

October ____ 2006

Dear Senator,

We, the undersigned individuals and organizations, urge you to oppose the "Community Protection Against International Gangs Act" (S. 3946), a bill that would have devastating consequences on immigrant children, families, and communities across the nation. S.3946 threatens to tear families apart, in many cases hurting U.S. citizen siblings or children and permanent resident parents of presumed, and even rehabilitated, former gang members.

S. 3946 creates inadmissibility and deportability grounds for any alien who the Attorney General or Secretary of Homeland Security knows or has "reason to believe" either is a current or **former** gang member, or participated in "activities" that "promoted, furthered, aided, or supported" gang activity. This sweeping and overly broad definition would give the Department of Homeland Security (DHS) unprecedented, unfettered discretion to determine who is a gang member – resulting in criminalizing and removing youth who have not committed or been convicted of any crime, who are merely **suspected** of being gang members, as well as youth who have successfully broken from gangs and become productive members of society. S.3946 would also punish **mere association** with gang members, thereby ensnaring many innocents. Moreover, S.3946 is another jurisdiction stripping provision, depriving youth suspected of being gang members from due process and access to judicial review of the DHS' determination.

While we support punishing actual criminal activity, we believe this bill is unduly harsh, overly broad, and duplicative. Gang members who commit illegal acts are already subject to the criminal justice system for the act itself, as well as enhanced sentencing guidelines for gang activity under 8 U.S.C. §521. Additionally, immigrant gang members who commit criminal acts are already subject to far-reaching inadmissibility and deportability grounds. See 8 U.S.C. §1182(a)(2) and U.S.C. §1227(a)(2), and the DHS can and does deny applications for permanent residence on discretionary grounds, such as involvement in gang activity. See 8 U.S.C. §1255(a).

Unfortunately, many times children flee to the U.S. because they do not have the capacity to protect themselves from violence, forcible recruitment and coerced participation in gangs in Central American countries where the governments are unable or unwilling to control gang activity. Central American youth often join gangs under duress, after repeated threats and/or physical abuse for refusal to join. See *Marked for Death: The Maras of Central America and Those Who Flee*, 20 Georgetown Immigration Law Journal 407 (2006); *Young and Marked for Death, Expanding the Definition of Particular Social Group in Asylum Law to Include Youth Victims of Gang Persecution*, 37 RULJ 235, 239 (2005). There is also a strong correlation between gang membership and abuse, abandonment, and/or neglect. See *Central America and Mexico Gang Assessment*, USAID Bureau for Latin American and Caribbean Affairs Office of Regional Sustainable Development (April 2006) at 50, 75; *Seeking Asylum Alone, Unaccompanied and Separated Children and Refugee Protection in the United States*, Jacqueline Bhabha and

Susan Schmidt (June 2006); *The Silent Victims Children and Domestic Violence*, 26 Wm. Mitchell L. Rev. 775 at 786. Once in a gang, the only safe way out for these children is to disappear. S.3946 would deny refuge to these vulnerable youth and subject them to deportation, which for former gang members is equivalent to a death sentence.

Effective anti-gang strategies include supporting youth in their efforts to leave gangs and protecting them from the possible life threatening repercussions, not labeling and punishing them for their status and for making the decision to leave. S.3946 would punish former gang members who have chosen to leave the gang and reform their lives, refusing them admission and deporting them to countries where they may face interrogation, torture, detention and even death. The tragic case of Edgar Chocoy illustrates the grave consequences of S.3946. Edgar was only twelve years old when he joined a street gang in Guatemala. When he tried to leave that gang at age fourteen, he was threatened, beaten, forced into hiding, and chased at gunpoint. Edgar fled to the U.S. and sought asylum. Tragically, he lost his case and was deported. Seventeen days after his deportation, Edgar was shot to death on the streets of Guatemala by the same gang who had persecuted him in the past. See Boulder Weekly May 27, 2004, available online at: <http://www.boulderweekly.com/archive/052704/coverstory.html>

S. 3946 fails to adequately protect children by subjecting them to the same penalties as adults, even though the Supreme Court in *Roper v. Simmons*, 543 US 551 (2005) recognized that children do not have the same developmental capacity, *mens rea* or culpability as adults. The Roper Court further acknowledged that child delinquents must be treated differently than adult criminals because of their significantly higher likelihood of rehabilitation and reform. *Roper* at 569-70. Our juvenile justice system and immigration jurisprudence have also always distinguished between child and adult offenders. S.3946 represents a sharp departure from our nation's traditional concern for protection and rehabilitation of youth.

S.3946 is another misguided bill focused solely on enforcement for short-term political gain rather than addressing this country's need for immigration reform. We urge you to reject S.3946 and to support comprehensive, realistic immigration reform.

Sincerely,