

Sharpen the Blade: Void for Vagueness and Service of Process Concerns in Civil Gang Injunctions

Ryan Young*

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* J.D. Candidate, University of the Pacific, McGeorge School of Law, 2010; B.A., Psychology, University of the Pacific, 2006. Many thanks to Professor Michael Vitiello for his guidance and mentorship. Thanks to the Sacramento and Los Angeles County District Attorney’s Offices, especially to Los Angeles County Deputy District Attorney Deanne Castorena at Hardcore Gang and the staff at Pomona Juvenile for allowing me to begin my legal career with you all. Most importantly, thanks to my family for their love and support.

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*Every society, all government, and every kind of civil compact therefore, is or ought to be, calculated for the general good and safety of the community.*¹

I. INTRODUCTION

Which is more important: protecting the community at large or protecting the individual's right to associative freedom? At its core, this is the gang injunction dilemma. Achieving a balance between the two is a precarious task. As the stories of Kebret Teckle and Alma Ponce illustrate, gang violence affects individuals on both sides of the coin.

1. George Mason, *The Papers of George Mason, 1725-1792*, in 1 THE FOUNDERS' CONSTITUTION 667 (Robert A. Rutland ed., 1970).

A. *Kebret Teckle: An Innocent Victim of Gang Violence*

Kebret Teckle was a hardworking and disciplined student at California State University, Sacramento.² She was a kind, friendly, and active young woman with aspirations of going to graduate school.³ On May 7, 2007, those dreams came to an end.

That night Teckle was out with friends at an off-campus night club when a fight broke out between rival gangs.⁴ A member of the G-Mobb gang performed a “turf dance” that enraged members of the rival Fourth Avenue Bloods (“FAB”). During the confrontation, a member of the G-Mobb gang randomly shot in the direction of FAB members.⁵ As the crowd fled in fear, Teckle quickly boarded her vehicle.⁶ A stray bullet struck Teckle in the head as she escaped the scene.⁷ Kebret Teckle died later that day.⁸

Innocent bystanders are caught in the crossfire of gang violence. “Innocent people are getting murdered all around this city because of gang members. . . . The next time, it may be your family, loved ones or friends.”⁹

B. *Alma Ponce: Gang Member?*

Alma Ponce is a twenty-two year-old mother of one living in Orange County, California.¹⁰ She has never been jailed or convicted of a violent crime.¹¹ Other than a marijuana arrest when she was a teenager, Ponce is a law-abiding citizen and does not consider herself a member of the Varrío Viejo Latino street gang.¹² Nonetheless, if Ponce wears a certain color of clothing, stays out past 10 p.m., or even hugs her brother in public, she will be arrested and put on probation.¹³ Worse yet, she could be placed in jail for six months.¹⁴

2. See Andy Furillo, *Gangs' Warfare Spills Over: Feud Playing Out in Public Has Killed 3*, SACRAMENTO BEE, Dec. 28, 2008, at B1 (describing the effects of a “turf war” between the G-Mobb and Fourth Avenue Bloods gangs on innocent Sacramento citizens).

3. *Id.*

4. See *id.* (depicting the events that led to Teckle’s death).

5. See *id.* (confirming a witness’ statement that shots rang out after FAB members tried to run over G-Mobb members with a car).

6. See *id.* (detailing the death of Teckle).

7. *Id.*

8. *Id.*

9. *Id.* (relaying the statement of an aggrieved mother during the sentencing of her son’s murder).

10. See Daffodil J. Altan, *Is a Popular Legal Weapon Ending a South County Gang Rivalry, or Catching Bystanders in Its Net?*, O.C. WKLY., Jan. 29, 2009, <http://www.ocweekly.com/2009-01-29/news/san-juan-capistrano-gang-injunction> (on file with the *McGeorge Law Review*) (describing the effects of a civil gang injunction on those alleged to be “gang members”).

11. *Id.*

12. See *id.* (outlining Ponce’s arrest record).

13. See *id.* (summarizing key provisions in San Clemente’s gang injunction against Varrío Viejo).

14. *Id.*

Ponce, along with 132 other people in town, is subject to a civil gang injunction.¹⁵ Suspected Varrio Viejo members were sued by the Orange County District Attorney's Office for creating a public nuisance within a two mile area in the City of San Clemente.¹⁶ While the injunction removed some drug dealers from the streets, Ponce and other law-abiding Latinos are routinely stopped, questioned, and involuntarily searched by law enforcement officers.¹⁷

As Ponce sits with her father on a brisk December evening, she wonders why she cannot go to the park to play with her daughter.¹⁸ She had lived in this neighborhood all her life, but maybe it was time to move.¹⁹

C. *Overview of This Comment*

Civil gang injunctions are civil lawsuits that prohibit gang members from engaging in criminal and nuisance activities.²⁰ While the stories of Kebret Teckle and Alma Ponce exemplify the gang injunction dilemma, a court of law cannot be influenced by moral judgments alone. The efficacy of gang injunctions must be based on a constitutional foundation. Opponents frequently challenge gang injunctions as a violation of the First Amendment right to free association;²¹ however, California precedents preclude associational arguments.²²

Recent California court of appeal decisions suggest that void for vagueness and service of process are areas of increasing concern.²³ This Comment seeks to

15. *Id.*

16. *Id.*

17. *See id.* (stating that Latino teenagers are stopped by the police even though they are not named defendants in the suit).

18. *Id.*

19. *Id.*

20. *See, e.g.*, OFFICE OF THE L.A. CITY ATT'Y ROCKY DELGADILLO, THE CITY ATTORNEY'S REPORT, GANG INJUNCTIONS: HOW AND WHY THEY WORK 2 (2007) [hereinafter THE CITY ATTORNEY'S REPORT] ("When a gang has engaged in so many crimes and has . . . infringed on the rights of other members of the community . . . it is not only legal to enjoin the actions of the gang[,]. . . it is just.").

21. *See, e.g.*, Larry Welborn, *D.A. Seeks Injunction Against O.C. Street Gang*, O.C. REGISTER, July 14, 2006, http://www.ocregister.com/ocregister/homepage/abox/article_1211685.php# (on file with the *McGeorge Law Review*) ("Deputy alternate defender Tony Ufland said many of the terms requested by prosecutors are protected by the First Amendment to the U.S. constitution, including freedom of association and freedom of speech.").

22. *See People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997) (holding that a gang defendant's right to associate with other members is not a constitutionally protected interest); *see also People v. Englebrecht (Englebrecht II)*, 106 Cal. Rptr. 2d 738, 752 (Ct. App. 2001); *In re Englebrecht (Englebrecht I)*, 79 Cal. Rptr. 2d 89, 94 (Ct. App. 1998).

23. *See People ex rel. Totten v. Colonia Chiques*, 67 Cal. Rptr. 3d 70 (Ct. App. 2007) (overturning a curfew provision because it was unconstitutionally vague); *see also People ex rel. Reisig v. Broderick Boys*, 59 Cal. Rptr. 3d 64 (Ct. App. 2007) (invalidating a gang injunction because of improper service of process). Although this comment supports the use of gang injunctions, it acknowledges that current injunctions are not perfect. *Colonia Chiques* and *Broderick Boys* show that gang injunctions are also vulnerable to void for vagueness and service of process challenges.

provide insight on possible vagueness and service weaknesses in civil gang injunctions.

The Comment is divided into five parts. Part II offers background on America's gang problem and asserts that traditional law enforcement methods are ineffective in reducing gang violence. Part III establishes the civil gang injunction as a unique method of fighting gang violence and presents the mechanics of gang injunctions. Part IV reviews First Amendment challenges to the "do not associate" provision and outlines why California precedents preclude such challenges. Part V introduces void for vagueness as an area of vulnerability and recommends gang-specific pleadings as a possible solution to the problem. Part VI puts forth service of process as a second area of weakness and proposes voluntary safeguards as a method of alleviating notice concerns.

This Comment urges prosecutors to be proactive in addressing void for vagueness and service of process issues. Gang injunctions may be an effective means of curbing gang violence, but to achieve that end, they must remain constitutional.

II. THE GANG PROBLEM

Gang violence is a national epidemic.²⁴ There are now over 30,000 gangs and over 800,000 gang members across the United States.²⁵ Cities in California, especially Los Angeles, are considered epicenters for modern gang activity.²⁶ Many well-known street gangs, such as the Bloods, the Crips, Mara Salvatrucha (MS-13), and the 18th Street Gang, trace their origins to the streets of Los Angeles.²⁷ Gang membership in California ranges from 250,000 to 420,000.²⁸ Close to twenty-seven percent of California's homicides between 1996 and 2005 were gang-related.²⁹

Gangs are spreading across America.³⁰ Gang culture is seeping into smaller cities and suburban areas.³¹ In places like Wilmington, Delaware, inner city gangs claim new territories and regularly engage in drug trafficking and other

24. See Robert S. Mueller, III, Dir., Fed. Bureau of Investigation, Address at the Los Angeles Chamber of Commerce: Combating the Gangs of L.A. and Beyond (Jan. 18, 2007) (on file with the *McGeorge Law Review*) (providing an initial overview of the national gang problem).

25. See *id.* (presenting statistics on the number of gangs and gang members across the United States).

26. See *id.* (stating that Los Angeles is "ground zero" for modern gang activity).

27. *Id.*

28. News Release, Cal. Dep't of Justice: Bureau of Narcotics Enforcement, Vicious Gang Taken Down (June 6, 2007) (on file with the *McGeorge Law Review*).

29. *Id.*

30. See Mueller, III, *supra* note 24 (stating that MS-13 has spread from Los Angeles to over thirty-three U.S. states and four foreign countries). See generally Gustav Eyer, Note, *Gangs in the Military*, 118 YALE L.J. 696 (2009) (noting that gang members are pervading the military).

31. See Esteban Parra, *Gang Violence Spreads to Smaller Cities*, NEWS JOURNAL (WILMINGTON, DEL.), Oct. 25, 2008, at 1B (examining the influx of Latino gangs in Wilmington, Delaware, and nearby suburbs).

illegal activities.³² By reaching out to the youths of more vulnerable immigrant and impoverished demographics, gangs are finding new populations to replenish their ranks.³³

Based on this evidence, traditional law enforcement approaches to curbing gang violence are ineffective.³⁴ High crime counties such as Los Angeles County continually seek unique solutions to address the gang problem.³⁵ In 1987, the Los Angeles City Attorney's Office developed the first civil gang injunction.³⁶

III. THE CIVIL GANG INJUNCTION: A UNIQUE SOLUTION

The civil gang injunction is a unique method for reducing the spread of gang-related criminal activity. Gang injunctions enjoin gang defendants from engaging in a wide range of legal and illegal activities within a specified "safety zone" ranging in area from a few city blocks to several square miles.³⁷ An injunction may include provisions prohibiting gang defendants from engaging in illegal activities such as using drugs and alcohol, discharging firearms, and trespassing on private property.³⁸ Additionally, an injunction may prohibit otherwise legal conduct, such as freely associating with other gang members and using a cell phone.³⁹

Gang injunctions are a powerful tool because they grant police and law enforcement personnel the authority "to disperse, or stop and frisk, or take into custody enjoined [gang defendants] whenever they are seen violating one of the injunction's broad provisions."⁴⁰ By imposing fines and possible jail time for smaller offenses, civil gang injunctions are designed to limit more serious crimes

32. See *id.* (noting that the influx on gangs in Wilmington has created new rivalries and increased the level of violence).

33. See Tracy Loew & Ruth Liao, *Pervasive Spread of Gang Culture Makes Youths Vulnerable*, STATESMAN JOURNAL (SALEM, OR.), Dec. 21, 2008, at Mid-Valley 1 (examining the recent rise of youth gang activity in the suburb of Salem, Oregon).

34. Mueller, III, *supra* note 24 ("[G]iven the scope of gang activity throughout America, it has become clear that this traditional approach is only part of the solution to a complex violent crime problem.").

35. See Molly Hennessy-Fiske, *L.A. County Supervisors Approve Anti-Gang Pilot Program*, L.A. TIMES, Jan. 7, 2009, <http://articles.latimes.com/2009/jan/07/local/me-county-gang7> (on file with the *McGeorge Law Review*) (previewing Los Angeles County's multi-million dollar multi-agency pilot program to combat gang activity in four communities).

36. See, e.g., Edson McClellan, *People ex rel. Gallo v. Acuna: Pulling in the Nets on Criminal Street Gangs*, 35 SAN DIEGO L. REV. 343, 356 (1998) (providing a brief history on the evolution of gang injunctions).

37. See, e.g., Scott E. Atkinson, *The Outer Limits of Gang Injunctions*, 59 VAND. L. REV. 1693, 1694-95 (2006) (introducing the basic mechanics of a gang injunction).

38. See, e.g., James Leito, Comment, *Taking the Fight on Crime from the Streets to the Courts: Texas's Use of Civil Injunctions to Curb Gang Activity*, 40 TEX. TECH L. REV. 1039, 1046-47 (2008) (introducing common provisions found in gang injunctions).

39. *Id.*

40. See Matthew Mickle Werdegar, Note, *Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs*, 51 STAN. L. REV. 409, 434 (1999) (describing the fundamental principles behind gang injunctions).

before they occur by restricting disorderly conduct.⁴¹ While violation of any injunction is punishable by civil or criminal contempt, violation of a gang injunction is prosecuted as criminal contempt.⁴²

Pursuing a civil gang injunction requires a tremendous amount of time and effort. Yet, academic studies, police reports, and community feedback indicate that gang injunctions may have a positive effect on deterring crime and enhancing public safety.⁴³ Other benefits include: “(1) bringing police and residents together to solve community problems; (2) making unlawful otherwise lawful activit[ies]; (3) allowing for group arrests and prosecutions [of gang members]; and (4) creating a list of crimes where police,” and not intimidated victims, will be called upon as witnesses.⁴⁴ For these reasons, prosecutors must ensure the efficacy of gang injunctions.

A. Legal Theory of Civil Gang Injunctions

Civil gang injunctions apply traditional public nuisance law to the “harms criminal street gangs inflict on the community.”⁴⁵ Although public nuisance law originally addressed minor annoyances, the doctrine can be applied to curtail the activities of a criminal street gang.⁴⁶ In all states, either a common law or statutory cause of action for public nuisance allows for injunctive relief.⁴⁷

41. See, e.g., McClellan, *supra* note 36 (explaining the purpose of implementing a gang injunction).

42. See CAL. PENAL CODE § 166(a)(4) (West 1999 & Supp. 2009) (stating that any person who willfully disobeys the terms of a court order is guilty of contempt of court and will be charged with a misdemeanor); see also Gregory Walston, *Taking the Constitution at Its Word: A Defense of the Use of Anti-Gang Injunctions*, 54 U. MIAMI L. REV. 47, 53-57 (1999) (summarizing the general mechanics of gang injunctions).

43. See Leito, *supra* note 38, at 1053-55 (stating that while crime persists in communities where gang injunctions are implemented, residents generally feel safer because they no longer worry about gang members on the streets harassing them). See generally Matthew David O’Deane, *Effectiveness of Gang Injunctions in California: A Multicounty 25-Year Study* (Sept. 2007) (unpublished Ph.D. dissertation, Walden University) (on file with the *McGeorge Law Review*) (providing a detailed evaluation on the effectiveness of several gang injunctions filed in California within the last twenty-five years). But see Cheryl L. Maxon et al., “*It’s Getting Crazy Out There*”: *Can a Civil Gang Injunction Change a Community?* 4 CRIMINOLOGY & PUB. POL’Y 501 (2005) (suggesting that while gang injunctions filed in San Bernardino reduced gang violence in the short-term, there were no intermediate or long-term effects except for a lower fear of crime). The opinions of these scholars typify the debate over the effectiveness of gang injunctions.

44. McClellan, *supra* note 36, at 360-61 (outlining potential benefits of gang injunctions to the community).

45. See, e.g., Max B. Shiner, *Ganging Up on Criminals*, S.F. DAILY J., Sept. 29, 2008, at 7 (reviewing the law of civil gang injunctions).

46. See INJUNCTION MANUAL 2003, NATIONAL DISTRICT ATTORNEYS ASSOCIATION 2 (2008) (on file with the *McGeorge Law Review*) (introducing prosecutors and law enforcement agencies to specific procedures necessary to implement a civil gang injunction).

47. See *id.* (reviewing common law and statutory causes of action for public nuisance).

1. *Common Law Application of Public Nuisance*

The common law recognizes public nuisance as an unreasonable interference with a set of general public interests entitled to protection.⁴⁸ Common law public nuisance has been used to restrict or prohibit a wide range of activities. Activities subject to restriction or prohibition include interference with public health (e.g., keeping diseased animals), public safety (e.g., shooting off fireworks in a public street), public morals (e.g., keeping houses of prostitution), public peace (e.g., making loud and disturbing noises), public convenience (e.g., obstructing a public highway or stream), and a variety of similar public rights.⁴⁹ While many states replaced common law crimes with statutes, common law public nuisance principles may be used as a foundation for determining which gang activities are unreasonable enough to constitute a public nuisance.⁵⁰

2. *Statutory Application of Public Nuisance*

Almost all states have adopted general statutes to provide criminal penalties for public nuisance.⁵¹ These statutes often include common law principles.⁵² While applying public nuisance to the activities of a criminal street gang may be a foreign concept for most states, public nuisance statutes are used extensively in California.⁵³ California's use of public nuisance statutes can be seen as a guide for prosecutors and law enforcement personnel of other states seeking to implement their own civil gang injunctions.⁵⁴

3. *California's Application of Public Nuisance*

California defines a public nuisance as an activity that affects "an entire community or neighborhood, or any considerable number of persons."⁵⁵ More

48. See RESTATEMENT (SECOND) OF TORTS § 821B (1979) (summarizing the application of public nuisance in the common law).

49. *Id.*

50. INJUNCTION MANUAL 2003, *supra* note 46, at 2 ("[T]he common law tort of public nuisance still exists, and the traditional basis for determining what is [and is not] a public nuisance may still be applicable.").

51. See generally RESTATEMENT (SECOND) OF TORTS § 821B (1979).

52. *Id.*

53. See INJUNCTION MANUAL 2003, *supra* note 46, at 3 (examining California's use of public nuisance statutes to implement civil gang injunctions).

54. *Id.* Influenced by California precedent, Texas began drafting its own gang injunctions in the late 1990s. The Texas injunctions mirror those of California. See Leito, *supra* note 38, at 1049 (summarizing Texas' use of civil gang injunctions). Most recently, prosecutors in St. Paul, Minnesota, announced plans to pursue a gang injunction against the Sureño 13 street gang. See ConnectingSt.Paul.com, Mayor Coleman Announces Civil Gang Injunction Lawsuit Against the Sureño 13, <http://www.connectingstpaul.com/news/latest/mayor-coleman-announces-civil-gang-injunction-lawsuit-against-the-sureno-13.html> (last visited Oct. 5, 2009) (on file with the *McGeorge Law Review*) (previewing Minnesota's first attempt to secure a gang injunction).

55. CAL. CIV. CODE § 3480 (West 1997 & Supp. 2009).

specifically, California defines public nuisance as:

Anything which is injurious to health, . . . or is indecent or offensive to the senses, . . . or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in a customary manner, of a navigable lake, . . . or any public park, square, street, or highway⁵⁶

The activities of a street gang fit into one or all of these four categories. Gangs engage in a variety of activities that are injurious to life or property, including shootings, homicides, assaults, robberies, burglaries, thefts, extortions, and other criminal acts.⁵⁷ Additionally, noncriminal acts that are part of a gang's effort to expand its territory and influence over a community interfere with the public's comfortable enjoyment of life or property.⁵⁸

The California Code of Civil Procedure grants prosecutors standing to bring a civil action in the name of California citizens to abate a public nuisance.⁵⁹ As such, injunctive relief is warranted where a reasonable person considers the activities of a particular gang to be a "substantial" and "unreasonable" interference with a public right under one of California's four categories of public nuisance.⁶⁰ Since important individual interests are at jeopardy, the government must prove its case by clear and convincing evidence.⁶¹

While criminal conduct may be enjoined in a nuisance action,⁶² the provisions of a civil gang injunction are not limited to restrictions on criminal conduct.⁶³ Restrictions on otherwise legal conduct are possible, provided the prosecutor establishes a clear and convincing factual basis as to why the provision is necessary to abate the public nuisance.⁶⁴

56. *See id.* § 3479 (describing the activities that constitute a public nuisance under California law).

57. *See, e.g.,* Shiner, *supra* note 45, at 7 (applying California's public nuisance law to the general activities of criminal street gangs).

58. *Id.*

59. CAL. CIV. PROC. CODE § 731 (West 1980 & Supp. 2009) ("A civil action may be brought in the name of the people of the State of California to abate a public nuisance . . . by the district attorney of any county in which such nuisance exists, or by the city attorney [of any town or city] in which such nuisance exists.").

60. *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 605 (Cal. 1997); *see also* INJUNCTION MANUAL 2003, *supra* note 46, at 5 (stating that a judge must apply an objective standard in determining whether a specific gang activity is actionable under public nuisance).

61. *Englebrecht II*, 106 Cal. Rptr. 2d 738, 752 (Ct. App. 2001) ("We conclude that the importance of the interests affected by the injunction in this case requires that the finding of facts necessary to justify its issuance be proved by clear and convincing evidence.").

62. *See* CAL. CIV. PROC. CODE § 3369 (West 1997 & Supp. 2009) ("Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or as otherwise provided by law.").

63. *Englebrecht I*, 79 Cal. Rptr. 2d 89, 93 (Ct. App. 1998).

64. *See* INJUNCTION MANUAL 2003, *supra* note 46, at 9 (emphasizing that it is important for the prosecutor to develop a solid factual basis for each proposed provision of the gang injunction).

B. *Provisions of a Civil Gang Injunction*

Because civil gang injunctions restrict the activities of gang defendants within a safety zone,⁶⁵ the prosecutor must explain why each provision of the injunction is necessary.⁶⁶ The nuisance activity may vary from gang to gang. Therefore, prosecutors must narrowly-tailor injunction provisions to individual gangs.⁶⁷ Typical provisions include no intimidation, no firearms, drugs, or alcohol, no trespassing, no forcible recruiting, and no graffiti or graffiti tools.⁶⁸

C. *The “Do Not Associate” Provision*

The most controversial and effective provision of civil gang injunctions is the “do not associate” restriction. “Do not associate” provisions prevent gang members from “driving, standing, sitting, walking, gathering, or appearing anywhere in public view or any place accessible to the public” with any known member of a gang within the specified safety zone.⁶⁹ Although, “do not associate” provisions are subjected to constitutional challenges based on the First Amendment right to free association, California precedents support their validity.⁷⁰

IV. FIRST AMENDMENT CHALLENGES TO “DO NOT ASSOCIATE”

A. *Acuna: The Seminal Case on Civil Gang Injunctions*

The California Supreme Court validated the use of “do not associate” provisions in *People ex rel. Gallo v. Acuna*,⁷¹ the seminal case on civil gang injunctions.⁷² Because the United States Supreme Court declined to hear the case on appeal, *Acuna* is the leading authority on gang injunctions.⁷³ Thus far, no other state supreme court has addressed this issue.⁷⁴

The *Acuna* court stated that while the United States Supreme Court made it clear that the Constitution recognizes and protects a “limited right of

65. See, e.g., Shiner, *supra* note 45, at 7 (noting that the provisions of a valid gang injunction only restrict conduct within the safety zone and that gang defendants are free to engage in otherwise legal activities outside of the safety zone).

66. INJUNCTION MANUAL 2003, *supra* note 46, at 9.

67. *Id.*

68. See *id.* at 9-10 (providing some common gang injunction provisions).

69. See *id.* at 9 (providing an example of a “do not associate” provision).

70. *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 609 (Cal. 1997); *Englebrecht II*, 106 Cal. Rptr. 2d 738, 757 (Ct. App. 2001); *Englebrecht I*, 79 Cal. Rptr. 2d 89, 96 (Ct. App. 1998).

71. 929 P.2d 596.

72. *Id.*

73. See Atkinson, *supra* note 37, at 1702 n.58 (emphasizing the importance of the *Acuna* decision in legitimizing the use of civil gang injunctions).

74. *Id.*

association,” it does not recognize “a generalized right of ‘social association.’”⁷⁵ The court identified two types of associational interests entitled to protection: (1) intimate associations—interests linked to deep personal relationships such as marriage, raising children, and cohabitating with relatives; and (2) instrumental associations—interests linked to fundamental liberties such as freedom to speak, freedom to worship, and freedom to petition the government for redress of grievances.⁷⁶ Here, the court held that the right of gang defendants to associate with one another did not fall into either of the associational interests entitled to constitutional protection.⁷⁷ Freedom of association “does not extend to joining with others for the purpose of depriving third parties of their lawful rights.”⁷⁸ Therefore, even though the “do not associate” provision may impede a gang defendant’s right to free association, the value of protecting society at large outweighs hardships to gang defendants.⁷⁹

B. Later Decisions Reinforce Acuna on First Amendment Challenges to “Do Not Associate”

Subsequent California decisions strengthen the validity of “do not associate” provisions. In *Englebrecht I*⁸⁰ and *Englebrecht II*,⁸¹ the California Court of Appeal for the Fourth District held that “do not associate” provisions remain constitutional even though some gang defendants may live in the safety zone or have relatives who live in the safety zone.⁸² According to *Englebrecht I*, the “familial nexus” of some gang defendants to the safety zone does not automatically transform their gang activities into “intimate” or “instrumental” associations warranting First Amendment protection.⁸³

Englebrecht II reinforced these principles. The court acknowledged that while the “do not associate” provision may place some strain on the familial relationships of gang defendants within the safety zone, “[a]ny attempt to limit the . . . impact of the injunction would make it a less effective device for dealing with the collective nature of gang activity” because gang membership spans

75. *Acuna*, 929 P.2d at 608 (quoting *Dallas v. Stanglin*, 490 U.S. 19, 25 (1989)).

76. *See id.* at 608-09 (summarizing two types of associational interests the United States Supreme Court recognizes as protected by the Constitution).

77. *See Atkinson*, *supra* note 37, at 1703 (explaining the rationale behind the majority’s holding in *Acuna*).

78. *Acuna*, 929 P.2d at 609 (quoting *Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 776 (1994)).

79. *Id.* at 618 (“Preserving the peace is the first duty of government, and it is for the protection of the community from the predations of the idle, the contentious, and the brutal that the government was invented.”).

80. 79 Cal. Rptr. 2d 89 (Ct. App. 1998).

81. 106 Cal. Rptr. 2d 738 (Ct. App. 2001).

82. *See, e.g., Atkinson*, *supra* note 37, at 1704-05 (explaining *Englebrecht I* and *Englebrecht II* as an extension of the principles espoused in *Acuna* regarding the validity of “do not associate” provisions).

83. *Englebrecht I*, 79 Cal. Rptr. 2d at 96 (“The familial nexus is not carte blanche for creating a public nuisance.”).

across several generations.⁸⁴ Additionally, the injunction placed no restrictions on contacts between individuals outside of the safety zone, and “merely require[d] gang members not to associate in public.”⁸⁵ Therefore, when considering the injunction’s limited impact on familial relationships and the fact that liberalizing the injunction would reduce its effectiveness, the court concluded that the “do not associate” provision did not burden the gang defendants’ First Amendment associational rights.⁸⁶

C. *Where Does This Leave Us?*

Acuna and subsequent California decisions reinforce civil gang injunctions and “do not associate” provisions.⁸⁷ Despite criticisms from scholars,⁸⁸ challenges to the constitutionality of gang injunctions based on the First Amendment right to free association have failed because of *Acuna* and subsequent decisions. Opponents must look for other means to displace the use of gang injunctions.

V. VOID FOR VAGUENESS: AN AREA OF VULNERABILITY?

Prosecutors and law enforcement personnel cite *Acuna* for the premise that the provisions of gang injunctions are not unconstitutionally vague.⁸⁹ Nonetheless, subsequent California decisions do not support *Acuna*’s denial of vagueness challenges in the same way they support its approach to First Amendment challenges to “do not associate” provisions.⁹⁰ Vagueness challenges are not precluded.

84. *Englebrecht II*, 106 Cal. Rptr. 2d at 758.

85. *Id.*

86. *Id.*

87. *See, e.g.*, Leito, *supra* note 38, at 1049 (explaining the impact of *Acuna* and California precedents on other jurisdictions).

88. *See, e.g.*, Werdegar, *supra* note 40, at 420-21 (acknowledging that while *Acuna* is the “law of the land” in California, the decision should not be used as a model for lower courts); *see also* Shelley Ross Saxer, *Zoning Away First Amendment Rights*, 53 WASH. U. J. URB. & CONTEMP. L. 1, 60-62 (1998) (including a First Amendment free association argument against civil gang injunctions).

89. *See, e.g.*, INJUNCTION MANUAL 2003, *supra* note 46, at 12 (asserting that California courts adequately addressed vagueness challenges to gang injunction provisions under a substantive due process analysis).

90. *See, e.g.*, *People ex rel. Totten v. Colonia Chiques*, 67 Cal. Rptr. 3d 70, 73 (Ct. App. 2007) (overturning a curfew provision because it was unconstitutionally vague); *see also* Werdegar, *supra* note 40, at 420-21 (arguing that the *Acuna* court improperly applied United States Supreme Court precedents on vagueness because it misunderstood the structure of urban street gangs).

A. *Constitutional Standard for Vagueness*

The Fifth and Fourteenth Amendments guarantee that no state shall deprive any person of “life, liberty, or property, without due process of law.”⁹¹ At the core of this guarantee is adequate notice.⁹² “No one may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.”⁹³ Simply put, a person of common intelligence must understand the meaning of a law in order to violate it.⁹⁴

There are two elements to every constitutional vagueness challenge⁹⁵: (1) the meaning of a statute or order is insufficiently clear to provide adequate notice as to what conduct is and is not legal; and (2) the statute or order offers inadequate notice to prevent discriminatory and arbitrary enforcement.⁹⁶ Additionally, context is important. The clarity of any statute or act is influenced by its intended application.⁹⁷

Vagueness challenges emphasizing the second element are relevant to civil gang injunctions because the United States Supreme Court ruled that similarly-worded anti-loitering and anti-vagrancy ordinances prohibiting otherwise legal conduct are unconstitutionally vague.⁹⁸ These holdings have not been transferred to the gang-injunction context. Even so, the possibility of constitutional vagueness jeopardizes the efficacy of gang injunctions.

B. *Acuna’s Approach to Vagueness Challenges*

While the *Acuna* court properly articulated the constitutional standard for vagueness, its application of the standard is problematic. The court acknowledged the risk of arbitrary enforcement, stating that in noncommercial

91. U.S. CONST. amend. V; U.S. CONST. amend XIV.

92. *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 611-12 (Cal. 1997) (“[T]he underlying concern is the core due process requirement of adequate notice.”).

93. *Id.* (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)).

94. *See, e.g.*, Werdegar, *supra* note 40, at 421 (giving an overview of the vagueness standard).

95. INJUNCTION MANUAL 2003, *supra* note 46, at 13 appears to mischaracterize the constitutional vagueness framework, identifying the above elements as “two types of constitutional vagueness challenges” rather than as a single analysis with two elements. “[A] law that is ‘void for vagueness’ not only fails to provide adequate notice . . . but also ‘impermissibly delegates basic policy matters to policemen, judges, and juries . . . with the attendant dangers of arbitrary and discriminatory application.’” *Acuna*, 929 P.2d at 612-13 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)).

96. *See, e.g.*, Werdegar, *supra* note 40, at 421 (outlining two types of vagueness challenges).

97. *Acuna*, 929 P.2d at 612 (“A contextual application of otherwise unqualified legal language may supply the clue to a law’s meaning, giving facially standardless language a constitutionally sufficient concreteness.”).

98. *See generally* *City of Chicago v. Morales*, 527 U.S. 41 (1999) (invalidating an anti-gang loitering ordinance on the grounds of arbitrary enforcement risks); *see also* Werdegar, *supra* note 40, at 422 (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) (invalidating an anti-vagrancy ordinance because the statute’s definition for vagrants encouraged arbitrary enforcement by police)).

contexts, the “most meaningful aspect of the vagueness doctrine” is in establishing minimum guidelines for law-enforcement personnel.⁹⁹ Yet, in light of this statement, the remainder of the opinion sidesteps the arbitrary enforcement issue and provides a superficial analysis of the statutory language.

The *Acuna* court argued that both provisions at issue were not vague because they possessed “reasonable specificity.”¹⁰⁰ Under this standard, the court upheld the “do not associate” provision, stating that language prohibiting association with *any other known* gang member also prohibited association with *any other person known by the defendant* as a gang member because mens rea could be implied into the provision.¹⁰¹ Next, the court used this same standard to uphold the “do not intimidate” provision,¹⁰² stating that language prohibiting threats to the community were reasonably specific because “similar words were upheld against claims of vagueness” in *Madsen v. Women’s Health Center*, a United States Supreme Court case enjoining abortion protestors from picketing in front of a health clinic.¹⁰³

Finally, the court supported both provisions by reading them in context with the stated public safety objective.¹⁰⁴ According to the court, the declarations filed in support of the preliminary injunction were reasonably specific and left “little doubt as to what kind of conduct the decree seeks to enjoin.”¹⁰⁵ Thus, despite failing to thoroughly explore the plain meaning of the statutory text and address the arbitrary enforcement issue, the court determined that both provisions provided sufficient notice to overcome vagueness.¹⁰⁶

99. *Acuna*, 929 P.2d at 612.

100. *Id.* at 612-13 (“[F]ew words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations Consequently, no more than a reasonable degree of certainty can be demanded.” (quoting *Boyce Motor Lines v. United States*, 342 U.S. 337, 340 (1952))).

101. *Acuna*, 929 P.2d at 612-13.

102. The “do not intimidate” provision enjoins defendants from: “confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting, and/or battering any residents or patrons, or visitors to ‘Rocksprings’ . . . known to have complained about gang activities.” *Id.* at 613-14.

103. *Id.*; see also *Werdegar*, *supra* note 40, at 425 (stating that *Madsen* is different from *Acuna* in two respects: (1) while the text of both provisions is substantially similar, *Acuna* prohibits additional behaviors like “confronting,” “annoying,” and “challenging” that require subjective interpretation; and (2) *Madsen* was written to enjoin individuals from protesting in front of an abortion clinic while *Acuna* was written to enjoin individuals in a significantly larger geographic area). For similar reasons, *Madsen* also applies to the service of process issue.

104. *Acuna*, 929 P.2d at 613-14 (“The words of [the provision] . . . considered irretrievably vague are simply not, at least in the constitutional sense, when the objectives of the injunction are considered and the words of the provision are read in context.”).

105. See *id.* (referencing anecdotal evidence of gang violence contained in supporting declarations submitted with the preliminary injunction).

106. *Id.* at 614 (“[N]either of the two provisions should have been invalidated by the Court of Appeal on vagueness grounds.”).

C. Later Decisions Attempt to Address Vagueness

Subsequent California decisions emphasize the uncertainty of *Acuna*'s vagueness analysis. While *Acuna* and later decisions reinforce the notion that a mens rea can be read into a "do not associate" provision,¹⁰⁷ issues of statutory clarity and arbitrary enforcement remain unanswered.

1. Who Is a Gang Member?

To provide gang defendants and law-enforcement personnel with adequate notice to avoid arbitrary enforcement, California courts must answer an essential question: *Who is a gang member?*¹⁰⁸ Determining an individual's gang membership is crucial to the success of civil gang injunctions. To prosecute a person for violating the injunction, "it must be proven, beyond a reasonable doubt, that the individual was a gang member at the time of the violation."¹⁰⁹

Englebrecht II attempted to answer the gang membership question.¹¹⁰ The court began by acknowledging that *Acuna* did not provide a definition of gang membership.¹¹¹ It also stated that to sustain a civil gang injunction, the state must prove that the individual defendants are in fact members of the gang.¹¹² The court provided this definition of gang membership:

[A]n active gang member is a person who participates in or acts in concert with an ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of acts constituting the enjoined public nuisance, having a common name or common identifying sign or symbol and whose members individually or collectively engage in the acts constituting the enjoined public nuisance. The participation or acting in

107. *Id.* at 612-13; *Englebrecht I*, 79 Cal. Rptr. 2d 89, 94-95 (Ct. App. 1998) ("Far from being a 'classic' instance of constitutional vagueness . . . we think the element of knowledge is fairly implied in the decree.").

108. *See, e.g.,* Werdegar, *supra* note 40, at 422-23 (stating that without a specific definition for gang membership, a defendant has no way of knowing if he or she is violating the injunction, and a police officer has no way of objectively determining whether a defendant knows that he or she is associating with a gang member); Atkinson, *supra* note 37, at 1728-29 (explaining that officers are given little guidance in identifying potential gang members).

109. THE CITY ATT'YS REPORT, *supra* note 20, at 14 (citing *People v. Conrad*, 55 Cal. App. 4th 896, 903 (1st Dist. 1997)).

110. *Englebrecht II*, 106 Cal. Rptr. 2d 738 (Ct. App. 2001).

111. *Id.* at 756-57 ("*Acuna* provides no test for determining whether an individual is a member of a gang responsible for nuisance activity such that he may be enjoined or ultimately found in contempt for engaging in enjoined behavior in the target area.").

112. *See id.* at 753-54 (holding that an individual can only be enjoined if he or she is a member of the gang).

concert must be more than nominal, passive, inactive or purely technical.¹¹³

Although *Englebrecht II* provided a lengthy definition of gang membership,¹¹⁴ the definition does not articulate an objective standard for what a gang member is. Rather, it outlines the *type of conduct* constituting active gang membership.¹¹⁵ Furthermore, it requires the participation to be more than “nominal, passive, inactive, or purely technical.”¹¹⁶ However, the court does not define these terms.¹¹⁷

Englebrecht II may in fact strengthen the void for vagueness argument. Atkinson alleges that the *Englebrecht II* definition is unconstitutionally vague and fails both elements of the vagueness framework.¹¹⁸ First, the definition is insufficiently clear to provide adequate notice to potential defendants because its “lack of objective criteria against which to assess an individual’s participation . . . makes it difficult for an individual to know whether his or her association with the gang is ‘nominal, passive, inactive, or purely technical.’”¹¹⁹ Second, the lack of objective criteria increases the risk of discriminatory and arbitrary enforcement because “police have free rein to determine whose action in concert with gang members is ‘more than nominal, passive, inactive or purely technical.’”¹²⁰ As such, while the California Court of Appeal was well-intentioned in *Englebrecht II*, its definition of gang membership muddied the waters.

No court has overruled an entire injunction on the grounds that the definition for gang membership is unconstitutionally vague. In *People ex rel. Totten v. Colonia Chiques*, the California Court of Appeal declared that *Englebrecht II*’s definition of gang membership was not vague.¹²¹ The court based its holding on *People v. Castenada*.¹²² In *Castenada*, the California Supreme Court defined active gang participation under California Penal Code section 186.22(a) (the

113. *Id.* at 756-57.

114. *See, e.g.,* Martin Baker, *Stuck in the Thicket: Struggling with Interpretation and Application of California’s Anti-Gang STEP Act*, 11 BERKELEY J. CRIM. L. 101, 109-10 (2006) (suggesting that *Englebrecht II*’s definition of gang membership is a “watered-down definition” of California’s Street Terrorism Enforcement and Prevention (STEP) Act under California Penal Code section 186.22(a)).

115. *Id.* at 110.

116. *Englebrecht II*, 106 Cal. Rptr. 2d at 756-57.

117. *See, e.g.,* Atkinson, *supra* note 37, at 1728 (noting that the opinion offers no guidance on what conduct would constitute “more than nominal[ly], passive[ly], inactive[ly], or technical[ly]” (quoting *Englebrecht II*, 106 Cal. Rptr. 2d at 756-57)).

118. *See id.* at 1727-30 (“The ordinance was fatally flawed both because it failed to give adequate notice of what conduct was prohibited and because it permitted arbitrary enforcement.”).

119. *Id.* at 1728-29 (quoting *Englebrecht II*, 106 Cal. Rptr. 2d at 756-57).

120. *Id.* at 1729 (quoting *Englebrecht II*, 106 Cal. Rptr. 2d at 756-57).

121. *People ex rel. Totten v. Colonia Chiques*, 67 Cal. Rptr. 3d 70, 84-85 (Ct. App. 2007).

122. *Id.* (citing *People v. Castenada*, 3 P.3d 278 (Cal. 2000)).

STEP Act) as involvement that is “more than nominal or passive.”¹²³ Based on this definition, the *Castenada* court determined that section 186.22(a) was not vague because there was nothing in the section that encouraged arbitrary enforcement.¹²⁴ The *Colonia Chiques* court extrapolated this holding and applied it to *Englebrecht II*, concluding that since *Englebrecht II*'s definition of gang membership was derived from *Castenada*'s definition of active gang participation, it too was not vague.¹²⁵

The *Colonia Chiques* court uses circular logic on this issue. The court asserts that the language of *Englebrecht II* and *Castenada* are substantially similar in describing the persons to be enjoined.¹²⁶ Assuming that is the case, section 186.22(a)'s definition of active gang participation has the same shortcomings as *Englebrecht II*'s definition of gang membership. Like *Englebrecht II*, section 186.22(a) is only concerned with defining gang membership by *degree* of participation.¹²⁷ “Despite the frequent references to ‘gang members’ throughout the [STEP] Act, the term is not defined anywhere in the Penal Code, nor has the term been adequately defined by any appellate court.”¹²⁸ Therefore, relating *Englebrecht II*'s definition of gang membership to section 186.22(a)'s definition of active gang participation leaves us asking the same essential question: *Who is a known gang member?*

2. Specific Provisions Invalidated for Vagueness

While the *Colonia Chiques* court did not overrule the injunction on grounds that the definition of gang membership was unconstitutionally vague, other parts of the opinion confirm that specific provisions of civil gang injunctions are susceptible to vagueness challenges. The appellants in *Colonia Chiques* also contended that the injunction's curfew provision was unconstitutionally vague.¹²⁹

123. 3 P.3d at 280.

124. *Colonia Chiques*, 67 Cal. Rptr. 3d at 84-85 (quoting *Castenada*, 3 P.3d at 884-85).

Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

CAL. PENAL CODE § 186.22(a) (West 2006).

125. *Colonia Chiques*, 67 Cal. Rptr. 3d at 84-85 (“The gang injunction here follows the language of *Englebrecht* and *Castenada* . . . Accordingly, this description is not unconstitutionally vague.”).

126. *Id.*

127. Baker, *supra* note 114, at 106.

128. See, e.g., *id.* (describing the terms of California Penal Code section 186.22(a)).

129. The disputed curfew provision enjoins members from

[b]eing outside [in the Safety Zone] between the hours of 10:00 p.m. on any day and sunrise the following day, unless (1) going to or from a legitimate meeting or entertainment activity (specifically excluding activities where other gang members are present); (2) actively engaged in some business, trade, profession or occupation which requires such presence (including directly driving to or from work); or (3) involved in a legitimate emergency situation that requires immediate

Here, the California Court of Appeal agreed with the appellants.¹³⁰ The court stated that “the curfew provision is ‘so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.’”¹³¹ Moreover, the provision provided inadequate notice.¹³²

The court took exception with two elements of the curfew provision, and it focused on various ways that law enforcement personnel and potential defendants might interpret the plain language. First, although the provision prohibited gang defendants from “[b]eing outside” during curfew hours, it failed to provide a definition for this term.¹³³ The court looked to a dictionary definition of “outside,” but it was unable to find a definition with enough specificity to provide adequate notice and guidance to potential defendants and law enforcement personnel.¹³⁴ Second, although the provision exempted gang defendants engaging in a “legitimate meeting or entertainment activity” during curfew hours, it also failed to provide a definition for these terms.¹³⁵ Once again, the court looked to a dictionary definition of “meeting”¹³⁶ and “entertainment activity,”¹³⁷ but it was unable to find a sufficiently specific definition. Therefore, based on a thorough analysis of the statutory language, the *Colonia Chiques* court concluded that both terms were unconstitutionally vague and invalidated the entire curfew provision.¹³⁸

D. *Where Does This Leave Us?*

Acuna’s application of the vagueness standard provides minimal guidance. Subsequent California decisions do not provide a clear definition for gang membership. Furthermore, *Colonia Chiques* indicated that unlike First Amendment challenges to “do not associate” provisions, courts are more

attention.

Colonia Chiques, 67 Cal. Rptr. 3d at 82.

130. *Id.* at 83-84 (“[T]he curfew violation violates due process of law and is unenforceable.”).

131. *Id.* (quoting *In re Berry*, 68 Cal. 2d 137, 156 (1968)).

132. *Id.* (concluding that the curfew provision failed both elements of the vagueness framework).

133. *Id.* at 82.

134. *Id.* at 83 (“Does this mean that a gang member is in violation of the injunction, and subject to arrest, if he or she is sitting in the open air on the front porch of his or her residence[,] . . . standing on his or her own front lawn, or . . . at a late night barbeque in the backyard?”).

135. *Id.* at 83-84.

136. *Id.* (“The broad dictionary definition of ‘meeting’ could encompass such an informal social gathering. Or does ‘meeting’ apply only to a formally organized gathering such as a meeting at a church, school, or community center?”).

137. *Id.* (“Does ‘entertainment activity’ apply only to activities occurring at places of entertainment open to the public . . . or [also to] visiting a friend’s house in the Safety Zone to watch a DVD movie on a big screen television?”).

138. *Id.* The Texas Court of Criminal Appeals applied a similar analysis in invalidating a gang injunction’s stalking provision. Terms like “harass” and “abuse” are “themselves susceptible to uncertainties of meaning.” *Long v. State*, 931 S.W.2d 285, 289 (Tex. Crim. App. 1996).

receptive to vagueness arguments against specific injunction provisions.¹³⁹ Therefore, the future of civil gang injunctions hinges on extinguishing these vagueness concerns.

E. Recommendation: Gang-Specific Pleadings

In addressing the void for vagueness challenge, the *Acuna* court stressed the importance of adequate notice.¹⁴⁰ “[T]he claim that a law is unconstitutionally vague is not dependent on the interests of absent third parties. Instead, the underlying concern is the core due process requirement of *adequate notice*.”¹⁴¹ Simply put, a vague statute or order fails because it does not provide adequate notice. Therefore, constitutional vagueness is mitigated by increasing the level of notice.

When applied to the gang injunction context, notice can be improved in two respects. First, prosecutors and law enforcement personnel should clarify who is bound by the gang injunction. A gang defendant cannot be prosecuted without adequate notice of the injunction and its provisions.¹⁴² The essential question of *who is a gang member* must be answered. “[W]hether an individual must abide by the injunction depends wholly upon whether that individual is, in fact, a gang member.”¹⁴³ This fact must be proven beyond a reasonable doubt.¹⁴⁴

Second, greater care should also be taken in defining the *type of conduct* each injunction provision seeks to enjoin. For these reasons, the proposed preliminary injunction and supporting declarations must be narrowly-tailored so that gang defendants and law enforcement personnel clearly understand their terms.

1. Gang Membership Varies from Gang to Gang

To repel future vagueness challenges, a specific definition for gang membership is needed. Without a clear and precise definition, “how can a [gang] defendant know when he or she is violating the injunction?”¹⁴⁵ Similarly, “[h]ow can a police officer objectively know whether or not a defendant . . . is associating with a gang member?”¹⁴⁶

139. 67 Cal. Rptr. 3d 70.

140. See *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 611-12 (Cal. 1997) (emphasizing that adequate notice should be the foundation for any vagueness analysis).

141. *Id.* (emphasis added).

142. See THE CITY ATTORNEY’S REPORT, *supra* note 20, at 15 (summarizing who can be prosecuted for violating a gang injunction).

143. *Id.* at 16.

144. See *id.* (citing *People v. Conrad*, 64 Cal. Rptr. 2d 248 (Ct. App. 1997)) (articulating the burden of proof for gang membership).

145. Werdegar, *supra* note 40, at 422-23.

146. *Id.* at 423.

a. *Englebrecht II Is Helpful After All*

Englebrecht II provides a partial solution to this problem.¹⁴⁷ The district attorney in *Englebrecht II* employed criteria developed by the California Department of Justice Task Force on Street Gangs to determine active membership of the Posole street gang in the trial court proceeding.¹⁴⁸ According to this standard, an active gang member is a person meeting two or more of the following objective criteria: (1) subject admits being a member of the gang; (2) subject has tattoos, clothing, etc. that are only associated with a particular gang; (3) subject is arrested while participating with a known gang; (4) reliable information places subject with a known gang; or (5) close association with known gang members is confirmed.¹⁴⁹ The police officers actually used this standard to identify the appellant as a member of the Posole gang; however, the court approved the criteria only as it related to its newly-articulated, STEP Act-inspired definition.¹⁵⁰ Therefore, the validity of the five-part Gang Task Force criteria used by the district attorney in *Englebrecht II* is unclear.

Courts should look to the approach used by the district attorney in *Englebrecht II* for guidance. Rather than describing the *type of conduct* constituting active gang membership, the criteria articulates an objective standard for what a gang member is. While the criteria are not perfect, “they still provide more guidance than the test outlined by *Englebrecht II*.”¹⁵¹ At the very least, the standard provides instruction to potential defendants and law enforcement in determining who is bound by the injunction.

b. *A Step in the Right Direction*

The Los Angeles City Attorney’s Office recognized the need to go beyond the conduct-driven definition of gang membership articulated in the holding of *Englebrecht II*.¹⁵² Although not legally required to do so, the office adopted a procedural safeguard substantially similar to the objective criteria used by the district attorney in *Englebrecht II*. In determining whether the evidence is sufficient to prove a person’s gang membership for purposes of a gang

147. *Englebrecht II*, 106 Cal. Rptr. 2d 738 (Ct. App. 2001); see also Atkinson, *supra* note 37, at 1729 (suggesting that incorporating the “objective standards” used by the district attorney in *Englebrecht II* is a relatively cheap and effective way to reduce the risk of erroneous identifications).

148. See *Englebrecht II*, 106 Cal. Rptr. 2d at 753 (outlining the criteria used by the district attorney in determining gang membership).

149. *Id.*

150. *Id.* at 756-57 (“While the trial court . . . did not articulate the participation test of membership as stated above, its analysis of the issue of membership convinces us that it employed those concepts.”).

151. Atkinson, *supra* note 37, at 1729 n.230.

152. See L.A. CITY ATTORNEY’S OFFICE, CRIMINAL AND SPECIAL LITIGATION BRANCH, GANG INJUNCTION GUIDELINES, app. B (2007) [hereinafter GANG INJUNCTION GUIDELINES] (voluntarily imposing additional procedural requirements to ensure the efficacy of future gang injunctions).

injunction, two or more criteria in a nine-factor standard must be met.¹⁵³ As such, a gang deputy will not enforce the injunction against any individual who does not meet at least two of the nine criteria. The Los Angeles City Attorney's approach should inspire other law enforcement agencies to be more proactive in defining gang membership.¹⁵⁴ To maintain the efficacy of gang injunctions, prosecutors should seek additional methods to improve clarity. Meeting *Englebrecht II*'s definition for gang membership is not enough. Procedural safeguards reduce the risk of false identifications.

153. Though not necessarily dispositive, evidence of the existence of two or more of the following criteria represents strong proof of gang membership:

1. The individual admitted to being a gang member in a non-custodial situation;
2. The individual was identified as a gang member by a reliable informant or source (such as a registered gang member);
3. The individual was identified as a gang member by an untested informant or source with corroboration;
4. The individual was witnessed wearing distinctive gang attire;
5. The individual was seen displaying gang hand signs or symbols;
6. The individual has gang tattoos;
7. The individual frequents gang hangouts;
8. The individual openly associates with documented gang members; or
9. The individual has been arrested, alone or with known gang members, for a crime usually indicative of gang activity.

Id. The gang deputy must exercise sound judgment and base his findings on the "totality of circumstances." *Id.* The Los Angeles City Attorney's criteria also appear to borrow substantially from guidelines developed by the California Department of Justice. *See infra* note 154.

154. A uniform framework for defining gang membership may already exist. In 1998, the California Department of Justice developed CAL/GANG, an internet-linked, statewide database allowing participating law enforcement agencies to compile data on gang members. *See* Raymond Dussalt, *CAL/GANG Brings Dividends*, GOV. TECH., Dec. 1, 1998, <http://www.govtech.com/gt/95214> (on file with the *McGeorge Law Review*) (detailing the functional benefits of the CAL/GANG database). Under guidelines set forth by the California Department of Justice, an individual meeting two or more of the following criteria can be listed as a gang member on the CAL/GANG database:

1. The individual admits gang membership;
2. The individual has been arrested while participating in a crime with known gang members;
3. The individual has been identified as a gang member by a reliable informant or source;
4. The individual has been identified as a gang member by an untested informant that is corroborated by independent information;
5. The individual has been seen associating with documented gang members;
6. The individual has been seen displaying symbols and/or hand signs representing a gang;
7. The individual has been frequenting a gang area;
8. The individual has been wearing gang dress specific to his or her area;
9. The individual is known to have gang tattoos;
10. The individual claims membership during a custodial classification interview.

Yvette Urrea, *Documenting Gang Members an Involved Process*, N. COUNTY TIMES, Jul. 9, 2005, http://www.nctimes.com/articles/2005/07/10/news/top_stories/7905191136.txt (on file with the *McGeorge Law Review*). Participating law enforcement agencies could apply the same criteria for documenting gang membership on CAL/GANG to the gang injunction context. *See* Interview with Andrew Solomon & Rod Norgaard, Current and Former Head Gang Deputies, Sacramento District Att'ys Office, in Sacramento, Cal. (Apr. 16, 2009) (notes on file with the *McGeorge Law Review*) (responding to this Comment's suggestion that law enforcement agencies should be proactive in defining gang membership for purposes of gang injunctions).

c. *Taking It Further: The Use of Gang-Specific Definitions*

While the mindset of the Los Angeles City Attorney's Office is a step in the right direction, it is possible to achieve greater clarity by including detailed, gang-specific definitions of gang membership in the pleadings of each injunction. Prosecutors are required to narrowly tailor injunction provisions to individual gangs because nuisance activities will vary from gang to gang.¹⁵⁵ By the same token, criteria for determining gang membership should also be tailored to the specific characteristics of a particular gang. It is counterintuitive to require a uniform definition of gang membership, especially when one considers the increased diversity, dispersion, and dangerousness of modern gangs.¹⁵⁶

Including a gang-specific definition is not burdensome. To prosecute someone for violating an injunction, hard evidence of the individual's gang membership must be provided.¹⁵⁷ Evidence of gang membership can be established through the testimony of "gang experts," officers with extensive training and experience in investigating the gang.¹⁵⁸ Other resources like crime reports, search warrants, field interview cards, and pictures of graffiti can be used to supplement the gang expert's testimony.¹⁵⁹

Gang-specific definitions can be developed within the framework of existing objective criteria. For example, of the nine criteria set forth by the Los Angeles City Attorney's Office, a gang expert could easily help specify Criteria 4 through 7. The gang-specific criteria might read as follows:

Criteria 4: A member of Gang X wears the following types of distinctive gang attire _____.

Criteria 5: A member of Gang X displays for following types of hand signs or symbols _____.

Criteria 6: A member of Gang X displays the following types of tattoos _____.

Criteria 7: A member of Gang X frequents the following hangouts _____.

155. INJUNCTION MANUAL 2003, *supra* note 46, at 9.

156. *See, e.g.*, Mueller, III, *supra* note 24 ("There is no 'typical' gang. Some are comprised of three or four individuals whose sole ambition is to control drug sales on their corner. Others have hi-tech hierarchies and maintain their own websites.").

157. *See, e.g.*, THE CITY ATTORNEY'S REPORT, *supra* note 20, at 14 ("[A]rrest and prosecution depends on hard evidence of the defendant's gang membership, which must be presented to the jury.").

158. *See, e.g.*, INJUNCTION MANUAL 2003, *supra* note 46, at 18 (stressing that gang expert declarations are the most important documents in support of the injunction).

159. *Id.* at 17-18. The very same evidence can be used to show that the gang commits nuisance activities within the proposed safety zone. *Id.*

While meeting two or more criteria still provides proof of gang membership under the objective standard, a gang-specific definition provides greater clarity in determining who is bound by an injunction against Gang X. Furthermore, by including these gang-specific definitions in the pleadings of each injunction, potential defendants will have notice as to who is and is not a gang member.¹⁶⁰

2. *Defining the Type of Conduct Prohibited*

A court may invalidate a specific injunction provision on vagueness grounds if it determines that the injunction's terms are so vague that a reasonable person must guess at its meaning.¹⁶¹ This means that the preliminary injunction and supporting declarations must be drafted so that gang defendants and law enforcement personnel clearly understand the specific *type of conduct* a provision seeks to enjoin.

a. *Giving More Context to the Terms*

Acuna provides some insight.¹⁶² In upholding the “do not associate” and the “do not intimidate” provisions, the California Supreme Court stressed the importance of context.¹⁶³ The court implied that the language of the provisions themselves may not have been clear,¹⁶⁴ however, when these provisions were read in context with the declarations filed in support of the injunction, there was “little doubt as to what kind of conduct the decree [sought] to enjoin.”¹⁶⁵ The

160. Deputy District Attorney Deanne Castorena of the Los Angeles County District Attorney's Office is one of the first prosecutors to successfully draft a civil gang injunction in Los Angeles County. She has written a pleadings manual on gang injunctions. See *infra* note 208. Castorena expressed concerns over listing criteria for gang membership in the pleadings:

If prosecutors were to list the attire, hand symbols, and local hangouts used to identify gang members and then hand that document to the gang members, the gang members would change their hangouts and hand signs. I think it is a sound suggestion for force law enforcement agencies that have these criteria to have them written down somewhere in their policies and procedures. But to share these criteria with the gang members is only inviting constant change and a near impossible task for law enforcement to keep up.

Telephone Interview with Deanne Castorena, D.D.A., Hardcore Gang Div., L.A. County Dist. Att'y's Office, in L.A., Cal. (Apr. 17, 2009) [hereinafter Castorena Interview] (notes on file with the *McGeorge Law Review*). While this Comment acknowledges that there is a risk that gang members might alter their appearance and behavior if specific criteria are released, it recommends including gang-specific definitions in the pleadings because of the increased notice this practice provides.

161. See, e.g., *People ex rel. Totten v. Colonia Chiques*, 67 Cal. Rptr. 3d 70, 83-84 (Ct. App. 2007) (providing a situation where a vagueness challenge is warranted).

162. 929 P.2d 596 (Cal. 1997).

163. *Id.* at 613-14 (“[T]he particular context is all important.” (quoting *Am. Commc'ns Ass'n v. Douds*, 339 U.S. 382, 412 (1950))).

164. *Id.* (“The words of [the provision] which the Court of Appeal considered irretrievably vague are simply not . . . when the objectives of the injunction are considered and the words of the provision are read in context.”).

165. See *id.* (referencing anecdotal evidence of gang violence contained in supporting declarations).

court's reasoning indicates that notice is directly related to the factual context. The more information provided on the type of conduct prohibited by the injunction, the more notice.

b. Providing Detailed Illustrations for Each Provision

Like gang-specific definitions, offering greater factual context on the type of conduct prohibited is not difficult. Once again, the prosecutor can rely on the testimony of the gang expert to establish a clear and convincing factual basis as to why the provision is necessary to abate the public nuisance.¹⁶⁶ Most of this evidence would already be contained in the declarations filed in support of the injunction. As such, there is no reason why these factual bases cannot be written into an otherwise ambiguous provision to supplement clarity.

Every provision of the gang injunction should be accompanied by detailed illustrations of the prohibited conduct. The factual bases for these examples would be based on specific incidents outlined in the declarations filed in support of the injunction. Although this practice seems repetitive and unnecessary, it is grounded in *Acuna's* contextual argument and addresses vagueness challenges similar to those in *Colonia Chiques*.¹⁶⁷ By supplementing each provision with detailed illustrations of the prohibited conduct, there is no need to guess at the meaning of a specific provision. The illustrations provide a reasonable person with the necessary context to discern the provision's language. Likewise, the illustrations present police officers with concrete examples of enforceable offenses.

VI. SERVICE OF PROCESS: THE GREAT UNKNOWN

Statutory clarity is only one piece of the puzzle. Determining exactly who and what type of conduct is bound by provisions is the first of two steps required to prosecute an individual for violating a gang injunction. A gang defendant also needs adequate notice of the pending proceeding before he or she can be prosecuted for contempt.¹⁶⁸ Proper service of the summons and complaint is vital to the future of civil gang injunctions.

To eliminate confusion, a distinction must be made between service of the summons and complaint and service of the injunction. Every gang member must

submitted with the preliminary injunction).

166. *Englebrecht II*, 106 Cal. Rptr. 2d 738, 752-53 (Ct. App. 2001) (concluding that issuance of a gang injunction is based on a clear and convincing standard).

167. *People ex rel. Totten v. Colonia Chiques*, 67 Cal. Rptr. 3d 70, 82-85 (Ct. App. 2007) (invalidating the curfew provision of a gang injunction because the terms of the provision itself were vague).

168. See THE CITY ATTORNEY'S REPORT, *supra* note 20, at 15-16 (explaining that gang injunction prosecutions are a two step process: first, gang membership must be proven to render the defendant bound by the injunction; second, "service is used to show that the bound individual had notice of the injunction and its provisions").

either be personally served or have actual notice of the injunction to be prosecuted for violating its terms; however, as discussed below, only a representative group of gang members must be personally served with the summons and complaint to achieve adequate notice of the pending action to the entire gang.¹⁶⁹ This section refers to service of the summons and complaint.

While the void for vagueness analysis is supported by a small body of precedent, case law specifically addressing service of process relating to gang injunctions is even more sparse.¹⁷⁰ Additionally, constitutional and statutory frameworks offer little guidance on proper notice to a gang. If anything, gang injunctions are vulnerable to improper service challenges because of uncertainty in the law.¹⁷¹

A. How Service of Process Fits into the Picture

Adequate notice begins with the pleadings. Although early gang injunctions only named individual members as defendants,¹⁷² recent injunctions also name the gang as a defendant.¹⁷³ The legal theory is that adequate notice is achieved by including both the gang itself and a set of individual gang members “who are to be sued or who may be designated to receive service of the summons and complaint on behalf of the gang.”¹⁷⁴ The theory is based on the assumption that “if a critical mass is named, those gang members will effectively represent by proxy the other members’ interests in opposing the injunction.”¹⁷⁵ As such, any

169. See, e.g., INJUNCTION MANUAL 2003, *supra* note 46, at 31-34 (explaining the distinction between service of the summons and complaint for notice of the proceeding and service of the injunction for enforcement purposes).

170. The only case that specifically addresses the service of process is *Broderick Boys*. Texas courts have not heard this issue.

171. Substantive concerns like void for vagueness remain unsettled. Opponents of civil gang injunctions are still challenging the first step in the two-step process. It is unnecessary to challenge service of process if the provisions themselves are substantively invalid.

172. See, e.g., *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997) (naming thirty-eight Varrio Surefio gang members in the pleadings).

173. See, e.g., *Shiner*, *supra* note 45, at 7 (noting that naming the gang itself, in addition to the individual gang member, is the current practice). No gang injunction should name either gang members or the gang alone. Modern pleadings should include *both* a representative group of named members and the gang itself. “Where a suit names the gang itself and the injunction runs to its members—the individuals through whom the gang may act—the injunction becomes flexible enough to adapt to changing membership.” INJUNCTION MANUAL 2003, *supra* note 46, at 20.

174. See, e.g., INJUNCTION MANUAL 2003, *supra* note 46, at 20-21 (naming individual defendants along with the gang itself has three important benefits: (1) it ensures that the injunction binds the gang’s key members; (2) it strengthens the argument that the gang has sufficient notice of the proceeding; and (3) it “preempts defense arguments that due process requires that each individual potentially subject to the injunction be given notice and an opportunity to be heard on whether it should issue”).

175. See *Atkinson*, *supra* note 37, at 1731 (recommending that individual gang members should always be named as a separate entity in the pleadings). This theory also relies on the assumption that this “critical mass” will pass notice of the pending injunction to gang members who are not named in the suit. “[I]f I wanted to contact [the gang], the way I’d do it is to go out and find a gang member on the street. They’ll pass the word

gang member receiving actual notice of the injunction can be prosecuted for violating its terms even if he or she is not named in the pleadings.¹⁷⁶

To support this theory, prosecutors cite language in *Acuna*.¹⁷⁷ *Acuna* analogized civil gang injunctions to injunctions filed against labor unions and abortion groups.¹⁷⁸ According to the court, enjoining a street gang is identical to enjoining a labor union or an abortion group because “such groups can act only through the medium of their membership.”¹⁷⁹ The court acknowledged that specific acts of public nuisance could not be attributed to all named gang members; however, it concluded that the factual basis was sufficient to prove that the gang itself, acting through its individual members, was collectively guilty of public nuisance.¹⁸⁰ Therefore, the acts of the named defendants represented the acts of the entire gang.¹⁸¹

Based on this reasoning, subsequent courts concluded that proper service of the summons and complaint to a representative group of gang members will bind all gang members to the terms of the permanent injunction.¹⁸² This is why developing a reasonable method of service is so crucial.

B. Existing Law Offers Little Guidance

For lack of a better analogy, providing adequate notice to a street gang is

quickly.” People *ex rel.* Reisig v. Broderick Boys, 59 Cal. Rptr. 3d 64, 67-68 (Ct. App. 2007) (quoting testimony from a lead gang investigator on communication between gang members).

176. People *ex rel.* Totten v. Colonia Chiques, 67 Cal. Rptr. 3d 70, 78-79 (Ct. App. 2007) (“[T]he injunction properly encompassed nonparties who were active members of Colonia Chiques or who acted in concert with the gang.”). See, e.g., GANG INJUNCTION GUIDELINES, *supra* note 152, at 21 (explaining that pleading both the gang itself and a representative group of individual gang members will bind properly-served gang members who are nonparties to the suit).

177. *Acuna*, 929 P.2d 596.

178. *Id.* at 616-18 (comparing *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 291 (1940), and *Madsen v. Women’s Health Center*, 512 U.S. 753, 776 (1994), to the gang injunction context) (“Both . . . [cases] stand for the proposition that, in a proper case, an organization and its individual members are enjoined *without* meeting the ‘specific intent to further unlawful group aims’ standard.” (citation omitted)). The *Acuna* court remarked that the injunctions in *Drivers Union* and *Madsen* were constitutional because they enjoined activities within a limited geographic area. *Id.* This reasoning may not apply to gang injunctions.

179. *Id.* at 617-18.

180. *Id.* at 618.

Although all but three of the eleven defendants who chose to contest entry of the preliminary injunction . . . were shown to have committed acts . . . comprising specific elements of the public nuisance, such individualized proof is not a condition to the entry of preliminary relief based on a showing that it is the gang, acting through its individual members, that is responsible for the conditions prevailing

Id.

181. *Id.* (“[The prosecutor’s] decision to name individual gang members instead [of the gang itself] does not take the case out of the familiar rule that both the organization and the members through which it acts are subject to injunctive relief.”).

182. See, e.g., People *ex rel.* Totten v. Colonia Chiques, 67 Cal. Rptr. 3d 70 (Ct. App. 2007) (asserting that a gang defendant does not need to be party to the suit to be bound by the injunction).

comparable to fitting a square peg into a round hole. While California courts recognize the street gang as a distinct *jural entity* capable of being sued,¹⁸³ they do not provide a consistent standard for providing notice to that entity. The failure to provide a consistent standard for notice may be due to the distinct characteristics of gangs.

Although a gang is a criminal enterprise, it does not adhere to the traditional formalities associated with legally-recognized organizations.¹⁸⁴ Street gangs do not appoint officers or agents to receive service of process, designate business addresses, or file articles of incorporation.¹⁸⁵ In fact, many gangs use this lack of a discernable hierarchy to avoid liability for the crimes they commit.¹⁸⁶ The prosecutor must develop an appropriate method of service that will meet both constitutional due process and statutory procedures.¹⁸⁷ While the prosecutor enjoys freedom in choosing an appropriate method of service, inadequate service of the summons and complaint will render the injunction unenforceable.

1. Constitutional Standard for Notice

Due process challenges to state procedures are analyzed under a three-part balancing test developed by the United States Supreme Court in *Matthews v. Eldridge*.¹⁸⁸ Nonetheless, issues specific to notice are analyzed under the framework developed in *Mullane v. Central Hanover Bank & Trust Co.*¹⁸⁹ The *Mullane* Court acknowledged that while personal service is adequate in any proceeding, there are certain situations where personal service “would place impossible or impractical obstacles in the way [of adequate notice that] could not be justified.”¹⁹⁰

Under such circumstances, the interests of the state must be balanced against

183. See CAL. CIV. PROC. CODE § 369.5(a) (West 2006) (“A partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known.”); see also *Colonia Chiques*, 67 Cal. Rptr. 3d at 75 (“Colonia Chiques may be sued as an unincorporated association . . .”).

184. See INJUNCTION MANUAL 2003, *supra* note 46, at 30 (“The unique nature of the gang defendant requires prosecutors to pay special attention to the method by which the gang is served . . .”).

185. See, e.g., *id.* (providing distinctive characteristics of a gang that make it difficult to provide adequate notice).

186. *Id.*

187. *Id.* (stating that the prosecutor’s method of service should “provide for service on the gang by service on a practicable number of the gang’s members, as well as any other efforts reasonably calculated to provide the gang’s membership with notice”).

188. 424 U.S. 319, 335 (1976). In determining whether an individual’s due process rights have been violated, a court must consider the following factors: (1) the private interest affected by the government action; (2) the risk of an erroneous deprivation under the current procedures versus the probable value of additional procedural safeguards; and (3) the financial and administrative burden on the government additional safeguards would require. *Id.*

189. 339 U.S. 306, 313-14 (1950).

190. *Id.*

the interests of the individual protected by the Fourteenth Amendment.¹⁹¹ Notice procedures must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”¹⁹² While “heroic efforts” are not required,¹⁹³ “[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.”¹⁹⁴ Therefore, all notice procedures are evaluated on an individual basis.¹⁹⁵

2. *Statutory Standard for Notice*

California prosecutors and law enforcement agencies sue criminal street gangs as “unincorporated associations.”¹⁹⁶ Personal service to an unincorporated association requires the following: (1) delivery of a copy of the summons and complaint “to one or more of the association’s members designated in the order,” and (2) mailing of a copy of the summons and complaint “to the association at its last known address.”¹⁹⁷ Because criminal street gangs rarely have a known address, the prosecutor must seek an order from the court excusing the second requirement.¹⁹⁸

Adequate service on a gang requires adherence to both the constitutional framework developed in *Mullane* and state statutory procedures for service of the summons and complaint.¹⁹⁹ Mere compliance with the statutory method of service may not provide constitutionally adequate notice under the *Mullane* framework.²⁰⁰

C. *Broderick Boys: First Time Confronting the Service Issue*

People ex rel. Reisig v. Broderick Boys is the first and only case on the issue

191. *Id.* at 314 (“Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment.”).

192. *Id.*

193. *Dusenbery v. United States*, 534 U.S. 161, 170 (2002).

194. *Mullane*, 339 U.S. at 315.

195. *Jones v. Flowers*, 547 U.S. 220, 227 (2006) (“[W]e have explained that the ‘notice required will vary with circumstances and conditions.’” (quoting *Walker v. City of Hutchinson*, 352 U.S. 112, 115 (1956))).

196. CAL. CORP. CODE § 18035 (West 2006) (defining an unincorporated association as a “group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not”); *see also* INJUNCTION MANUAL 2003, *supra* note 46, at 31 (stating that criminal street gangs are sued as unincorporated associations in California).

197. CAL. CORP. CODE § 18220.

198. *See, e.g.*, *Shiner*, *supra* note 45, at 7 (explaining that the mailing requirement must be excused by a court order where the gang does not possess a last known address).

199. *See id.* (“[S]trict compliance with the statutory requirements may not suffice—the efforts to notify the gang’s members should be robust.”).

200. *See, e.g.*, INJUNCTION MANUAL 2003, *supra* note 46, at 31 (noting that the constitutionality of a statutory method of service will vary from state to state).

of service to a gang.²⁰¹ In *Broderick Boys*, the Yolo County District Attorney enjoined a 350-member West Sacramento subgroup of the Norteño criminal street gang.²⁰² Although the gang itself and ten gang members were named in the complaint, the district attorney served the summons and complaint to only “a single gang member of unknown rank, trusting that he would spread the word.”²⁰³ The gang member indicated that he would not appear at the proceeding and would not oppose the People’s request for an injunction.²⁰⁴ Based on these facts, the California Court of Appeal for the Third District concluded that even though the district attorney’s method of service complied with California law,²⁰⁵ the service did not meet constitutional requirements under the *Mullane* standard because it “was not reasonably calculated to apprise the gang and its other members of the pending action.”²⁰⁶ Therefore, the permanent injunction was void.²⁰⁷

The *Broderick Boys* court had three reasons for its holding. First, the district attorney’s method of service did not comply with the customary “practice in California of serving notice on several gang members.”²⁰⁸ Service of the summons and complaint on only a single gang member was unprecedented.²⁰⁹ The court was disturbed by this method of service, especially after considering the fact that the served member was of unknown rank.²¹⁰ Second, the served member’s ability to spread notice was speculative.²¹¹ The gang expert testified

201. 59 Cal. Rptr. 3d 64 (Ct. App. 2007). The court also addressed the issue of whether the Broderick Boys gang even qualified as an unincorporated association under California law. *Id.* at 73-75. Although *Broderick Boys* determined that the gang did not qualify as an unincorporated association because it was not formed with “any lawful purpose,” the court nonetheless analyzed the service issue under methods of service applicable to unincorporated associations. *Id.* at 74.

202. *Id.* at 67 (“The gang is connected to the Nuestra Familia prison gang and uses the color red and certain symbols in clothing, graffiti and accessories. Its principle enemy is an affiliate of the Mexican Mafia prison gang, in the Sureño family of gangs.”).

203. *See id.* at 66-68 (detailing the service procedures used in the injunction).

204. *Id.* at 66-67.

205. *Id.* at 75 (“The statute provides that where an association lacks an agent or defined officers, ‘one or more’ members may be served. In *some* cases service on one member may be sufficient. But ‘one or more’ does not always mean *one* is enough.” (referencing California Corporation Code section 18220)).

206. *Id.* at 66-67.

207. *Id.* at 79.

208. *Id.* at 76-77. The *Broderick Boys* court emphasized several California precedents where multiple gang members were named in the pleadings and served. *See, e.g.,* *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 618 (Cal. 1997) (naming and serving thirty-eight members); *Englebrecht II*, 106 Cal. Rptr. 2d 738, 741 (Ct. App. 2001) (naming and serving twenty-eight members); *Iraheta v. Superior Court*, 83 Cal. Rptr. 2d 1500, 1502 (Ct. App. 1999) (naming and serving ninety-two members). In making this assertion, the court expressly cited a gang injunction pleadings manual written by Los Angeles County Deputy District Attorney Deanne Castorena. *Broderick Boys*, 59 Cal. Rptr. 3d at 73 (citing Deanne Castorena, CIVIL GANG INJUNCTION PLEADINGS MANUAL, CAL. DISTRICT ATTORNEYS ASSOCIATION III-315 (2000)).

209. *Broderick Boys*, 59 Cal. Rptr. 3d at 76 (noting that while all gang members do not have to be served, the fewest number of gang members ever served in an injunction is seven).

210. *Id.* at 66-67.

211. *Id.* at 76 (emphasizing that whether the served member “would tell others was a matter of chance”).

that Broderick Boys used a “sophisticated internal communications network” and that members frequently communicated by cell phone; however, no factual basis was given as to the served member’s ability to disseminate information to other gang members.²¹² As such, the court refused to infer notice based on “‘hearsay or rumor.’”²¹³

Finally, the court noted that alternative methods of service were possible.²¹⁴ Several inexpensive and efficient methods were available to the prosecutor.²¹⁵ Alternative methods of service included: (1) serving other named gang members before obtaining the permanent injunction;²¹⁶ (2) providing notice to gang members in jail or prison;²¹⁷ and (3) publishing notice of the pending injunction.²¹⁸ As a result, the court determined that while “‘heroic efforts’” were not required, the district attorney failed to meet minimum standards of notice.²¹⁹

D. Where Does This Leave Us?

Broderick Boys is cited for the premise that the method of service must comply with both statutory and constitutional requirements.²²⁰ Because the *Broderick Boys* court limited its holding to the facts of the case, other courts remain free to impose more stringent standards for notice based on the specifics of those injunctions.

1. Broderick Boys Recognizes Previous Methods of Service

Broderick Boys takes a narrow approach to service of process. While the court invalidated service on a single gang member,²²¹ it did not state that this practice is impermissible. In fact, the court acknowledged that if the served

212. *Id.* at 76-79.

213. *Id.* at 78-79 (quoting *Marchwinski v. Oliver Tyrone Corp.*, 461 F. Supp. 160, 166 (W.D. Pa. 1978)).

214. *See id.* (“A court passing on the adequacy of notice should consider what else might have been done.” (citing *Jones v. Flowers*, 547 U.S. 220, 229 (2006))).

215. *Id.* at 79.

216. *See id.* (recognizing that police officers had an opportunity to serve several named members “before obtaining the permanent injunction. . . . [O]ne of the 10 designated alleged members on whom service was authorized by the trial court . . . was seen by peace officers, along with [another alleged member], about 20 minutes after [the unnamed member] was served”).

217. *Id.* at 79 (“[T]he district attorney could have served the gang members known to be in jail or prison Looking up some addresses is not too much to expect.”).

218. *See id.* (noting that the district attorney “waited until the permanent injunction was *fait accompli*” when he could have published notice to the press before issuing the injunction).

219. *Id.* (quoting *Dusenbery v. United States*, 534 U.S. 161, 170 (2002)).

220. INJUNCTION MANUAL 2003, *supra* note 46, at 31 (citing *Broderick Boys* for the proposition that “[e]ven technical compliance with a statutory method of service may fail to provide constitutionally adequate notice”).

221. *See Broderick Boys*, 59 Cal. Rptr. 3d at 76 (asserting that service on one gang member of unknown rank was not reasonably calculated to provide notice to the gang in this case).

member was of “sufficient rank and character within the Broderick Boys [gang] that it is reasonable to infer that service on him effectively apprised the gang of the pendency of the legal proceeding.”²²² Thus, although discouraged by the court, service on a single gang member is possible. In addition, at no point in the opinion did the court disapprove of the service methods used in previous injunctions. Moreover, the court recognized the legitimacy of two injunctions where prosecutors served only seven members in each case.²²³ Therefore, although *Broderick Boys* voided the injunction at issue, the court validated service methods used in previous cases.²²⁴

2. A Higher Standard for Notice May Be Needed for Certain Injunctions

While California’s requirement for notice to an unincorporated association is clear,²²⁵ the line distinguishing constitutional notice is not. The *Mullane* framework acknowledges that while personal service of the summons and complaint is not required, the method of service must be “reasonably certain to inform those affected.”²²⁶ Nonetheless, the question remains: *What is a reasonable method of service?*

There may not be a “minimum threshold” for reasonable service.²²⁷ Instead, the *Mullane* framework may require a “sliding scale” for notice where the “method of service [is] weighed against the importance of the constitutional right in question.”²²⁸ A gang member’s right to associate with other known members, while not recognized as a constitutionally protected right under *Acuna*, may still qualify as a “fundamental” or “civil right” under a “gradation” standard. Categorizing associational provisions in this manner affects the “sliding scale” by requiring a higher standard of service for injunctions that are larger in scope. Therefore, reasonable service may depend on the type and scope of rights

222. *Id.* This statement is based on the assumption that higher rank is directly related to ability to circulate information throughout the gang.

223. *See id.* (commenting that in the *Kick Ass Mexicans* and *Canoga Park Alabama* cases only seven members were served with the summons and complaint). By acknowledging service methods used in the aforementioned injunctions, *Broderick Boys* seems to view service of gang injunctions as a fairly low standard.

224. *Id.* at 76-77 (“[M]any members were named and served in [the] San Diego and Santa Barbara County cases, as in the two Los Angeles County cases [T]here is a practice in California of serving notice on several gang members.”).

225. *See* CAL CORP. CODE § 18220 (requiring delivery of a copy of the summons and complaint to one or more members of the association and mailing of a copy of the summons and complaint to the association at its last known address).

226. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950).

227. *See* Jo-Leo W. Carney-Waterton, Note, *The Postman Must Always Ring Twice: When Preliminary Attempts at Notice Are Unsuccessful, Is the State Obligated to Take Additional, Reasonable Steps to Ensure That a Person Receives Adequate Notice?*, 34 S.U. L. REV. 65, 100 (2007) (outlining practical implications of *Jones v. Flowers*, 547 U.S. 220 (2006), a recent United States Supreme Court case interpreting the *Mullane* framework).

228. *Id.* (“At the same time, the premium placed on certain fundamental and/or civil rights implies, too, that there is a noticeable gradation.”).

implicated in a particular injunction.

Once again, *Acuna* provides direction.²²⁹ In *Acuna*, the court analogized gang injunctions to injunctions against labor unions and abortion groups because “such groups can act only through the medium of their membership.”²³⁰ This analogy instructed later decisions that bound entire gangs upon service to a representative group of members;²³¹ however, the analogy works against gang injunctions in the context of service.

Although the labor union²³² and abortion group²³³ injunctions cited in *Acuna* are similar to gang injunctions because they prohibit public association among members within a defined area, gang injunctions are distinct because the geographic scope of the defined area is considerably larger.²³⁴ While “the size of the Target Area does not make . . . [a gang injunction] constitutionally infirm—even though it encompasses a much larger area than the target area in *Acuna*”²³⁵—an injunction spanning a large geographic area may require more service procedures than an injunction that is geographically limited because associational rights are affected on a greater scale. For the same reason, an injunction including more extensive provisions and enjoining a larger gang may also require heightened service procedures to pass constitutional muster. As such, a court using the “sliding scale” interpretation of the *Mullane* framework may enforce a higher standard of service based on the geographic scope, type and number of provisions, and number of gang members implicated by the injunction.

229. *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997).

230. *Id.* at 616-18. The analogy is based on the presumption that gangs possess the same hierarchical structure as labor unions and abortion groups. *See, e.g., Werdegarr, supra* note 40, at 431-33 (arguing that “gangs, unlike labor unions or anti-abortion organizations, have virtually no organizational structure and no express purpose or goals”).

231. *See, e.g., People ex rel. Totten v. Colonia Chiques*, 67 Cal. Rptr. 3d 70, 78-79 (Ct. App. 2007) (asserting that a gang defendant does not have to be party to the suit to be bound by the injunction).

232. *See Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 294 (1940) (enjoining union workers from picketing in front of a dairy plant and stores where dairy products were distributed).

233. *See Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 758-60 (1994) (enjoining abortion protestors from picketing in front of an abortion clinic).

234. *See Colonia Chiques*, 67 Cal. Rptr. 3d at 73-75 (enjoining a 500 member gang in an area spanning 6.6 square miles); *see also Atkinson, supra* note 37, at 1717-19 (recommending that the physical boundaries of gang injunctions be determined by equitable principles, not constitutional tests). Gang injunctions can also be distinguished from the *Mullane* case line because they implicate liberty interests and not property rights. Perhaps in anticipation of this argument, *Broderick Boys* cited *Menonite Board of Missions v. Adams*, 462 U.S. 791 (1983), stating that although “[m]any notice cases involve *property* rights, . . . notice requirements are not less for *liberty* interests.” *People ex rel. Reisig v. Broderick Boys*, 59 Cal. Rptr. 3d 64, 72-73 (Ct. App. 2007). Nonetheless, this does not change the argument that a gang injunction that is larger in scope may require heightened notice.

235. *Englebrecht I*, 79 Cal. Rptr. 2d 89, 95 (Ct. App. 1998). *Englebrecht I* enjoined nuisance activities within an area of one-square mile. *Id.* at 91. *Acuna* enjoined nuisance activities within an area of four city blocks. *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 601 (Cal. 1997).

E. Recommendation: Procedural Safeguards for Service of Process

Service of process is about providing adequate notice of a pending proceeding to the defendant.²³⁶ While the method of service must, at a minimum, meet statutory requirements and the *Mullane* standard of reasonableness,²³⁷ there is no reason to propose a method of service that is at risk of being invalidated. Simply put, gang injunctions cost time and money. “Preparing a gang injunction lawsuit requires a great deal of work, and this work all leads up to the filing of the complaint for injunction and obtaining the preliminary injunction.”²³⁸ Losing an otherwise enforceable gang injunction because of inadequate notice is a waste of public resources.

In voiding the injunction, the *Broderick Boys* court repeatedly stated that the gang defendant “is not entitled to ‘heroic efforts’ or the best possible notice.”²³⁹ Rather, the court focused on alternative methods of service that did not require a great deal of extra effort from the district attorney.²⁴⁰ The court even recognized two injunctions where only seven named members were served in each case.²⁴¹ Based on these facts, if the district attorney did his due diligence and served more than one unranked member in a 350-member gang, the *Broderick Boys* injunction likely would not be void today.²⁴²

In the end, *Broderick Boys* brings attention to the service of process issue. While no gang injunction before *Broderick Boys* was ever overturned for inadequate service, the case shows that gang injunctions are vulnerable to attacks on service of process. In addition, courts may look to a “sliding scale” interpretation of the *Mullane* standard for guidance.²⁴³ Reasonable service would then depend on the type and scope of rights implicated in a particular injunction. In response to *Broderick Boys*, prosecutors should impose procedural safeguards for service of process.²⁴⁴ Establishing voluntary standards forces prosecutors to consider a number of factors before serving a gang.

236. See, e.g., INJUNCTION MANUAL 2003, *supra* note 46, at 31 (“Fundamentally, the proposed method must comply with the due process requirement that it be reasonably calculated, under all circumstances, to inform the gang and its members of the judicial action against them.”).

237. *Id.*

238. *Id.* at 32.

239. *Broderick Boys*, 59 Cal. Rptr. 3d at 79 (quoting *Dusenbery v. United States*, 534 U.S. 161, 170 (2002)).

240. *Id.* (“The district attorney could have served . . . shot callers, rather than one member of unknown rank, and could have served a significant number of gang members Looking up some addresses is not too much to expect. . . . [T]he district attorney could have obtained approval to publish notice in the press.”).

241. *Id.* at 76 (commenting that in the *Kick Ass Mexicans* and *Canoga Park Alabama* cases only seven members were served with the summons and complaint).

242. The pleadings named ten individual members as a representative group of the gang. *Id.* at 67. There is no indication why the other nine named members were not served with the summons and complaint. *Id.*

243. See *Carmey-Waterton*, *supra* note 227, at 100 (proposing a plausible interpretation of the *Mullane* framework as a sliding scale).

244. See, e.g., INJUNCTION MANUAL 2003, *supra* note 46, at 21 (“Where the method chosen to prosecute a gang injunction is shown to have inherent procedural protections, this will assist in convincing the judge that

1. *Alternative Methods Proposed by Broderick Boys Provide a Starting Point*

Just as the district attorney's criteria in *Englebrecht II* served as a starting point for procedural safeguards on gang membership,²⁴⁵ *Broderick Boys* can serve a similar role in establishing procedural safeguards on service of process.²⁴⁶ Before proposing a method of service, prosecutors should consider all three of the alternative methods articulated in the opinion.²⁴⁷

a. *Serving Gang Members Before Obtaining a Permanent Injunction*

The *Broderick Boys* court stated that the prosecution could have served “veteranos,” or shot callers of the gang; but, instead, he served one member of unknown rank.²⁴⁸ Additionally, “[t]he record shows that shortly after obtaining the permanent injunction the police were able to serve many alleged gang members.”²⁴⁹ The court was critical of a specific instance where the prosecution failed to serve two alleged gang members—one of whom was named on the pleadings—after observing them speak to one another in public.²⁵⁰ Based on these facts, the court determined that a significant number of gang members could have been served *before* the permanent injunction was obtained.²⁵¹

A prosecutor must be vigilant in providing adequate notice to the gang. Proper service of the summons and complaint to a representative group of gang members will bind the gang to the permanent injunction.²⁵² Prosecutors must be careful in deciding which members to include in the group. While it is important to obtain evidence of the named members' nuisance activities,²⁵³ every named member should be personally served. Service to the designated group acts as notice to the entire gang. Failing to serve the named members raises questions as to whether the gang is on notice of the pending injunction.

the injunction is appropriate and will help withstand criticism from defense counsel and the public.”).

245. See GANG INJUNCTION GUIDELINES, *supra* note 152, at app. B (voluntarily imposing additional procedural requirements to ensure the efficacy of future gang injunctions).

246. 59 Cal. Rptr. 3d 64. An agency should use the alternative methods proposed in *Broderick Boys* to develop a multi-factored guideline for service of process.

247. See *id.* at 79 (proposing three alternative methods of service the district attorney could have used to provide notice to the gang).

248. *Id.*

249. *Id.*

250. *Id.* (“[O]ne of the 10 designated alleged members on whom service was authorized by the trial court . . . was seen by peace officers, along with [an] alleged member . . . about 20 minutes after [the unnamed member] was served.”).

251. *Id.* (“They could have served many or all of those same people *before* obtaining the permanent injunction.”).

252. See, e.g., *People ex rel. Totten v. Colonia Chiques*, 67 Cal. Rptr. 3d 70, 78-79 (Ct. App. 2007) (asserting that a gang defendant does not need to be party to the suit to be bound by the injunction).

253. See INJUNCTION MANUAL 2003, *supra* note 46, at 22 (advising that a prosecutor should gather evidence that the designated member *personally* engaged in nuisance activities).

In addition to serving all named members, law enforcement officers should serve all gang members seen associating with named members. Serving other members does not require “heroic efforts.”²⁵⁴ Officers should carry extra copies of the summons and complaint in the trunks of their vehicles, serving other gang members during everyday interactions with the gang.²⁵⁵ These practices maximize notice to the gang *before* the permanent injunction is obtained.

b. Serving Gang Members in Jail or Prison

Broderick Boys also asserted that “the district attorney could have served the gang members known to be in jail or prison.”²⁵⁶ Prosecutors should incorporate this procedure because “[l]ooking up some addresses is not too much to expect.”²⁵⁷ Incarcerated gang members often communicate with active members living in the community.²⁵⁸ Therefore, all incarcerated gang members should be served. Prosecutors should also work with gang experts to identify incarcerated gang members who can be included as named defendants.²⁵⁹ This safeguard expands the list of named members and strengthens the argument that service of process is reasonable.

c. Publishing Notice of a Pending Injunction

Broderick Boys further commented that the district attorney could have published notice of the injunction *before* it was issued.²⁶⁰ Adequate notice alerts the gang of the pending the action. Publishing notice of the permanent injunction *after* it is issued does not serve this purpose.

Prosecutors should seek innovative methods to publish notice. Newspaper postings are a conventional means of publishing notice;²⁶¹ however, few people

254. *Dusenbery v. United States*, 534 U.S. 161, 170 (2002).

255. *See supra* Part IV.E (suggesting that vagueness issues—including arbitrary enforcement concerns—are alleviated through gang-specific pleadings).

256. 59 Cal. Rptr. 3d at 79.

257. *Id.*

258. *See, e.g.*, Julia Reynolds & George Sanchez, *Prison Gang Case Puts Role of FBI Informants Under Scrutiny*, S.F. CHRON., Nov. 29, 2003, at A1 (detailing the communications network of the Nuestra Familia crime organization in northern California’s Pelican Bay State Prison). “[G]ang leaders have used elaborate communication systems to send out orders, including writing coded messages disguised as love letters, using urine as invisible ink and sending letters marked ‘legal mail’ to a nonexistent law firm in San Francisco.” *Id.*

259. Provided there is documentation that the incarcerated member personally engaged in nuisance activities, that person should be included as a named member. The incarcerated member has a known address. All the prosecutor needs to do is mail a copy of the summons and complaint to the prison cell.

260. *Broderick Boys*, 59 Cal. Rptr. 3d at 79 (“Instead, he waited until the permanent injunction was *fait accompli* to publicize it.”).

261. *See, e.g.*, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 309-10 (1950) (stating that notice was given by publishing newspaper advertisements for four successive weeks).

use traditional publications to get their news today.²⁶² Websites and other media outlets offer a unique alternative to traditional methods. Social networking websites like MySpace.com and Facebook.com are frequented by gang members wanting to “brag about their exploits.”²⁶³ Information on pending injunctions can be posted in the “Comment” sections of these networking sites. Posting notice in “Comment” sections alerts the creator of the site and visitors of the site to the gang injunction.

Prosecutors should also include information on past and future gang injunctions on their agency’s website. The San Francisco City Attorney’s Office website is a model for other law enforcement agencies.²⁶⁴ The website displays visual representations of gang injunctions, highlighting the areas of permanent and proposed safety zones.²⁶⁵ Additionally, the site features downloadable Portable Document Format (PDF) files of the pleadings and various news releases on past and future injunctions.²⁶⁶ While not perfect, the website is an acceptable method of publishing notice and brings transparency to the injunction process.

As this discussion demonstrates, there are many ways to publish notice.²⁶⁷ Modern technology provides innovative solutions to alert gang defendants of a pending injunction.

262. See, e.g., Jack Shafer, *The Incredible Shrinking Newspaper: Newspapers Are Dying, but the News Is Thriving*, SLATE, June 24, 2006, <http://www.slate.com/id/2144201/pagnum/all/> (on file with the *McGeorge Law Review*) (“[G]iven today’s many alternatives, younger potential customers have skipped the lesson and migrated to other media forms for edification and amusement. Newspapers attract fewer eyeballs today and will attract fewer tomorrow.”).

263. Scott Gutierrez, *Street Gangs Using Internet for Violent Bragging Rights: Masked Hoodlums Making Threats at MySpace, Other Sites*, SEATTLE POST-INTELLIGENCER, July 10, 2006, http://seattlepi.nwsourc.com/local/277025_webgangs10.html (on file with the *McGeorge Law Review*); see also Thomas J. Prohaska, *MySpace Use Against Gang Suspect*, THE BUFFALO NEWS, Jan. 23, 2009, <http://www.buffalonews.com/cityregion/niagaracounty/story/557726.html> (on file with the *McGeorge Law Review*).

264. Office of the City Attorney, Dennis Herrera, *Gang Injunctions*, http://www.sfgov.org/site/city_attorney_page.asp?id=88624 (last visited Apr. 6, 2009) (on file with the *McGeorge Law Review*).

265. *Id.*

266. *Id.*

267. The Los Angeles County District Attorney’s Office is developing novel methods for publishing notice. In its most recent injunction against the Florencia 13 street gang, the office posted copies of the complaint in six locations throughout the safety zone, including city hall and a frequently-visited liquor store. See Castorena Interview, *supra* note 160 (previewing new methods of publishing notice used by Los Angeles County law enforcement). In the same injunction, an innovative Los Angeles County police officer constructed an information box similar to those used to distribute free newspapers and stocked the box with copies of the complaint. *Id.* The officer reported that four to fifteen copies of the complaint were removed from the box each day. *Id.*

2. A Minimum Percentage Threshold

Notice procedures are evaluated on a case-by-case basis.²⁶⁸ A court using a “sliding scale” interpretation of *Mullane*²⁶⁹ may require a higher standard of service for more expansive injunctions. There must be a way to account for the type and scope of rights implicated in a particular injunction.

Prosecutors should consider applying a minimum percentage threshold before enforcing an injunction.²⁷⁰ Under this proposed safeguard, a critical percentage of the gang would be served with the summons and complaint before the permanent injunction is enforced. By using a percentage threshold instead of a solid number threshold,²⁷¹ the level of service required “slides” up and down with the relative scope of a particular injunction.²⁷² This method attempts to account for substantive distinctions in individual gang injunctions. At the very least, prosecutors should be cognizant of an injunction’s scope.

VII. CONCLUSION

The battle against gang violence is ongoing. The civil gang injunction is a powerful legal tool that can be used to treat the gang problem. By imposing fines and possible jail time for smaller offenses, gang injunctions serve as a deterrent and limit more serious crimes before they occur.²⁷³

While the gang injunction dilemma ultimately requires a choice between protection of the community at large and protection of the individual’s right to associative freedom, constitutional mandates cannot be ignored. Opponents are becoming aware of void for vagueness and service of process challenges.²⁷⁴

268. See, e.g., *Jones v. Flowers*, 547 U.S. 220, 227 (2006) (stating that the level of notice required will vary by circumstances and conditions).

269. See *Carney-Waterton*, *supra* note 227, at 100 (suggesting a possible interpretation of the *Mullane* framework as a sliding scale).

270. This Comment does not purport to know what the exact percentage should be. It only suggests that a minimum percentage threshold may be helpful.

271. An example would be requiring exactly seven members served to impose the permanent injunction, or requiring exactly ten members served to impose the permanent injunction.

272. For example, if the minimum threshold is ten percent, a 500-member gang requires service of the summons and complaint to fifty members. On the other hand, a 100-member gang requires service to ten members.

273. See, e.g., THE CITY ATTORNEY’S REPORT, *supra* note 20, at 17 (“Where a gang injunction is used as part of a strategy that includes the efforts and expertise of other governmental agencies and community organizations, the positive effect on the overall well-being of a neighborhood can be dramatic.”); see also McClellan, *supra* note 36, at 360-61 (detailing the intended purpose and corresponding benefits of gang injunctions).

274. See, e.g., News Release, ACLU of Southern Cal., ACLU/SC Opposes Troubling Provisions of L.A. District Attorney’s Proposed Gang Injunction in South Los Angeles (Jan. 14, 2009) (on file with the *McGeorge Law Review*) (opposing various provisions of an injunction against the Florencia 13 street gang); see also News Release, ACLU of Northern Cal., California Court of Appeal Declares West Sacramento Injunction Void (Apr. 23, 2007) (on file with the *McGeorge Law Review*) (providing an account of trial proceedings in the *Broderick Boys* case as relating to the need for notice).

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Prosecutors must be proactive. They must sharpen the blade of the gang injunction tool. To that end, implementing precautionary measures like gang-specific pleadings and procedural safeguards for service of process will ensure the efficacy of future gang injunctions.