

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

VARRIO LAMPARAS PRIMERA, aka)
WESTSIDE, a criminal street gang as an)
unincorporated association; SOUTHSIDE, a)
criminal street gang as an unincorporated)
association,)

Defendants.)

_____)
RICHARD ALVAREZ, DAMION BLACK;)
and CRYSTAL GARCIA,)

Intervenors.)
_____)

Case No.: 1148758

Statement of Decision on Motion for
Preliminary Injunctions

Date: September 16 & 30, 2005
Time: 8:30 a.m.
Dept. 1
Judge: Judge James F. Iwasko

The People of the State of California have filed their complaint for preliminary and permanent criminal street gang injunctions. They seek two separate injunctions, each enjoining one of the two defendant gangs. On September 16 and 30, 2005, the court heard the People's motion for preliminary injunctions, pursuant to CCP § 731, to enjoin a public nuisance as defined in Civil Code § 3479 and 3480. Gene Martinez, Senior Deputy District Attorney,

1 appeared for the People. Neil B. Quinn, representing the Office of the Public Defender,
2 appeared for interveners Richard Alvarez, Damion Black and Crystal Garcia. The defendants are
3 Varrio Lamparas Primera, aka Westside (“VLP”) and Southside, both alleged criminal street
4 gangs sued as unincorporated associations. The defendants have not appeared in this case. The
5 court has considered the evidence, the pleadings herein and the arguments of counsel.

6 Summary of Facts of This Case

7 The People rely primarily on the declarations and hearing testimony of Agent Joseph
8 Stetz of the Lompoc Police Department and voluminous criminal records relating to alleged gang
9 members. The court finds that Agent Stetz qualifies as an expert on criminal street gangs based
10 on his 9 years experience personally investigating or assisting in the investigation of numerous
11 gang related or gang motivated cases involving both VLP and South Side and his education.
12 Agent Stetz’ qualifications equal or exceed those found adequate in *People v. Roberts* (1992) 2
13 Cal. 4th 271, 298, and *People v. Williams* (1997) 16 Cal. 4th 153, 195.

14 In his March 23, 2005, declaration, Stetz testified that VLP is the larger gang, with 69
15 alleged members who are adults and 16 alleged members who are juveniles compared to
16 Southside’s 8 adults and 13 juveniles. At the hearing, he estimated that there are 120 active gang
17 members. Criminal records reveal that these individuals are responsible for 213 criminal
18 convictions (not all of which occurred in Lompoc), 87 of which are felonies and 126 of which
19 are misdemeanors or infractions. Stetz provided other evidence of arrests involving these
20 individuals and observations of their conduct, some of which is duplicative of the conviction
21 evidence.
22

23 As significant as the criminal history of these individuals is, the People have not sued the
24 individuals in this case. The People seek injunctions against VLP and Southside. The individual
25 information is only material if it relates to the activities of the gangs as entities. Under the
26 California Penal Code, a “‘criminal street gang’ is any ongoing organization, association, or
27 group of three or more persons, whether formal or informal, having as one of its primary
28 activities the commission of one or more of [several criminal acts enumerated in Penal Code §

1 186.22(e)], having a common name or common identifying sign or symbol, and whose members
2 individually or collectively engage in or have engaged in a pattern of criminal gang activity.”
3 Penal Code § 186.22(f). The People have established that VLP is a criminal street gang. Its
4 members have engaged in crimes for the benefit of the gang including assault, robberies, drug
5 sales, witness intimidation, auto theft, vandalism and coordinated attacks on perceived enemies.
6 Stetz Dec,4:8-10. Stetz also testified that VLP “uses drug distribution as a primary source of
7 income.” *Id.*, 9:21-22. From his declaration testimony, the only purpose of Southside as an
8 ongoing organization or association is to protect its members from VLP. *Id.*, 15:23-16:2. At the
9 hearing, Agent Stetz testified that Southside had become more offensive in pursuit of its own
10 aims and that its graffiti had increased. The People have established that Southside is a criminal
11 street gang.

12 Establishing the Nuisance

13
14 Without diminishing the impact of a crime on individual victims, every crime is not a
15 public nuisance that the court can enjoin. “Something more than the threatened commission of
16 an offense against the laws of the land is necessary to call into exercise the injunctive powers of
17 the court.” *In re Debs*, 158 U.S. 564, 593 (1895). In California, to constitute a nuisance,
18 conduct must be injurious to health; indecent or offensive to the senses; “an obstruction to the
19 free use of property, so as to interfere with the comfortable enjoyment of life or property;” or an
20 unlawful obstruction of the free passage or use of public ways. Civil Code § 3479. To be a
21 public nuisance, the conduct must affect an entire community or neighborhood. Civil Code §
22 3480.

23 The California Supreme Court has held that a public nuisance injunction under CCP §
24 731 can issue to enjoin the activities of members of a criminal street gang. *People ex rel. Gallo*
25 *v. Acuna* (1997) 14 Cal.4th 1090. There, a gang had created an “urban war zone” in a four block
26 square area of San Jose known as “Rocksprings.” *Id.* at 1100. *Acuna*, however, establishes what
27 is permissible, not what is mandatory. The People must still make their case for a public
28 nuisance injunction against *these* gangs in *this* community. What happened in San Jose does not

1 establish the People’s case in Lompoc. On the “highly particular question” of the breadth of an
2 injunction, the California Supreme Court deferred “to the superior knowledge of the trial judge,
3 who is in a better position than we to determine what conditions ‘on the ground’ in Rocksprings
4 will reasonably permit.” *Id.* at 1122. Most trial judges will happily embrace the Supreme
5 Court’s endorsement of their superior knowledge. But, while this judge, sitting as the lone
6 criminal court judge in Lompoc, has considerable knowledge of gang activity here, the burden of
7 demonstrating the existence of a nuisance and necessity for an injunction falls on the People.

8
9 First, it is important to understand how Lompoc differs from the situation in the *Acuna*
10 case. There, instead of the testimony of one police agent, a high school principal and a high
11 school student, there were 48 declarations of people in the community. None of the gang
12 members lived in the four square block neighborhood that was the target area of the injunction.
13 The court described Rocksprings as an “occupied territory” and “urban war zone.” The gang
14 congregated in this small neighborhood, openly using drugs (“even snorting cocaine laid out in
15 neat lines on the hoods of residents’ cars”) and took over the streets to conduct a “drive-up drug
16 bazaar.” Drive by shootings, murder, assault, vandalism, arson and theft were commonplace.
17 The community had become “a staging area for gang-related violence and a dumping ground for
18 the weapons and instrumentalities of crime once the deed is done.” People in the community had
19 become prisoners in their own homes, afraid to go out at night or allow their children to play
20 outdoors. Relatives and friends refused to visit. *Id.* at 1100.

21 The People’s evidence paints a much different picture in Lompoc. While Agent Stetz
22 testified that VLP was engaged in drug sales, the evidence is anecdotal and does not demonstrate
23 an open “drug bazaar” in a concentrated area nor is there evidence of gang members openly
24 using drugs. Gang members engage in a variety of criminal activity, much of which is related to
25 the respective gangs, but there is no evidence that drive-by shootings, murder, assault and arson
26 are commonplace. The area in which the People seek an injunction is not a limited area where
27 non-resident gang members come to stage gang-related crimes and dump weapons and
28 instrumentalities of crimes. To the contrary, it appears that most of the alleged gang members

1 live in the community. There was no evidence offered from people in the community that
2 demonstrated that they feel themselves to be prisoners in their own homes or that they are afraid
3 to venture out in their neighborhoods. But the evidence demonstrates that the criminal activity of
4 gang members directly and indirectly impacts the community at large, particularly the frequent
5 violent crimes committed by gang members in the proposed “Safety Zone.”

6 The court finds that the primary, though not exclusive, problem the gangs present is the
7 harassment and intimidation of both gang members and non-gang members. The evidence
8 demonstrates that anyone can be subject to a confrontation with members of either gang in which
9 they are asked, “where are you from” – a question to which there is seemingly no correct answer.
10 These confrontations almost invariably lead to violence. Arthur Diaz, the principal of Lompoc
11 High School, testified to the intimidation of students by gang members both on campus and on
12 street corners immediately adjacent to the school. He indicated that some students are afraid to
13 leave the school at the end of the day because of congregations of gang members around the
14 school. He said students feel they have to make a choice to be in one gang or another. Principal
15 Diaz has done an admirable job of creating a well-controlled environment on campus using
16 school rules and increasing the presence of teachers and administrators (including his own
17 bicycle patrols) outside of classrooms. He has even met with individuals who congregate
18 adjacent to the campus. He describes the climate on campus this year as pretty positive. He and
19 his staff have limited ability, however, to effectively police areas adjacent to the campus.

21 The People propose injunctions that will be effective in a “Safety Zone.” The Safety
22 Zone described in the People’s proposed injunctions is, according to the testimony of Agent
23 Stetz and the court’s own rough measurements of the map (People’s Exhibit 1), approximately
24 1.5 to 2 square miles in size. According to Stetz’ declaration, approximately 35% of the
25 population of Lompoc lives in the “Safety Zone.” At the hearing, Stetz indicated that injunctions
26 in other communities cover larger areas but his examples do not bear that out. He testified that
27 Oxnard’s zone encompassed an area with 25% of the population. He claimed that the proposed
28 Lompoc “Safety Zone” is smaller than the one in the City of Oceanside discussed in *People v.*

1 *Englebrecht* (2001) 88 Cal. App. 4th 1236. But the target area in that case was only one square
2 mile. *Id.* at 1242. In any event, the court is not persuaded by what is appropriate in Oxnard and
3 Oceanside. The court is concerned only with the evidence presented regarding Lompoc.

4 The size of the “Safety Zone” that is necessary or appropriate is a factual determination
5 to be made by the trial court in each case. *Id.* at 1162. The court is convinced that the proposed
6 “Safety Zone” is the area of concentration of VLP and Southside criminal activity as Agent
7 Stetz’ testimony and People’s Exhibit 1 demonstrate. The greater the size of the Safety Zone,
8 however, the more conscious the court is of the impact of an injunction on non-gang activity and
9 associations.

10 The court concludes that the People have demonstrated that VLP and Southside gang
11 activity is more than a collection of crimes in the Safety Zone. Their activities constitute a
12 public nuisance that the court can and should address with an appropriate equitable remedy.

13 **The Injunctive Remedy for the Nuisance**

14 The People initially proposed injunctions with ambitious lists of 21 enjoined activities.
15 At the hearing, the People presented modified proposed injunctions that are more modest in their
16 breadth and more in line with the evidence presented in support of the injunctions. The court
17 will address each element of the proposed injunctions but, first, the court has more general
18 concerns with the relief the People seek.

19 **A. The Association Prohibition**

20 The Supreme Court has held that the United States Constitution does not recognize “a
21 generalized right of ‘social association.’” *Dallas v. Stanglin* (1989) 490 U.S. 19, 25 . More
22 specifically, the California Supreme Court held that the First Amendment does not protect “the
23 collective public activities of the gang members within the four-block precinct of Rocksprings,
24 activities directed in the main at trafficking in illegal drugs and securing control of the
25 community through systematic acts of intimidation and violence.” *People ex rel. Gallo v. Acuna*,
26 *supra*, 14 Cal.4th at 1110. The court held that the gang activity in Rocksprings did not fall within
27 the two categories of protected association – 1) intrinsic or familial association and 2) intimate or
28

1 purpose driven association in of pursuit of “a wide variety of political, social, economic,
2 educational, religious, and cultural ends.” *Id.* at 1110-1111.

3 Because of the large proposed “Safety Zone,” the possibility that the proposed Lompoc
4 injunctions will impact innocent and constitutionally protected associations is much greater. In
5 *Acuna*, it was unlikely that gang members, none of whom lived in Rocksprings, would descend
6 upon that four block square neighborhood for family picnics, weddings or funerals. Since 35%
7 of the citizens of Lompoc live within the proposed “Safety Zone,” however, that is a much more
8 likely scenario. The proposed “Safety Zone” includes numerous churches, schools and
9 businesses. Gang members should not be prohibited from working, learning, worshiping and
10 shopping in the area. These people are likely to “associate” by merely running into each other in
11 the supermarket.

12 Also, in *Acuna*, the City of San Jose sued 38 individuals. Only they would be subject to
13 the terms of the injunction and each of them had the opportunity to fully litigate the injunction.
14 The court did not, therefore, appear to be very concerned with the over breadth challenge to the
15 association prohibition. “Unlike the pervasive ‘chill’ of an abstract statutory command that may
16 broadly affect the conduct of an absent class and induce self-censorship, the decree here did not
17 issue until after *these* defendants had had their day in court, a procedure that assures ‘a prompt
18 and carefully circumscribed determination of the issue.’” *Id.* at 1114 [emphasis in original]. The
19 People’s chosen procedure in this case will affect absent members of these two gangs and,
20 therefore, there is a potential “chill” of the rights of an absent class. For that reason, this court is
21 mindful of the breadth and scope of the injunction terms, particularly the association prohibition.

22 When confronted on cross-examination with various scenarios of innocent association by
23 gang members, Agent Stetz testified that officers would have to be reasonable. While the court
24 fully expects Lompoc police officers will be reasonable in the enforcement of any injunction just
25 as they should be reasonable in enforcing the Penal Code, that sort of discretion can render the
26 injunctions too vague to withstand constitutional scrutiny.
27
28

1 In *Chicago v Morales*, 527 U.S. 41 (1999), the Supreme Court struck down the Chicago
2 Gang Congregation Ordinance, which prohibited “criminal street gang members” from
3 “loitering” with one another or with other persons in any public place. One problem with the
4 statute was that it left absolute discretion in the police officers on the street to determine what
5 loitering was. Finding that the ordinance was a criminal law that contained no *mens rea*
6 requirement and that infringed on constitutionally protected rights, the court stated: “When
7 vagueness permeates the text of such a law, it is subject to facial attack.” *Id.* at 55. “Since the
8 city cannot conceivably have meant to criminalize each instance a citizen stands in public with a
9 gang member, the vagueness that dooms this ordinance is not the product of uncertainty about
10 the normal meaning of ‘loitering,’ but rather about what loitering is covered by the ordinance and
11 what is not.” *Id.* at 57. Chicagoans would only know what “loitering” was prohibited when the
12 police ordered them to disperse. *Id.* at 59.

14 In these proposed injunctions, every instance of association of two members of the
15 defendant gangs would be prohibited. But, in reality, as Agent Stetz testified, that is not the
16 intent. Agent Stetz says that Lompoc police officers will determine which associations are
17 appropriate, potentially leaving the gang members uncertain whether a discussion with a gang
18 member who happens to be his neighbor is a violation of the proposed injunctions. This is the
19 sort of vagueness that the Supreme Court found troublesome in *Chicago v. Morales*. This court
20 will put an objective standard in the injunction to guide police enforcement of this provision.

21 The People propose the following restriction on association among gang members:

22 **“b. No Association with Other Known [VLP/Southside] Gang Members:**

23 Gang members are prohibited from standing, sitting, walking, driving, bicycling,
24 gathering or appearing anywhere in public view or anywhere accessible to the
25 public, with any other known [VLP/Southside] gang member.

26 **“EXCEPT** association is permitted when all gang members are together

27 “(1) inside a school building attending class or on school business, or;

28 “(2) inside a church building; or

1 “(3) while actively engaged in some business, trade, profession or occupation
2 which requires the presence and association of the members;
3 **“HOWEVER,** gang members are prohibited from associating while traveling to
4 and from any of the locations (except if in a school bus) and/or activities
5 occurring inside the school building, or inside a church, or while actively engaged
6 in the business, trade, profession or occupation.”

7 The association provision is designed to prevent gang members from nuisance conduct by
8 breaking them up. There are two deficiencies in the provision. First, the order should make
9 clear that the subject person knows the person they are associating with to be a VLP or Southside
10 gang member. This would address the knowledge requirement that the court in *Acuna* said was
11 implied in the decree. *People ex rel. Gallo v. Acuna, supra*, 14 Cal.4th at 1117. For clarity, this
12 decree should make the requirement express.

13
14 Second, any injunction should tie the prohibited association to the nuisance conduct,
15 eliminating innocent association in the “Safety Zone.” This would also take care of concerns
16 about innocent associations between neighbors and family members. Without that qualification
17 of the non-association requirement, the provision might require many exceptions, in addition to
18 those the People propose, and it would be impossible to think of them all, e.g., playing sports,
19 performing in or attending concerts or other presentations, participating in dances, attending
20 funerals, attending weddings, etc.... For example, one of the People’s witnesses suggested that
21 many of the players on the Lompoc High School football team are VLP members. If that were
22 true, then the People’s proposed injunction would put an end to the Braves’ season a result
23 unacceptable to all of the fervent Braves supporters.

24 The court in *Acuna* approved a broad prohibition against association. But, again, the
25 court based its approval of that prohibition on the peculiar facts of that case, including the
26 limited area within which the injunction operates, and “the absence of any showing of
27 constitutionally protected activity by gang members within that area....” *Id.* at 1122. Here, the
28

1 area is not so limited. Here, unlike in Rocksprings, many gang members live in the “Safety
2 Zone” and, necessarily, engage in constitutionally protected activity there.

3 In this context, it is interesting to note that Chicago included just such a “mens rea”
4 element in the new gang ordinance adopted after the Supreme Court struck down its old
5 ordinance. Chicago’s post-Morales gang ordinance prohibits loitering defined as follows:
6 “Gang loitering means remaining in any one place under circumstances that would warrant a
7 reasonable person to believe that the purpose or effect of that behavior is to enable a criminal
8 street gang to establish control over identifiable areas, to intimidate others from entering those
9 areas, or to conceal illegal activities.” CHI., IL., MUN. CODE § 8-4-015(d)(1) (2000).

10 The court will adopt an association prohibition as follows:

11 **No Association with Other Known [VLP/Southside] Gang Members:** Gang
12 members are prohibited from gathering or appearing anywhere in public view or
13 anywhere accessible to the public, including standing, sitting, walking, driving, or
14 bicycling with any person known to the individual to be a VLP or SS gang
15 member under circumstances that would warrant a reasonable person to believe
16 that the purpose or effect of that behavior is to enable VLP/Southside and/or its
17 members to engage in the nuisance conduct prohibited in this Order (other than
18 this paragraph “b”). No person shall be deemed to be in violation of this
19 paragraph “b” if they are on a school campus attending class or on school
20 business, engaging in religious activities; or actively engaged in some lawful
21 business, trade, profession or occupation, though these exceptions do not define
22 all activity that is not in furtherance of the nuisance.

23 **B. The Definition of a Gang Member**

24 The People’s proposed injunction will leave the determination of who is a gang member
25 to the police, without notice. Again, the People have not sued individual alleged gang members,
26 depriving them of the opportunity to contest whether the injunctions should apply to them. The
27 People propose and the court will require the People to serve any court order on various persons
28

1 but that will not necessarily be notice that the injunctions apply to the persons who read it
2 without a definition of “gang member.”

3 The court will include in the injunction a definition of gang member that will at least set
4 forth the criteria that will be used in determining who is a member of VLP or Southside, along
5 the lines of the discussion in *People v. Englebrecht, supra*, 88 Cal. App. 4th at 1258-1261. The
6 injunction will include the following definition:

7 For purposes of this injunction, a person is a member of [VLP/Southside] if that
8 person actively participates in or acts in concert with or has, within the last five
9 years, actively participated in or acted in concert with [VLP/Southside] and/or its
10 other members in the commission of acts constituting the public nuisance
11 enjoined herein, which participation or acting in concert is more than nominal,
12 passive, inactive or purely technical.

14 **C. Opting Out**

15 Even with the definition of a gang member, an individual who does not believe he is a
16 gang member may still operate under the chill that the police may have a different view.
17 Therefore, he may be forced to choose not to associate with friends, co-workers and even family
18 with whom he otherwise would associate. The narrow association provision set forth above
19 should eliminate some of that chill. But, still, the police may view the alleged gang member as
20 associating in furtherance of nuisance activities when the individual does not believe he is a gang
21 member at all. Also, some of the enjoined activities set forth below are not unlawful in and of
22 themselves. An individual should have a means of affirmatively removing himself from the
23 reach of this injunction.

24 The court will, therefore, include an “opt-out” provision in the order. That procedure will
25 be as follows:

26 **Procedure for Exclusion from Preliminary Injunction:** Any person wishing to
27 be excluded from the coverage of this order (“Movant”) shall file, in this
28 proceeding, a Motion to be Excluded From Preliminary Injunction, and serve it on

1 the District Attorney. The motion shall be governed by the Code of Civil
2 Procedure and Rules of Court. No points and authorities, however, will be
3 necessary. The timing of the motion, opposition and reply shall be governed by
4 this order. The motion shall include a declaration, under penalty of perjury, by
5 the Movant that he/she is not a member of [VLP/Southside] and a statement that
6 he/she does not want to be subject to the terms of the Injunction. The motion
7 shall set a hearing on a Friday at 8:30 a.m. The motion shall be filed and served
8 no less than 30 calendar days before the hearing date. The People shall file and
9 serve, by fax if possible, any opposition and declarations no less than 10 days
10 before the hearing date and any reply shall be filed and served, by fax, no less
11 than 3 days before the hearing date. The court may reschedule the hearing.
12 Rescheduling will not affect the due dates for opposition and reply.

13
14 **a. Person Not Previously Adjudicated:** If the Movant has never been
15 adjudicated a gang member in a prior judicial proceeding, the declaration will
16 shift the burden to the People to prove, by clear and convincing evidence, that the
17 Movant is a member of [VLP/Southside].

18 **b. Person Previously Adjudicated:** If the Movant has been adjudicated a
19 gang member in a prior judicial proceeding, Movant shall have the burden of
20 proving, by clear and convincing evidence, that he/she is not now a member of
21 [VLP/Southside]. The court may condition the exclusion from the injunction on
22 terms that will insure that the Movant remains disassociated from
23 [VLP/Southside], including enrollment in appropriate social programs and
24 services.

25 The court will entertain suggestions from both parties as to the form a motion and
26 declaration might take.

27 The court will decide each motion on a case by case basis, taking into consideration the
28 Movant's criminal history, if any; length and nature of association with a gang, if any; length of

1 time Movant has been disassociated from a gang; Movant’s involvement in non-gang social
2 organizations, programs and activities; and any other factors tending to demonstrate whether
3 Movant is a gang member.

4 **D. Enforcement of the Injunction**

5 Penal Code § 166(a)(4) provides that a person who willfully disobeys a lawful court order
6 is guilty of a misdemeanor. However, that person is also subject to an order to show cause re
7 contempt. “Under this section, the act prohibited is both a contempt and a misdemeanor. The
8 mere fact that the legislature has seen fit to declare such a contempt also a misdemeanor in no
9 way deprives the court of the power to punish such an act as a constructive contempt in a
10 summary proceeding” *In re San Francisco Chronicle* (1934) 1 Cal. 2d 630, 636 (OSC re
11 contempt for publication of article allegedly in violation of Pen. Code § 166(a)(7)).

12 Since the injunction names only the gangs, the remedy of a summary contempt
13 proceeding may be too dismissive of due process rights. While the court in the *San Francisco*
14 *Chronicle* court held that the legislature cannot limit the court’s inherent power to punish a
15 contempt in a summary proceeding, this court believes it can so limit itself in the enforcement of
16 its own order. In order to provide adequate due process under the circumstances, the court will
17 circumscribe the remedies available for violation of its order. The court will require that the
18 injunction can be enforced solely by prosecution under Penal Code § 166. The court does not
19 find that any person is a member of a VLP or Southside. In any prosecution for violation of the
20 injunction, the People must prove gang membership as an element of the crime of violating the
21 injunction. Of course, the burden of proof will be beyond a reasonable doubt.

22 **E. Other Proposed Injunction Terms**

23 The court will now address the particular terms of the proposed injunctions. First, The
24 court finds that there is evidence that the gangs intimidate witnesses and victims of crimes and
25 will prohibit this practice as follows:
26

27 **NO WITNESS INTIMIDAITON:** Gang members are prohibited from
28 confronting, intimidating, annoying, harassing, threatening, challenging,

1 provoking, assaulting or battering any person known to be a witness to or a victim
2 of a crime, or any person known to have complained of the activities of
3 [VLP/Southside].

4 The People propose the following injunction language with respect to weapons:

5 **“c. No Dangerous Weapons, Guns, Firearms or Imitation Guns or Firearms:**

6 While anywhere in public view or anyplace accessible to the public, gang
7 members are prohibited from (1) possessing any dangerous weapons, guns or
8 firearms including BB guns, pellet guns or any instrument that expels a projectile
9 such as a BB or a pellet, through the force of air pressure, CO2 pressure, or spring
10 action, or any spot marker gun, and any replica or imitation guns or firearms,
11 ammunition, knives, rocks, bottles, hammers, sharpened screwdrivers, sticks,
12 chains, pipes, or any other instrument prohibited by Penal Code section 12020; (2)
13 possessing a baseball bat, miniature bat or golf club without a legitimate purpose;
14 (3) knowingly remaining in the presence of anyone who is in possession of such
15 dangerous weapons, guns or firearms; or (4) knowingly remaining in the presence
16 of such dangerous weapons, guns or firearms.”

17
18 The court will include the People’s proposed prohibition against possessing certain
19 weapons and items that can be used as weapons with a minor modification. Some of the items
20 have legitimate uses and the court will only prohibit the possession of these items without a
21 legitimate purpose. The court’s version simply moves some of those items to category 2 and will
22 read as follows:

23 **No Dangerous Weapons, Guns, Firearms or Imitation Guns or Firearms:**

24 While anywhere in public view or anyplace accessible to the public, gang
25 members are prohibited from (1) possessing any dangerous weapons, guns or
26 firearms including BB guns, pellet guns or any instrument that expels a projectile
27 such as a BB or a pellet, through the force of air pressure, CO2 pressure, or spring
28 action, or any spot marker gun, and any replica or imitation guns or firearms,

1 ammunition, knives, sharpened screwdrivers, or any other instrument prohibited
2 by Penal Code section 12020; (2) possessing a baseball bat, a miniature bat, a golf
3 club, rocks, bottles, hammers, sticks, chains or pipes, without a legitimate
4 purpose; (3) knowingly remaining in the presence of anyone who is in possession
5 of such dangerous weapons, guns or firearms; or (4) knowingly remaining in the
6 presence of such dangerous weapons, guns or firearms.

7 Based on the evidence of gang fights in the “Safety Zone,” the court will enjoin gang
8 members from fighting as follows:

9 **No Fighting:** Gang members are prohibited from engaging in fighting anywhere
10 in public view or any place accessible to the public, including on public streets,
11 alleys, and/or public and private property.

12 The court will enjoin the use of gang signs and gang the wearing of gang clothing. There
13 is evidence that gang hand signs and gang-related clothing promote gang activity and are an
14 intimidating indication of gang presence. Although the number 13 has many everyday non-gang
15 uses, it has become an important symbol in gang parlance. The 13th letter of the alphabet is “M.”
16 Gang members use this number to associate themselves with Mexico and the “Mexican Mafia.”
17 The court will enjoin the use of signs and wearing of clothing with the number 13. This will
18 prohibit gang member sports fans from wearing the jerseys of sports legends Dan Marino and
19 Wilt Chamberlain or current Yankee third baseman Alex Rodriguez. But that is a small price to
20 pay in light of the negative impact of gang clothing. The court will provide as follows:

21 **No Use or Display of Gang Symbols:** Gang Members are prohibited from using
22 or displaying letters, words or phrases, or physical gestures, commonly known as
23 hand signs, which describe or refer to the gang known as VLP, including, but not
24 limited to: the letters VLP, W, S, WS and G.

25 The specific symbols for the proposed Southside injunction are SSG, SS, SSL, 13.

26 **No Wearing Gang Clothing:** Gang members are prohibited from wearing
27 clothing, hats or accessories, including necklaces, which bear the name, initials,
28

1 letters, numbers or other symbols of the gang known as VLP, including, but not
2 limited to: 13, X3, Sureno, Lamparas, VLP, LP, WSG, WS, Westside Varrio,
3 Primera, Bow Down, XIII, WSL, LP13, LPX3.

4 The specific symbols for Southside clothing are 13, SSG, Southside, SS, SSL, X3, Sureno, SS
5 Locos.

6 The People propose the following prohibition against drug possession, use and sale:

7 **“g. Stay Away From Illegal Drugs, Controlled Substances and Related**
8 **paraphernalia:** Unless prescribed by a physician licensed to practice in the
9 State of California, gang members are prohibited from (1) participating in the
10 use, possession, transportation, and or sale of any controlled substances or illegal
11 drugs, including but not limited to, heroin, methamphetamine, cocaine, hashish
12 or marijuana; (2) using or possessing related drug paraphernalia, including but
13 not limited to video monitoring equipment, police scanners, two-way radios,
14 rolling papers, bindles, pipes or other items used to smoke, ingest, inject,
15 package or sell illegal drugs; (3) knowingly remaining in the presence of anyone
16 possessing, using or selling any illegal drug or controlled substance, or such
17 related paraphernalia.”

18
19 The court will enjoin the gangs’ drug sale operations, as there is evidence that the sale is
20 an activity conducted on behalf of the gangs and is a nuisance. The court will not enjoin the use
21 or possession of illegal drugs, though that behavior is still subject to enforcement of the Penal
22 Code – something the evidence suggests the Lompoc Police are vigorously pursuing. Although
23 there is a great deal of evidence that the identified gang members are drug users, there is no
24 evidence that their drug use is in furtherance of the purposes of the gang. In fact, to the extent
25 Agent Stetz is correct that VLP uses drug distribution as a primary source of income, use of the
26 product by its dealers would run counter to the purpose of the gang. Individual drug use may
27 well be a nuisance, but the defendants in this case are gangs. If the conduct is not on behalf of
28

1 the gang, it should not be the subject of the injunction enjoining the gang in which the gang is the
2 only party. The court's injunction will provide:

3 **No Sale of Illegal Drugs, Controlled Substances and Related Paraphernalia:**

4 Gang members are prohibited from (1) participating in the sale of any controlled
5 substances or illegal drugs, including but not limited to, heroin,
6 methamphetamine, cocaine, hashish or marijuana; or (2) knowingly remaining in
7 the presence of anyone selling any illegal drug or controlled substance, or related
8 paraphernalia.

9 The People request that gang members not be allowed to drink alcoholic beverages in
10 public or even be in the presence of an open container of alcohol. The People's proposed
11 language is:

12 **“h. Stay Away From Alcohol:** While anywhere in public view or any place
13 accessible to the public, gang members are prohibited from (1) drinking or
14 possessing alcoholic beverages; (2) being under the influence of alcohol; (3)
15 knowingly remaining in the presence of anyone possessing an open container of
16 an alcoholic beverage; (4) knowingly remaining in the presence of an open
17 container of an alcoholic beverage.”

18 The court will not include this prohibition. While individual members have been shown
19 to be drinkers, the numbers are not excessive. Again, the drinking is not shown or even alleged
20 to be an activity of the gang as an organization. Certainly being in the presence of alcohol is not
21 demonstrated to be a nuisance. Under age drinking is still subject to enforcement of existing
22 laws. According to Agent Stetz, however, the average age of gang members in Lompoc has been
23 consistently in excess of 21 years from 1998 to 2003. The court's order is without prejudice to
24 the people establishing a need for this provision at trial.

25 The People propose the following injunction against graffiti and vandalism:

26 **“i. No Graffiti/Vandalism:** Gang members are prohibited from spray painting,
27 marking with marker pens, scratching, applying stickers or otherwise applying
28

1 graffiti on any public or private property, including but not limited to the street,
2 alley, residences, block walls, vehicles and/or any other real or personal
3 property.”

4 The court will include a revised version of this prohibition against vandalism and graffiti.
5 The People’s broadly worded provision would prohibit a gang member from painting a house or
6 working in a body shop. The court will make clear that it is enjoining “applying graffiti.” This
7 provision will read:

8 **No Graffiti/Vandalism:** Gang members are prohibited from applying graffiti by
9 any means, including spray painting, marking with marker pens, scratching,
10 applying stickers or otherwise on any public or private property, including but not
11 limited to the street, alley, residences, block walls, vehicles and/or any other real
12 or personal property.

13
14 The People propose the following prohibition against possession of graffiti and/or
15 vandalism tools:

16 “j. **No Graffiti/Vandalism Tools:** Gang members are prohibited from possessing marker
17 pens, spray paint cans, spray can accessories, nails, razor blades, other sharp objects
18 capable of defacing private or public property.”

19 The court will include a revised version of this prohibition. There is ample evidence of
20 graffiti activity and a demonstrated relation to the gangs. However, all of the items have
21 legitimate uses, sometimes necessary to a person’s employment. A “without a legitimate
22 purpose” limitation is necessary. The court will include the following language:

23 **No Graffiti/Vandalism Tools:** Gang members are prohibited from possessing,
24 without a legitimate purpose, marker pens, spray paint cans, spray can
25 accessories, nails, razor blades, other sharp objects capable of defacing private or
26 public property.

27 The People request the following “no trespassing” injunction:
28

1 **“k. No Trespassing:** Gang members are prohibited from being present on any
2 property not open to the general public, except with (1) the prior written consent
3 of the owner, owner’s agent, or the person in lawful possession of the property, or
4 (2) in the presence of and with the voluntary consent of the owner, owner’s agent,
5 or the person in lawful possession of the property.”

6 The court will not include this prohibition, as there is insufficient evidence to support it.
7 There are only anecdotal references to gang members fleeing police through private yards, but
8 they did not result in trespassing charges. That evidence is related to VLP only. This provision
9 could prevent innocent visitation by unwritten invitation when the owner or person in possession
10 of the property is not present. The court’s order is without prejudice to the people establishing a
11 need for this provision at trial.

12 The People ask that the court include in its injunction a curfew aimed specifically at
13 juvenile gang members, worded as follows:

14 **“1. Juvenile Curfew:** Gang members under the age of eighteen (18) are
15 prohibited from being in a public place between the hours of 10:00 p.m. on any
16 day, and 6:00 a.m. of the following day, unless (1) accompanied by a parent or
17 legal guardian, or by a spouse eighteen (18) years of age or older, or (2)
18 performing an errand directed by a parent or legal guardian, or by a spouse
19 eighteen (18) years or older, or (3) returning directly home from a public meeting,
20 or a place of public entertainment, such as a movie, play, sporting event, dance or
21 school activity or (4) actively engaged in some business, trade, professionalism,
22 or occupation which requires such presence.”

23 The court will not include this prohibition. The People presented no evidence linking any
24 of the activity to a particular time. Lompoc already has a juvenile curfew. The court’s order is
25 without prejudice to the people establishing a need for this provision at trial.

26 The People seek an injunction prohibiting gang members from acting as lookouts as
27 follows:
28

1 “m. **No Acting as Lookouts:** Gang members are prohibited from signaling to,
2 whistling, or acting as a lookout for other persons to warn of the approach of
3 police officers.”

4 The court will not include this prohibition. Agent Stetz refers to this practice as to VLP
5 only. He mentioned only one incident of lookout and warning and only that incident appeared in
6 his voluminous detail of gang activity. There is no evidence that Southside engages in this
7 practice. The court’s order is without prejudice to the people establishing a need for this
8 provision at trial.

9 The court will enjoin the blocking of free passage. The testimony of Agent Stetz and
10 Principal Diaz indicates that blocking passage is a frequently used method of intimidation. The
11 court will include the following provision:

12 **No Blocking Free Passage:** Gang members are prohibited from blocking the free
13 passage of any person or vehicle on any street, walkway, sidewalk, driveway,
14 alleyway, parking lot, or other area of public passage, or on the grounds of a
15 school;

16 The people request the following prohibition against loud noise:

17 “o. **No Loud Noise:** Gang members are prohibited from making, or causing loud
18 and unreasonable noise of any kind, including, but not limited to, by yelling and
19 loud audio equipment at any time of the day or night.”

20 The court will not include this prohibition. The People presented insufficient evidence of
21 this conduct as to VLP and no evidence as to Southside. Any isolated incidents or increased
22 future activity of this nature can be prosecuted as a violation of Penal Code § 415. The court’s
23 order is without prejudice to the people establishing a need for this provision at trial.

24 **F. No Affect on Other Orders or Laws**

25 The court wishes to avoid confusion where the terms of the injunction might be
26 inconsistent with the terms of another court restraining order or someone’s terms of probation or
27 conditions of parole. To that end, the injunctions will include this language: “Nothing in this
28

1 order will have the effect of superseding or altering any law, ordinance, regulation, terms and
2 conditions of probation or parole, or other lawful court order.”

3 **G. Reservation of Jurisdiction**

4 The injunctions issuing with this Statement of Decision are preliminary injunctions. The
5 court will set this case for trial on permanent injunctions. The court intends to actively exercise
6 continuing jurisdiction to modify the injunction terms.

7 The court has carefully crafted the injunctions. But drafting injunctions in a courthouse
8 is an inexact science. The injunctions will be tested on the streets. Even as drafted, the
9 injunctions entrusts the protection of some civil liberties of gang members in the reasonable
10 discretion of the Lompoc Police Department. The court will monitor that trust.

11 If the injunctions prove, in any aspect, inadequate for controlling the nuisance, the court
12 will entertain a motion to modify. Likewise, if the injunctions prove too restrictive of individual
13 liberty and/or the pursuit of productive lives within the Safety Zone, the court will consider
14 modification of the injunction terms or even dissolution of the injunctions. In the event of a
15 motion to modify or dissolve the injunctions, the moving party must demonstrate the need for the
16 change by clear and convincing evidence. The court will want to see specific evidence justifying
17 the proposed change and not merely anecdotes or opinions.

18 The court is interested in having the input of the District Attorney, the Public Defender
19 and the community in making necessary modifications to the injunction. The court would
20 particularly welcome input in making the “opt-out” provision more accessible and in identifying
21 programs and services that will enhance the paths of former gang members seeking not only to
22 be free from the terms of the injunction, but to improve their lives.

23 The court will hold a status hearing on the injunctions on December 16, 2005. The
24 parties shall file any written materials they want the court to consider no less than ten (10) days
25 before the hearing.
26
27
28

1 The court will issue two separate injunctions consistent with this Statement of Decision.

2 DATED: September 30, 2005

3
4
5 JAMES F. IWASKO
6 Judge of the Superior Court
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28