


FILED
San Francisco County Superior Court

OCT 12 2007

GORDON PARK-LI, Clerk
BY: 
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

County Of San Francisco

Department No. 302

PEOPLE OF THE STATE OF CALIFORNIA,
By and Through Dennis J. Herrera, City
Attorney for the City and County of San
Francisco,

Plaintiff,

vs.

NORTEÑO, a criminal street gang sued as an
unincorporated association, and DOES ONE
through DOE FIVE HUNDRED, inclusive,
Defendants.

Case No.: CGC 07-464492

ORDER GRANTING PRELIMINARY
INJUNCTION

Plaintiff, the People of the State of California, *ex rel.* Dennis J. Herrera as the City Attorney for the City and County of San Francisco (hereafter the "People"), applied for an order to show cause (the "OSC") re: preliminary injunction to abate a public nuisance through the use of what is commonly referred to as a "gang injunction," against defendant Norteño, an unincorporated association alleged to be a criminal street gang, and against all members of defendant Norteño, in an approximately sixty block area of the Mission District (hereafter

1 referred to as the "Safety Zone").¹ After consideration of the application, the Court issued the
2 OSC. Thereafter, the People gave notice of the OSC by posting, by publication and by personal
3 service on seventeen persons alleged to be members of the Norteño gang. Eight of the persons
4 served by the People requested and were granted the right to intervene --Antonio Buitrago, Kevin
5 Chavez, Henry Hernandez, Ernesto Arroyo, Jesus Guerrero, Antonio Garcia, Reuben Reynoso-
6 Jimenez and Hector Berrera - (hereafter collectively referred to as the "Intervenors"). The
7 Intervenors filed objections to the issuance of the preliminary injunction with declarations in
8 support of their position. The American Civil Liberties Union requested and was granted the
9 right to file an Amicus Brief in Opposition to the preliminary injunction. On September 18,
10 2007, the Court heard oral argument and on September 19, 2007, the Court issued an Order for
11 Further Briefing.

12 After due consideration of all of the papers filed by the parties, the arguments of counsel
13 and the declarations and evidence submitted by the parties, this Court finds by clear and
14 convincing evidence that service is proper under the circumstances, that defendant Norteño is a
15 criminal street gang as defined by Penal Code § 186.22 (the Street Terrorism Enforcement and
16 Prevention "STEP" Act), that a public nuisance caused by the conduct and activities of the
17 Norteño gang exists in the Safety Zone, and that the conduct and activities of defendant and the
18 members of defendant is the cause of the public nuisance that exists in the Safety Zone.

19 In opposing the issuance of the injunction, the Intervenors assert that the People have
20 failed to establish that Norteño can be sued as an unincorporated association; that the evidence
21 does not support a finding of a pervasive public nuisance in the Safety Zone warranting the
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23 ¹ The boundaries of the safety zone covered by the preliminary injunction are attached hereto as Exhibit A and are
24 incorporated by reference.

1 issuance of an injunction; that the Intervenor are not gang members; and that the proposed
2 preliminary injunction is defective and would do more harm than good.

3 **The Norteño Gang as a Defendant and Service:** The Intervenor contend that the
4 People have not shown that Norteño is an entity that can be sued as an unincorporated
5 association. In advancing this argument, the Intervenor do not dispute that Norteño is a well-
6 established gang with deep roots in California, or that the gang operates in the Safety Zone or
7 that the gang has committed the acts of public nuisance delineated by the People in ninety-three
8 declarations. Rather, the Intervenor rely upon the recent decision of People v. Broderick Boys
9 (2007) 149 Cal.App.4th 1506, where the court held that an unincorporated association must be
10 organized for a lawful purpose to effect service on the entity by serving a single member under
11 Corporations Code §§ 18035(a) and 18220. This Court finds that Broderick Boys is not
12 controlling. There, the court stated: “[A]nd in any event, the district attorney did not take steps
13 ‘reasonably calculated, under all circumstances, to apprise interested parties of the pendency of
14 the action and afford them an opportunity to present their objections.’” (Broderick Boys, 149
15 Cal.App.4th at 1511.)

16 Here, the Intervenor have not challenged the People’s method of service and given the
17 steps taken, this Court concludes that service was effective and within constitutional mandate of
18 Mullane v. Central Hanover B. & T. Co. (1950) 339 U.S. 306, 314. First, Exhibits D, E and F of
19 the Declaration of Mario Molina set forth facts that the Norteño gang has certain lawful
20 objectives and that evidence has not been disputed by the Intervenor. Second, numerous
21 decisions recognize the right to sue a gang as an unincorporated association. See, e.g., People ex
22 rel. Gallo v. Acuna (1997) 14 Cal.4th 1090, 1125; People v. Englebrecht, Jr. (2001) 88
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1 Cal.App.4th 1236. Third, the People properly effected service within the meaning of Code of
2 Civil Procedure § 369.5.

3 **Evidence of a Public Nuisance:** Civil Code Section 3479 defines a public nuisance as
4 “anything which is injurious to health, including, but not limited to, the illegal sale of controlled
5 substances, or is indecent or offensive to the senses, or an obstruction to the free use of property,
6 so as to interfere with the comfortable enjoyment of life or property....” The People presented
7 ninety-three declarations from police officers documenting conduct within the Safety Zone that,
8 by clear and convincing evidence, establishes that the Norteño gang has engaged and continues
9 to engage² in conduct that constitutes a public nuisance. The declarations also support the
10 finding, by clear and convincing evidence, that the Norteño gang is engaged in drug trafficking
11 and using business practices that cause a public nuisance. For example, the gang discourages
12 competition through violence, weapons possession, fighting, and destruction of public and
13 private property. Such conduct gives rise to a claim under section 17200 of the Business and
14 Professions Code.

15 The Intervenors have not disputed any of the described acts. Rather, they have submitted
16 declarations from three citizens who state, in substance, that the declarant has not been harassed
17 and/or is comfortable moving about the Safety Zone.³ The Intervenors also challenge the
18 People’s reliance on police declarations and note that the record in People ex rel. Gallo v. Acuna,
19 *supra*, included citizen declarations. The People correctly argue that Acuna does not mandate
20 citizen declarations. Moreover, the People state such declarations were not sought given the
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23 ² The People’s Reply Declarations document continuing acts of violence, graffiti and witness intimidation.
24 ³ See the Declarations of Iris Biblowitz, Roberto Hernandez and Eric Quezada.

1 gang's well-established pattern of witness intimidation.⁴ Certainly, the source of the evidence is
2 for the Court to weigh. The fact is that the police declarations reflect the concerns of persons in
3 the Safety Zone who are reporting the conduct documented in the police declarations.

4 Given the present state of the record, the People are likely to prevail on the claims
5 alleged, i.e. the activities of the Norteño gang come within the definition of a public nuisance
6 and the nuisance is substantial and unreasonable. See People v. Engelbrecht, 67 Cal.App.4th at
7 492.

8 **Parties Subject to the Preliminary Injunction:** No one has appeared on behalf of the
9 Norteño gang. By clear and convincing evidence, the People have established the existence of
10 the gang, its operations within the Safety Zone and its commission of acts constituting a
11 nuisance.

12 Each of the Intervenors has denied being a member and/or an active member of the
13 Norteño gang. In naming the Intervenors and twenty-three other persons, the People rely on the
14 Declaration of Officer Mario Molina to bring together evidence in the record and to opine on the
15 involvement of each of the named gang members. The record establishes and the Intervenors
16 have not disputed Officer Molina's qualifications as a gang expert, in particular an expert on the
17 Norteño gang. Courts consistently recognize testimony that mirrors that given by Officer
18 Molina. See, e.g., People v. Garedely (1996) 14 Cal.4th 605, 616-620. In addition, the Courts
19 recognize that such testimony is sufficient to establish that a person is a member of a criminal
20 street gang beyond a reasonable doubt. (Id.)

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23 ⁴ Molina Declaration ¶¶ 67-68, 117-118.

1 For the purpose of granting a civil injunction, the decision in People v. Engelbrecht, 67
2 Cal.App.4th at 1261, defines an active gang member as “a person who participates in or acts in
3 concert with an ongoing organization, association or group of three or more persons, whether
4 formal or informal, having as one of its primary activities the commission of acts constituting the
5 enjoined public nuisance, having a common name or common identifying sign or symbol and
6 whose members individually or collectively engage in the acts constituting the enjoined public
7 nuisance. The participation or acting in concert must be more than nominal, passive, inactive or
8 purely technical.” The Engelbrecht court rejected the argument that the individual must “devote
9 all or a substantial part of his time to the gang.” (Id. at 1260-1261.)

10 The Court finds, by clear and convincing evidence, that the following Intervenors are
11 active gang members: Kevin Chavez, Ernesto Arroyo, Jesus Guerrero, Henry Hernandez, Ruben
12 Reynoso-Jimenez, Antonio Garcia, and Hector Barrera. The Court finds that the record does not
13 establish by clear and convincing evidence that Intervenor Antonio Buitrago is an active gang
14 member.

15 The Court finds, by clear and convincing evidence, that the following persons named as
16 gang members, who have been served and have not intervened are active gang members: Juan
17 Barrera, Victor Cano, Joshua Deleon, Rocky Deleon, Elvis Martinez, Antonio Napoleon,
18 Bizmark Ocampo, Alex Reyes, Miguel Sanchez, Daniel Santiago and William Whitebone.

1 The Court finds, by clear and convincing evidence, that the following persons named as
2 gang members but not as yet served⁵ are active gang members: Jose Amador, Noel Arguello,
3 Samuel Dueñas, Joseph Fuimano, Hector Garcia, Daniel Gonzalez, Carlos Morales, Salvador
4 Rodriguez, Alfred Sanchez, Michael Sanchez, Anthony Urbina and Omar Varela. The
5 Court finds that the record does not establish by clear and convincing evidence that Ana Behena
6 is currently an active gang member.

7 **Issuance of a Preliminary Injunction:** The People seek a preliminary injunction against
8 the Norteño gang itself and persons who have been named and served with the proposed
9 preliminary injunction. The People contend that the proposed injunction is essential to address
10 the magnitude of the impact of the Norteño gang's conduct on the community and is narrowly
11 tailored to address the public nuisance that pervades the Safety Zone.

12 The Intervenors object to the requested relief on several grounds. First, the Intervenors
13 focus on the impact of the proposed injunction on their right of association with family, friends,
14 organizations and resources within the Safety Zone. This concern was expressly considered and
15 rejected in People v. Englebrecht, 88 Cal.App.4th at 1263, where the court explained:

16 Collective activity by gang members is at the core of the nuisance the injunction
17 justifiably attempts to abate. While it may be that many gang members are also related
18 by family, and while the injunction's associational restrictions may affect, in the target
19 area, contact between those family members, those facts are not determinative. The
20 injunction places no restrictions on contact between any individuals outside the target
21 area. In the target area the injunction merely requires gang members not to associate in
22 public. While the injunction may place some burden on family contact in the target area,
23 it by no means has, in our view, a fundamental impact on general family association.

24 Any attempt to limit the familial associational impact of the injunction would
25 make it a less effective device for dealing with the collective nature of gang activity.

1 See also People ex rel. Gallo v. Acuna, 14 Cal.4th at 1112.

2 Next, the Intervenor's express concern that the injunction will be used by the police to
3 target and harass Latino males.⁶ This is a bona fide concern, but the Court cannot assume that
4 the police will engage in unconstitutional conduct in the enforcement of the injunction. This
5 concern does highlight the need for specificity in the terms of any injunction and clear and
6 convincing evidence that those who are subject to the injunction are active gang members.

7 The Intervenor's criticize the People for not consulting with community organizations
8 regarding the utility of the proposed injunction and the impact on the ability of the community
9 organizations to carry out their programs if the injunction is issued. No one is disputing that
10 many organizations in the Mission District contribute to the well being of the community within
11 the Safety Zone. However, the concerns expressed by certain organizations, although genuine,
12 appear overstated. At the same time, the record is undisputed "that violence in the Mission is a
13 serious problem"⁷ and the People correctly note that consultation with community organizations
14 is not required. Despite the efforts by these and other organizations, those living and visiting the
15 Safety Zone are subject to a repeated pattern of criminal conduct.⁸ It is this conduct that the
16 injunction seeks to address, not the beneficial work of organizations seeking to improve the area
17 and the lives of those who live there. In determining whether to issue the injunction, it is the
18 impact on the gang and its members that is central, not the impact on community organizations.

21 ⁵ The preliminary injunction is effective only against those who have been named and served. Upon service, these
22 individuals have the right to challenge the People's evidence. However, that right shall not be a defense to any
proceeding brought to enforce the injunction or for a violation thereof.

23 ⁶ The Declarations of Roberto Hernandez, Eric Quezada, Henry Morales, and Santiago Ruiz, all of whom are
involved in community organizations, and Iris Biblowitz, a resident of the area, support this contention.

24 ⁷ Memorandum of Points and Authorities of Intervenor's Antonio Garcia and Ruben Reynoso-Jimenez at 9:17.

25 ⁸ As the Reply Declaration of Officer Molina demonstrates, that conduct is both violent and continuing.

1 Finally, the Intervenor present a declaration from Judith Greene, an expert on gang
2 suppression tactics, who testifies, based on her work and others upon whom she relies, that “gang
3 injunctions are ineffective for three reasons: very loose criteria are used to establish who is a
4 gang member, the fact that the consequences of being placed on a gang injunction are permanent
5 and the fact that an affected community’s input is ignored.” As explained above, the criteria for
6 who is an active gang member is that approved by the courts in prior decisions and mirrors the
7 criteria for establishing gang membership beyond a reasonable doubt. The People have proposed
8 an opt-out provision to address the concerns about the permanent nature of the injunction and the
9 issue of community input is addressed above. Ms. Greene notes that “[t]here is no ‘magic bullet’
10 to end gang crime” but she believes that evidenced-based practices “are scientifically proven to
11 reduce juvenile recidivism and positive outcomes for young people.” At present, the individuals
12 that the People seek to enjoin are adults, not juveniles, and Ms. Greene has not proposed a
13 remedy to address the conduct of that group.

14 **Safety Zone:** The Intervenor contend that the conduct at issue is confined to a far
15 narrower area than proposed by the People. The Court requested and has reviewed supplemental
16 filings by the parties on this issue and concludes that a public nuisance exists in the area
17 described as the “Safety Zone.” It is defined as an “L” shaped area generally bordered by 23rd
18 Street to the North (but extending to 21st Street at Alabama Street), Valencia to the West, Cesar
19 Chavez to the South, Potrero Avenue to the East, and extending to encompass La Raza Park, also
20 known as Potrero Del Sol Park. A map of the Safety Zone is attached hereto as Exhibit A. The
21 area is consistent with the evidence and the decision in People v. Engelbrecht, 88 Cal.App.4th at
22 1242, where the court upheld a “one-square mile” area.

1 **The Preliminary Injunction:** It is the Court's conclusion that the People have
2 established, by clear and convincing evidence, that Norteño is a criminal street gang, as defined
3 by Penal Code Section 186.22, that said gang has engaged and continues to engage in conduct
4 that constitutes an egregious public nuisance in the Safety Zone. Defendant Norteño was
5 properly noticed of these proceedings. The Intervenors received proper notice of these
6 proceedings by service of process or chose to voluntarily intervene thereby submitting to the
7 jurisdiction of this Court. Further, the People are likely to prevail on the merits of the claim and
8 the equities weigh in favor of granting the preliminary injunction because the conduct and
9 activities of the criminal street gang and its active members in the Safety Zone is the cause of a
10 significant and continuing public nuisance.

11 GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED that:

- 12 1. Defendant Norteño and Norteño members Ernesto Arroyo, Hector Barrera, Juan
13 Barrera, Victor Cano, Kevin Chavez, Joshua Deleon, Rocky Deleon, Antonio
14 Garcia, Jesus Guerrero, Henry Hernandez, Elvis Martinez, Antonio Napoleon,
15 Bizmark Ocampo, Alex Reyes, Ruben Reynoso-Jimenez, Miguel Sanchez, Daniel
16 Santiago and William Whitebone are enjoined and restrained from engaging in or
17 performing directly or indirectly, any of the following activities in the Safety Zone:
 - 18 a. **No Intimidation:** Confronting, intimidating, harassing, threatening,
19 challenging, provoking, assaulting or battering any person known to be a
20 witness to, known to be a victim of , or known to have complained about any
21 activity of Norteño;
 - 22 b. **No Weapons or Dangerous Weapons:** Anywhere in public view or any
23 place accessible to the public, (1) possessing any gun, ammunition, or illegal
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1 weapon as defined by Penal Code Section 12020, (2) knowingly remaining
2 in the presence of anyone who is in possession of such gun, ammunition or
3 illegal weapon, or (3) knowingly remaining in the presence of such gun,
4 ammunition or illegal weapon;

5 c. **No Graffiti or Graffiti Tools:** Damaging, defacing, or marking any public
6 property or private property of another, or possessing any spray paint can,
7 felt tip marker, or other graffiti tool as defined in Penal Code Section 594.2;

8 d. **Stay Away From Drugs:** Without a prescription, (1) selling, possessing, or
9 using any controlled substance - including but not limited to heroin,
10 methamphetamine, cocaine, hashish or marijuana - or related paraphernalia
11 as defined by Health & Safety Code Section 11364 - including but not
12 limited to rolling papers, pipes used for illegal drug use, crack vials and
13 syringes - (2) knowingly remaining in the presence of anyone selling,
14 possessing, or using any controlled substance or such related paraphernalia,
15 or (3) knowingly remaining in the presence of any controlled substance or
16 such related paraphernalia;

17 e. **No Trespassing:** Remaining on any private property after being asked to
18 leave by the owner, owner's agent, or person in lawful possession of the
19 property;

20 f. **No Gang Signs, Gang Symbols or Red Clothing:** Flashing, meaning using
21 one's hand or hands or finger or fingers, to form the numbers "14", "24",
22 "XIV", "X4" or "XXIV", the letter "N" or "M"; wearing clothing, hats or an
23 accessory that contains red in whole or part that is visible to the public; or
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1 publicly displaying by any means the following gang symbols, the numbers
2 "14", "24", "XIV", "X4" or "XXIV", the letters "N" or "M", the words or
3 phrases "Norte", "Norteno", "LNS", "22B", "21ABL", "Nuestra Familia",
4 "Shotty Block" and "SFM"; this prohibition does not include a uniform that
5 must be worn while one is engaged in lawful employment or coming to and
6 from the place of employment;

7 g. **Do Not Associate:** Standing, sitting, walking, driving, gathering or
8 appearing anywhere in public view or any place accessible to the public,
9 with any known member of Norteno gang, but not including: (1) when all
10 individuals are inside a school attending class or on school business; or (2)
11 when all individuals are inside a church engaging in a religious service;
12 provided, however, that such individuals are in full compliance with all other
13 terms of the injunction, and no association occurs during travel to and from
14 any of those locations;

15 h. **Do Not Loiter with the Intent to Commit a Narcotics-Related Offense as**
16 **Proscribed in Health and Safety Code Section 11352:** Loitering in a
17 public place in a manner and under circumstances manifesting the purpose
18 and with the intent to commit an offense specified in Chapter 6 of the Health
19 and Safety Code, commencing with Health and Safety Code Section 11350,
20 and Chapter 6.5 of the Health and Safety Code, commencing with Section
21 11400, in accordance with Health and Safety Code Section 11532(b);

22 i. **No Nighttime Loitering:** Loitering in a public place between 10 p.m. on any
23 day and 5:30 a.m. the immediately following day;

1 j. **Blocking the Passage of Person or Vehicles:** Blocking the free passage
2 of any person or vehicle on any street, walkway, sidewalk, driveway,
3 alleyway, parking lot or other area of public passage or on the grounds of
4 a school.

5 k. **Do Not Force Any Person to Join the Norteño Gang:** Making any threats
6 or doing anything threatening, or disturbing the peace, to cause a person to
7 join the Norteño criminal street gang;

8 l. **Do Not Prevent Any Person From Leaving the Norteño Gang:** Making
9 any threats or doing anything threatening, including without limitation
10 shooting, striking, battering, destroying the personal property or disturbing
11 the peace (1) to prevent a person from leaving the Norteño gang or (2) to any
12 person known to have left the Norteño gang; and

13 m. **Obey All Laws:** The enjoined and restrained parties must obey all laws that
14 (1) prohibit violence and threatened violence including murder, rape, robbery
15 by force or fear, assault and battery, (2) prohibit interference with the
16 property rights of others including trespass, theft, driving or taking a vehicle
17 without the owner's consent, and vandalism, or (3) prohibit the commission
18 of acts which create a nuisance including the illegal sale of controlled
19 substances, loitering with intent to commit a narcotics-related offense, and
20 blocking the sidewalk.

21 2. No Norteño member shall be subject to the provisions of this Order unless said
22 individual has been personally served with this Order or has intervened in this case
23 and the order is served on his/her counsel of record.
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1 Any member of the Norteño gang who is subject to this Order and wishes to opt-out
2 of the gang must make a properly noticed motion in accordance with the California
3 Code of Civil Procedure, the Rules of Court and applicable local rules, and serve the
4 motion upon the People by serving the City Attorney. It shall not be a defense to
5 any civil or criminal contempt charge, or civil or criminal charge of any nature
6 whatsoever, that the moving party is eligible to apply for relief under this provision.

7 3. This Order shall be subject to modification of any of its terms by any party, any
8 person named in the complaint, and any alleged member of the Norteño gang served
9 with the complaint and the preliminary injunction, including without limitation
10 motions by the People to add additional persons to be bound and motions to be
11 removed from or to modify the list of persons subject to this Order; any noticed
12 motion must be filed in accordance with the California Code of Civil Procedure, the
13 Rules of Court and the applicable local rules of this Court;

14 4. The People shall not be required to post an undertaking pursuant to Code of Civil
15 Procedure section 529(b)(3).

16
17 October 2 2007

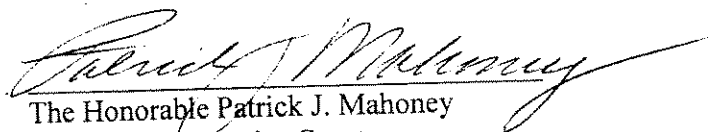
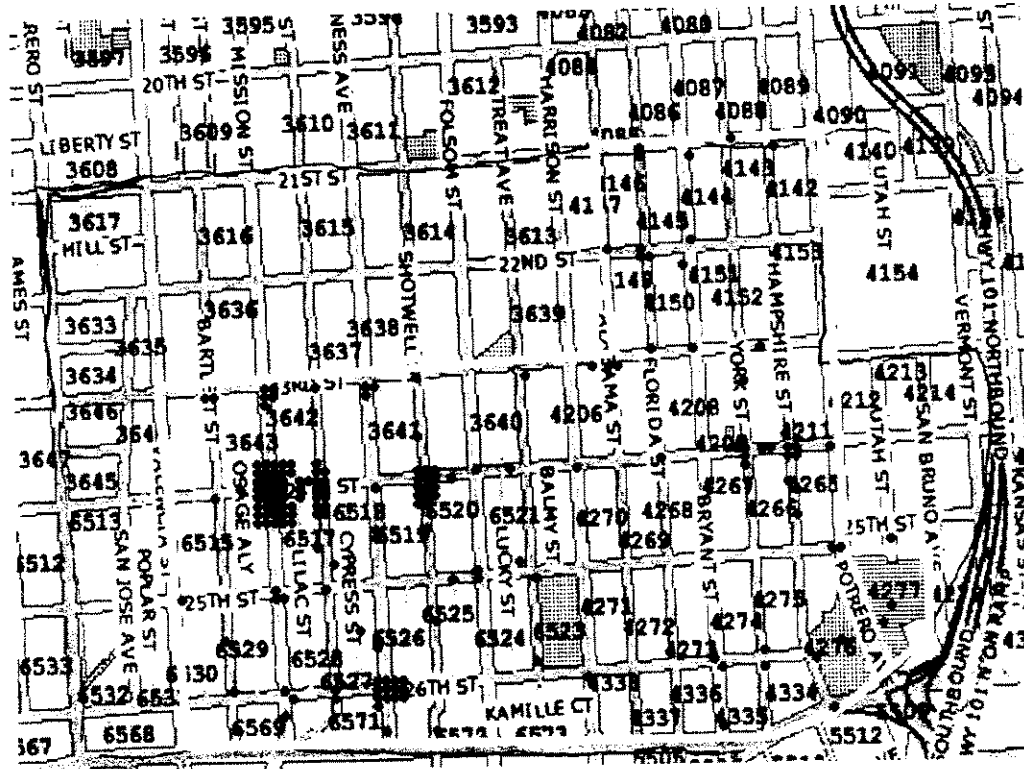

The Honorable Patrick J. Mahoney
Judge of the Superior Court

EXHIBIT A
MAP OF PROPOSED SAFETY ZONE



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SUPERIOR COURT OF CALIFORNIA
County of San Francisco

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff(s)

Case Number: 464492

vs.

CERTIFICATE OF MAILING
(CCP 1013a (4))

NORTENO,
Defendant(s)

I, Gordon Park-Li, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 12, 2007 I served the attached ORDER GRANTING PRELIMINARY INJUNCTION by placing a copy thereof in a sealed envelope, addressed as follows:

MICHAEL S. WEISS
DEPUTY CITY ATTORNEY
OFFICE OF THE CITY ATTORNEY
1390 Market St., 6th Fl.
San Francisco, Ca. 94102

JEFFREY G. ADACHI
PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
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KARL W. KROOTH, ESQUIRE
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San Francisco, Ca. 94111

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: October 12, 2007

GORDON PARK-LI, Clerk

By: 

Deputy Clerk