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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

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A P P E A R A N C E S

GANG DATABASE TECHNICAL ADVISORY COMMITTEE  
MEMBERS:

- Mr. Sammy Nunez
- Mr. Paul Carrillo
- Mr. Scott Sorensen
- Mr. Lt. Jim Considine
- Mr. Michael Scafiddi
- Mr. Chief Jarrod Burguan
- Mr. Marin (Marty) Vranicar
- Mr. Det. Ryan Cooper
- Mr. Jeremy Thornton
- Mr. Luis Marquez
- Ms. Marissa Montes

NON-GDTAC MEMBERS, BUT SAT ON THE PANEL/LED  
DISCUSSION:

- Ms. Sundeep Thind
- Ms. Jenny Reich
- Ms. Arwen Flint
- Ms. Shayna Rivera
- Ms. Shanae Kidd
- Mr. Thomas Bierfreund

A P P E A R A N C E S C O N T I N U E D

ALSO PRESENT PUBLIC COMMENT SPEAKERS:

Mr. Sean Garcia-Leys, Urban Peace Institute

Mr. Rekha Arulanantuan, ACLU

Mr. Jose Valle, De-Bug

Mr. Bener Vejar, De-Bug

Ms. Melanie Ochoa, ACLU

Mr. Christopher Sanchez, CHIRLA

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

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

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

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

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

MR. CARRILLO: My name is Paul

1 Carrillo, executive director of Southern  
2 California Crossroads, also Injury Prevention  
3 Coordinator for St. Francis Medical Center. I  
4 have been working in the field of gang prevention  
5 intervention for about 17 years out of Los Angeles  
6 and I am also the cofounder of the Gang Prevention  
7 Intervention Conference in Los Angeles. Thank  
8 you.

9 MR. MARQUEZ: Luis Marquez,  
10 supervisor. I run the International Liaison Unit  
11 in San Diego and I predominantly work on  
12 international job reductions. I have worked in LA  
13 for about 11 years or so, and half of that I spent  
14 working on major gang investigations. Thank you.

15 CHAIRPERSON NUÑEZ: Let's continue  
16 with rollcall.

17 MS. MONTES: Marissa Montes.

18 MR. COOPER: Ryan Cooper, LAPD.

19 MR. VRANICAR: Martin Vranicar,  
20 CDAA.

21 MR. BURGUAN: Jarrod Burguan, San  
22 Bernardino PD.

23 MR. SCAFIDDI: Michael Scafiddi. I  
24 am a lawyer in San Bernardino. I am also the  
25 president of the San Bernardino Legal Aid Society

1 and I was appointed to this committee by the  
2 senate.

3 MR. CONSIDINE: Jim Considine,  
4 lieutenant sheriff, California State Sheriffs'  
5 Association.

6 MR. BIERFREUND: Tommy Bierfreund,  
7 Department of Justice CalGang Unit.

8 MS. KIDD: Shanae Kidd, DOJ CalGang  
9 unit.

10 MS. RIVERA: Shayna Rivera, DOJ Cal  
11 Gang Unit.

12 MS. FLINT: Arwen Flint with  
13 Department of Justice.

14 MS. REICH: Jenny Reich, Department  
15 of Justice.

16 MS. THIND: Sundeep Thind with the  
17 Department of Justice.

18 CHAIRPERSON NUÑEZ: Okay. If you  
19 can do me a favor, copies of the minutes were  
20 submitted to the committee members for review on  
21 November 21st and also included in your packets.  
22 Please let me know if there are any edits that  
23 need to be made, otherwise we will continue with  
24 the agenda.

25 MS. RIVERA: Do we have a motion to

1 approve the minutes?

2 MR. VRANICAR: Motion to approve.

3 CHAIRPERSON NUÑEZ: Second?

4 MR. CONSIDINE: Second.

5 CHAIRPERSON NUÑEZ: Thank you, sir.

6 All those in favor say "aye."

7 [Ayes.]

8 CHAIRPERSON NUÑEZ: Opposed.

9 MS. MONTES: One opposition, but  
10 I've explained why.

11 CHAIRPERSON NUÑEZ: Thank you.

12 Now, we will go into a brief  
13 meeting overview with Ms. Shanae Rivera.

14 MS. RIVERA: It's great to see  
15 everybody again. Thank you for being here. If  
16 you haven't done so already, help yourself to  
17 coffee and snacks in the back. Just an FYI we  
18 will break for lunch around 12:15, otherwise we  
19 don't have planned breaks.

20 And since we are running a little  
21 bit late we definitely won't have any other  
22 breaks. So feel free to help yourself to the  
23 restroom, you can go as you need. And then if you  
24 guys parked here, there is parking -- discounted  
25 parking stickers that you can get from Trini. The



1 discount is like from 30 to 18. So it's still a  
2 little steep, but it is a discount. So thank you  
3 powers that be.

4 Members of the public, again, thank  
5 you guys for being here. If you would like to  
6 speak during one or all of the public comment  
7 periods, please sign up on the coinciding sign-in  
8 sheets, the colored paper out front.

9 Again, if speaking in public isn't  
10 your thing or you have additional comments or  
11 questions either during the meeting or after  
12 today's meeting, you can submit to the DOJ by  
13 going -- by sending an e-mail to  
14 gangdatabasegdtac@doj.ca.gov. And you can do that  
15 at any time throughout the process and throughout  
16 the next year.

17 And it is anticipated, as Sammy  
18 mentioned, that this is our last meeting together,  
19 so we have assigned time limits to each agenda  
20 topic in order to get through everything that we  
21 need to. I am going to announce the total amount  
22 of time before Sundee commences his leading of  
23 the discussion. I will announce when five minutes  
24 are remaining and again when time is up.

25 Sundee has prepared questions for

1 the Committee, but please feel free to ask  
2 questions and make any comments pertinent to the  
3 topic we are discussing. And if there aren't any  
4 questions or comments, I will turn to over to  
5 Tommy to start the first public comment period.

6 MR. BIERFREUND: Has everyone who  
7 would like to speak during the first public  
8 comment period signed the sign-up sheet?

9 All right. We are going to start.  
10 Comments made during this period may only address  
11 the minimum age of entry into the shared gang  
12 database, criteria for designating a criminal  
13 street gang, criteria for an individual to be  
14 designated as a gang member or gang associate, and  
15 source documents.

16 Based upon the number of speakers  
17 who have signed up, each individual will have four  
18 minutes to make their comments. All comments  
19 should be directed at the Committee and speakers  
20 may not yield their time to another.

21 Speakers shall refrain from making  
22 personal attacks while making their comments. The  
23 audience is asked to be respectful of all the  
24 speakers. It is the Committee's practice to  
25 listen to all the speakers and not engage in

1 dialogue. After all the speakers who have been  
2 heard, the committee members may respond as  
3 appropriate. Please follow the guidelines or we  
4 will have to ask you to end your time. And thanks  
5 everyone for the participation.

6 And the first on the time sheet is  
7 Sean Garcia-Lyes from the Urban Peace Institute.

8 MR. GARCIA-LYES: Hello and thank  
9 you, everybody. I will go through the bullet  
10 points in order from the agenda.

11 First, regarding the minimum age of  
12 entry into a shared gang database. When the first  
13 statutory law was enacted dealing with shared gang  
14 database, SB 458, several years ago, it originally  
15 only applied to individuals 18 or under, OR  
16 juveniles under 18, and that provided due process  
17 and notice and appeal rights only to juveniles.

18 When that was passed, I am told  
19 that Oxnard Police Department, finding the notice  
20 requirement burdensome, stopped entering all  
21 juveniles into a shared database into CalGang.  
22 They were still using it for adults but not  
23 juveniles.

24 I am curious whether or not anyone  
25 from Oxnard Police Department would say that that

1 was negatively impacting public safety. I have  
2 yet to see any evidence that public safety has  
3 improved by entering juveniles into the gang  
4 database. I have heard arguments say it is  
5 accurate to call juveniles gang members, but I  
6 have not heard any arguments yet that public  
7 safety has improved by documenting juveniles as  
8 gang members in a gang database.

9 Absent that evidence, I think that  
10 the intent of AB-2298 and AB 90 to reform the gang  
11 database would be that, without evidence to the  
12 contrary, we should be looking at ways to reduce  
13 the use of gang databases and overbroad labeling  
14 people as gang members when there is no public  
15 safety benefit from that.

16 So we have some history with  
17 removing juveniles from the gang database and I  
18 think we should look to that to see whether or not  
19 there is a safety impact.

20 As for the criteria for designating  
21 criminal street gang, because of the 20-year  
22 history of the STEP Act, there is a long history  
23 of case law, specifically on the subject of what  
24 constitutes criminal street gangs. Law  
25 enforcement agencies have become very adept at

1 documenting predicate crimes that establishes a  
2 gang as a criminal street gang.

3 I see no reasoning why CalGang  
4 should not simply use the predicate crime  
5 practices that have developed around the STEP Act  
6 and that any gang that doesn't qualify under the  
7 STEP Act or isn't documented with the sort of  
8 predicate crimes that courts expect the STEP Act  
9 [inaudible], the gang does not meet that and  
10 should not be included.

11 Criteria for being identified as a  
12 gang member or gang associate. For those who  
13 remember the legislative hearings that led to the  
14 enactment of the statute that brought us here  
15 together today, one of the things that motivated  
16 this was the story of Dr. Weber, the author of  
17 some of these bills, whose son was playing  
18 basketball and was told by a police officer that  
19 he was being entered into the gang database  
20 because he was in a gang area and he was  
21 associating with gang members.

22 I don't see any reforms in the  
23 Package 1 Or Package 2 or in the other criteria  
24 that would prevent that from happening. So the  
25 specific incident that motivated the legislature

1 to act on this has not been addressed by these  
2 criteria proposals. So I think we are still a  
3 long way from criteria that solves the problem  
4 that the legislature recognized and that was the  
5 motivation for this.

6 Along with that is the issue of the  
7 source documentation. So I will be presenting  
8 later in this meeting on my clients' experiences  
9 with attempting to be removed from gang databases  
10 which means I have been able to go over several  
11 thousand pages of court documents and FI cards and  
12 investigative documents.

13 (Mr. Jeremy Thornton joined the  
14 meeting at 9:57 a.m.)

15 MR. GARCIA-LEYS: And I think that  
16 there is a huge broad spectrum quality of these  
17 documents and they are a liability. And I think  
18 that addressing source documentation and ensuring  
19 that whatever criteria exists and that's backed up  
20 by appropriate source documents is perhaps one of  
21 the most important reforms that can be made.  
22 Thank you.

23 CHAIRPERSON NUÑEZ: Thank you.

24 MR. BIERFREUND: Thank you. Next  
25 we have Rekha from the ACLU.

1 MS. ARULANANTUAM: I am going to  
2 address the minimum age. Kids under 18 years old  
3 and under should be excluded from shared gang  
4 databases. We know from research that kids are  
5 impressionable. We know that kids behave ways  
6 society perceives them. If we think of them as  
7 bad kids, they will behave like bad kids.

8 In psychology, it's called  
9 introjection. A child absorb society's  
10 projections and begins to use them to define him  
11 or herself.

12 I have a story from another lawyer  
13 who works on education rates. It's about one of  
14 her clients and the names have been changed.

15 Curtis is a 13-year-old Latino boy.  
16 As early as elementary school he struggled to  
17 interact appropriately with peers, oftentimes  
18 getting bullied, and as a result developed social  
19 impressionable issues.

20 Academically he performed below  
21 grade level standards. Curtis was never assessed  
22 for special education to determine whether he had  
23 a disability. In sixth grade he attended a  
24 charter school where he continued to get bullied.

25 The school began labeling Curtis as

1 a gang member based on their perceptions of how he  
2 dressed, talked, and behaved. With that  
3 perception the school surveilled Curtis and  
4 disproportionately [inaudible] for behaviors that  
5 were clearly disability related.

6 When Curtis notified the school  
7 officials that he was getting targeted and  
8 bullied, the school did nothing to intervene or  
9 support Curtis. Finally the school expelled  
10 Curtis.

11 So just to cut some of this story  
12 down, eventually Curtis found himself out of  
13 school. He was on the street -- out on the street  
14 during the day because a single mother had to work  
15 to support him and his siblings. Kids will find  
16 [inaudible] whether in school or on the street,  
17 and Curtis finally joined a gang. In other words,  
18 he found older people out on street who can  
19 protect him and teach him something.

20 The charter school's perceptions  
21 and improper labeling of Curtis had significant  
22 impact on his life's trajectory. Because he was  
23 labeled as a gang member so early in life, he was  
24 pushed out of school onto the street where he  
25 engaged in risky behaviors that ultimately led him



1 to the juvenile system involvement.

2 So my question to you is, if we  
3 send a kid a notice on official police letterhead  
4 saying "you are a gang member," won't they  
5 internalize that and act accordingly? Setting a  
6 minimum age for inclusion in the shared gang  
7 databases confirms with [inaudible] as well.

8 Legislation enacted this year will  
9 end the practice of trying kids 15 years and under  
10 in adult court even for murder charges and exclude  
11 kids Age 12 and under from juvenile court except  
12 for serious crimes. Senate Bill 1391 and Senate  
13 Bill 439. These laws recognize that we must be  
14 less punitive with children in order for them to  
15 rehabilitate. Thank you.

16 MR. BIERFREUND: Thank you. Next  
17 we have José Valle from De-Bug.

18 MR. VALLE: Hi, good morning. So I  
19 wanted to speak on the gang criteria for suspected  
20 gang member and associates regarding (a)(1), (4),  
21 (7) and (8) which [inaudible] stood out to me the  
22 most as well as 756.050. I will just start off  
23 with that.

24 There is still no clarity as to  
25 what is the difference between a gang member and

1 gang associate other than a loose description of  
2 someone being tied to a gang member. "Tied" must  
3 be defined and there should be no reason why  
4 anyone should be in a criminal database without a  
5 conviction.

6           Going back to 756 and (a)(1),  
7 without Miranda rights and an attorney present  
8 informing in person that they may be subjected to  
9 being entered the gang database as a gang member  
10 or associate without educating that person about  
11 harmful implications of admitting to being a  
12 member or associate is a violation of rights.

13           This same standard should be  
14 applied to jail and prison classification.  
15 Without a crime attached to the due process or  
16 proper counsel is just unconstitutional.

17           Regarding (a)(4), has been seen  
18 associating with persons meeting the criteria is  
19 unconstitutional and no one should be entered in  
20 the database simply because of who their family  
21 is, who their neighbors are, who they socialize  
22 with, where they live or, frankly, being poor and  
23 not white.

24           Furthermore, "has been seen" must  
25 be defined. There is no reason why a law abiding

1 person should be subjected to a criminal database  
2 simply because they have been seen with an alleged  
3 gang member.

4                   Regarding (a)(7), I think this also  
5 speaks to a lot of other criterias in here. Has  
6 been seen at one or more gang locations is  
7 unconstitutional and no one should be entered in  
8 the database simply because of where they live.  
9 This is disturbing and should be removed  
10 immediately.

11                   Gang location can't be defined  
12 without clearly -- can't be defined as clearly  
13 criminalizing the mere fact that someone lives in  
14 the barrio. In fact, I challenge the entire  
15 committee here to describe gang location without  
16 being racially bias.

17                   The same goes with (a)(8), I  
18 believe the criteria discussing style of dress and  
19 the tattoos and so on and so forth. Thank you.

20                   CHAIRPERSON NUÑEZ: Thank you.

21                   MR. VALLE: Can I also submit this?

22                   MS. RIVERA: Absolutely.

23                   CHAIRPERSON NUÑEZ: Yes, sir.

24 Thank you, sir.

25                   MR. BIERFREUND: Thank you for your

1 comment. Last we have Benee Vejar with De-Bug.

2 MS. VEJAR: Good morning,  
3 everybody. I am going to be addressing the  
4 minimum age of entry into the shared gang  
5 database.

6 In a discussion of youth scientific  
7 studies and prison reform efforts have found that  
8 the adolescent brain has not been developed until  
9 the age of 25 and, therefore, CalGang is moving  
10 towards not including youth in their database and  
11 aligning with prison reform efforts. Youth ages  
12 25 and under should not be included in this  
13 database.

14 I am also addressing criteria for  
15 an organization should be designated as criminal  
16 street gang. Silicon Valley De-Bug opposes  
17 criteria designated as a criminal street gang  
18 knowing that this criteria is racially bias  
19 targeting communities that have been historically  
20 impacted by poverty inequality.

21 In translation, criminal street or  
22 criminal street gang is just another word for the  
23 barrio, hence criminalizing poverty inequality  
24 [inaudible] Hispanics and blacks in the state.  
25 People face poverty inequality do not have the

1 choice of where they live and are driven by  
2 survival and enduring injustice faced in everyday  
3 barrio life.

4 In fact, there is no way to  
5 sufficiently have a criteria to a criminal street  
6 gang without frankly outlawing the barrio itself  
7 in its entirety. If we were to focus on our  
8 efforts to securing the economy and equality of  
9 the barrio, what law enforcement alleges to be  
10 gang would cease to exist. Thank you.

11 MR. BIERFREUND: Thank you for your  
12 comment. And last on the list we have Melanie  
13 Ochoa from the ACLU.

14 MS. OCHOA: Hello. I would like to  
15 say I am very disappointed in this criteria that  
16 the DOJ has proposed. The statute specifically  
17 directed it to develop regulations that are  
18 evidence-based and none of that is true for these  
19 regulations. I will go through what some of the  
20 most glaring proposals are with [inaudible].

21 The singular criteria to allow  
22 someone to be put in the database simply based on  
23 an admission is completely contrary to the  
24 research on the accuracy of self-admission, the  
25 context in which these alleged admissions are

1 made, and the officers' interpretations of  
2 statements that are made with these alleged  
3 admissions are poorly made.

4 For instance, saying, 'Where are  
5 you from?' 'Echo Park.' That's [inaudible] that's  
6 a community. That's also a gang potentially  
7 [inaudible] if officers want to interpret it that  
8 way. And they do interpret it that way. If  
9 determining things literally [inaudible] where  
10 you're from, the housing projects that you live  
11 in, can put you in this database.

12 And that is precisely what this  
13 criteria -- it's not by accident. It's exactly  
14 what the criteria is asking you to be able to do.

15 Second, all of the criteria that  
16 were previously proposed by Marissa Montes require  
17 that someone is actually convicted for an offense  
18 associated with gang activity, using both the  
19 statutory definition of gang activity versus the  
20 super expanded definition of gang activity which  
21 is incredibly broad that the [inaudible] amendment  
22 and arrests, as we know can be -- are often not  
23 validated when actually someone goes through the  
24 process.

25 So simply an allegation that

1 someone has been -- is that an arrest for selling  
2 weed or smoking weed or purchasing weed? Well,  
3 it's not weed now, but a drug. It's consistent  
4 with gang activity and can put you, again, in this  
5 database when they cannot prove those things in a  
6 court when someone has the opportunity to counter  
7 those allegations with actual evidence.

8 I don't think that's a legitimate  
9 basis for including someone in the database  
10 because we also know that officers, when making  
11 arrests, can essentially doctor the charges even  
12 if they feel they cannot actually prosecute on  
13 them because that's -- because they will be  
14 motivated to do so because that will allow them to  
15 [inaudible].

16 Again, the person being identified  
17 as a gang member or associate by a reliable  
18 source. We have repeatedly tried to require that  
19 identification as a gang member by a third party  
20 be tied to the actual criteria for determining  
21 that somebody is a gang member, but the DOJ is  
22 refusing to do so. This is bootstrapping of  
23 allowable criteria.

24 Again, so if an expert officer says  
25 they believe someone to be a gang member because

1 of how they look, which is exactly what the  
2 officers here have said is the criteria that they  
3 use to determine whether or not someone is a gang  
4 member, that is sufficient to put someone in this  
5 database.

6 And it's completely one-sided. If  
7 someone's mother said someone is a gang member,  
8 sure let's put them in here. What do they know?  
9 But if it turns out they are not a gang member,  
10 what does a mother know? She is not an expert in  
11 gang activity.

12 It's not intended to actually be  
13 based on the reliability of the evidence. It's  
14 just a matter to put people into the database; not  
15 to actually come to an actual correct conclusion  
16 as to whether someone is a gang member.

17 So, again, I think if it's going to  
18 be allowed for a third party to provide evidence  
19 that puts people in the database, it needs to be  
20 tied to the actual criteria, not allowing them to  
21 develop whatever criteria they think, what they  
22 heard about someone, to be allowed to be the basis  
23 for how someone gets into the database.

24 Again, so the criteria [inaudible]  
25 where it says a person directs another to commit a



1 criminal act that furthers the interest of the  
2 criminal street gang, again that is incredibly  
3 vague and it's not even based on a conviction for  
4 that allegation. It's just based on the plain  
5 allegation that someone has directed someone to do  
6 something that would further the gang.

7 Association, again, is  
8 bootstrapping. There is significant evidence that  
9 it's not reliable in terms of someone who  
10 associates with to determine whether or not they  
11 are a gang member. I, who am -- this particularly  
12 connected with gang locations which is excluded  
13 under the statute already and is not reliable.

14 Someone like me, who is attorney at  
15 the ACLU, member of the California Bar, three  
16 degrees from Harvard, one degree from Stanford,  
17 works for a federal judge in the Superior Court of  
18 the Ninth Circuit, could be included in this  
19 database, not by accident but by design, because  
20 of the people who I know and where I live, and  
21 that's exactly what law enforcement says should be  
22 included in here as an associate. Simply by their  
23 ties.

24 And I think that's a completely  
25 inappropriate use of this database to allow people

1 who are not even alleged to be gang members by  
2 officers to be [inaudible] particularly knowing  
3 the informal consequences that occur when someone  
4 is included in the database without having any  
5 opportunity to challenge that. Thank you.

6 MR. BIERFREUND: Thank you. And  
7 that's the end of the public comment period. Pass  
8 it back over to Sammy.

9 CHAIRPERSON NUÑEZ: Yes. Thank you  
10 so much. So thank you all from the public for  
11 your -- for offering that. I think that's very  
12 important to have this kind of dialogue as we make  
13 decisions about all of these different issues that  
14 are significant and important to this committee.

15 I think at this point we are going  
16 to -- right now I am having a mental block right  
17 now.

18 We are going to discuss what was  
19 just presented on the topics of the minimum age of  
20 entry into a shared gang database, criteria for  
21 designating a criminal street gang, criteria for  
22 an individual to be designated as a gang member or  
23 gang associate, and source documents.

24 MS. RIVERA: Before Sundeeep gets  
25 started, I just want to let you know we have

1 10 minutes assigned to discuss the minimum age of  
2 entry, 10 for criteria for discussing a criminal  
3 street gang, 60 for criteria for gang member and  
4 associate, and 10 for source documents.

5 And I apologize for the short  
6 timing. Sundeep?

7 MS. THIND: First of all, I would  
8 like to thank all the members who submitted  
9 comments. We looked through all of them, reviewed  
10 them, and this meeting is going to be a little  
11 different. We are not going to go through member  
12 comments, but they will come up indirectly through  
13 this question and discussion thing that we are  
14 doing here.

15 So I am going to start out with  
16 minimum age for entry. And at the last meeting we  
17 talked about the minimum age to enter a person  
18 into a CalGang database. And there was a  
19 discussion on keeping the minimum age as low as 12  
20 since [inaudible] juveniles aged 10 or 11 in the  
21 database or removing juveniles completely from the  
22 database or setting the minimum age at 16 years  
23 old.

24 So I kind of wanted to circle back  
25 to this issue, especially in light of the passing

1 of Senate Bill 1391. Senate Bill 1391 takes  
2 authority away district attorneys to transfer the  
3 14- and 15-year-olds to criminal court from  
4 juvenile court. So that essentially means that --  
5 it mandates that no child under the age of 16 be  
6 tried as an adult for a crime that he or she is  
7 accused of committing.

8 So the first question to you  
9 members is does the passing of Senate Bill 1391  
10 change your thoughts on what the minimum age  
11 should be to enter a person into the CalGang  
12 database?

13 MS. MONTES: I am happy to start.  
14 I know this has been an issue that I have been  
15 quite passionate about and that I have actually  
16 talked about at multiple meetings already. I  
17 still maintain that I believe that if we can  
18 actually cap it at 18 considering the fact that,  
19 if I remember correctly, the number of juveniles  
20 or the percentage of juveniles in the database is  
21 like 1 percent; correct?

22 MS. RIVERA: Pretty low.

23 MS. MONTES: Right. Something  
24 pretty low. [Inaudible] much of a difference, but  
25 given that there is Senate Bill 1391, I would be

1 amenable to setting it at 16.

2 Anybody else?

3 MR. THORTON: Sorry for being late.

4 Jeremy Thorton. So it's difficult to examine  
5 these questions without kind of looking at these  
6 regulations holistically, one of them being that  
7 the current proposal says that people who admit to  
8 being in a gang, that is sufficient for inclusion.

9 And so if we take that kind of  
10 proposal in conjunction with the minimum age, I  
11 think it's very important to accept the data out  
12 there that shows that juveniles [inaudible] that  
13 they don't do at an extremely young age. So the  
14 innocence project put out some numbers for  
15 exonerees, looking at people who later have been  
16 exonerated for crimes.

17 And they broke it down into various  
18 types of evidence that was used against them. And  
19 one of them is percentage of exonerees who falsely  
20 confessed to the crime; so said "I did this," were  
21 prosecuted because of that confession and it  
22 turned out that they actually did not do what they  
23 said they did.

24 82 percent of the exonerees were  
25 under 14 at the age of the crime. More than

1 50 percent were 14 to 15 at the age of the crime.  
2 Juxtapose those numbers to 18 and over, and that  
3 number is approximately 10 percent. So if there  
4 is an insistence on using admissions to  
5 documenting individuals, then I am adamant in that  
6 it should be 18 and older.

7           And I am not ignoring what law  
8 enforcement said. I also realize that  
9 16-year-olds and 17-year-olds are in gangs and  
10 that can be active. But given the data on false  
11 confessions and the propensity for juveniles to  
12 say things detrimental to themselves that are not  
13 true, I just don't think it's fair to include  
14 juveniles in a criminal database.

15           MR. VRANICAR: It's interesting  
16 that even under the current Senate Bill, 14- or  
17 15-year-olds even in juvenile court can be  
18 convicted of a gang crime. So if we were to adopt  
19 that position that you couldn't go into a gang  
20 database unless you were 18 or older, then someone  
21 who was convicted -- and I believe that one of the  
22 public comment was that no one should be in the  
23 gang database unless they had been convicted of a  
24 crime -- I think that runs counter to what the  
25 purpose of this gang database is. And that is to

1 be used as an investigative tool to determine when  
2 there is -- when there is a crime that has been  
3 committed by gang members, who might be  
4 responsible, and where should we focus our efforts  
5 to determine who was responsible for that  
6 particular crime.

7 So I am of the opinion that the  
8 minimum age should remain where we discussed the  
9 last time and that is 12.

10 CHAIRPERSON NUÑEZ: I think in the  
11 past, in the wake of the past Senate Bill 1391 and  
12 other efforts and other things we should know  
13 about brain science, I think we will find the face  
14 of just what we know about [inaudible] the  
15 adolescent brain.

16 And, frankly, it puts a label that  
17 is very -- has severe implications and diminishes  
18 the life opportunities and life chances of  
19 children. These are children, first and foremost.  
20 I think that -- and the consequences, as we know,  
21 are severe. We put a label on our babies,  
22 basically, like that.

23 I, for one, am with  
24 Professor Montes that we should actually -- I  
25 would be actually in favor of having somebody who

1 actually has the wherewithal to make the decision  
2 whether or not they are -- 18 seems to me like a  
3 very good number frankly when folks are actually  
4 more, I think, in a position to make decisions for  
5 themselves, if you will.

6           If that's the adult age, even  
7 though we know that brain development still  
8 continues up until the age of 24, I feel as though  
9 anything beyond that, anything below that is --  
10 again, flies in the face of everything we know  
11 about brain development, about childhood  
12 behaviors.

13           And this is as a parent, a parent  
14 knowing my own children, that they can easily,  
15 because of the work that I do, be associated into  
16 a criminal street gang database by the sheer fact  
17 that I am their father. I think it's very  
18 frightening to me.

19           And, again, I think it also -- we  
20 have to understand the spirit in which this -- why  
21 we are here, which is not to broaden the net of  
22 the database, but to make very specific use of  
23 this database. And I think that the fact that we  
24 have children as young as 12 entered into this  
25 database is astounding to me, that we would even



1 consider that frankly.

2 I would hope that we could at least  
3 set it at an age of maybe 16. I would vote in  
4 favor of that. But I just don't want us to come  
5 back to this later on because we don't get it  
6 right now. And it seems to me this is a critical  
7 decision that we are making and I would really  
8 implore you to really think about our children and  
9 make a decision based on what's best for them.

10 Anyone else?

11 MR. COOPER: I have got something.  
12 To echo what Marty said, the gang database is an  
13 investigative school. It doesn't mean that  
14 [inaudible]. This is not saying this person is a  
15 gang member. It's just a pointer system. It's  
16 indicating, go look over here, there are FI cards,  
17 there are arrest reports. That's what the system  
18 is.

19 And the question Sundeep answered,  
20 the passing the senate bill has no change in my  
21 opinion. Should we raise the age to 14 or 16 or  
22 18 or 26? It should stay where it is. As an  
23 example that was given in multiple meetings about  
24 a kid that was grown up and, yes, maybe it's the  
25 exception, but this is a kid that was, at a very

1 young age, doing gang-related crime and the  
2 intervention stuff didn't work and he ended up  
3 going down the wrong path.

4 And this is a kid -- in law  
5 enforcement we want to keep information on this  
6 person, figure out who this person is, when we  
7 have [inaudible] shootings, we have monikers, we  
8 have other stuff I have discussed in the past. So  
9 I would be very much opposed to raising it to 16  
10 or 18 or anything higher or saying convictions.

11 This is, again, it's a tool that we  
12 have. It's not labeling them, it's not impacting  
13 their life unless they are committing criminal  
14 acts. That's it.

15 MS. MONTES: I just want to make  
16 one more comment. Thanks so much. Just also to  
17 back up when Jeremy had commented on, and I think  
18 this would be helpful, too, also for the DOJ to  
19 [inaudible] Senate Bill [inaudible] which also  
20 states that, you know, youth who are detained who  
21 are 15 years and younger need to actually have an  
22 attorney before any type of police interrogation.

23 I think that highlights not even  
24 just the legislature intended to protecting the  
25 children, but the fact that the California

1 legislature has said themselves that children tend  
2 to make comments or might admit to something that  
3 might have repercussions without really  
4 understanding. So I think this even highlights  
5 even more why we should set an age limit that's 16  
6 or higher.

7 MR. CARRILLO: If I can make a  
8 comment, with respect to Mr. Cooper's comment and  
9 he suggested that perhaps it was a young person  
10 who was the exception, 12, 13 years old, is  
11 extremely troubling to me for the need to have a  
12 paper trail or FI card or what have you to track  
13 the activity or the membership or association of a  
14 juvenile.

15 And I will give an example from  
16 myself personally. I was -- I have many family  
17 members that are gang members; cousins, aunts,  
18 uncles. I was 14. I was not a gang member. I  
19 had an FI card on me at the age of 13.

20 And so at 14 I was stopped by law  
21 enforcement and asked -- I won't say what law  
22 enforcement agency -- 'Are you a gang member? Are  
23 you associated with these guys?' And I said no.  
24 Another officer came who was with the other  
25 officer when the FI card was created on me prior,

1 again for my association.

2                   They had a conversation and said,  
3 'No, he is with such and such gang.' So this  
4 officer was very upset that I had lied to him. So  
5 he proceeded to search me, put his hand in my  
6 pocket, and squeezed my testicle and tell me that  
7 he doesn't appreciate me lying to him and that the  
8 next time he sees me, it's going to be a lot  
9 worse.

10                   It's just a small example. I am  
11 just saying I agree there are a lot of effective  
12 professional trustworthy officers, but in any  
13 agency, in any group, unfortunately there are  
14 individuals who will abuse the tool or policy or  
15 what have you to their advantage or to violate  
16 someone's rights or to disrespect an individual.

17                   I will also say that whether by  
18 design -- I don't think it's by design -- but it  
19 also contributed to me feeling as if law  
20 enforcement is treating me like a gang member. It  
21 helped my psychological decision making at the  
22 time to then accept that that was the fate that  
23 society was pushing me towards, so I might as well  
24 assume this association and accept it as what life  
25 has in store for me and associate with these

1 gangs.

2 MS. RIVERA: We have to move to  
3 move to the next topic. I apologize.

4 MS. THIND: Thank you so much for  
5 all your comments. We will go to the next topic,  
6 criteria for designating a criminal street gang.  
7 This is more directed towards I guess Ryan.

8 The question is: What does a node  
9 administrator rely on to designate an organization  
10 a street gang? For example, does the officer have  
11 to have reasonable suspicions that the  
12 organization is a criminal street gang and what  
13 types of behaviors might an association or  
14 organization give rise to this reasonable  
15 suspicion?

16 So this is when you are entering a  
17 new gang.

18 MR. COOPER: So, yeah, you do have  
19 to have reasonable suspicion. As node  
20 administrator, there is a form that I have them  
21 fill out, signed by the supervisor, and they have  
22 to have at least three members of this gang.

23 They believe they have reasonable  
24 suspicion that these people or this group is  
25 involved in criminal activity. They meet the

1 definition, common signs, symbols, fear and  
2 intimidation in the community. They have, again,  
3 at least three members documented that they can  
4 put in and they have the crimes that they have  
5 reasonable suspicion of them being involved in.

6 Reasonable suspicion threshold  
7 comes from 28 CFR, which is what we bind ourselves  
8 by, which we comply with. That is the threshold  
9 that we use. If we have criminal predicates, we  
10 can put criminal predicates in there as well.

11 I wouldn't say very often a new  
12 gang is added. I think maybe this year I have  
13 maybe only added a few. Less than five. We are  
14 in LA. We are the largest population of gangs per  
15 a system. So it's not like they are being created  
16 on a daily basis or weekly basis or anything like  
17 that. It's not a very common thing for a new gang  
18 to be added.

19 If the gang falls below the minimum  
20 criteria for the definition, three or more  
21 members, if they don't have three members, if they  
22 don't exist anywhere else in the state or existing  
23 connections, then that gang is deleted out of the  
24 system.

25 So reasonable suspicion, meeting

1 the criteria, the definition of the gang, and if  
2 they have at least three members, the gang stays  
3 in the system.

4 MS. THIND: Do you have a checklist  
5 that you use? I mean, I am sure you know other  
6 nodes, but do you maybe have any knowledge about  
7 what other nodes also do? Do they the same thing?

8 MR. COOPER: It's the same thing.  
9 They have got to have, again, three at least  
10 members.

11 Hey, this gang here, there is a  
12 gang that I am adding actually maybe next week  
13 that has just started up and it's because they are  
14 getting hammered pretty hard by another gang, so  
15 they started up. But they actually have a  
16 faction, another set of their gang in another  
17 node, another area.

18 So I am going to take what they  
19 have and take what we have and combine them  
20 together [inaudible]. We recently had a guy from  
21 another node came to register at one of our  
22 stations [inaudible]. That gang is not in LA. So  
23 we are taking the history of that gang, since this  
24 guy is a gang member, was required by the court to  
25 come register as a gang member, we are taking the

1 history and the comments of what that gang is and  
2 putting it in ours.

3 It's pretty similar from what I  
4 have seen. It's a form we have to fill out; this  
5 is what initially got put in, this is the  
6 background of the gang, this is the [inaudible],  
7 this is the clothing that they wear to express the  
8 gang, the tattoos, whatever, tagging that they  
9 have, and then, again, if we have predicates, we  
10 have predicates. It can either be arrests,  
11 convictions, whatever.

12 MS. THIND: Does anyone want to  
13 make comments on designating a criminal street  
14 gang or thoughts on what Ryan has said?

15 MR. CONSIDINE: Our process is  
16 identical. It's a CalGang form. It's [inaudible]  
17 issued. It's not our own independent opinion of  
18 what we have. We take our time. It takes a lot  
19 of work to get a gang into CalGang. So it's not  
20 an easy process. It's a lot of vetting. And,  
21 again, we probably have three to five gangs a  
22 year.

23 MS. THIND: So do you have like a  
24 checklist? This goes to the next question, but we  
25 are going to come back.



1 MS. MONTES: No worries.

2 MS. THIND: Is there like a  
3 checklist that you utilize?

4 MR. CONSIDINE: There is a form  
5 that has all the [inaudible].

6 MR. COOPER: It's the same form.  
7 And I forgot to mention, they are only created by  
8 the node administrator. So some gang officers  
9 working the street says, 'Hey, I've got this new  
10 gang, the ABC gang,' they can't go create that  
11 gang. It's impossible. They have to go through  
12 us, we create the gang, we tell them, Hey, you  
13 have got a week or ten days, whatever it is to put  
14 at least three members in the system. If they  
15 don't, then we move that gang. Like Jim said,  
16 it's not very common, not very often that we do  
17 it.

18 MS. MONTES: I will be quick. I  
19 promise. Just very quickly, I really appreciated  
20 the comment from Sean Garcia-Leys from UPI when he  
21 stated the STEP Act and the fact that it's already  
22 been -- it has much case law that backs it up  
23 already. So I just wanted to say that I agree  
24 with his comments.

25 MS. THIND: Does anybody else have

1 any thoughts on this topic?

2 So I guess we will move on to  
3 criteria for a person to be designated as a gang  
4 member or gang associate. So multiple  
5 organizations worked together to provide us with a  
6 criteria proposal. And that was the one that was  
7 a stand-alone two-page document that says CalGang  
8 criteria proposal.

9 I just kind of want to discuss this  
10 proposal with you in that there may be things that  
11 we drafted on our end -- it's just something that  
12 we were trying to hear a bunch of different voices  
13 try to come up with something so we can have a  
14 discussion going forward.

15 So without us going into the  
16 specifics, my questions will set that up. And I  
17 have seen some of your thoughts already.

18 How do you feel about -- so what  
19 are your thoughts regarding the way that this  
20 proposed criteria is set up? You know, with the  
21 primary, a secondary, a singular? What do you  
22 think?

23 MR. VRANICAR: Are we talking about  
24 the CalGang proposal or --

25 MS. RIVERA: Yes, the CalGang

1 proposal criteria that was inside your packet.

2 MR. THORTON: So I appreciate the  
3 tier. I do like the tiered system. However, I  
4 don't believe we should have a singular criteria.  
5 So in terms of the [inaudible], that's kind of my  
6 thoughts.

7 MS. MONTES: I will say that I also  
8 appreciate the tiered set-up also because that's  
9 one of the areas that I had previously submitted.  
10 I know we are not going to get into the missions  
11 now, but I have major concerns about the singular  
12 criteria, especially when it's solely based on any  
13 kind of admission.

14 MS. RIVERA: If you want to get  
15 into the admission, you can, Marissa.

16 MS. MONTES: I can?  
17 Sundeep, you said you had  
18 questions?

19 MS. THIND: Yeah, my next one will  
20 be about that.

21 MS. MONTES: I will hold my  
22 comments unless somebody else wants to speak about  
23 the set-up.

24 Nobody else? No? Okay.

25 So I will got onto admissions. I

1 know that my previous comments that I had  
2 submitted did suggest that we submit complete  
3 admissions so long as it was under penalty of  
4 perjury, because at least there is a standard of  
5 some sort.

6                   When we have it be so blanket in  
7 the sense where anything can be classified as  
8 admission, I have major concerns about that, just  
9 in my own experience as an attorney in  
10 representing clients or, as you know, Melanie  
11 Ochoa from the ACLU commented how often it is that  
12 law enforcement -- or even your friends and  
13 family, hey, where are you from? And that can be  
14 construed into anything depending on what vague  
15 answer that come up. A neighborhood and a gang  
16 can mean the same thing depending on how someone  
17 interprets it.

18                   So I believe that this is too  
19 vague, it's too broad where basically anyone can  
20 be designated as a gang member. If anyone asks me  
21 where I am from, I am from Boyle Heights. That's  
22 where I live and that can be sufficient to put me,  
23 as Melanie said, you know, a professor, onto this  
24 database.

25                   MR. VRANICAR: I have a comment

1 with respect to that. You indicated that an  
2 admission would not be -- you would have to have  
3 it under penalty of perjury. So, in effect, for a  
4 consensual encounter, you would be grafting on  
5 what might be your own version of the Miranda  
6 warning. You understand that before you say  
7 anything, that if you lie, you could be charged  
8 with perjury.

9 Now, are you -- so you are  
10 admitting to being a member of the criminal street  
11 gang? I think that's a totally unworkable  
12 solution. I think that I have heard all the  
13 comments that juveniles are basically inclined to  
14 lie about or to admit things that they really  
15 didn't do, but in this case I find it to be very,  
16 very interesting that in a group of gang members,  
17 that someone would admit to being a member of the  
18 gang if he was not. Because that has consequences  
19 for that individual.

20 MR. SCAFIDDI: Just briefly, just  
21 to talk a little bit about what Marty just said, I  
22 have real concerns about self-admission. I think,  
23 Jeremy, at almost every meeting has brought up  
24 statistics that show that kids will say things for  
25 many reasons because there are other kids there or

1 other people there.

2           When I hear the word that would be  
3 a lie, when kids are saying, 'I am in this gang,'  
4 and they are really not, it doesn't necessarily  
5 have to be a lie. [Inaudible] purposely  
6 misleading. Sometimes it's because they are weak  
7 of mind and they are embarrassed.

8           So it doesn't have to be  
9 necessarily a lie. It just has to be under  
10 circumstances they will say something that's not  
11 true without an intent to mislead but, in fact, it  
12 isn't true and we know that.

13           And the studies that Jeremy wanted  
14 to say from the Innocence Project go hand in hand  
15 with everything we are talking about, whether age  
16 in CalGang, criteria. So I have a real concern  
17 about any sort of self-admission to being a single  
18 criteria, especially for juveniles.

19           MR. THORTON: When it comes to the  
20 admissions, using admissions to document someone  
21 in a gang member without any indication of a  
22 desire to look at how reliable that statement is,  
23 it doesn't seem to me that the excuse should be,  
24 well, it's a pointer system, it's not going to  
25 have any bad effect on them in society.

1                   Because for law enforcement it  
2 seems to me we want this to be an accurate pointer  
3 system. And so it doesn't seem right. Given what  
4 we know about confessions, given what we know  
5 about juveniles confessing things they didn't do,  
6 it doesn't seem right to allow someone to say  
7 something that can be interpreted by the officer  
8 without any check that he is admitting to gang  
9 membership.

10                   I understand that law enforcement  
11 sees this as a very trustworthy indicator of  
12 membership. If the committee -- if the Department  
13 of Justice insists on including this, if law  
14 enforcement does, my request is that there be  
15 requirements of trustworthiness where if the  
16 police officer has a body-worn camera, he needs to  
17 be recording this interaction and it needs to be  
18 [inaudible] so that lawyers like the individuals  
19 at the UPI and ACLU who litigate gang  
20 documentation, getting people out of these  
21 databases, can have the body-wear camera where  
22 they can analyze the circumstances of the FI.

23                   I am not going sit here and say  
24 that certain admissions can be extremely probative  
25 of someone's gang membership. But these

1 individuals should have an ability to contest this  
2 and lawyers for these individuals should have an  
3 ability to contest this if there are, in fact,  
4 indications of untrustworthiness. [Inaudible] I  
5 list some factors that I thought may go toward  
6 trustworthiness, but ultimately I think it needs  
7 to be recorded.

8           And if the police officer has a  
9 body-worn camera or has a recording device  
10 [inaudible] and don't wear a body-worn camera and  
11 they don't use it during this consensual  
12 encounter, then I think that's extremely probative  
13 of the statement in whether or not it was said and  
14 the circumstances it was said.

15           And attorneys who litigate,  
16 including people in the database on whether or not  
17 they should be included, should have access to  
18 this information.

19           MR. VRANICAR: I think what should  
20 be remembered is that under AB 90 and also  
21 included in these regulations is the issue of  
22 notice, especially as it applies to juveniles. So  
23 if under the singular criterion a juvenile or  
24 someone else admitted, then before they can be  
25 entered into the database, it still requires that



1 they have notice. And we have set forth both in  
2 the regulations and in the statute a whole list of  
3 things that are going to be entered into the gang  
4 database.

5           So for the other point that I  
6 wanted to make, especially for those individuals  
7 involved with prevention and intervention,  
8 wouldn't it be -- wouldn't it be that first  
9 opportunity to get a hold of that juvenile, that  
10 kid, and get them to some services once they have  
11 the notice?

12           And if they were -- if they are as  
13 early as the time frame that we are talking about  
14 indicating that they were admitting to gang  
15 membership or hanging out with other gang members,  
16 once that notice went to the individual and/or the  
17 parent or guardian, then there is an opportunity  
18 for services and intervention.

19           So, you know, we talk about these  
20 criteria in a vacuum. And it's not a vacuum.  
21 There is a whole process that's involved here.  
22 And if someone wanted to challenge, as Jeremy  
23 indicates, whether or not it's reasonable or  
24 unreasonable, the circumstances of that  
25 opportunity is there and we built that in already.

1 MS. THIND: Thank you. Just going  
2 off of this, what if the stand-alone self-admit  
3 criteria only applied to adults rather than  
4 juveniles? What are your thoughts on that?

5 MR. THORTON: I think there still  
6 needs to be indications of trustworthiness. What  
7 if the person is on drugs? What if there is  
8 someone next to them and they just, you know, are  
9 trying to take the heat?

10 There are just so many things that  
11 happen on the street that these officers know  
12 about that they deal with and why not record it?  
13 If it's going to be used to document them in a  
14 criminal database, if this is subject to  
15 litigation later on, which Marty has just talked  
16 about, then why not record it? Why not have the  
17 best evidence there.

18 Challenging this when you have  
19 someone with perhaps with a criminal record,  
20 perhaps without a job, perhaps without an  
21 education that comes into court and says, 'I  
22 didn't say that,' and then you have a police  
23 officer who has been with the force for five  
24 years, has a college degree, comes in and takes  
25 the stand and says, 'Yes, he did,' I mean as

1 Martin is pretty aware of how the court system  
2 works, the judge is not going to believe my  
3 client.

4 And so having a recording there  
5 eliminates that ambiguity. It eliminates the  
6 ability for this to be, how should we take this?  
7 For many people this is not just a pointer system.  
8 For these individuals in the database, this is an  
9 end. They have been called a gang member. That's  
10 it.

11 That may be as far as it goes.  
12 They may never commit a crime a day in their life,  
13 but they have been documented as a gang member,  
14 they have been told by the police that they are a  
15 gang member. And so it very much is an end. It's  
16 not a means to an end.

17 I understand why law enforcement  
18 uses it. I do believe them when they say that  
19 it's successful in stopping crime and catching  
20 criminals, but for those individuals included,  
21 there just needs to be an avenue for redress when  
22 it's wrong.

23 MR. COOPER: Going back to the last  
24 comment and then this one as well, the reason that  
25 the people know that they have been documented as

1 a suspected gang member or suspected associate is  
2 because we are required by law to send them a  
3 notification letter. Prior to 458 we didn't have  
4 to send them a notification letter.

5 My department did send it to the  
6 juveniles, to the parents. That's something my  
7 department has done for years and years and years.  
8 Because of law, we are now required to send them a  
9 letter saying "we suspect that you are potentially  
10 a gang member or a gang associate."

11 So what are we going to do? We  
12 have to comply with the law and that's what the  
13 law is. Everything -- I know my agency patrols  
14 gangs, detectives I guess eventually are going to  
15 be given body cams, but everything is recorded.

16 And that is something that can be  
17 used later on when you want to go to litigate it,  
18 and say, 'Hey, this guy said he is from Echo  
19 Park.' [Inaudible] this is Echo Park, that you  
20 live in Echo Park, or you are a member of the  
21 Echo Park gang, whatever, and we don't want -- as  
22 gang officers, gang investigators, we don't want  
23 bad information in the system. That just makes  
24 our job even harder.

25 So if somebody wants to taint

1 somebody's file with some bad info, then it  
2 doesn't help us. It just makes our job harder.  
3 There is a review that's done before something  
4 gets put in. Just because I stopped some guy and  
5 he says, 'Hey, I am a member of the Hells Angels,'  
6 and I know for a fact this guy is [inaudible].  
7 That doesn't mean -- it gets reviewed before it  
8 goes in.

9                   It goes to whatever detective,  
10 supervisor, they look at it and go, no, this guy  
11 is a 5150. This guy is not a [inaudible]. He was  
12 booked for under the influence because he was  
13 running around naked down Hollywood Boulevard and  
14 he claimed to be a member of whatever. We are not  
15 going to take that. It happens all the time.

16                   The gang officers who are specially  
17 trained, they are looking to try to find the  
18 truth. They don't get any bonus credit, they  
19 don't get a bonus or get overtime for documenting  
20 more gang members. It's not like they get their  
21 preferred days off. Hey, you documented 20 gang  
22 members last week. Cool. You can have weekends  
23 off.

24                   The benefit for us is to make sure  
25 we get accurate information. And whatever is put

1 in the system, we want it as accurate as possible.

2 MS. MONTES: I just wanted to  
3 circle back to Sundeeep to your question. Again, I  
4 still would have major issues with it if it's a  
5 stand-alone single criteria. I agree with Jeremy  
6 and, you know, even Detective Cooper saying we,  
7 you know, when we have these interactions  
8 [inaudible], we can put in recordings as a source  
9 document, which I think would be great, but I have  
10 spoken to many members of the public who are  
11 completely against having any sort of admission as  
12 a criteria, but I hear law enforcement as to the  
13 importance as to this.

14 If you are going to include  
15 admission as a criteria, it should not be  
16 stand-alone and I think it should count as a  
17 secondary criteria if that's the case if you are  
18 really going to have to include it.

19 And another reason, again, is I  
20 know I have had conversations with law enforcement  
21 and I believe Detective Cooper, him and I have  
22 spoken multiple times, and I understand this is a  
23 very important law enforcement tool and I  
24 understand that for the purposes of law  
25 enforcement in this state it is used as a pointer

1 system.

2 But I do believe based on the  
3 comments that I have received from the public in  
4 my own personal experience representing either  
5 at-risk youth or even former gang members, that  
6 information that's entered into the database, if  
7 it's obtained by other agencies, including  
8 immigration agencies such as ICE, can have major  
9 consequences.

10 So if someone is placed into the  
11 database as singular criteria as to admission,  
12 that can have major immigration consequences.  
13 Because the immigration court compared to criminal  
14 court does not have any true evidentiary standards  
15 that apply to them.

16 I have objected in immigration  
17 court and most of the time the judge still allows  
18 it and takes it for what it is. So that's why I  
19 think it's really important that we have to  
20 safeguard this information as much as possible.  
21 And if you are going to use admission, regardless  
22 if you are an adult or minor, it should not be a  
23 stand-alone criteria. It should be considered a  
24 secondary criteria, but nonetheless should still  
25 be documented.

1 MR. CARRILLO: If I can make one  
2 quick comment. I agree with Mr. Thorton and  
3 Marissa in regards to my objection to the single  
4 criteria. And if I can just respond again to  
5 Mr. Cooper and how he explained how the database  
6 is used and how law enforcement officers from  
7 LAPD -- you know, it's not -- they don't get a  
8 bonus or a pat on the back if they enter more gang  
9 members into the system, but I would say that part  
10 of my concern with this database are the smaller,  
11 less well functioning law enforcement agencies  
12 throughout the state. Right?

13 So LAPD in that regard might be a  
14 very well-oiled machine in how it's managed and  
15 how the oversight is, but there are a lot of other  
16 smaller law enforcement agencies that perhaps use  
17 it in different ways, with respect to your  
18 comment.

19 MR. SCAFIDDI: If I can, I agree  
20 with Marissa and Jeremy on everything they have  
21 said, especially about single criteria. Two  
22 comments though. A body-worn camera can show what  
23 is said in context.

24 I will just tell a quick anecdote  
25 little story that I have talked about with every



1 client who comes into my office about when you  
2 review reports, there are things in the report  
3 that are not correct, things in the report that  
4 are not correct, and things that have been taken  
5 out of context. And with audio recording, it can  
6 just audio, it doesn't have to be video, you can  
7 see context.

8 The story is this. If you ever  
9 watched the movie My Cousin Vinny, there is a  
10 scene where Sheriff Farley is interviewing Ralph  
11 Macchio's character.

12 CHAIRPERSON NUÑEZ: The two youths.

13 MR. SCAFIDDI: He goes to the  
14 Sac-O-Suds, that's the name of the store, and  
15 takes out tuna fish from his pocket and says, 'I  
16 forgot this,' they left and get stopped.

17 And sheriff walks in and, 'When did  
18 you shoot the clerk?' He goes, 'I shot the  
19 clerk,' like, 'I didn't shoot the clerk, what are  
20 you talking about?' And then two seconds later  
21 there is a knock on the door and lady named Gladys  
22 comes in and the sheriff leaves and as he is  
23 leaving, Ralph Macchio stands up and yells, 'I  
24 shot the clerk.' Like there is no way I shot the  
25 clerk, what are you talking about? But later on

1 in the movie in court the sheriff testifies about  
2 two admissions of shooting the clerk.

3 Now, that's a farfetched analogy,  
4 but context is important. It's extremely  
5 important. And I have to disagree with Sergeant  
6 Cooper about one thing. There may not be a quid  
7 pro quo bonus for getting FIs on people, getting a  
8 gang list, but most gang cops, men and women who  
9 go into gangs, they start off as hard-charging  
10 patrol officers and deputies.

11 There are no slug lazy cops being  
12 assigned gang details. It just doesn't work like  
13 that. It just doesn't work like that. They are  
14 hard-charged and proactive and that's how they get  
15 there. And they continue to be proactive  
16 hard-chargers. And that's always the concern, the  
17 fine line.

18 So they may not get better days  
19 off, they certainly get overtime when they go to  
20 court. Gang cases tend to bring more court  
21 litigation with motions and things like that. So  
22 it may not be a direct benefit, but the police  
23 officers, the men and women, the deputy sheriffs  
24 that go into gangs, they start off as the most  
25 proactive officers. That's what got them there.

1 And they continue to do that. And that's where  
2 you have to always be cautious. And that's my  
3 comment.

4 MR. CONSIDINE: Okay. So in terms  
5 of the recording, we are 2,200 sworn officers in  
6 my department. We don't have body cameras. We  
7 will not have body cameras. So that's impossible  
8 that the DOJ that the [inaudible], so why throw it  
9 out there?

10 It's one of those things. We can't  
11 afford it. We don't always record on a homicide.  
12 And you really think we are going to need that on  
13 admission on a gang? That's crazy.

14 And, No. 2, for you to say small  
15 agencies are worse than big agencies, that's just  
16 ludicrous because we have node administrators that  
17 oversee those agencies. That's our job as node  
18 administrators. To say we're not doing our job,  
19 that's not fair. We all have a quality control.

20 It's all -- to say Long Beach is  
21 worse than LAPD, that's wrong. Because you think  
22 that, that's totally not fair because we are all  
23 sworn officers. We all go through the same  
24 academy. [Inaudible] that they are worse at what  
25 they do. [Inaudible] well oiled machines.

1 MR. SCAFIDDI: Just one last  
2 comment. And I appreciate the lieutenant's  
3 comment. Right now, today and for the past six  
4 months, the Rancho Cucamonga station, the  
5 sheriff's department, are using body-worn cameras  
6 and testing them. So is Chino Hills station.

7 I get body-worn cameras from Rancho  
8 all the time on DUI cases. Maybe [inaudible], so  
9 we do see that. But it doesn't have to be  
10 body-worn cameras. You can buy a little recorder  
11 for 10 bucks, 20 bucks. Body-worn cameras are the  
12 best because not only do you hear the voice, you  
13 can see the interaction. But it doesn't have to  
14 be a 20-million-dollar outlay for body-worn  
15 cameras to show some additional indicia of the  
16 questioning. It can simply be a tape recorder  
17 that costs a lot less money.

18 MS. MONTES: Very quickly, just to  
19 respond to the lieutenant's comment, but this is  
20 actually as to not all law enforcement agencies  
21 have body cams or the same type of resources  
22 because this has been brought up to me too when I  
23 have spoken to other agencies, but I think there  
24 is a way we can write that into the regulations.  
25 If the agency has access to it like LAPD, they

1 must submit it.

2 But I think this also then  
3 highlights the fact that if other agencies  
4 [inaudible], this not be a single criteria due to  
5 the fact that they aren't able to collect  
6 necessary evidence, recordings, or maybe if there  
7 are other source documents or evidence they are  
8 able to obtain.

9 Again, if you are going to include  
10 admissions, it shouldn't be singular. It can be  
11 used somewhere else [inaudible] secondary  
12 criteria.

13 MR. SCAFIDDI: One more comment  
14 relating to body camera. Rialto PD, San  
15 Bernardino County, a fairly small agency. I would  
16 say mid size for San Bernardino County but small  
17 when compared to the larger agencies in the state,  
18 they were the first law enforcement agency in  
19 San Bernardino County to go exclusively to  
20 body-worn cameras.

21 And the reason they did that and  
22 they got a grant for it was because they wanted to  
23 be able to cut down investigation time and look at  
24 citizens' complaints on negative contacts with  
25 officers. And as a result of the body cameras,

1 citizen complaints went down in Rialto by 43  
2 percent. And [inaudible] points went down even  
3 further.

4 So every member of law enforcement  
5 in this committee, in fact every member of law  
6 enforcement in the state should want to have a  
7 body camera on them or an audio recording because  
8 the City of Rialto numbers tell us that more often  
9 than not it helps gather evidence for the police  
10 and helps unsustained complaints.

11 So I don't know why there would be  
12 a problem with just adding that layer [inaudible]  
13 to gather evidence to have an indicia of  
14 trustworthiness that Jeremy was talking about as  
15 far as self-admission.

16 MR. THORTON: I am cognizant of the  
17 fact that not every agency has a body-worn camera.  
18 I did include in my proposals of [inaudible]  
19 recording readily available. These are FIs are  
20 created on the street, they happen quickly.  
21 Sometimes there isn't going to be a recording, but  
22 that should be the exception, not the rule.

23 I don't think it takes away from  
24 the fact that the officer should list the  
25 circumstances of the contact. What's going on?

1 Who are they with? Are drugs involved? Why did I  
2 initially contact them? And document those things  
3 for later use.

4 I agree with everything as Sergeant  
5 Cooper says, they want it to be accurate and I  
6 certainly -- I don't want to suggest that every  
7 officer is going out there trying to document  
8 people even if it's right or wrong.

9 But I think some officers make  
10 mistakes, some officers are wrong, some officers  
11 are making judgment calls that later need to be  
12 litigated and questioned. That's why I have a  
13 job. So if admissions are going to be used, there  
14 needs to be a way to substantiate the reliability  
15 of the admission.

16 CHAIRPERSON NUÑEZ: I just -- I was  
17 debating whether or not I was going to chime in on  
18 this one, but I just recollect in my own  
19 experience, and I think Paul actually had me  
20 thinking about my first experience getting hammed  
21 up, as they say, by law enforcement, the gang task  
22 was G-force as it was called.

23 And in my neighborhood as a young  
24 man, them asking me where I lived, asking me who  
25 my family was, and proceeding to insinuate that I

1 was a gang member, at that point I was just a kid.  
2 And, actually, even admitting that the other  
3 officer knew my older family members and I stated,  
4 'Well, you know, we are the hardest gang there is  
5 out here.' Him actually saying that to me. And I  
6 was thinking to myself, wow, that's kind of  
7 self-admission, but I don't think they were  
8 including that in the database.

9           There were circumstances there,  
10 there was power dynamics there, and by virtue of  
11 that, I was put into a gang database kind of  
12 label, ended up getting expelled for a simple  
13 fistfight at school because I was a gang member.

14           I mean this has, again,  
15 implications on children's -- on the outcome for  
16 our folks. I think that there is -- for me there  
17 is the policy. But then there is what happens on  
18 the ground in our communities every single day.

19           And we know that it happens and  
20 there has been numerous experience with this  
21 issue. So I would be very, very -- I think that  
22 just even self-admission, because there is just  
23 to -- I didn't admit to it, but it was insinuated  
24 and I just kind of again -- and my mom wasn't  
25 going to go into the law enforcement office, the



1 headquarters, to dispute it or to the court to  
2 dispute it because we just don't do that. We just  
3 don't. We will not go into, -unless it's  
4 absolutely necessary -- into a situation where we  
5 feel afraid.

6 And my mother obviously working two  
7 jobs, raising her children wouldn't, have  
8 contested it because of fear of further kind of  
9 criminalization of her son. So I think that there  
10 is really circumstances right now where I don't  
11 think the self-admission as a single criteria  
12 should be the basis for inclusion in the gang  
13 database.

14 MS. THIND: Thank you, Sammy. So  
15 let's move on. Thank you for your thoughts.

16 Let's talk about some of the  
17 terminologies that's used in this CalGang criteria  
18 proposal. Like the term "authored communications"  
19 in (2)(C). I am wondering how is this term  
20 interpreted by law enforcement versus how can it  
21 be interpreted in a court of law?

22 So the full subdivision says -- or  
23 section says:

24 "The person is identified as  
25 a gang member or a gang associate

1                   by physical evidence, or authored  
2                   communications taking credit for  
3                   an offense consistent with gang  
4                   activity."

5                   And I know Jeremy made a comment on  
6                   this. I was hoping you could expand on it as  
7                   well.

8                   MR. THORTON: Okay. So when I see  
9                   "authored communications," I think of a jailhouse  
10                  kite where somebody passes some letter from one  
11                  cell to another cell via, you know, a trustee  
12                  working -- a jailhouse worker who is also an  
13                  inmate or slides it across with a piece of fishing  
14                  line. There are various ways they communicate  
15                  with kites. Kites are used. Kites are used in  
16                  prosecution. Kites are also notoriously  
17                  unreliable. So when I saw "authored  
18                  communications," that's what I thought.

19                  And then I also saw Facebook.  
20                  Posting something on Facebook, tagging a news  
21                  article on Facebook and taking credit for it, you  
22                  know, I think it would be foolish in regular life  
23                  to believe everything you read on Facebook unless  
24                  you can independently verify it.

25                  I understand some people take

1 credit for things, I understand Facebook  
2 [inaudible] put yourself out there and things like  
3 that, but there is a lot of popularity that goes  
4 on, there is a lot of deceit that goes on in  
5 Instagram or whatever the newest social media  
6 platform is where you can author communications.

7 So without some sort of concrete  
8 definition of "authored communications" that would  
9 exclude kites, exclude things that would detract  
10 from the reliability of the database, it just  
11 seems to me that we should eliminate that language  
12 from the section.

13 MR. VRANICAR: Authored  
14 communications would also be recorded jail calls.  
15 So it seems to me that if you have an individual  
16 who is talking about his gang activity over a  
17 recorded call, that's certainly an authored  
18 communication.

19 As far as kites not being reliable,  
20 the individual certainly -- kites are often  
21 authenticated -- well, have to be authenticated in  
22 court as to who created that kite. So I think if  
23 an individual takes time and effort to create such  
24 a document and then to pass it on to confederates  
25 or to others, I think he should be held

1 responsible for that.

2 And that information could easily  
3 form the basis of -- I mean, talk about physical  
4 evidence, that's certainly physical evidence.

5 MS. THIND: And law enforcement,  
6 "authored communications," what does that mean to  
7 you, the term, if it means anything to you?

8 MR. CONSIDINE: It's pretty vague.

9 MR. THORTON: So if by authored  
10 communications we mean recorded phone calls, then  
11 we should write recorded phone calls.

12 MS. THIND: That's what I am trying  
13 to get at. I am not quite sure what that means so  
14 I am trying to see what the organizations are  
15 proposing of what that means so we have a thorough  
16 understanding of what we put in here.

17 MR. SCAFIDDI: And ironically,  
18 recorded phone calls, we need to know the context.

19 MS. THIND: Okay. Then I guess we  
20 can move on to the next question.

21 So what types of physical evidence  
22 is also used in that same section? And I am just  
23 curious what types of physical evidence does law  
24 enforcement potentially use to identify someone as  
25 a gang member or gang associate and how is this

1 physical evidence different from criminal street  
2 gang-related clothing and accessories?

3 MR. THORTON: So when I read this,  
4 and just to kind of give some background into why  
5 I proposed what I proposed, is when I read  
6 physical evidence, what came to mind was a  
7 fingerprint or DNA.

8 A fingerprint on a shell casing  
9 that has -- of a shooting where all the  
10 indications is gang-related, that can be physical  
11 evidence that can be used. The reason -- the  
12 limitation I suggested is that it must be current  
13 and accurate.

14 And because tattoos are included in  
15 a different section on photographs, you know,  
16 because of Facebook and MySpace and those sorts of  
17 things, I don't know if MySpace is still being  
18 used --

19 MS. RIVERA: Your age is showing.

20 MR. THORTON: Yeah. That's why I  
21 also put that exclusion in there. And so there is  
22 physical evidence out there that is probative of  
23 activities. And so to the extent that that's the  
24 physical evidence law enforcement has cultivated  
25 using and documents and source documents, it seems

1 fair so long as it's a current and accurate  
2 indication of what law enforcement is proposing.

3 MR. VRANICAR: Evidence Secure is  
4 part of a search warrant. In many instances the  
5 location, if it's the individual's home, he may  
6 have -- he may have gang graffiti on the walls, he  
7 may also have his own personal notebook with  
8 copies of his gang crime or gang signature and the  
9 rest of it. I think that certainly would qualify  
10 as the type of physical evidence that would be  
11 included.

12 I don't see the need for any  
13 further explication of the term "physical  
14 evidence." It's any number of things that's going  
15 to be in the eye of the court of when you submit  
16 it.

17 MS. THIND: Thank you. Let's move  
18 on to the next question.

19 MR. THORTON: If I can, sorry.

20 MS. THIND: Go ahead.

21 MR. THORTON: That was also another  
22 the reason because of the varying types of -- the  
23 fingerprint example I think is a pretty strong  
24 indicator. But a notebook with some tagging in  
25 there or graffiti in there they found because

1 someone's brother is a Fourth Amendment waiver, I  
2 don't think that is strong. And so that's why I  
3 also put this down as the secondary criteria and  
4 ask that it be one of three that we found.  
5 Because the term "physical evidence" can be so  
6 broad. Thank you. I'm sorry.

7 MS. THIND: No worries. Thank you,  
8 thank you.

9 So next in regards to the criteria,  
10 the person has been seen associating with persons  
11 meeting the criteria for entry into the CalGang  
12 database. I feel like it's a little vague. So  
13 how can this be possibly tightened up?

14 One of the members suggested the  
15 language "the person has been seen associating  
16 with persons already documented in the CalGang  
17 database," what are the Committee's thoughts on  
18 utilizing this verbiage?

19 MR. COOPER: I don't think it  
20 should be limited to somebody that's already  
21 documented. We can have a contact with somebody  
22 and they might not already be in there. They  
23 purged out, they haven't been documented before,  
24 but they meet the criteria and they say, 'yes, I  
25 am.'

1           The guy is a full-fledged member,  
2 he admits it, he has got the tattoos, whatever, he  
3 just wasn't on our radar before that. And the guy  
4 that's with him, he says 'I am not a member, I  
5 hang out with these guys,' he is an associate. So  
6 it should not be limited to just somebody that's  
7 already -- that's previously documented in the  
8 system.

9           MR. VRANICAR: That was my comment,  
10 Ryan, I had for after that. Person has been seen  
11 associating with persons meeting the criteria for  
12 entry or have been -- who have been previously  
13 entered into the CalGang database, to cover those  
14 circumstances where the individual is hanging out  
15 with somebody who is already in the database.

16           MS. THIND: I believe this was  
17 Marissa's comment actually, but Martin had a  
18 similar comment and he had both situations.

19           MR. THORTON: So I don't know how  
20 this can be an accurate interpretation when the  
21 word "associate" is used. That can be standing  
22 around in a group. And it oftentimes is standing  
23 around in a group. And when we are talking about  
24 creating a database of gang members and gang  
25 associates, people who do bad things, an officer



1 seeing them standing around in a group on one  
2 occasion, I understand [inaudible], but it's  
3 just -- something doesn't seem right about this.  
4 It seems too broad. And so that's why I consider  
5 [inaudible].

6 MS. MONTES: I found it to be --  
7 this definition to be -- well, I just found it to  
8 be too broad. And, again, you know, harping on  
9 the example of me, Jeremy, Michael, Sammy, and  
10 Paul could all be listed as associates because of  
11 this.

12 And then again I go back to, you  
13 know, the incidents that I have with my clients,  
14 survivors of human trafficking who have been  
15 trafficked by a gang. They are associated because  
16 they are being trafficked by a gang, but by  
17 classifying them as associates, you are already  
18 basically listing them as a gang member, victims  
19 of domestic violence, family members.

20 And I found this -- and I have to  
21 go back to my notes -- but I found this to be  
22 inconsistent with -- granted, I understand now,  
23 Sundeep, because you said another group submitted  
24 this, right, and that was the DOJ -- but I found  
25 this to be inconsistent with the definition we

1 have already had as to what is a gang associate.

2 So I really don't like this. I  
3 think it's incredibly broad and basically opens up  
4 that anybody who has any sort of ties to anyone  
5 who might be classified as a gang member can be  
6 placed into the database.

7 MS. THIND: So we are running out  
8 of time and we only have 14 minutes left to talk.  
9 So I'm going to go down to this question.

10 What are the Committee's thoughts  
11 as to how the criteria is allocated between  
12 primary and secondary in the criteria proposal  
13 document?

14 So I know we talked about singular  
15 and we know everyone's thoughts on that, so let's  
16 just talk about what is under primary and  
17 secondary and how they can be moved around, what  
18 your recommendations would be.

19 MR. THORTON: So in what I had  
20 submitted, I included under primary criteria which  
21 would include two of the following submissions  
22 given the limitations that I suggested earlier:  
23 The reliable source, but given the qualifications  
24 that I included, initiating an individual by  
25 participating in an [inaudible] as a primary;

1 directing the gang member to do something is a  
2 primary. And I actually included tattoos as a  
3 primary.

4 In the secondary, which would  
5 require three, I had four criteria listed:  
6 Physical evidence, the personal observations of a  
7 police officer, seeing gang signs thrown, gang  
8 signs, hand gestures, gang locations without a  
9 legitimate or innocent purpose, and I also  
10 included tattoos there, but it looks like that was  
11 an oversight on my part.

12 MR. COOPER: I would move the  
13 secondary criteria of tattoos up to a primary  
14 saying that we should have -- that is really a  
15 good criteria. So basically what our policy is  
16 now, two criteria, two separate criteria, tattoos  
17 being one of them, markings, brandings, scars,  
18 indicating the gang membership. So it would  
19 definitely be up into the primary criteria.

20 MS. MONTES: Again, I know that you  
21 guys have -- everyone has already seen what I  
22 previously submitted, so I just want to say again  
23 I really appreciate the -- having this tiered  
24 system. I think you guys already probably know  
25 too as to my thought as to what should be

1 allocated as to a primary and secondary, so I will  
2 save my breath on saying that.

3 I just wanted to be able to talk to  
4 you again, I brought up concerns about it before,  
5 I understand tattoos can be an indicator of gang  
6 membership, but I would like for us to put some  
7 sort of limit, if possible, as indicating as to  
8 the age of the tattoo.

9 Because, you know, I have clients  
10 who have left their gang but still have their  
11 tattoos because it's something permanent. And  
12 maybe they are coming from a low-income family,  
13 don't necessarily have the resources to do tattoo  
14 removal. And just for the fact they get stopped  
15 by law enforcement but they are actually not gang  
16 involved, they shouldn't be classified based on a  
17 tattoo.

18 Another thing is I -- there was  
19 something about if you meet -- the No. 4:

20 "A person may be initially  
21 entered into the CalGang database  
22 as a suspected gang member if the  
23 person meets one primary  
24 criterion and one secondary  
25 criterion."

1 I don't like that at all, but I  
2 would change that to two secondary criteria just  
3 because it should be elevated because only one  
4 criteria is met. And I think you also saw that in  
5 my comments too, Sundeeep.

6 MS. THIND: Do any of the other  
7 members have thoughts on No. 4 pertaining to a  
8 person may be initially entered into the CalGang  
9 database as a suspected gang member if the person  
10 meets one primary criterion and one secondary  
11 criterion?

12 MR. COOPER: I agreed with one  
13 primary and one secondary. You have two criteria  
14 and at least two. The only thing going back, I  
15 forgot to mention was, directing somebody to  
16 commit a criminal act. It's a little -- I think  
17 it can be interpreted both ways.

18 When was it? '20 years ago I told  
19 a guy to do a drive-by on other gangsters.' That  
20 doesn't seem like something that's current, that's  
21 fresh. If we are going to use something like  
22 that, we should maybe have some type of time  
23 frame.

24 This guy, 'I did a drive-by,' 'who  
25 ordered you to do it?' Whatever the case was, that

1 it's within five years or something that we are  
2 staying consistent because, 'hey, I ordered a hit,  
3 10, 15 years ago.'

4 MS. THIND: So what would be your  
5 recommendation? Five years?

6 MR. COOPER: I would probably say  
7 five years for consistency purposes.

8 MS. THIND: Does anybody have any  
9 other thoughts on how they think the criteria  
10 should be allocated between primary and secondary?  
11 If you want to take some time to think about it  
12 even during lunch, you can write down what you  
13 would think is good and then just give it to me so  
14 at least I have your thoughts.

15 MR. VRANICAR: I have just one  
16 comment; that I didn't care for the language that  
17 was used tied to a specific criminal street gang.  
18 And I changed the language to "a person has been  
19 seen displaying symbols and/or gang signs that are  
20 associated with a criminal street gang."

21 And then under (C), I had a  
22 specific comment there that the person has been  
23 seen at one or more gang locations, law  
24 enforcement or shall document the specific  
25 location or locations and how they are known as

1 criminal street gang locations.

2 I think that that response to some  
3 earlier criticism that we had, going back to even  
4 the legislative proposal that we had in AB 90,  
5 that -- and I have heard those comments here --  
6 that an individual says, 'Well, I am from Boyle  
7 Heights' or Echo Park and therefore, you know, 'I  
8 got entered into a gang database.'

9 But if the officer is specific  
10 about the gang location and why that specific  
11 location is known as a criminal street gang  
12 location, it's not only a street corner in Boyle  
13 Heights or Echo Park, but it's necessarily  
14 associated with a criminal street gang.

15 MS. THIND: I think the term there  
16 was mostly to -- I guess it was talking about the  
17 CalGang database. You can't enter a person in the  
18 database that they are a gang associate -- like  
19 you have to physically mark that this person is  
20 associated with a gang member to even enter them  
21 into the database.

22 So maybe the language wasn't  
23 clear -- I mean, "associating" is a better word,  
24 but I am just curious how we can maybe clarify  
25 that. So if we look at Subdivision (b):

1 "A suspected gang associate  
2 shall only be entered into the  
3 CalGang database if that person  
4 is tied to a person who has  
5 either been classified as a  
6 suspected gang member in the  
7 CalGang database or meets the  
8 requirement for entry..."

9 So an associate can't just be  
10 entered. They have to be in the system tied to a  
11 gang member to have an entry. So that was kind of  
12 like what I was going for in that subdivision,  
13 telling law enforcement you can't just enter an  
14 associate. You have to tie them to a person who  
15 is already in the system or meets the criteria.

16 MR. CARRILLO: If I can make a  
17 quick comment, I am wondering if, as a suggestion,  
18 if perhaps we can add some sort of glossary or  
19 what have you to this document of the criteria  
20 proposal to really define some of the terms that  
21 it seems like some of us are struggling with.

22 Like physical evidence, gang area.  
23 What really defines a gang area. Is it a corner?  
24 Is it an alley? Is it where there is graffiti?  
25 So just as a suggestion. I don't know if that is



1 something that folks would be interested in kind  
2 of flushing out some of this terminology so it's  
3 more clear.

4 And then if I can just briefly go  
5 back, my intent was not to offend law enforcement  
6 at all. I respect law enforcement. I have no  
7 problem with law enforcement. I just think that  
8 it's irresponsible for everybody to assume that  
9 it's being used in the same way for the same  
10 purposes. That was my point.

11 But I apologize if there was any --  
12 if anybody took offense to my statement. Thank  
13 you.

14 MS. THIND: Thank you, Paul.

15 Since we have about four minutes  
16 left, let's talk about this. So I was looking at  
17 criteria patterns and if we should make a new  
18 criteria pattern. If we did go off something like  
19 this primary and secondary criteria thing, how  
20 would we -- what would be an additional criteria  
21 pattern that we could possibly create? Should we  
22 create like another combination? Should there be  
23 something else?

24 MR. COOPER: I don't think we  
25 should complicate it. We don't need to call it a

1 primary, a secondary, a third or fourth or  
2 whatever. I mean, we have criteria that we  
3 believe we feel strongly about and this is what we  
4 should stick with.

5 So instead of saying one from here,  
6 three from here, I think as long as we have the  
7 minimum of at least two criteria to put somebody  
8 in the system and it's verified to the best of our  
9 ability, that we stick with that.

10 MS. MONTES: I will just say again  
11 that I really like the tiered criteria. Granted I  
12 was the one who originally proposed it, and the  
13 reason being, working with the different community  
14 groups that this idea came about was to address  
15 community concern that some criteria are more  
16 reliable than others.

17 And this was really our way of  
18 compromising, you know, our thinking trying to  
19 take law enforcement's concerns into account,  
20 especially when it comes to some of the criteria  
21 that's more controversial like admissions.

22 Granted, the way that it's set up  
23 right now for this proposal so far, I would  
24 probably move around some of the criteria, but,  
25 again, like I said, I have already submitted to

1 you guys my previous proposal on [inaudible] what  
2 would be primary and what would be secondary.

3 But I really think that this type  
4 of set-up giving way to different ones would  
5 address community concerns and I think if we are  
6 trying to move towards something that's a little  
7 bit more transparent where the community has more  
8 trust in this database and in law enforcement, I  
9 think it's something we should keep.

10 CHAIRPERSON NUÑEZ: Yeah, I wonder  
11 with the AB 953, the racial profiling bill, how  
12 does this work with or against that particular  
13 kind of attempt to really prevent the racial  
14 profiling of individuals? And it seems to me like  
15 some of these are kind of like subjective. And  
16 then there is some that are kind of concrete.  
17 Does that make sense?

18 So somebody got busted doing a  
19 crime with other gang members. That's pretty  
20 concrete. Versus somebody living in a particular  
21 neighborhood that's designated as a gang area and  
22 how that's defined or somebody that has the  
23 clothing or attire of a proposed gang member.

24 I think some are more suggestive.  
25 And I think if we could actually have, you know,

1 kind of a combination before we enter somebody  
2 that has hard fact along with subjectivity and  
3 professional experience with law enforcement, I  
4 think that would be a happy medium. Does that  
5 make sense?

6 MS. THIND: Uh-huh.

7 CHAIRPERSON NUÑEZ: Thanks.

8 MR. THORTON: So in regards to  
9 criteria of pattern, the two primary and three  
10 secondary, I thought that was a good allocation as  
11 far as how many primary versus how many secondary  
12 you need. In those instances where there is going  
13 to be a combination, I would like to see it be one  
14 primary and two secondary.

15 CHAIRPERSON NUÑEZ: Are you looking  
16 for a particular kind of criteria or just --

17 MS. RIVERA: It would help if you  
18 would say what you would consider a valid primary  
19 and a valid secondary.

20 MS. THIND: You can write your  
21 thoughts down.

22 MR. THORTON: Do we have a second  
23 to talk about the location?

24 MS. RIVERA: We do need to talk  
25 about source documents. Sorry, Jeremy.

1 MS. THIND: So with source  
2 documents, I don't actually have any questions  
3 ready for that, but I do have your comments.

4 Marissa, I have all of your  
5 comments.

6 We have everything we are taking  
7 into consideration. We are actually going to run  
8 it up through our legal division and the HE will  
9 make the final call on what exactly it's going to  
10 look like. So I just wanted to ask in addition to  
11 anything you have already submitted and that we  
12 have talked about, are there any items regarding  
13 source documents that you would like to talk about  
14 right now? And if not, then we can send it back  
15 to Jeremy.

16 MR. VRANICAR: I have a particular  
17 question with respect to source documents under  
18 Subdivision (B).

19 "Photographs are permitted to  
20 be used with source documents  
21 only if they are legally  
22 obtained."

23 I guess I have some issue with  
24 that. I'm not sure what that means that if you  
25 have a booking photo or if the officer has taken

1 photographs of an individual's tattoos and stuff,  
2 you are going to overlay a legal requirement on  
3 that? Does that mean consent?

4 If you have a consensual encounter  
5 and the individual agrees to do that, would that  
6 qualify? I guess -- and the fact is that there  
7 may be postings on social media, take a screen  
8 shot of what somebody posted there or whatever, is  
9 there some -- I guess this is the first time I had  
10 seen that language, "legally obtained."

11 MR. THORTON: So I actually had the  
12 opposite interpretation when I read it. It seems  
13 to me that it can't violate the Fourth Amendment.  
14 You can't have an officer walk up to someone and  
15 pull down their pants and take a photograph of a  
16 tattoo on their back or butt, right, that that  
17 would be a problem.

18 You can't have an officer take  
19 someone's cell phone without a warrant and search  
20 through it with photographs. That would be a  
21 problem.

22 So I think if I post something on  
23 Facebook, I don't have a reasonable expectation of  
24 privacy if my account is public. And I think  
25 taking a screen shot of it seems pretty fair. I

1 don't know of any kind of complicated  
2 interpretation that it would be.

3 So I saw this as kind of just  
4 respecting the dignity of individuals who are  
5 going to be consensually encountered on the  
6 street. So it seems like a fair limitation,  
7 especially in California, where California law  
8 does not extend beyond the supreme court  
9 jurisprudence on the Fourth Amendment.

10 MS. MONTES: Well, just quickly on  
11 that, more when it comes to the issue of social  
12 media. I saw that more in terms of a contact,  
13 right, because isn't contact -- and I have to go  
14 back as to how we defined it, it's something that  
15 I push, it has to be an in-person contact when you  
16 are obtaining this information.

17 And talking about the reliability  
18 of social media, what's on Facebook, what clients  
19 post, I don't think it's actually reliable when it  
20 comes to becoming an indicator of gang membership.  
21 So I actually push for social media to not be  
22 included as a source document for the reason that  
23 I don't think it constitutes a lawful contact  
24 because I don't think it's fair that just based on  
25 something -- various social medias posts that a

1 client might have but yet has never actually been  
2 arrested, detained, or stopped by law enforcement,  
3 that they are hence placed in this database.

4 MS. THIND: I do have a series of  
5 questions about social media at the end. So we  
6 will get back to that at the end.

7 MR. COOPER: Quick comment I have  
8 about source documents is that, yeah, it can be a  
9 field contact, interview, whatever, out in the  
10 field, or going back to what Marissa mentioned  
11 earlier about making it mandatory of uploading if  
12 we have body cam video, making that mandatory. I  
13 would be against that.

14 I would just say that [inaudible]  
15 if they have the ability to, they can put video in  
16 there. They can put 10 or 15 different types  
17 formats, videos, audio recordings, whatever, they  
18 have the ability to do that, but I would not make  
19 it a mandatory thing. It would completely bog  
20 down the system.

21 My agency alone has entered 17,000  
22 people this year. And the time it's going to take  
23 for that, people are just going stop using it and  
24 shut it down. I wouldn't make it mandatory. I  
25 would say you are encouraged to do it, but it's



1 not a shall. It's a "you may do it."

2 MR. THORTON: So I actually had the  
3 opposite take and I think it should be required if  
4 it's available. I think as a defense  
5 practitioner, I think that body-worn cameras is  
6 one of the best things that could have happened to  
7 the criminal justice system. It cuts equal ways.

8 Sometimes it's helpful to my  
9 clients and sometimes it's not. And so it adds a  
10 lot of clarity to the situation. And so in those  
11 situations where an officer has a body-worn camera  
12 and doesn't elect to use it, I don't think that  
13 should be a valid source document. The  
14 information coming from that contact should be  
15 utilized.

16 MS. THIND: Thank you. Anything  
17 else on source documents?

18 So we have about four more minutes  
19 left. Did you want to make the comment?

20 MR. THORTON: Yes. About the  
21 location, using the location of an individual to  
22 document them, what stands out to me in this is  
23 there are people at a park not involved in gang  
24 activity, but it's a park that is dominated by a  
25 gang through no fault of that individual's.

1           This is one reason I am pushing for  
2 body-worn cameras to be mandatory, this is one  
3 reason I am pushing for recorders, one reason I am  
4 pushing for specifics of contact in detail because  
5 if someone is playing basketball at a park that is  
6 dominated by a gang that sells guns there, that  
7 traffics guns there, or just intimidates people,  
8 they shouldn't also then be entered into a gang  
9 database because they are also victimized by gangs  
10 at the park.

11           So I propose language that I think  
12 should limit that. I am opposed to just including  
13 it as just a gang location. It doesn't seem right  
14 because gang locations are often urban and often  
15 poor neighborhoods.

16           And at least in San Diego, many of  
17 those neighborhoods are -- the majority of the  
18 populations are minorities. And if we are trying  
19 to increase the accuracy of this, if we are trying  
20 to fix the difficulties between neighborhoods and  
21 the community and the police and also have  
22 effective policing, I just don't see a "gang  
23 location," that language alone, being something  
24 that we can include as a valid criteria.

25           MR. CONSIDINE: Jeremy, I kind of

1 get your point. The stats on the location, do we  
2 still have those? It's like 1 percent. It's such  
3 a small -- and we did add the caveat in CG to have  
4 a reason or explanation of why it's a gang area.

5 And, again, it's a secondary thing.  
6 So if he had self-admit in a gang area, that's a  
7 perfect storm. That's what we are looking for.  
8 Stand-alone, no, I get that. Remember, it's just  
9 a secondary. It can be three and four down the  
10 list if you want it to be. So it's not mandatory.  
11 And it's a very low turn-out. We rarely use it.

12 MS. MONTES: I just want to go back  
13 to the public comment by Melanie Ochoa from the  
14 ACLU. She brought up the fact that gang  
15 neighborhood is the same as location and area and  
16 I believe that it needs to be removed to comply  
17 with statute.

18 And then just going back to the  
19 lieutenant's comment, he himself said it's not  
20 very rarely used and I think it should be removed  
21 and not actually a criteria.

22 CHAIRPERSON NUÑEZ: May I ask a  
23 question of law enforcement or anyone that may  
24 have an answer to this.

25 Is gang designation, location, used

1 to determine gang injunctions in a particular  
2 community?

3 MR. BURGUAN: Locations?

4 CHAIRPERSON NUÑEZ: Yeah, so you  
5 designate a gang location in a particular part of  
6 the city. Is that basis used to create a gang  
7 injunction or apply a gang injunction in that  
8 particular neighborhood?

9 MR. BURGUAN: Yeah, gang  
10 injunctions that define certain geographical  
11 boundaries that are controlled by a gang,  
12 particularly with an injunction, will have to do  
13 with that particular area.

14 MR. COOPER: That's based off of  
15 crimes that have happened in a certain area, you  
16 know, whatever a ten-block radius, this gang  
17 dominates that area and they commit the crimes in  
18 that area. So that's where the injunction would  
19 come into that ten-block area based off of crimes  
20 that have been committed, murders, whatever,  
21 robberies, contacts, tagging, marking their  
22 territory, stuff like that.

23 MS. THIND: I guess that's all the  
24 time we have for now.

25 CHAIRPERSON NUÑEZ: Thank you so

1 much, Sundeep, for that. And, actually, we are  
2 going to move on.

3 Just real quick, I am going to  
4 invite Sean Garcia-Leys from Urban Peace to do a  
5 presentation on due process requirements of 186 --  
6 Penal Code 186.34 and 186.35. We are going to  
7 extend his time for another 10 minutes so we will  
8 break at 12:25. We will have a hard stop then.

9 DOJ -- so that means that DOJ -- I  
10 don't remember the agenda. We will actually  
11 reduce that time by 10 minutes. Take it away,  
12 Sean.

13 MR. GARCIA-LEYS: So let me  
14 introduce myself. My name is Sean Garcia-Leys. I  
15 am a staff attorney at the Urban Peace Institute.  
16 20 years ago you would have found me teaching high  
17 school in Watts. I used to live and work in  
18 Watts. And after my third or fourth or fifth  
19 student was murdered, I left teaching and devoted  
20 my career to public safety.

21 That led me to the Urban Peace  
22 Institute. The Urban Peace Institute is a  
23 non-profit whose mission is violence reduction.  
24 Mr. Carrillo actually is on the committee who  
25 oversees the bulk of our work which is training

1 gang intervention workers, especially those that  
2 work for the City of Los Angeles. We also work  
3 closely with LAPD in creating community safety  
4 partnerships and in training the CSB officers.

5 I work in our Smart Justice  
6 program. Our Smart Justice program works to  
7 reform what we see as counterproductive gang  
8 suppression and strategies. So we have concerns  
9 around gang databases that led to our work around  
10 this.

11 One, we have heard from Sammy and  
12 Paul stories about how they were stopped by gang  
13 units and targeted for gang suppression before  
14 they were ever actively involved in gangs and how  
15 that was counterproductive for them.

16 We have also heard about how  
17 communities are less trustful of the police when  
18 they feel like they are subject to surveillance.  
19 And we think that gang databases risk motivating  
20 confrontational encounters with people that are in  
21 a gang. So that's what we do.

22 So I will tell you a little bit  
23 about our clients. I have two dozen in the low  
24 30s, the number of clients we have worked with on  
25 gangs database issues. About half of them are

1 former gang members; half of them are people who  
2 have been never been gang members, never  
3 considered themselves gang members, but have been  
4 accused of being gang members by police.

5 So most of them are in their 20s, a  
6 few of them are teenagers. Most of them are men,  
7 a few of them are women. Here is a photo of one  
8 of our first clients actually and I think his  
9 story is pretty typical.

10 So he grew up in a family where his  
11 older sister was running the house. His older  
12 sister's boyfriend was an active gang member. And  
13 starting at a pretty young age, his house became a  
14 hang-out for about a half a dozen gang members.

15 There were some crimes that were  
16 committed out of that house. He became suspected  
17 in attempted murder at one point that he was not  
18 actually involved in, was never actually charged  
19 with, but pretty soon after, in his late  
20 adolescence, he had a baby. He has been with the  
21 baby's mom ever since. He moved out of the  
22 neighborhood.

23 He is also undocumented, childhood  
24 arrival, and he was concerned that his criminal  
25 history might prevent him from gaining legal

1 status. So a letter saying that we helped him get  
2 removed from a gang injunction and a letter saying  
3 he was removed from a gang database were both  
4 instrumental in his ability to file papers to  
5 remain in the country and continue to raise his  
6 children.

7 So, like I said, it's typical of  
8 our clients. I have turned down clients who I  
9 thought were still active gang members. But all  
10 of the clients have been vetted by us.

11 Next slide: So first I want to  
12 talk a little bit about what their perspective of  
13 these stops are like. Like we have already heard,  
14 I think, consensual stops with FI cards is the  
15 bulk of the evidence that's been used against my  
16 clients.

17 This is a photo I took. I am going  
18 to tell on myself a little bit. This is my best  
19 friend since my teenager years, and he just  
20 happened to -- he got in an argument with his  
21 girlfriend in a parking lot out in front of the  
22 restaurant I was going to meet him at and the  
23 police had been called on him. And pretty quickly  
24 the gang unit had been called out right when I got  
25 there.



1           So I have seen these encounters  
2 first-hand. I also have thousands of pages of  
3 documents and digital audio recorders. I know a  
4 lot of this conversation is about body cameras,  
5 but more often I have seen digital audio recorder  
6 evidence. So everything my clients tell me I have  
7 seen myself or verified with the documents.

8           I also wanted to speak for a second  
9 on jail classifications. I don't think that's  
10 something that is being brought up enough  
11 especially today. Now, jail classification as a  
12 criteria is listed in 186.36 as an unsupported  
13 criteria.

14           I know from looking -- well, so  
15 San Bernardino County, if you look at the ZIP  
16 codes of where people are being documented, they  
17 are nearly all of the ZIP code of the jail which,  
18 to me, raises concerns that jail classifications  
19 are actually where people are being documented and  
20 where these admissions are taking place in some  
21 counties.

22           And the reason it's a problem is  
23 because people are having to make a choice when  
24 they are doing their intake. Do they go where  
25 they think it's safest, which is going to be with

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  
25