



Guilt by Association
How California's CalGang Database and State Gang Laws Jeopardize Civil Liberties

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The *California Golden Fleece® Awards* shine a spotlight on waste, fraud, and abuse in California government to give valuable information to the public, enabling them to provide needed oversight and demand meaningful change.

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GUILT BY ASSOCIATION

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I. Overview

Criminal organizations have long plagued America. Cities and suburbs have been haunted by gang warfare, leaving behind desolated communities, broken families, and shattered lives. In the fight against these groups, the line between justice and injustice can blur.

Aaron Harvey experienced the fuzzy line firsthand. In 2014, police surrounded his Las Vegas home one morning and hauled the 26-year-old away. Harvey, a transplant from Southern California, was studying to become a real estate agent before he was booked and shipped off to San Diego County's jail. The horror of his arrest grew in the weeks ahead when he discovered that he was being connected to nine brutal shootings.

As Harvey went through his trial, he grappled with the revelation that his alleged involvement in that heinous shooting spree was not rooted in physical evidence but rather in CalGang, California's criminal gang intelligence database.

CalGang, a statewide repository created to combat organized crime by tracking gangs and alleged

gang members, linked Harvey to the shootings. CalGang listed him as a gang member in part because of the mere color of Harvey's clothing in an old social media picture, combined with his history of living in a neighborhood rife with gang activity. Because of his identification by CalGang, Harvey was a gang member as far as the law was concerned. The prosecution in the case knew that Harvey did not pull the trigger or participate in any way—a fact that Harvey had been insisting on since his arrest. But that fact didn't prevent the prosecution from putting him on trial.

Harvey was charged with gang conspiracy to commit the shootings because of a little-known statute: California Penal Code Section 182.5, the ultimate guilt-by-association law.¹ Section 182.5 says that when one gang member commits a crime, all other members of the gang are guilty of conspiracy to commit that crime if the other members benefited, assisted, or promoted the crime. The prosecution's logic was simple: According to CalGang, Harvey was a member of the gang allegedly linked to the shootings and, as such, his social standing in the criminal underworld could have benefited from the shootings by bolstering his reputation on the street. Therefore, Harvey was guilty of conspiracy for each shooting. The kicker was that Harvey had never been a gang member. Despite having no prior convictions and no tangible connection to any of the crimes, Harvey faced life in prison.

Harvey's defense team lambasted the obvious miscarriage of justice. The presiding judge eventually dropped the case, although not before Harvey had spent months in jail. Five years after his arrest, a federal judge in a follow-up case ruled that the San Diego police detectives never had probable cause to arrest Harvey.²

While law enforcement agencies confront the difficult task of combating gang-related crime, they must protect individual rights. Harvey's experience serves as a poignant illustration of the perils embedded within a system that, with few

safeguards and little accountability, associates individuals with heinous acts.

Against the foregoing backdrop, the Independent Institute bestows its 15th [*California Golden Fleece® Award*](#) on the CalGang system and California Penal Code Section 182.5. This dishonor calls attention to the pressing need to reform the legal frameworks that enable guilt by association, a lack of accountability, and a failure to protect civil liberties. We recommend commonsense reforms to both CalGang and the California Penal Code that would safeguard civil liberties without impairing law enforcement's counter-gang intelligence sharing.

II. Gangs in California

The history of gangs in California is as extensive as it is complex, stretching back more than a century and permeating the social fabric of the state's urban cores. According to a recent report from the California Department of Justice, gang-related homicides accounted for 25.3 percent of homicide cases statewide in 2022.³

Perhaps no other place in America has felt the presence of gangs more than Los Angeles, a city that for decades was synonymous with gang activity in the United States. Today, Los Angeles continues to be an epicenter of criminal gangs, both statewide and nationally. According to the National Gang Center, "In a typical year in the so-called 'gang capitals' of Chicago and Los Angeles, around half of all homicides are gang related; these two cities alone accounted for approximately one in four gang homicides recorded in the NYGS [National Youth Gang Survey] from 2011 to 2012."⁴

Gangs were present on the East Coast of North America around the time of the American Revolution. They were primarily composed of English, German, and Irish immigrants, although in the early days their effect on public orderliness seemed minimal. But by the 1820s, chiefly in New York City, organized gangs had emerged,

including the Forty Thieves, considered the first gang with an acknowledged structure, and the Bowery Boys, a gang that was intimately involved in political corruption.⁵

Gangs popped up on the West Coast in the late-1800s.⁶ In the early days of criminal gangs in California, police had no specific strategies for counteracting them. The emergence of gang-related lawlessness was a precursor of things to come.

The Hounds, operating as something of a San Francisco counterpart to the Bowery Boys, were one of California's earliest organized criminal gangs. The Hounds were a violent anti-foreigner organization with ties to the Know-Nothing Party.⁷ Government constables had little interest in dealing with the Hounds directly owing to the gang's size and violent history. After the Hounds murdered several Chilean immigrants, a posse of 230 citizens formed to assist the police in 1849.⁸

Although 20 members of the Hounds were eventually apprehended and convicted, local public corruption allowed them to evade justice. The San Francisco Committee of Vigilance, a vigilante militia initially organized to fight a gang of Australian immigrants called the Sydney Ducks, went after the Hounds and publicly hanged several alleged gang members.⁹

In 1895, one of the early examples of a loosely tailored counter-gang strategy in California was an organized police response to the Fish and Sporting Life gang in West Oakland. According to novelist Jack London, who had personal interactions with the group, Fish and Sporting Life was "a crowd of hoodlums and criminals that terrorized the lower quarters of Oakland, and two-thirds of which were usually to be found in state's prison for crimes that ranged from perjury and ballot-box stuffing to murder."¹⁰ Police Chief Charles Lloyd said at the time,

I'm going to clean out those gangs of hoodlums if I send half the police force down there. Their conduct is intolerable,

and there will be some speedy convictions if I can secure them. One-tenth of the doings of the gang has never been published, but their reign of terror has about come to an end. Their existence is a disgrace to the community.¹¹

By 1920, Hispanic gangs became concentrated in Los Angeles. The growth of gang size and scope accelerated in the 1940s, in part propelled by the "Sleepy Lagoon murder" of José Gallardo Díaz and the Zoot Suit Riots.¹²

By the 1940s and 1950s, black gangs became prevalent in Los Angeles. Gangs were well entrenched by the 1960s in areas such as the Watts neighborhood, which was the site of six days of civil disturbance in 1965, known as the Watts Riots.¹³ Around that same time, a small Hispanic gang, the 18th Street Gang, was formed in the Rampart District of Los Angeles, made up of "youth who were not accepted into existing Hispanic gangs." Today, it is one of the largest transnational gangs in the world.¹⁴

The Crips, founded in 1969, rapidly expanded into a large network of loosely affiliated "sets," which sometimes battled each other. In 1972, the Bloods came together as an alliance of previously unaffiliated neighborhood gangs that were united in their opposition to the Crips' growing power, leading to a bitter rivalry marked by retaliatory violence and territorial disputes that continues today.¹⁵

In 1972, it was reported that upward of 18 different criminal gangs with an identifiable structure were active in the greater Los Angeles area.¹⁶ Within six years, that number had more than doubled. By the late 1980s, it was estimated that Los Angeles was home to 36,000 gang members belonging to 450 different gangs.¹⁷

The 1980s and 1990s were particularly tumultuous, with gangs increasingly becoming involved in drug trafficking, especially the crack cocaine trade, which fueled turf wars as rival

gangs and individual “sets” (subgroups) vied for control of lucrative drug markets.¹⁸ The most well-known of these turf wars were conflicts between the Crips and the Bloods, although the competition between those two gangs was far from the only widespread conflict. Gangs armed themselves heavily—a far cry from Crips founder Raymond Lee Washington’s belief that firearms were unmanly.¹⁹ Former Los Angeles Sheriff’s Department Gang Unit officer Ken Bell characterized the early Crips and Blood skirmishes: “They used to call them ‘rumbles.’ Some of the greatest fear [*sic*] you had was maybe a bicycle chain, maybe a bumper jack, a stick, or a [baseball bat].”²⁰

Mara Salvatrucha, more commonly known as MS-13, was created in the 1980s by immigrant Salvadorans in Los Angeles.²¹ It would grow to be one of the most feared gangs in the world, gaining notoriety for its brutal tactics and destabilization of El Salvador and Honduras. The gang’s penchant for violence has been so great that dealing with MS-13 has become a significant feature of foreign policy between the United States and Central American countries.²²

Gang violence in Los Angeles proper claimed around 60 to 200 lives per year in the 1980s.²³ Violence spilled over to impact the general population. The high-profile 1988 murder of Karen Toshima, a 27-year-old woman in Westwood Village, a popular shopping and entertainment hub just south of the campus of the University of California, Los Angeles (UCLA), illustrated that gang violence could happen anywhere.²⁴

By the late 1980s and early 1990s, the Colombian giants, Pablo Escobar’s Medellín Cartel and the rival Cali Cartel, were the prominent international gangs. The latter produced 70 percent of the cocaine that made it into the United States and “90 percent of the drug sold in Europe” in the early to mid-1990s.²⁵

The Colombian giants’ eventual downfall led to the Tijuana Cartel’s brief stint as the reigning

international criminal organization. In 2000, Mexico’s President Vicente Fox, with American assistance, killed or captured many of the leaders of the Tijuana Cartel.²⁶ Its fracture led to more violence and conflicts with the Mexican government and other “cartelitos,” or breakaway gangs.

Out of that power vacuum emerged the Sinaloa Federation, led by Joaquín “El Chapo” Guzmán, a former high-ranking officer in Félix Gallardo’s Guadalajara Cartel, which had reached its zenith when it trafficked drugs for the Colombian cartels in the 1980s.²⁷ Referred to as “the Cartel,” the Sinaloa Federation’s hub-and-spoke model of decentralized decision-making made it much more adaptable and fluid, unlike many other gangs.²⁸

The Sinaloa Federation works with the Mexican Mafia; the largest California prison gang, MS-13; and Sureños cells in Southern California.²⁹ The Sinaloa Federation also wields considerable influence and power in Southeast Asia, West Africa, and Australia. A 2014 report, *Gangs Beyond Borders: California and the Fight Against Transnational Organized Crime*, by then-California Attorney General Kamala Harris, estimated that the Sinaloa Federation was “responsible for the vast majority of drugs, weapons, and human trafficking across the California-Mexico border.”³⁰ Despite El Chapo’s high-profile capture by Mexican authorities and extradition to the United States in 2017, the Sinaloa Federation continues to be the dominant international gang today.³¹

The California Department of Justice estimates that gangs enroll approximately 300,000 members across the state.³² The greater Los Angeles area accounts for as many as 175,000 of those members, who belong to nearly 1,350 different gangs—a stark contrast to the 1972 estimate of only 18 different criminal gangs in Los Angeles proper (not including the surrounding areas).³³ Today, the state’s prison system is dominated

by sophisticated prison gangs, and even law enforcement agencies have difficulties keeping gang members out of their ranks.³⁴

III. CalGang Emerges

In 1987, the first modern electronic and collaborative gang database was launched in Los Angeles County, called the Gang Reporting, Evaluating, and Tracking System (GREAT).³⁵ Participating agencies could access and add to existing records. The idea was the brainchild of Wes McBride, a Vietnam veteran who became one of four gang intelligence specialists in Los Angeles County in 1973. He would later become known as the “godfather of gang investigators.”³⁶ GREAT grew out of McBride’s collection of extensive paper logs detailing street gangs, which he shared with other departments. It was said of McBride that “he could recite how they operated, their financial status, their M.O., everything. Even on specific gang members.”³⁷

Before the advent of electronic systems, the Los Angeles County Sheriff’s Department, like other law enforcement agencies, relied heavily on paper records to document and manage gang information. Paper records obviously cannot provide officers in the field with real-time information, and records tended to be siloed by the departments that collected the data. The transition to a digital system was a significant step in both operational efficiency and interagency collaboration as units focused specifically on gang intelligence became more commonplace in police departments.

A new anti-gang informational tool was sorely needed. A 1990 police chief journal article stated, “In 1989, there were 1,113 drive-by shooting incidents, accounting for 1,675 victims. The Los Angeles Police Department (LAPD) estimates that up to half of gang victims are not even remotely associated with any form of gang activity.”³⁸ A 1997 US Army report called America’s gang problem a national security threat:

The Cold War saw the threat of superpower conflagration end, and with it, the notion of traditional warfare. America now faces an entirely different enemy. An enemy who operates within and outside its borders. He uses the inner cities as his battleground and conducts warfare through criminal activity.³⁹

To turn the tide in the escalating gang wars, the California Legislature passed the Street Terrorism Enforcement and Prevention (STEP) Act in 1988. Louise Carhart of the Loyola University Chicago School of Law noted it was the first time in American legislative history that the term “gang” was legally defined.⁴⁰

In the text of the Act, Section 186.21 includes a prologue summarizing the state’s new strategy:

[T]he State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. . . . It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together are the chief source of terror created by street gangs.

As legislators called for the state to capitalize on possible criminal patterns, a digital intake system became all the more valuable. GREAT was a sophisticated system for its time. By the early 1990s, it contained details on approximately 1,500 gangs and more than 105,000 gang members.⁴¹ With access provided to more than 130 law enforcement agencies nationwide, GREAT became the template that the Bureau of Alcohol, Tobacco, Firearms, and Explosives

(BATFE) and the Federal Bureau of Investigation (FBI) used to explore their own joint effort to create a national gang database.

GREAT allowed 150 separate data fields for each entry, “with such information as gang member name, gang moniker (nickname), gang affiliation, physical description, residence address, prior arrests, vehicle information, and gang member’s associates or acquaintances.”⁴²

Police officers in the field would populate the data fields with information from street interviews of people they came into contact with, suspected gang members, or arrestees. Police relied on six criteria, shown in Figure 1, to determine gang affiliation. Meeting any one of the criteria could designate an individual as a gang member.

Adapting GREAT for the rest of the state became a priority.⁴³ The tide was now turning in Los Angeles County, where a staggering 4,574 gang homicides were recorded between 1990 and 1995.⁴⁴ Gangs emerged in Fresno, Sacramento, and Stockton, which had been spared from modern criminal organizations up to that point.

It was clear, however, that such a database needed safeguards; there were known gaps in quality and administrative controls. One of the big weaknesses of GREAT’s early operability from an accountability perspective was that it never required documentation of the criteria used to designate someone as a gang member. Thus, an individual could end up on the list with no evidentiary justification.

In a 1992 letter to the Los Angeles County Sheriff, an assistant director at the US General Accounting Office handling justice issues noted that record trails for data requests were incomplete and that “GREAT has never been audited.”⁴⁵ In a 1994 follow-up report to the US House of Representatives’ Subcommittee on Civil and Constitutional Rights, the assistant director’s concerns were repeated, though the program was generally praised overall.⁴⁶

Figure 1. GREAT Database Criteria.

01	An individual admits membership
02	A reliable informant identifies an individual as a gang member
03	An untested informant identifies an individual as a gang member, and this is corroborated by other information
04	An individual resides in or frequents a known gang area and displays a gang’s clothing style, hand signs, and/or tattoos
05	An individual is arrested several times with known gang members
06	Strong indications exist that an individual has a close relationship with a gang

Source: Harold A. Valentine, “Information on the Los Angeles County Sheriff’s Department Gang Reporting, Evaluation, and Tracking System,” statement before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, June 26, 1992, p. 6, <https://www.gao.gov/assets/t/ggd-92-52.pdf>.

GREAT was ultimately determined to be inadequate for expanding into a statewide gang database. Renovations to the system were costly for the California Department of Justice (DOJ), and GREAT’s user interface proved too convoluted and inefficient.⁴⁷ Officers had to memorize command lines to enter basic information. Running on an obsolete version of DOS, the database was not particularly user-friendly for operators.

In 1992, California began working on a database that followed in GREAT’s footsteps: CalGang. The California DOJ sought the help of the Newport Beach software company Orion Scientific Systems Inc., known at the time for its specialized work for the Central Intelligence Agency and National Security Agency.⁴⁸ The database was set up so that a central server in the DOJ’s Sacramento office functions as the “master node” connected to other nodes throughout the state, making CalGang “essentially, a statewide intranet—a gang-related clearinghouse for information.”⁴⁹ Beyond the DOJ master node, other nodes are a “geographically located cluster of participating law enforcement agencies with

access to the CalGang database that may exist from time to time.”⁵⁰ Each of the regional nodes has a complete version of the CalGang program, and each node is responsible for its local agency’s data.⁵¹ Data from the nodes is replicated to the DOJ server, creating a central repository.⁵²

CalGang was seen as an essential resource for wider intelligence sharing and was meant to be a turning point in managing and overseeing gang-related information. According to the California DOJ, the objective behind CalGang was to “provide law enforcement agencies with an accurate, timely, and electronically-generated database of statewide gang-related intelligence information.”⁵³ To the extent that various local law enforcement agencies maintained any intelligence records on gangs before the development of CalGang, those records were fragmented and lacked standardization; possible collaboration between agencies remained limited. CalGang aimed to centralize and standardize gang-related intelligence across the state.

CalGang was launched in 1997. The cost to implement it, from research and development to point of launch, was approximately \$800,000 (about \$1.6 million today). Each participating agency spends roughly \$2.4 million per year in dedicated staff time to maintain and use CalGang.⁵⁴

IV. The Consequences of Being Labeled a Gang Member

Under California law, a “gang member” is defined as an individual who is part of an “ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of crimes” ranging from violent offenses to various other forms of criminal activity, such as burglary.⁵⁵ Membership in a gang in itself is not criminal, but “active participation” in a criminal gang is a crime—although California law does not specify what constitutes

active participation.⁵⁶ Membership still carries significant weight.

Because a “gang member” designation in CalGang counts as an official classification, appearing on the CalGang list has significant legal implications. Such a designation can lead to enhanced charges and sentences under anti-gang statutes, making it of the utmost importance that CalGang records are accurate. California allows for additional years of imprisonment to be added to felony sentences if a crime is determined to be gang related. Additional sentencing can range from “two, three, or four years at the court’s discretion” for low-level crimes to an additional five years for a “serious felony,” such as “inflicting great bodily harm,” and an extra 10 years for other violent felonies.⁵⁷

A gang membership designation can also subject individuals to gang injunctions. Pioneered in Los Angeles County, a gang injunction is a legal order—effectively a type of restraining order—that imposes certain restrictions on particular individuals.⁵⁸ The restrictions include curfews, limitations on associating with other alleged gang members, and bans on certain behaviors or activities commonly associated with gang involvement. Violating the terms of a gang injunction can result in civil or criminal penalties. Proponents argue that gang injunctions help reduce crime and improve community safety, though critics have raised concerns about potential civil liberties violations, racial profiling, and the effectiveness of such measures.⁵⁹

The risks to civil liberties caused by gang injunctions are magnified when individuals are erroneously labeled as gang members or associates. Enforcing the injunctions not only leaves the door open for abuse by police officers to target youth who are not gang members, but also can infringe on the First Amendment right to freedom of association, because the police may mistakenly believe that a nonmember is engaging in a prohibited activity set forth by an injunction.⁶⁰

Peter Arellano, a resident of the Echo Park neighborhood of Los Angeles, was hit with a gang injunction in 2013. With no prior notice, Arellano was effectively put on house arrest, not because of any nexus to criminal activity but because an LAPD officer believed him to be a gang member. According to the American Civil Liberties Union,

To obtain a gang injunction, a prosecutor files a civil “nuisance abatement” lawsuit against a particular gang, claiming that its conduct harms the community. The gang, which is not a formal organization and has no legal representation, does not appear at trial. With no one to argue against the need for an injunction, it is granted by default.⁶¹

Arellano was legally barred from visiting his neighbors, going to church with his family, or standing “in his own front yard with his father or brother.” Moreover, he “couldn’t wear a Los Angeles Dodgers jersey, despite living less than a mile from Dodger Stadium, because the team’s gear was considered gang paraphernalia under the injunction.”⁶² (See below for more on gang clothing.) His designation likely stemmed from his father’s previous life as a gang member; because of this relationship, Peter was “affiliated” with a gang member. In 2017, the US District Court for the Central District of California held that Arellano’s due process rights had been violated.⁶³

Designation as a gang member not only carries immediate legal implications but also opens up the possibility of a Racketeer Influenced and Corrupt Organizations Act (RICO) prosecution, amplifying the severity of consequences, including significant prison sentences and financial penalties.⁶⁴ Under the federal RICO law, individuals engaged in a pattern of racketeering activity connected to a corrupt organization can be prosecuted.⁶⁵ While RICO initially was aimed at dismantling the Italian Mafia, its broad scope has been utilized in various contexts, including

prosecutions related to street gangs.⁶⁶ What constitutes a street gang is a concept that is malleable by prosecutors. In a notable instance, prosecutors in Fulton County, Georgia, brought charges against rappers Young Thug and Gunna, who are part of Atlanta-based record label YSL.⁶⁷ Prosecutors argued that the rap crew constituted a criminal organization, a spurious argument. Initially beginning in 2022, the case went on for more than two years and became the longest criminal trial in Georgia state history.⁶⁸

While the penalty modifications for gang members may be dubious in their own right, the quintessential example is the previously mentioned gang conspiracy law, California Penal Code Section 182.5. It reads,

Notwithstanding subdivisions (a) or (b) of Section 182, any person who actively participates in any criminal street gang, as defined in subdivision (f) of Section 186.22, with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, and who willfully promotes, furthers, assists, or benefits from any felonious criminal conduct by members of that gang is guilty of conspiracy to commit that felony and may be punished as specified in subdivision (a) of Section 182.⁶⁹

Section 182.5 was passed in 2000 as part of California Proposition 21, the Treatment of Juvenile Offenders Initiative. The law was originally championed in 1997 by then-Governor Pete Wilson.⁷⁰ Framed as a tool against rising levels of juvenile crime, the rationale behind the proposition was that giving prosecutors more tools to go after gang activity ultimately would have a deterrent effect.⁷¹ This law’s version of conspiracy is something of a modern variant of the Pinkerton liability rule, which “allows defendants in criminal conspiracy cases to be found guilty of crimes committed by their co-conspirators.”⁷² The

California law allowed for longer sentences for gang-related crimes, made more crimes eligible for the death penalty, loosened restrictions on wiretapping, and required that convicted gang members register with their local police.⁷³

The campaign for Prop 21 came on the heels of California's turn toward "tough on crime" policies.⁷⁴ Prop 21 built on Assembly Bill (AB) 560 (1994), which made it easier for judges to "waive" juveniles to adult court, and Senate Bill (SB) 314 (1994), a "direct-file law," which permitted prosecutors to choose whether to bring charges against minors in either juvenile or adult court.⁷⁵ Direct-file laws, present in several states and Washington, DC, have faced significant criticism for undermining the juvenile justice system.⁷⁶ Prop 21 required direct filing in certain crimes. While the practice of direct filing has been prohibited in California since the passage of the Public Safety and Rehabilitation Act of 2016, this reversal is an exception.⁷⁷ California Penal Code Section 182.5 and many of the gang-related laws remain on the books.

While measures such as the gang conspiracy law are thought to serve the interests of law enforcement in combating gang-related activities, the inherent danger lies in the ease with which individuals can find themselves on CalGang owing to the loose and vague criteria for inclusion. The expansive definitions of gang affiliation significantly heighten the risk of wrongful designation. As a result, individuals with no actual gang involvement or criminal activity may inadvertently find themselves labeled as gang members, triggering a cascade of legal ramifications and civil liberties concerns.

Like the GREAT database before it, CalGang adopts a point criteria system, which is slightly modified from the system used by GREAT. The California Code of Regulations specifies eight criteria for being designated as a "gang member" or "gang associate."⁷⁸ Meeting any two of the eight criteria shown in Figure 2, through a police

officer's observation or reasonable suspicion, qualifies an individual for inclusion.

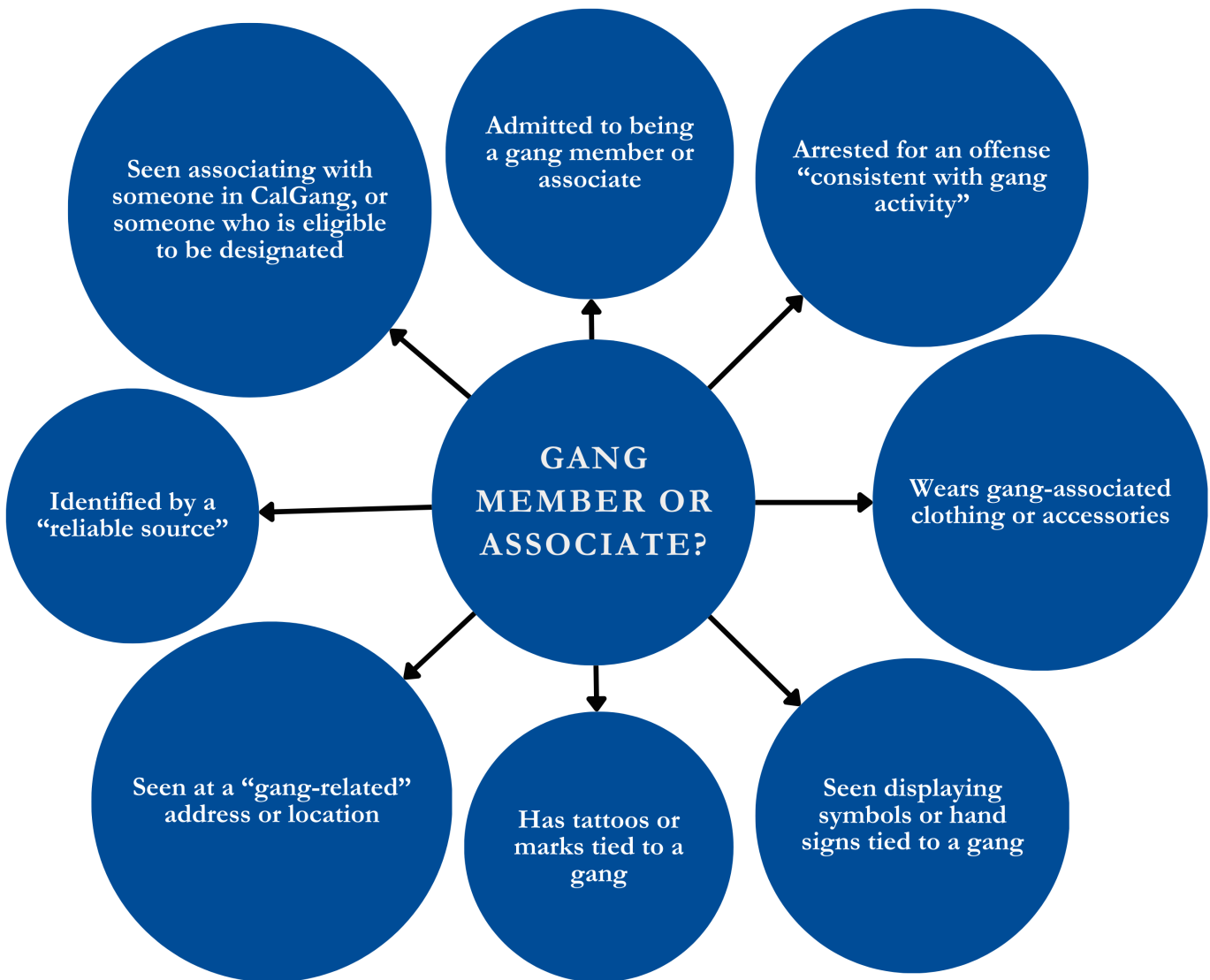
In recent decades, federal immigration authorities increasingly have sought out intelligence from state and local law enforcement agencies, including data on gangs and gang members.⁷⁹ Since the adoption of the Secure Communities program, federal law has prevented states from exempting from immigration decisions some of the intelligence shared with federal agencies, including the FBI and the Department of Homeland Security (DHS). For example, the US Immigration and Customs Enforcement (ICE) description of the Secure Communities program reads,

The United States government has determined that a jurisdiction cannot choose to have the fingerprints it submits to the federal government processed only for criminal history checks. Further, jurisdictions cannot ask that the identifications that result from DHS's processing of the fingerprints not be shared with local ICE field offices in that jurisdiction. It is ICE, and not the state or local law enforcement agency, that determines what immigration enforcement action, if any, is appropriate.⁸⁰

ICE's position means that some intelligence gathered through gang investigations, in particular biometric information and immigration status, can find its way to immigration authorities, irrespective of an officer's sole intent to determine criminal history. Some uses of gang intelligence sharing thus may violate the spirit of California's immigration laws, specifically the California Values Act, which forbids cooperation between state and federal law enforcement authorities on matters of immigration enforcement.⁸¹

Professor Jennifer Chacón of the UC Irvine School of Law writes,

State and local governments are now actively participating in the enforcement

Figure 2. Is an Individual a Gang Member or Associate?

Source: Jonathan Hofer and Jonathan Fuentes, based on California Code of Regulations, Title 11, Division 1, Chapter 7.5, Department of Justice Regulations for the Fair and Accurate Governance of the CalGang Database, accessed September 4, 2024, <https://oag.ca.gov/sites/all/files/agweb/pdfs/bciis/ch7-5-proposed-text.pdf>.

of federal immigration law. In some cases, they are doing so because they erroneously believe that they have the inherent authority to do so. Increasingly, they are doing so at the behest of the federal government, sometimes even when they are not interested in dedicating their law enforcement resources to these efforts.⁸²

Not only does the participation of local law enforcement represent a form of mission or function creep, but some evidence has been

reported that gang-abatement strategies in the context of immigration enforcement have actually increased the scope of transnational gangs.⁸³ In the book *Space of Detention*, Elana Zilberg, professor of cultural anthropology at UC San Diego, noted that the United States' immigration policies with respect to El Salvador have had the unintended consequence of growing MS-13 and the 18th Street Gang.⁸⁴ Some ethnic Salvadorans, who were effectively raised in Los Angeles in the wake of the Salvadoran Civil War

and participated in gangs, were deported to El Salvador, a country with which they had few connections. In doing so, their gang network was exported, and members cycled through the United States, especially Los Angeles. Gang know-how and membership accelerated, strengthening the gangs' presence in both California and El Salvador.⁸⁵

Designation as a gang member in CalGang itself carries substantial weight in immigration proceedings. An undocumented immigrant accused of participating in a gang does not enjoy prosecutorial discretion, which would normally permit the DHS to consider deferred action, delaying deportation and allowing for work authorization. Decisions on the status of an undocumented immigrant accused of gang membership are exempt from judicial review.⁸⁶

Because CalGang records, or associated gang records, can be made available to the DHS, and the DHS maintains its own records compiled from the records of other agencies, an undocumented immigrant who would otherwise be a candidate for deferred action has imperfect information going into a petition for prosecutorial discretion. Although they may request to see whether they are currently named in CalGang, the individual's designation could have made its way to the DHS records prior to their CalGang request. An individual's record could have been purged in CalGang but not in DHS's records.

In addition to influencing deferred action outcomes, a gang designation could lengthen detentions, lead to bond denials, and adversely affect eligibility for U nonimmigrant status visas, which are reserved for crime victims who assist law enforcement in their investigations or prosecutions, and Special Immigrant Juvenile requests, which offer permanent resident status to noncitizen children who have been abused, neglected, or abandoned by a parent.⁸⁷ In a white paper for the Immigrant Rights Clinic at the UC Irvine School of Law, Sean Garcia-Leys, Meigan

“

I'M SITTING IN JAIL AND
I'M WATCHING PEOPLE
WHO COMMITTED ACTUAL
CRIMES... THEY ADMIT I
KNEW NOTHING ABOUT
THESE CRIMES.

Thompson, and Christyn Richardson argue that one of the worst possible outcomes is that ICE shares an alleged gang member's designation with another country because “alleged gang members originally from Mexico or Central America face an alarming likelihood of extrajudicial murder in their home country or murder by feuding criminal gangs.”⁸⁸ Even if the person is not actually a gang member, they are placed in a perilous situation.

For a time, a formal relationship arose between ICE and California that involved sharing knowledge about the construction and operability of GangNet, the software underlying CalGang. SRA International, which had acquired Orion Scientific Systems, the original builders of CalGang, assisted in creating ICEGangs.⁸⁹ It was effectively CalGang but with fields that included areas for immigration status. From 2006 to 2016, ICE had access to CalGang data, and California DOJ users could access ICEGangs records through CalGang.⁹⁰ In fact, ICE had access to all linked databases relying on the GangNet software, which, at the time, was in use in several states and by various federal agencies.⁹¹ The number of records to which ICE has access is unclear. In 2016, ICE's access to CalGang was suspended, purportedly because ICE thought it was underutilized and not cost-effective. ICE and DHS personnel instead

relied more on the FALCON Search & Analysis System, an information management system that is still in use today.⁹²

V. The Ultimate Guilt by Association

The vague language of California Penal Code Section 182.5 is troubling. In particular, the terms “benefit” and “promote” are unclear and overbroad. The inclusion of those two terms is a significant departure from the traditional definition and understanding of criminal conspiracy, which is characterized as something along the lines of a “partnership in crime”—a much more sensible definition.⁹³

For example, at the federal level, conspiracies broadly have a few key elements: Two or more people are involved, the conspirators are in agreement, their acts are intentional, and they commit a federal crime or commit an “overt act in furtherance of the agreement.”⁹⁴ The latter part is key. An “overt act” means some specific or observable action with a “particular purpose or intent.”⁹⁵ Generally, the spirit of the law implies that conspirators at least have a shared “general understanding” of the crime.

The US District Court for the District of Massachusetts’s web page on conspiracy adds, “Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy.”⁹⁶

In the aforementioned case of Aaron Harvey, Harvey was prosecuted based on an allegation that he “benefited” from the crimes because they would have caused his social standing among the criminal underworld to rise, according to the prosecutor. For the prosecution, Harvey stood to command more respect on the streets and, therefore, was guilty of conspiracy for the crimes. But he wasn’t the only defendant in that case with a spurious connection to the crimes. San Diego-based rapper Brandon Duncan, known by his



Source: Wikimedia, “No Safety,” 2023, https://en.wikipedia.org/wiki/No_Safety#/media/File:No_Safety.jpg. Cover art copyright is believed to belong to the label, Gett Money Gang, or artist ViperGfx.

stage name, “Tiny Doo,” was also on the hook.

The crux of the prosecution’s argument hinged on Duncan’s social media, his album titled *No Safety*, and the imagery that it purportedly conveyed in tracks that showcased the grittiness of urban life. Prosecutors charged that Duncan’s lyrics amounted to “promoting” violence within the community, thereby implicating him in the alleged criminal activities under Penal Code Section 182.5.⁹⁷ Prosecutors argued that Duncan would have also benefited from the shootings in terms of commanding more respect on the street and realizing larger album sales.

The album in question was a free download, making the argument that Duncan inspired the shootings to increase album sales dubious. Duncan said, “Nobody in their right mind would submit themselves to 25-years-to-life in prison in order to achieve any kind of fame.”⁹⁸

For Duncan, the absurdity of the charges levied against him was glaringly evident.⁹⁹ “How would you promote crimes you don’t even know about?” he asked. Adding to his frustration with the

obvious miscarriage of justice, Duncan had to watch others walk free while he faced the prospect of spending decades behind bars for crimes he vehemently denied having a part in.¹⁰⁰ As Duncan related,

I'm sitting in jail and I'm watching people go home every day who committed actual crimes. I watch them go home and they admit I haven't even done anything. They admit that. They admit I knew nothing about these crimes but that I am promoting violence with my music. I'm just speaking about urban life. I'm a storyteller, nothing more.

Central to their case was the album's artwork, which depicted a revolver and a speed loader with cartridges—a visual motif that prosecutors seized upon as damning evidence of Duncan's supposed complicity in gang-related violence. A CNN report at the time sarcastically referred to the artwork as the prosecutor's "smoking gun."¹⁰¹

Like Harvey, Duncan would eventually be set free after the presiding judge dropped the case. As Duncan languished behind bars, his grandfather, who had raised the rapper, passed away.¹⁰² Duncan would go on to sue the City of San Diego, with Aaron Harvey as a coplaintiff.¹⁰³ In 2020, the pair settled with the city for \$1.5 million.¹⁰⁴ Bonnie Dumanis, the San Diego district attorney during the original trial of Harvey and Duncan, which was discharged for a lack of evidence, later pledged to never "file charges under Penal Code 182.5 again."¹⁰⁵

Ironically, Duncan was not the only musical artist to be ensnared by California's database. Larry Sanders, known for his contributions to Coolio's iconic track "Gangsta's Paradise," also found himself on the wrong side of CalGang. Sanders, who went by the name L.V., for "Large Variety," was chatting with friends at the Green Meadows Recreation Center in South Los Angeles on an April night in 2020.¹⁰⁶ Sanders was approached by police officers responding to a call about alleged

drinking in the park.¹⁰⁷ Sanders was far from causing mischief. In fact, he was helping stage the city's Summer Night Lights event, a program that provides youth with food and games at the park in the hope of keeping them off the streets and away from gangs.

Sanders showed police that no alcohol was being served. The officers then asked Sanders for his ID and asked him to show them any tattoos he had. For Sanders, that seemed like the end of the interaction. A week later, he was bewildered to receive a letter notifying him of his impending addition to CalGang, citing his former arrest record, association with documented gang members, and tendency to frequent gang areas as grounds for inclusion.¹⁰⁸ As it would turn out, Sanders was never part of a gang, and his previous arrest was some 20 years earlier on a charge unrelated to any gang activity.

The subjective nature of identifying "gang areas" in CalGang's criteria leaves room for abuse and arbitrary enforcement, potentially entangling innocent individuals who simply reside in or frequent those areas. Sanders would apply to get his name removed from the database with the help of attorney Sean Garcia-Leys, who made an important point: "I have never heard a law enforcement officer give a workable definition of a 'gang area'; I don't believe one exists."¹⁰⁹ In Garcia-Leys's estimation, "90 percent of my clients, people who come to me who ask to be removed, don't belong on a gang database."¹¹⁰

In addition to the porous criteria of "gang-related address or location," CalGang factors in perceived elements of gang dress as a criterion. For many gangs, identifiers serve as both badges of pride and markers of allegiance.¹¹¹ The adoption of specific colors, tattoos, logos, graffiti signatures, emblems, and clothing styles are conspicuous examples. In the eyes of law enforcement the identifiers are crucial for pinpointing and tracking gang activity. Consequently, databases such as CalGang aim to catalog and analyze such markers.

“
 90 PERCENT OF MY
 CLIENTS, PEOPLE WHO
 COME TO ME WHO ASK TO
 BE REMOVED, DON'T
 BELONG ON A GANG
 DATABASE.”

Amid the effort to spot the signs of gang affiliation, the line between genuine membership and innocent expression blurs. Using “gang-associated dress or colors” as a criterion for designating gang membership poses a grave threat to civil liberties because of its inherent subjectivity and potential for overreach. Gangs often adopt specific colors or dress styles as identifiers, but the symbols can vary widely and evolve rapidly across different regions and communities.

The use of sports clothing, such as Los Angeles Dodgers hats or Las Vegas Raiders clothing, as markers of gang affiliation further exacerbates the issue, ensnaring countless individuals, including many innocent youths in Los Angeles (see more in Figure 3).¹¹² In urban areas, where gang culture intersects with mainstream fashion, items like sports jerseys or caps are ubiquitous, representing hometown pride or team comradery rather than gang allegiance for the vast majority of wearers.¹¹³ Law enforcement’s reliance on such symbols as indicators of gang involvement disregards that reality.

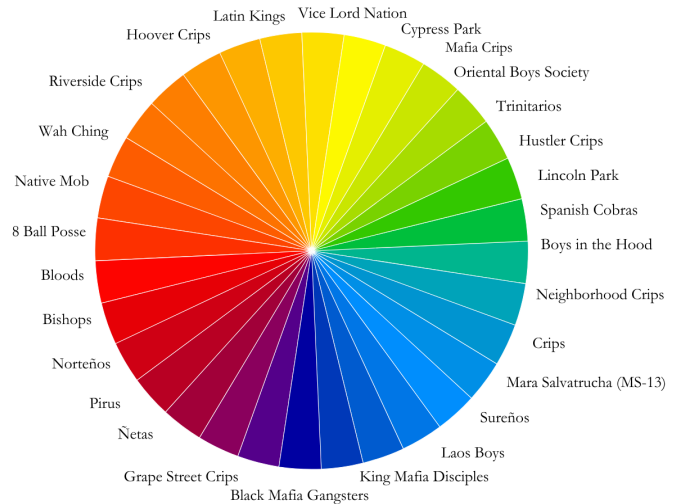
Complicating matters further, multiple gangs, even within the same area, might claim the same team’s gear, or police might associate the team with multiple gangs. For instance, Raiders

Figure 3. Gangs and Californian Sports Teams.

Sports Team	Gangs
Las Vegas Raiders (formerly Oakland and Los Angeles Raiders)	Folk Nation Gangs, People Nation Gangs
Los Angeles Angels	Athens Park Bloods, Arbor Village, Avenue Piru, Cross Atlantic Pirus
Los Angeles Dodgers	Crips, Gangster Disciples, Latin Aspects, Sureños
Los Angeles Kings	Latin Kings, Folk Nation Gangs, People Nation Gangs
(formerly Oakland) Athletics	Acacia Blocc Hustlers, Avalon Gangster Crips, Ambrose, Orchestra Albany, Spanish Cobras
Sacramento Kings	(Affiliates of the Nuestra Familia may use red variants of “SK” hats)
San Diego Padres	Harvard Park Brims (uses red variant of Padres cap)
San Francisco Giants	Family Swan Bloods (alliance on the East Side of South Los Angeles), Folk Nation Gangs, Seven Foe Hoover
San Francisco 49ers	Norteños, Stone Freaks

Sources: Jonathan Hofer and Jonathan Fuentes, based on “Gang Identification—Sports Team Logos,” n.d.; Salt Lake City School District, “S-3: Gang Signs, Symbols, Signals, Words, and Conduct Prohibited,” accessed September 6, 2024, <https://resources.finalseite.net/images/v1615923912/slcschoolsorg/k4llblrykpsxr8gtzxko/s-3-gang-signs-symbols-signals-words-and-conduct-prohibited-english.pdf>; r/CaliBanging, *Reddit*, 2022, <https://www.reddit.com/r/CaliBanging/>.

Figure 4. Gangs by Clothing Color.



Source: Jonathan Hofer and Jonathan Fuentes.

and Los Angeles Kings apparel has been linked to both Folk Nation Gangs and People Nation Gangs—the two are rival gang alliances in the Chicago area—meaning that the clothing in Chicago should not be counted as evidence of membership in a particular gang. Moreover, virtually every color on the color wheel has been claimed by some gang at some point (see Figure 4 for some examples), making it alarmingly easy

Figure 5. Example of a Police Field Card.

Persons with subject				
NAME (LAST, FIRST)		DOB	SEX	GANG/MONIKER
NAME (LAST, FIRST)		DOB	SEX	GANG/MONIKER
ADDITIONAL INFO [ADDITIONAL PERSONS, BOOKING NO., NARRATIVE, E-MAIL, SOCIAL MEDIA ACCOUNT(S) (E.G., TWITTER, INSTAGRAM, FACEBOOK), ETC.]				
DATE	TIME	LOCATION		RD
OFFICER		SERIAL NO.	OFFICER	SERIAL NO.
FIELD INTERVIEW 15.43.00 (01/20)	INCIDENT NO.	DIVISION	DETAIL	SUPV. INITS.
Z * IF SOCIAL SECURITY NUMBER IS REQUESTED THE FOLLOWING DISCLAIMER MUST BE READ: "Federal law requires that you be informed, when asked for your Social Security number, that it must be provided for use in identification. Authority for requiring this information is based upon field interview procedures operational prior to January 1, 1975." <input type="checkbox"/> DISCLAIMER GIVEN SOCIAL SECURITY NO.:				

OP. LIC. NO. O	STATE F	NAME (LAST, FIRST, MIDDLE) N		SUFFIX (JR., ETC.) J	
RESIDENCE ADDRESS A		CITY C	STATE	SEX S	DESCENT D
HEIGHT T	WEIGHT W	BIRTHDATE B	CLOTHING		
PERSONAL ODITIES				PHONE NO.	
ADDITIONAL PERSONS					
NAME (LAST, FIRST)		DOB	SEX	ALIAS/AKA	
NAME (LAST, FIRST)		DOB	SEX	ALIAS/AKA	
NAME (LAST, FIRST)		DOB	SEX	ALIAS/AKA	
SUBJ INFO		1 LOITERER	3 HOMELESS	5 CRIMINAL ACTIVITY	7 ON PAROLE
		2 PROWLER	4 WITNESS	6 HAS RECORD	8 ON PROBATION
				<input type="checkbox"/> DRIVER	<input type="checkbox"/> PASSENGER
Y E R	MAKE	MODEL	TYPE	COLOR	VEH. LIC. NO.
					TYPE STATE

Sources: Los Angeles Police Department, Office of the Chief of Police, Administrative Order No. 5, March 17, 2020; Chief of Los Angeles Police Department, "Field Interviews; and, Field Interview Report, Form 15.43.00—Revised," intradepartmental correspondence to Los Angeles Board of Police Commissioners, September 21, 2021, https://www.lapdpolicecom.lacity.org/092121/BPC_21-166.pdf.

for individuals to be misidentified based on their attire or accessories. One of the criteria that purportedly marked Aaron Harvey as a gang member was his wearing a shirt with green on it. In the eyes of the law, that made him a Lincoln Park Blood, whose members sometimes wear the color green.¹¹⁴

The proximity of the Oakland Coliseum, former home of the Oakland A's, to the high-crime Hegenberger Corridor—an area known for gang activity—highlights the problem with deducing gang membership from apparel. Since Oakland A's hats and green or yellow shirts are gang symbols, nothing prevents a hypothetical assertion that the thousands of fans attending home games were gang members or associates. When the Giants, Angels, Padres, or Dodgers

In 2020, an internal LAPD investigation found that "at least 24" officers were suspected of falsifying information.

came to town, the number of eligible gang suspects arguably increased. With such vague criteria as living in a large city and wearing colored clothing, virtually every Californian could be seen as guilty of gang conspiracy under Penal Code Section 182.5.

VI. The Pathway into CalGang

How is it determined that a person qualifies for inclusion in CalGang? Typically, individual law enforcement officers have the authority to add people to the CalGang database based on their observations and interactions with people in the field. The person in question does not need to be charged, arrested, or detained. The process often relies on so-called field interviews, during which officers collect information from individuals and document it on "field cards" (see an example of a field card in Figure 5). The field cards may contain details about a person's appearance, associates, location, and other factors that officers consider relevant to gang affiliation. Officers may even ask to see and photograph tattoos. Police will typically compile the history of their interaction following an individual's designation as a gang member.¹¹⁵ Other information that is deemed relevant can be paired with an individual's entry

in CalGang, such as vehicle information, pictures, street monikers, and so forth.

Additionally, routine interactions or detentions can lead to individuals being added to CalGang if officers perceive them to have gang associations based on their clothing, tattoos, or behavior. It is standard police department procedure that the completion of a field interview “shall not unnecessarily prolong a stop or detention.”¹¹⁶ Moreover, footage from body and dash cameras may be used in the place of field cards or as a complement to them.

After gathering information and documentation, it is up to the officer to determine what data is recorded. Usually, individual officers relay the records to their department’s gang unit, and then it is incumbent on the personnel in the gang unit to decide whether or not to input an entry in CalGang.¹¹⁷ Departments typically keep their own records, which may mirror the records they have supplied to CalGang, although they may be wholly different. While state law gives the California DOJ authority over any shared gang database—for example, a hypothetical regional database that is different from CalGang—fewer regulations exist for data held by a single agency. Statutes specifying the treatment of police records primarily govern the files.

The identification of gang members from among the general population or gang “wannabes” is likely best conducted by specialized police gang units, whose members have more expertise and training on the matter. Researcher Charles M. Katz has noted that gang designation is rarely initiated by gang specialists.¹¹⁸ Instead, most designations come from patrol officers who may have no training in gang identification.

Given the serious legal repercussions of being designated as a gang member, it is all the more alarming that information gleaned from field interviews may be incomplete or inaccurate. In some cases, officers may entirely or partly fabricate information. In 2020, an internal LAPD investigation found that “at least 24” officers

were suspected of falsifying information.¹¹⁹ The officers in question allegedly identified individuals they stopped as having admitted to belonging to a gang. A review of the officers’ body camera footage, however, revealed that the individuals had made no such declarations.

Because a shared database is naturally interconnected, any mistake produced by one agency can result in another agency relying on false information, multiplying the risk of misidentification. Currently, 100 separate law enforcement agencies in California participate in CalGang, although more than 400 agencies have used it in the past, with the number of participating agencies fluctuating from year to year.¹²⁰

The mistakes can also compound as CalGang designations are used to inform downstream justice decisions. Although CalGang is principally used as an intelligence tool for officers and detectives, the information from the database can be made available to jail and prison officials, prosecutors, and judges. Jail and prison officials may rely on CalGang information to sort prisoners in order to keep rival gang members away from each other, while prosecutors and judges may use the database for plea-bargaining decisions and sentencing.¹²¹ An analysis by Ana Muñoz and Emily Owens, professors of criminology at UC Irvine, found that the use of CalGang by “adjacent users” has grown tremendously. The adjacent users are individuals or entities that can access CalGang records but “were not initially intended as users and who, in pre-digital surveillance eras, would have a much more difficult time obtaining the information.”¹²² Adjacent users in immigration-related fields have particularly contributed to this expansion in the use of CalGang.

Moreover, the practice of field photography, the first link in the chain, is itself questionable. The Fourth Amendment to the US Constitution protects against unreasonable searches and seizures, calling into question police practices

such as taking photos during interactions.¹²³ Molly Bruder of the *American University Law Review* terms the taking of an individual's photo during such police interactions, regardless of consent or charges, a "photostop."¹²⁴ These photostops, especially when linked to gang databases, can lead to the compilation of prejudicial information.

The context in which photos are taken is crucial. For instance, photos taken while investigating alleged criminal activity or for identification post-arrest likely pass constitutional muster, but photos taken during an unlawful arrest are not permissible.¹²⁵

Therefore, the legality of taking photos for gang databases is questionable, especially when the stop is not related to gang activity. The legality of photostops is particularly suspect when an officer takes a photo for reasons unrelated to the investigation that justified the "Terry stop" in the first place. A Terry stop occurs when a police officer has reasonable suspicion that an individual is "armed, engaged in, or about to be engaged in criminal conduct" and detains the individual.¹²⁶ Such a stop is considered a "seizure" under the Fourth Amendment. The Fourth Amendment guards against unreasonable seizures; therefore, the stop is permitted only if it is reasonable. If the stop is unreasonable, it violates the individual's constitutional rights.

The photostop issue may ultimately hinge on how the US Supreme Court applies precedents such as *Hiibel v. Sixth Judicial District Court of Nevada* and *Illinois v. Caballes*.¹²⁷ *Hiibel* dealt with whether or not a man, Larry Hiibel, had to identify himself to police, who asked for his name while they were investigating a nearby assault. He refused to give his name, and he was arrested and convicted for failing to identify himself. He appealed but was ultimately unsuccessful when the US Supreme Court affirmed his conviction. In *Caballes*, the Supreme Court held that police did not have to have reasonable suspicion of criminal

activity to use a drug-sniffing dog during a legal traffic stop.¹²⁸

Under *Hiibel*, which upheld and expounded on the limits of evidence collection detailed in *Terry v. Ohio*—the case that gave us the ruling on Terry stops—photostops may go beyond permissible investigatory actions, making them unconstitutional.¹²⁹ Taking a picture for any gang database when the stop had nothing to do with suspected illegal gang activity goes beyond what is commonly understood to be permissible under *Terry*, and such photos may be determined to be illegally obtained.¹³⁰ Under *Caballes*, however, photostops might be deemed legal if they do not cause unreasonable delays in the investigation.¹³¹ Such photographs may be analogous to a drug-dog sniff because they occur in plain view in areas without a reasonable expectation of privacy.¹³²

The legal scenarios are immensely complicated by the fact that, unlike a dog sniff for illegal narcotics conducted at a specific time and place, a photograph in a gang database has a much longer shelf life and could create a host of issues for individuals who may have no ties to criminal gang activity.¹³³

It is generally accepted that aerial photography by federal agencies and photography by police for booking identification purposes after arrests are allowable, similar to the way police can take DNA samples and fingerprints of an arrestee.¹³⁴ An open question remains, however: Do photographs taken during the course of a criminal investigation before arrest constitute a permissible search or seizure under the Fourth Amendment? The answer to that question will determine whether CalGang and other gang databases that house photographs are legally sound.¹³⁵

Despite the critical importance of accurate information on CalGang, its history is marred by inaccuracies and errors. In 2016, the California State Auditor's Office released a report highly critical of the CalGang system.¹³⁶ "Although it asserts compliance with federal regulations

and state guidelines . . . little evidence exists that CalGang’s governance has ensured these standards are met . . . and user agencies have diminished the system’s crime-fighting value,” the state auditor concluded. Moreover, some 600 individuals whose records were meant to be purged were still in the system.¹³⁷

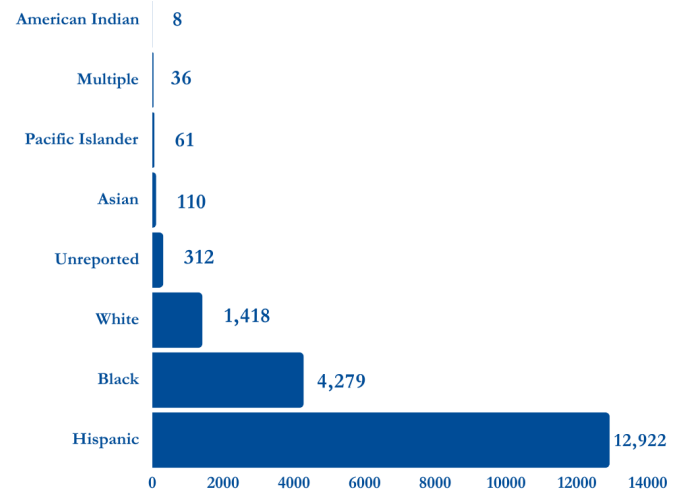
Three different law enforcement agencies relied on CalGang for employment screenings, despite CalGang policy prohibiting agencies from using CalGang for purposes not related to law enforcement.¹³⁸ None of the four agencies selected for further review by the state auditor had completed their annual review of entries. The agencies failed to meet the federal regulations for protecting criminal intelligence, and there were no procedures to ensure that the information was even relevant.¹³⁹

Technical safeguards were also porous. At the time of their review, the node agencies did not automatically disable login credentials for those no longer employed by the agency, meaning that an officer terminated for misconduct could have had access to the records.¹⁴⁰

After the auditor found that 23 percent of CalGang entries from these agencies lacked support, a sample of 100 entries was further scrutinized. The auditor concluded that 13 of those 100 entries were incorrectly included in CalGang.¹⁴¹ At one point, CalGang was tracking 42 individuals who were recorded as less than one year old.¹⁴² While that fact alone emphasizes the depth of CalGang’s designation problem, the reality was even worse: According to the system, 28 of the 42 alleged infant suspects had admitted to being gang members—an obvious impossibility.

A report by the Youth Justice Coalition has also raised concerns about racial disparities. As shown in Figure 6, while African American men do not make up the largest demographic group in CalGang, the raw number of African American men included in the database appears abnormally

Figure 6. Number of Individuals in CalGang by Race, 2023.



Source: Office of the California Attorney General, *Attorney General’s Annual Report on CalGang for 2023*, California Department of Justice, accessed September 4, 2024, <https://oag.ca.gov/system/files/media/ag-annual-report-calgang-2023.pdf>.

high, given the demographics of California and of Los Angeles County in particular. It has previously been estimated that the difference in the gang participation rate among African Americans and Latinos in large metropolitan areas is not practically significant.¹⁴³ A possible explanation is that police classify neighborhoods with larger concentrations of African Americans as gang areas, meaning that an automatic criterion for CalGang inclusion could already be baked in for residents of those neighborhoods owing to a racial profiling feedback loop.¹⁴⁴

George Gascón, former district attorney for Los Angeles County, former LAPD assistant chief, and previously chief of police for Mesa, Arizona, and San Francisco, remarked,

[We] begin with garbage in, garbage out . . . [I]t targets young people just simply by association. So, very young kids that are raised in the neighborhoods where there may be gang activity, they immediately get a scarlet letter, they get tagged as a gang associate, and then that is used against them even if there is no evidence that they’re involved in gang activity.¹⁴⁵

VII. A Series of Legislative Reforms

Another habitual problem that state auditors identified in 2016 was the improper management of juveniles. In 2013, a state law required juveniles and their parents to be notified if the juvenile's name was to be entered into CalGang, so that the family could have the opportunity to contest the decision. This legislation was the first major change to laws governing the database. Previously, no mechanism had existed to allow individuals designated as "gang members" or "gang associates" to remove themselves from the database—whether they were juveniles or not.¹⁴⁶

Nevertheless, according to the state auditor, "[o]f 129 juvenile records examined from the two agencies [Los Angeles and Santa Ana city police departments], 70 percent had been added without proper notification."¹⁴⁷ In some cases, the LAPD made no apparent effort to notify the juveniles at all.

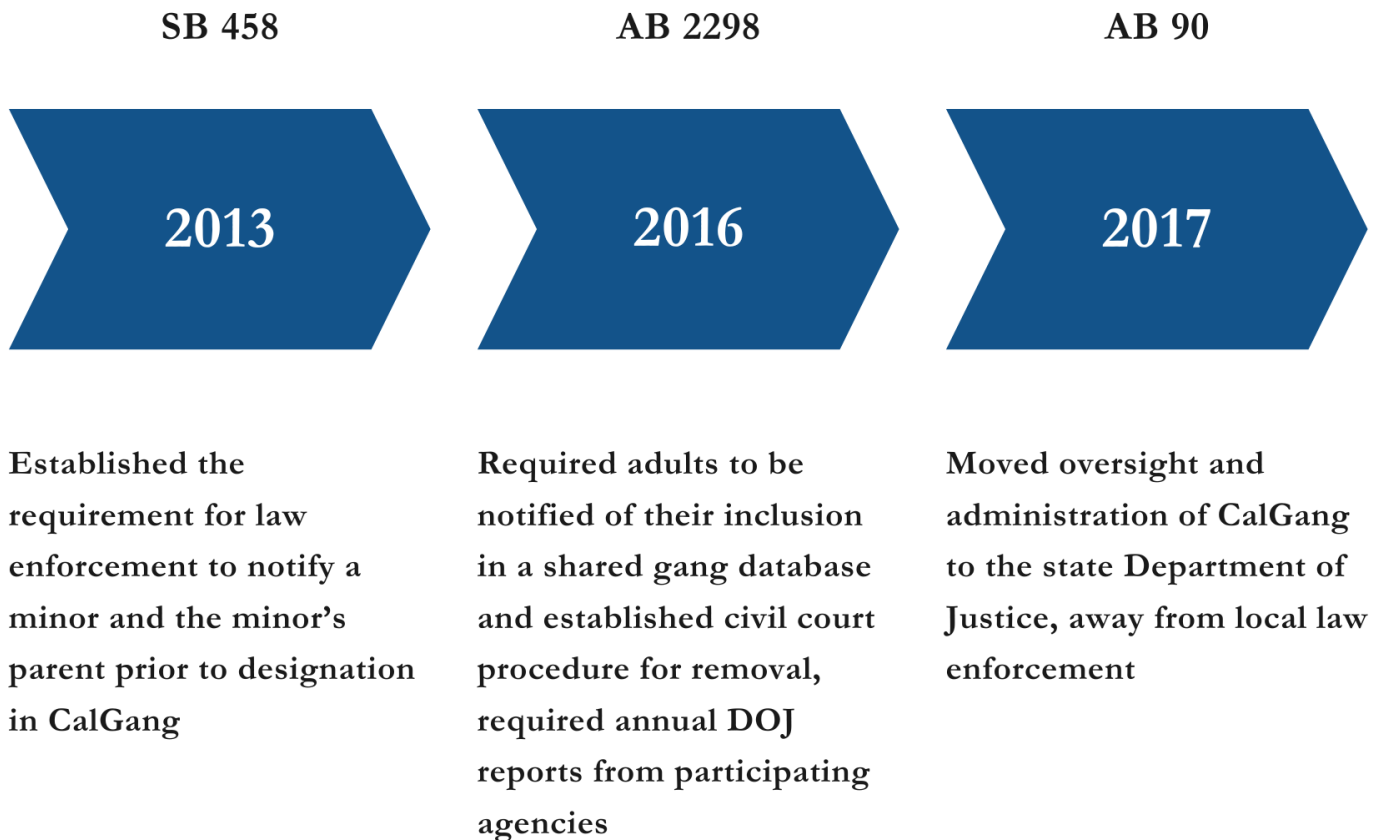
Following that revelation from state auditors, Governor Jerry Brown wrote, "I believe substantive improvements are clearly in order."¹⁴⁸ After the passage of Assembly Bill 2298 in 2016, California extended the ability to challenge one's inclusion in CalGang to adults and, for the first time, required annual reports from participating agencies.¹⁴⁹ Still, law enforcement agencies exercised minimal oversight.

The system was overhauled entirely in 2017. With the passage of AB 90, the CalGang Executive Board was stripped of its oversight responsibilities, and those duties were assigned to the California Department of Justice in the last significant change to the laws governing the database.¹⁵⁰ (Figure 7 shows the series of CalGang legislative reforms.) Under the reforms, the California DOJ was required to develop formal regulations to standardize the use and operation of CalGang and to establish standardized training for CalGang operators.

CalGang has always been funded by California's DOJ, although that was not originally the

principal body tasked with overseeing CalGang's day-to-day operations. In fact, for a time, the DOJ was not required by statute to oversee CalGang at all.¹⁵¹ The DOJ could provide technical ad hoc assistance when needed but was otherwise quite removed from the management of CalGang. Instead, the CalGang Executive Board and the California Gang Node Advisory Committee, which reported to the Executive Board, were originally tasked with overseeing the database.¹⁵²

Both the Executive Board and the Node Advisory Committee were generally composed of law enforcement officials. The CalGang Executive Board was staffed by a chief executive officer, elected annually by the board, and designees from the California Department of Justice, the node administrators, the California District Attorneys Association, and the California State Sheriffs' Association. Nominally, the Executive Board was intended to exercise oversight and provide policy direction, and it was empowered to approve or eliminate a node, which is a law enforcement agency that acts as a CalGang administrator for other agencies. The Node Advisory Committee was also composed of law enforcement officers or law enforcement support staff. After California's 2006 memorandum of understanding with ICE, an ICE representative became a voting member of both the Node Advisory Committee and the Executive Board.¹⁵³ The key responsibility of the committee included overseeing the operations of the agencies that participated in CalGang. Underneath the committee were the individual node administrators and the user agencies. The node administrators were tasked with conducting audits every three years and keeping records of gangs for the CalGang database. Node agency administrators were members of agencies from select county sheriff's offices and city police departments.¹⁵⁴ The user agencies were the individual law enforcement officers or police department staff that supplied the ground-level CalGang data. That relatively loose and horizontal

Figure 7. CalGang Legislative Reform Efforts.

Source: Jonathan Hofer and Jonathan Fuentes.

administrative structure, shown in Figure 8, was in effect from roughly 1997 until 2017.

This administrative structure was altered by AB 90, the Fair and Accurate Gang Database Act of 2017. This legislation created a new advisory committee called the Gang Database Technical Advisory Committee, which was charged with providing recommendations to the DOJ on oversight matters (see Figure 9).¹⁵⁵ The law specified that the new committee would be staffed with a mix of representatives from law enforcement associations, gang violence intervention specialists, lawyer association presidents, a community civil rights representative, a victim of erroneous gang labeling, and the chairperson of the Gang Node Advisory Committee. In an effort to increase transparency, the DOJ was required to publish annual reports on its website, which

would include the reporting from the Gang Node Advisory Committee and from individual agencies.

AB 90 imposed a moratorium on CalGang statewide in 2018 until the Office of the Attorney General could ensure that the database was purged of outdated or inaccurate information. During the attorney general's investigation, the LAPD was not allowed to enter new records, and the LAPD's previously entered records were not accessible to agencies participating in CalGang.

Since the initial moratorium, the DOJ's new powers have already been used. In 2020, Attorney General Xavier Becerra suspended the LAPD's access to CalGang, alleging systematic abuse.¹⁵⁶ Los Angeles's records, which made up roughly 25 percent of total entries, were all in question. Becerra said,

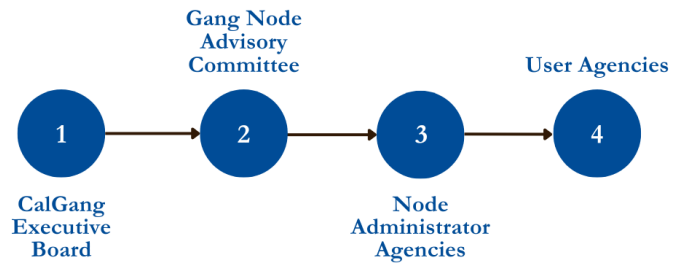
If a quarter of the program’s data is suspect, then the utility of the entire system rightly comes under the microscope. The Legislature tasked the DOJ with oversight of the CalGang database and with the development of mechanisms to ensure the system’s integrity. That’s why we’re formally revoking access to the records generated by LAPD. Public safety tools must provide a real benefit to the public and withstand the durability test of constant scrutiny. It should now be obvious to everyone: CalGang must change.¹⁵⁷

LAPD Chief Michel Moore once said that CalGang was a “critical tool.”¹⁵⁸ After confirming the allegations against the department, in 2020 the LAPD announced that “the department will no longer use this resource.”¹⁵⁹ The city that pioneered gang databases was also one of the first to reject it. In 2022, the Anaheim Police Department, Garden Grove Police Department, and Oceanside Police Department withdrew from the system.¹⁶⁰ As of 2024, none of those agencies participate in CalGang. (See the appendix for a list of participating agencies.)

VIII. The Constitutional Concerns with Gang Databases

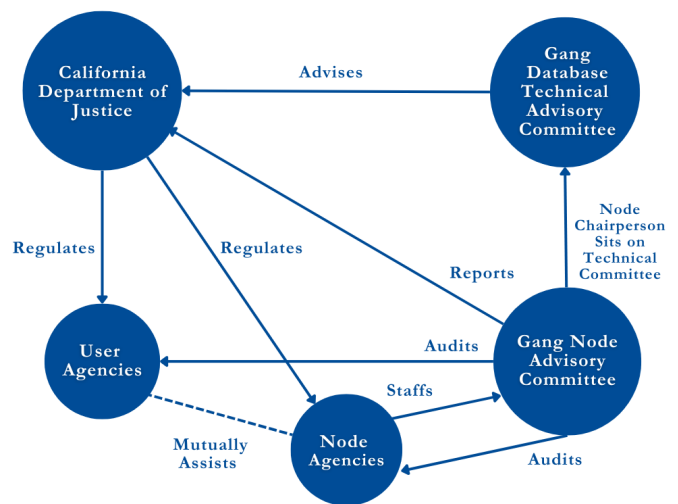
Even with some reforms, CalGang and other databases still raise outstanding constitutional questions because of the inaccuracies of gang database data and the flawed and subjective documentation practices by nonexpert police officers. Research by Joshua D. Wright of the *Stanford Journal of Civil Rights & Civil Liberties* and Jasmine Johnson of *St. John’s Law Review* has highlighted that, nationwide, the addition of individuals to gang databases typically occurs without any formal notice, opportunity to challenge the inclusion, or clear path for removal.¹⁶¹ These authors accordingly argue that being added to a gang database without a hearing may activate Fifth and Fourteenth Amendment protections against the deprivation of life, liberty,

Figure 8. Former CalGang Administration, 1997–2017.



Source: Jonathan Hofer and Jonathan Fuentes.

Figure 9. Current CalGang Administration.



Source: Jonathan Hofer and Jonathan Fuentes.

or property without due process of law, because an individual’s legal status is substantially and negatively altered with no opportunity for the individual to be heard.¹⁶² Because designation as a gang member can have serious repercussions, due process would seemingly be required.

Beyond due process, gang databases may face other legal challenges related to equal protection. The Fourteenth Amendment demands equal protection of the laws, and the US Supreme Court has historically interpreted this clause as prohibiting racial discrimination.¹⁶³ Johnson explains that class action cases such as *Floyd v. City of New York* have shown success in challenging government action based on allegations of a pattern of racially biased enforcement practices.¹⁶⁴ It was found in *Floyd* that the city had violated the rights of African

American and Latino New Yorkers who were stopped and frisked without cause, and the court ordered reforms to the city's Terry stop practices. A short time later, New York City announced Operation Crew Cut, a campaign against gang activity by the New York Police Department (NYPD) that involved an "increase in the use of the NYPD's 'secret' gang database."¹⁶⁵ The gang database, however, was "[almost all] Black or Latino." Because criminal activity was not a requirement for addition to NYPD's gang database and additions were subject to police discretion, "creating a database that is nearly 100% Black and Latinx looks like racial targeting."¹⁶⁶

Similar racial disparities have been alleged in other US cities as well, including Boston, Charlotte, Denver, Los Angeles, Minneapolis, and Washington, DC.¹⁶⁷ Racially neutral laws can violate the Fourteenth Amendment if the enforcement of the law results in racial bias, and the near-total overrepresentation of Black and Latino individuals in gang databases is concerning.¹⁶⁸ If racial bias is found, the compilation and use of gang databases could supply viability to class action claims under the Equal Protection Clause.¹⁶⁹

Other than statistical evidence of possible bias, police database documentation practices also pose Fourteenth Amendment questions. For example, the *Harvard Law Review* published an overview and analysis of the points-based system, a criterion similar to that adopted by CalGang, that the Boston Police Department (BPD) used for its gang database.¹⁷⁰ With respect to racial profiling, the *Harvard Law Review* found that inclusion in the gang databases adversely affected Latino and African American youth and that those "youth were likely labeled gang members, in part, because they went to school with other youth of color, wore clothing popular among young men of color, and lived in neighborhoods that were predominantly made up of people of color."¹⁷¹

Such findings may end up requiring the government to justify why some people are listed in a gang database, while others are not. If a case alleging violation of the rights of individuals listed in a gang database were to go to court, it might reveal whether there has been consistent treatment across the board. For example, if a police officer puts a person of a racial minority on a gang list just because they frequent a certain area but does not do the same for a white person in the same area, that discrepancy may trigger the Fourteenth Amendment's protection of fairness under the law.

Government staff change over time, however; what was considered discriminatory practices by one administration might not be true for another administration.¹⁷² And in any lawsuit, the government will assert nondiscriminatory justifications for its actions. A case in point is the NYPD's defense of its gang database, arguing that it reflects the city's government-generated crime statistics.¹⁷³ Those challenging the government's actions would have to persuade juries to consider the totality of the circumstances, not just the government's stated justifications for its actions related to gang databases.¹⁷⁴

Flawed data from the gang databases used as part of law enforcement activity cause additional problems. For example, police conduct justified by questionable intelligence from the gang databases might fail the Fourth Amendment's protection against unreasonable searches and seizures. The *Harvard Law Review* article analyzing the Boston Police Department's gang database confirmed that possibility, offering the example of the Massachusetts Supreme Judicial Court case *Commonwealth v. Sweeting-Bailey*, which "upheld a finding of reasonable suspicion to stop and search a driver and passenger in a vehicle based in part on the fact that some occupants of the vehicle were identified as gang members in a gang database."¹⁷⁵ The *Harvard Law Review* article emphasized the immense importance of

justified reasonable suspicion or probable cause warranting police action. The article argued that justification is not possible when relying on gang database information because the gang database verification process is arbitrary, inconsistent, and unreliable even when serving in an informant capacity.¹⁷⁶

It is clear that the strongest challenges to gang databases come from the Due Process Clauses of the Fifth and Fourteenth Amendments. Other challenges, such as those brought under the Fourteenth Amendment's Equal Protection Clause and the Fourth Amendment protection against unreasonable searches and seizures, might provide alternative paths in obtaining relief from wrongful inclusion in a gang database.

IX. Does CalGang Even Work? Should It Be Reformed or Abolished?

A worthwhile gang database would be characterized by a demonstrable reduction in gang-related activities, evidenced by lower gang-related crime rates and higher clearance rates. A clearance rate is the ratio of crimes reported to the number of crimes that have “cleared” or been terminated—for example, because a person was arrested or the case was closed. Clearance does not necessarily mean that a perpetrator was convicted or the crime was solved, but it is still a useful law enforcement barometer. Success would also be seen in the system's accuracy, ensuring that individuals are correctly identified, databases are error-free, and false positives are minimized. The system would operate transparently, with robust oversight mechanisms, and would do so at a monetary cost that is not excessive for individual agencies and the public, thus yielding a net benefit to society. CalGang misses the mark in each of those respects.

Robin Petering of the University of Southern California performed the most thorough financial cost-benefit analysis of CalGang, which was

published in the *Journal of Forensic Social Work*. The analysis looked at the years 1997–2010. After accounting for the costs associated with system operation and system errors, Petering concluded,

Although the primary costs of operating the database were relatively low, secondary costs resulting from errors were much larger and led to an overall greater cost to society. In addition, it appears that CalGang has not been successful in reducing the rate of gang-related crime in Los Angeles. Resources for CalGang may be better spent on other crime-prevention activities that are less costly to society and lead to greater prevention.¹⁷⁷

Petering calculated that the annual cost of CalGang to the city of Los Angeles was \$412,025 for a typical year in the 2010s.¹⁷⁸ The state itself estimated that a new agency participating in CalGang would spend an estimated \$1,832,600 annually in detective time, while staff training could cost local agencies anywhere from \$562,500 to \$2,250,000 per year.¹⁷⁹ In addition to normal operating expenses, the cost of charging a misidentified individual with a gang crime carries a steep financial penalty, roughly \$42,178 per individual, stemming chiefly from city, county, and state costs related to prosecution and processing. The number of gang members who are unidentified by CalGang constitutes another error. The precise cost of such a “Type II error” is difficult to determine, as is ascertaining CalGang's responsibility for underreporting mistakes. An estimate of that cost, however, is as much as \$1.58 million for each gang homicide.¹⁸⁰ That estimate comes from a study by Matt DeLisi and colleagues at Iowa State University, who calculated the monetary costs of murders. The variables examined in the study included “victim costs, criminal justice costs, lost offender productivity, and public willingness-to-pay costs.”¹⁸¹

As Petering correctly emphasized, not only do the financial costs of CalGang outweigh the

benefits, but it has also never been established that CalGang functions as an effective crime-fighting tool. Compared with the heights of gang activity in the late 1980s to early 1990s, overall violent crime is down in California and nationally, but street gangs continue to grow in the United States. The latest National Gang Report by the FBI noted, “Street gangs continue to impact communities across the United States and do not show signs of decreasing membership or declining criminal activity.”¹⁸² In 2022, the San Diego Police Department reported that gang-related activity was the second-most common motive for the homicides it investigated, trailing only “an argument.”¹⁸³ Periods of time, such as 1997–2007, can be identified when gang crime was increasing statewide while other categories of crime were falling.¹⁸⁴ CalGang certainly has had some success stories, such as when Fresno law enforcement was able to identify a serial rapist through the perpetrator’s street-gang name or when CalGang identified a suspect in a gang shootout relying only on physical descriptions of the suspect.¹⁸⁵ Unfortunately, such success stories are rare.

In Los Angeles, the city that was top of mind for CalGang’s creators and proponents, the effect of CalGang is unclear. In 1996, one year prior to the creation of CalGang, gang killings in Los Angeles accounted for 25 percent of all homicides. By 2008, 70 percent of homicides in Los Angeles were gang related.¹⁸⁶ In recent years, gang-related homicides have made up approximately half of all homicides in Los Angeles. It was estimated that 57 percent of the city’s homicides in 2018 were gang related and around 50 percent were gang related in 2019.¹⁸⁷

Following the statewide moratorium on the use of CalGang in 2018, California’s gang-related homicide rate improved, though the numbers of gang-related homicides were already trending downward, as can be seen in Figure 10. The clearance rate of all violent crime in California has commonly been around 30 to 40 percent over the

Figure 10. Gang-Related Homicides in the State of California (2012–2023).

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Total Homicides	1,878	1,745	1,697	1,861	1,930	1,829	1,739	1,679	2,202	2,361	2,206	1,892
Gang-Related	397	367	315	323	370	339	276	256	369	345	312	229
Gang-Related %	32.9%	33%	29.8%	28.8%	31%	30.2%	26.8%	25.3%	28.2%	26.6%	25.3%	23.4%

Sources: California Department of Justice, 2021 Homicide in California, accessed November 6, 2024, https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/Homicide%20In%20CA%202021_o.pdf; California Department of Justice, 2023 Homicide in California, accessed November 6, 2024, <https://data-openjustice.doj.ca.gov/sites/default/files/2024-07/Homicide%20In%20CA%202023f.pdf>.

Figure 11. Gang-Related Homicides in the City of Los Angeles (2020–2023).

	2020	2021	2022	2023
Total Homicides	355	402	392	327
Gang-Related	198	230	209	154
Gang-Related %	51%	57%	53%	47%

Sources: Los Angeles Police Department, 2023 Homicide Report, 2024, <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2023-Homicide-Report.pdf>; Los Angeles Police Department, 2022 Homicide Report, 2023, <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022-LAPD-Annual-Homicide-Report-03-23-23.pdf>.

past decade, implying that police officers are no less capable of clearing violent crimes generally.¹⁸⁸

Since leaving CalGang in 2022, there was a year-over-year drop in gang-related homicides in Los Angeles, as shown in Figure 11, though there has only been one full year of collated data since 2022. The numbers of other gang-related categories of crime, such as assaults and robberies, were stable during the pandemic.¹⁸⁹

Given the evidence that CalGang data are marred by issues of inaccuracy, bias, and questionable constitutionality, that criteria are overly subjective, that documentation and training are inadequate, and that the net benefits to society are unproved, a statewide moratorium on the use of CalGang should be issued until all of those matters have been resolved to the satisfaction of the California attorney general in order to

protect the civil liberties of all Californians. Considering CalGang’s current form and the state of California’s gang laws, the database does not adequately serve the public; thus, its use in its current form is unjustified. As for the accuracy of its records, CalGang fails *prima facie*.

Comparing CalGang with gang databases in other states reveals that the issues plaguing California’s system are not unique and are, in fact, prevalent across the country. Many states operate similar databases or are parties to shared information. The databases have minimal transparency and oversight, and, like CalGang, they often have vague criteria for inclusion.¹⁹⁰ Routine interactions with law enforcement, such as field interviews or detentions, frequently are the basis for adding individuals to the databases, raising questions about due process and civil liberties.

In addition to CalGang’s many shortcomings, an audit of Minnesota’s gang database is highly instructive. Minnesota’s gang database is effectively the same GangNet platform as CalGang and has comparable data collection standards and entry criteria. The audit found that approximately 15 percent of entries in the Minnesota database contained errors.¹⁹¹ If the error rate in California’s database is comparable, that would mean that well over 2,500 entries in CalGang are invalid.

Casting further doubt on the accuracy of gang database records, Marjorie Zatz’s research in the *Journal of Contemporary Crises* reported evidence that the officials in the Phoenix Police Department exaggerated the city’s gang problem in order to get federal grant money and fed narratives to the local media that the gang situation would worsen unless the department received more money.¹⁹² Richard McCorkle and Terance Mieth at the University of Nevada, Las Vegas, similarly alleged that the Las Vegas Metropolitan Police Department (LVMPD) “often grossly exaggerated [the gang problem] in order to justify further economic or political

action.”¹⁹³ At the time, the LVMPD reportedly faced mounting pressure from several police misconduct charges and financial strain. Such practices may inflate the number of gang database entries.

While gang problems are real, so are the serious problems with gang databases. The sheer size and scope of California’s CalGang system is an extra cause of concern.

X. Key Policy Recommendations

California officials should impose a statewide moratorium on the use of CalGang and fix its shortcomings before permitting any further use. The moratorium should continue until the concerns highlighted above are resolved to the satisfaction of the California attorney general. With or without a moratorium, however, the following recommendations, if implemented, would improve accountability, accuracy, and effectiveness of efforts to reduce gang-related criminal activity while protecting individuals’ civil liberties.

Amend Penal Code Section 182.5. The current wording of Penal Code Section 182.5 potentially subjects individuals to criminal liability based on indirect actions or incidental benefits derived from the actions of others within a gang, regardless of the individuals’ intent or degree of involvement. The loose wording allows for broad interpretation and undermines principles of justice by imposing guilt based on loose or nonexistent association rather than actual criminal conduct or concrete links to perpetrators.

The words “promotes” and “benefits” should be removed from Section 182.5 and the Penal Code should be amended to read,

Notwithstanding subdivisions (a) or (b) of Section 182, any person who actively participates in any criminal street gang, as defined in subdivision (f) of Section 186.22, with knowledge that its members

engage in or have engaged in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, and who willfully **promotes**, furthers, **or** assists in **or benefits** any felonious criminal conduct by members of that gang is guilty of conspiracy to commit that felony and may be punished as specified in subdivision (a) of Section 182.

The proposed amendments properly focus on direct participation and culpable actions in furthering or assisting in felonious criminal conduct, aligning the law more closely with typical elements of criminal conspiracy.¹⁹⁴

Create a Better Removal Process. Individuals should be able to see whether they are listed in CalGang and the information associated with their entry. Transparency would have the added benefit of allowing errors to be detected sooner. After reforms allowed individuals to request removal from CalGang, few tried, and even fewer were successful.¹⁹⁵ The California DOJ should create an accessible and standardized template for individuals seeking removal from CalGang. While the DOJ currently provides a template to request information about an individual's status as a suspected gang member or associate, contesting and clearing one's name from the database is logistically impractical.¹⁹⁶ Currently, in order to request removal, an individual or their legal representative must draft a written request to the designating agency; what to include in the request is not specified. If the request is declined or never receives a response, the individual must petition the superior court of appropriate jurisdiction.

A standardized removal process would have the added benefit of reducing the administrative burden on user agencies that would have to parse out and respond to nonuniform requests. The template should provide space for individuals to submit any supporting documentation or evidence corroborating their claim of innocence or lack of association with criminal street gangs.

Additionally, the state should create a template that law enforcement agencies could use when rejecting a removal request that would provide a clear explanation of the reason(s) for the rejection.

Change the Standard for Review of Removal Requests. The DOJ claims that user agencies will respond to requests within 30 days and provide a rationale for rejection, but it is not guaranteed that they will actually do so.¹⁹⁷ Moreover, if the 30-day response period lapses, the request is considered to have been declined, no rationale is provided, and no changes will be made to a person's CalGang designation. To challenge inclusion in CalGang when the designating agency does not respond, an individual or his legal representative must petition the superior court of appropriate jurisdiction to review the request. The state can require that designating agencies justify every denied removal request, allow individuals to request removal from the DOJ, or a combination thereof.

Lawmakers should amend the 30-day standard for removal requests so that if no decision is made before the deadline, the request is automatically approved, not rejected. A similar process is already used for gun background checks with the FBI's National Instant Criminal Background Check System. The designating agency can continue its review after this deadline and reenter an individual if the request should have been rejected, but the individual must be told why the request was ultimately denied and be given an opportunity to appeal. While under review after the 30 days have lapsed, the designation in CalGang would be withheld from interagency sharing.

Clarify Criteria for Gang Membership and CalGang Inclusion. California Penal Code Section 186.22, the law that defines gang membership, vaguely starts with the words "[a] person who actively participates in a criminal street gang," while Penal Code Section 186.34 similarly defines criminal street gangs

vacuously.¹⁹⁸ The California DOJ should create a guidance document that elaborates on what constitutes active participation in a criminal gang, and language should follow the State of Mississippi’s definition of gang membership, which offers greater specificity about what, precisely, constitutes a participant in illegal activity. This definition, in Mississippi Streetgang Act Section 97-44-3, states,

“Streetgang member” or “gang member” means any person who actually and in fact belongs to a gang, and any person who knowingly acts in the capacity of an agent for or accessory to, or is legally accountable for, or voluntarily associates himself with, a gang-related criminal activity, whether in a preparatory, executory, or cover-up phase of any activity, or who knowingly performs, aids, or abets any such activity.¹⁹⁹

Law enforcement agencies should implement protocols that require thorough documentation and articulation of the rationale behind each individual’s listing in CalGang. Such protocols entail moving beyond superficial identifiers and instead demand concrete evidence linking an individual to gang-related activities. By adding more specific criteria for designation in CalGang, authorities can mitigate the risk of erroneous inclusions. Some individual agencies, such as the San Diego Police Department, require individuals to meet at least three out of the eight criteria for gang membership, instead of the usual minimum of two criteria.²⁰⁰ The protocol should be a universal minimum unless a person explicitly and freely admits to gang membership.

Rethink the Current Approach to Criminal Street Gangs. California’s approach to criminal street gangs during the past 30 years has failed to effectively counter gangs, which appear immune to elements of traditional policing. A 2019 survey of gang experts, prosecutors, and public defenders has highlighted several reasons that California’s gang laws fail to produce long-term tangible results:²⁰¹

1. Despite convictions, gang leaders often continue to exert control over their gangs from within prison walls, indicating that incarceration alone is insufficient to dismantle gang operations.²⁰²
2. Gang-penalty enhancements are not an effective deterrent. Gang members engage in high-risk behavior knowing that death is a possibility, and, therefore, “additional jail time does not affect the person’s decisions on whether or not to commit crimes for the gang.”
3. Gang enhancements do not affect the loyalties of individual members toward gangs, and stints in prison may earn a gang member more respect among their peers.²⁰³
4. Longer sentences may prolong a member’s time in a gang by increasing the time they spend in jail, where gangs are concentrated and may be thought of as a source of protection while incarcerated.

In addition, rather than dissuading criminality, the “war on drugs” likely contributes to the prevalence of violent gangs, both domestically and internationally. By criminalizing drug use and the drug trade, the war on drugs has inadvertently created lucrative black markets in which gangs are able to generate substantial profits and make gang life enticing. The high financial stakes involved in the drug trade fuel violent competition among gangs, leading to increased street violence and crime rates.

For example, even though black markets continue to flourish because of excessive regulation and taxation of dispensaries and growers, modest cannabis decriminalization has already been observed to reduce crime in border states. A 2014 paper by Evelina Gavrilova, Takuma Kamada, and Floris Zoutman stated, “Our results are consistent with the theory that decriminalization of small-scale production and distribution of marijuana harms Mexican drug trafficking

organizations, whose revenues are highly reliant on marijuana sales.”²⁰⁴ A 2018 paper for the *Journal of Economic Behavior & Organization* by Davide Dragone and colleagues found that cannabis legalization “is inducing a crime drop” in the United States, adding support to the argument that “letting the drug market emerge from illegality would make illegal activities in this market not pay, thus greatly reducing fertile ground for crime.”²⁰⁵ This view was championed by economist and Nobel laureate Gary Becker, who said, “Just as gangsters were largely driven out of the alcohol market after the end of prohibition, violent drug gangs would be driven out of a decriminalized drug market.”²⁰⁶

Although decriminalization removes penalties for personal use and possession up to a predetermined amount, it stops short of establishing a white market, which legalization would provide.²⁰⁷ Decriminalization still leaves room for criminal organizations to corner the illicit markets. The positive impacts seen from decriminalization, such as reduced crime in certain areas, suggest that full legalization and legalization of other substances could further diminish gang-related violence and involvement in the drug trade. Full legalization would also unleash legitimate medical research on the beneficial uses of previously illicit drugs. Drug legalization, therefore, would both reduce gang violence and gang involvement in the drug trade and also advance medical research.

Reform Gang Injunctions. Gang injunctions are court mandates that are effectively a type of restraining order. Because the orders may be broad, they risk infringing individual rights, as was the case with Peter Arellano, who could not leave his house or go to church with his family despite not having a criminal record. These injunctions, which are civil orders, require a lower standard of proof than criminal cases do,

and temporary orders are generally approved by judges by default.²⁰⁸ Gang injunctions typically specify restrictions on certain activities but should also include the specific names of verified gang members that the individual should refrain from associating with. For the injunction to become permanent through a jury trial, the “beyond a reasonable doubt” standard should be used instead of lower evidentiary standards.²⁰⁹

XI. Conclusion

Gang violence is a serious problem in California that deserves serious solutions. CalGang is currently not such a solution. California’s experience with CalGang serves as an example to other states, emphasizing the importance of improving gang databases to protect civil liberties and to provide reliable, documented information to law enforcement. Gang databases present complex challenges, and reforms are necessary, especially in California.

Although gang databases may serve a legitimate purpose in combating gang-related crime, California’s gang laws create an environment where the consequences of misidentifying someone as a gang member are severe, not only to the individual who was deprived of civil liberties but also to the general public when these misidentifications contribute to law enforcement investigative errors and erroneous prosecutions. As a result, the Independent Institute has awarded CalGang and California’s gang laws the *California Golden Fleece® Award*.

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Appendix: Agencies that Participate in CalGang

The following agencies participated in CalGang in 2023:

Alhambra Police Department	Downey Police Department
Anaheim Police Department	El Cajon Police Department
Azusa Police Department	El Camino College Police Department
Baldwin Park Police Department	El Monte Police Department
Banning Police Department	Escondido Police Department
Barstow Police Department	Fontana Police Department
Beaumont Police Department	Fontana School Police Department
Bell Gardens Police Department	Fullerton Police Department
Beverly Hills Police Department	Garden Grove Police Department
Brea Police Department	Gardena Police Department
Buena Park Police Department	Glendale Police Department
Burbank Police Department	Hawthorne Police Department
California Department of Justice	Hemet Police Department
California Department of Corrections and Rehabilitation	Huntington Beach Police Department
California Highway Patrol	Huntington Park Police Department
Carlsbad Police Department	Inglewood Police Department
Cathedral City Police Department	Irwindale Police Department
Chino Police Department	La Habra Police Department
Chula Vista Police Department	La Mesa Police Department
Claremont Police Department	La Verne Police Department
Colton Police Department	Long Beach Police Department
Compton Police Department	Los Angeles City Housing Authority Police Department
Corona Police Department	Los Angeles County Metro Transit Authority
Costa Mesa Police Department	Los Angeles County Parks Bureau
Covina Police Department	Los Angeles County Probation Department
Culver City Police Department	Los Angeles County Sheriff's Department

Los Angeles Port Police Department	Riverside County Probation Department
Los Angeles Unified School Police Department	Riverside County Sheriff's Department
Manhattan Beach Police Department	Riverside Police Department
Maywood Police Department	San Bernardino County District Attorney's Office
Monrovia Police Department	San Bernardino County Probation Department
Montclair Police Department	San Bernardino County Sheriff's Department
Montebello Police Department	San Bernardino Police Department
Monterey Park Police Department	San Bernardino School District Police Department
Murrieta Police Department	San Diego County Sheriff's Department
National City Police Department	San Diego Police Department
Oceanside Police Department	San Fernando Police Department
Ontario Police Department	San Gabriel Police Department
Orange County District Attorney's Office	San Luis Obispo County Probation Department
Orange County Probation Department	San Luis Obispo County Sheriff's Department
Orange County Sheriff's Department	Santa Ana Police Department
Orange Police Department	Santa Monica Police Department
Palos Verdes Estates Police Department	South Gate Police Department
Pasadena Police Department	Torrance Police Department
Placentia Police Department	Tustin Police Department
Pomona Police Department	Upland Police Department
Redlands Police Department	US Department of Homeland Security
Redondo Beach Police Department	West Covina Police Department
Rialto Police Department	Westminster Police Department
Riverside County District Attorney's Office	Whittier Police Department

Source: California Department of Justice, 2023 Yearly Report AG Dataset.

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