District of Columbia Responses to Youth Violence:

Impact on the Latino Community

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Washington Lawyers' Committee
for Civil Rights and Urban Affairs

National Council of La Raza

Foley & Lardner, LLP

Piper Rudnick, LLP

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Executive Summary of Findings and Recommendations

FINDINGS

- The District of Columbia has failed to collect and analyze crucial data regarding the racial and ethnic makeup of youth involved in the criminal justice system, even though it is mandated to do so by federal law.
- Latino youth appear to be involved in the District of Columbia criminal justice system at a rate that is disproportionate to their representation in the population of the city and that is not readily explained by factors other than race.
- The District of Columbia City Council should not layer on new punitive juvenile justice provisions to a system which may be disproportionately affecting Latino youth without, at a minimum, obtaining the relevant data. If it does so, it opens the District to claims that the new laws will violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution and/or statutes that prohibit discrimination on the basis of national origin and ethnicity.
- The bills proposed before the City Council in the fall of 2003 would, if adopted, have led to the initiation of deportation proceedings against many Latinos.
- The Supreme Court of the United States has noted that deportation is an extreme penalty and a drastic measure, which is imposed in addition to any sentence or sanction applied in the criminal justice system. Immigrant offenders, therefore, can be punished far more severely than non-immigrants convicted of the same offense.
- Convictions for a very wide range of crimes, including many common misdemeanors, relatively minor crimes such as shoplifting, and almost any drug conviction, render a non-citizen deportable, and make almost all forms of immigration relief unavailable.

- Probation and both suspended and deferred sentences are all considered to be "convictions"; an individual sentenced only to probation for a minor crime, therefore, will often become deportable. Moreover, expungements, withdrawal of pleas, and deferred judgments do not erase convictions for immigration purposes.
- Conviction as a juvenile does not trigger these deportation provisions. However, if a juvenile is convicted in the adult system, the immigration consequences of that conviction will follow.
- The proposals brought before the City Council in the fall of 2003 would have made it easier to try juveniles as adults and therefore would result in the deportation of non-citizens convicted as adults of any of a broad range of crimes.
- For undocumented youth and their parents, proceedings in the adult criminal justice system would also likely lead to deportation, because the unavailability of confidentiality would allow immigration authorities to become aware of people involved in proceedings and their families, and no relief is available to undocumented persons.
- Similarly, the proposed provisions before the City Council diluting the confidentiality surrounding juvenile proceedings would likely lead to the deportation of undocumented youths and their families, because immigration authorities can easily learn about youths involved in proceedings and their families, and no immigration relief would be available.
- The proposals brought before the City Council in the fall of 2003 would have imposed criminal contempt convictions on parents of juveniles adjudicated "delinquent" in a broad range of circumstances, including failure of the parent to ensure that a child attend school or court hearings. Such convictions would likely be treated as convictions of "crimes of moral turpitude" and lead to deportation of the parent.
- Several of the bills introduced in the City Council in the fall of 2003 contained provisions impacting the ability of a family to obtain government services and benefits when a youth in that family is adjudicated "delinquent." These provisions would have had a particularly harsh impact on Latino families who have traditionally faced significant barriers in obtaining services and benefits in the District of Columbia.

- The punitive measures proposed by the City Council in the fall of 2003 have not been proven effective in combating crime.
- A number of studies have shown that the most effective strategies for combating youth crime are those that focus on education (such as after-school programs), skills training, individual counseling, and behavioral programs.
- The various proposals brought before the City Council in the fall of 2003 would have had tremendous negative impact otherwise on Latino youth and their families. Latinos, including those who have no relation to gangs and gang violence, would have faced deprivation of liberty and the separation of families. Although the consequences for Latinos would be unique because of immigration status and related concerns, the negative impact of the proposed bills would not be limited to Latinos, but rather would sweep in many vulnerable minority youth.

RECOMMENDATIONS

The Mayor and City Council for the District of Columbia should:

- Reject any efforts to revive punitive proposals brought before the District of Columbia City Council in the fall of 2003 which would potentially have a negative and disproportionate impact on Latinos and other persons of color.
- Incorporate additional elements of the Blue Ribbon Juvenile Justice and Youth Rehabilitation Act of 2004 (Bill B15-0673) and other positive rehabilitative measures into the Omnibus Juvenile Justice Amendment Act of 2004 for final adoption as law.
- Conduct oversight to ensure that the relevant District of Columbia government agencies improve their collection of data regarding criminal justice issues, disaggregate these data by race and ethnicity, compile the data in a readily understandable manner, and make them publicly available.
- Establish a mechanism for hearing and addressing the concerns of Latino community leaders and stakeholders regarding criminal justice issues.
- Call upon the relevant District of Columbia government agencies to enhance bilingual and culturally-competent services for Latino youth and families who

come into contact with the criminal justice system by, among others: a) recruiting, hiring, and training bilingual and culturally-competent personnel, including prosecutors, public defenders, and social workers; b) expanding bilingual and culturally-competent alternatives to detention programs and social service programs; and c) supporting effective community-based organizations in the Latino community which provide services to at-risk youth.

- Conduct oversight to ensure that the relevant District of Columbia government agencies: a) train their personnel, particularly public defenders and social service providers, regarding the immigration consequences of criminal sentences imposed on non-citizens; and b) develop guidelines prohibiting prosecutors and judges from taking immigration status into account as a negative factor in decisions about detention, transfer to adult court, and disposition.

I. Introduction

Over the past decade, the Washington, D.C. metropolitan area has become one of the top immigrant destinations in the country.[1] A significant number of the new immigrants are from Latin America, causing the existing Latino population to grow significantly. The 2000 Census calculated the percentage of Latinos in the District of Columbia at approximately 8%,[2] and most analysts believe that this number still represents an undercount resulting from continued failings in Census methodology. Despite the size of the immigrant population, lawmakers and government officials in the District of Columbia do not always consider the unique policy needs and concerns presented by Latinos and other immigrants.

Changes in laws affecting immigrants have an impact that goes far beyond the immigrant community. Since 40 million Latinos make up the nation's largest minority, and because 40% of the Latino population is foreign-born, the proposed changes to DC laws will have serious implications for the Latino community. Furthermore, since many Latinos live in mixed-status households and communities, meaning that undocumented immigrants, lawful residents, and U.S. citizens live interdependently, even measures that are aimed at the undocumented population have huge spillover effects on the larger Latino community. Moreover, many Latinos are mistaken for immigrants because of their appearance, accent, or surname.

It is imperative that policymakers not disregard the Latino population as they consider legislation currently before the District of Columbia City Council, which would amend the juvenile justice system in response to recent incidents of gang

1. The Brookings Institution, "The World in a Zip Code: Greater Washington, D.C. as a New Region of Immigration" (April 2001).
2. U.S. Census Bureau, 2000 Census Data.

violence, several of which have involved Latino youth. While District officials acted rapidly in the wake of gang encounters to suggest ways to impose a more punitive system on youths involved in gangs, including Latinos, these same officials did not act carefully to assess the negative impacts that the reforms might have on young Latinos and their families. Further, District officials largely ignored the recommendations of the Mayor's own Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform, which provide a sound blueprint for effective reform based on research and experience from around the country.

In the fall of 2003, City Council members introduced individual reform proposals, and the Mayor of the District of Columbia also introduced an omnibus juvenile justice reform bill.[3] Most of the measures sought to remove perceived leniency from the criminal justice system as it relates to juveniles.[4] A number of the proposals introduced in the fall of 2003, if adopted, would have led to extremely harsh and disproportionate consequences for Latinos youth and their families. First, measures that would make the juvenile justice system more punitive do not take into account the likely reality that Latinos are disproportionately represented in the current system and are thus much more likely to be negatively impacted by such proposals. Second, several of the proposed bills would result in severe immigration consequences for Latino youth caught up in the justice system, as well as their families, such that the actual punishment would far outweigh the seriousness of any crimes committed. Finally, several of the measures would result in a new basis for exclusion of Latino families from government services and benefits that have traditionally been unfairly inaccessible to them.

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3. See "Juvenile Justice Act of 2003," introduced by Phil Mendelson, Kevin Chavous, and Jim Graham (Bill B15-0574 [hereinafter called "Juvenile Justice Bill"]; "Juvenile Justice and Parental Accountability Amendment Act of 2003," introduced by Kevin Chavous (Bill B15-0460) [hereinafter called "Juvenile Justice and Parental Accountability Bill"]; "Restricting Minors' Access to Graffiti Materials Amendment Act of 2003," introduced by Jim Graham and Harold Brazil (Bill B15-0523); "Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003," proposed by Mayor Anthony Williams and introduced by Linda Cropp (Bill B15-0537) [hereinafter called "Omnibus Bill"]; "Public Access to Juvenile Justice Amendment Act of 2004," introduced by Kathleen Patterson, Jack Evans, Harold Brazil, and Sharon Ambrose (Bill B15-0666) [hereinafter called "Public Access Bill"]; "Blue Ribbon Juvenile Justice and Youth Rehabilitation Act of 2004," introduced by Adrian Fenty (Bill B15-0673) [hereinafter called "Blue Ribbon Bill"]; "Juvenile Justice Task Force Establishment Act of 2003," introduced by Harold Brazil (Bill B15-0573).

4. The exception was the Blue Ribbon Bill introduced by Council Member Fenty, which proposed a number of measures for improving rehabilitation possibilities for youth.

The various bills introduced in the fall of 2003 were considered by the Committee on the Judiciary on June 22, 2004, and that Committee voted out a single juvenile justice bill (Bill 15-537) to be known as the "Omnibus Juvenile Justice Amendment Act of 2004." This most recent version of the juvenile justice reform legislation eliminates many of the problematic measures contained in the bills proposed in the fall. However, the deliberative process has not concluded, and some of the negative measures previously proposed may surface again. In addition, the report of the Judiciary Committee specifically reserves at least one of the original measures, the Public Access to Juvenile Justice Amendment Act of 2004, for subsequent consideration.

Gang violence and gang-related issues in the District of Columbia require immediate attention and the implementation of strategies with demonstrated effectiveness. However, in crafting their response, policymakers must adequately consider whether their proposals provide meaningful deterrents and effective interventions that will help get youth back on the right track, while also ensuring that the juvenile justice system provide for consequences that fit the crime.

II. Disproportionate Representation of Latino Youth in the Criminal Justice System

Anecdotal evidence and the limited available statistics suggest that Latino youth are involved in the District of Columbia criminal justice system and are negatively impacted by that system at a rate that is disproportionate to their representation in the population of the city. However, the District of Columbia does not gather or make available data that would clarify to what extent Latino youth are suffering disparate negative impacts in the justice system.

Several of the measures proposed to the City Council would make the criminal justice system significantly more punitive for youth. To the extent that Latino youth are already disproportionately impacted by the current system, these measures would likely lead to new and more severe disproportionate consequences for Latinos.

A. Available Information Suggesting Disparate Treatment

Studies conducted at the national level have found that Latino youth are significantly overrepresented in the criminal justice system at almost all stages.[5] While the data are incomplete and patchy, it appears that Latino youth are arrested at disproportionately high rates in jurisdictions around the country.[6] For example, available data show that Latino youth are almost twice as likely as White youth to be arrested in Los Angeles County.[7] Latino youth are also generally incarcerated in

5. See, e.g., Building Blocks for Youth Initiative, Youth Law Center, *¿Dónde está la justicia? A Call to Action on Behalf of Latino and Latina Youth in the U.S. Justice System*, Executive Summary, at 2 (July 2002) [hereinafter *Justicia*], available at http://www.buildingblocksforyouth.org; *Disproportionate Minority Confinement Technical Assistance Manual*, prepared for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) (Feb. 2001), available at http://www.ncjrs.org/html/ojjdp/dmc_ta_manual [hereinafter "OJJDP Manual"].

6. *Justicia*, at 2.

7. *Ibid.*

adult jails and prisons at very high rates, which is not readily explained by factors other than race and ethnicity. Thus, in 21 states, Latino youth under age 18 are incarcerated in adult facilities at rates that are at least double the rates at which White youth are incarcerated in adult jails and prisons.[8]

The anecdotal evidence suggests that Latino youth are similarly represented disproportionately in the various stages of the criminal justice system in the District of Columbia. Professional social workers and Latino community advocates note, for example, that Latino youth appear to be charged as adults in circumstances in which non-Latinos are charged as juveniles. They cite, as an example, the fact that a young Latino man was charged as an adult in the wounding of a Metro bus driver, while non-Latino youths are sometimes treated as juveniles even in homicide cases.[9]

The extremely limited data available suggest that concerns based on anecdotal information are not misplaced. The District of Columbia Metropolitan Police Department (MPD) made available limited information regarding arrest rates of Latinos as compared to other ethnic groups in 2001. These data are outdated and do not focus on Latino youth, but they highlight some troubling trends. The data showed that, while the total number of arrests in the District of Columbia decreased from 1999 to 2000, the number of arrests of Latinos increased by almost 25%.[10] They also showed that MPD's Third District, which includes large concentrations of Latinos in the neighborhoods of Mount Pleasant, Adams Morgan, and Columbia Heights, saw more arrests than any other district, with the exception of the First District.[11]

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8. *Ibid*., at 3, tbl. 2; Race and Incarceration in the United States: Human Rights Watch Briefing (Feb. 27, 2002), at tbl. 7, available at http://hrw.org/backgrounder/usa/race.

9. See "New Charges are Filed in Gang-Related Shooting," *Washington Post*, at B2 (Nov. 4, 2003); "A Surge in Killings of Children; Access to Guns Linked to Rising Toll of Violence in District," Washington Post, at B5 (May 5, 2004). The authors do not suggest, of course, that the non-Latino youths should be treated as adults. Rather, the suggestion is that treatment of juvenile offenders should be consistent across racial lines and should be equally focused on rehabilitation for all similarly-situated alleged juvenile offenders.

10. Hogan & Hartson, LLP, *The Police and the Latino Community: Bridging the Discrimination Gap*, at 13 (May 2002) (available on file at the Washington Lawyers' Committee).

11. *Ibid*.

B. Lack of District of Columbia Statistics

Despite these indications that Latino youth are overrepresented in the various stages of the criminal justice system, there is currently no statistical information available in the District of Columbia breaking down the representation of youth in the system by ethnicity. As a result, it is currently not possible to evaluate the extent of the disparities that exist relating to Latino youth in the District.

In preparing this analysis, attorneys from the law firm of Piper Rudnick contacted all of the relevant District of Columbia agencies in an effort to collect numerical information on Latino youth with regard to arrests, prosecutions as adults, and incarceration as adults.[12] None of the agencies was able to provide the data requested. A number of individuals contacted at the government agencies seemed not to know what information was available or whether any information collected could be broken down by ethnicity. Most responded that whatever information was collected did not isolate Latino or Hispanic information. The only entity that indicated that it did disaggregate information by Latino ethnicity was the MPD's Central Crime Analysis Unit, which indicated that it gathered information relating to the levels of arrests of Latinos. However, the MPD has failed to respond in a timely manner to a Freedom of Information Act request seeking to obtain current data regarding Latino arrest rates.[13]

The District of Columbia has failed to collect and analyze these crucial data, even though it is mandated to do so by federal law. The Juvenile Justice and Delinquency Prevention Act has required local jurisdictions to address the problem of disproportionate minority representation in the criminal justice system since 1988, and has required local entities to gather data on minority representation for this purpose since at least 1992, when the law was amended to include this requirement.[14]

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12. Specifically, the attorneys contacted the District of Columbia Superior Court, the Metropolitan Police Department, the Juvenile Section of the Office of the Corporation Counsel, the United States Attorney's Office, and the Department of Corrections.

13. See Freedom of Information Act Request directed to Sergeant Joe Gentile from Monica Rojas (April 26, 2004) (available on file at the Washington Lawyers' Committee).

14. See Pub. L. No. 107-273 (2002) (originally enacted as Pub. L. No. 93-415, 42 U.S.C. 5601 et seq. (1974)); OJJDP Manual, at intro.

According to a Juvenile Justice Specialist of the Justice Grants Administration, Office of the Deputy Mayor for Public Safety & Justice for the District of Columbia, a program will be implemented in the future whereby the government will collect information for minority groups, including Latinos/Hispanics, on a range of issues including juvenile arrests, referrals to juvenile court, and cases transferred to adult court.[15] However, this program is extremely late in coming, and of course does not help with an analysis of the situation now.

The District of Columbia City Council should not layer on new punitive juvenile justice provisions to a system which may be disproportionately affecting Latino youth already without, at a minimum, obtaining and considering the relevant data. If it does so, it potentially opens the District to claims that the new laws, on their face or as applied, will violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and/or the various statutes that prohibit discrimination on the basis of national origin and ethnicity in law enforcement and other government programs.[16]

15. The information to be gathered is that dictated by the OJJDP Manual.

16. See Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d et. seq; Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §§3711 et seq; DC Human Rights Act, D.C. Code §2-1402.73.

III. Drastic Immigration Consequences of Proposed Legislation

It does not appear that policymakers have analyzed the serious immigration status consequences of the proposals to address gang violence concerns which were brought before the City Council in the fall of 2003. Several provisions of the proposed legislation, although not directed at immigration issues, nevertheless would have a huge impact on District of Columbia residents who are not U.S. citizens. These provisions would create a danger both for immigrant youth accused of criminal conduct and for families with any members who are not citizens of the United States, whether or not the juvenile involved is a United States citizen. Even casual brushes with the criminal justice system could have catastrophic immigration consequences, and might result in the permanent banishment of youths or family members from the United States, without hope of ever returning.

The measures proposed would lead to the initiation of deportation (now known as "removal") proceedings against many immigrants caught up in the criminal justice system either directly or indirectly. Cases not resulting in deportation would carry consequences almost as severe, such as an inability for an immigrant to leave the country and re-enter or obtain permanent legal status or citizenship.

Deportation is an extreme penalty, which is imposed in addition to any sentence or sanction applied in the criminal justice system,[17] resulting in a combination of punishments that is disproportionate to the crime. As noted by the United States Supreme Court, deportation is "a drastic measure…at times the equivalent of banishment or exile."[18] And this is a penalty that is imposed on some offenders but not on others; only immigrants, obviously, can suffer this particular type of "added on" punishment.[19]

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17. Individuals generally serve any criminal sentence imposed before immigration proceedings, eventually leading to deportation, are initiated. In most cases, individuals who were detained through the criminal justice system remain detained during the immigration proceedings even though those proceedings are civil in nature. As a result, immigrants often spend significantly more time in jail than non-citizens for the same crime.
18. *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948).
19. See Letter from the Latin American Youth Center, Mexican American Legal Defense and Educational Fund, and National Council of La Raza to Mayor Anthony Williams (January 13, 2003) (available on file with the Washington Lawyers' Committee).

A. Background on Current Immigration Laws

Individuals who are not citizens of the United States (referred to as "aliens" in governmental parlance) reside here for many different reasons. Non-citizens may have been in the United States for many years, possess Social Security numbers and driver's licenses, hold down jobs, own homes, and speak perfect English. They may be immigrant visa holders, or Lawful Permanent Residents (LPRs), who have green cards and are eligible to reside in the U.S. permanently. Or they may be non-immigrant visa holders (with different statuses, depending on their immigration classifications) who can stay in the U.S. for proscribed periods of time as long as they continue to engage in the qualifying activity for their specific non-immigrant status. Tourists, students, businessmen, investors, healthcare providers, certain categories of employees, diplomats, and religious workers fall into the non-immigrant classifications. Finally, individuals may be present in the United States without authorization by virtue of undocumented entry or by falling out of status.

In recent years, the chances that a non-citizen would be removed from the United States – even a permanent resident legally authorized to remain here indefinitely – have increased dramatically. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) diminished eligibility for immigration relief that formerly could be granted on grounds of hardship, long residence, or family ties.

1. Crimes with Immigration Consequences

The immigration consequences of alleged criminal behavior thus can be, and often are, far more severe than any criminal penalty attached to the same behavior. Conviction of certain crimes may result in deportation or removal, a prohibition on re-entry into the United States after departure, and denial of other immigration benefits, such as LPR status. Convictions of these crimes, and even lesser crimes, will also result in the inability of an LPR to obtain citizenship and integrate fully into the political and social fabric of United States society.

The Immigration and Nationality Act (INA) defines those criminal convictions which render non-citizens in the United States subject to deportation and other immigration sanctions.[20] The INA is applicable to "any person not a citizen or

20. INA § 237(a)(2)(A), 8 U.S.C. §1227(a)(2)(A).

national of the United States."[21] Thus, the grounds set forth in the INA apply to both illegal and legal immigrants, including LPRs.

The relevant categories under 237(a)(2)(A) of the INA are as follows:

(a) Aggravated felonies. The definition of "aggravated felonies" has been progressively expanded over recent years, and now includes many common misdemeanors.[22] Conviction of an aggravated felony automatically makes a non-citizen deportable, as well as ineligible for almost all forms of relief (short of a presidential or gubernatorial pardon). Furthermore, non-citizens convicted of committing aggravated felonies are permanently barred from returning to the United States as immigrants. Detention is also mandatory for non-citizens who are in removal proceedings due to conviction of an aggravated felony.[23]

One of the broadest and perhaps more controversial categories for deportation results from the inclusion of "crimes of violence… for which the term of imprisonment imposed [is] at least one year" within the definition of "aggravated felony."[24] A "crime of violence" is:

- An offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- Any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

The courts have found an extremely broad range of crimes to constitute "crimes of violence." The term has been found to encompass, for example, lewd assault, menacing, false imprisonment, and even driving while under the influence.[25] Most recently, the Board of Immigration Appeals determined that a California state

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21. INA § 101(a)(3), 8 U.S.C. §1101(a)(3).
22. INA §101(a)(43), 8 U.S.C. § 1101(a)(43).
23. *Demore v. Kim*, 123 S. Ct. 1708 (2003).
24. INA §101(a)(43)(F), 8 U.S.C. §1101(a)(43)(F).
25. See respectively, *Ramsey v. INS*, 55 F.3d 580 (11th Cir. 1995); *U.S. v. Drummund*, 240 F.3d 1333 (11th Cir. 2001); *Bovkun v. Ashcroft*, 283 F.3d 166 (3d Cir 2002); *Brooks v. Ashcroft*, 283 F.3d 1268 (11th Cir. 2002); In re Ramos, 23 I. & N. Dec. 336 (BIA 2002) (finding that a DUI may constitute a crime of violence).

stalking offense for harassing conduct, without any physical element, constitutes a "crime of violence" and therefore an aggravated felony for immigration purposes.[26]

In addition to "crimes of violence," other relatively minor crimes are considered aggravated felonies. For example, any theft offense for which the term of imprisonment is at least one year is an "aggravated felony," sweeping into this category some persons who have been convicted of shoplifting.[27] Certain fraud crimes also fall within the "aggravated felony" category regardless of the sentence that could be imposed.[28]

(**b**) **Crimes of moral turpitude.** There is no statutory definition of "crimes of moral turpitude." However, a wide range of crimes is considered to fall within this category, including everything from fraud to robbery to intentional passing of bad checks to forgery.[29]

A non-citizen may be deported if convicted of a crime of moral turpitude committed within five years after the non-citizen entered the country and a sentence of one year or more could have been imposed. Also, a non-citizen may be deported if he or she has more than one conviction for a crime of moral turpitude (not arising out of the same scheme), regardless of when the offense was committed and regardless of the sentence imposed. In this case, when there is more than one conviction for crimes of moral turpitude, detention of the non-citizen during immigration hearings is mandatory.

If a non-citizen has pled or admitted to the essential elements of a crime of moral turpitude, leaves the country, and then tries to come back, the non-citizen may be declared inadmissible. This can happen even if the non-citizen is an LPR, committed the offense more than five years earlier, and was not sentenced. Non-citizens already in the United States would be prevented from applying for LPR status under similar circumstances, because applications for LPR status are considered requests for "admission."

(**c**) **Controlled substance violations.** Drug convictions are treated with particular harshness under immigration regulations. Almost any drug conviction, under

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26. Matter of Malta, 23 I&N Dec. 656 (BIA 2004).
27. INA §101(a)(43)(G), 8 U.S.C. § 1101(a)(43)(G).
28. INA § 101(a)(43)(M), 8 U.S.C. § 1101(a)(43)(M).
29. INA § 212(a)(2)(i), 8 U.S.C. § 1182(a)(2)(i); INA § 237(a)(2)(i), 8 U.S.C. § 1227(a)(2)(i).

any state, federal, or foreign law (except for the possession of small amounts of marijuana for personal use), renders a non-citizen both deportable and nonreadmissible.[30] So, re-entry into the United States upon departure would not be permitted, nor would adjustment to LPR status. Although in some cases, an LPR convicted of a drug-related offense may be eligible for relief from the immigration consequences, a conviction for drug trafficking (an aggravated felony) renders all offenders ineligible for discretionary relief.[31]

(**d**) **Firearms offenses.** If, at any time after entry into the United States, a non-citizen is convicted of buying, selling, trading, using, or possessing a firearm, he or she is deportable.[32] Furthermore, any crime in which the use of a firearm is an essential element of the offense is automatically a firearms violation. Detention is mandatory for non-citizens who are in removal proceedings due to a firearms conviction.

(**e**) **Domestic violence.** Domestic violence is defined very broadly and, regardless of the sentence imposed, convicted offenders may be deported.[33]

2. Broad Definition of "Conviction" under Immigration Law

Immigration regulations have their own definition of "conviction," which is much broader than a commonsense understanding of the term would suggest. Any finding of guilt or confession of guilt, or even admission without a formal pleading of guilt, is sufficient to establish a conviction for immigration purposes. The controlling factor in determining a conviction is an admission by the offender of the essential elements of the offense charged, followed by a restraint on the offender's liberty.[34] Probation and suspended or deferred sentences are all deemed "restraints on liberty," and thus are all considered to be convictions.[35] Convictions for an

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30. INA §237(a)(2)(B), 8 U.S.C. § 1227(a)(2)(B); INA §212(a)(2)(B), 8 U.S.C. § 1182(a)(2)(B).
31. INA §101(a)(43)(B), 8 U.S.C. § 1101(a)(43)(B).
32. INA § 237 (a)(2)(C), 8 U.S.C. § 1227(a)(2)(C).
33. INA §237(a)(2)(E), 8 U.S.C. § 1227(a)(2)(E).
34. INA §101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A).
35. INA §101(a)(48)(B), 8 U.S.C. § 1101(a)(48)(B). In addition, it is not altogether clear whether the calculation of the length of sentence imposed requires reference to the actual sentence imposed or to the sentence that could have been imposed under the law. So, there may be cases in which an immigrant would be considered to have a conviction leading to deportability when sentenced to six months probation even where the INA requires a one-year sentence for a deportation ground to be triggered, because the possibility existed that a one-year sentence could have been imposed.

attempted offense or conspiracy to commit an offense are considered convictions for the underlying offense.[36]

Moreover, expungements, withdrawal of pleas, and deferred judgments pursuant to a state rehabilitative statute do not erase convictions for immigration purposes.[37] Even a conviction that is vacated continues to stand as a conviction if it was vacated for immigration purposes.

The immigration consequences of criminal convictions for relatively minor crimes, even those in which sentences imposed are light, are drastic when these various provisions are read together.

Some examples of the consequences include the following:

- *An LPR who has lived in the United States for most of his life may be deported if he is convicted of DUI (an aggravated felony) and sentenced to a year of probation.*
- *An LPR with no ties to his home country could nonetheless be deported there if he is convicted one time for possession of a firearm or for possession of narcotics, even if this conviction were later expunged.*
- *An immigrant from El Salvador with Temporary Protected Status or other interim legal status might be prevented from ever becoming an LPR, even if he qualifies to do so based on family relations or exceptional work skills, if he is convicted for passing bad checks "a crime of moral turpitude" and is given a suspended sentence of one year.*

36. For immigration purposes, section 101(a)(48) of the INA defines "conviction" as "a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where i) judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed." 8 U.S.C. §1101(a)(48).

37. Matter of Roldan, 22 I&N Dec. 512 (BIA 1999).

3. Other Grounds of Deportability

Immigrants who do not possess current documented status in the United States are always deportable.[38] Almost no relief is available for such immigrants if they come to the attention of the immigration authorities through involvement in criminal justice proceedings or otherwise. Consideration is not generally given to humanitarian factors. As a result, undocumented immigrants will be deported even if they were brought to the United States as infants by their parents and know no other country, and even if they have United States citizen children who will effectively be deported along with them.

B. Immigration Impact of Proposed Bills on Juveniles

1. Impact of Bills Involving Youth in the Adult Criminal Justice System

The City Council proposed a series of bills in the fall of 2003 that would have made it easier to prosecute juvenile offenders in the adult criminal justice system. At least two of these bills would have made it easier to try children as young as fifteen years old as adults.[39] In addition, the legislation proposed by Mayor Anthony Williams would have established a presumption that cases would be tried in the adult criminal justice system; and would have transferred the burden of proof to defendant youths to demonstrate that they were not a threat to the public and that they could be rehabilitated in the juvenile system, in order to avoid transfer to adult court.[40] Fortunately, in voting out the Omnibus Juvenile Justice Amendment Act of 2004, the Committee on the Judiciary rejected an approach that would have made it easier to try youth as adults, and these measures are not included in the current bill.

Any effort to revive proposals to treat more juveniles as adults should be immediately quashed by the City Council. The immigration consequences for youth who would be treated as adults under any such proposal are severe.

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38. INA § 237(a)(1)(B), 8 U.S.C. 1227(a)(1)(B).
39. See Juvenile Justice and Parental Accountability Bill; Omnibus Bill.
40. See Omnibus Bill.

In general, the criminal deportation grounds described above do not apply to juvenile offenders. A finding of juvenile delinquency is not a "conviction" for immigration purposes.[41] Thus, juvenile offenders who are not U.S. citizens or nationals are not inadmissible or deportable on the sole basis of a juvenile conviction.[42] However, once a juvenile enters the adult system, the juvenile "protections" of delinquency no longer apply in the immigration context. If a state court convicts a juvenile in adult criminal proceedings, this conviction will no longer be considered an act of delinquency, but rather will be considered a conviction for the purposes of immigration law.[43] Thus, if a juvenile is convicted in adult court of any of the crimes described above, s/he is subject to removal from the United States.

If proposals making it easier for juveniles to be tried as adults were adopted, much greater numbers of Latino immigrant youth would receive adult convictions and would face the additional penalty of deportation, a consequence probably not considered by the Council. While the proposals brought before the City Council in the fall of 2003 were intended to address the serious problem of gang violence, they were so broad as to affect many youth, including Latino immigrants, who have absolutely no connection to gang violence. And given the range of crimes leading to deportation under the immigration laws, many of the adult convictions mandated under the proposals would result in the harsh punishment of banishment.

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41. *Ibid*.; Matter of De La Nues, 18 I&N Dec. 140 (BIA 1981); Matter of Ramirez-Rivero, 18 I&N Dec. 135 (BIA 1981).

42. There are only two instances in which a juvenile court finding can create adverse immigration effects: 1) a finding, based on commission of an offense, which if committed by an adult would constitute a felony crime of violence, will disqualify the juvenile from the Family Unity Program (Section 283 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amending Section 301(e) of the Immigration Act of 1990;8 U.S.C. 1266a note) and 2) a finding of violation of a domestic violence TRO can trigger deportation. See INA § 237(a)(2)(E); 8 U.S.C. §1227(a)(2)(E).

43. While the Board of Immigration Appeals has held that federal law governs whether an offense is considered an act of delinquency or a crime, the First Circuit has held that "[o]nce adjudicated by the state court, as either a juvenile or an adult, we are bound by that determination," noting that neither "we [the First Circuit] nor the BIA have jurisdiction to determine how a state court should adjudicate its defendants." See Vieira Garcia v. I.N.S., 239 F.3d 409, 413 (1st Cir. 2001).

An example of the potential consequences to immigrant youth can be found in the case of Mr. AC.[44]

> *Mr. AC is an LPR who entered the United States as a young child. He and his entire family, including his mother and sister, have lived legally in the United States as either legal permanent residents or U.S. citizens. His mother obtained her legal residency through a domestic violence immigration program that provides relief to battered spouses of United States citizens. At the age of 19, Mr. AC was convicted as an adult of credit card fraud. He was sentenced to one year probation and six months suspended sentence. As a result, he became deportable. He was detained by the immigration authorities and was recently ordered removed to his home country, where he has no family or friends.*

In other cases, the proposed laws might actually reach their intended targets of gang members or ex-gang members and result in adult convictions for those young people. The likely consequence of deportation in those instances might result in even more severe harm to youth beyond that intended or considered by the Council. In the Latin American countries to which gang members may be deported, gangs often have an even stronger presence than in the United States, and law enforcement officials are much less able to control them. Youth who have served jail time in the United States and have consequently made the decision to leave the gang life, or are perceived to have done so, may be seriously injured or killed by gang members in

44. Mr. AC's full name has not been used to preserve confidentiality, but the facts are true. The information regarding this case was provided to us by the Capital Area Immigrants' Rights (CAIR) Coalition.

their home countries who consider them to be traitors. The City Council certainly does not intend to impose the death penalty on Latino gang members, but that would be the likely effect of the legislation proposed in the fall of 2003.

This possibility is not merely hypothetical. The case of a teenager killed by gangs upon deportation to his home country recently made headlines in the United States.[45]

Edgar Chocoy came to the United States from Guatemala. While here, he fell in with a gang and eventually was convicted for serving as a lookout at a crime scene. While in juvenile jail, he rehabilitated himself and even removed his gang tattoos. However, when he completed his criminal sentence, immigration authorities initiated deportation proceedings. The youth told his immigration judge that he would be persecuted by gangs in Guatemala if returned home, because he had abandoned gang life. He was nonetheless deported to Guatemala and was killed by "a gang" only 17 days later.

45. "Death of a deportee: Back in Guatemala, teen slain by gang he tried to escape," *The Denver Post* (April 5, 2004).

A case with the possibility for a similar outcome has recently presented itself in the Washington, D.C. area.[46]

Carlos, a young man from El Salvador who came to the United States to flee gang life in his home country, is being detained in regional county jail in Virginia pending deportation proceedings. Carlos came to the United States at the age of 18, met and became engaged to a United States citizen, and had a daughter. His United States citizen daughter is now only six months old. Carlos also has several other family members in the United States, including an LPR sister.

Carlos was arrested twice for crimes relating to his use of marijuana in 1999 and 2000. He is now in deportation proceedings that will likely remove him from his infant daughter and the rest of his family in the United States. Carlos also fears that gang members will find him and kill him if he returns to El Salvador.

In addition to the risks for Latino youth in legal status in the United States, for undocumented youth, any brush with the law that results in proceedings in the adult criminal justice system would likely lead to deportation. Even for youth not found to have engaged in criminal conduct, the immigration consequences would be the same.

Because youth involved in adult proceedings do not enjoy any confidentiality protections, the immigration authorities generally become aware of young people involved in such proceedings. Once the immigration authorities become alerted,

46. Carlos' full name has not been used to preserve confidentiality, but the facts are true. The information regarding this case was provided to us by the Capital Area Immigrants' Rights (CAIR) Coalition.

they may (and probably will) deport the youth regardless of the final results of the criminal proceedings. Even if charges are dropped or a jury finds the youth not guilty, a deportation would likely ensue. The youth's undocumented status would be sufficient to allow for his deportation, and no consideration would be given either to the ties that he had developed in the United States or to any other factor. Thus, the penalty imposed on a Latino immigrant youth found not to have been involved in criminal activity would, in the end, be much worse than that which would be imposed on a United States citizen found guilty of a serious crime.

2. Impact of Bills Diluting Confidentiality of Juvenile Proceedings

Several of the bills introduced before the City Council in the fall of 2003, as well as the Omnibus Juvenile Justice Amendment Act of 2004 voted out of the Committee on the Judiciary, would dilute the confidentiality of juvenile proceedings by allowing for much greater sharing of information from juvenile records between governmental agencies and law enforcement officials. Another bill still under consideration would go further, and explicitly mandate that juvenile delinquency hearings be opened to the public, except in limited circumstances.[47] The motivation behind these proposals appears to be an effort to ensure greater accountability in the juvenile justice system both to the public and to crime victims.

However, lifting confidentiality would have severe consequences for undocumented immigrants caught up in the juvenile justice system. If these proposals are adopted, the involvement of youth in juvenile proceedings would also likely come to the attention of immigration authorities. As with youth involved in the adult criminal justice system, the consequences would be extremely harsh regardless of the final results of the proceedings. Even those youth who were absolved of any guilt would likely face deportation, because their interactions with law enforcement would have brought them to the attention of immigration officials. No consideration would be given to their innocence or to their situation in the United States. As a result, a child brought here as an infant by his parents could be removed from the only home that he knows as a result of his mere involvement in juvenile justice proceedings.

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47. See Public Access Bill.

C. Immigration Impact of Proposed Bills on Parents

1. Impact of Bills Sanctioning Parents

Several of the legislative proposals placed before the City Council in the fall of 2003 would have imposed significant sanctions on the parents of youth involved in the criminal justice system. One bill would have imposed administrative fines on parents of all youth adjudicated "delinquent," without any requirement that parental culpability be established.[48] Going even further, the Mayor's omnibus legislation and the Juvenile Justice Act of 2003 provided for the possibility of criminal contempt convictions for parents of juveniles adjudicated "delinquent."[49] Those bills would have allowed parents to be fined up to $1,000 and to be imprisoned for up to 180 days. Pursuant to these proposals, criminal contempt convictions could be imposed if, among other things, a parent failed to attend certain court hearings or social services meetings, if a parent failed to guarantee the attendance of his/her child for such meetings or hearings, or if a parent failed to ensure that his/her child complied with curfew and school attendance requirements.

Fortunately, most of these punitive proposals directed at parents have been removed from the Omnibus Juvenile Justice Amendment Act of 2004. They should not be revived for several reasons.

First, studies have not shown that such measures imposing consequences on parents for the delinquency of their children are an effective deterrent to delinquent conduct. Second, in addition to punishing parents if they fail to fulfill the impossible mandate of exercising complete control over their children, these measures would likely lead to severe immigration consequences for the parents of youth adjudicated "delinquent." Criminal contempt convictions may be considered to be crimes of moral turpitude under the immigration laws.[50] As outlined above, an immigrant convicted of two crimes of moral turpitude becomes deportable even if that person has lived for many years as an LPR in the United States. The sentence imposed is irrelevant.

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48. While local statutes imposing liability on parents for the harm or damage caused by their children's activities are not uncommon, this statute goes further by imposing a sanction, in the form of a fine, on the parent without regard to damages or harm caused.
49. See Omnibus Bill; Juvenile Justice Bill.
50. See In the Matter of P, 61 I&N Dec. 400 ((BIA) 1954).

Thus, if the proposed criminal contempt statutes were adopted, a parent could be stripped of his/her legal status in the United States and deported as a result of his/her child's minor transgressions. Such harsh consequences are surely too extreme.

> *For example, criminal contempt convictions could be imposed on a parent and deportation ensue if a child missed school on one occasion and the child's parent then missed a meeting with a social services agency on another occasion. This result could occur even if the parent's failure was considered to be sufficiently minor so as to warrant only the imposition of a fine.*

2. Impact of Bills Diluting Confidentiality

The various measures described above that would dilute the confidentiality of juvenile proceedings may also have a collateral negative impact on the parents of youth involved in juvenile proceedings, particularly those parents who are undocumented. If information regarding a case becomes public, it is significantly more likely that immigration authorities will learn about the situation and seek to initiate deportation proceedings. Undocumented parents could easily be caught up in such immigration enforcement and, again, would have little defense against deportation. Parents might not ever have had any personal interaction with law enforcement and would likely never have had any reason to come to the attention of immigration authorities through their own actions. Yet, they may face the extreme penalty of deportation when a case involving their children became notorious.

IV. Negative Impact on Access to Services and the Safety Net

Several of the bills introduced in the fall of 2003 to address gang violence concerns included additional provisions impacting the ability of families to obtain government services and benefits if a youth in the family were adjudicated delinquent. One bill would have required the suspension of the operator's permit of the parent or legal guardian of a child adjudicated delinquent for a period of two weeks to six months.

The Juvenile Justice and Parental Accountability Amendment Act of 2003 would also have allowed records of juvenile arrest and adjudication to be shared with, among others, MPD, the District of Columbia Department of Human Services, and the District of Columbia Housing Authority. The legislation stated that this information would be shared with the Housing Authority "for the express purpose of determining parental eligibility for assisted housing." Similarly, the Juvenile Justice Act of 2003 would have required reporting of information regarding certain juvenile adjudications to, among other agencies, the District of Columbia Public Schools, the District of Columbia Housing Authority, and MPD.

In voting out the Omnibus Juvenile Justice Amendment Act of 2004, the Committee on the Judiciary again made an appropriate decision to exclude most of the proposals that would have seriously hindered the ability of immigrant families to receive government benefits and services. It is highly unlikely that these proposed reforms would have deterred crime, and they would almost certainly have had an extremely negative impact on immigrant families struggling to survive.

Loss of a driver's license may result in job loss if having one's own transportation is required for continued employment or to get to work. The family would be put at severe risk if housing were lost. Because of this negative impact, the proposed statutes would most likely increase instability in the home, thereby increasing rather than decreasing the likelihood of continued juvenile delinquency.

The provisions limiting access to government services and benefits would have had a particularly harsh impact on Latino families who have traditionally faced significant

barriers in obtaining services and benefits. The difficulties suffered by Latinos in this regard have been documented for many years.

After the Mount Pleasant disturbances, the United States Commission on Civil Rights concluded, in a final report issued in January 1993, that the District of Columbia government was responsible for discrimination against Latinos on a broad range of issues, including housing.[51] A decade after the Mount Pleasant disturbances, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, working with a Review Panel of experts and nine area law firms, found similar levels of discrimination by District of Columbia government agencies and exclusion from government programs.[52] The Washington Lawyers' Committee study, released in May 2002, found that language barriers existed across the range of government agencies, despite provisions in federal law mandating that agencies provide interpretation and translation services as necessary to ensure the access of limited-English-proficient persons. The study also found that Latinos and other immigrants were often excluded from government programs because agencies did not understand immigration status issues and did not properly apply immigrant eligibility requirements.

Thus, for example, the 2002 study found that Latinos were excluded at a disproportionate rate from public, subsidized, and assisted housing programs run by the District of Columbia Housing Authority. The percentage of Latinos on the Housing Authority waiting list for public housing actually declined from 1991 to 1998 (from 1.7% to 0.9%) despite the fact that the need for low-income housing for Latinos increased during the 1990s. In 2001, although Latinos made up at least 8% of the population in the District, they held only 1.3% of Section 8 vouchers and 1.2% of Section 8 project-based units. In heavily Latino-occupied Ward 1 of the District, Latinos occupied only 2.2% of the public housing units and held 17% of the Section 8 vouchers allotted in this area of the city.[53]

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51. See United States Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination*: *The Mount Pleasant Report* (Jan. 1993).

52. See "A Place At The Table: Latino Civil Rights Ten Years After The Mount Pleasant Disturbances, Conclusions And Recommendations Of The Civil Rights Review Panel" (May 2002) (available on file at the Washington Lawyers' Committee).

53. *Ibid.* at 16.

Because Latinos are already excluded at a higher rate from government programs, any bill that would make it more difficult for families to obtain services and benefits would be particularly disastrous for Latino families. The extremely small possibility that Latino families would manage to obtain access to such programs would be altogether eliminated for many families. In fact, because it is likely that Latinos are also disproportionately represented in the juvenile justice system, the bills could be seen as layering one governmental policy with a disparate impact against Latinos upon another. These measures limiting access to government services thus should not be included in the final juvenile justice reform legislation.

V. Conclusions

The various proposals brought before the City Council in response to incidents of gang violence in the District of Columbia in the fall of 2003 would have had a tremendous negative impact on Latino youth and their families. Latinos, including those with no relation to gangs and gang violence, would have faced deprivation of liberty and the separation of families. Of course, although the consequences for Latinos would be unique because of immigration status and related concerns, the negative impact of the proposed bills would not have been limited to Latinos. The bills were expansive, and all youth of color – including African Americans as well as Latinos and other immigrant groups – would have been at particular risk of getting caught up in the punitive criminal justice system initially proposed in response to the incidents of gang violence in 2003.

Unfortunately, this price to be paid by Latinos and others who interact with the criminal justice system would not buy any guarantees that gang violence would disappear in the District of Columbia. The punitive measures originally proposed by the City Council have not been proven effective in combating crime.[54] In fact, because harsh measures adopted in the 1980s and 1990s have proven largely ineffective in addressing violence, the pendulum has begun to swing back in many states away from "law and order" measures and toward a more balanced approach.[55]

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54. See, e.g., Pamela K. Graham, "Parental Responsibility Laws: Let the Punishment Fit the Crime"; 33 Loyola L.A. L.Rev. 1719, 1730 (2000) (noting that juvenile crime rates have risen since states began to enact parental responsibility statutes); American Youth Policy Forum, "Less Hype, More Help: Reducing Juvenile Crime, What Works - and What Doesn't" (2000), available at http://www.aypf.org (finding programs that urge "adult time for adult crime" to be ineffective).

55. See "Juvenile Justice: A Century of Change, 1999" Nat'l Rep. Series, Juv. Just. Bull. (Office of Juvenile Justice and Delinquency Prevention, Wash., D.C.) (Dec. 1999).

A number of studies have shown that the most effective strategies for combating youth crime are those that focus on education (such as after-school programs), skills training, individual counseling, and behavioral programs.[56]

The City Council has wisely eliminated from the Omnibus Juvenile Justice Amendment Act of 2004 the most problematic proposals, and should not renew consideration of the punitive proposals originally put up for consideration. In developing the Omnibus Juvenile Justice Amendment Act of 2004, the City Council, through the Committee on the Judiciary, has begun to place greater focus on alternative approaches to juvenile justice which adequately take into account the social service and educational needs of at-risk juveniles. The City Council is encouraged to take further strides in this positive direction as it approves legislation to reform the juvenile justice system. While innovative rehabilitative approaches may not satisfy those who urge a swift and stern response to the incidents of gang violence that have taken place, they are more likely to have the true desired effect of diminishing crime.

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56. M. Lipsey, et al., "Effective Intervention for Serious Juvenile Offenders," *Bulletin* of the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (April 2000), available at http://www.ncjrs.org/html/ojjdp/jjbul2000_04_6/contents.html; "Fight Crime: Invest in Kids," From America's Frontline Against Crime: School and Youth Violence Prevention Plan (January 2001), available at http://www.fightcrime.org.