

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO CITY
ATTORNEY'S OFFICE, THE AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, AND THE LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO BAY AREA REGARDING CIVIL GANG
INJUNCTIONS AND THE OPT OUT PROCESS**

This memorandum of understanding ("MOU") is between the San Francisco City Attorney acting in the name of the People of the State of California, the American Civil Liberties Union of Northern California ("ACLU-NC") and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR"). The City Attorney and the aforementioned organizations have reached an understanding and agreement regarding an opt out procedure to be instituted and implemented by the City Attorney's Office for persons identified in civil gang injunctions brought by the City Attorney that is fair, transparent, accessible, and recognizes that individuals can and do change for the better.

SECTION 1: Background.

At the time of this MOU, the City Attorney has obtained two permanent civil gang injunctions against four criminal street gangs and one preliminary injunction against a fifth criminal street gang. There is a permanent injunction in an area within the Bayview/Hunters Point neighborhood against the Oakdale Mob. There is also a permanent injunction in areas in the Western Addition against the KOP, Eddy Rock and Chopper City criminal street gangs. As of the date of this MOU, there is a preliminary injunction in an area within the Mission district against the Norteño criminal street gang.

A court hearing to determine whether a permanent injunction will be issued in the Norteño case will be scheduled following the execution of this MOU.

Although each injunction names the criminal street gang as the defendant, the injunction includes an enforcement list that identifies specific gang members against whom the injunction is enforceable. In order to be bound by the injunction, individuals on the enforcement list must be served with a copy of the injunction by the People. The enforcement list for each injunction has been adopted by the Court, based on evidence submitted by the City Attorney and findings made by the Court that the individuals on the list are active gang members. The enforcement list is a part of the Court-issued injunction, and the Court must therefore approve the removal of any person from the enforcement list.

In evaluating whether or not an individual should be considered for inclusion in a civil gang injunction, the City Attorney considers the following criteria. This list is not meant to be exclusive, nor prioritized in order of importance. Admissions by the individual to being a gang member; participation in gang related crimes or activities; affiliation with known gang members; evidence that the individual has been seen displaying gang affiliated symbols and/or hand signs; evidence that the individual has been seen wearing gang affiliated clothing; evidence that the individual has identifiable gang affiliated tattoos; and registration as a gang member under California Penal Code section 186.30.

SECTION 2: The City Attorney's Opt Out Process.

A. Effective on the date of this MOU, the City Attorney agrees to implement an opt out process in which individuals named in a civil complaint or a subsequent injunction (i.e., preliminary or permanent) may apply to the City Attorney for removal from an enforcement list. This opt out process is completely voluntary on the part of the individual. At any point in time, the individual named in any enforcement list may choose to bypass this opt out process and proceed directly to Court to seek a modification of the injunction and/or to request that the individual be excluded or removed from the enforcement list. In seeking a modification by the Court, the individual, is responsible for complying with all applicable rules of litigation unless otherwise ordered by the Court. The City Attorney appreciates that some individuals may be proceeding in proper, and will therefore exercise his best judgment and take into account a litigant's need for access to the courts.

B. An individual may request that he or she be removed from the enforcement list either before a preliminary or permanent injunction (or similar order) has been issued by the Court ("pre-injunction opt out request") or after a preliminary or permanent injunction (or similar order) has been issued by the Court ("post-injunction opt out request"). As a condition to the City Attorney's approval of any request for removal, the individual must agree that the City's agreement or stipulation to remove the individual from the enforcement list may be used to show only that the individual has been removed from the enforcement list.

C. If an individual invokes the City Attorney's opt out process, whether pre-injunction or post-injunction, he or she must initiate contact with the City Attorney's Office by telephone or in writing and request to be removed from the enforcement list. The individual seeking removal should contact Deputy City Attorney Alex G. Tse ("DCA Tse"), the supervisory attorney for the team responsible for civil gang injunctions, or his successor in that role. A Petition for Removal ("Petition"), attached to this MOU as Exhibit A, may be used to request an opt out from the City Attorney. The City Attorney will provide a copy of this Petition to each individual seeking removal. The Petition will also be made available to the public on the City Attorney's website, which is found at the following hyperlink: http://www.sfgov.org/site/cityattorney_index.asp. The use of the Petition is optional. Any written documents the individual would like to submit to the City Attorney for review, including the Petition, should be mailed or hand delivered to DCA Tse. DCA Tse may also be contacted by telephone at (415) 554-3800. The individual is encouraged to provide any and all information he or she believes would support removal from the enforcement list.

Unless there are exceptional circumstances, the City Attorney will require an interview of the individual prior to making any decision on the opt out request, and the individual may choose to have representatives at this interview. The interview shall take place at the City Attorney's Office on a mutually agreeable date and time and can be set up by calling DCA Tse or his successor as Team Leader for the Gang Injunction Team at (415) 554-3800.

D. The City Attorney agrees to consider any and all information, without limitation, so long as that information is true and accurate. The format of the information provided is not as critical as the content. Except as set forth in this paragraph, the City Attorney agrees that the information provided in the Petition will be kept confidential to the extent required by law and will be used solely for the decision in the opt out process. Notwithstanding the foregoing, if the City Attorney relies on any information provided by the individual that subsequently is determined to be false or misleading at the time made or to cease to be true thereafter, the City Attorney reserves the right to take any and all appropriate action, including, but not limited to, declining the request of the individual to be removed from the enforcement list, or requesting that the Court add the individual back on to the enforcement list, and the City Attorney may use the information provided in connection with the Petition in any court proceeding to add the individual back to the gang injunction enforcement list based on such false, misleading or no longer accurate information. The City Attorney will take into account any privacy concerns raised by the individual related to the information provided to the City Attorney.

E. The City Attorney's Office may conduct its own investigation into the veracity of any information submitted by an individual invoking the opt out process and may consider any other information that may be relevant to the request. Except as set forth in paragraph 2(D) above, the City Attorney will use information provided regarding employment and education only to confirm the factual accuracy of the information provided.

F. Once an individual requests an opt out, the City Attorney will give the individual a decision in writing if the individual provides the City Attorney with a valid current address to which the response may be sent. This decision will be provided within 30 days of the date the petition or request was made. For pre-injunction opt-outs, the City Attorney will exercise his best efforts to evaluate all requests for opt out prior to the hearing on the preliminary injunction. The purpose of the written response is solely to facilitate the individual's future efforts to disassociate from the gang and rehabilitate himself or herself and successfully invoke the opt out process at a later date. The individual will receive a written response regardless of the decision. If the decision is to decline the opt out request, the individual must agree that he or she will not use the written response in: (1) any other court proceeding; or (2) as the basis for or as evidence in any litigation or claim of any kind predicated in whole or in part on the City Attorney's acts or omissions in conjunction with the injunction or the opt out process. Except as set forth in paragraph 2(D) above, the City Attorney agrees that the information provided by individuals will not be used against them in any other court proceeding.

G. **Post-Injunction Opt Out Requests:** If an individual makes, and the City Attorney's Office approves, a post-injunction opt out request, the agreement by the City Attorney that the individual should be removed from the enforcement list must be approved by the Court. The City Attorney will provide the individual with written notice, consistent with Section F, above, that the individual will be responsible for applying to the Court for the removal from the enforcement list. The City Attorney will represent to

the Court, in writing, that, after conducting its investigation, the City Attorney has no objection to the individual's request to be removed from the enforcement list so long as that removal is without prejudice. A copy of this document will be served on the individual when it is filed with the Court. If the City Attorney denies the individual's request to be removed from the enforcement list of any injunction or other court order, the individual may nonetheless seek relief from the Court. By deciding to go to court, the individual is responsible for complying with all applicable rules of litigation unless otherwise ordered by the Court. The City Attorney appreciates that some individuals may be proceeding in pro per, and will therefore exercise his best judgment and take into account a litigant's need for access to the courts. The City Attorney will give notice to the San Francisco Police Department, within no more than three days, of the name of any individual who has been removed from the enforcement list and the name of the injunction from which they have been removed.

H. **Pre-Injunction Opt Out Requests:** If an individual makes a pre-injunction opt out request, the individual shall exercise reasonable diligence to provide all information to the City Attorney before the last day to file an opposition to the preliminary injunction. This MOU does not affect any deadline triggered by the filing of a gang injunction complaint unless otherwise ordered by the Court. While the City Attorney will exercise his best efforts to evaluate all requests for an opt out prior to the hearing on the preliminary injunction, if the request is made less than five days prior to the last day to file an opposition to the preliminary injunction, the City Attorney may

refuse to consider the request before the injunction proceeding is heard because he lacks sufficient time to evaluate the information provided by the individual. In that event, and as is always the case, the individual may request relief from enforcement from the Court or have the request considered as a post-injunction opt out request.

If the City Attorney approves an individual's pre-injunction opt out request prior to the hearing on the preliminary injunction, that individual will be removed by the City Attorney from the proposed enforcement list prior to the hearing on the preliminary injunction, and the individual will not need to file papers with the Court. Removal from the proposed enforcement list shall be without prejudice.

If the City Attorney denies an individual's pre-injunction opt out request to be removed from an injunction's enforcement list prior to the hearing on the preliminary injunction, that individual may oppose the injunction or his or her inclusion on the list or otherwise apply for relief from the Court. By deciding to go to court, the individual is responsible for complying with all applicable rules of litigation unless otherwise ordered by the Court. The City Attorney appreciates that some individuals may be proceeding in pro per, and will therefore exercise his best judgment and take into account a litigant's need for access to the courts.

SECTION 3: Criteria For Removal From A Civil Gang Injunction.

In deciding whether or not to approve or deny an individual's opt out request, the City Attorney will consider the totality of the circumstances and evidence when

evaluating the individual's request. The main overarching issue is whether the individual is currently an active gang member. The City Attorney will consider, among other factors, whether the individual is gainfully employed, pursuing an education, and any activities that demonstrate a willingness and desire not to engage or associate in gang related activities. The City Attorney will favorably consider evidence of an individual removing gang related tattoos, ceasing to wear gang colors, or ceasing to spend time with known gang members. The City Attorney will also consider relevant the length of time a person has disassociated himself or herself from the gang. Because the manner in which an individual disassociates from a gang will often be several and varied, the time factor may be different for different individuals, and it will be the totality of the evidence, including the time factor, that will be considered by the City Attorney.

SECTION 4: Notice Of The City Attorney's Opt Out Process.

The City Attorney will provide notice of the process described above in Sections 2 and 3 by issuing a press release and publishing and maintaining information related to the civil gang injunction and this opt out process on the City Attorney's website. In all civil gang injunction cases in which there is a permanent injunction in effect on the date this MOU is executed, the City Attorney will serve persons subject to the injunction by mail to the last known address notice of the opt out process. In any pending action (i.e., an action in which no permanent injunction has been issued) or any action initiated after the date of this MOU, the City Attorney will provide notice of the opt out process

described above in Sections 2 and 3 by serving written notice with any complaint and any subsequent injunction issued by the Court. This notice shall attach the Petition for Removal and clearly inform individuals of the following: 1) that the opt out process exists so that individuals who are not active gang members can petition the City Attorney for removal from a gang injunction enforcement list; 2) to initiate the opt-out process, individuals should contact Deputy City Attorney Alex G. Tse (or his successor) at (415) 554-3800; and 3) individuals may contact the Lawyers' Committee for Civil Rights at (415) 543-9444 for questions regarding the opt out process and for assistance in identifying relevant community organizations and service providers to support an opt out request. A copy of the notice is attached to this MOU as Exhibit B.

SECTION 5: Periodic Review.

The City Attorney shall conduct a review of each gang injunction every three years from the date in which a permanent injunction has issued to determine whether the injunction should continue in effect and, if so, if any individual should be removed from the enforcement list. If, as a result of such a periodic review, the City Attorney determines that an individual should be removed from an enforcement list, the City Attorney will seek a Court order modifying the injunction, and notice of removal will be given to that affected individual consistent with the law, unless otherwise ordered by the Court. Any removal of an individual initiated by the City Attorney must be approved the Court, and is without prejudice. Moreover, any removal of an individual is inadmissible

in any criminal proceeding involving that individual, except to show that the individual has been removed from the gang injunction enforcement list. The City Attorney will give notice to the San Francisco Police Department, within no more than three days, of the name of any individual who has been removed from the enforcement list and the name of the injunction from which they have been removed.

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SECTION 6: Review and Renewal of the MOU.

The City Attorney, ACLU-NC and LCCR shall meet and confer prior to the third anniversary of this MOU to determine whether changes need to be made to the terms or scope of this MOU. If after five years there is no unanimous agreement to continue under this MOU, it shall expire.

OFFICE OF THE CITY ATTORNEY
THE CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
CITY ATTORNEY
ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA

Dated: 3/24/08

ACLU-NORTHERN CALIFORNIA

ALAN L. SCHLOSSER, ESQ.
JUNIPER LESNIK, ESQ.

Dated: _____

LAWYERS' COMMITTEE FOR CIVIL RIGHTS

KENDRA FOX-DAVIS, ESQ.

Dated: _____

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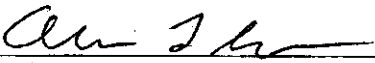
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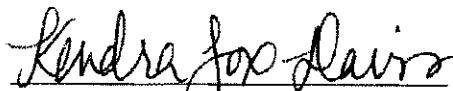
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