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MEETING
GANG DATABASE
TECHNICAL ADVISORY COMMITTEE

LOS ANGELES MARRIOTT BURBANK AIRPORT
2500 NORTH HOLLYWOOD WAY
BURBANK, CA 91505

THURSDAY, DECEMBER 13, 2018
9:46 A.M.

Reported by Megan M. Grossman-Sinclair, CSR 12586

1 BURBANK, CALIFORNIA;
2 THURSDAY, DECEMBER 13, 2018; 9:46 A.M.

3
4 CHAIRPERSON NUÑEZ: Good morning,
5 everybody. Welcome to what may be last stop on a
6 great journey, the Gang Database Technical
7 Advisory Committee meeting. All right. I, for
8 one, am excited. Feeling the spirit.

9 We are going to start off with the
10 rollcall, but prior to that, actually, we have new
11 committee members joining us today. So Paul
12 Carrillo to my right is replacing Aaron Harvey's
13 seat on the committee. And, additionally,
14 Fernando Huerta was not able to make it today, so
15 the Attorney General has designated Luis Marquez.

16 And we have got Scott Sorensen also
17 here representing Mr. [Inaudible]. Correct? So
18 we will let them introduce themselves first and we
19 will proceed with the rollcall. Welcome.

20 MR. SORENSEN: Hi, my name is Scott
21 Sorensen, Long Beach Police Department, gang
22 enforcement section, detective, and former
23 president and current vice president of the
24 California Gang Investigators Association.

25 MR. CARRILLO: My name is Paul

1 people from their neighborhood, especially if they
2 are worried that they might be mistaken by people
3 who are rival neighborhood gang members, or do
4 they say, 'I am from nowhere,' stay off the gang
5 database, but have no control for where they get
6 housed.

7 So legislature said that these sort
8 of jail [inaudible] are unsupported criteria, yet
9 they still show up in the evidence that we get
10 through the 186.35 legal process.

11 Next slide: So I want to take a
12 second to go over one particular stop because I
13 think this really brings home some of the details
14 of what we are talking about. So this is an FI
15 card that comes from Placentia Police Department
16 from one of my clients.

17 So you have got your criteria on
18 one side and you see there are four or five
19 checkmarks there. This has a narrative
20 description and over here you can see the
21 description of what he was wearing.

22 The next slide show I think is up
23 close. Or maybe the slide after.

24 So let me tell you my client's
25 version of what happened. So he had moved away

1 from the neighborhood, but he was back in the
2 neighborhood on this occasion visiting family. So
3 he did spend a year during his teenager years
4 hanging out with active gang members.

5 He was never initiated into the
6 gang, he never considered himself a gang member,
7 but he had been stopped and arrested with gang
8 members when he was younger. This was more than
9 five years before this stop.

10 So at this point he was there, he
11 was at the park with his girlfriend. Girlfriend
12 was driving. They stopped at this park and then
13 they drove on. They drove on and they were
14 stopped at a traffic stop a few blocks away. The
15 officer wrote down that the vehicle was stopped
16 because they had gone through a red light
17 illegally.

18 But what the officers did is they
19 didn't really talk about the traffic stop. They
20 went around to the passenger side of the car and
21 began interviewing him about whether or not he was
22 a gang member, which he denied. The officer had
23 stopped him once before and accused him for being
24 a gang member once before. And then they were
25 allowed to leave. [Inaudible] based on that

1 incident, so we know they were released, but he
2 was FI-ed.

3 This is a picture of the park.
4 They say that this park is a gang area. And so I
5 have been to this park. This park is really the
6 community center for this neighborhood. There is
7 a Boys and Girls Club there that has a teen center
8 in this park. You will see birthday parties there
9 all the time.

10 There is also a little covered
11 patio area where you will see young men hanging
12 out, some of them are gang members. I have been
13 there a dozen times. Maybe about a third of the
14 time do I actually see gang members hanging out at
15 this park, but I do.

16 One important point. Were it not
17 for this stop and one other with that same
18 officer, my client would have purged out of the
19 gang database already. But this is a restart of
20 the five-year clock. As of right now he will
21 remain in the gang database for another four years
22 based on this stop.

23 Next slide: So the narrative
24 pretty much matches my client's version of the
25 events. You see this is Kramer park. It's a

1 known gang hang-out with his girlfriend and
2 another male. My client says that other male, he
3 does know him -- I know him too. He was actually
4 one of my clients at one point also. But he was
5 50 feet away.

6 My client says that they know each
7 other, that they are not friendly, and that they
8 did not actually talk, but the other guy is
9 accused of being a gang member by the police.

10 It says:

11 "When the group saw my
12 vehicle, the male started to walk
13 through the park."

14 I also believe that is a habit of
15 trying to avoid police contact. Not this guy, but
16 the guy he is supposedly talking to.

17 "I recognized the other
18 person by name."

19 He was right.

20 "And when they were stopped,
21 he denied being" --

22 There was another male that stated
23 that he doesn't hang out with that gang.

24 Also written down was his clothes.
25 He wore a gray plaid flannel and blue pants. Now

1 based on that you will see that the officer was
2 gang identification. First, style of dress, blue
3 pants and a plaid shirt is gang dress to this
4 officer.

5 Anybody here wearing a plaid shirt?
6 Not today. Last time we had somebody in a plaid
7 shirt.

8 "Associates with a known gang
9 member."

10 The association was being in the
11 same park, 20 to 50 feet away. And even if they
12 had talked, right, this is somebody that they went
13 to elementary school together. He was revisiting
14 his old neighborhood for the first time. I was a
15 little surprised that they didn't talk. But
16 knowing the personal dynamics between them, it
17 makes sense.

18 "Associates with gang
19 members. Prior arrest with known
20 gang members."

21 This is true, but it was more than
22 five years previous. It was certainly -- he was
23 not arrested during this stop.

24 "Attendance at gang functions
25 or known gang hang-outs."

1 I can only assume that means that
2 he was at the park. So this is the sort of
3 evidence we are getting from my clients.

4 Next slide: The one thing that did
5 come up was admission which we talked quite a bit
6 about. None of my clients never remember being
7 asked, 'Are you currently an active gang member?'
8 Rather, the questions are always ambiguous. 'Who
9 do you kick it with?' 'Where are you from?' 'Do
10 you hang out with these guys?'

11 And I have got digital audio
12 recordings. Having heard enough of these, I have
13 got a pretty good sense of what happened. This
14 one in particular was memorable. A young man was
15 stopped. Him and the other people who were
16 handcuffed were put on a curb. They were
17 interviewed one at a time.

18 The officer asked, 'So who do you
19 hang out with?' 'Are you a gang member?' 'Who do
20 you hang out with?' The kid said, 'I don't hang
21 out with anybody, with nobody.' And the guy said,
22 'Don't lie to me, I just saw you with these guys.'
23 And the young man says, 'Well, yeah, I guess I
24 hang out with these guys.'

25 So that was interpreted as an

1 admission. Hanging out with these other gang
2 members, he admitted to being a gang member. I
3 have also heard officers say, 'Don't lie to me,'
4 and the kid says, 'Fine, whatever.' And that's
5 been interpreted as a gang admission.

6 Next slide: Notice. So once my
7 clients come to me, we are able to go over whether
8 or not the 186.34 and 186.35 processes are being
9 followed. From what I can tell, law enforcement
10 is making a really solid, good faith effort to
11 meet those requirements. That's the one area
12 where I have no criticism so far. I recognize
13 it's difficult to find people sometimes, but most
14 of my clients recently have been coming to me
15 through gang intervention services because they
16 got notices.

17 But, however:

18 "The notice shall include the
19 reason for his or her designation
20 in the database."

21 And I brought these to give you
22 [inaudible]. So here is what the LAPD notice
23 looks like, one page. Here is the basis of the
24 designation from another department when I asked
25 for the basis of the designation. So we are

1 getting everything from one page to a thousand
2 pages.

3 And an important part of this is
4 the legislative intent behind this was spelled out
5 in 186.34(c) that says -- actually, that should be
6 35 I think.

7 "The evidentiary record for
8 the court should be limited to
9 the statement of the basis made
10 when the notice is given."

11 So if there is no evidence given
12 with the notice, there is no evidence it's
13 admissible in court. And this is an issue that
14 has been ignored by every single department I have
15 worked with except for the Los Angeles Sheriff's
16 Department. Every other agency has ignored this
17 and tried to wait until the last minute before
18 they present any evidence.

19 Next slide: Here is an example of
20 a notice also. You know what, and I wasn't going
21 to bring this up, but I think we have heard
22 assurances from law enforcement again and again
23 that node administrators, that supervisors are
24 doing quality control.

25 I want to point out that this

1 notice has only one check and yet still made it
2 into the database. Notice went out. It wasn't
3 until this just happened to come through me
4 through a gang intervention worker and I saw that
5 it was one that I was able to bring it to law
6 enforcement's attention, to Detective Cooper to
7 his credit, and he removed this person from the
8 gang database and gave us a letter of his removal.

9 But it shows the work that has to
10 be done and the fact that oversight is needed.
11 But, again, it's a one-page checklist. It doesn't
12 include any evidence.

13 Next slide: Inquiry, same thing.
14 So if you don't get a notice, you [inaudible] gang
15 database. Same evidentiary limit. And this is
16 where I typically start to get evidence, but not
17 all agencies will even give evidence at that
18 point. The agencies at this point just give you
19 the checklist again.

20 Also, it's only by the fifth or
21 sixth time I submit an inquiry that they start to
22 come back to me within 30 days. No agency has
23 ever gotten back to me within 30 days in their
24 first inquiry. So there is some work I think in
25 training with DOJ for oversight on meeting that

1 requirement.

2 Next slide: Contests. So it's
3 just a normal bullet point list. I want to go
4 over these one at a time. So I hear from clients
5 who first tried the process on their own and I
6 have yet to meet anybody who feels like they got
7 anywhere on this.

8 The first issue is what I call the
9 run-around. Most departments are giving a phone
10 number of somebody to contact. Well, that person
11 gets a voicemail, they are always out in the
12 field, they don't get back to people right away.

13 One guy, I called him up and it
14 turns out he has been transferred and they don't
15 know who has taken his place and who the contact
16 person is. People come in, in person, and they
17 are told, 'Well, there is nobody here right now
18 who can take your contest.' And, 'No, I don't
19 know who does it, so I don't know when you should
20 come back or who you should talk to.'

21 Another thing happens is they are
22 told, 'Yeah, let's set up a meeting and you can
23 come and sit down with a gang officer and make
24 your case in person.' Well, the problem with that
25 is there is a concern in the community that this

1 process means debriefing. Debriefing in prison is
2 where you are required to say what you know and
3 implicate other gang members.

4 If people think you have to debrief
5 to use this process, it would be dangerous to use
6 this process. So this idea that you have to meet
7 in person with an officer and sit down with them
8 has a profound chilling effect on this process.

9 And then the other thing is they
10 are often given forms that -- 'Well, just fill out
11 this form and turn it in.' Well, if you do that,
12 the evidentiary limit is imposed on the person
13 seeking removal also. If they still have got that
14 form and turn it in, they have just given up their
15 opportunity to present any evidence on their
16 behalf because the evidentiary limit should kick
17 in at that point.

18 So people are getting frankly bad
19 advice from law enforcement departments as part of
20 the requirement of law enforcement explaining to
21 people how to do the contest.

22 Now, for self-represented people
23 but also attorneys, first untimely replies. I
24 said before, nobody has been timely in their
25 initial reply. I find myself again and again

1 filing court cases based not on denials but based
2 on implied denials because we never got a
3 response.

4 Mismatched standards. This one is
5 super important and so if you can go to the next
6 slide, I want to talk through this one a little
7 bit.

8 So Marty Vranicar and I were both
9 part of drafting some of these laws and I think we
10 can both agree that this is not something that
11 anybody wanted to happen, but there is a mismatch
12 between the standards of what has to be proof to
13 be on the gang database or removed from the gang
14 database, which is here in the statute and the
15 court process.

16 When you have asked a law
17 enforcement agency, 'Please remove me,' what it
18 says is if the law enforcement suspects the person
19 is a gang member, associate, or affiliate, the
20 request can be denied. But when you go into
21 court, the burden on the law enforcement agency is
22 then to prove active membership, associate, or
23 affiliate status by clear and convincing evidence.

24 What this means is people are going
25 to be routinely denied in agency contest and then

1 win at court contest. And what that means is only
2 people who get removed are those who have lawyers
3 because the court contest process is not in any
4 practical way practical for self-represented
5 people.

6 Next slide: To make that point,
7 what I have here is another LAPD form. So this
8 was based on contest and the agency did not look
9 to see whether or not in the totality of the
10 evidence this person was an active membership or
11 whether or not they appear to [inaudible].

12 This right here is what the review
13 was. It was compliant with the existing State of
14 California guidelines. There is a spreadsheet
15 indicating the criteria reviewed. The source
16 documents that contains criteria reviewed of the
17 contestant will be provided to the superior court
18 at the court's request. So, one, that is a
19 violation of the evidentiary limits so that
20 probably won't happen.

21 Second, the review was just, are
22 the FI cards properly filled out? Was this a case
23 where there was only one checklist? One
24 checkmark? Or were there other checkmarks there?
25 So this person was denied and now has to file for

1 a court review and I am certain will win in court.

2 So this shows that that mismatch --
3 one way it can be addressed I think is -- and be
4 much more efficient is if agencies are instructed
5 as part of the regulations to review, based on the
6 totality of the evidence, do they think it's clear
7 and convincing evidence of gang membership.

8 Next slide: New evidence I
9 mentioned. So here is the kinds of evidence we
10 get. But these are all in violation of the
11 evidentiary limit. And we have no opportunity to
12 respond. The evidentiary limit has already been
13 imposed on my clients. So I can't give
14 counter-evidence.

15 So the majority of the court cases
16 so far have all dealt just with the admissibility
17 of evidence and it's never even gotten to the
18 issue of whether somebody has been an actual gang
19 member or not.

20 Recordings, I am glad we have been
21 talking about this. In there are typically
22 references to the file names and the locations in
23 law enforcement data, digital audio recording or
24 body camera footage, but I had never gotten those.
25 And I also do gang injunction cases and

1 [inaudible] in discovery [inaudible] copies of
2 them. There is no discovery process here.

3 So I get references to evidence
4 that my clients tell me would be exculpatory if we
5 were to get it. 'I didn't say that' and they have
6 got digital audio recordings of what was said, but
7 I don't get those.

8 And then finally inadequate removal
9 letters. This is an immigration thing. I would
10 like to see letters that say "you are not listed
11 as a gang member in a gang database base," period.
12 Not forms that say, "check a box, you might be in
13 it, you are not in it." A really clear saying
14 "you are not in the database," that would be
15 helpful for immigration purposes.

16 Next slide. I don't have time to
17 go over each of these cases, but these are the
18 cases that have happened so far. And so far they
19 have all turned on evidentiary requirements.
20 Three cases in litigation look like they are all
21 also going to turn on evidentiary issues.

22 Last slide. I am timing it just
23 right. So in conclusion, I think what we have
24 learned from engaging in this process is, first,
25 the clients report widespread abuse and

1 discretions by documenting officers, and the FI
2 card I showed is an example of that. So that's
3 typical of the kind of use of discretion -- abuse
4 of discretion that we have seen. So that's what I
5 am talking about here.

6 Self-represented individuals report
7 that individuals are not prepared to meet
8 obligations to accept administrative contest
9 letters. Nobody knows who to give them to, nobody
10 knows who accepts them, nobody knows who to see in
11 person.

12 And, frankly, I have the same
13 problems also sometimes. I have to rely on our
14 law enforcement partners to get captain on the
15 phone before I can get some of this stuff done.

16 Nearly all law enforcement
17 agencies -- again, this is every single agency I
18 have worked with, LAPD, LA County Sheriffs -- has
19 withheld needed evidence and has ignored the
20 evidentiary limit.

21 And, finally, the use of the lower
22 standard in the administrative contest, the
23 superior court contest is going to guarantee
24 unequal access to removal. Only those people with
25 attorneys are going to be removed. Not only

1 because we saw the example in the person with the
2 one checkmark, but nearly only people with
3 attorneys are going to be removed. Everyone else
4 can have their administrative process denied
5 because the review -- the threshold for review is
6 so low.

7 And then I guess we don't have time
8 for questions?

9 MS. RIVERA: We do.

10 MR. GARCIA-LEYS: I would be happy
11 to answer any questions.

12 MR. THORTON: Can you talk about
13 the evidentiary limits a little bit more?

14 MR. GARCIA-LEYS: So the process
15 was -- so first going back a couple years, the
16 judiciary committee in the assembly said, we don't
17 want a burdensome process where there is going to
18 be discovery and motion in limine and rebuttal
19 briefs, we don't want any of that. Make this
20 simple and we will pass it out of committee.

21 So what we said was, okay, so there
22 will be two pieces of written evidence; one is the
23 evidence that comes from the agency and they go
24 first with all their evidence. Then there will be
25 a response from the petitioner who gets to see

1 that evidence because the burden is on the agency.
2 So they respond with their counterevidence and
3 their version of it.

4 'So you were stopped on this date
5 at this park. Well, what's your version of what
6 happened?' And then the evidentiary limit kicks in
7 at that point. One is exchange of writings and
8 that becomes the administrative record that then
9 goes to the judge, and the judge reviews that, and
10 there is not even a requirement of an oral
11 hearing. It can be decided just on that record.

12 The problem is when agencies don't
13 ever provide evidence before the evidentiary limit
14 is in, there is no opportunity to respond. You
15 are left in an evidentiary vacuum to prove a
16 negative that you are not a gang members without
17 any idea really of why, except the checklist.

18 'You were seen some day, some time
19 in some gang area, but we are not going to tell
20 you what that gang area is.'

21 MR. CARRILLO: So what would you
22 say from you and your clients' perspective is the
23 most difficult part in trying to obtain evidence
24 of why they were added to the gang database and
25 also removed them assuming, as you say, that you

1 take on clients that have a legitimate position on
2 the issue as opposed to also perhaps are still
3 gang members just wanting to get off the list?
4 What is the biggest issue for you and your
5 clients?

6 MR. GARCIA-LEYS: That law
7 enforcement agencies and their city attorneys or
8 county council have made no effort, serious
9 effort, to get ready for these. So they don't
10 know who is supposed to receive the requests, they
11 don't know what they are supposed to do, they
12 haven't read the law.

13 Even city attorneys that are
14 private law firms that are hired sometimes by city
15 attorneys to work on these cases don't read the
16 rules of court. Everybody on the agency side is
17 completely unprepared, and that leaves you
18 sometimes, well, what's the next step?

19 Especially if they don't respond to
20 a contest because if they respond to a contest --
21 if they don't respond to a contest after 30 days,
22 that's an implied denial. So you have to go
23 [inaudible] an extension at that point.

24 But if they don't respond to an
25 inquiry, there is no repercussion for that, no

1 remedy. The only thing I can think would be in
2 federal court to file a writ of mandamus which is
3 an expensive, difficult, complicated thing to do
4 just to get a reply.

5 So those are the sorts of problems
6 that make this most difficult.

7 MR. CARRILLO: What would you
8 recommend remedying that issue?

9 MR. GARCIA-LEYS: Well, I am hoping
10 that the Department of Justice, once we have
11 regulations, will be effective at training people.
12 In the meantime, I think that there should be some
13 sort training done by the node administrators.

14 Our plan right now is really just
15 getting as many agencies as possible into court,
16 bring them to court and hope they learn from that,
17 which so far has not been an effective approach.

18 MS. RIVERA: So, Sean, you
19 mentioned kind of that you kind of vet your
20 clients a little bit. Are you using criteria
21 similar to what CalGang uses? What does that look
22 like? What could lead you to kind of see what
23 process you go through because, obviously, you
24 feel that's more acceptable.

25 MR. GARCIA-LEYS: Yeah, well, I

1 have the advantage of sitting down with people and
2 having conversations. So the things I ask about
3 is what do you do with your time. If they have
4 got good explanations of what they do with their
5 time, I find that particularly persuasive.

6 I found things that would never
7 work for police like what is the relationship with
8 their girlfriends, boyfriends, partners,
9 especially how long have they been -- I ask them
10 about changing diapers, things like that.

11 I really find out whether or not
12 people have attachments to non-gang members. And
13 if people have strong emotional attachments to
14 people other than gang members, that's a strong
15 indicator.

16 I also sometimes talk to gang
17 intervention workers who know the gang. The gang
18 intervention workers have been particularly
19 helpful. And I talk to my other clients.

20 MS. RIVERA: And then you mentioned
21 also -- and I may not have captured everything and
22 I want to make sure. It was the burden and
23 standard slide. You said agencies need
24 instruction on reviewing docs to see if there is
25 clear and conclusive evidence that the person is a

1 gang member. Did I capture that right?

2 MR. GARCIA-LEYS: Well, that is
3 what the courts are going to do and it seems to me
4 that if agencies did that, the agency review would
5 make the whole system more efficient and would
6 eliminate the issue of then going back to the
7 judge where only those with attorneys are able to
8 get the more certain de novo review of clear and
9 convincing evidence of active gang membership.

10 MS. RIVERA: Active gang
11 membership, okay that's the --

12 MR. GARCIA-LEYS: Well, active gang
13 membership, association or affiliate status,
14 right? The member/affiliate/associate language
15 was supposed to be inclusive of everything that
16 law enforcement might call people. It wasn't
17 supposed to be three distinct categories. At
18 least that's my read on the intent based on
19 conversations that I had.

20 CHAIRPERSON NUÑEZ: Thank you so
21 much for your presentation. Actually, I am
22 curious. I am trying to formulate this question.
23 You represent youth, children, minors; right? As
24 well as adults?

25 MR. GARCIA-LEYS: I would say about

1 15 percent of our clients are teenagers,
2 juveniles.

3 CHAIRPERSON NUÑEZ: And they are
4 usually the -- I would assume that their parents
5 are the ones that are kind of involved in the
6 process or do you just represent --

7 MR. GARCIA-LEYS: No. Surprisingly
8 no. So far in all of our juvenile cases the moms
9 are monolingual Spanish speakers who are alienated
10 through this process and everyone who came from
11 the juvenile [inaudible], these are people who --
12 they are all in Los Angeles.

13 They all have gang reduction youth
14 development department contracted community
15 intervention workers. So what's happened is they
16 have gotten the letters and they have taken the
17 letters to their intervention workers and the
18 intervention workers then call me.

19 CHAIRPERSON NUÑEZ: Gotcha. And in
20 terms of like with the young people you are
21 working with and once they are designated -- I
22 think just your former life as an educator, right,
23 in particular, the designation and inclusion in
24 this, you know, what do you see in terms of like
25 the impact that it has on young people? And I

1 hope that's a fair question from your perspective
2 or experience.

3 MR. GARCIA-LEYS: So I think the
4 story that you and Paul told are perfect examples
5 of how overbroad targeting gang suppression,
6 especially against young people, is
7 counterproductive; that it leads people to
8 identify as gang members, it builds cohesion,
9 especially when there are arrests and people end
10 up going through the juvenile hall process where
11 they are much more likely to become gang members
12 than they are even in the neighborhoods.

13 So that initial process certainly
14 has downsides. Now, the upsides, are there --

15 CHAIRPERSON NUÑEZ: Benefits?

16 MR. GARCIA-LEYS: Are there
17 killings that have been stopped because juveniles
18 have been arrested and they were arrested based on
19 evidence that was discovered in the gang database?
20 That's a potential upside. I don't know what
21 happens with respect to [inaudible], and I
22 certainly haven't seen any evidence.

23 MR. VRANICAR: I would like to make
24 a comment. I think you made the point or you
25 added to the point that I made earlier that the

1 notice process works and individuals are going
2 to -- or at least where the information is going
3 to prevention and intervention workers and those
4 are the individuals who are then looking to get
5 removed.

6 And I think that that's basically
7 the way the process was set up is that the earlier
8 these individuals can get to services and
9 certainly with the removal process, that's the way
10 the system was set up to work.

11 MR. GARCIA-LEYS: I think that's
12 right. One caveat, it appears that tens of
13 thousands of people are added to the gang database
14 and dozens are being asking to be removed.

15 MR. THORTON: It would seem like
16 the higher-functioning juveniles would be able to
17 do that, but in your experience, that's --

18 MR. GARCIA-LEYS: I also don't know
19 how effective the notice is. What I particularly
20 said was that law enforcement is making a good
21 faith effort to notify people, especially with
22 juveniles. I don't know how accurate the
23 addresses are. I don't know how many of the
24 juveniles that are being added are actually
25 getting a notice.

1 There is no actual notice
2 requirement and I don't see how to make that
3 workable, except some of the discussions we had
4 about writing tickets to the person and handing it
5 to them during the contact when that happens. So
6 I don't know how effective the notice is, but the
7 fact that so many people are getting noticed tells
8 me that law enforcement is trying.

9 MS. MONTES: I just wanted to ask a
10 couple questions. I wanted to respond quickly to
11 that reasoning because I forgot to earlier. I
12 have problems saying that placing someone into the
13 database hence is good because they go reach out
14 to interventionist workers.

15 It's basically saying let's
16 criminalize them and then if we criminalize them,
17 they will go seek help. When I think it's really
18 that we should intervene before the
19 criminalization actually happens.

20 But, anyways, my questions for you,
21 Sean, based on someone who has actually been able
22 to review the evidentiary record and the source
23 documents, which I think is something that's a
24 little frustrating for us since we don't have
25 access to it, the system as it stands now, not

1 including our comments as to changing criteria and
2 suggestive, how does it actually differentiate
3 between someone who is an associate and someone
4 who is an active gang member?

5 And then my second issue is what
6 are the most pertinent issues that you think when
7 it comes to these source documents in terms of
8 reliability?

9 MR. GARCIA-LEYS: So every client I
10 have had has been listed as a member except
11 possibly the one I put up with the one criteria
12 check. The criteria check was associate. And if
13 you look up in the corner at the handwritten "ASD"
14 which I took to mean that this person was
15 documented as an associate, not a member, but
16 everybody else has been a member. So I haven't
17 seen that practice being meaningful.

18 And the other question as far as
19 source documentation, I like in gang injunctions
20 when I get these digital audio recordings and
21 body-worn cameras, that's really helpful.

22 I would also say that Long Beach
23 PD, for example, writes really nice narratives of
24 their stops whereas Placentia PD writes out these
25 little cards with -- sometimes you get six words.

1 So I prefer to see a real narrative of what
2 happened.

3 Also, the narratives help deal with
4 Fourth Amendment issues to the possibility that
5 there may be illegal stops occurring. Now, I
6 found that most law enforcement officers are
7 really good at finding reasons of probable cause
8 to make a stop, they are really efficient when
9 they make a stop, but at least we have all that
10 documented. There is something to meet there and
11 talk about.

12 CHAIRPERSON NUÑEZ: You had set out
13 some recommendations earlier on in the process.
14 Do you want to highlight what are the actual
15 recommendations that you had previously? What are
16 your top recommendations?

17 MR. GARCIA-LEYS: So the top level
18 recommendation is that gang databases should be
19 done in a way that doesn't backfire. And at the
20 beginning of this presentation I talked about the
21 three ways where I think that that's most likely
22 to happen.

23 One is if we incentivize
24 intelligence gathering that looks like stopping
25 people at the park, photographing their tattoos,

1 asking them where they are from, these sort of
2 hostile interactions in public interfaces with
3 people who may or may not be committing a crime
4 or, at worst, it's usually a nuisance behavior,
5 maybe an infraction, that doesn't work.

6 So we need to disincentivize that
7 practice. And if our intelligence gathering
8 practices say the more intelligence we have the
9 better, and this is how you collect the
10 intelligence, it's counter-productive. So that's
11 one concern.

12 The other is transparency and rigor
13 and source documentation so that advocates who do
14 this work can go to communities and say, this is
15 not dragnet surveillance of young men of color.
16 This is good law enforcement and it may save your
17 child's life.

18 If I can say that, then the
19 database might actually be helpful for community
20 trust. But if my honest opinion is, no, this is
21 just overbroad surveillance of young men of color
22 including your children, then that's bad for
23 community trust. That's the second thing.

24 And then the third thing is I think
25 Paul's story, the kind of confrontational attitude

1 that gang unit officers have with suspected gang
2 members, that kind of confrontation is, in and of
3 itself, a form of violence, especially when any
4 attempt to be a Smart Aleck or assert your rights
5 is responded to by law enforcement with escalating
6 aggressive intimidation in order for them to
7 control the situation. That's just a recipe for
8 danger for both the people who are being stopped
9 and for the law enforcement agents.

10 So those are the broad strokes that
11 I would like to see on recommendations
12 specifically addressed. Better criteria, better
13 source documents, more robust notice and appeal
14 processes are ways of getting in all of those.

15 CHAIRPERSON NUÑEZ: Thank you, sir.
16 I appreciate that. We are ahead of schedule.

17 MS. RIVERA: We are back on track.
18 So everybody, at 1:20 come back.

19 (Whereupon, a luncheon recess was
20 held from 12:21 p.m. to 1:34 p.m.)

21 CHAIRPERSON NUÑEZ: Welcome back.
22 All right. Moving this along everybody. Welcome
23 back. I hope you enjoyed your lunch. We are
24 moving on to Item No. 9 at this point and that is
25 the public comment period regarding to -- sorry,

1 Item 8. Comment period will be capped at 10
2 minutes.

3 MR. BIERFREUND: We are going to do
4 15 minutes.

5 CHAIRPERSON NUÑEZ: 15 minutes.
6 Thank you. Perfect. And comments may be only
7 topics on the topics listed under Item No. 8. Is
8 there anything else that you would like to --

9 MR. BIERFREUND: At this point, I
10 just want to ask if everyone who wants to speak
11 during this comment period has signed up?

12 And if we are good, I will just say
13 my -- what I've got to say. So the comments made
14 during this period may only address information
15 requests and limitations to access provided to
16 out-of-state agencies.

17 Based on the number of people who
18 have signed up, each individual will have
19 3 minutes to provide their comments. All comments
20 shall be directed at the committee members.
21 Speakers cannot yield their time to another.

22 Speaker shall refrain from making
23 personal attacks while making their comments. The
24 audience is asked to be respectful of the
25 speakers. It is the Committee's practice to

1 listen to the speakers and not engage in dialogue.

2 After all the speakers have been
3 heard, the committee members may respond as
4 appropriate. If we can please follow these
5 guidelines or we will have to end your time. And
6 we are on a time crunch so if we can stop at the
7 three minutes, that would be greatly appreciated.
8 And thanks everyone for the participation.

9 We have Sean Garcia-Leys from Urban
10 Peace Institute.

11 MR. GARCIA-LEYS: Thank you. So I
12 already went on for about a half an hour about
13 information requests so I will say nothing about
14 that.

15 As to federal agency and
16 out-of-state agencies, there are two points that I
17 still have concerns about that I have raised
18 before. The first is that there is federal law
19 that insists that any federal agency with
20 information that's relevant to immigration share
21 that information with immigration enforcement.

22 So I don't see how we can share
23 anything with ATF or the FBI or DHS without them
24 being handed over for immigration purposes. I
25 don't have a good solution for that, but I just

1 want to raise that again.

2 The other thing I wanted to bring
3 up is that I am still concerned that there is
4 information sharing with the federal government
5 besides CalGang that is not being acknowledged
6 even though it's the shared gang database
7 definition. And that concern is fusion centers
8 and the sharing of local law enforcement agency
9 with the Department of Homeland Security through
10 regional fusion centers.

11 If that information meets the
12 definition of shared gang databases, I think that
13 the DOJ needs to address that. And after having
14 met with law enforcement on it, I'm not sure that
15 people who operate CalGang are really clear on
16 what fusion centers really do with law enforcement
17 data, especially electronic field investigation
18 databases.

19 They are kept separate from CalGang
20 that will include gangs information but aren't
21 exclusively a gang database. But if it includes
22 gang allegations, if it is shared through fusion
23 centers with AHS, then it should qualify under the
24 statute. Thank you.

25 MR. BIERFREUND: Thank you. Next

1 up we have José Valle with De-Bug.

2 MR. VALLE: I am going to pass.

3 MR. BIERFREUND: All right. Benea
4 Vejar?

5 MS. VEJAR: I am going to pass as
6 well.

7 MR. BIERFREUND: All right.
8 Melanie Ochoa.

9 MS. OCHOA: I am going to speak to
10 the limitation access. So first I just have a
11 concern that there seems to be no legitimate need
12 for out-of-state agencies not working with law
13 enforcement agencies to have unfettered ongoing
14 access to CalGang. It troubles me that that is
15 even contemplated by the regulations.

16 The purpose of the sharing limits
17 to limit some of the information going to federal
18 agencies, as Sean mentioned, and that can easily
19 be circumvented through sharing with these
20 out-of-state agencies. Not even sharing. Access
21 granted to out-of-state agencies, particularly
22 that are outside of the scope of the jurisdiction
23 of the DOJ of California AG.

24 And I am also troubled that within
25 the regulations, there is no even criteria by

1 which the DOJ is tasked with evaluating whether or
2 not someone should even get access. If there is
3 some kind of contemplated need for agencies to
4 have access, which again I don't think is true, I
5 think that that should be explicitly included in
6 the regulations and have status and criteria by
7 which that decision is being made, not that it can
8 be just ad hoc by the DOJ without any guidance or
9 regulation.

10 And, again, we have talked about --
11 I don't think this access question at all
12 implicates the stated needs that's been set by law
13 enforcement when they are working with other
14 agencies because in those cases they have access
15 directly through the local agencies that they are
16 working with.

17 So task forces and other types of
18 programs that would require joint communication
19 with agencies and sharing of this information
20 directly with other agencies is already
21 contemplated and allowed under the statute. We
22 don't need to be granting unfettered access to
23 out-of-state agencies.

24 MR. BIERFREUND: Thank you. Last
25 up we have Christopher Sanchez with CHIRLA.

1 MR. SANCHEZ: Good afternoon
2 everybody. My name is Christopher Sanchez with
3 CHIRLA, the Colation For Humane Immigrant Rights,
4 once again, the state's largest human rights
5 non-profit organization in the State of
6 California.

7 And I think when we talk about
8 access and sharing information, we really solely
9 focus on the access to the CalGang database in
10 itself. However, I do want to kind of expand on
11 that and specifically talk about sheriff's
12 departments and how it relates to that.

13 And this isn't saying that I know
14 all this information, but there is kind of an
15 inquiry that I would like to hear if law
16 enforcement would be able to provide some sort of
17 perspective on it.

18 Being that the sheriff's department
19 would have their own access to the CalGang
20 database when an individual is to be placed into
21 their custody within jail, we would like to have
22 some insight on what kind of cooperation has
23 happened with ICE.

24 We understand current law does not
25 allow cooperation, however some sheriff's

1 departments across the state have continued to
2 cooperate with ICE and have been very open about
3 it. One example would be in Sacramento County
4 where the Sacramento sheriff has been very, very
5 open about working with ICE and has actually
6 created a document that they share information
7 about individuals with ICE based on intake.

8 So we would just like some type of
9 insight. We understand that ICE officers are no
10 longer having offices in there, but they are able
11 to conduct interviews. Not saying that the
12 sheriff's department provided information as far
13 as CalGang or any of that information, but is
14 there any information that is related that they
15 might provide to an individual based on criteria
16 or on the designation of an in-custody person
17 that's made? And is that from an inside sheriff
18 or county jail or is that from an outside sheriff
19 who is patrolling on the streets and working the
20 gang unit outside?

21 So that's some questions that we
22 are just looking for some perspective on. Being
23 that some of the sheriffs have been open about
24 continuing to work with ICE regardless of the
25 current law and statute.

1 MR. BIERFREUND: Thank everyone for
2 their comments. I am going to turn it back over
3 to Sammy now.

4 CHAIRPERSON NUÑEZ: Right on. So
5 now we are moving over to Item No. 9: A,
6 information requests; B, Limitations to access
7 provided to a federal agency and out-of-state
8 agency.

9 Sundeep?

10 MS. THIND: Thank you, Sean, for
11 your presentation on information requests. That
12 was very helpful.

13 Right now I don't really have any
14 other questions pertaining to information
15 requests, but I do want to encourage the members
16 to bring up any concerns that they may have
17 regarding this action we have written so far when
18 it comes to maybe adding more or just conversation
19 about that, if there is anything.

20 MR. VRANICAR: I have a comment
21 that I made with respect to that and that was with
22 respect to Chapter 752, limitations to access
23 provided to a federal agency or out-of-state
24 agency. I think that --

25 MS. THIND: I'm sorry, this is only

1 pertaining to the information requests section.

2 MR. VRANICAR: I'm sorry. Wrong
3 information requests. I will withdraw my comment.

4 MS. THIND: Yeah, this one will be,
5 if you want to look at Package 1, it's Article 8
6 on Page 16.

7 MS. MONTES: Sundeep, just a
8 question. So we are talking specifically when
9 these requests are being made by individuals, not
10 agencies; correct?

11 MS. THIND: Correct. When they are
12 requesting information to see if they are in a
13 database.

14 My only comment is -- I think this
15 is actually something that I know that -- I think
16 Detective Cooper, we talked about.

17 I do like this. My only concern is
18 that sometimes when it has like access to certain
19 type of identifications, specifically for my
20 documented clients, I really appreciate the fact
21 that it says that you are not allowed to -- you
22 know, they don't have to require a birth
23 certificate and proof of citizenship document.

24 Would you guys be opposed to adding
25 something maybe like a school ID or alternative to

1 state ID? Just in the event that the individual
2 doesn't have it. Just an idea.

3 MS. THIND: Thanks for your idea.
4 We will take it into consideration.

5 MS. MONTES: Okay.

6 MS. THIND: Anything else on
7 information requests?

8 MR. COOPER: One really quick
9 thing. Something that got brought up is, let's
10 say the person says 'I want to know if I am in the
11 database' or it's the parent, but we can't verify
12 who they are, we're trying to get some type of
13 guidance on what our response should be from an
14 agency from a legal standpoint or do we just not
15 respond because we can't verify it's the correct
16 person or it's an eligible person or whatever the
17 correct term would be?

18 We can't verify it's the actual
19 person because they are non-cooperative,
20 non-responsive, for whatever reason they are
21 scared of contact with the police or, you know,
22 whatever it is, at what point do we not have to
23 respond because we could be giving out information
24 to the wrong person?

25 MS. THIND: That's a fair question.

1 Does anybody have any thoughts on that on how we
2 can maybe address this?

3 MS. MONTES: I just want to
4 understand the scenario a little bit better. So
5 you are saying if a parent is requesting
6 information on behalf of their child and you don't
7 have documentation as to the identity of the child
8 or the parent?

9 MR. COOPER: The parent. We can't
10 tell who the parent is and we are not sure if it's
11 the correct person or they say, 'I want to know if
12 I am in the database,' and it's an adult. They
13 want to know if they are in the database and we
14 can't verify that it's actually that person, we
15 can't tell if it's a potential employer or
16 landlord, and we want to make sure it's for the
17 right reasons, for military reasons or whatever.

18 At what point, if the person is
19 being non-cooperative, non-responsive, what is the
20 agency's -- what's the guidance for the agency?
21 What should we do? Do an internal department
22 report [inaudible] respond as to a reason why?

23 That would be my first thought
24 instead of -- that's what we should do is just
25 document it internally and if it comes through a

1 lawsuit or complaint, we go, 'Hey, that's why we
2 didn't respond, we tried calling this person
3 multiple times, sent letters out, we got nothing
4 back.'

5 MS. MONTES: I think if you
6 provided documentation that you provided
7 [inaudible] insufficient, like in the sense of a
8 parent -- let's say a client submits something on
9 their behalf, 'Responding back to the information
10 you provided me,' or 'The documentation you
11 provided me is insufficient to comply with your
12 inquiry,' and leave it at that and if you document
13 [inaudible] that suffices.

14 MR. COOPER: I just want to have
15 something written down.

16 MR. SCAFIDDI: I think from a
17 practical standpoint, let's say you can't confirm
18 their ID [inaudible] under notaries, what notaries
19 do, if someone doesn't have ID, if two other
20 people can identify them as that person and
21 everyone signs that notary under penalty of
22 perjury, you can have a document notarized in that
23 format.

24 So there is an issue of
25 trustworthiness with a lack of ID. So that's

1 something that's been used in legal documents
2 before. So that might be one practical way of
3 doing this. I'm not sure it solves your problem,
4 but that is a vehicle that could be used because
5 we use it all the time for notarizing documents
6 when we don't have valid ID.

7 MS. THIND: Okay. We will think
8 more about this and see if we can come up with
9 anything else or suggestions.

10 MR. COOPER: And would this pertain
11 to the section to responses to people wanting to
12 get removed?

13 MS. THIND: Sure. If you have
14 something you want to bring up?

15 MR. COOPER: A scenario has come up
16 twice in the last week, just my agency, where
17 somebody has requested to be removed, we have
18 already responded saying, 'No, you are not going
19 to be removed,' and the response from this
20 person's attorney is, 'Well, I don't agree, they
21 really need to be removed.'

22 Do we need to respond to that or
23 should we let them file with the court like they
24 are supposed to? That's what the law says. Or do
25 we respond back saying, 'Sorry, we don't agree

1 with this.' The way the law is written is that
2 first time we have to respond. And we have 30
3 days and they have 90 days. Just throwing it out
4 there. These one of the weird ones we have gotten
5 twice in the last week.

6 MS. THIND: We will also take that
7 into consideration and see what we can do.
8 Anything else pertaining to info requests?

9 MR. SCAFIDDI: One comment about
10 Ryan's last thing. I don't think it's in the
11 code, but could be, that request could be a
12 request for reconsideration. But I don't think
13 [inaudible] we are not doing it. You can look at
14 it as a request for reconsideration.

15 MS. THIND: Okay. How about we
16 move on to limitations to access provided to an
17 out-of-state agency. So currently we share
18 information from the CalGang database with seven
19 out-of-state agencies. All of these agencies have
20 view-only access which means that they are not
21 allowed to add, edit, or delete any information.

22 We have a memorandum of agreement
23 in place with each of these agencies. These
24 agencies adhere to the same rules that apply to
25 all in-state agencies who use the CalGang database

1 and they will be bound to these regulations once
2 they come into effect.

3 Presently, all out of state
4 agencies cannot use information they view in the
5 database for immigration, employment, or military
6 related purposes.

7 With that said, does the committee
8 have any other concerns pertaining to the sharing
9 of information with just out-of-state agencies?

10 MS. MONTES: I am happy to speak to
11 this. I know I have already provided this example
12 before. I have major concerns for giving
13 automatic access to other state agencies even if
14 it's in the view-only form.

15 I believe it was -- I agree with
16 Melanie Ochoa. I think it was her who commented
17 the view about keeping it in California is that it
18 does have the proper confidential DOJ oversight
19 and there are protections that are governed by
20 California law that don't necessarily exist or
21 actually don't exist in any other state.

22 And I have given this example
23 multiple times as to how I know that CalGang has
24 been used by other states and has immigration
25 repercussions. The example is I had a client who

1 was a victim of a drive-by in Las Vegas. Her
2 boyfriend at the time was documented a gang member
3 on CalGang. And this is out-of-state [inaudible]
4 local law enforcement here. The Nevada PD denied
5 my client, who is a DACA recipient, stellar
6 overall perfect package type of girl, a
7 certification based on the fact that her boyfriend
8 who was present at the time of the crime, even
9 though she was just a bystander, was a documented
10 gang member on CalGang and, hence, denied her the
11 ability to actually move forward with a new visa
12 claim.

13 So it's not necessarily that the
14 [inaudible] is going to share directly with ICE or
15 CBP from an out-of-state agency, but still shows
16 how an out-of-state agency made a decision using
17 CalGang that basically they believe they had the
18 ability to deny her a new visa certification for
19 that reason.

20 MR. VRANICAR: I just want to make
21 a comment -- actually, two comments. If you refer
22 back to AB 90, Paragraph 7, policies, that DOJ is
23 responsible for creating policies and procedures
24 for sharing information from a shared gang
25 database for federal agency, multi-state agency,

1 or agency of another state that is otherwise
2 denied access, this includes sharing information
3 with a partner and a joint task force.

4 So that was part of the legislation
5 setting up this process and it speaks to whatever
6 limitation there would be access to that in
7 Section 752 and, obviously, those are always
8 controlled by memorandum of agreements. And those
9 agreements would basically state, as the language
10 there is, "shall not utilize the information from
11 CalGang in a way that it affects immigration
12 proceedings," et cetera, et cetera.

13 However, I had a comment that
14 obviously it should be clarified that "shall not
15 utilize information from a CalGang database other
16 than for investigative purposes" -- an arrest,
17 because an arrest and a conviction resulting from
18 the use of CalGang database in an investigation
19 can result in all of those consequences.

20 So that's why I think that
21 clarification should be included in that section.

22 MS. THIND: Thank you, Martin.

23 Thank you, Marissa.

24 Anybody else have anything else
25 they would like to say on this topic?

1 So I am going to move on to agenda
2 Item No. 11. These are just some questions that
3 are just like wrap-up questions that I wanted to
4 just see what type of feedback we can get.

5 So the first question I have is to
6 meet the initial criteria requirement to enter a
7 person into the CalGang database, does law
8 enforcement only use information that was acquired
9 during an in-person contact to determine if the
10 person meets the criteria to be entered into the
11 database or are there other ways that this
12 intelligence is gathered?

13 And this is just like when you are
14 first putting somebody into the database without
15 them having any subsequent history.

16 MR. COOPER: In-person contacts,
17 you can also use the social media aspect with it.
18 You can't just say, 'I saw a guy's Facebook post
19 and he claimed he is a gang member' and blah,
20 blah, blah, and you create a file on the guy based
21 off of that. For the most part they are field
22 interviews or arrests and additionally you could
23 add the social media or whatever recordings you
24 have of the person.

25 MS. MONTES: So at the moment you

1 do require in-person contact? And is social media
2 just used as additional source documents?

3 MR. COOPER: Yes.

4 MS. MONTES: So it doesn't actually
5 become like, let's say you meet someone and you
6 see them associating with another documented gang
7 member; right? So that's one criteria. And then
8 you go on social media and see them throwing up
9 gang signs. Would that satisfy a second or would
10 that be just --

11 MR. COOPER: It could. It's not
12 used --

13 MS. MONTES: It's not used that
14 way?

15 MR. COOPER: It's not used very
16 often like that. I can speak especially for my
17 agency and the ones I am familiar with is it's a
18 contact with the person. And you are going to
19 have contact with the person, you can have
20 whatever the conversation is, interrogation,
21 interview, whatever, and then based off of that
22 you develop whatever criteria, and then you might
23 go on social media and find that -- on there they
24 are throwing hand signs, they are dressed down
25 wearing certain clothing indicative of a gangs on

1 top of the self-admission you got and gang
2 tattoos, whatever, so you can add that.

3 As far as that being used as a
4 second criteria to put somebody in, I don't think
5 it's used very often.

6 MR. THORTON: It might be helpful
7 to expressly say it's required, what they need in
8 a reliable source, and also looking at social
9 media or getting a kite. So I think it may be
10 helpful to require that.

11 MS. THIND: Require the use --

12 MR. THORTON: Require that it be
13 in-person contact. Expressly.

14 MS. THIND: Marissa kind of asked
15 the next question which is, what role does social
16 media play when it comes to gathering
17 intelligence?

18 And, Ryan, you said it's not
19 utilized frequently to satisfy the criteria for
20 entering a person into the CalGang database;
21 right?

22 MR. COOPER: To initially put
23 somebody in with additional criteria, I don't
24 think it's used very often. Is it used in other
25 cases to update somebody or whatever with

1 additional criteria? Yes. It is. I don't
2 personally do it, but then I am not doing the
3 entries on a daily basis. But there is a wealth
4 of information.

5 It's not a singular thing. It's
6 not just, oh, there is a Facebook account or
7 Instagram account where this guy is claiming this
8 and claiming that and dressed down and you never
9 have contact, he has never dressed down in public,
10 doesn't have any tattoos, whatever, you still
11 have to look at everything.

12 MS. THIND: So then I am curious
13 for my next question, I was just wondering what
14 types of information if we weren't to just limit
15 it to in-person contact, but beyond that, what
16 types of information is helpful on social media
17 that can be gathered? Let's say the person is
18 already entered into the database. I know you
19 have answered it sort of but [inaudible] --

20 MR. COOPER: Again, it would be
21 showing tattoos that we didn't see during stops
22 out in the field because their shirt is off or
23 whatever the case might be, but the guy might be
24 claiming that he did some crime on there. He was
25 responsible for this crime or that crime, maybe

1 showing up at the scene of the crime. He is
2 dressed down, wearing certain clothes, he is
3 driving through a rival neighborhood.

4 The possibilities are endless on
5 what -- I wouldn't want to say it's just three
6 things or four things. There are a ton of stuff
7 that can be gathered that is gang-related. Not
8 just, hey, his favorite color is blue or whatever,
9 but there are tons of things that could be
10 gathered off there.

11 MR. THORTON: It seems like it
12 varies at least on what the detective finds to be
13 important. Like I know sometimes it's how things
14 are spelled, the photographs, people who they are
15 in photographs with, the type of language that's
16 used.

17 For a while I know in San Diego
18 there was one detective who was using social media
19 to try to establish pandering charges based on
20 special fonts used, spellings used, words used,
21 and then kind of network out based on that.

22 So it seems like it's -- I don't
23 know that it's -- I think like Detective Cooper
24 said, there is a lot and there is lots that
25 different officers rely on.

1 MS. MONTES: I actually have a
2 question for Detective Cooper.

3 Detective, is social media ever
4 used to extend somebody's purge date? For
5 example, they are about to be purged, so you look
6 them up on social media and you find that they are
7 throwing up gang tattoos and tagging and stuff.
8 Can that be used to then extend?

9 MR. COOPER: Could be.

10 MS. MONTES: So it would be like
11 coming into contact then?

12 MR. SORENSEN: Well, no, because
13 it's not part of a document.

14 MS. MONTES: Like an FI card?

15 MR. SORENSEN: We can't make an FI
16 card unless we have a body attached to it.

17 MS. MONTES: Got it. For my
18 understanding, the way the extension works, to
19 extend someone on the CalGang database it requires
20 them to have another contact; correct?

21 MR. SORENSEN: Correct.

22 MS. MONTES: So it would have to be
23 a physical contact. It wouldn't be just social
24 media only?

25 MR. SORENSEN: Correct.

1 MS. MONTES: I feel more
2 comfortable knowing that -- I do agree with Jeremy
3 saying that we make an exception that it should be
4 in-person contact, but it seems like it's already
5 what law enforcement does. And I think it's
6 something that would also -- making it explicit
7 since it's already in practice is something that I
8 think would also make the community feel a lot
9 more comfortable with the database.

10 MR. COOPER: There could be a
11 document -- let's say we are monitoring the social
12 media account for somebody and we see that this
13 person has tattoos and tagging and whatever. We
14 would document that in a report and we can use
15 that as a source document.

16 We would capture screen shots or
17 whatever the program is and document, here is what
18 we have in this person's account. And that could
19 extend their date, but there is a document to back
20 that up. It's not just, I looked on there and he
21 was throwing a hand sign and I just updated it in
22 the system.

23 That's backed up by -- for us would
24 be a follow-up report or follow-up investigation
25 or some type of miscellaneous report or an

1 employee's report, in terms of what our department
2 uses. So you have some type of document, not just
3 an entry into the system, just to extend the
4 person's [inaudible].

5 And as far as people being -- some
6 people think the gang officers can look and see
7 who is going to purge out here in the next month
8 or whatever, but that's limited on who can see who
9 is going to purge out. I can see it and a very
10 limited amount of people can see, hey, in the next
11 30 days these people are getting purged out of my
12 files. So it's not like the officers on a weekly
13 basis are going, let's go contact this guy.
14 That's not the case.

15 MS. THIND: Thank you for that
16 explanation. So next I just wanted to say that.
17 Is there like a best practice guideline or rule
18 regarding how far back any information taken from
19 social media can be used as intelligence? If not,
20 is there like a time limit that is generally
21 followed like in your individual agencies?

22 MR. COOPER: I think we discussed
23 we don't have like a manual that I am aware of.
24 That's just for us.

25 MR. MARQUEZ: Just to mention, not

1 all social media starts off 90 days. Sometimes
2 it's 10 years old, sometimes it's 2 years old. So
3 it really depends on when they became active on
4 social media or in Facebook.

5 Even if you locate some kind of
6 social media, you write a warrant at that
7 capacity, and when you write the warrant, it takes
8 six weeks to two months to get that information.
9 So that, in and of itself, is old. On this media,
10 when you get anything, it can be 6,000 pages. How
11 long does it take you to sift through that? It
12 can be another month. So the timetable is really
13 hard to pinpoint.

14 MS. MONTES: My concern with social
15 media is it kind of goes in the sense of a tattoo.
16 And I'll just throw something out [inaudible]. So
17 regardless if my client -- because, trust me, and
18 I know you guys -- if I can find my clients'
19 social media stuff, I can only imagine what law
20 enforcement is able to find.

21 So I want to go back to the issue
22 of age when it comes to the source document and
23 evidence for that reason. Similar to tattoos.
24 The client can have a tattoo from 20 years ago
25 versus a tattoo that was done yesterday. Same

1 thing with social media. Regardless of it being
2 actually deleted and let's say they posted up --
3 they posted a video of them smoking weed five
4 years ago, deleted it, I know there is still a
5 means of how you guys can get that information.

6 And sometimes it's even hard to
7 tell the age of this information. I don't think
8 it should be used in my personal opinion because I
9 find it to be problematic, especially if we are
10 still talking about youth being included in the
11 database, not really thinking of what's being put
12 out there and how it can then be used to increment
13 them.

14 But I do think that if it is going
15 to be used, the standard the age of the
16 information has to be based [inaudible].

17 (Court Reporter's Note: All parties
18 stopped using the microphone and
19 some comments were out of the
20 hearing of the reporter.)

21 MR. THORTON: I won't repeat
22 everything I said earlier. This is why I asked
23 that it be excluded when we were discussing that
24 earlier because of the [inaudible], what is on the
25 Internet, what is on Facebook, and, frankly, I

1 don't know how we authenticate that it was that
2 person who said those things or posted those
3 things.

4 MR. SCAFIDDI: Just a question
5 maybe to Ryan. So the example you gave was to
6 keep someone from cycling off you do an in-house
7 reports, something like that, on tattoos or
8 something like that.

9 What if the social media -- say a
10 person that's about to cycle off is at a party,
11 whether it's a baptism or whatever in a so-called
12 gang area, and there are people there that you
13 guys have on your gang list and it's a baptism or
14 whatever, can you use that to keep someone on? No
15 throwing gang signs, no new tattoos, five years,
16 about to cycle off, is that baptism or some social
17 event -- there are other gang members there and
18 you call it gang area, have you guys kept people
19 on in a situation getting a social media post like
20 that? Do you know of anyone who has done that?

21 MR. COOPER: I have never seen
22 that. I have never seen something like that. And
23 I don't see a lot of the social media stuff as far
24 as -- I am primarily focussed on the LAPD stuff.
25 I don't see very much social media stuff. I don't

1 see anything like what you are --

2 MR. SCAFIDDI: Okay. I was
3 thinking if that is happening, I think that was
4 really disconcerting if something that like -- a
5 non-person contact, but there are pictures where
6 there are other people at a party and that can be
7 used because you see a known gang member there and
8 it's in a gang area, so-called gang area, it seems
9 to me it's unfettered discretion for law
10 enforcement if something like that can keep
11 someone on CalGang.

12 I think that's concerning from --
13 as Jeremy suggested -- no social media.

14 CHAIRPERSON NUÑEZ: I have actually
15 seen social media be used. We have a young youth
16 staff, some that are on probation that are in the
17 database. There was a particular incident, not
18 too long ago, where one of our youth, young staff
19 members, actually an old picture showed up on
20 social media and he was with his buddies and
21 throwing up some gang signs in the picture, but it
22 was an old picture.

23 That triggered the cease fire
24 program and the gang detectives actually -- they
25 actually came to the office looking for him, where

1 is his home, [inaudible] he went to the run. And
2 it was because of the social media post and some
3 of those posts about him. I think that there are
4 times where, in our pursuit of trying to -- in law
5 enforcement's pursuant trying to curb gang
6 violence, perhaps that it could create more of a
7 wedge between communities, in particular
8 communities of color where there is already some
9 distrust.

10 So I have seen it used like that
11 and that would constitute that contact, that would
12 constitute in my opinion. Obviously, it would
13 extend the time that he is going to be on that
14 gang database by virtue -- because they raided his
15 grandma's house as well.

16 So I don't know -- I guess I am
17 just -- again, just my own experience with it, but
18 social media, how it's being used, when this guy
19 was working, doing well, out of the neighborhood,
20 and it really further I think pushed him into --
21 basically into the shadows.

22 It's a much different game than
23 where he could be working and having some kind of
24 a normal life, if you will. So I think that those
25 are instances that I do see. I have seen them

1 myself. And I would, you know, just again caution
2 that we don't get into the habit of -- because
3 there is no [inaudible] authentication of the
4 picture. It's an old picture. I saw it
5 afterwards because they came to my office looking
6 for him.

7 MR. CARRILLO: I have a quick
8 comment if that's okay. One of the things that I
9 teach at the Los Angeles Violence Intervention
10 Training Academy for Mayor Garcetti's office to
11 intervention workers is social media [inaudible],
12 both how intervention workers display themselves
13 in their work, not only at work, but in their
14 personal time on social media and also how they
15 should conduct themselves on social media for
16 various reasons because it creates a lot of safety
17 concerns.

18 Oftentimes we have kids who portray
19 themselves as being hard-core active gang members
20 on social media and they are not. And sometimes
21 the rivals see them on social media or even in
22 person -- there is a really high profile case,
23 without saying names, in Los Angeles where this
24 young man was a church-going kid by from what
25 everybody thought, and he was murdered and nobody

1 could figure out why until someone says, 'Well,
2 have you seen what he is doing on social media?'

3 He was disrespecting everybody
4 under the sun because his father was so-and-so and
5 [inaudible], but in person he was a normal kid,
6 not active, doesn't carry a gun, et cetera,
7 [inaudible] and thought in the community.

8 I think once screen shot became a
9 reality. It changes the game because, like Sammy
10 said, I can post something from ten years ago and
11 erase it and be embarrassed about it, but if
12 somebody in the neighborhood, my enemy or
13 whatever, reposts it, it can be perceived as
14 current, but in actuality it was ten years old.

15 So once screen shot and the ability
16 to record videos that other folks post, it really
17 dilutes the accuracy of when things are posted.
18 It's just very difficult to consider it as a
19 reliable source.

20 I guess sometimes you can see it as
21 a slam dunk if somebody posted my video and it
22 just was posted ten minutes, that's kind of hard
23 to say that's not accurate. Smoking gun. But if
24 it's a Throwback Thursday, which are pretty
25 popular, I always tell intervention workers don't

1 post those throw-backs because if they are
2 throw-backs of you in your gang clothing and
3 throwing signs, [inaudible] professionally.

4 MR. SORENSEN: I think we need to
5 make a clarification between what triggers a law
6 enforcement investigation and entry into CalGang
7 because they are two totally different animals.

8 Seeing a post in social media and
9 following up that, you know, he may have had a gun
10 at some point, blah, blah, blah, that's different
11 than being entered into CalGang.

12 MS. THIND: Thank you for
13 discussion. I have one more question regarding
14 social media and this is more geared towards the
15 courtroom.

16 So since social media is being used
17 more and more as a form of reporting criminal
18 acts, not just, you know, gang cases, how is it
19 treated when it's brought into the court room
20 whether it's criminal cases, civil cases, or
21 immigration cases?

22 This is just to get some knowledge.
23 Like I know at the June meeting we touched on
24 social media. So it's just like a discussion we
25 are interested in hearing how it works in the

1 courtroom.

2 MR. VRANICAR: Well, I can tell you
3 that's probably direct evidence of whatever the
4 activity is. Obviously, the Court is going to
5 demand that it be authenticated and the identity
6 of the person who is depicted there, established,
7 is no different than photographs and other forms
8 of documentary evidence.

9 So, unfortunately, it will be up
10 to -- in terms of a situation where an individual
11 posted a photo five years ago or whatever, then
12 that would be certainly subject to
13 cross-examination. 'Well, officer, do you have
14 any idea when that picture was taken' or that type
15 of thing.

16 But it's -- I mean, if we can get
17 that evidence in those criminal cases, especially
18 since it's been created by the individual who may
19 be the defendant, is dynamite evidence.

20 MR. THORTON: It's pretty powerful
21 in the courtroom. It seems to me that when it's
22 introduced, the second it's mentioned, then really
23 the burden shifts to the opposing party to show
24 that it's not accurate, which is usually not how
25 other evidence is treated.

1 It's also I think problematic
2 because the government can get social media
3 information, but defendants cannot, unless it's
4 through the discovery process. I cannot subpoena
5 Facebook, I cannot subpoena Instagram or Twitter
6 or whatever it may be.

7 And often is the case, my client
8 will say, oh, well, they are saying all these
9 things on social media. I go onto Facebook and
10 see that that person's account is private, so I
11 can't see anything. I then can't go to Facebook
12 and say give it to me. But the opposite is true.

13 So if it's damning and it's coming
14 from us, the government can request a search
15 warrant and get a search warrant for that
16 information. And getting a judge to move on
17 compelling Facebook is impossible. So it's very
18 difficult in the courtroom [inaudible] on the
19 defense side.

20 MS. MONTES: And it's a very big
21 problem when it comes to immigration, courtroom
22 immigration cases. And the reason being is that
23 immigration court is actually administrative
24 court. And I know I mentioned this before, but
25 evidence rules do not really apply. We can assert

1 them, we can object, most of the time the judge
2 admits it anyways and then that's within their own
3 discretion to decide how much weight they want to
4 give the evidence.

5 Social media usually comes out in
6 the context of -- we have seen it a lot and I have
7 spoken to other advocates, especially in terms of
8 bond cases -- when you are asking to post bond
9 before an immigration judge and you normally have
10 to demonstrate that you are not a flight risk or
11 pose a threat to public safety, and multiple times
12 we have seen incidents where the trial attorney
13 will bring source documents from law enforcement,
14 will bring social media as proof of the client or
15 respondent posing a flight risk or a threat to
16 public safety.

17 So it's incredibly influential
18 because it's up to the discretion of the judge and
19 there is really no way, if we don't know about the
20 evidence, unless we know about it beforehand,
21 perhaps immigration counsel can try to bring
22 exculpatory evidence or maybe an expert witness,
23 but most of the time we don't know necessarily
24 what ICE has.

25 Another thing is ICE -- and it's

1 interesting and this is something I am actually
2 writing about right now -- in immigration court
3 the burden on ICE is to prove that the individual
4 is removable through clear and convincing
5 evidence.

6 But let's say they get a source
7 document from CalGang. To be inputted into
8 CalGang is a reasonable suspicion. But that
9 evidence is given the weight of clear and
10 convincing evidence in immigration court and it's
11 highly problematic. And it's often hard for
12 defense counsel or for someone like me to then go
13 against the government and say -- you know, to try
14 to actually rebuttal the evidence half of the time
15 because I don't know actually what ICE has on my
16 client.

17 And I have also heard instances of
18 even simple things like liking something on
19 Facebook has been used by trial attorneys to try
20 to influence the judge that the individual is, in
21 fact, gang related or somehow supports gang
22 activity.

23 MR. THORTON: There is a certain
24 ambiguity with what's posted sometimes on social
25 media and the way that can be used in court. It's

1 difficult. Because you can make a post or picture
2 say what you want it to say. I had a case where
3 my client was accused of jumping on this woman's
4 car and shattering the window. And she had
5 testified to how scared she was, but she had
6 tweeted 20 minutes after the incident "LOL" with a
7 picture of her window.

8 Now, there is no question that
9 would be a scary incident when someone is jumping
10 on your car breaking the window. But then I got
11 to run around in court and show the LOL sign and
12 say, see, she wasn't scared at all. It was a joke
13 to her. Right? And because that's what I wanted
14 it to say.

15 And it's just subject to
16 interpretation. It's subject to whatever the
17 presenter wants to use it for, and that's why I
18 don't think we should be using it when it comes to
19 documenting anyone in the criminal database.

20 MS. THIND: Do you have any idea
21 how it's used in civil proceedings? Because this
22 process, this positioning is going to be in civil
23 court. So I am just curious -- I mean, in
24 immigration, that makes sense, and in criminal
25 court in which Marty and Jeremy brought up.

1 Do we have any insight on civil
2 court?

3 MR. SCAFIDDI: I do personal injury
4 and it would fall under relevance in a civil
5 proceeding, whether it's PI or administrative
6 hearing, and if it's relevant, if it's probative,
7 if I have made a foundation for it to come in,
8 it's not prejudicial or too prejudicial under 352
9 of the evidence code, you can bring social media
10 postings in civil cases like any other case.

11 MS. THIND: Thank you for that.
12 Does anybody have any more comments on this before
13 we move on to the next question?

14 Okay. So this one is directed at
15 you, Jeremy. I notice that you removed "issuing a
16 letter of censor from the regulations as a form of
17 enforcing violations of state law, federal law, or
18 these regulations."

19 And I just -- I mean, I can
20 interpret why you did that, but I just kind of
21 wanted to discuss to see what your reasoning was
22 behind that and your thoughts so we can all hear
23 them.

24 MR. THORTON: I think breaches of
25 this are serious and they have serious

1 consequences for the individuals whose information
2 is being shared. So I think it's not stiff enough
3 to send a letter to say, hey, you broke the rules.
4 That person knows that and they are willing to
5 deal with the consequence of it.

6 And so I think temporary
7 suspension -- it's kind of embarrassing if an
8 officer can't access CalGang because he broke the
9 rules and his access has been suspended for 30
10 days. He can't go on that particular patrol
11 because Detective Cooper suspended his access
12 because he broke the rules.

13 It goes further than just -- I
14 think it communicates the level of what we are
15 dealing with here. To break these rules is very,
16 very serious.

17 (Mr. Chief Jarrod Burguan left the
18 meeting at 2:26 p.m.)

19 MR. MARQUEZ: Obviously, that
20 question is not to me, but in terms of what he is
21 saying, every database we have in law enforcement,
22 we have training, we have policies, we have rules
23 and we get audited on a yearly basis and whatnot.
24 And for us, sometimes we put case numbers on every
25 inquiry to tally inquiry. So all those are

1 documented.

2 So in terms of violations, it would
3 be pretty obvious to somebody right away. I don't
4 think they can go on and on and on because there
5 are so many queries, so many checks and balances
6 to that are in place to make sure this particular
7 example he gave doesn't happen.

8 MS. THIND: Ryan, have you ever
9 issued a letter of censor? And if you have, what
10 were the circumstances? Just curious.

11 MR. COOPER: No. The only thing I
12 have done is -- the letter of sensor, the reason
13 is it's a formal letter -- this came from when we
14 had the executive board for oversight with Cognac.
15 So the executive board -- Cognac would find out
16 about the violation or whatever it was, do their
17 investigation, go, Hey, Marty Vranicar from Fresno
18 PD was caught doing this, blah, blah, blah.

19 MR. VRANICAR: I was not.

20 MR. COOPER: And basically the
21 executive board would issue a letter to the head
22 of his agency saying, blah, blah, blah, and he
23 misused the system for this reason and this
24 reason, that's what he did, whatever the case was.
25 And the department can deal with it the way they

1 wanted to. As the node administrator, we would
2 suspend his account for however long.

3 I have suspended people's accounts.
4 I have suspended a few people's accounts
5 indefinitely and just put a flag in their account
6 never to be reactivated for a few people. The
7 only reason I don't delete accounts is the way the
8 program is set up.

9 If you delete -- if I delete
10 Marty's account, the way the program is set up,
11 any field arrest reports he has tied to any of the
12 subjects, any of the gang members, suspected gang
13 members or associates, those would actually get
14 erased out also. So that's the only reason that
15 we don't put it in there.

16 Plus, we can keep it in there
17 saying Marty Vranicar, he is a bad apple, don't
18 reactivate. Hypothetically.

19 MR. VRANICAR: Thanks, Ryan.

20 MR. COOPER: No problem.

21 MS. THIND: Are there any other
22 thoughts pertaining to this particular question or
23 anything relating to this?

24 So that kind of brings me to the
25 end of the questions that I had for today. So I

1 kind of just wanted to touch back with everyone
2 and just maybe go from member to member asking if
3 there are any other items that we failed to
4 discuss or did not discuss at this meeting or any
5 other meetings that you would like to bring up and
6 discuss at this time?

7 MS. RIVERA: And we only have 15
8 minutes. Sorry, not sorry.

9 MS. THIND: Maybe we'll go down the
10 table. And want to start, Lieutenant?

11 MR. SCAFIDDI: I would just make
12 one comment is that I would have loved to have
13 seen Sean's presentation at the first meeting. It
14 made everything really crystal clear for me and an
15 outstanding presentation, but my only comment is I
16 really wish I would have saw that at the June 18
17 or June 16 meeting. That's all.

18 MS. THIND: Thank you.

19 MR. VRANICAR: I just have a
20 question. At the last meeting we voted on a
21 tolling proposal and I didn't see it in this
22 round. Is there a reason for that?

23 MS. THIND: We are running
24 everything through our higher-ups and legal. So
25 all of the proposals you have given us we have

1 documented them and we are going to present them
2 to the Attorney General and he is going to make
3 the final call. So we have it. It's in
4 consideration. It's these drafts that are more
5 than just kind of like a reflection of -- just
6 kind of like how we are progressing right now
7 before we run it through our legal division and to
8 the Attorney General.

9 So there is a possibility that
10 there may be some other different things that are
11 not incorporated in these drafts right now, but
12 maybe were suggested by all of you members and
13 maybe were not. And when we get ready for the
14 final APA process after the Attorney General
15 determines what should and should not be included,
16 those would be the drafts that we work off of.

17 So that's kind of -- it's not to
18 say that it wasn't important. It's very
19 important. Every comment you make is very
20 important to us.

21 Good, Ryan?

22 MR. COOPER: Yes.

23 MR. THORTON: I would like to see
24 some requirement that the opposite of gang
25 involvement is also included in the database when

1 someone is a documented gang member. So, for
2 instance, when their FI -- when they say, 'Look, I
3 am not part of a gang,' you know, even if it's to
4 the same officer three weeks ago that the teacher
5 said he is a gang member and he says, 'No, I am
6 not part of a gang, I just made that up, I wanted
7 to be cool that day,' whatever that is, that that
8 be included in the database, that there be some
9 requirement that this exculpatory evidence be
10 preserved with the source documents so that it can
11 be pulled.

12 I think it would go far in the
13 confines of litigation and law in how there are
14 evidentiary limits. It would go far for a judge
15 potentially deciding the issue of if this person
16 has actually, in the last five years, has
17 attempted to say, 'I am not part of a gang.'

18 MS. MONTES: I have a couple of
19 comments. First I want to say that I do agree
20 with what Jeremy was saying and I think I actually
21 had submitted that [inaudible] as well about
22 exculpatory evidence to ensure that if there is
23 any exculpatory evidence in a time that when
24 request of information is made, that it also be
25 given to the individual.

1 I do want to say that I very much
2 am appreciative of what you guys have written
3 regarding proxy access and what is it that DOJ --
4 it's basically in their in Package 2 suggesting
5 what is it that another agency has to provide,
6 such as the name, ID number, reason for request.

7 I really do appreciate that because
8 I think it ensures that if access is given to
9 somebody else, that it should be used only for
10 intelligence based purposes. So I wanted to say
11 thank you.

12 Just to go back a little bit about
13 information sharing, since it's something that's
14 very important to me, in previous drafts I had
15 submitted that information will not be collected
16 regarding a person's a alienage, be it place of
17 birth -- I can't remember off the top of my head,
18 but I know you guys have my drafts.

19 This is a conversation that I have
20 had with law enforcement extensively even when I
21 went to -- when I did the -- when I went on patrol
22 with Rampart police division about how they don't
23 collect that information and it's really not
24 necessary to their investigation. And I know that
25 it's not included in the FI cards, but it should

1 be exclusively written here in the regulations.

2 I understand that there is a
3 federal statute that says information needs to be
4 free flowing between the federal and state
5 government, but if that information is not
6 collected in CalGang, it is protected to the
7 individual. And I think, you know, it would also
8 be compliant with Senate Bill 54.

9 So I do just wanted to bring to the
10 DOJ's attention that if you guys can circle back
11 to my comments regarding what can and cannot be
12 collected regarding an individual's alienage, I
13 would greatly appreciate that.

14 MS. THIND: And that was your
15 limitations to the data collection section; right?

16 MS. MONTES: I think so, yes.
17 Since I don't have it with me, I can't remember,
18 but, yes, I think that was it.

19 MS. THIND: Okay. We have that, so
20 I will reference that in my notes. Thank you so
21 much.

22 Scott?

23 MR. SORENSEN: I would like to
24 [inaudible]. CalGang is a pointer system, only
25 like Ryan has said umpteen million times. This is

1 not for evidence. This is just merely a pointer
2 system that those documents are housed with those
3 agencies already and available for all the court
4 proceedings already. That's it.

5 MR. CARRILLO: I think this has
6 already been -- this has been mentioned before.
7 So I would say it again and just add a couple
8 other nuggets.

9 But I think the whole conversation
10 on the age of entry I think it should be 18. If
11 the number of youth that are in the system is
12 between 1 and 10 percent, they are either not that
13 active or not as important to be on the radar or
14 whatever the system is being used, so we should
15 just remove them all together.

16 If it's decided to keep minors on
17 there, you know, I would certainly hope that we
18 can move the age more towards like 16. And then
19 also I think there should be a somewhat more
20 rigorous process for them in terms of them getting
21 put on. I think that we should assume that these
22 kids have proactive, positive parents which is
23 oftentimes not the case, but [inaudible] advocate
24 for them, which is one of the reasons why minors
25 consent to have an abortion because they don't

1 have a parent or someone to advocate for them or
2 even consent for substance abuse treatment without
3 parent authorization.

4 There is a lot of laws in the State
5 of California to protect kids because they
6 oftentimes don't have proactive positive parents
7 in their corner. So it should be harder for them
8 on to get put on, and the process for them should
9 include some sort of advocacy for them to take it
10 off, assuming adults have more knowledge,
11 experience, and resources to advocate for
12 themselves.

13 MS. THIND: I want to thank
14 everyone for their comments and everything they
15 have done up until this point. It's been very
16 helpful. I urge you, if you have any more
17 additional comments in the future, if you can
18 think of anything, please feel free to reach out
19 to Shanae for regulations.

20 Next is public comment period.

21 MR. BIERFREUND: Once again, has
22 everyone for the public comment period signed up
23 that would like to speak?

24 Since no one has come or gone since
25 the last time, I will just do a summary. Everyone

1 is going to have five minutes. Items discussed
2 during this comment period may address anything of
3 interest that are within the committee's
4 jurisdiction. We ask everyone to be respectful of
5 each other and please not yield your time to
6 another. The committee does not engage in
7 dialogue, but they can comment after the public
8 comment.

9 We want to thank everyone for
10 coming out and everyone for participating in the
11 public comment period.

12 First up we have Sean Garcia-Leys
13 from Urban Peace Institute,

14 MR. GARCIA-LEYS: Thank you. So I
15 will try to refrain from giving a big picture
16 closing speech since I got to do that earlier. I
17 have a list of details I would like to get through
18 real quickly and maybe get them on the record.

19 First, the idea that all that needs
20 to be done to designate a gang is to fill out a
21 form signed off on by an officer seems to be a
22 much lower threshold than is used in STEP Act
23 cases where a preliminary hearing, every one that
24 I have been to, the DA shows up with court records
25 of previous convictions, with case numbers to show

1 that the primary activities of gang [inaudible]
2 and I don't see why that same standard of actual
3 court documents and convictions shouldn't apply in
4 CalGang.

5 Two, regarding the idea that
6 somebody running naked down the street would not
7 be put on CalGang because that's just ridiculous,
8 well, I actually have a client who, high on meth,
9 was in another neighborhood walking down the
10 street taking off his clothes, sweating profusely
11 and yelling at everybody that he ran the Mexican
12 Mafia and they better leave him alone, and that
13 was used as an arrest consistent with gang
14 activity and an admission of gang activity. That
15 exact sample is in my records.

16 Three, many problems with source
17 documents are going to have to be addressed in
18 training. There is no way to avoid giving
19 discretion to officers. And, in many times,
20 giving officers discretion will be a good thing,
21 but what has not really been discussed in these
22 meetings I think in nearly sufficient detail is
23 how the trainings that are going to be given,
24 people who use this, need to really say what is
25 within the bounds of discretion and what is

1 outside the bounds of discretion. So I am hoping
2 that through the next part of this process, the
3 DOJ is able to bring the public in, in designing
4 these trainings.

5 Fourth, there is a question about
6 what evidence is admissible in court cases.
7 Because this is a review of an administrative
8 decision, basically anything that's in the
9 administrative record is going to be admitted,
10 kind of like Marissa described in immigration
11 court.

12 Some can be given less weight if
13 they seem less reliable, but the entire
14 administrative record, which is anything that was
15 exchanged in the papers, would be used in the
16 civil court process.

17 Related to that is the exculpatory
18 evidence. I understand the CalGang is a pointer
19 system so let it point to exculpatory evidence.

20 And then social media, that's the
21 final thing I wanted to bring up, which is I have
22 not seen this in CalGang cases, but I have seen in
23 gang injunction cases where -- I will give you an
24 example.

25 Kid grows up on Santa Fe Street.

1 Everybody, all the gangs in the neighborhood, use
2 San Francisco 49ers gear as Santa Fe Street -- all
3 the gangsters all wear 49ers gear all the time.
4 They are also all San Francisco fans now and their
5 younger brothers and their nephews are all
6 San Francisco fans and everybody who grew up on
7 this block is a San Francisco fan.

8 And I have done cases where we have
9 deposed gang unit officers and they bring up the
10 person's social media page and say, look, they
11 like San Francisco 49ers. Therefore, that's
12 evidence of gang membership.

13 Or in one case, in this case it was
14 Tennessee Titans was the gang. And the background
15 wallpaper on the person's social media page was
16 the Tennessee Titans logos and that was used.

17 I have also seen law enforcement
18 officers say -- go over the friends list and say,
19 look, this person has friend requests with people
20 who they think are active gang members and that's
21 evidence of gang membership. So social media has
22 a lot of lists that I have seen come up in other
23 gang contexts; not in CalGang, I will say that.

24 But it let me know the way that
25 many of the officers out there are thinking about

1 social media. And it's much more than just
2 photographs of people with guns. It's much more
3 subtle than that.

4 And with that, thank you very much
5 for all of your hard work and your time.

6 MR. BIERFREUND: Thank you for your
7 comment. Next we have Rekha with ACLU.

8 MS. ARULANANTUAN: Detective
9 Cooper, you asked a question, so I wanted to
10 address it about second requests. [Inaudible] and
11 so I would hope the DOJ's recommendations don't
12 prohibit that. So it's discussed in [inaudible]
13 earlier. There are notices that are incomplete or
14 have bear bones information.

15 There are individuals who don't
16 understand the limitations of the evidentiary
17 record on their own and the police department
18 request forms are inadequate or individuals are
19 instructed incorrectly on how to fill out the
20 form, and so they should be allowed to resubmit.

21 So I think we should consider the
22 purpose of submitting the request to the police
23 department as opposed to the court as the first
24 step is that allowing someone to submit a request
25 with correct information is actually helpful

1 because it allows the police to correct the
2 information without going to court. So that's why
3 I think secondary requests or subsequent requests
4 should be allowed. Thank you.

5 MR. BIERFREUND: Thank you. Next
6 we have José Valle with De-Bug.

7 MR. VALLE: Before I begin, I just
8 wanted to comment that we were able to meet with a
9 lot of our families in Santa Clara County. We
10 have a lot of family members that come in and we
11 help support them in their cases and partner with
12 their public defenders. Many of the cases are
13 gang enhancements and things like that of that
14 nature. So I am proud of being able to get
15 together and come up with the stuff we talked
16 about today as well as last time we were here.

17 But let me go ahead and just read
18 this. The Street Terrorism Enforcement Act of
19 1988 is initially is what brought us to the mass
20 incarceration and mass unconstitutional entries of
21 individuals in the database.

22 The STEP Act, commonly known as the
23 gang enhancement law, mirrors entirely crack
24 versus cocaine sentencing disparities which only,
25 until recently, did we find some relief. Gang

1 enhancements directly targets non-white
2 communities, especially la raza and black
3 communities.

4 When la raza and blacks are
5 convicted with the gang enhancement law, that
6 person will serve more time in prison than their
7 white counterparts that may be convicted for the
8 same crime.

9 Silicon Valley De-Bug [inaudible]
10 CalGang or any form of a criminal database in its
11 likeness is inherently racially and bias and
12 unconstitutional and historically criminalizes
13 youth. Therefore, no youth nor adult shall be
14 entered in the database.

15 Frankly, the gang enhancement law
16 is a localized RICO Act that can freely be abused
17 without challenging the courts on just about
18 anyone simply because of where they live, being
19 non-white, being poor, and being cut out of the
20 American dream.

21 The database criteria is
22 unconstitutional because it's based solely on law
23 enforcement contact, not an actual arrest or even
24 a conviction. The gang enhancement law or
25 criteria discussed in today's advisory committee

1 serves no purpose other than to arm prosecutors
2 with unconstitutional monitoring of alleged gang
3 members and associates simply because of where
4 they live.

5 In fact, there is no clear way to
6 end mass incarceration without first entering the
7 gang enhancement law and alleged gang criteria
8 which violates freedom of speech, due process,
9 presumption of innocence, surveillance and
10 monitoring, and convicting the barrio too.

11 MR. BIERFREUND: Thank you. Next
12 up is Benee Vejar with De-Bug.

13 MS. VEJAR: Good afternoon
14 everybody. So as José pointed out, we help at
15 Silicon Valley. We are out of Santa Clara County
16 so our gang enhancements are different and a lot
17 more punitive. We work with families to help
18 navigate the criminal justice system. And I have
19 been doing this work for a little bit, over about
20 five years.

21 I wanted to touch base on some
22 examples with families that I deal with. When
23 gang indictments happen, a lot of the evidence is
24 social media. It can be a girl wearing a hat at a
25 bar around guys and they used that as to convict

1 her. She ended up getting convicted because she
2 was married to somebody who got convicted of a
3 gang enhancement and they called her an associate.
4 So she lost her business and she was kicked out of
5 our county. So that's just one story.

6 The other story was one of my good
7 friends was also convicted as an associate, had to
8 register in the gang database as a gang member.
9 She lost her job at Kaiser. She was HR, lost her
10 job, lost her kids, and lost her housing. So for
11 three years she was doing her hardest working
12 dead-end jobs, paying the fines for the court.

13 And it just amazes me, I don't see
14 no healing process to help these moms, to help
15 these women come and try to get their lives back
16 together. I just see punitive, let's just
17 convict, convict, convict. And I wish there was
18 something here for this gang database to help, to
19 assist them.

20 This is a system that's determined
21 women to fail. And I just think that more needs
22 to be inputted into this CalGang database.

23 As for the body cameras, I have
24 always liked that idea. So in Santa Clara County
25 we do what's called court duty. We go there and

1 observe what's happening with cases and things
2 like that. And when I was there watching a case,
3 a disruption of the courtroom had taken place.

4 I noticed the guard just tapped his
5 chest, the CO tapped his chest, and there was a
6 mentally ill patient going crazy in the courtroom.
7 And when he tapped his chest, his body camera
8 turned on. And I just thought, wow, that's so
9 great for the CO to just -- for that little
10 disruption, to turn on the body camera to get that
11 evidence should something happen.

12 So I am going back to -- I don't
13 know who said it -- but to be saying cameras is
14 too expensive, after seeing that little small
15 thing in Santa Clara County, I believe it can
16 happen throughout the state.

17 I also want to touch base on the
18 tattoos. So I have a past. I have a 24-year-old
19 son who is Chicano and live in a poor area. I
20 have two jobs, three kids. Over there it's called
21 "clean slate" where you can get your tattoos
22 removed. But I am over 40. So how am I going to
23 get tattoos removed that I still have on my
24 finger?

25 I still have this tattoo I've had

1 since when I was under the age of 25, but I can't
2 get it removed no more because I no longer qualify
3 for clean slate.

4 So what if I get stopped and they
5 see this tattoo, I get scared. I think, well, I
6 have a past. How can we have something for,
7 again, mothers that have these old tattoos to get
8 them removed and not be put in a gang database
9 because of where I live or whoever is living
10 around me?

11 And I think that's it. Thank you
12 all for your time. Much appreciated.

13 MR. BIERFREUND: Thank you for your
14 comment. Last on the list we have Melanie Ochoa
15 with the ACLU.

16 MS. OCHOA: Hello. So I just want
17 to first say there is simply no need to have a
18 separate category for associates within the
19 database. As law enforcement has explained their
20 need for it is so they can identify and have a
21 record of people who may be with someone who is a
22 designated gang member if they need to search for
23 that person.

24 That can be addressed by including a
25 field [inaudible] in terms of known friends or

1 people who should be contacted if they need to try
2 to find them. That is not a reason to have an
3 entire entry for someone in the gang database
4 particularly knowing what the informal harms are
5 that people encounter simply by being in the
6 database regardless of what other lack of
7 information shows.

8 Also, there is no current legal
9 definition of "associate." As Sean mentioned,
10 when associate is mentioned in the law, it's
11 always invoked along with gang member and the
12 [inaudible] definition be included. So it's
13 speculation to create the first definition of,
14 quote/unquote, "associate."

15 So if that definition is someone
16 simply with ties to someone who is a gang member,
17 then not only can they include someone's mom or
18 girlfriend or coach or mentor or lawyer,
19 [inaudible] if they challenge that because they
20 need to do the investigation. So I am in the
21 database, Mr. Garcia-Leys is in the database,
22 Mr. Nuñez and his children is in the database, and
23 there is no way to get out. That would be legal.

24 And, separately -- but if it's not,
25 if we apply the same criteria that's in the

1 statute where the court is actually depending on
2 that database [inaudible] whether or not someone
3 is in the database and currently the active gang
4 member, then literally everyone in there has an
5 associate that would have to be purged when they
6 challenge it before the court definition.

7 So it serves no purpose to put
8 someone in the database that would actually need
9 to be purged under the law if they actually have
10 the means to challenge that inclusion. This
11 definition both goes against the spirit and the
12 language of the statute [inaudible].

13 Secondly, I just want to bring a
14 client that I have who saw his high school friend
15 after 15 years and gave him a ride home, driving
16 through his own neighborhood which the LAPD
17 designated as a gang allocation. He is 30 years
18 old, no prior arrests, no prior police
19 interactions, gainfully employed, community
20 volunteer.

21 This is the kind of perfect storm
22 that Lieutenant Considine mentioned. And Sean
23 mentioned he has a client that Detective Cooper
24 claimed would never be put in the database based
25 on an admission because he was clearly incompetent

1 when the contact was made.

2 So law enforcement gives lots of
3 examples about how hypothetically stringent they
4 are in putting folks in the database, yet real
5 example after real example [inaudible] experiences
6 [inaudible] showing this is not the case in
7 practice.

8 So I want to make sure that these
9 convenient police narratives do not influence the
10 policy that's forth [inaudible]. The policy needs
11 to be responsive to what is actually happening,
12 not what we wish were happening if the most
13 stringent rules were applied and everyone abided
14 by them and everyone had always good intentions
15 all the time.

16 MR. BIERFREUND: Thank you. Thank
17 you everyone for their comments. I am going to
18 pass it back to Sammy now.

19 CHAIRPERSON NUÑEZ: I think that
20 pretty much brings us to our closing. I just
21 wanted to -- real quick parting words. In my
22 experience growing up, in our family they would
23 always ask, who do you belong to, when you meet
24 other families and whatnot.

25 That usually meant you have got to

1 say your full name, say your mother's --
2 grandmother's name and I belong to that family.
3 Oh, I know who that is, I know your family. I
4 think it's a sacred connection that we have with
5 our grandmothers and our mothers.

6 It could be kind of, I think,
7 broken when we say we belong to a particular gang
8 or this is who I belong to. And I don't think
9 it's -- it's something to me that I always
10 remember that -- because that's who I kind of -- I
11 think go back to all those values that are
12 imparted upon me, but there was a time that was I
13 was definitely involved and I am lucky and
14 fortunate that I am here and I survived.

15 But I would say that this is such
16 an important issue and I think that it's really
17 important that we actually will consider the
18 implications of this beyond just the pointer
19 system because it's very important to our
20 community.

21 We have people like Jose Valle and
22 Ms. Vejar who come from Silicon Valley and
23 San José because of the importance of this issue.
24 We have people that come here because this is an
25 important issue to us and we have to approach it

1 with that kind of sensitivity and sound judgment
2 and make decisions that are going to impact many
3 in our state, our children.

4 So I just want to thank our
5 community for showing up and your comments. I
6 really feel with advocates like you, I think it's
7 really important and [inaudible] children and our
8 communities.

9 I want to thank our committee
10 members. I apologize for any offenses or mistakes
11 or shortcomings or errors, but I also want to
12 thank you for allowing me to be in this space with
13 you all.

14 And, lastly, I want to thank our
15 DOJ family here and, in particular, Shayna who
16 took a lot of time to actually help me because
17 it's frankly sometimes coming into a space like
18 this, it's scary. You know what I am saying?

19 I don't know. I just feel as
20 though -- I feel as though there is something
21 about feeling this division or the separation and
22 I don't think we should feel that way. I think we
23 can shatter the illusion of separation and not
24 have law enforcement see us as the opposition and
25 our community see law enforcement as the

1 opposition. I think that's really important for
2 our state, for our communities.

3 So I just want to thank you all
4 again. I don't think we are going to -- I don't
5 know if we will see each other again, but
6 blessings to all of you. Happy holidays.

7 And lastly our recorder. I just
8 want to thank you for all the work that you did
9 here. And I just appreciate you all. Safe and
10 blessings on your travels home. Thank you.

11 MS. RIVERA: And Sundeep has just a
12 few parting words.

13 MS. THIND: So I just want to talk
14 about this process now that we are undergoing. So
15 all of this was preliminary rule-making stuff. We
16 haven't started our actual rule-making under the
17 Administrative Procedures Act. That doesn't
18 commence until the regulations and the notice are
19 published in the California registry. That's OAL,
20 on its website.

21 So right now we are going to take
22 back everything you have given us since the
23 beginning of our meeting, since March, June,
24 September, October, and we are going to finalize,
25 run everything through our legal division, the

1 Attorney General's office, and put together all
2 the rule-making documents, basically an
3 explanation of what was written, why it was
4 written. And then we hope to have that out and
5 published in May of this year.

6 At that time if you are interested,
7 we can put you on an interested parties list,
8 assuming we will put all the members on it just
9 because you were here to help us, and anybody who
10 is a member of the public is welcome to be on this
11 list as well, and we will e-mail out the
12 rule-making to everyone.

13 As soon as it's published in May,
14 we will have a 45-day comment period and at that
15 time we will have the final drafts that the AG has
16 looked at and made final decisions for. And based
17 on that you can submit your comments to us and
18 then we will have a grace period to take your
19 comments into consideration and we will respond to
20 your comments.

21 So if you have any changes at that
22 time, if you would like to propose them, please
23 make them. Then we can even open up for
24 additional comment period. We will have two
25 public hearings -- we hope to have them in July --

1 at which time the public can come in and make oral
2 comments. We are hoping to have one in Northern
3 California and another in Southern California.

4 Locations, we don't know exactly
5 where it's going to be, whether it's going to be
6 LA, San Diego, or where in Northern California,
7 but as soon as we have that information, we will
8 provide it to you. So maybe in May that
9 information will come out with the notice when
10 that's published.

11 And then after that we hope to have
12 our regulations come into effect on January 1st so
13 everything will be submitted to the office of
14 administrative law around October.

15 So that's kind of like a timeline.
16 I guess if anything comes up, please feel free to
17 contact us if you have any more thoughts. And
18 thank you so much for your time. I appreciate it.

19 Jenny is up.

20 MS. REICH: So I would like to
21 thank the committee on behalf the [inaudible] and
22 on behalf of the Department of Justice for all of
23 your time, [inaudible] and providing us with your
24 issues and concerns.

25 I also would like to thank the

1 members of the public because I think most of you
2 have shown up at the majority of the meetings and
3 have given us some great insight into these
4 regulations that we are going to be writing.

5 I also would like to thank Sammy
6 because you did a great job as our chairperson.
7 And, lastly, I would like to thank the DOJ staff
8 because they are truly the ones that have put in
9 the time and effort to arrange all these meetings,
10 to communicate with all of you, and are doing the
11 heavy lifting and putting together these
12 regulations.

13 So I just want to thank my staff
14 for doing a great job and, again, thank all of you
15 for such productive meetings. I appreciate it.

16 CHAIRPERSON NUÑEZ: We out. Drop
17 the mic.

18

19 (Whereupon, at the hour of 3:01 p.m., the
20 proceedings were concluded.)

21 oo0oo

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1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Shorthand Reporter of
4 the State of California, do hereby certify:

5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth;
7 that a verbatim record of the proceedings was made
8 by me using machine shorthand which was thereafter
9 transcribed under my direction; further, that the
10 foregoing is an accurate transcription thereof.

11 I further certify that I am neither
12 financially interested in the action nor a
13 relative or employee of any attorney of any of the
14 parties.

15 IN WITNESS WHEREOF, I have this date
16 subscribed my name.

17
18 DATED: _____

19 *Megan M. Grossman-Sinclair*
20

21
22 MEGAN M. GROSSMAN-SINCLAIR, CSR NO. 12586
23
24
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