

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Stephen L. Borrello, P.J., and Michael J. Kelly and Mark T. Boonstra, JJ.

PEOPLE OF THE STATE OF MICHIGAN, Supreme Court No. 147261

Plaintiff-Appellant,

Court of Appeals No. 307028

v

Calhoun Circuit Court No.
2011-001705-FC

LEVON LEE BYNUM,

Defendant-Appellee.

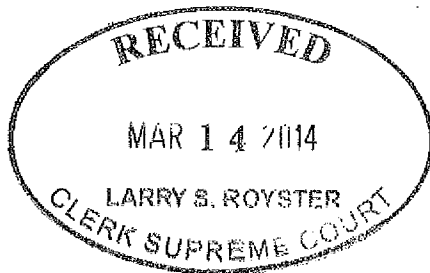
**BRIEF OF ATTORNEY GENERAL BILL SCHUETTE AS *AMICUS CURIAE*
IN SUPPORT OF THE PEOPLE OF THE STATE OF MICHIGAN AND FOR
THE PROSECUTING ATTORNEYS' ASSOCIATION OF MICHIGAN**

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INTEREST AND STATEMENT OF POSITION OF AMICUS CURIAE

The Attorney General is the chief law enforcement officer for the State of Michigan. In recognition of this role, the Court Rules provide that the Attorney General may file a brief *amicus curiae* without seeking permission from this Court. MCR 7.306(D)(2). This Court also specifically invited the Prosecuting Attorneys Association of Michigan to file an amicus brief. The Attorney General accepts that invitation, supports the position of the People of the State of Michigan, and joins the People in asking this Court to reverse the Court of Appeals and reinstate Bynum's convictions.

STATEMENT OF QUESTIONS PRESENTED

In its order entered November 8, 2013, this Court granted Plaintiff–Appellant People of the State of Michigan’s application for leave to appeal and limited the grant to the following issues:

- (1) whether the police officer’s expert testimony regarding gangs and gang membership—especially the testimony as to the defendant’s gang, the defendant’s role in his gang, and premeditation—was more prejudicial than probative under MRE 403;
- (2) the extent to which the profiling factors listed in *People v Murray*, 234 Mich App 46, 56–58[; 593 NW2d 690] (1999), apply to the admissibility of this expert testimony;
- (3) whether any error by the trial court with respect to this testimony was preserved; and
- (4) whether, if there was any such error by the trial court, the Court of Appeals correctly held that the defendant was entitled to a new trial or whether any error was harmless. [__ Mich __; 838 NW2d 884 (2013).]

This amicus brief addresses the first two issues.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES INVOLVED

Michigan Rule of Evidence 402 provides in relevant part:

Evidence which is not relevant is not admissible.

Michigan Rule of Evidence 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Michigan Rule of Evidence 404(b)(1) provides in relevant part:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material,”

Michigan Rule of Evidence 702 provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles or methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

INTRODUCTION

Gang-related violence and crime is a serious and growing problem. According to the FBI's most recent National Gang Threat Assessment (NGTA),¹ gang membership is steeply on the rise: As of 2011, there were approximately 1.4 million active gang members, up 40 percent from 2009. (NGTA, p 11.) In most jurisdictions, almost half of violent crime is gang-related, and in some areas, 90 percent of it is. (*Id.*, p 9.) Gangs engage in drug distribution, human trafficking, so-called "white-collar crimes," and all manner of violent crimes. (*Id.*, pp 9, 16.) And our Legislature has recognized that gang membership can provide "*motive, means, or opportunity*" to commit a crime. MCL 750.411u (emphasis added).

But, as courts in Maryland, Virginia, and Illinois have recognized, what may motivate a gang member to commit a crime will not be clear to a juror who does not have experience with gang culture. Certainly the motivation for theft crimes and drug trafficking are apparent. But why, for example, do two groups of young men attack one another simply for being in the "wrong place"? Without an expert to explain the concepts of turf ownership and inter-gang rivalries that motivate gang members to commit violent crimes, a jury would be left to speculate. Some jurors may have a little knowledge of gang culture from, for example, television and movies, but courts cannot depend on this—other jurors may not be familiar with those programs. And a conscientious juror will recognize that what he or she

¹ Available at <http://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment>, last accessed March 14, 2014. Excerpts from the NGTA are attached as Attachment A.

“knows” from the movies will be a mixture of fact and fiction—that juror will disregard such knowledge and rely on the evidence presented. Expert testimony will thus aid the jury in having the facts it needs to decide the case.

Excluding this evidence, in spite of its relevance to motive, and thus to intent, would hamper gang prosecutions for no legitimate reason. For this reason, many states have held that evidence of gang membership “is probative and admissible, for example, as evidence of a possible motive for the crime, . . .” *Admissibility of evidence of accused’s membership in gang*, 39 ALR4th 775 (collecting cases). This Court should recognize the highly relevant nature of this evidence as it relates to motive and intent, and reverse the decision below.

Levon Bynum’s reasons for shooting Joshua Mitchell, Brandon Davis, and Larry Carter were inextricable with Bynum’s membership in the Boardman Boys, a violent gang. This made evidence of Bynum’s gang membership highly relevant at his trial for murdering Carter and shooting Davis and Mitchell. Without this evidence, the jury would be left to wonder why Bynum would, seemingly at random, confront Carter and initiate the deadly confrontation. With the gang evidence—which was admitted in addition to an abundance of direct and circumstantial evidence of Bynum’s guilt—the jury was better able to understand why Bynum behaved as he did. Under MRE 403, a court may exclude relevant testimony “if its probative value is substantially outweighed by the danger of unfair prejudice.” Any danger of unfair prejudice that resulted from the expert testimony in this case was minimal, especially when compared to the legitimate probative value.

Turning to the second question this Court has raised, the *Murray* factors are well-tailored to drug profile evidence, which is a collection of innocuous traits that require expert testimony to explain why they are probative of guilt. But testimony about gang membership and culture—that gangs engage in criminal activity, control turf, instill fear, and have rivalries with other gangs—do not relate to innocuous traits of defendants. There is nothing innocuous about these relevant aspects of gang culture. For this reason, the *Murray* factors are a poor fit; instead, this evidence should be treated as bad-acts evidence, and admitted according to the standard governing bad-acts evidence. Like all evidence, bad-acts evidence must satisfy MRE 402 and 403. In addition, under MRE 404(b), the evidence must be admitted for a proper purpose. In this case, the panel majority erred in holding that the gang expert testimony was impermissible propensity evidence. In fact, it was motive evidence, which is enumerated as proper under MRE 404(b).

This Court should therefore reverse the Court of Appeals, and reinstate Bynum's convictions.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS BELOW

Attorney General Schuette adopts the People's recitation of facts and account of proceedings below as accurate and complete.

ARGUMENT

I. Expert testimony on gangs is highly relevant to prove motive. Here, any danger of unfair prejudice was minimal in comparison.

Motive is relevant in any criminal prosecution. And gang membership can provide a powerful motive for a gang member to commit violent acts. But the extent to which gang membership can motivate a gang member will be outside the scope of the common experience and understanding of the ordinary juror. For this reason, it was important to allow relevant expert testimony to explain Bynum's motivation in shooting Larry Carter.

A. The testimony on gang activity was highly relevant and meets the requirements of MRE 401.

This Court has asked, as the first of four questions in the grant of leave to appeal, whether the gang testimony was more prejudicial than probative under Michigan Rule of Evidence 403. Bynum argues, however, that the testimony fails the threshold test of relevance under Rule 401. Before discussing the 403 balancing, this argument must be countered at the outset.

Motive is not an element of any crime, but evidence of motive is relevant in any murder case—especially, as here, where that evidence is probative of intent and premeditation. *People v Fisher*, 449 Mich 441, 453 n 13; 537 NW2d 577 (1995) (citations omitted); *People v Kuhn*, 232 Mich 310, 312; 205 NW 188 (1925) (motive is “illuminative of the intent”). When Bynum murdered Larry Carter, and shot his two other victims, he was motivated by his gang affiliation. To hold that testimony about gangs is irrelevant would be tantamount to holding that evidence of motive is

irrelevant. It is not surprising, therefore, that Bynum's argument has been rejected by many states and federal circuits that have considered this issue. *Gutierrez v State*, 423 Md 476, 490–491; 32 A3d 2 (2011) (collecting cases); see, e.g., *State v Tran*, 252 Kan 494, 505; 847 P2d 680 (1993) (“The trial court did not abuse its discretion when it allowed the State to present relevant evidence of gang membership to establish [the defendant’s] motivation for the crime.”); *State v Nieto*, 129 NM 688, 696; 12 P3d 442 (2000) (“as evidence of Defendant’s motive and intent, the testimony had considerable probative value.”)

Further, accepting Bynum's argument would confer a special advantage on gang-motivated defendants. Just as evidence of motive is always relevant, so too is it always relevant for a defendant to argue that the prosecution has presented no evidence of motive. Although the evidence of guilt would be sufficient without the motive evidence, the defendant can use the lack of evidence about motive to try to persuade the jury that there is a reasonable doubt as to his guilt. If the prosecution were barred from explaining why a defendant's gang membership would motivate him to commit his crimes, then the defense would be able to argue that there was no motive for the charged act, even where there was in fact a powerful motive.

B. To explain the gang-related motivations, both fact testimony about the defendant's gang affiliation and expert testimony about gang culture are required.

Though fact testimony about a defendant's gang involvement is relevant to motive, it is not enough to assist the jury in understanding motive. The prosecutor cannot simply argue that because the defendant was a member of a gang, he was

motivated to defend his “turf” and attack rivals. Such an argument is not within the common experience and understanding of an ordinary juror, and without expert testimony, it would not be based on facts in evidence. See *Ayala v State*, 174 Md App 647; 923 A2d 952 (2007) (evidence of gang affiliation “served to explain the ‘otherwise inexplicable,’ by providing a motive for a brutal and seemingly senseless killing.”); *People v Davis*, 335 Ill App 3d 1, 18; 779 NE2d 443 (2002) (“The average layperson has no understanding of the workings of the gangs active around the area of the shooting, the conflict between the [gangs], and the source of that conflict.”) Because gang activity and culture are outside the understanding and experience of ordinary jurors, expert testimony is helpful to assist the jury.

In *Utz v Commonwealth*, 28 Va App 411 (1998), the Virginia Court of Appeals was faced with a case similar to this one. The defendant and his victim were members of rival gangs. *Id.* at 425–426. The prosecution presented, through the investigating officer, both fact and expert testimony about the defendant’s gang involvement and what impact that involvement may have had on his motives. *Id.* at 418–427. Affirming the conviction, the court held that, “[b]ecause the subject matter was beyond the common knowledge and experience of ordinary jurors, the trial judge did not abuse his discretion in allowing [the expert] to testify about gang culture in order to show motive and intent and to rebut appellant’s claim of self-defense.” *Id.* at 426.

It is true that some, or even most, jurors will have some impressions about gangs through television, movies, or other media. But the courts cannot rely on the

media to educate jurors about the relevant facts to aid in understanding a defendant's motive, and some jurors will not be familiar with these shows and movies, and will not understand these issues. In addition, the media may dramatize, sensationalize, and romanticize gang culture such that a juror's "knowledge" will comprise both fact and fiction, in a proportion that is impossible to determine. Indeed, a fundamental premise for giving jury instructions in the first place is that conscientious jurors should set aside any understanding they think they have about gangs if it came from the media, and decide the case based only on the evidence adduced at trial. For this reason, even though it may seem intuitive to some that a gang will claim and defend turf and engage in violent rivalry with other gangs, it is not enough to assume that it will be obvious to all jurors. Expert testimony is required to put the facts into evidence and allow the jury to properly consider those facts in deciding the case.

C. The trial court did not plainly err in declining to strike Officer Sutherland's testimony under MRE 403.

The first question before this Court is whether Officer Sutherland's expert testimony on gang activity was substantially more prejudicial than probative. For the reasons stated above, the legitimate probative value of this testimony was so high that it easily outweighed any incidental prejudicial effect that may have been present.

Inherent in the language of Rule 403 is the contemplation that evidence may be both legitimately probative and prejudicial at the same time. And the rule does

not allow probative evidence to be excluded merely because it is also prejudicial, nor merely because it is as prejudicial as probative, nor even when the evidence is somewhat more prejudicial than probative. Only where the risk of unfair prejudice “substantially outweigh[s]” the probative value is a trial court allowed to exclude relevant evidence. See *People v Starr*, 457 Mich 490, 499; 577 NW2d 673 (1998) (“[T]he proper inquiry . . . is not whether the testimony is more prejudicial than probative, but whether the probative value is *substantially* outweighed by the risk of unfair prejudice.”).

In *Cyrus v State*, the Georgia Court of Appeals was asked to overturn a gang member’s conviction because expert testimony on gang culture was more prejudicial than probative. 231 Ga App 71, 72; 498 SE2d 554 (1998). The court held that the testimony was “material to informing the jury of all circumstances surrounding the crime charged, including Cyrus’ motivation for shooting” the victim. *Id.* Noting that, “[m]aterial evidence is not rendered inadmissible merely because it incidentally places a defendant’s character in issue,” the court rejected Cyrus’ argument. *Id.* (citation and quotation marks omitted); accord *Davis*, 335 Ill App at 15–17 (“Gang evidence is admissible despite the prejudice that attaches if it is relevant and particularly if it is crucial in establishing motive.”); *Nieto*, 129 NM at 696; see also *United States v Abel*, 469 US 45, 54–55; 105 S Ct 465; 83 L Ed 2d 450 (1984) (evidence of gang membership to explain bias was prejudicial, but “highly probative” and thus “did not *unduly* prejudice respondent.”).

When a defendant has affiliated himself with a gang, and then committed crimes that were motivated by that affiliation, he should not be able to take refuge in his gang membership by using it to render inadmissible otherwise relevant evidence. This is consistent with other instances in which otherwise potentially inflammatory evidence becomes admissible because the facts of the case make it so. For example, information about a defendant's status as a convicted felon would normally be unfairly prejudicial. But our Court of Appeals has held that, where "the defendant's statements that he was a convicted felon and that he spent time in prison were made as part of a concerted effort to manipulate [his victim] into lying to the authorities . . ." and, "[a]s such, they were highly probative of consciousness of guilt," the trial court did not violate MRE 403 in admitting them. *People v Schaw*, 288 Mich App 231, 237–238; 791 NW2d 743 (2010). Similarly, although evidence of a defendant's drug addiction is "highly inflammatory," it may be admissible to show motive, if sufficient evidence can tie the addiction to the motive for the crime. *People v Rice*, 235 Mich App 429; 597 NW2d 843 (1999) (motive for murder); *People v Barnett*, 166 Mich App 741, 749; 421 NW2d 278 (1988) (same); *People v McConnell*, 124 Mich App 672, 681–682; 335 NW2d 226 (1983) (motive for theft offense).

The jury, which is presumed to following its instructions and obey its oath, must be trusted not to convict a defendant solely on evidence of gang membership, but on actual evidence that the defendant committed the crime charged. Here, the evidence was strong that Bynum shot the victims, and did not do so in self-defense.

Motive, intent, and premeditation were at issue, and the gang evidence was highly relevant to show those. Any incidental prejudicial effect was dwarfed by the highly probative value of the evidence.

II. *Murray's* factors are a poor fit for gang testimony. Instead, courts should apply the familiar standards of Rules 402, 403, and 404(b).

Turning to the second of this Court's questions presented, in *People v Murray*, the Court of Appeals considered the admissibility of "drug profile evidence," which that court described as "essentially a compilation of otherwise innocuous characteristics that many drug dealers exhibit, . . ." 234 Mich App 46, 52; 593 NW2d 690 (1999). The court discussed the tension in allowing such profile evidence to be admitted: On one hand, there was a fear that the profile evidence was dangerous to admit, "because 'proof' of crime based wholly or mainly on these innocuous characteristics could potentially convict innocent people." *Id.* at 53. On the other hand, the court recognized the legitimate probative value of such evidence "to explain the significance of items seized and the circumstances obtaining during the investigation of criminal activity." *Id.* Mindful of these considerations, the court did not hold that the evidence was categorically inadmissible, but that courts needed to consider the evidence on a case-by-case basis. Courts are to "enable profile testimony that aids the jury in intelligently understanding the evidentiary backdrop of the case, and the modus operandi . . . but stop short of enabling profile testimony that purports to comment directly or substantively on a defendant's guilt." *Id.* at 56.

The *Murray* court then identified several factors courts could use to determine the proper use of drug-profile evidence: (1) “[T]he reason given and accepted for the admission of the profile testimony must only be for a proper use—to assist the jury as background or modus operandi explanation”; (2) “the profile, without more, should not normally enable a jury to infer the defendant’s guilt”; (3) “courts must make clear what is and what is not an appropriate use of the profile evidence”; and (4) “the expert witness should not express his opinion, based on a profile, that the defendant is guilty, nor should he expressly compare the defendant’s characteristics to the profile in such a way that guilt is necessarily implied.” 234 Mich App at 56–58.

As Judge Boonstra noted in his dissent below, drug-profile evidence is dissimilar from gang evidence, because while drug profile evidence “is ‘a compilation of otherwise innocuous characteristics that many drug dealers exhibit,’” gang evidence is “not based on a list of innocuous characteristics.” Slip op. at 5, quoting *Murray*, 234 Mich App at 52–53. For this reason, the *Murray* factors would be a poor fit to test the admissibility of expert gang testimony.

The better approach is that employed by the *Utz* court. Because “a juror might associate a defendant with [gang] affiliation as a person of bad character or someone prone to aggressive or violent behavior,” that court examined the admissibility of gang evidence under the standard for admitting evidence of prior bad acts. 28 Va App at 420. The standard applied is analogous to that found in

MRE 404(b):² Evidence of prior bad acts is inadmissible to show character, but is admissible for other purposes, including motive. *Id.* at 420–421.

Michigan courts should treat testimony of gang affiliation, and expert testimony of gang culture, as bad-acts evidence, and evaluate its admissibility like they would any other bad-acts evidence. As the dissent below pointed out, this Court has combined Rules 402, 403, and 404(b) into a three-part standard for bad-acts evidence. *Starr*, 457 Mich at 495–496, citing *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993). Under this test, the evidence must be (1) admitted for a proper purpose under Rule 404(b), (2) relevant under Rule 402, and (3) not substantially more prejudicial than probative under Rule 403. *Id.* The *Starr* Court also noted a fourth element—that a limiting instruction be given upon request. *Id.* at 498, citing *VanderVliet*, 444 Mich at 75.

Contrary to the panel majority’s conclusion, the evidence here was admitted for a proper purpose under 404(b): to show motive. For the reasons discussed in Argument I above, the evidence was relevant, and was not substantially more prejudicial than probative. Finally, because no limiting instruction was requested, the fourth requirement is not at issue.

This Court should reverse.

² At the time *Utz* was decided, Virginia had not promulgated rules of evidence. A similar standard to that found at MRE 404(b) was established by Virginia case law. *Utz*, 28 Va App at 420–421, quoting *Reynolds v Commonwealth*, 24 Va App 220, 223–224; 481 SE2d 479, 481 (1997).

CONCLUSION AND RELIEF REQUESTED

This Court should follow the lead of other states that have grappled with the question of expert gang testimony, and hold that testimony in this case was far more probative than prejudicial. Further, this Court should hold that the *Murray* factors are a poor fit for expert gang testimony, and consider the testimony under the standard applicable to bad-acts testimony.

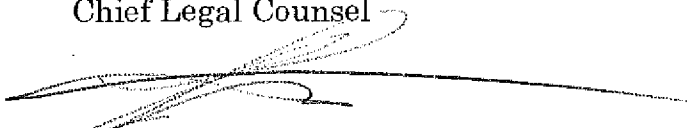
For these reasons, the Attorney General joins the People of the State of Michigan in asking this Court to reverse the decision of the Court of Appeals and reinstate Bynum's convictions.

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AG# 20130062089A/Bynum, Levon/MSA Amicus Brief

ATTACHMENT A

Executive Summary

Gangs continue to commit criminal activity, recruit new members in urban, suburban, and rural regions across the United States, and develop criminal associations that expand their influence over criminal enterprises, particularly street-level drug sales. The most notable trends for 2011 have been the overall increase in gang membership, and the expansion of criminal street gangs' control of street-level drug sales and collaboration with rival gangs and other criminal organizations.^a

Key Findings

Gangs are expanding, evolving and posing an increasing threat to US communities nationwide. Many gangs are sophisticated criminal networks with members who are violent, distribute wholesale quantities of drugs, and develop and maintain close working relationships with members and associates of transnational criminal/drug trafficking organizations. Gangs are becoming more violent while engaging in less typical and lower-risk crime, such as prostitution and white-collar crime. Gangs are more adaptable, organized, sophisticated, and opportunistic, exploiting new and advanced technology as a means to recruit, communicate discretely, target their rivals, and perpetuate their criminal activity. Based on state, local, and federal law enforcement reporting, the NGIC concludes that:

^a Title 18 U.S.C. Section 521(a)(A) defines criminal street gangs as ongoing groups, clubs, organizations, or associations of five or more individuals that have as one of their primary purposes the commission of one or more criminal offenses. Title 18 U.S.C. Section 521(c) further defines such criminal offenses as (1) a federal felony involving a controlled substance; (2) a federal felony crime of violence that has as an element the use or attempted use of physical force against the person of another and (3) a conspiracy to commit an offense described in paragraph (1) or (2).

- There are approximately 1.4 million active street, prison, and OMG gang members comprising more than 33,000 gangs in the United States. Gang membership increased most significantly in the Northeast and Southeast regions, although the West and Great Lakes regions boast the highest number of gang members. Neighborhood-based gangs, hybrid gang members, and national-level gangs such as the Sureños are rapidly expanding in many jurisdictions. Many communities are also experiencing an increase in ethnic-based gangs such as African, Asian, Caribbean, and Eurasian gangs.
- Gangs are responsible for an average of 48 percent of violent crime in most jurisdictions and up to 90 percent in several others, according to NGIC analysis. Major cities and suburban areas experience the most gang-related violence. Local neighborhood-based gangs and drug crews continue to pose the most significant criminal threat in most communities. Aggressive recruitment of juveniles and immigrants, alliances and conflict between gangs, the release of incarcerated gang members from prison, advancements in technology and communication, and Mexican Drug Trafficking Organization (MDTO) involvement in drug distribution have resulted in gang expansion and violence in a number of jurisdictions.
- Gangs are increasingly engaging in non-traditional gang-related crime, such as alien smuggling, human trafficking, and prostitution. Gangs are also engaging in white collar crime such as counterfeiting, identity theft, and mortgage fraud, primarily due to the high profitability and much lower visibility and risk of detection and punishment than drug and weapons trafficking.

-
- US-based gangs have established strong working relationships with Central American and MDTOs to perpetrate illicit cross-border activity, as well as with some organized crime groups in some regions of the United States. US-based gangs and MDTOs are establishing wide-reaching drug networks; assisting in the smuggling of drugs, weapons, and illegal immigrants along the Southwest Border; and serving as enforcers for MDTO interests on the US side of the border.
 - Many gang members continue to engage in gang activity while incarcerated. Family members play pivotal roles in assisting or facilitating gang activities and recruitment during a gang members' incarceration. Gang members in some correctional facilities are adopting radical religious views while incarcerated.
 - Gangs encourage members, associates, and relatives to obtain law enforcement, judiciary, or legal employment in order to gather information on rival gangs and law enforcement operations. Gang infiltration of the military continues to pose a significant criminal threat, as members of at least 53 gangs have been identified on both domestic and international military installations. Gang members who learn advanced weaponry and combat techniques in the military are at risk of employing these skills on the street when they return to their communities.
 - Gang members are acquiring high-powered, military-style weapons and equipment which poses a significant threat because of the potential to engage in lethal encounters with law enforcement officers and civilians. Typically firearms are acquired through illegal purchases; straw purchases via surrogates or middle-men, and thefts from individuals, vehicles, residences and commercial establishments. Gang members also target military and law enforcement officials, facilities, and vehicles to obtain weapons, ammunition, body armor, police gear, badges, uniforms, and official identification.
- Gangs on Indian Reservations often emulate national-level gangs and adopt names and identifiers from nationally recognized urban gangs. Gang members on some Indian Reservations are associating with gang members in the community to commit crime.
 - Gangs are becoming increasingly adaptable and sophisticated, employing new and advanced technology to facilitate criminal activity discreetly, enhance their criminal operations, and connect with other gang members, criminal organizations, and potential recruits nationwide and even worldwide.

Current Gang-Related Trends and Crime

Gang membership continues to expand throughout communities nationwide, as gangs evolve, adapt to new threats, and form new associations. Consequently, gang-related crime and violence is increasing as gangs employ violence and intimidation to control their territory and illicit operations. Many gangs have advanced beyond their traditional role as local retail drug distributors in large cities to become more organized, adaptable, and influential in large-scale drug trafficking. Gang members are migrating from urban areas to suburban and rural communities to recruit new members, expand their drug distribution territories, form new alliances, and collaborate with rival gangs and criminal organizations for profit and influence. Local neighborhood, hybrid and female gang membership is on the rise in many communities. Prison gang members, who exert control over many street gang members, often engage in crime and violence upon their return to the community. Gang members returning to the community from prison have an adverse and lasting impact on neighborhoods, which may experience notable increases in crime, violence, and drug trafficking.

GANG MEMBERSHIP AND EXPANSION^b

Approximately 1.4 million active street, OMG, and prison gang members, comprising more than 33,000 gangs, are criminally active within all 50 US states, the District of Columbia, and Puerto Rico (see Appendix A). This represents a 40 percent increase from an estimated 1 million gang members in 2009. The NGIC attributes this increase in gang membership primarily to improved reporting, more aggressive recruitment efforts by gangs, the formation of new gangs, new opportunities for drug trafficking, and collaboration with rival gangs and drug trafficking organizations (DTOs). Law enforcement in several jurisdictions also attribute the increase in gang membership in their region to the gangster rap culture, the facilitation of communication and recruitment through the Internet and social media, the proliferation of generational gang members, and a shortage of resources to combat gangs.

More than half of NGIC law enforcement partners report an increase in gang-related criminal activity in their jurisdictions over the past two years. Neighborhood-based gangs continue to pose the greatest threat in most jurisdictions nationwide.

- NGIC and NDIC data indicates that, since 2009, gang membership increased most significantly in

^b The gang membership presented in this section represents the collection of data provided by the National Drug Intelligence Center (NDIC) – through the National Drug Threat Survey, Bureau of Prisons, State Correctional Facilities, and National Gang Intelligence Center (NGIC) law enforcement partners. The data is based on estimates provided on a voluntary basis and may include gang members and gang associates. Likewise, these estimates may not capture gang membership in jurisdictions that may have underreported or who declined to report. As these numbers are based on estimates, they only provide a general approximation of the gang activity nationally. If you have additional questions on gang activity within specific jurisdictions the FBI and NGIC recommend contacting state and local law enforcement agencies for more information.

the Northeast and Southeast regions, although the West and North Central regions--particularly Arizona, California, and Illinois--boast the highest number of gang members.

- Sureño gangs, including Mara Salvatrucha (MS-13), 18th Street, and Florencia 13, are expanding faster than other national-level gangs, both in membership and geographically. Twenty states and the District of Columbia report an increase of Sureño migration into their region over the past three years. California has experienced a substantial migration of Sureño gangs into northern California and neighboring states, such as Arizona, Nevada, and Oregon.
- Law enforcement reporting indicates a significant increase in OMGs in a number of jurisdictions, with approximately 44,000 members nationwide comprising approximately 3,000 gangs.^o Jurisdictions in Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Missouri, Montana, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, and Virginia are experiencing the most significant increase in OMGs, increasing the potential for gang-related turf wars with other local OMGs. The Wheels of Soul (WOS), Mongols, Outlaws, Pagans and Vagos have expanded in several states.

Table 1. Recent Expansion of Major OMGs:

NG	R	N
Mongols	Arizona, Arkansas, California, Colorado, Illinois, Kentucky, Montana, Nevada, New York, Oklahoma, Oregon, Washington	
Outlaws	Arkansas, Montana, Maryland, North Carolina, New York	
Pagans	Delaware, New Jersey, Ohio	
Vagos	California, Florida, Georgia, Mississippi, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, South Dakota	
Wheels of Soul	Alabama, Arkansas, California, Colorado, Illinois, Kentucky, New York	

Source: ATF

^o For the purpose of this assessment, OMGs include One Per-center gangs as well as support and puppet clubs.