

CITY OF OAKLAND



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May 20, 2010

Paul Robeson Chapter of the ACLU of Northern California
201 13th Street
Box 248
Oakland, CA 94612

Re: May 17 Letter

Dear Board Members,

Thank you for your May 17 letter about the proposed gang injunction in North Oakland. As a longtime ally and supporter of the ACLU, I welcome a serious dialogue with your board, and I share your concerns about the need for transparency, due process and safeguards against abuse in any law enforcement measure.

Be assured that the proposed injunction in North Oakland has been narrowly tailored to address those concerns. While it places restrictions on a small group of adults who are deeply involved in dangerous activity, in no way does it endanger the civil liberties of any other individuals, including fellow ACLU members, within the proposed Safety Zone.

As you stated in your letter, transparency is paramount. In fact, transparency is one of the purposes of a gang injunction. We hope that shining a very public light on the actions of this criminal enterprise (North Side Oakland) will make it harder for its members to plan and commit crimes.

To be clear, the proposed order would apply to 15 defendants based on evidence including convictions for armed robbery, carjacking, grand theft, felony drug sales and other major crimes.

Any additional person included in the injunction will also be named as an individual defendant. Every person included in the injunction will be served with notice and will have their own opportunity to be heard in court. All evidence will be filed with the court and open to the public. Restrictions are spelled out in detail in the order. Under no circumstances will there be uncertainty about who is subject to the injunction, how they are restricted, or why they are being enjoined.

The proposed injunction also goes well beyond what is required by the law to protect due process rights.

Anyone added to the injunction will have the opportunity to argue their case in court, and they will only be subject to the injunction after approval from a judge. The burden of proof is on the City, as it should be, to show that these individuals are in fact active gang members based on extensive evidence of criminal/nuisance conduct. Any enjoined individual who is no longer associated with the gang will be able to go through an administrative "opt-out" process to be removed.

This is a civil law enforcement measure, as opposed to criminal. However, traditional safeguards against abuse – due process, court review and the right to appeal to a judge – are still in place.

Injunctions are analogous to a restraining order against an abuser. The law is clear that, in certain cases, we can and should use a civil court order to prevent someone from causing greater harm to others.

In this case, the proposed order will protect the residents and businesses of North Oakland from further harm by a criminal organization responsible for dozens of robberies, shootings and other violent crimes in the area over the last few years.

In 2007, there were three North Side Oakland-related incidents involving murder, shooting or gun possession. In 2008, that number rose to seven incidents. In 2009, that escalated to 18 incidents, including seven murders. I believe the immediate threat of continued violence justifies a court order restraining the responsible parties.

Gang members subject to the proposed injunction cannot associate in public – with exceptions for work, school and other activities – and cannot be on the street between 10 p.m. and 5 a.m. – with exceptions for jobs, emergencies, etc. They are also restricted from recruiting young people, carrying firearms, threatening witnesses and other activities that are in themselves violations of the law.

As you note, research on gang injunctions is limited. But it does show some potential benefit – see *The Effects of Civil Gang Injunctions on Reported Violent Crime*, which concludes that, "in the first year after the injunctions are imposed, they lead the level of violent crime to decrease by 5-10 percent."

Injunctions "may open the window of opportunity for change" in a neighborhood, according to the authors of the 2005 study "*It's Getting Crazy Out There: Can a Civil Gang Injunction Change a Community?*"

Perhaps more importantly for Oakland, OPD Chief Batts has said that injunctions were an important and effective tool in Long Beach during his time as chief in that city.

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I don't want to overstate the case – by itself, an injunction is not a solution to all gang crime. We must have smart enforcement on one hand, but we also must have meaningful education and intervention on the other.

Ideally, the proposed injunction will crack a window of opportunity for change, give residents a sense of empowerment and reduce the number of bullets fired on our streets. I agree that we cannot compromise constitutional rights to make that happen. This injunction makes no such compromise. It is sharply focused on protecting the community's right to peace and safety, while at the same time carefully safeguarding the principles of due process which we both agree are fundamental to our system of justice.

Thank you again for your letter. Please don't hesitate to contact me directly in the future, and please feel free to review court documents and other information about the injunction at www.oaklandcityattorney.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John Russo", with a large, sweeping flourish extending to the right.

John Russo
Oakland City Attorney

cc: Mayor Ron Dellums
Oakland City Council
City Auditor Courtney Ruby
Oakland Police Chief Anthony Batts