



CITY OF HUNTINGTON BEACH

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TO: HUNTINGTON BEACH CITY COUNCIL

VIA: HUNTINGTON BEACH CITY MANAGER
INTERGOVERNMENTAL RELATIONS COMMITTEE

FROM: HUNTINGTON BEACH HARBOUR COMMISSION

DATE: DECEMBER 1, 2022

SUBJ: U.S. STATE DEPARTMENT AND DEPARTMENT OF HOMELAND
SECURITY SUPPORT TO REDUCE THE OCCURRENCE OF
RESIDENTIAL BURGLARIES AND OTHER CRIMINAL ACTIVITIES
PERPETRATED BY FOREIGN NATIONAL MEMBERS OF
TRANSNATIONAL ORGANIZED CRIME GROUPS (TOCG)

Issue Statement:

The recent increase in residential burglaries perpetrated by Transnational Organized Crime Group (TOCG)¹ members has garnered national attention and raised safety concerns among Huntington Beach residents. TOCG members arrive in the United States under tourist visas issued by the U.S. State Department or via the Visa Waiver Program (VWP) administered by the Department of Homeland Security (DHS) for those coming from countries that participate in the program (e.g., Chile). A practical solution to reduce crime, improve safety and increase peace of mind among U.S. residents is to deny entry and/or revoke visas for known, convicted TOCG members.

Executive Summary:

Bottom Line Up Front (BLUF): The Huntington Beach Harbour Commission recommends that the Huntington Beach City Council (HBCC) engage with the office of Representative Katie Porter to pursue U.S. State Department and Department of Homeland Security solutions to reduce the occurrence of criminal activity conducted by TOCG members.

¹ South American Theft Groups (SATG), also known as South American Crime Groups (SACG), represent a subset, albeit the largest subset in Southern California, of Transnational Organized Crime Groups (TOCG).

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The Immigration and Nationality Act (INA), specifically 8 U.S.C §1182, establishes criteria for denying or revoking visas. Enclosure 1 provides the exact text of 8 U.S.C. §1182(a)(2) that defines “aliens who are ... ineligible to receive visas and ineligible to be admitted to the United States” based on criminal and related grounds. The pertinent paragraph (8 U.S.C §1182(a)(2)(B)) that applies reads as follows:

(B) Multiple criminal convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

The minimum of 5 years aggregate sentences to confinement requirement may be problematic for implementing the visa denial/revocation strategy to reduce TOCG related criminal activity. However, a legislation proposal to relax that arbitrary requirement should garner bipartisan support. Alternatively, legislation to include burglary and other crimes related to personal safety as a criterion of ineligibility for entry or to remain in the United States can be equally effective and supported. There may be other remedies that do not require legislation. State Department and DHS officials would be best suited to answer that question.

The DHS administers the VWP which enables eligible citizens or nationals of designated countries to travel to the United States for tourism or business for stays of 90 days or less without first obtaining a visa. The Electronic System for Travel Authorization (ESTA) assists the DHS in determining eligibility to travel to the United States under the VWP. The criteria to deny entry into the United States under the VWP is less restrictive than that delineated in the INA. Specifically, the DHS has the authority to disapprove an application for travel that simply “poses any law enforcement or security risk.” A reconciliation between DHS and State Department standards for denial of entry into the United States may yield a viable, non-legislative solution to the TOCG problem.

Background:

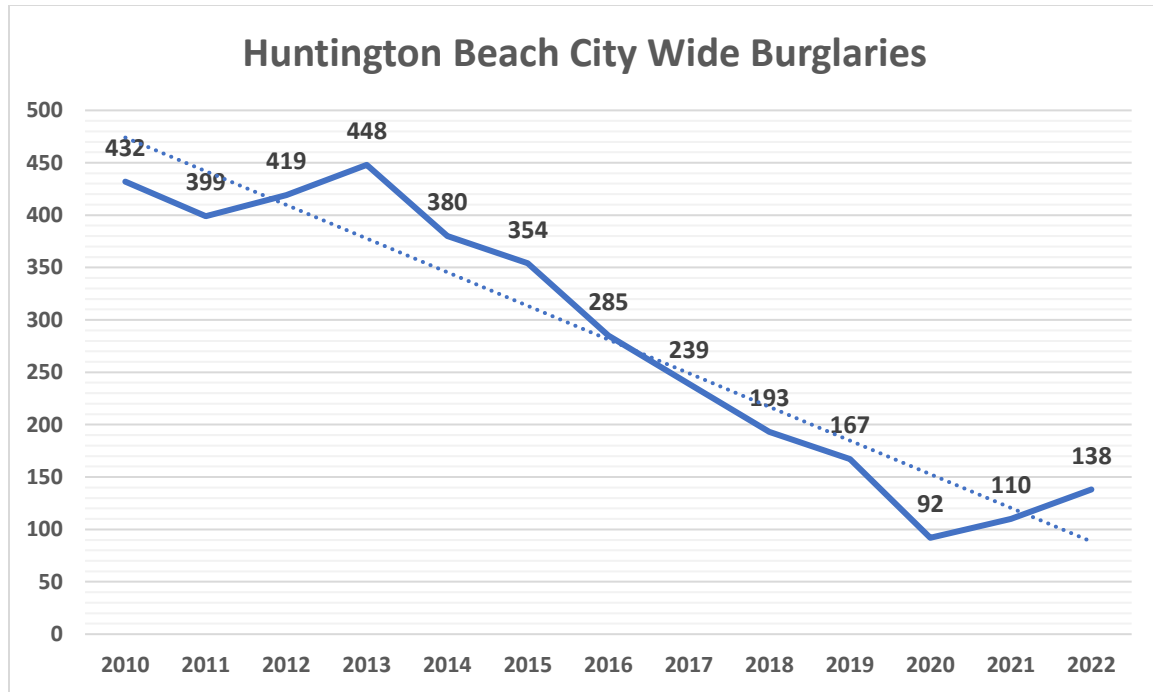
Recent TOCG residential burglary activity in Southern California and in Huntington Harbour in particular has garnered both local and national media attention. More importantly, the safety, security and welfare of U.S. residents is in jeopardy as a result of the increase in TOCG activity. Fortunately, this should be a relatively easy problem to solve – simply do not allow TOCG members to travel to the U.S. and revoke the visas of TOCG members convicted of burglary and other related crimes.

One recent HBPD success story (i.e., the October 5th arrest of two TOCG members from Columbia), highlights the need for tighter controls and support from the U.S. State

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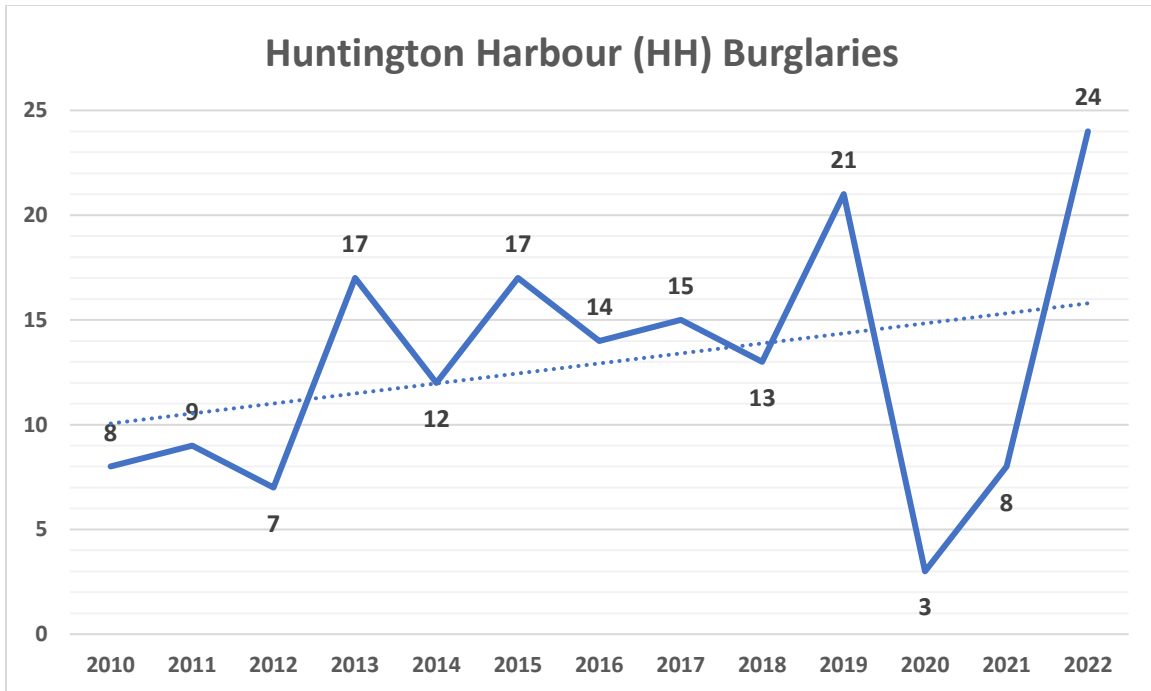
Department to help prevent TOCG members from traveling to and remaining in the United States. In this case, the two TOCG members from Columbia pled guilty to a misdemeanor and were released. Both were allowed to remain in the United States and presumably have returned to their criminal activity – probably outside HBPD jurisdiction though.

Huntington Beach burglary statistics provided by the HBPD Crime Analysts tell a compelling story. The good news is that burglaries in Huntington Beach have steadily declined city-wide since peaking in 2013.



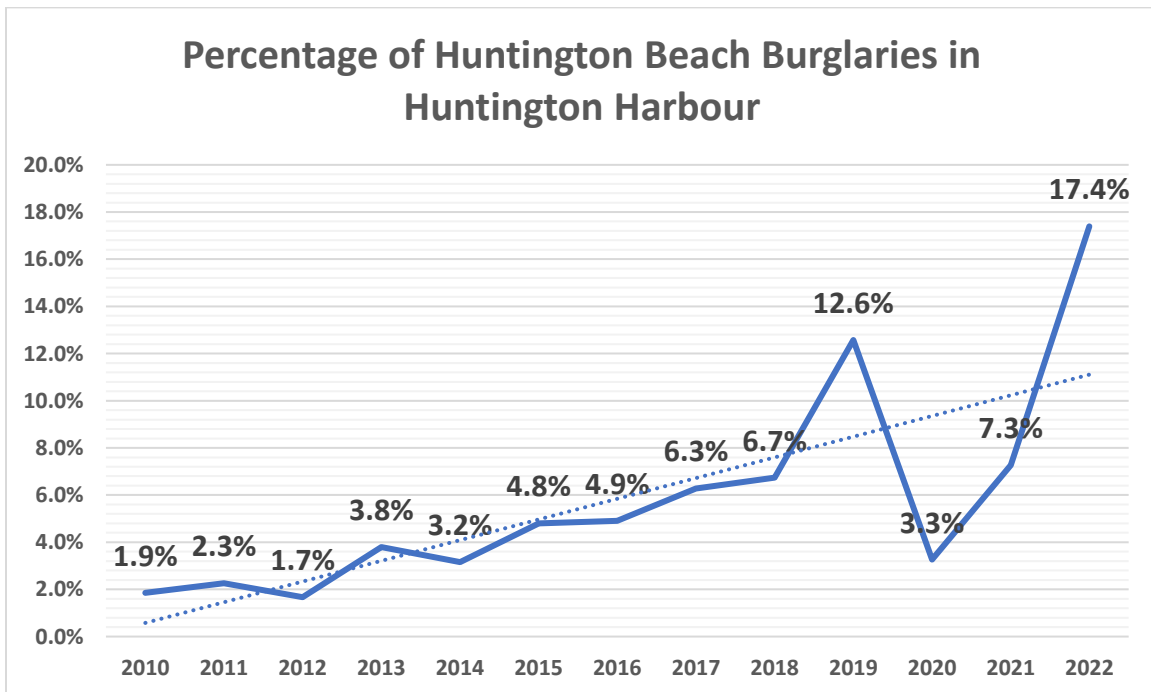
Note: 2022 burglary statistic (138) is projected based on an extrapolation from October year to date data (115)

Unfortunately, the city-wide burglary rate appears to have bottomed out in 2020 and is starting to increase. This could be due to the increase in TOCG activity first identified by HBPD in 2019. The burglary data specific to Huntington Harbour, one of the main TOCG target communities, support that hypothesis. With the exception of 2020 and 2021, when COVID travel restrictions were in place, burglaries in Huntington Harbour have increased since 2010.

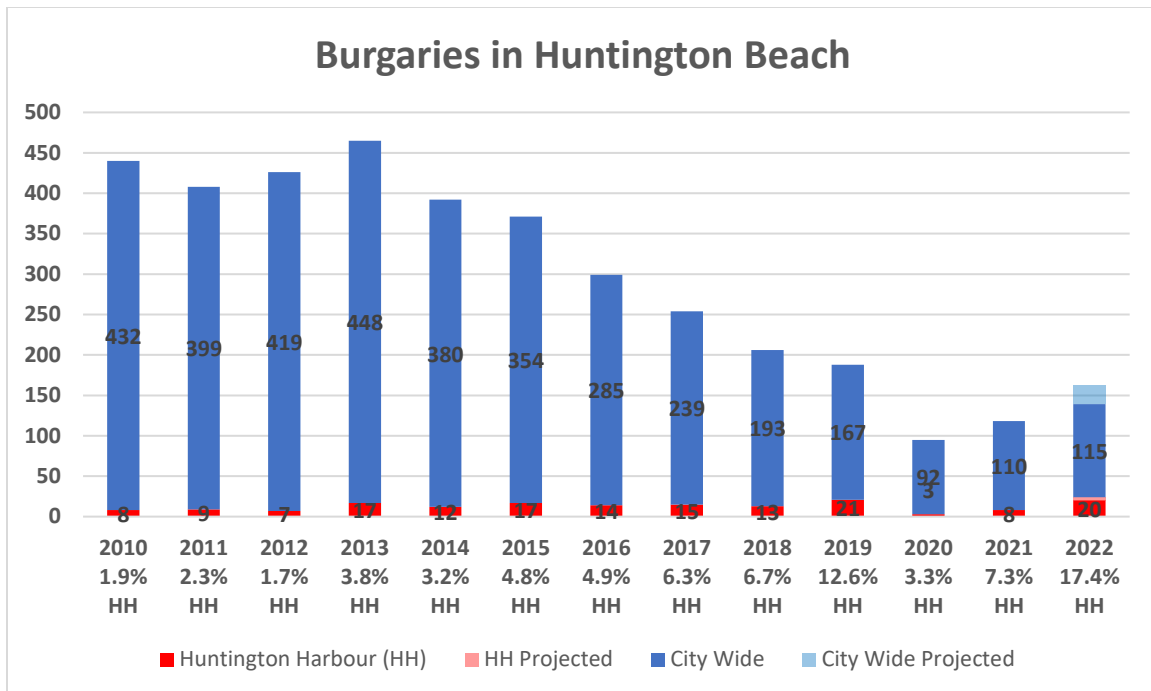


Note: 2022 burglary statistic (24) is projected based on an extrapolation from October year to date data (20).

As a percentage of city-wide burglaries, Huntington Harbour share of burglaries increased over ninefold since 2010, from 1.9% in 2010 to 17.4% in 2022. Again, this could be attributed to the advent of TOCG activity with the spike up in 2019 coinciding with when HBPD first recognized the unique TOCG modus operandi (MO).



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Note: Projections for 2022 based on an extrapolation from October year to date data.

Recommendation:

Realizing the politically charged and divisive nature of immigration reform and the time required to draft and enact proposed legislation, the Harbour Commission proposes a two-step process to protect U.S. residents from TOCG criminal activities. First, there may be solutions readily available to the State Department and DHS to achieve the same result within current statutes and authorities. If so, an initial outreach to the State Department and DHS from Rep Porter and other House members whose constituents are similarly impacted by TOCG activity may help identify viable solutions that do not require Congressional level action. Specifically, the Harbour Commission recommends that the City draft a proposed letter for Rep Porter to send to the State Department and DHS inquiring what actions each department can take under current statutes to limit the entry of TOCG members into the United States. Additionally, the letter should address what actions could be taken to revoke visas and remove TOCG members convicted of crimes conducted while in the United States on tourist visas or otherwise. Finally, the letter should also solicit the departments' input for additional authorities needed to protect U.S. residents from criminal activity conducted by foreign nationals and offer Congressional support to enact required legislation. The second step, assuming the first proves ineffective, entails drafting appropriate legislation that will garner bipartisan support to protect U.S. residents from Transnational Organized Crime Groups.

Enclosures:

Enclosure 1: Immigration and Nationality Act
8 U.S.C. §1182

Immigration and Nationality Act

8 U.S.C. §1182. Inadmissible Aliens

8 U.S.C.

United States Code, 2011 Edition

Title 8 - ALIENS AND NATIONALITY

CHAPTER 12 - IMMIGRATION AND NATIONALITY

SUBCHAPTER II - IMMIGRATION

Part II - Admission Qualifications for Aliens; Travel Control of Citizens and Aliens

Sec. 1182 - Inadmissible aliens

From the U.S. Government Publishing Office, www.gpo.gov

§1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

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-
-

(2) Criminal and related grounds

(A) Conviction of certain crimes

(i) In general

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21),

is inadmissible.

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the

Immigration and Nationality Act

8 U.S.C. §1182. Inadmissible Aliens

crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Controlled substance traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

(D) Prostitution and commercialized vice

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

Immigration and Nationality Act

8 U.S.C. §1182. Inadmissible Aliens

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or
(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution

Any alien—

- (i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),
- (ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,
- (iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and
- (iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

(F) Waiver authorized

For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h) of this section.

(G) Foreign government officials who have committed particularly severe violations of religious freedom

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of title 22, is inadmissible.

(H) Significant traffickers in persons

(i) In general

Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of

Immigration and Nationality Act

8 U.S.C. §1182. Inadmissible Aliens

State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of title 22, is inadmissible.

(ii) Beneficiaries of trafficking

Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) Exception for certain sons and daughters

Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) Money laundering

Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18 (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.