UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 11-01135 DMG (JEMx)** Date February 15, 2013

Title ***Christian Rodriguez, et al. v. City of Los Angeles, et al.*** Page 1 of 10

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

VALENCIA VALLERY	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None Present	Attorneys Present for Defendant(s) None Present

Proceedings: IN CHAMBERS—ORDER RE PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION [Doc. # 61]

This matter is before the Court on Plaintiffs' motion for preliminary injunction [Doc. # 61]. The Court held a hearing on the motion on August 24, 2012 and the matter was submitted after the parties filed supplemental authorities on September 7, 2012. The Court has considered the parties' respective positions and the evidence submitted in support thereof. For the reasons set forth below, Plaintiffs' motion for preliminary injunction is **GRANTED in part** and **DENIED in part**.

I. FACTUAL & PROCEDURAL BACKGROUND[1]

On February 7, 2011, Plaintiffs filed a class action complaint against the City of Los Angeles, Carmen Trutanich, Charles Beck, Allan Nadir, Angel Gomez (collectively, "Defendants") and Does 1 through 10. Plaintiffs assert the following nine causes of action: (1) violation of 42 U.S.C. § 1983 (First Amendment); (2) violation of 42 U.S.C. § 1983 (Fourth Amendment); (3) 42 U.S.C. § 1983 (Fourteenth Amendment – Right to Travel); (4) violation of Article 1, §§ 1, 2 of the California Constitution (First Amendment analogue); (5) violation of Article 1, §§ 1, 13 of the California Constitution (Fourteenth Amendment analogue); (6) violation of Article 1, §§ 1, 7 of the California Constitution (Fourteenth Amendment analogue); (7) violation of Cal. Civ. Code § 52.1; (8) tort in essence (false imprisonment—Cal. Penal Code § 236); and (9) violation of mandatory duties.

Plaintiffs challenge 26 gang injunctions that have substantially similar curfew provisions limiting the enjoined parties' ability to go "outside" between the hours of 10 p.m. and sunrise, with certain exceptions, all of which they contend have language substantially similar to the following:

[1] The facts are set forth in greater detail in the Court's February 13, 2013 Order regarding class certification ("Class Certification Order") and need not be recited anew here.

> Being outside between the hours of 10:00 p.m. on any day and sunrise of the following day, unless (1) going to/from a legitimate meeting or entertainment activity, or (2) actively engaged in some business, trade, profession or occupation which requires such presence, or (3) involved in a legitimate emergency situation that requires immediate attention.

(Rodriguez Decl. ¶¶ 13, 27, Exs. 5, 18.)

On October 15, 2007, the California Court of Appeal, in *People ex rel. Totten v. Colonia Chiques*, 156 Cal. App. 4th 31 (2007), *review denied* by *People v. Colonia Chiques (Acosta)*, 2008 Cal. LEXIS 906 (2008), ruled that a gang injunction's curfew provision was unenforceable because the following portions were unconstitutionally vague: (a) the provision enjoining gang members from "being outside" in the safety zone during curfew hours; and (b) the "legitimate meeting or entertainment activity" exception to the curfew provision.[2]

On February 13, 2013, the Court issued an order certifying the following Class:

> All persons who have been served with one or more gang injunctions issued in Los Angeles County Superior Court Case Numbers BC397522; BC332713; BC305434; BC313309; BC319166; BC326016; BC287137; BC335749; LC020525; BC267153; BC358881; SC056980; BC359945; NC030080; BC330087; BC359944; BC282629; LC048292; BC311766; BC351990; BC298646; BC349468; BC319981; SC060375; SC057282; and BC353596.

(Class Certification Order at 28-29 [Doc. # 89].)

[2] The curfew provision in the following seven injunctions does not contain the "being outside" language, but suffers from the same defect as that addressed in *Colonia Chiques* insofar as it fails to define a "place accessible to the public" or a "legitimate meeting or entertainment activity": All for Crime, Blythe Street, Eastside Wilmas, Langdon Street, Rolling Sixty Crips, Venice 13, and Venice Shoreline Crips. (Decl. of Anne Richardson in Support of Motion for Class Certification ¶¶ 16, 24, 29, 33, 36, 39, and 40, Exs. 7, 15, 20, 24, 27, 30, and 31 ("Richardson Decl.") [Doc. # 44].)

II. LEGAL STANDARD

A plaintiff seeking injunctive relief must show that (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Toyo Tire Holdings Of Ams. Inc. v. Cont'l Tire N. Am., Inc.*, 609 F.3d 975, 982 (9th Cir. 2010) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L.Ed.2d 249 (2008)). An injunction is also appropriate when a plaintiff raises "serious questions going to the merits," demonstrates that "the balance of hardships tips sharply in [his] favor," and "shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (quoting *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

III. DISCUSSION

A. Plaintiffs Have Standing To Seek Injunctive Relief On Behalf Of The Class

Defendants argue that Plaintiffs' Motion should be denied because Plaintiffs lack standing to seek injunctive relief. In their opposition to Plaintiffs' motion for a preliminary injunction, Defendants raise many of the same arguments they presented in their opposition to Plaintiffs' motion for class certification.[3] Insofar as the Court has already addressed those arguments in its Class Certification Order, the Court will not reiterate its analysis here.

"The irreducible constitutional minimum of standing" requires that (1) Plaintiffs suffered an injury in fact, i.e., one that is sufficiently concrete and particularized and actual or imminent, not conjectural or hypothetical, (2) the injury is proximately caused by the challenged conduct, and (3) Plaintiffs' injury is likely to be redressed by a favorable decision. *Lujan v. Defenders of*

[3] In an effort to bolster their argument that Plaintiffs are presumed to know the law, Defendants provide the Court with additional case citations. None of them are applicable to the case at hand. The cases relied upon by Defendants addressed whether the plaintiffs were entitled to individualized notice of state and federal statutes. *See New Jersey v. Delaware*, 552 U.S. 597, 128 S. Ct. 1410, 170 L. Ed. 2d 315 (2008) (noting that the 1905 Compact was codified in the New Jersey state codes and finding it unconvincing that New Jersey officials were ignorant of the state's own statutes); *North Laramie Land Co. v. Hoffman*, 268 U.S. 276, 282-83, 45 S. Ct. 491, 69 L. Ed. 2d 953 (1925) (the plaintiffs were not entitled to individualized notice of Wyoming "road law" governing establishment of proposed roads); *Jones v. United States*, 121 F.3d 1327, 1330 (9th Cir. 1997) (noting that the 1992 Act notice was published in the Federal Registrar on November 16, 1992). In this case, Defendants have not provided Plaintiffs with any kind of notice and, instead, contend that Plaintiffs do not have a right to such notice. *See* Defs.' Opp'n at 10 ("Plaintiffs' [sic] themselves have neither a right to notice that the CCBG Injunction curfew is invalid (because they are presumed to know already) or a need to notice (because they have actual notice already)").

Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 978 (9th Cir. 2011). "The plaintiff must demonstrate that he has suffered or is threatened with a concrete and particularized legal harm, coupled with a sufficient likelihood that he will again be wronged in a similar way." *Ellis*, 657 F.3d at 978 (internal quotation marks omitted). "Past wrongs do not in themselves amount to a real and immediate threat of injury necessary to make out a case or controversy but are evidence bearing on whether there is a real and immediate threat of repeated injury." *Id.* (internal quotation marks omitted).

In a class action context, standing exists if at least one named plaintiff meets the requirements. *Id.* For Plaintiffs to have standing, the claimed threat of injury must be likely to be redressed by the prospective injunctive relief. *Id.*

As to Plaintiffs' service of injunction claims, the Court finds that Plaintiffs have standing to seek injunctive relief. To the extent that Plaintiffs, and the class members they represent, have been served with an injunction containing the challenged curfew provisions, they have suffered a deprivation of due process. *Colonia Chiques*, 156 Cal. App. 4th at 49. Defendants appear to concede that this is so by virtue of their efforts to educate Los Angeles Police Department ("LAPD") officers that they must not detain or arrest enjoined gang members based upon the unconstitutional curfew provision in the subject injunctions. (Decls. of Carol J. Aborn Khoury ¶ 2 and Matthew J. Blake ¶ 2, Ex. A [Doc. # 77].) Yet, there is no evidence in the record that Defendants have addressed the self-inhibitory effect of those curfew provisions upon those who already have been served. In fact, the opposite is true.

Defendants present a declaration from Anne C. Tremblay, Assistant City Attorney and Supervisor of the Anti-Gang Section of the Los Angeles City Attorney's Office, stating that, the City considered but rejected (1) seeking court modification of the pre-*Colonia Chiques* curfew provisions affected by the decision and (2) asking LAPD officers to serve notice on gang members covered by the curfew provisions that LAPD would not be enforcing such provisions.[4] (Decl. of Anne C. Tremblay ("Tremblay Decl.") ¶ 17 [Doc. # 49].) Furthermore, according to Tremblay, "it is questionable whether it would be proper for [the City] to attach any document, such as a notice of non-enforcement of certain injunction provisions, *when serving new gang*

[4] Defendants further argue that, because the Named Plaintiffs in this action have actual knowledge of the *Colonia Chiques* decision and its impact from their participation in this case, their decision to remain in their homes is purely voluntary. The very issue in this case, however, is whether the curfew provision is unenforceable because it is so vague that it fails to provide Plaintiffs with sufficient notice of what is impermissible conduct. Until the Court rules on the validity of Plaintiffs' claims on their merits, Plaintiffs' actual knowledge of the result in *Colonia Chiques* does nothing to assuage their fears that they may be sanctioned for violating one of the injunctions challenged here.

members with a permanent injunction previously served to others." (*Id.*; emphasis added.) Thus, Defendants appear to acknowledge that they have not communicated to affected individuals the fact that the offending provisions are unenforceable and, in fact, may have continued to serve on new alleged gang members the same injunctions previously served on others.

The Court therefore finds "a realistic danger" that Plaintiffs and class members will sustain injury as a result of Defendants' conduct. The Court finds that Plaintiffs have standing to seek injunctive relief as to their service claims.

Plaintiffs' seizure claims, however, present a different set of considerations. The Court is mindful of the fact that, despite the October 15, 2007 ruling by the Court of Appeals in *Colonia Chiques*, Rodriguez and Cazarez were detained on June 19, 2009 and that Rodriguez was subsequently arrested and charged with violation of the curfew provision. That Plaintiffs can demonstrate that they sustained harm in the past does not necessarily show that they will again be wronged in a similar way. Indeed, Defendants present evidence that, as of August 3, 2012, Defendants implemented a policy that "[v]iolations of the ["Obey Curfew" provision] must not be used as a reasonable suspicion or probable cause to detain or arrest an enjoined gang member," and that, "should any LAPD officer willfully disobey [Operations Order] No. 3, such action could constitute misconduct and could subject the officer to discipline." (Khoury Decl. ¶¶ 2-3, Ex. A; Blake Decl. ¶ 3.) Plaintiffs fail to present any evidence refuting Defendants' adoption of the policy or challenging the efficacy of its implementation. On this record, the Court finds that Plaintiffs lack standing to seek injunctive relief as to their seizure claims because they cannot demonstrate that they or the class members they represent are currently subject to a real and immediate threat of seizure pursuant to the challenged curfew provisions.

B. Plaintiffs Have Demonstrated Likelihood of Success on the Merits that Service of the Curfew Order Violated Their Due Process Rights

Plaintiffs contend that they are entitled to a preliminary injunction because the gang injunctions at issue contain unconstitutionally vague and overbroad curfew provisions. In their Complaint, Plaintiffs assert that the vague language of the injunctions violate their right to freely associate, communicate, and assemble under the First Amendment. [5] (Compl. ¶ 50.) Courts

[5] Plaintiffs also contend they are likely to succeed on the merits of their claims as to individuals who were seized pursuant to the unenforceable curfew provisions but, as discussed *supra*, the Court finds that Plaintiffs cannot show that seizures pursuant to the challenged curfew provisions are likely to recur. Given that Plaintiffs are likely to succeed on their claim that their due process rights were violated by service of the curfew order, the Court need not address the likelihood of success of each of Plaintiffs' other claims at this juncture. *See V.L. v. Wagner*, 669 F.

evaluating the constitutionality of gang injunctions similar to the ones at issue here have been hesitant to hold that vague or overbroad terms infringe on this "right of association." *See, e.g.*, *City of Chicago v. Morales*, 527 U.S. 41, 53-56, 119 S. Ct. 1849, 1857, 144 L. Ed. 2d 67 (1999) (declining to find that an injunction prohibiting "loitering" violated the First Amendment right of association, but finding that the injunction's vague terms violated due process); *Colonia Chiques*, 156 Cal. App. 4th at 45-46 (finding that the "no associating" provision of a gang injunction did not overburden associational right because it only minimally impacted the familial associations asserted by plaintiffs); *People ex rel. Gallo v. Acuna*, 14 Cal. 4th 1090, 1110, 60 Cal. Rptr. 2d 277 (1997) (recognizing limited right of association but finding that injunction did not offend that right as to gang association because gang was not formed for purpose of engaging in protected speech or based on relationships of intimate or intrinsic value).

The associational challenges in those cases arose out of clauses of the injunctions specifically prohibiting association between gang members. Here, however, Plaintiffs have at least raised a serious issue that the challenged curfew provisions alone infringe on associational rights because they prohibit being "outside" except where attending a "legitimate meeting or entertainment activity," which has already been held to be unconstitutionally vague. *See Colonia Chiques*, 156 Cal. App. 4th at 84. The Court need not determine at this time whether the challenged clauses impermissibly limit Plaintiffs' associational rights, however, because it finds that service of the injunctions has violated and continues to violate Plaintiffs' due process rights.

As noted above, Defendants do not appear to dispute that at least 19 of the 26 challenged injunctions contain unconstitutional curfew provisions. (Defs.' Opp'n to Plfs.'s Mot. for Class Certification at 7 [Doc # 49]). Instead, Defendants argue in their opposition that Plaintiffs are unlikely to succeed on the merits of their claims because "they have failed to establish the existence of a municipal policy or condoned pervasive practice that could serve as a predicate to municipal liability under section 1983." (Defs.' Opp'n at 11.) Defendants' position is puzzling in light of Tremblay's assertion that "it is questionable whether it would be proper for [the City] to attach any document, such as a notice of non-enforcement of certain injunction provisions, when serving new gang members with a permanent injunction previously served to others." (Tremblay Decl. ¶ 17.) The Court understands that statement to mean that Defendants will continue to serve gang members with injunctions containing the unenforceable curfew provisions, notwithstanding the deterrent effect they may have on those served. Moreover, thousands of people who already have been served with the challenged gang injunctions likely remain unaware that they are not subject to the unenforceable curfew provision and, like Plaintiffs, continue to live in fear or uncertainty that they could be subject to its terms.

Supp. 2d 1106, 1121 n.10 (N.D. Cal. 2009) (court was not required to examine likelihood of success of all of plaintiffs' claims as long as plaintiffs established likelihood of success on some claims).

In light of the evidence in the record, the Court finds that Plaintiffs are likely to succeed on the merits that service of the injunctions containing the invalid curfew provisions violate their due process rights.

C. Plaintiffs Have Demonstrated a Likelihood of Irreparable Harm and the Balance of Equities Tips in Their Favor

Plaintiffs contend that, absent an injunction, they will continue to suffer irreparable harm as a result of Defendants' acts because they are bound by the gang injunctions' vague restrictions and precluded during certain hours from going "outside" their own house, sitting on a porch, helping their mother get groceries from the car, or going to what they consider "legitimate meetings" or "entertainment events," as a result of not knowing how the injunctions will be construed or enforced.

It is well established that "an alleged constitutional infringement will often alone constitute irreparable harm." *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997); *see also Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L. Ed. 2d 547 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (2d ed. 2004) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable harm is necessary.")). This is most often the case in injunctions implicating First Amendment values, where courts find that injury—the inability to engage in protected speech or other expression—is inherent in the deprivation of the right and is not compensable by money damages. *See Warsoldier*, 418 F.3d at 1001 (presuming irreparable injury where enforcement of unconstitutional policy would force plaintiff to "choose between following his religious beliefs and suffering continual punishment, and abandoning his religious beliefs to avoid such punishment"). In cases involving unconstitutional vagueness or overbreadth, the chilling effect that is likely to result from enforcement of an unconstitutional statute constitutes irreparable injury because it forces individuals to choose between exercising their rights on particular occasions or risking prosecution, a wrong which cannot be remedied under law. *See Dombrowski v. Pfister*, 380 U.S. 479, 489, 85 S. Ct. 1116, 1122, 14 L. Ed. 2d 22 (1965) (permanent injunction appropriate where enforcement of unconstitutionally vague statute would have chilling effect on First Amendment associational rights); *see also Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010) (restriction on campaign spending would cause irreparable harm to candidate by forcing him to "speak less than he wants" during campaign).

In this sense, the due process rights at stake here are analogous to the expressive rights at stake in First Amendment cases. Having received notice of the gang injunctions' vague restrictions, a significant risk exists that Plaintiffs will be forced to forego attending legitimate meetings or gatherings out of fear that their actions are restricted. Moreover, the Ninth Circuit has presumed irreparable injury where a likelihood of success on the merits exists in other types of constitutional challenges. *See, e.g.*, *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (that "Plaintiffs faced a real possibility that they would again be stopped or detained and subjected to unlawful detention on the basis of their unlawful presence alone" was sufficient to constitute irreparable injury for Fourth Amendment preliminary injunction); *see also R.G. v. Koller*, 415 F. Supp. 2d 1129, 1162 (D. Haw. 2006) (injunction proper to prevent youth correctional facility from failing to protect plaintiffs against harassment based on actual or perceived sexual orientation, gender identity, or sex).

In this case, Defendants have provided proof to the Court that the LAPD has adopted a policy of non-enforcement of the curfew provisions. This addresses Plaintiffs' concerns that irreparable harm may arise from future detentions or arrests stemming from curfew violations. Nevertheless, Defendants' expressed intention to refrain from seizing those who violate the unconstitutional curfew provisions has not been communicated to those served with the injunctions. Under these circumstances, class members who have been served with the challenged injunctions are likely to be discouraged during certain hours from participating in lawful activities as mundane as carrying groceries from their car or as hallowed in a free society as speaking to relatives or friends on the porch outside of their home. This risk remains as long as they believe that the gang injunctions are in full force, regardless of Defendants' decision not to enforce the restrictions.

In comparing the hardships that Plaintiffs and class members must bear as a result of the service of the curfew orders with any hardship that Defendants would face as a result of the issuance of an injunction in this case, the Court finds that the balance of equities tips sharply in Plaintiffs' favor. Insofar as Defendants already have indicated that they do not intend to enforce the challenged curfew provisions going forward, there appears to be no harm that would result from informing those served with these curfew orders that they are unenforceable.

D. Public Interest

The Court is mindful of the pernicious effects of the criminal street gangs that thrive in the communities in which gang injunctions have been served. The public has a strong interest in ensuring that law enforcement has the ability to curb illegal conduct in those communities. Nevertheless, the public has an equally strong interest in ensuring that law enforcement officials

comply with the rule of law and honor the rights enshrined in the United States Constitution. As Defendants themselves have voluntarily restrained their own enforcement of the challenged curfew provisions, there is no legitimate public policy reason why that fact should not be communicated to the people served with and presumably subject to those provisions.

E. A Mandatory Injunction is Appropriate in this Case

While a mandatory injunction is generally disfavored, the Court is nevertheless empowered to grant a mandatory injunction when prohibitory orders are otherwise ineffective or inadequate. *See, e.g., D.R. v. Antelope Valley Union High School District*, 746 F. Supp. 2d 1132, 1149 (C.D. Cal. 2010) (granting mandatory injunction to provide disabled plaintiff with elevator key as a reasonable accommodation). For the reasons discussed above, any relief short of providing notice to class members regarding the non-enforceability of the challenged curfew provisions would fail to address the potential for continuing irreparable harm. As the Court finds that the law and facts clearly favor Plaintiffs and that the potential for irreparable harm cannot be remedied by a later award of damages, the Court also finds that Plaintiffs have met their burden of demonstrating the need for a mandatory injunction requiring notice of the non-enforceability of the curfew provisions.

IV. CONCLUSION

In light of the foregoing, Plaintiffs' motion for a preliminary injunction is **GRANTED** with regard to the requirement to give notice to class members that the curfew restrictions will not be enforced, but **DENIED** in all other respects. It is hereby ordered that:

(1) Defendant City of Los Angeles, its officers, agents, employees, representatives, and all persons acting in concert or participating with it, shall be **ENJOINED** from enforcement of unconstitutional curfew provisions contained in gang injunctions issued in Los Angeles County Superior Court Case Numbers BC397522; BC332713; BC305434; BC313309; BC319166; BC326016; BC287137; BC335749; LC020525; BC267153; BC358881; SC056980; BC359945; NC030080; BC330087; BC359944; BC282629; LC048292; BC311766; BC351990; BC298646; BC349468; BC319981; SC060375; SC057282; and BC353596 pending a final determination in this matter; and

(2) Defendants shall personally serve all persons currently subject to one of the aforementioned gang injunctions with notice that the unconstitutional curfew restrictions contained therein are unconstitutional and will not be enforced, and

file proof thereof with the court. The parties shall meet and confer within ten days of the date of this order regarding the contents of a Notice consistent with this Order. The parties shall file a joint status report regarding the Notice on or before **February 25, 2013**.

(3) The Court waives the bond requirement. *See, e.g.*, *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (nominal security not an abuse of discretion where "vast majority of [those affected by class action] were very poor"); *Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) ("[t]he district court has discretion to dispense with the security requirement, or to request mere nominal security, where requiring security would effectively deny access to judicial review").

IT IS SO ORDERED.