



The Office of Vince Ryan  
County Attorney

---

May 10, 2016

*Via Email: [ssingh@aclutx.org](mailto:ssingh@aclutx.org)*

Mr. Satinder Singh  
Staff Attorney  
ACLU of Texas  
1500 McGowen, Suite 140  
Houston, TX 77004

Dear Mr. Singh:

We wish to thank you and Terri Burke, ACLU Executive Director, for meeting with John Odum and Terence O'Rourke of the County Attorney's Office to discuss the constitutional issues surrounding the gang injunction lawsuit, and we appreciate the additional input your letter provided. The Harris County District Attorney's Office and County Attorney's Office (collectively, "the State") have carefully reviewed the constitutional parameters of gang injunctions before this suit was filed and continue to review the law as the facts of the case unfold. We were, are, and will be committed to protecting the constitutional rights of all people in Harris County including criminal gang members.

A great deal of misinformation about this lawsuit is in the community and which bears correction. The Southlawn gang injunction lawsuit does not seek a "lifetime" or "permanent banishment" from an entire community but asks for an injunction of a two- to four-year duration covering a limited geographical area, with the additional constitutional safeguard of an "opt out" process any defendant may use to exit the injunction sooner. *See* Second Amd. Pet. at ¶¶ 22-26, 28. No "secret lists" of gang members have been created by law enforcement without any objective guidelines or procedures to protect anyone erroneously included. Rather, Texas law contains detailed safeguards and criteria for inclusion in and removal from the State's criminal gang intelligence database. *See* TEX. CODE CRIM. PROC. art. 61. Further, the proposed Safety Zone is targeted to cover very high crime blocks in our community. *See* HPD Crime Analysis, Incident Reports for Gang Exclusion Zone Targets (map) (attached).

We also appreciate the four actions your letter urges the State to take. We are pleased to inform you that we have already taken action as follows:

1. **Community Meetings.** Members our offices — particularly lead trial counsel Celena Vinson — have been meeting with Southlawn residents for months to hear their concerns about crime in the neighborhood and how the gang injunction can best alleviate that crime and improve the living conditions for everyone. We are, of course, absolutely dedicated to additional meetings with the community and believe such community collaboration to be essential to the ultimate success of the neighborhood and thus to eliminate the need for gang injunctions.
2. **Community Programs.** Both of our offices are already working with other governmental officials to develop gang reduction strategies to break the cycles of incarceration, violence, and economic depression in Southlawn. The public/private environment of cooperation in Harris County provides an unprecedented opportunity for all of us to think creatively and develop innovative, funded solutions for Southlawn, and we will be taking advantage of that opportunity to make Southlawn and Harris County a safer and more prosperous community.
3. **Opt-out Procedures.** As you know from reading our Second Amended Petition, the State has already requested an opt-out process to enable any individual to apply for modifications to injunction terms based on individual circumstances or request dismissal from the injunction once that individual renounces criminal gang activity and makes progress toward rehabilitation. Because we believe this opt-out process could be very beneficial to individuals and the community, as discussed, we have moved the court to appoint a Community Counselor to oversee this process and make it available to individuals *both* before and after trial. (See attached motion and order.) As you know, these proposals are modeled on a program run successfully for years by the City of San Francisco, California, after entering an agreement with the ACLU and the Lawyers' Committee for Civil Rights. We would appreciate the ACLU's efforts to encourage defense counsel to agree to this process rather than oppose it as is their current position.
4. **Geographic Prohibitions.** As for the constitutional issue on your fourth point regarding enjoining defendants from being "physically present" in a limited geographical area, whether any such provision is unconstitutional depends on the facts and evidence establishing the criminal gang activity in Southlawn and the participation by and the circumstances of each individual defendant. Moreover, the rights of the defendants are not viewed without regard to the rights of others who may live in, work in, or travel through Southlawn.

As a preliminary matter, the State must protect the safety of all in Southlawn. Civil gang injunctions seek to prevent future crime and violence and thus are not punitive for past acts, but are forward-looking to protect the community as a whole, much like a domestic violence

protective order seeks to prevent future violence against a physically-abused woman. As the California Supreme Court noted nearly twenty years ago while reviewing the constitutionality of early gang injunctions: “The state has not only the right to maintain a decent society, but an obligation to do so.” *People ex rel. Gallo v. Acuña*, 929 P.2d 596, 603 (Cal. 1997).

Our civil liberties and constitutional rights are not absolute or viewed in the abstract, and gang injunction cases illustrate why this is so. “Freedom and responsibility are joined at the hip.” *Id.* First Amendment rights of speech and association do not protect all speech or gatherings. “The First Amendment does not protect violence.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982). Likewise, freedom of association “does not extend to joining with others for the purpose of depriving third parties of their lawful rights.” *Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 776 (1994). When violence occurs in conjunction with constitutionally protected activity, “precision of regulation” is required. *Claiborne Hardware Co.*, 458 U.S. at 916 (discussing protections where some acts of violence occurred related to civil rights boycott of businesses). But here, with a lawsuit focused on criminal gang activity, there has been no showing that the defendants engage in speech or assembly for the purpose of bringing about political, social, or economic change. *Cf. id.* at 911, *to Acuña*, 929 P.2d at 615. Indeed, in their motions for summary judgment raising constitutional issues, the defendants failed to submit any evidence that they engage in any form of civic, charitable, fundraising and other activities worthy of constitutional protection under the First Amendment. While under our constitutional law, such defendants are not broadly protected by the First Amendment, the State still will make every effort to minimize restrictions on the defendants’ rights while protecting the rights of the rest of the community.

Every defendant remaining in the lawsuit has committed and been convicted of multiple crimes ranging from possession and delivery of narcotics, aggravated assaults, drive-by shootings, trespass, retaliation, and burglaries. Most of the crime victims, of course, live in the Safety Zone and are worthy of protection. While some may minimize the gravity of criminal trespass charges and convictions, in the context of these defendants and the aggressive, open air drug markets in Southlawn, those charges arise from invading and refusing to leave the property of others in order to engage in criminal gang activity as the State will demonstrate at trial.

Nevertheless, our offices have made clear to defense counsel that we have been, are, and will be open to modifying orders or dropping defendants entirely if they ask and make a showing of legitimate reasons to be in the Safety Zone or a desire to leave and progress toward leaving gang life behind. The pre-trial opt-out process we are proposing gives defendants a confidential mediation option and one that empowers all defendants — including those who have already defaulted in the case or do not have legal counsel. Finally, at trial the defendants will have yet another opportunity to demonstrate why the gang injunction should not be in place or apply to them. But to exercise their rights, the defendants must proffer some facts and evidence which they have refused to do thus far, despite our informal requests for information and formal discovery requests to those defendants represented by counsel about residency and reasons to be in the Safety Zone.

Mr. Satinder Singh

May 9, 2016

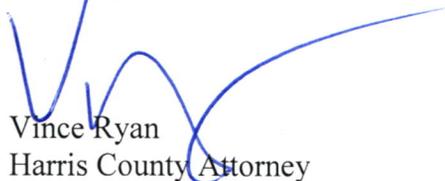
Page 4

After evidence is heard at trial, the appropriate contours of the injunction under the constitution and state statute will be clear as to each individual defendant. The “physically present” provision may be appropriate for some but not all defendants, and the State will argue to the Court for an injunction that is well-supported by the law and the evidence as to individual defendants. For example, one such defendant does not live in Southlawn, is a member of a rival gang, and has been charged in connection with the murder of 15-year old Southlawn resident. A complete prohibition of his presence from the Safety Zone would be both reasonable and constitutional as, the evidence will show, he has no legitimate reason to be there and has been involved in violent crimes while physically present in Southlawn.

Another defendant might have a child who attends a school in the Zone or may himself attend a place of worship there and has taken steps to redeem himself by furthering his education or obtaining gainful employment. The State wants him to succeed and engage in healthy relationships with his family and community. Consequently, the State will urge any such defendant to participate in the opt-out process, and seek only orders that simultaneously protect the community and encourage his progress. If a defendant is, as your letter suggests hypothetically, in fact “picking up a cousin from school,” but doing so as part of an effort to recruit that cousin into criminal gang life, the State will seek to stop him. *See* TEX. PENAL CODE § 71.022 (prohibiting coercing, inducing, or soliciting gang membership). But if he renounces criminal gang life and wishes to be a positive example to his young cousin, the State will make all efforts in Court and through community programs to support him and enable him and his young cousin to succeed.

In conclusion, be assured that the State will protect both the civil liberties of the defendants and the quality of life, security of property, and the lives of the Southlawn residents. We look to continuing our conversation with the ACLU and the Southlawn community.

Sincerely,



Vince Ryan  
Harris County Attorney