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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

YOUTH JUSTICE COALITION, an organization; PETER ARELLANO and JOSE REZA, individuals, for themselves and on behalf of a class of similarly-situated individuals,

Plaintiffs,

vs.

CITY OF LOS ANGELES; MIKE FEUER, City Attorney of the City of Los Angeles, in his official capacity; CHARLIE BECK, Chief of the Los Angeles Police Department, in his official capacity; DOES 1 through 10, in their official and individual capacities,

Defendants.

Case No. 16-cv-07932-SJO-RAO

DECLARATION OF MALCOLM W. KLEIN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION FOR PLAINTIFF PETER ARELLANO

Date: December 5, 2016
 Time: 10:00 AM
 Place: Courtroom 1

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Declaration of Prof. Malcolm W. Klein

I, Malcolm W. Klein, declare as follows:

1. I submit this expert declaration at Plaintiffs’ request. I have personal knowledge of the facts set forth herein based on my study of gangs as a researcher, as set forth below.

2. My degrees (B.A, M.A., Ph.D.) are in psychology. My career was spent primarily in sociology, including 13 years as chair of the Sociology Department at the University of Southern California. My principal research specialty has been in criminology, with emphases on a) crime measurement, b) police and community responses to juvenile crime, c) comparative (i.e., cross-national) research, and d) street gang research and policy. Included in my street gang career from 1962 to the present are program evaluations, data collection on gang structures and crime, violence, and drug trafficking. Principal sources of my data have been street observations; field interview of gang members, police, and community informants; analysis of police records; reviews of a wide variety of research by others; and review of court documents in almost 200 gang cases.

3. I have consulted in over 180 court cases, including trial testimony in approximately 20 of these. Over 80 of these cases have involved gang injunctions and application of the STEP Act (CA Penal Code section 186.22). I served on the Los Angeles Superior Court experts panel; as a member of the Technical Advisory Committee of the National Gang Center (U.S. Department of Justice); as Chair of the Evaluation Advisory Committee of the Los Angeles Mayor’s 80 million dollar gang program; and as initiator of and principal advisor to the International Eurogang Program, a consortium of over 200 scholars in 20 countries since 1998. I have attached (as Exhibit A) a true and correct copy of my curriculum vitae, listing my 19 books, scores of articles, awards, invited lectures, consultations, research grants, and other career items.

4. At the request of the ACLU Foundation of Southern California, I offer

1 the following general opinions about gang structure and membership, aimed at
2 helping this court understand the complexity of determining that a person is an
3 active gang participant for purposes of subjecting them to so-called gang
4 injunctions.

5 **I. Gang Organization and Membership**

6 5. A number of my comments derive from assumption that the gangs
7 enjoined fit in the category of “Traditional Gangs,” within the gang typology of
8 five distinguishable street gang structures the gang typology of five distinguishable
9 street gang structures derived from national interviews and data supplied by police
10 gang experts. This typology is detailed in Klein and Maxson (2006) and validated
11 by research of the National Gang Center (2000), the Illinois Attorney General’s
12 Office (Scott, 2000), Weitekamp (2001), and Decker and Weerman (2005).

13 6. “Traditional Gangs” are characterized by Klein and Maxson (2006)
14 as durable (over 20 years), large (over 100 members) with denotable subgroups, an
15 expanded age range (of 20 - 30 years between youngest and oldest members),
16 territorial, and exhibiting very versatile crime patterns. The implications of the
17 traditional gang are several, and pertinent to the gang injunctions in several ways.

18 **A. *The Traditional Gang and Strong Neighborhood/Family Ties***

19 7. The traditional gang’s durability means that in many ways it has
20 become ingrained in its own community and neighborhood, even including in
21 some instances within both nuclear and extended families. In the conflation of
22 family, neighborhood, and gang, it becomes difficult to determine who is or is not
23 a gang member, or at what time membership may exist. Individuals may engage
24 in joint activity with gang members — such as driving in a car or hanging out at a
25 house — that is not joint gang activity, and is therefore not a good indication of
26 gang involvement.

27 8. A gang is an informal collectivity, having no dues-paying or other
28 formal criteria of membership. Gang membership therefore exists in the eyes of

1 the observers; it is a judgment more than an objective status. When police and
2 prosecutors (and others) classify young people as gang members or participants or
3 associates or affiliates, as active or former members, as core or fringe members, as
4 partners or supporters, they are reifying their imposed categories, exercising
5 discretion far more than stating “fact.” As I know from my own experience,
6 classifying young people as gang members (whether for research purposes or for
7 applying a gang injunction) is an art, even an expert judgment, but is inherently
8 subjective enough to be disputable.

9 ***B. Traditional Gangs Lack Strict Organization Structure.***

10 9. Traditional street gangs are only very rarely well organized (e.g. The
11 Black Gangster Disciples of Chicago, and many “Specialty Gangs” in the
12 Maxson/Klein typology). Traditional gangs are too large, too varied in age and
13 subgroupings, too varied in member commitment to joint activities, and so on, to
14 be effectively organized or functionally hierarchical. As a result, gang
15 cohesiveness in the Traditional Gang tends to be moderate, not tight.

16 10. In terms of organizational structures, gangs do not resemble
17 hierarchical entities like a police department, for example. A police department is
18 highly organized: it has a roster of members, set criteria for joining, a formal
19 training program to prepare members, specified positions with particular duties,
20 and a clear hierarchy and command structure. None of those exist with a gang.
21 The description of specific roles of gang members that police often use – shot
22 callers, field sergeants — are external impositions of structure on a poorly
23 organized group. Terms like “shot caller,” “field sergeant” and soldier are terms
24 coined by police, not gang members (as are the terms “associate,” “affiliate” and
25 “participant”), and they exaggerate the extent of influence, control, and hierarchy
26 within a gang. A 30 year old may not be able to tell a bunch of 16 year olds what
27 to do any more inside a gang than in nongang situations.

28 11. The role-functions that police often assign to gangs generally are

1 based in stereotypes about gangs, not on fact. The suggestion of tightly defined
2 roles and strict hierarchy is part of the gang mythology that make gangs seem more
3 nefarious and organized than in fact they are.

4 12. One example of this problem is the expectation sometimes expressed
5 by police or prosecutors that serving a gang injunction to various gang members
6 will spread the message to the full membership. The moderate level of gang
7 organization and the extended age range of the enjoined people dictates against
8 this. Many gang “members” are so loosely or temporarily affiliated that the
9 message will not reach them. Again, the stereotype of the gang leads to inefficient
10 apportioning of resources and possible boomerang effects because gangs develop
11 an “oppositional culture” (Moore and Vigil, 1989) that turn attempts to affect them
12 into negative responses that yield greater gang cohesiveness (Klein, 1971).

13 **C. *Gang Territory***

14 13. Gang “territories” (or “turf”) are a perception in the members’ minds,
15 seldom well shared among them. The territories claimed by a gang do not
16 correspond well with locations where crime “hot spots” are noted, nor in fact with
17 the locations where members engage in noncriminal social activity, or “hang” with
18 each other. Tita, *et al.* (2005) describe this phenomenon, calling the discrete areas
19 in which gang members actually spend time “set spaces.” An injunction applied to
20 these “hanging” areas might be far more justifiable (in terms of discouraging gang
21 activity) than a large safety zone that seems arbitrary and inclusive of much area
22 that is little impacted by gang activity or crime.

23 **D. *Gang Members Leave Gangs***

24 14. The presence of older persons on gang injunctions raises the question
25 of gang desistance, and criteria (or lack thereof) for designating former members.
26 All research studies reveal that most street gang members become former
27 members. The common mythology of “once a gangster, always a gangster” would
28 lead to gang membership totals perhaps 10 times greater than they are. Most gang

1 members mature, tire of the perceived youthful “advantages” of membership,
2 despair of the continuing violence threat, and engage (however successfully) in
3 jobs, sexual attachments, and other adult involvements (Thomberry et al., 2003;
4 Decker and Lauritsen, 2002). Gang membership across the country has a median
5 tenure of about one year. Tenure in traditional gangs is longer, but membership
6 still probably averages three to four years. Even in the expanded age range of
7 traditional gangs, median age is around 20 years old – gang banging is a youthful
8 status.

9 15. Even if individuals continue criminal activity, it is usually done for
10 purely personal motivation, rather than to further the gang or their status within the
11 gang. In other words, gang members who continue to commit crime may do so as
12 adult criminals, but not adult gang criminals.

13 ***E. Self-Admission is Not Irrefutable Evidence of Membership***

14 16. Self-admission is not irrefutable evidence of gang membership. One
15 view common among law enforcement is that someone who is not a member of a
16 gang would never claim membership, because the gang would retaliate against
17 them for falsely claiming to be part of the gang. This may be right in some
18 instances, but in other instances, the reverse may be true: the presence of gang
19 members may cause people who are not members to claim membership, because
20 they do not want to show the wrong face in front of their peers; they do not want to
21 be seen denying association with gang members, even if they do not consider
22 themselves to be part of the gang or engage in gang activity.

23 **II. Crime Attributable to Street Gangs**

24 17. There is much variation between police about what it means for crime
25 to be “gang-related”. There are three common definitions:

- 26 a) “Member-defined” gang crime, commonly used by most police
27 departments, and the broadest of the three, counts a crime as “gang
28 related” if a gang member is involved, on either the suspect or victim

1 side, regardless of motive or nature of the crime. The crime need not
2 advance the gang or the individual's status within the gang.

3 b) "Motive-defined" gang crimes counts as "gang-related" those crimes
4 committed by a gang member to serve his or her membership only.
5 Examples would be acts that seek to further one's reputation in the gang,
6 to be initiated in the gang, or to demonstrate one's commitment to the
7 gang. The motive pertains to the gang, but is personal, not for the sake of
8 the gang as a group.

9 c) "Gang furtherance" crime corresponds to the descriptions in Penal Code
10 186.22 (the STEP Act), and refers to crime done with the intent of
11 benefitting the gang itself. Examples would include many drive-by
12 shootings and other group retaliations, crossing out rival tags, some drug
13 sales, burglaries, and robberies where the proceeds are returned to other
14 members or a gang "treasury."

15 18. In serious assaults and homicides, motive-defined acts comprise from
16 40% to 50% of the broader member-defined acts (Maxson and Klein, 1996). The
17 STEP Act definition (Penal Code 186.22) applies in even fewer cases. In other
18 words, 50% to 60% of crimes committed by gang members are not done because
19 they are gang members. They are done for purely personal benefit. Gang
20 members often steal cars or steal from stores, not because they are gang motivated
21 or to benefit the gang, but because they want the cars or want the things from the
22 stores. Most gang members sell drugs because they get money for selling drugs,
23 not in order to replenish a gang treasury or to advance their status within the gang.

24 19. Crime committed by traditional street gang members is versatile,
25 rather than focused on a particular type of criminal activity. This is a
26 characteristic some researchers have called "cafeteria-style crime," because crimes
27 committed by gang members range from very minor (alcohol or drug use, petty
28 theft, misdemeanor theft) to major (assaults, car theft, robbery, etc.), but the bulk

1 of it is minor.

2 **A. *Gang Members Exhibit Different Levels of Criminal Behavior***

3 20. Gang crime is not equally distributed across members, nor categories
4 of individuals. It varies greatly by age, gender, and most importantly by level of
5 membership. Injunctions do not distinguish well between core and fringe members
6 of gangs, between criminally active versus occasional perpetrators. It would be
7 better to concentrate on the more troublesome members than widely (and
8 indiscriminately) targeting members, participants, supporters, and others who are
9 tangentially or peripherally connected to a gang through social relationships. This
10 is especially the case in a Traditional Gang where much younger members are still
11 less involved and older “members” have desisted or are desisting from active
12 participation.

13 **B. *Police Documentation of Gang-Related Crime is Unreliable***

14 21. Measuring the level of crime in any jurisdiction is problematic.
15 Measuring levels of gang crime is even more difficult. Comparing police recorded
16 gang crime against non-gang crime reveals gang crime to be more public, yet more
17 anonymous as to perpetrators, involving more suspects, younger victims, younger
18 suspects, more gang victims, more injuries to others, and more unidentified
19 suspects. In short, gang crime is messier, harder to investigate, harder to identify
20 suspects, and less clearly motivated (Maxson et al., 1985). Police do not record
21 (cannot record) most gang crime and its perpetrators. Motives are therefore more
22 inferred than documented. Because the injunctions target and are justified by gang
23 crime, this imprecision necessarily reduces the validity of injunction-related
24 information and injunction-related effectiveness. When one adds to this the
25 problems of criteria for member identification, one gets major levels of ambiguity
26 about the process of injunction application.

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1 **III. There Is Little Empirical Evidence To Suggest Gang Injunctions Are**
2 **Effective In Reducing Gang Activity.**

3 22. Empirical research does not show gang injunctions to be effective in
4 reducing gang activity. What empirical research exists shows that gang injunctions
5 have limited effects in narrow types of criminal activity.

6 23. Gang injunction evaluations are surprisingly rare, given the scores of
7 injunctions in existence. The few studies include:

- 8 • A study suggesting crime displacement to neighboring areas (ACLU,
9 1997), though this study suffers serious methodological flaws.
- 10 • A poorly enforced injunction in Inglewood provided a study showing
11 some increase in crime (Maxson and Allen, 1997).
- 12 • A statistically sophisticated study of 14 Los Angeles County injunctions
13 yielded a 5 to 10 percent reduction in assaults, but not robbery and not
14 property offences (Grogger, 2002).
- 15 • A study revealed for San Bernardino an improvement in community
16 response, but crime effects were unmeasured. (Maxson, Hennigan,
17 Sloane 2005).
- 18 • A study of the Santa Anita gang injunction in Orange County was flawed
19 in its use of service calls rather than crime as the principal outcome
20 variable. Calls went up, crime was unmeasured, and no spillover to other
21 communities was noted (Goulke et al., 2009).

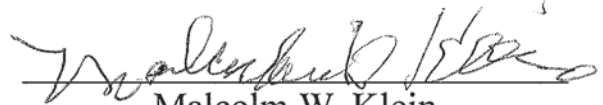
22 24. In essence, despite numerous anecdotal suggestions and public
23 pronouncements, little empirical evidence yet exists to support the effectiveness of
24 street gang injunctions. What empirical evidence does exist shows limited effect,
25 in narrow categories of crime. From the research, it seems equally plausible that
26 gang injunctions may be a success or a failure as tool against gang crime.

27 25. Research also suggests gang injunctions could have unintended
28 negative effects. Research specifically in Orange County (Lane 2002; Lane and

1 Meeker, 2003) suggests that “public officials’ programs to increase community
2 awareness of gang violence and their introduction of gang suppression efforts
3 increased fear levels in community residents” (Klein and Maxson, 2006).
4 Research has also shown that police pressures, injunctions, or group-oriented
5 social services that target the gang as a whole can increase cohesiveness, which in
6 turn leads to increased gang-related crime levels (Klein, 1971; Miller 1958, 1962)
7 rather than crime reduction.

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10 I declare under the penalty of perjury of the laws of the State of California
11 and the United States of America that the foregoing is true and correct.

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13 Executed on 10/21/16, 2016 in Los Angeles, California.

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16 Malcolm W. Klein

References

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