, but when our nation’s policies and foreign interventions create political and criminal environments abroad that are unlivable for its people, we have a heightened responsibility to offer safety. Helton’s piece explains how partisanship and foreign policy have sullied the asylum process in the U.S. and highlights the risks of flexible policies. He states that “The notion that asylum may be denied as a matter of "discretion" is questionable under international and domestic law. Whether the "discretionary asylum" concept will be expanded to cover other situations remains to be seen. Any such expansion would risk swallowing whole the right to asylum.”⁷³ Echoing Helton, this thesis argues that the

⁷² Helton, Arthur C. "Political Asylum Under the 1980 Refugee Act: An Unfulfilled Promise." *In Defense of the Alien: Center For Migration Studies* 6 (1983): 201-06. 206.

⁷³ Helton. "Political Asylum." 205.

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right to asylum is not discretionary. An analysis of the circumstances of victims of gang violence in the Northern Triangle shows that there are legitimate claims to political asylum on the basis of a well-founded fear of persecution based on anti-gang political beliefs.

Glossary (alphabetical)

CBP	– Customs and Border Patrol, the federal enforcement agency of the Department of homeland Security
CICIG	– Comisión Internacional contra la Impunidad en Guatemala / The International Commission against Impunity in Guatemala
<i>Clicas</i>	– The Spanish word for local factions of gangs
DHS	– Department of Homeland Security
EOIR	– Executive Office for Immigration Review, the judicial branch of the Department of Homeland Security
FMLN	– Farabundo Martí National Liberation Front, one of major political parties in El Salvador
IIRIRA	– The Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA	– The Immigration and Nationality Act
La 18	– <i>Barrio 18</i> , the second most powerful gang in the Northern Triangle
<i>Mano dura</i>	– “the iron fist,” a set of harsh anti-gang policies in the Northern Triangle
<i>Mareros</i>	– the Spanish word for gang members
MS-13	– <i>Mara Salvatrucha</i> , the most powerful gang in the Northern Triangle
Northern Triangle	– refers to the nations of El Salvador, Guatemala, and Honduras
<i>Policia nacional civil</i>	– the Spanish translation of National Civil Police
<i>La renta</i>	– an extortion tax collected by the gangs
UDHR	– the United Nations Universal Declaration of Human Rights
UNHCR	– The United Nations High Commissioner for Refugees
USCIS	– United States Citizenship and Immigration Services

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