

No. 97-1121

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

CITY OF CHICAGO,

Petitioner,

v.

JESUS MORALES, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Illinois

**BRIEF AMICI CURIAE OF
CHICAGO NEIGHBORHOOD ORGANIZATIONS
IN SUPPORT OF PETITIONER**

Of Counsel:

DAN M. KAHAN
TRACEY L. MEARES
University of Chicago
Law School
1111 East 60th Street
Chicago, Illinois 60637

THEODORE B. OLSON
Counsel of Record
MIGUEL A. ESTRADA
MARK A. PERRY
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Counsel for Amici Curiae

QUESTIONS PRESENTED

1. Whether the right to loiter on public streets with members of a criminal street gang is one of the traditional "amenities of American life" that, under principles of "substantive due process," may not be abridged by a police order to disperse.

2. Whether an ordinance that (i) specifically defines "loitering" and "criminal street gangs," (ii) authorizes police to order the dispersal of a group of loiterers when there is probable cause to believe that members of criminal street gangs are among the group, and (iii) permits the arrest of those loiterers who disobey the order to disperse, is so lacking in clarity that it is void for vagueness in all of its applications.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
INTEREST OF <i>AMICI CURIAE</i>	1
STATEMENT	2
REASONS FOR GRANTING THE PETITION	7
CONCLUSION	20

CONTENTS

.....	1
.....	1
.....	2
PETITION	7
.....	20

TABLE OF AUTHORITIES

CASES

<i>Albright v. Oliver</i> , 510 U.S. 266 (1994)	9,10,12,13
<i>Armendariz v. Penman</i> , 75 F.3d 1311 (9th Cir. 1996)	10
<i>Attorney General of N.Y. v. Soto-Lopez</i> , 476 U.S. 898 (1986)	13
<i>Brower v. County of Inyo</i> , 489 U.S. 593 (1989)	10
<i>Brown v. Texas</i> , 443 U.S. 47 (1979)	11
<i>California v. Hodari D.</i> , 499 U.S. 621 (1991)	10
<i>City of Tacoma v. Luvane</i> , 827 P.2d 1374 (Wash. 1992)	18
<i>Colten v. Kentucky</i> , 407 U.S. 104 (1972)	14
<i>Dallas v. Stanglin</i> , 490 U.S. 19 (1989)	12
<i>Dreyer v. Illinois</i> , 187 U.S. 71 (1902)	17
<i>E.L. v. State</i> , 619 So. 2d 252 (Fla. 1993)	18
<i>Florida v. Bostick</i> , 501 U.S. 429 (1991)	10
<i>Fort Wayne Books, Inc. v. Indiana</i> , 489 U.S. 59 (1989)	14
<i>Graham v. Connor</i> , 490 U.S. 386 (1989)	9,12
<i>Grayned v. City of Rockford</i> , 408 U.S. 104 (1972)	16
<i>Highland Farms Dairy, Inc. v. Agnew</i> , 300 U.S. 608 (1937)	17
<i>Hodgson v. Minnesota</i> , 497 U.S. 417 (1990)	13
<i>Horton v. California</i> , 496 U.S. 128 (1990)	11
<i>Kolender v. Lawson</i> , 461 U.S. 352 (1983)	14
<i>Madsen v. Women's Health Center, Inc.</i> , 512 U.S. 753 (1994)	18
<i>Martin v. Ohio</i> , 480 U.S. 228 (1987)	13
<i>Mays v. City of St. Louis</i> , 123 F.3d 999 (7th Cir. 1997)	9,10
<i>Medina v. California</i> , 505 U.S. 437 (1992)	13
<i>Montana v. Egelhoff</i> , 116 S. Ct. 2013 (1996)	13

<i>Papachristou v. City of Jacksonville</i> , 405 U.S.	
156 (1972)	<i>passim</i>
<i>People ex rel. Gallo v. Acuna</i> , 929 P.2d 596	
(Cal. 1997)	18
<i>Powell v. Texas</i> , 392 U.S. 514 (1968)	11
<i>Schenck v. Pro-Choice Network</i> , 117 S. Ct. 855	
(1997)	14
<i>Shuttlesworth v. Birmingham</i> , 382 U.S. 87	
(1965)	16
<i>Soldal v. Cook County</i> , 506 U.S. 56 (1992)	11
<i>United States v. Chemical Foundation, Inc.</i> , 272	
U.S. 1 (1926)	18
<i>United States v. James Daniel Good Real Prop-</i>	
<i>erty</i> , 510 U.S. 43 (1993)	11
<i>United States v. Lanier</i> , 117 S. Ct. 1219 (1997)	9,14
<i>United States v. Mezzanatto</i> , 513 U.S. 196	
(1995)	17
<i>United States v. Russell</i> , 411 U.S. 423 (1973)	14
<i>United States v. Salerno</i> , 481 U.S. 739 (1987)	16
<i>Village of Hoffman Estates v. The Flipside,</i>	
<i>Hoffman Estates, Inc.</i> , 455 U.S. 489 (1982)	17
<i>Whren v. United States</i> , 116 S. Ct. 1769 (1996)	11

MISCELLANEOUS

Kahan, <i>Social In-</i>	
<i>Deterrence,</i>	
Kelling & Cole:	
<i>storing Ord-</i>	
<i>Communitie</i>	
Livingston, <i>Pol-</i>	
<i>Life in Publ-</i>	
<i>and the New</i>	
551 (1997)	
Moore, <i>Proble-</i>	
<i>ing, in Torr-</i>	
<i>ing 99 (199-</i>	
Skogan, <i>Disord-</i>	
<i>Spiral of De-</i>	
(1990)	
Wilson & Kelli:	
<i>lantic Mond-</i>	

05 U.S.	
.....	<i>passim</i>
Id 596	
.....	18
.....	11
i. Ct. 855	
.....	14
. 87	
.....	16
992)	11
. Inc., 272	
.....	18
real Prop-	
.....	11
9 (1997)	9,14
196	
.....	17
(1973)	14
(1987)	16
side,	
9 (1982)	17
9 (1996)	11

MISCELLANEOUS

Kahan, <i>Social Influence, Social Meaning, and Deterrence</i> , 83 Va. L. Rev. 349 (1997)	3
Kelling & Coles, <i>Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities</i> (1996)	3
Livingston, <i>Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing</i> , 97 Colum. L. Rev. 551 (1997)	3,18-19
Moore, <i>Problem-Solving and Community Policing</i> , in Tonry & Morris, eds., <i>Modern Policing</i> 99 (1992)	3
Skogan, <i>Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods</i> (1990)	3
Wilson & Kelling, <i>Broken Windows</i> , <i>The Atlantic Monthly</i> 29 (Mar. 1982)	4

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

No. 97-1121

CITY OF CHICAGO,

Petitioner,

v.

JESUS MORALES, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Illinois

**BRIEF AMICI CURIAE OF
CHICAGO NEIGHBORHOOD ORGANIZATIONS
IN SUPPORT OF PETITIONER**

Amici curiae Chicago Neighborhood Organizations respectfully submit this brief in support of petitioner, the City of Chicago.¹

INTEREST OF AMICI CURIAE

Amici curiae are a number of neighborhood organizations and community groups in the City of Chicago. See App., *infra*. *Amici* represent concerned Chicago citizens and voters who are actively involved in identifying and implementing programs to stem the epidemic of drug abuse, violence, and

¹ Pursuant to this Court's Rule 37.2(a), letters of consent from all parties to the filing of this brief have been filed with the Clerk. Pursuant to this Court's Rule 37.6, *amici* represent that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

other gang-related criminal activities that plague their neighborhoods and our Nation's urban areas generally. *Amici* are concerned that the Illinois Supreme Court's decision unreasonably thwarts the reasoned determination by the people's elected representatives that responsible community-based policing of members of criminal organizations can prevent and deter gang-related crime in Chicago.

Amici represent the interests of the very people for whom the gang-loitering ordinance was enacted: They live in many of the Chicago communities hit hardest by gang-related crime, and are afraid to walk about in their own neighborhoods as a result of gang-related crime and violence. They saw firsthand that the ordinance, before it was declared unconstitutional, improved the quality of life in their communities.

Amici believe that community policing generally, and particularly the gang-loitering ordinance under review, benefits *all* residents of the communities in which gangs are active, including both law-abiding citizens and the young people—their children, siblings, and relatives—who are most at risk from the dangers of gang membership. Moreover, *amici* see no constitutional infirmity in reasonable efforts to rid their streets of the scourge of criminal street gangs, and they support the City's efforts to reinstate and enforce the ordinance that was enacted explicitly to safeguard the safety, security, and liberty of their members.

STATEMENT

1. Recent years have seen a dramatic change in the way many big-city police departments respond to criminal behavior. Rather than focusing solely on solving serious crimes that already have occurred, police increasingly take measures to prevent crime before it happens. Police intervention in relatively small-scale disorder—for example, preventing rowdy, drunken and antisocial behavior; eradicating graffiti, litter and vandalism; and enforcing curfew, cruising and loitering laws—has been shown to make neighborhoods safer

places and to reduce activity.²

The increasing maintain order in t tional police role c erred to as "comm can be implement tenet of communi between the police role in reducing c words, "[i]t prom expressed needs o

A principal im ment is the comm orderly neighborh

² For example, New 1993, focusing on s public drunkenness, ing several years, d level of serious crim robbery rate more 6 percent. Kahan, *So Va. L. Rev.* 349, 3 more than twice the than 25 years. "Ci the larger reduction maintenance." *Id. Windows: Restoru* 151-156 (1996).

³ See Livingston, *Places: Courts, C Rev.* 551, 573-578

⁴ Moore, *Probleu Morris, eds., Mode*

⁵ Skogan, *Disord American Neighbo*

s that plague their neighborhoods generally. *Amici* are the Court's decision un-
 termination by the peo-
 responsible community-
 minal organizations can
 in Chicago.

re very people for whom
 acted: They live in many
 hardest by gang-related
 t in their own neighbor-
 time and violence. They
 before it was declared un-
 of life in their communi-

policing generally, and
 ance under review, bene-
 s in which gangs are ac-
 izens and the young peo-
 latives—who are most at
 ership. Moreover, *amici*
 reasonable efforts to rid
 nal street gangs, and they
 ate and enforce the ordi-
 safeguard the safety, se-

T
 matic change in the way
 spond to criminal behav-
 i solving serious crimes
 reasingly take measures
 s. Police intervention in
 for example, preventing
 avior; eradicating graffiti,
 ; curfew, cruising and loi-
 nake neighborhoods safer

places and to reduce the incidence of more serious criminal activity.²

The increasingly prevalent strategy of using police to maintain order in urban communities, in addition to the traditional police role of solving serious crimes, generally is referred to as "community policing."³ Although the concept can be implemented through a variety of means, a central tenet of community policing is that "working partnerships between the police and the community can play an important role in reducing crime and promoting security."⁴ In other words, "[i]t promises that police will be responsive to the expressed needs of the communities they serve."⁵

A principal impetus for the community policing movement is the common-sense notion that there is less crime in orderly neighborhoods. As a leading article explained, "if a

² For example, New York City police implemented such a program in 1993, focusing on such low-level offenses as vandalism, panhandling, public drunkenness, unlicensed vending and prostitution. In the ensuing several years, this strategy proved to be effective in reducing the level of serious crime: The murder rate dropped nearly 40 percent, the robbery rate more than 30 percent, and the burglary rate more than 25 percent. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 Va. L. Rev. 349, 367 (1997). Crime in New York is decreasing at more than twice the national average, and is at its lowest level in more than 25 years. "City officials and at least some criminologists credit the larger reduction in crime rates to [the] recent emphasis on 'order maintenance.'" *Id.* at 368-369; see Kelling & Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* 151-156 (1996).

³ See Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L. Rev. 551, 573-578 (1997).

⁴ Moore, *Problem-Solving and Community Policing*, in Tonry & Morris, eds., *Modern Policing* 99, 123 (1992).

⁵ Skogan, *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods* 90 (1990).

window in a building is broken and left unrepaired, all the rest of the windows will soon be broken. . . . [O]ne unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing."⁶ Signs of disorder in public streets—e.g., broken windows, litter, drunks or drug addicts slumped on the sidewalk, or loitering gang members—cause the law-abiding public to avoid public rights of way and thus severely dilute the kinds of informal social checks that traditionally have permitted all of us to look after each other and to keep our streets safer. "[I]t is more likely that here, rather than in places where people are confident they can regulate public behavior by informal controls, drugs will change hands, prostitutes will solicit, and cars will be stripped."⁷ Community policing is thus founded on the notion that "the police ought to protect communities as well as individuals," and that, accordingly, "the police—and the rest of us—ought to recognize the importance of maintaining, intact, communities without broken windows."⁸

2. In 1992, the Chicago City Council held extensive hearings on the vexing public-safety problems posed for that city's residents by criminal street gangs. After extensive testimony from law enforcement and from community residents who lived under the terror created by those gangs, the City Council found that "the continuing increase in criminal street gang activity in the City [was] largely responsible" for an "increasing murder rate as well as an increase in violent and drug related crimes," and that "the burgeoning presence of street gang members in public places has intimidated many law abiding citizens." Pet. App. 60a.

⁶ Wilson & Kelling, *Broken Windows*, *The Atlantic Monthly* 29, 31 (Mar. 1982) (emphasis omitted).

⁷ *Id.* at 32.

⁸ *Id.* at 38.

The C
"creat[ing]
property i
criminal s
in two in
"avoid an
criminalit
are presen
notion of
criminal g
to the det
law-abidin
criminal s
is by loite
entering th

In view
ordinance
who are
them) to d

Who
reas
ber
pers
rem
doe
this

Pet. App.
operative
fined to
gaged in
App. 61a
in any one

In add
tailed gu
loitering
"areas fr
which, be

and left unrepaired, all the broken. . . . [O]ne unrelentant no one cares, and so on."6 Signs of disorder—broken windows, litter, drunks or people walking, or loitering gang members in public—to avoid public attention are the kinds of informal control that are permitted all of us to use to make our streets safer. "[I]t is in those places where people are engaged in behavior by informal control—constitutes will solicit, and informal policing is thus founded not to protect communities accordingly, "the police—recognize the importance of broken windows."8

The Council held extensive hearings on the problems posed for that city by gangs. After extensive consultation with community residents affected by those gangs, the Council found an increase in criminal activity "largely responsible" for the increase in violent crime. "the burgeoning presence of gangs in public places has intimidated the public." 60a.

The Atlantic Monthly 29, 31

The City Council specifically found that, apart from "creat[ing] a justifiable fear for the safety of persons and property in the area" (*ibid.*), loitering involving members of criminal street gangs furthered the gangs' criminal activities in two important and distinct ways. First, gang members "avoid arrest" for their street crimes by eschewing overt criminality and simply loitering "when they know the police are present." *Ibid.* Second, loitering is indispensable to the notion of gang "turf"—i.e., the assertion by a particular criminal gang of the right to *control* a given area of the City to the detriment of competing gangs and the members of the law-abiding public—because "[o]ne of the methods by which criminal street gangs establish control over identifiable areas is by loitering in those areas and intimidating others from entering those areas." *Ibid.*

In view of those findings, the City Council adopted an ordinance authorizing police officers to order gang members who are loitering in public areas (or those loitering with them) to disperse, and to arrest those who refuse to do so:

Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

Pet. App. 61a. The ordinance carefully defined each of its operative terms. The phrase "criminal street gang" was defined to require, among other things, an organization engaged in a pattern of specifically identified state crimes. Pet. App. 61a-62a. The term "loiter" was defined as "to remain in any one place with no apparent purpose." Pet. App. 61a.

In addition, the Chicago Police Department adopted detailed guidelines governing the enforcement of the gang-loitering ordinance. The ordinance was enforced only in "areas frequented by members of criminal street gangs which, because of their location, significantly affect the ac-

tivities of law-abiding persons in the surrounding community." Pet. App. 68a. Such areas were to be designated after consultation with "local officials, leaders of local community organizations, and other citizens likely to be able to provide reliable information." *Ibid.* Thus, in the finest spirit of community policing, the police explicitly entered into a partnership with neighborhood residents to identify those areas in which gangs were destroying the fabric of community life, and to enforce the ordinance in those areas to enhance the security and safety of all residents.

3. Respondents were separately arrested for disobeying a police order to disperse or "move along" under Chicago's gang-loitering ordinance and challenged the validity of the ordinance on numerous constitutional grounds. After separate proceedings in the lower state courts, the Supreme Court of Illinois consolidated respondents' challenges and agreed with respondents that the ordinance is inconsistent with the federal Constitution.

The court first concluded that the ordinance is void for vagueness. Pet. App. 6a-17a. The court explained that, even though the term "loiter" is specifically defined by the ordinance as "remain[ing] in one place with no apparent purpose," the term fails to give persons of ordinary intelligence sufficient notice of what is prohibited, because "[p]eople with entirely legitimate and lawful purposes will not always be able to make their purposes apparent to an observing police officer." Pet. App. 10a. That infirmity was not cured, in the court's view, by the requirement that the officer have probable cause to believe that one of the loiterers is a gang member, by the fact that it is a legal defense under the ordinance that no member of the group was in fact a gang member, or by the fact that prosecution is possible only if the defendant disobeys a clear order to disperse. As the court saw it, the city may not criminalize even a defendant's *knowing* participation in, or association with, criminal street gangs (Pet. App. 12a), and it may not confer on police authority to

disperse loiterers missibly vague." 1

The court also of the ordinance i crminatory enforce the court was esp. partment's effort t enforcing the ordi contemplated by view "lawmakers setting the standar

Finally, the co "is an arbitrary ex violates substantiv believed that its co v. *City of Jackson* court's view, stood ing prohibited by "amenities of Am pachristou, 405 U the Chicago ordin general right to tr freedom of movem others." Pet. App.

In light of its co violates due proce ine respondents m and Eighth Amenc

REASONS I

The Supreme C the right to loiter v "amenit[y] of An rights that are pr principles of "sub The court also cor nance is an "arbit

the surrounding commu-
ere to be designated after
aders of local community
kely to be able to provide
is, in the finest spirit of
licitly entered into a part-
ts to identify those areas
e fabric of community life,
se areas to enhance the se-

ely arrested for disobeying
ve along" under Chicago's
lleged the validity of the
onal grounds. After sepa-
courts, the Supreme Court
nts' challenges and agreed
ice is inconsistent with the

the ordinance is void for
e court explained that, even
fically defined by the ordi-
ace with no apparent pur-
ons of ordinary intelligence
hibited, because "[p]eople
ul purposes will not always
pparent to an observing po-
infirmity was not cured, in
ment that the officer have
e of the loiterers is a gang
gal defense under the ordi-
ip was in fact a gang mem-
n is possible only if the de-
disperse. As the court saw
even a defendant's *knowing*
with, criminal street gangs
confer on police authority to

disperse loiterers "if the underlying statute is itself imper-
missibly vague." Pet. App. 13a.

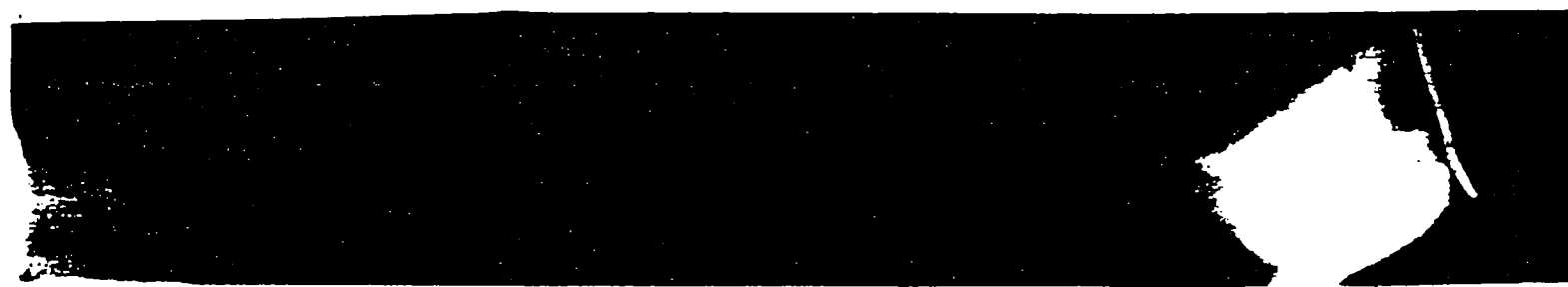
The court also concluded that the purported "vagueness"
of the ordinance improperly encouraged "arbitrary and dis-
criminatory enforcement" Pet. App. 14a. In this connection,
the court was especially critical of the Chicago Police De-
partment's effort to set forth specific written guidelines for
enforcing the ordinance, a step that the court conceded was
contemplated by the City Council, because in the court's
view "lawmakers may not abdicate their responsibilities for
setting the standards of the criminal law." Pet. App. 15a.

Finally, the court emphasized that Chicago's ordinance
"is an arbitrary exercise of the city's police power and, thus,
violates substantive due process." Pet. App. 17a. The court
believed that its conclusion was compelled by *Papachristou*
v. City of Jacksonville, 405 U.S. 156 (1972), which, in the
court's view, stood for the proposition that the type of loiter-
ing prohibited by the ordinance is one of the traditional
"amenities of American life." Pet. App. 17a (citing *Pa-
pachristou*, 405 U.S. at 164). The "amenities" invaded by
the Chicago ordinance, in the court's view, included "the
general right to travel, the right of locomotion, the right to
freedom of movement, and the general right to associate with
others." Pet. App. 18a (citations omitted).

In light of its conclusion that the gang loitering ordinance
violates due process, the court found it unnecessary to exam-
ine respondents more specific claims under the First, Fourth,
and Eighth Amendments. Pet. App. 5a, 19a.

REASONS FOR GRANTING THE PETITION

The Supreme Court of Illinois concluded in this case that
the right to loiter with members of criminal street gangs is an
"amenit[y] of American life" that includes a plethora of
rights that are protected from government intervention by
principles of "substantive due process." Pet. App. 17a-18a.
The court also concluded that Chicago's gang loitering ordi-
nance is an "arbitrary restriction" of those rights (Pet. App.



19a), because its purported "vagueness" encourages arbitrary law enforcement. Pet. App. 18a-19a, 14a-15a. Those conclusions, in the court's view, obviated any need to consider respondents' claims that the ordinance violates specific provisions of the Bill of Rights.

Neither the mode of analysis employed, nor the conclusions reached, by the Illinois Supreme Court can be reconciled with this Court's cases. This Court's precedents *forbid* the invocation of "substantive due process" in contexts already addressed by specific provisions of the Bill of Rights. The court below, however, neatly avoided respondents' claims under the Bill of Rights, which were obviously meritless, and awarded them relief on essentially the same allegations simply by inventing *broader* rights under the guise of "due process." The court similarly misused the narrow due process doctrine of vagueness, which is addressed to the *clarity* of legislation, to invalidate an ordinance that is unquestionably clear but that the court believed was, as a policy matter, *too broad*. Again, however, the breadth of legislation is cause for its invalidation *only* when it is shown that such legislation reaches substantial amounts of *constitutionally protected* conduct—*i.e.*, only upon analysis of the very questions under the Bill of Rights that the court below expressly refused to address. Because the erroneous ruling below exacerbates longstanding conflicts about the permissible scope of loitering and other community policing ordinances, and effectively disables an entire State of the Union from addressing a pressing social problem, this Court's review is clearly warranted.

1. The mode of analysis employed by the Supreme Court of Illinois put the cart before the proverbial horse. This Court has repeatedly made clear that if an "explicit textual source of constitutional protection" applies, government action must be analyzed under that standard "rather than under a 'substantive due process' approach." *Graham v. Connor*, 490 U.S. 386, 395 (1989). In *Graham*, the Court applied that principle to hold that substantive due process has

no place in analyzing "force" during an arrest under the Fourth Amendment because the Fourth Amendment is a source of constitutionally intrusive government action; the more generalization must be the guide for

The Court reaffirmed 510 U.S. 266 (1994) substantive due process is "arbitrary" prosecution "[i]t was through [their Framers sought] authority by the Government 273 (plurality). The Amendment that addresses behavior," rather than should be applied to prior. *Ibid.*; see also judgment) (applying for otherwise home Term, the Court unconstitutional claim is covered such as the Fourth analyzed under the vision, not under *United States v. La*

The decision because it expresses

⁹ See, e.g., *Mays v. (Fourth Amendment chase that resulted in Cir. 1996) (en banc) trols claims for inver*

ness" encourages arbitrary 19a, 14a-15a. Those con-
tained any need to consider
ance violates specific pro-

is employed, nor the con-
Supreme Court can be rec-

This Court's precedents
nitive due process" in con-
ic provisions of the Bill of
ver, neatly avoided respon-
ights, which were obviously
ief on essentially the same
; broader rights under the
rt similarly misused the nar-
teness, which is addressed to
alidate an ordinance that is
ne court believed was, as a
in, however, the breadth of
ation *only* when it is shown
stantial amounts of *constitu-*
., only upon analysis of the
f Rights that the court below
Because the erroneous ruling
g conflicts about the permis-
ner community policing ordi-
an entire State of the Union
ial problem, this Court's re-

employed by the Supreme
before the proverbial horse.
ade clear that if an "explicit
al protection" applies, govern-
d under that standard "rather
process' approach." *Graham*
(1989). In *Graham*, the Court
hat substantive due process has

no place in analyzing claims that police used "excessive
force" during an arrest, which must instead be gauged *solely*
under the Fourth Amendment. As the Court put it, "[b]e-
cause the Fourth Amendment provides an explicit textual
source of constitutional protection against this sort of physi-
cally intrusive governmental conduct, that Amendment, not
the more generalized notion of 'substantive due process,'
must be the guide for analyzing these claims." *Id.* at 395.

The Court reaffirmed that principle in *Albright v. Oliver*,
510 U.S. 266 (1994), which rejected the notion that substan-
tive due process embodies some right to be free from
"arbitrary" prosecutions. As the Chief Justice explained,
"[i]t was through [the] provisions of the Bill of Rights that
their Framers sought to restrict the exercise of arbitrary
authority by the Government in particular situations." *Id.* at
273 (plurality). Thus, the Court concluded, only the specific
Amendment that addresses the "particular sort of government
behavior," rather than notions of substantive due process,
should be applied to claims challenging that particular behav-
ior. *Ibid.*; see also *id.* at 288-289 (Souter, J., concurring in
judgment) (applying general "rule of reserving due process
for otherwise homeless substantial claims"). And only last
Term, the Court unanimously emphasized that "if a constitu-
tional claim is covered by a specific constitutional provision,
such as the Fourth or Eighth Amendment, the claim must be
analyzed under the standard appropriate to that specific pro-
vision, not under the rubric of substantive due process." *United States v. Lanier*, 117 S. Ct. 1219, 1228 n.7 (1997).⁹

The decision below got that principle exactly backwards,
because it expressly refused to address the specific provi-

⁹ See, e.g., *Mays v. City of St. Louis*, 123 F.3d 999 (7th Cir. 1997)
(Fourth Amendment alone controls conduct of police officer who gave
chase that resulted in death); *Armendariz v. Penman*, 75 F.3d 1311 (9th
Cir. 1996) (en banc) (Just Compensation Clause, not due process, con-
trols claims for inverse condemnation).

sions of the Bill of Rights that speak to respondents' claims and resolved those claims instead by reference to the amorphous requirements of "substantive due process." That is a key error, because it is obvious from this Court's cases that Chicago's ordinance offends *none* of the provisions of the Bill of Rights that the ordinance implicates. Because the Bill of Rights speaks to—and does not invalidate—the bulk of the governmental conduct that the court below found objectionable, its "requirements are not to be supplemented through the device of 'substantive due process.'" *Albright*, 510 U.S. at 276 (Scalia, J., concurring).

The most germane provision of the Bill of Rights is, of course, the Fourth Amendment. As Judge Easterbrook recently noted, it is clear that this "Court has looked exclusively to the fourth amendment for substantive limits to searches and seizures," *Mays*, 123 F.3d at 1002 (emphasis added), attempted seizures, *see California v. Hodari D.*, 499 U.S. 621 (1991), and even entirely consensual encounters in which police purportedly communicate to a citizen that "he [is] not at liberty to ignore the police presence and go about his business." *Florida v. Bostick*, 501 U.S. 429, 437 (1991).

Chicago's ordinance is fully consistent with the Fourth Amendment. Even if an officer's order to disperse could be considered a "seizure," *but see Brower v. County of Inyo*, 489 U.S. 593 (1989), Chicago police will issue such an order *only* "when there is *probable cause* to believe that criminal street gang members are loitering in a designated area." Pet. App. 72a (emphasis added). The existence of probable cause objectively justifies the minimal intrusion on individual liberty that the Chicago ordinance contemplates, and it accordingly constitutes the best guarantee of "evenhanded law enforcement." *Horton v. California*, 496 U.S. 128, 138 (1990); *compare Brown v. Texas*, 443 U.S. 47, 50-53 (1979) (invalidating "stop and identify" statute under the Fourth Amendment, because statute did not require officer to have probable cause or reasonable suspicion). That point was unanimously emphasized by the Court only two years ago,

when this Court rejected laws are so broad as to "the police to single out" *Whren v. United States*, 512 U.S. 496, 510 (1994). The Court emphasizes that cause is sufficient to freedom of movement cause to believe the private interest in avoid

While this Court governmental conduct "source" of protection 70 (1992); *United States v. Aronson*, 510 U.S. 43, even more implausible provisions of the Bill of create a "status" offense affirmative volitional association with) a citizen a police order. *See* (1968). Nor does the rights protected by street corner with may be described as "as loitering "simply do association that the First *Dallas v. Stanglin*, activity proscribed by down the street or

¹⁰ Indeed, the Court's sort of open-ended review of "substantive" that would allow us to expansive and so come be the ordinary means 116 S. Ct. at 1777.

ak to respondents' claims by reference to the amor- due process." That is a om this Court's cases that of the provisions of the plicates. Because the Bill t invalidate—the bulk of court below found objec- not to be supplemented due process." *Albright*, (ng).

the Bill of Rights is, of As Judge Easterbrook re- "Court has looked exclu- for substantive limits to 3 F.3d at 1002 (emphasis *lifornia v. Hodari D.*, 499 / consensual encounters in icate to a citizen that "he lice presence and go about 501 U.S. 429, 437 (1991). consistent with the Fourth order to disperse could be *rower v. County of Inyo*, ce will issue such an order se to believe that criminal in a designated area." Pet. existence of probable cause intrusion on individual lib- ntemplates, and it accord- e of "evenhanded law en- 496 U.S. 128, 138 (1990); : U.S. 47, 50-53 (1979) ' statute under the Fourth not require officer to have spicion). That point was Court only two years ago,

when this Court rejected the claim that the vehicular traffic laws are so broad and pervasive that they essentially license "the police to single out whomever they wish for a stop." *Whren v. United States*, 116 S. Ct. 1769, 1777 (1996). As the Court emphasized in *Whren*, the existence of probable cause is sufficient to justify interference with an individual's freedom of movement, since "the usual rule [is] that probable cause to believe the law has been broken 'outbalances' private interest in avoiding police contact." *Ibid.*¹⁰

While this Court's cases recognize that particular governmental conduct may implicate more than one "textual source" of protection, *Soldal v. Cook County*, 506 U.S. 56, 70 (1992); *United States v. James Daniel Good Real Property*, 510 U.S. 43, 49-50 (1993), respondents' claims are even more implausible when examined in light of other provisions of the Bill of Rights. Chicago's ordinance does not create a "status" offense (Pet. App. 5a), because it requires affirmative volitional *conduct*—loitering, membership in (or association with) a criminal street gang, and disobedience of a police order. See *Powell v. Texas*, 392 U.S. 514, 533 (1968). Nor does the ordinance interfere with associational rights protected by the First Amendment. Standing on a street corner with members of a criminal street gang "might be described as 'associational' in common parlance," but loitering "simply do[es] not involve the sort of expressive association that the First Amendment has been held to protect." *Dallas v. Stanglin*, 490 U.S. 19, 24 (1989). Rather, the activity proscribed by the ordinance is analogous to "walking down the street or meeting one's friends at a shopping

¹⁰ Indeed, the Court expressly disclaimed the *ability* to engage in the sort of open-ended review that the court below adopted here under the guise of "substantive due process": "[W]e are aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly violated that infraction itself can no longer be the ordinary measure of the lawfulness of enforcement." *Whren*, 116 S. Ct. at 1777.

mall"—which this Court has held outside the ambit of First Amendment protections. *Id.* at 25. Just as the Constitution does not recognize a "generalized right of 'social association' that includes chance encounters in dance halls" (*ibid.*), it does not create any right of "criminal association" that includes the right to remain on a street "with no apparent purpose" other than to associate with a "criminal street gang."

The proper mode of constitutional analysis, therefore, demonstrates that Chicago's ordinance does not violate any of the textual provisions it arguably implicates. Those textual provisions, "not the more generalized notion of 'substantive due process'" (*Graham*, 490 U.S. at 395), must therefore control respondents' assertion that Chicago's ordinance unduly invades their liberty interests in remaining on a public street without police interference. And, as demonstrated below, this Court's cases make it absolutely clear that the ordinance is also consistent with the requirement of "fair warning"—the *only* remaining liberty interest that was identified by the Supreme Court of Illinois and has been recognized by this Court's cases.

2. "The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *Albright*, 510 U.S. at 272 (plurality).¹¹ This Court's reluctance

¹¹ The "rights" of loiterers that the Chicago ordinance purportedly infringes are, needless to say, "markedly different from those recognized in this group of cases." *Albright*, 510 U.S. at 272. While this Court has recognized a limited constitutional right to interstate travel—"or, more precisely, the right of free interstate migration" (*Attorney General of N.Y. v. Soto-Lopez*, 476 U.S. 898, 902 (1986))—it has never held that the Constitution prohibits restrictions on intrastate (much less intracity) travel. Cf. *Hodgson v. Minnesota*, 497 U.S. 417, 435 (1990). The Court certainly has never recognized a constitutional right to travel—or "locomote," or "move around"—sufficiently elastic to comprehend a "right" to "remain in one place with no apparent purpose" other than to congregate with criminal street gangs.

to invoke "substantive due process" is more pronounced than in cases where individuals choose to make criminal associations in a particular area, see, e.g., *Marijuana v. City of Chicago*, 1992 WL 100000 (N.D. Ill. 1992); *Montana v. City of Helena*, 1996 WL 100000 (Mont. 1996) (Ginsburg, J., dissenting). In this regard, the Court's decision in this regard is more pronounced unless it "offends the Nation's traditions and constitutional principles of justice and fundamental rights." *Meek v. City of Chicago*, 1996 WL 100000 (N.D. Ill. 1996) at 2025 (Ginsburg, J., dissenting). Of course, it is responsible for the ordinance, and the principles of justice and fundamental rights (fair warning). This they call

The *only* "firm" principle of the Court that relates to the requirement of "fair warning" is the doctrine. Contrary to the Supreme Court, however, the due process doctrine of "chancellor's foot" which it [does] not recognize. *U.S. v. Soto-Lopez*, 476 U.S. 423, 435 (1986). In *Term*, the essence of the requirement of "fair warning" is "language that the law intends to be applied." *S. Ct.* at 1224 (quoting *U.S. v. Soto-Lopez*, 476 U.S. 423, 435 (1986)). *U.S. v. Soto-Lopez*, 476 U.S. 423, 435 (1986). Whether the statute made it reasonably clear that the defendant's conduct was

outside the ambit of First Amendment rights. Just as the Constitution protects the right of "social association" in "dance halls" (*ibid.*), it protects the right of "social association" that in-cludes "with no apparent purpose" a "criminal street gang."

Constitutional analysis, therefore, does not violate any constitutional principles. Those textually generalized notion of "fundamental rights" (490 U.S. at 395), must recognize that Chicago's ordinance protects its interests in remaining on its streets. And, as demonstrated, it is absolutely clear that the ordinance does not violate the requirement of "fair notice" interest that was identified in *Illinois* and has been recog-

itive due process have for the past decades relating to marriage, to bodily integrity." *Al-Idrisi*. This Court's reluctance

to strike down an ordinance purportedly in-terfering with interstate travel is different from those recognized in *Al-Idrisi* at 272. While this Court has recognized the right to interstate travel—"or, more broadly, the right to travel" (*Attorney General v. American Council on Education*, 399 U.S. 964 (1971))—it has never held that the right to intrastate (much less intracity) travel is a fundamental right. 7 U.S. 417, 435 (1990). The constitutional right to travel—or, more accurately, the right to travel—is not so readily elastic to comprehend a "substantial" purpose other than to

to invoke "substantive due process" has nowhere been more pronounced than in matters touching on what conduct States choose to make criminal. States enjoy wide latitude in this area, *see, e.g., Martin v. Ohio*, 480 U.S. 228, 232 (1987), and courts therefore "should not lightly construe the Constitution so as to intrude upon the administration of justice by the individual States." *Medina v. California*, 505 U.S. 437, 445 (1992); *Montana v. Egelhoff*, 116 S. Ct. 2013, 2024-2025 (1996) (Ginsburg, J., concurring in judgment). A State's decision in this regard is not subject to due process challenge unless it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Medina*, 505 U.S. at 445; *Egelhoff*, 116 S. Ct. at 2025 (Ginsburg, J., concurring in judgment). And, of course, it is respondents' burden to establish affirmatively that the ordinance they challenge transgresses fundamental principles of justice. *See Egelhoff*, 116 S. Ct. at 2019 (plurality). This they cannot do.

The only "firmly rooted" principle recognized by this Court that relates to respondents' claims here is the requirement of "fair warning" embodied in the void-for-vagueness doctrine. Contrary to the apparent assumption of the Illinois Supreme Court, however, the vagueness doctrine—like other due process doctrines—does not give the judiciary "a 'chancellor's foot' veto over law enforcement practices of which it [does] not approve." *United States v. Russell*, 411 U.S. 423, 435 (1973). As this Court made clear only last Term, the essence of vagueness review is simply the requirement of "fair warning," which centers on the use of "language that the common world will understand[] of what the law intends to do if a certain line is passed." *Lanier*, 117 S. Ct. at 1224 (quoting *McBoyle v. United States*, 283 U.S. 25, 27 (1931) (Holmes, J.)); *see also Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Accordingly "the touchstone is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." *Lanier*, 117 S. Ct. at 1225.

discover those "ame
the methodology pr
bright, and Lanier.
what "historically
(*Papachristou*, 405
that loitering with cr
ond passage on whi
emphasized that th
ordinance "by mode
at 163; Pet. App. 9;
nothing in that pas
courts unguided dis
ments that specific
point was simply th
pecial source of co
conduct that a citize
pable. See *Papachr*
need for "fair notic
clarity is not a failin
ordinance.

The city has
and determine
avoiding arre
Accordingly,
broad ordin
intolerable an
city streets.

¹³The repeated citation in *Hammond v. United States*, 382 U.S. 8

12 It simply blinks reality to suggest that the aldermen, the police, the general public, and especially the gang members themselves do not know what the Chicago ordinance outlaws. Indeed, unless the opinion below is an exercise in disingenuity, the justices of the state supreme court may be the only people in Illinois who do not know what it means.

easily meets that standard. a "criminal street gang" by less easily identified state crimes. *Indiana*, 489 U.S. 59 n.7 (statute's "pattern" requirement underlying crimes). The citizens of the prohibited conduct with no apparent purpose" the members of a "[c]riminal street gang" are perfectly capable of being proscribed by ordinance. Least arrest can be made only after officers of their legal obligations refuse a lawful order to disperse but that a person in those circumstances could be convicted to move on." *Colten v. Kenney*; cf. *Schenck v. Pro-Choice*, 507 U.S. 870 (1997) (defendants, too directly directed, "certainly" were not to know what was prohibited).

Conclusion, the Illinois Supreme Court, but mistaken, reliance on *Id.* The first passage referred to is not mentioned in the Constitution but that nonetheless may be seen in *S.* at 164; see Pet. App. 17a. The license for lower courts to

that the aldermen, the police, the gang members themselves do not know the law. Indeed, unless the opinion is, the justices of the state supreme court in Illinois who do not know what it

discover those "amenities" on their own and in the teeth of the methodology prescribed by this Court in *Graham*, *Albright*, and *Lanier*; indeed, only the most benighted view of what "historically [has been] part of" those "amenities" (*Papachristou*, 405 U.S. at 164) could lead to the conclusion that loitering with criminal gangs is among them. In the second passage on which the court below relied, *Papachristou* emphasized that the activities outlawed by Jacksonville's ordinance "by modern standards are normally innocent." *Id.* at 163; Pet. App. 9a. As its context makes clear, however, nothing in that passage purported to confer on the lower courts unguided discretion to second-guess legislative judgments that specific conduct is *not* "innocent"—the Court's point was simply that an ordinance's lack of clarity is an especial source of concern when the ordinance is applied to conduct that a citizen would not otherwise recognize as culpable. See *Papachristou*, 405 U.S. at 162-163 (emphasizing need for "fair notice"). As already demonstrated, lack of clarity is not a failing that can fairly be ascribed to Chicago's ordinance.

Indeed, the Illinois Supreme Court's real difficulty with the ordinance apparently was not that it is unclear, but that it is too broad:

The city has declared gang members a public menace and determined that gang members are too adept at avoiding arrest for all the other crimes they commit. Accordingly, the city council drafted an exceptionally broad ordinance which could be used to sweep these intolerable and objectionable gang members from the city streets.

Pet. App. 16a. Overbreadth is, of course, a distinct constitutional doctrine. Like vagueness, however, it is limited in reach.¹³ This Court has made clear that a legislative enact-

¹³The repeated citation by the court below of *Shuttlesworth v. Birmingham*, 382 U.S. 87 (1965), an overbreadth case, suggests that the

ment can be declared unconstitutionally "overbroad" only if it "prohibits constitutionally protected conduct." *Grayned v. City of Rockford*, 408 U.S. 104, 114 (1972). Indeed, this Court "ha[s] not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Because the ordinance does not infringe on any First Amendment interests, and violates no other specific provision of the Constitution, its mere breadth cannot serve as a basis for facial invalidation.

In any event, the Chicago Police have prepared detailed guidelines for the enforcement of the ordinance, which eliminate any difficulty the broad language of the ordinance itself might pose. Pet. App. 64a-73a. The court below rejected those guidelines on the ground that "[i]t is the duty of the lawmakers to establish minimal guidelines to govern law enforcement." Pet. App. 16a. But nothing in our Constitution governs the manner in which States, or local governments, allocate their legislative functions. *Highland Farms Dairy, Inc. v. Agnew*, 300 U.S. 608, 612-613 (1937) ("How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself"); *Dreyer v. Illinois*, 187 U.S. 71, 83-84 (1902) (due

court below did not see any significance distinction between the two doctrines. See Pet. App. 8a, 12a-13a. The ordinance at issue in *Shuttlesworth*, however, made it a crime "to stand or loiter upon any street or sidewalk . . . after having been requested by any police officer to move on." 382 U.S. at 90. The Court's concern was primarily with the blanket prohibition on "standing" on a public street, which was permeated "with [an] ever-present potential for arbitrarily suppressing First Amendment liberties." *Id.* at 90-91. Indeed, the Court noted that the ordinance had been narrowed since the events in that case. Once the ordinance was narrowed to apply to loiterers who obstructed free passage and "refused to obey a request by an officer to move on," the Court could "not say that the ordinance is unconstitutional." *Id.* at 91.

process does not require the Court frequently look[ing] at the ordinance in determining whether state action is unconstitutional. *Hoffman Estates v. blount*, 455 U.S. 489, 494 n.1 (1982). "A facial challenge to a state law, a claim that the law is unconstitutional on its face, is any limiting construction of the law that the agency has proffered."

The police guidelines are a facial challenge to the breadth of the ordinance. The ordinance is arbitrary enforcement: "The ordinance is arbitrary enforcement: 'loitering is not enforced' . . . In any event, this directive [e]nforces limitations on the police officers' discretion. The members, and thereby the ordinance in a fair and proper manner. A cursory review of the ordinance's guiding provisions of officers on the street is sufficient to show that the ordinance is no more than they do. The Court must enforce the gang-loitering ordinance. The courts who will there do so fairly. See, e.g., *United States v. Williams*, 196, 210 (1995); *United States v. Williams*, 272 U.S. 1, 14-15 (1926).

3. The questions presented below reflect the questions presented regarding the constitutionality of the ordinance. "[C]ourts have reached different conclusions in cases assessing facial challenges to state legislatures and city ordinances. The authority to deal with the ordinance is a matter of public policy. Prohibitions on loitering statutes are upheld in some cases and struck down in others. Compare, e.g., *City of Chicago v. Morales*, 1993 (holding loitering

y "overbroad" only if conduct." *Grayned v. City of Rockford*, 412 U.S. 43 (1972). Indeed, this breadth doctrine out-
 Amendment." *United States v. Salerno*, 481 U.S. 409 (1987). Because the First Amendment inter-
 vision of the Constitu-
 a basis for facial in-

have prepared detailed the ordinance, which language of the ordinance

The court below re- that "[i]t is the duty of guidelines to govern law nothing in our Constitu-
 tates, or local govern- ons. *Highland Farms* 512-613 (1937) ("How among its governmental
 question for the state 71, 83-84 (1902) (due

process does not require separation of state powers). This Court frequently looks to administrative constructions in de-
 termining whether state statutes are vague. See, e.g., *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1982) ("In evaluating a facial chal-
 lenge to a state law, a federal court must, of course, consider any limiting construction that a state court or enforcement agency has proffered") (emphasis added).

The police guidelines were adopted not only to narrow the breadth of the ordinance, but to avoid any possibility of arbitrary enforcement: "In order to ensure that the anti-gang loitering is not enforced in an arbitrary or discriminatory way, this directive [establishing the guidelines] establishes limitations on the enforcement discretion of Department members, and thereby provides for enforcement of the ordinance in a fair and principled way." Pet. App. 65a. Even a cursory review of the numerous and detailed discretion-guiding provisions of the police guidelines demonstrates that officers on the street have less discretion in enforcing the ordinance than they do, for example, in enforcing the traffic laws. The Court must presume that the police officers who enforce the gang-loitering ordinance, and the prosecutors and courts who will thereafter review those officers' work, will do so fairly. See, e.g., *United States v. Mezzanatto*, 513 U.S. 196, 210 (1995); *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926).

3. The questions presented are important, and the decision below reflects profound confusion in the lower courts regarding the constitutionality of community policing laws. "[C]ourts have reached conflicting results in several recent cases assessing facial vagueness challenges to the efforts of legislatures and city councils to fashion new forms of police authority to deal with neighborhood problems," including prohibitions on loitering. *Livingston, supra*, at 558. Loitering statutes are upheld in some jurisdictions and struck down in others. Compare, e.g., *E.L. v. State*, 619 So. 2d 252 (Fla. 1993) (holding loitering ordinance unconstitutional), with,

distinction between the two ordinance at issue in *Shut- id or loiter upon any street d by any police officer to ern was primarily with the ublic street, which was per- for arbitrarily suppressing Indeed, the Court noted that e events in that case. Once oiterers who obstructed free an officer to move on," the nconstitutional." *Id.* at 91.*

e.g., *City of Tacoma v. Luvane*, 827 P.2d 1374 (Wash. 1992) (sustaining constitutionality of similar ordinance); see Pet. 14-16 & nn. 9-12.

The Chicago gang-loitering ordinance is only one of many legislative implementations of the new community policing methods. Yet the Illinois Supreme Court held, erroneously, that the Chicago ordinance is unconstitutional. The decision below casts doubt on the constitutionality of a broad range of community policing laws, and will deter other cities and States from experimenting with reducing crime by controlling disorder. Other courts, by contrast, have sustained the constitutionality of restrictions similar to those imposed by the Chicago ordinance. See *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997) (rejecting constitutional challenges to injunction prohibiting gang-related conduct), cert. denied, 117 S. Ct. 2513 (1997).¹⁴

Indeed, a comprehensive review of this area of the law indicates a "confused pattern of decisions," an "erratic and confusing body of case law," an "overall pattern of decisions" that is "erratic, fractured, and confusing," an "erratic pattern of the vagueness cases in this area," and a "problem posed by the fractured case law." Livingston, *supra*, at 561, 610, 628, 629, 631. The lower courts have reached conflicting results in considering the limits the Constitution places on increased police interaction with the community in an effort to redress relatively low-level street crime and disorder.

¹⁴ The *Acuna* court upheld, as against vagueness, overbreadth and First Amendment challenges (among others), an injunction that prohibited gang members from "[s]tanding, sitting, walking, driving, gathering or appearing anywhere in public with" any other gang members. 929 P.2d at 608. The Supreme Court of California's judgment can scarcely be reconciled with the conclusions reached by the Supreme Court of Illinois here, given that injunctions are generally tested under more stringent constitutional requirements than ordinances. See *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 764-765 (1994).

The source of this Court's decision struck down a Fla. but gave little guidance on other constitutional public order laws. The predictable outcome of reviewing the case would have reached different results if the Court ascribed to the rule.

Many courts, given *Papachristou*, striking down even laws that enhance public safety at odds with the Court's decision, but also undermine public safety in their communities. In the community policing country, increasing the odds, recognizing the need, and the community.

Chicago's gang problem from the demand for poor, minority communities. The drive-by shooting criminal street gang margin by the Chicago Police Department represents the Chicago ordinance. The 1990s has of late in some parts by street-level drug residents of such kids the police catch ones who will be taken to the emergency

27 P.2d 1374 (Wash. 1992) (similar ordinance); see *Pet.*

ordinance is only one of the new community police. The Supreme Court held, erroneously, that the ordinance is unconstitutional. The Court's decision on the constitutionality of a broad ordinance, and will deter other cities from enacting similar ordinances with reducing crime by community police. By contrast, have sustained ordinances similar to those imposed in *People ex rel. Gallo v. City of Chicago*, 497 U.S. 97 (1990) (rejecting constitutional challenge to ordinance prohibiting gang-related conduct), 97 S.Ct. 1414.

view of this area of the law of decisions," an "erratic and an "overall pattern of decisions," and confusing," an "erratic in this area," and a "problem." Livingston, *supra*, at 561. Courts have reached conflicting results. The Constitution places limits on the community in an effort to reduce street crime and disorder.

of vagueness, overbreadth and First Amendment rights), an injunction that prohibited loitering, walking, driving, gathering or any other gang members. 929 California's judgment can scarcely be reached by the Supreme Court of the United States. The ordinance is generally tested under more rigorous standards than ordinances. See *Madsen v. W. Va.*, 512 U.S. 753, 764-765 (1994).

The source of the confusion among the lower courts is this Court's decision in *Papachristou*. The Court in that case struck down a Florida loitering statute as void for vagueness, but gave little guidance as to how the vagueness doctrine, or other constitutional restraints, should be applied in reviewing public order laws. "Disparate results in later cases were the predictable outcome." Livingston, *supra*, at 628. Courts reviewing the constitutionality of community policing laws have reached differing results depending on the breadth they ascribe to the ruling in *Papachristou*.

Many courts, including the Illinois Supreme Court, have given *Papachristou* an extraordinarily expansive reading, striking down even narrowly tailored laws designed to enhance public safety. This approach not only is fundamentally at odds with this Court's modern approach to due process, but also unnecessarily hampers state and local governments in their efforts to reduce crime by implementing community policing standards. Legislative bodies across the country increasingly are turning to the new policing methods, recognizing that frequent interaction between the police and the community is not only necessary but desirable.

Chicago's gang-loitering ordinance, for example, sprang from the demands of the City's residents—primarily from poor, minority communities—to rid their neighborhoods of the drive-by shootings, fighting, and drug dealing that attend criminal street gangs. It was passed by an overwhelming margin by the City Council, with crucial support from aldermen representing the most crime-ridden areas. And the Chicago ordinance is hardly unique: "Loitering legislation in the 1990s has often had broad community support, particularly in some predominantly minority communities plagued by street-level drug dealing." Livingston, *supra*, at 623. The residents of such communities understand full well that the kids the police can't order off the streets today are the same ones who will be taken off to jail tomorrow, if they are not taken to the emergency room or the morgue first.

This case presents an ideal vehicle for this Court to resolve the constitutionality of loitering laws and other similar efforts to reduce crime by policing disorder. A decision from this Court on the constitutionality of Chicago's ordinance would provide needed guidance not only to the Illinois courts, but also to courts and legislatures across the Nation that are considering the legal ramifications of the new policing. The Illinois Supreme Court expressly recognized that "[c]riminal street gangs are an expanding cancer in our society and their illegal activities endanger the safety of many law-abiding citizens." Pet. App. 17a. Yet, through a transparently fallacious analysis of this Court's cases, the court below disabled the citizenry of Illinois from dealing effectively with that "cancer." Only this Court's intervention can restore uniformity to this important area of federal constitutional law, which, perhaps more than any other, touches the day-to-day lives of our citizenry. This Court should grant certiorari to declare firmly that the Due Process Clause does not prevent the people from reclaiming their communities.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Of Counsel:

DAN M. KAHAN
TRACEY L. MEARES
University of Chicago
Law School
1111 East 60th Street
Chicago, Illinois 60637

THEODORE B. OLSON
Counsel of Record
MIGUEL A. ESTRADA
MARK A. PERRY
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Counsel for Amici Curiae

March 9, 1998

le for this Court to re-
laws and other similar
order. A decision from
of Chicago's ordinance
ot only to the Illinois
tures across the Nation
ations of the new polic-
pressly recognized that
ding cancer in our soci-
ger the safety of many
1. Yet, through a trans-
Court's cases, the court
ois from dealing effec-
Court's intervention can
area of federal constitu-
n any other, touches the
This Court should grant
Due Process Clause does
ng their communities.

ON

i should be granted. 4

ORE B. OLSON

et al of Record

A. ESTRADA

A. PERRY

DUNN & CRUTCHER LLP

onnecticut Avenue, N.W.

gton, D.C. 20036

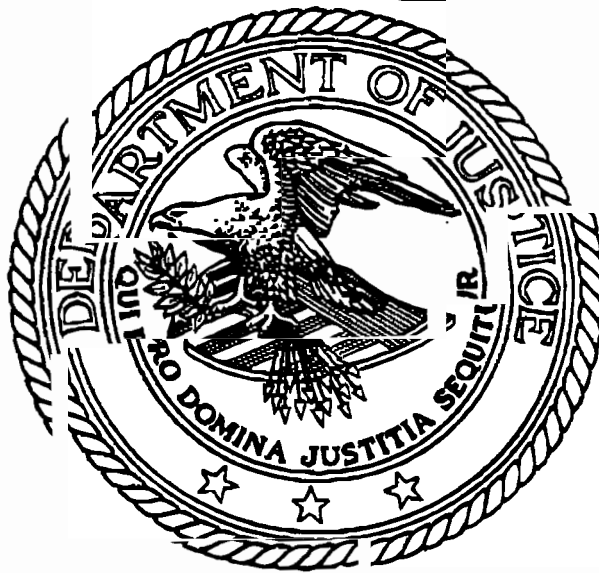
55-8500

et al for Amici Curiae

APPENDIX

**Groups Comprising *Amici Curiae*
Chicago Neighborhood Organizations**

The Resurrection Project
United Neighborhood Organization
West Woodlawn Council of Block Clubs
Hegwisch Community Committee
Chicago Roseland Coalition for Community Control
South Chicago Chamber of Commerce
Ravenswood Community Council
Nobel Neighbors
Hermosa Community Organization
Reach Out and Touch Ministries
West Humboldt Park Family and Community
Development Council



Office of Policy Development
United States Department of Justice
950 Pennsylvania Ave. NW, Room 4242
Washington, D. C. 20530-0001

TO: *Rose Cerda*

FAX: *456-7028*

FROM: *Liz Fero*

VOICE: (202)
FAX: (202) 514-5715

Total Pages (excluding this cover): *10*

Additional Message:



U.S. Department of Justice

Office of Policy Development

Assistant Attorney General
Telephone: (202) 514-4601
Fax: (202) 5142424

Room 4234
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

May 21, 1998

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: City of Chicago v. Jesus Morales, et al., No. 97-1121, petition for a writ of certiorari granted, April 20, 1998

You have asked the Office of Policy Development to review the interests of the Department of Justice and other federal agencies in this case. This memorandum describes the anti-gang loitering ordinance being reviewed by the Supreme Court, provides four bases for the federal government's involvement in the case, and recommends participation as amicus curiae in support of the City of Chicago, provided that you conclude that the ordinance withstands constitutional scrutiny.

STATEMENT

In 1992, the Chicago City Council enacted an anti-gang loitering ordinance in an effort to address the growing problem of criminal street gang activity. The ordinance proscribes loitering by members of criminal street gangs. Under the ordinance, Chicago police may order two or more persons loitering in a public place to disperse if the officer reasonably believes that one of them is a member of a criminal street gang. Failure to comply with the order is punishable by up to six months imprisonment, a \$500 fine or 120 hours of community service.

In enacting the ordinance, the Chicago City Council made a number of specific findings, based on testimony and other information, describing how loitering is an essential part of gang activity. In particular, the City Council found the following: First, street gangs loiter as part of a strategy to recruit members, claim territory and antagonize and drive off rival gangs. Second, existing laws are inadequate to control gang loitering. Gang members evade arrest because they do not commit punishable offenses in the presence of police, and residents in the community are afraid to report gang crimes for fear of reprisals. Third, gangs are menacing and intimidating to ordinary citizens and the community as a whole; they are destructive regardless of whether their members are committing crimes. People are afraid to be on the street if gang members are present in the community, or if a gang controls the area.

Citing statistics, Chicago city officials report that the ordinance proved to be a strong and effective law enforcement tool to attack gang violence. In a two-year period from 1994 through

1995, the Chicago Police made 31,000 dispersals and 37,000 arrests using the ordinance.¹ In 1995, gang-related homicides dropped 25 percent, and there was a 13 percent decline in the number of homicides involving victims under the age of 21.² In contrast, the rate of gang-related homicides rose 11 percent in 1996, after the ordinance was no longer in effect. More generally, where Chicago police removed gang members from the streets, residents reportedly were able to emerge from their homes and function fully in their communities.

The ordinance was in effect from 1992 until December of 1995, when it was declared unconstitutional by the Illinois Supreme Court. The Supreme Court granted the City of Chicago's petition for a writ of certiorari.

DISCUSSION

Over the past two decades, criminal street gangs have become a serious law enforcement problem for federal and state governments alike. By the early 1990's, 95 percent of the nation's largest cities and 88 percent of smaller cities in the nation reported gang problems.³ Most prevalent in areas in which the population is economically disadvantaged, criminal street gangs have attracted a growing number of young people to a life of violence and crime. The Department of Justice has identified over 23,000 youth gangs in the nation, with over 650,000 members.⁴ In 1994, criminal street gangs accounted for over 1,000 gang-related homicides in Chicago and Los Angeles alone.⁵ President Clinton has called the problem of gang violence "among the most profound we as a people have ever faced."⁶

To respond to the problem of gangs, the federal government has put into place a comprehensive gang-fighting strategy. The Chicago anti-loitering ordinance advanced three key elements of this strategy, each of which is considered in greater detail below. First, it furthered the federal government's cooperation with state and local law enforcement and contributed to the efficient use of federal resources. Second, the ordinance provided a tool for community police officers, advancing the federal community policing initiative. Third, the ordinance demonstrated

¹ "Mayor, Superintendent Endorse Assault Weapons Ban, Anti-Gang ordinance," City of Chicago Community Policing Press Release.

² *Id.*

³ U.S. Department of Justice, *Reducing Violent Crime in America: A Five-Year Strategy*, at 4 (May 1996).

⁴ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention 1995 National Youth Gang Survey (August 1997).

⁵ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention Fact Sheet #72 (Dec. 1997).

⁶ Proclamation by the President, "National Gang Violence Prevention Week, 1994," September 10, 1994.

the importance of using innovative laws in community efforts to fight crime and restore order, a strategy advanced by the federal government. The federal government must, however, assure that aggressive efforts to fight crime do not infringe the rights of individuals or encourage unlawful police practices. To this end, it is important for the federal government to be involved in this case, which may well establish the appropriate constitutional bounds for anti-crime public order measures.

1. **The Chicago Ordinance Supported Cooperative Federal, State, and Local Efforts to Eradicate Criminal Street Gangs and Contributed to the Efficient Use of Federal Resources**

Through the federal government's Anti-Violent Crime Initiative, launched in 1994, federal law enforcement agencies, under the leadership of United States Attorneys' Offices, have combined forces with state and local law enforcement agencies to tackle tough crime problems.⁷ These federal agencies include the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the U.S. Marshals Service, the Immigration and Naturalization Service (INS), the Bureau of Alcohol, Tobacco and Firearms (ATF), and other federal law enforcement agencies. The Attorney General directed participating jurisdictions specifically to consider the problem of street gangs through this multi-jurisdictional team. Federal, state, and local officials work together to direct criminal defendants to the state or federal criminal justice system for prosecution, depending on which system has the most effective laws for the crime in question, available resources, and whether state or federal prosecution would best serve the region's crime-fighting strategy.

The Chicago ordinance advanced the federal government's work with state and local law enforcement agencies and supported federal efforts to dismantle criminal street gangs in important ways.

First, according to the U.S. Attorney's Office in Chicago, the City's anti-loitering ordinance proved to be a useful tool in the federal and local anti-gang enforcement efforts in Chicago. In 1995, the U.S. Attorney in Chicago succeeded in removing entire cells of the Gangster Disciples gang from geographic areas of the city in which they had operated and prosecuting the leaders of this notorious gang.⁸ The U.S. Attorney's Office worked closely with community police stationed in the affected areas, encouraging them to increase their presence and visibility when necessary to support federal enforcement efforts. Community police backed up the federal prosecution by keeping new gangs from taking hold in areas cleared of Gangster Disciples. The quality of life in these areas improved considerably as a result of the federal

⁷ The federal government's various law enforcement activities and grant programs that target criminal street gang activity are described in the attached Appendix.

⁸ Interview with Chief of the Criminal Section of the U.S. Attorney's office for the Northern District of Illinois, May 15, 1998.

prosecution and subsequent enforcement of the ordinance. Without the coordination that occurred between the federal prosecutors and the community police, the successful federal prosecution might have been ineffective, and a new gang could have taken control of areas vacated by the Gangster Disciples.

Ongoing cooperative federal law enforcement efforts would also benefit from use of the Chicago anti-gang loitering ordinance, were it still in effect. For example, the Department of Justice and the Department of Housing and Urban Development teamed with city officials in an operation to clean up the Wentworth Gardens housing project and surrounding areas, a community imperiled by illegal street gangs. Had it been available, the ordinance might have proven extremely useful in this effort to eradicate gangs from Chicago public housing projects.

Second, the effective enforcement of the anti-gang loitering ordinance by local law enforcement in Chicago has helped to conserve federal resources. Through this local enforcement of the ordinance, volatile situations that otherwise could have escalated to violence, and necessitated a federal response, were instead diffused by removing gang members from the streets. Federal government resources that would ordinarily be used to respond to the escalation could instead be diverted to other crime-fighting efforts. Federal funds were used more efficiently as a result.

2. The Ordinance Supported the Work of Federally-Funded Community Police Officers and Advanced the Federal Government's Community Policing Strategy

The federal government has made a major commitment to funding community police officers and providing other support for law enforcement to fight street gangs and local criminal activity. As part of a national community policing strategy, the federal government is funding up to 100,000 new community police officers through the COPS program, enacted as part of the 1994 Crime Act.⁹ The goal of the community policing program is to have each community use its officers to address local crime problems in the best way that the community sees fit. These police officers establish order in neighborhoods, and enforce public safety codes and other laws to prevent serious crimes from occurring.

The COPS program has funded 571 new community police officers in Chicago to date. In addition, Chicago was one of 15 communities nationwide to participate in the COPS Anti-Gang Initiative and to develop innovative approaches to solve gang problems. Chicago established its own citywide community policing program in 1993, and used community police officers to combat the activity of criminal street gangs in part through the enforcement of the anti-gang loitering ordinance. The Chicago community police officers came to rely on this

⁹ The Department of Justice also administers a number of specific grant programs to help communities combat gang violence and to develop new approaches to the problem of gangs.

ordinance as a critical tool to fight gangs, and it served as a central element in the Chicago community policing program.

3. The Federal Government Supports the Use of Public Order Measures to Fight Crime

The Clinton Administration has supported local communities in their decisions to adopt and enforce public order and quality of life laws as part of a strategy to reduce crime and violence. Today, many communities around the country are enforcing curfews, requiring school uniforms, enforcing anti-truancy laws, and adopting other public safety measures, such as anti-gang loitering ordinances, to disrupt patterns of criminal behavior that have taken hold on community streets. Many communities receive federal funding or other support to advance these measures. For example, in the Los Angeles area, Weed and Seed sites have used federal funds to enforce anti-loitering ordinances, and in Sioux Falls, South Dakota, the local police, with the help of the FBI and ATF, enforce curfew violations.

Having encouraged these efforts, the federal government now has an important role to play in defending communities' ability to use these tools to fight crime. If the Supreme Court affirms the Illinois Supreme Court's holding that the Chicago ordinance is unconstitutional, the validity of other anti-loitering ordinances and other public order measures could be called into question. Such a result would thus implicate federal efforts to fight gangs and control illegal drug trafficking and violence in Chicago and around the country.

4. The Federal Government Has An Interest in Ensuring That Community Public Order Measures Do Not Infringe Constitutional Rights

In its review of the Chicago anti-gang loitering ordinance, the Supreme Court may well delineate the constitutional parameters for such anti-loitering ordinances and public order laws generally. Both parties in this case have taken an absolute position on the question of the constitutionality of the Chicago ordinance. By contrast, the federal government can offer a balanced view -- one that both supports the interests of law enforcement and has a high regard for the importance of protecting individual civil liberties.

In the case before the Supreme Court, the City of Chicago will argue that its anti-loitering ordinance is constitutional both on its face and as applied. Chicago will cite police guidelines that accompany the ordinance and dictate how it must be applied to prevent its arbitrary enforcement.¹⁰ These guidelines require a police officer to have probable cause that a member of a criminal street gang is loitering, limit a police officer's discretion by requiring an officer to

¹⁰ General Order No. 92-4 (Effective date, August 8, 1992), reprinted in Pet. App. 64a-73a.

have "specific, documented and reliable information" of gang membership, and set forth a process for determining the specific locations where the ordinance can be enforced.¹¹

At the same time, the respondents will argue that the Chicago ordinance is unconstitutional and that the use of broad anti-loitering ordinances opens the door to abusive and discriminatory enforcement practices. Indeed, there are components within the Department of Justice that believe that the Chicago ordinance is overly broad, particularly in its reach beyond gang members.

The federal government, by participating in this case, can provide guidance to the Supreme Court on how to approach the question of whether the anti-gang loitering ordinance, and other similar types of public order laws, can withstand constitutional scrutiny, recognizing that there are ways to limit the potential for police abuse, as reflected in the Chicago administrative guidelines. In addition, this case provides a likely vehicle for the Supreme Court to reinterpret, and possibly narrow or overrule, its 1972 decision in Papachristou v. City of Jacksonville, 405 U.S. 156. The federal government is uniquely positioned to present legal theories to the Court that would both serve the interest in fighting crime and the need to protect civil liberties. No other participant in the case can be expected to give the court tailored and balanced guidance on the appropriate development of the law in this area.

CONCLUSION

The outcome of this case could significantly affect the federal government's efforts to reduce criminal street gang activity. The ordinance has helped our work with state and local law enforcement, our community policing program, and our strategy to encourage local use of innovative crime-fighting strategies, including enforcement of a range of public order laws.

RECOMMENDATION

The Office of Policy Development recommends amicus curiae participation in support of the City of Chicago, provided that you conclude that the ordinance withstands constitutional scrutiny. The Office of Intergovernmental Affairs, the Office of Juvenile Justice and Delinquency Prevention, and the Drug Enforcement Administration concur in this recommendation. The Executive Office for Weed and Seed recommends against amicus curiae participation.


Eleanor D. Acheson
Assistant Attorney General
Office of Policy Development

Attachment

¹¹ Id.; Pct. App. 67a-68a.

APPENDIX

FEDERAL ANTI-GANG PROGRAMS AND INITIATIVES

Multi-Agency Programs and Initiatives

Anti-Violent Crime Initiative. In the Anti-Violent Crime Initiative, the Department of Justice and the Department of the Treasury have combined crime-fighting resources with state and local law enforcement to achieve collectively what no single entity can accomplish on its own. In 1994, the federal government launched the AVCI, a multi-jurisdictional approach that employs a wide array of investigative and prosecutorial tools to attack violent crime, including criminal street gangs. The AVCI serves as an umbrella for cooperative efforts to take place among federal, state, and local law enforcement agencies. These cooperative efforts are then deployed effectively in specific communities in order to target the violent crime problems in the particular area. United States Attorneys serve as their district's Violent Crime Coordinator, and the other participating federal entities include the FBI, DEA, IRS, INS, ATF, the U.S. Marshals Service, the Bureau of Prisons, U.S. Customs, the Park Service, the Fish and Wildlife Service, and the Armed Forces. On May 1996, the Attorney General requested that U.S. Attorneys in each district include a focus on violent gangs in their AVCI enforcement activities.

The AVCI brings under its umbrella numerous task forces and ongoing federal crime-fighting efforts that in the past competed for the attention of and participation from state and local law enforcement. The FBI, DEA, INS, the U.S. Marshals Service, ATF, and the Secret Service all have long histories of working together with local law enforcement in anti-gang and anti-drug activities.

HUD/DOJ. In coordination with HUD, the Department of Justice has launched a coordinated effort to fight violent crime in public housing. The effort focuses on thirteen cities, including Philadelphia, Chicago, Detroit, New Orleans, San Francisco, and Washington, D.C. A primary focus of this effort has been to root out the gang activity in public housing that has made public housing dangerous and unlivable.

Indian Country. There are several federal agencies with law enforcement responsibilities in Indian country. Violent crime in Indian country has increased significantly, corresponding with a significant rise in gang activity. According to a 1997 survey conducted by the Department of the Interior's Bureau of Indian Affairs (BIA), there are 375 gangs with approximately 4,650 members on or near Indian country, which is double the number of gangs identified by BIA in 1994.

The federal government's anti-gang activities in Indian country include the following programs.

1. Twenty-seven FBI field divisions have investigative jurisdiction in Indian country with respect to criminal matters. The FBI shares this responsibility with the BIA.

The FBI has created an Office of Indian Country Investigations within its Violent Crime and Major Offenders Section.

The FBI has adapted its Safe Streets Task Force model to Indian country by creating a Safe Trails Task Force to coordinate anti-gang activities with other federal, tribal, and state law enforcement groups.

2. U.S. Attorneys are responsible for prosecuting major crimes and crimes involving Indians and non-Indians in most of Indian country. The Attorney General has directed those U.S. Attorneys with jurisdiction in Indian country to designate AUSAs to serve as tribal liaisons and work with tribal police, prosecutors, and judges to address youth violence, including gang activity.
3. The BIA has created a Gang Resistance Education and Training (GREAT) program to use tribal and BIA police officers in schools to prevent kids from becoming involved in gangs.

Individual Agency and Component Programs and Initiatives

FBI. The FBI has developed the National Gang Strategy. Using the investigative and prosecutorial theories that have proven successful in the Organized Crime/Drug Program National Strategy, the FBI, in cooperation with other interested federal, state, and local law enforcement agencies, combats criminal street gang activity through sustained, multi-divisional, coordinated investigations leading to successful prosecutions. The National Gang Strategy contemplates support from U.S. Attorneys Offices, including the assignment of a full-time AUSA to significant, long-term investigations, and the development of relationships between AUSAs and their state and local counterparts.

In furtherance of the National Gang Strategy, the FBI has established the Safe Streets Violent Crime Initiative ("Safe Streets"). Under the Safe Streets program, the Special Agent in Charge of each FBI field division can combat criminal street gang activity by sponsoring task forces that coordinate the gang-fighting activities of federal, state, and local law enforcement agencies. As of September 1997, the FBI identified 153 Violent Crime/Gang Task Forces composed of 726 FBI Special Agents, 175 other federal agents, and over 1,100 state and local law enforcement officials. The FBI also maintains a Violent Gang and Terrorist Organizations File in the FBI's criminal history information system to support the gang-fighting efforts of local law enforcement officials.

DEA. Because the lifeblood of most gang activity in the nation is drug trafficking, DEA has a long history of participating in multi-jurisdictional, anti-gang task forces. DEA's primary tool to assist in coordinated gang investigations is the Mobile Enforcement Team (MET). METs are deployed at the request of local police chiefs, sheriffs, or district attorneys to work in concert with local police to dislodge violent drug offenders from the community.

U.S. Marshals Service. The Marshals Service works with state and local law enforcement in their efforts to locate and arrest federal fugitives, including gang members and their associates. In 1995, the U.S. Marshals Service participated in 140 task forces as part of the AVCI and arrested 12,500 fugitives.

INS. INS has formed Violent Gang Task Forces in sixteen major cities. These task forces target criminal street gangs comprised primarily of aliens.

Federal Grant Programs

Office of Juvenile Justice and Delinquency Prevention (OJJDP). OJJDP administers a number of grant programs to enable communities to combat gang activities. These include discretionary grants as part of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression. Recipients of this grant develop and implement a comprehensive gang program. Other OJJDP grants fund mentoring programs for juvenile delinquents, a career preparation initiative, local police departments to enable them to develop innovative strategies to combat gang violence, and a program to enable the designated Empowerment Zones to implement youth-oriented community policing.

For FY 1998, Congress allocated \$250 million for a new program, the Juvenile Accountability Incentive Block Grant. Grant recipients may use these funds for, inter alia, hiring additional prosecutors to enable them to address gang, drug, and youth violence activities more effectively.

COPS. The COPS program is putting up to 100,000 new police officers on the streets. Under the authority delegated to her in the 1994 Crime Act, the Attorney General carried out her responsibility to fund the 100,000 additional officers by creating the Office of Community Oriented Policing Series. The officers who are funded by the COPS program conduct community policing and enter into close partnerships with affected communities to attack endemic community problems, such as gang activity. In addition, between 1994 and 1996, COPS selected fifteen sites, including Chicago, to participate in an Anti-Gang Initiative. Grant recipients used the funds to develop innovative, community-specific approaches to gang problems, including using the police to target known gang gathering places, combating gang intimidation, and mobilizing communities.

In 1997, the COPS program instituted Problem-Solving Partnerships to enable communities to enter into partnerships with local police and sheriff's departments to address specific neighborhood problems, including loitering. Thus far, \$40 million in grants have been distributed to over 450 communities to form Problem-Solving Partnerships.

Weed and Seed. The Weed and Seed grant program, established in 1991, pioneered the adoption on a nationwide basis of community-based crime prevention and control strategies. At participating Weed and Seed sites, the U.S. Attorneys provide leadership to communities to

develop and implement comprehensive strategies to "weed out" violent crime, including gang activity, and "seed" the neighborhood through economic and social revitalization. For FY 1998, Congress appropriated \$33.5 million to fund 176 sites, which receive an additional \$9 million in Weed and Seed monies from the Asset Forfeiture Fund.

Consistent with the philosophy of the Weed and Seed program that relies on community policing and community residents to identify the problems their communities face, Weed and Seed grantees have adopted a range of strategies to deal with criminal street gangs. These strategies include prevention programs designed to persuade children to stay away from joining a gang and to teach non-violent means of conflict resolution.

Weed and Seed grants also have been used for multi-jurisdictional criminal investigations. In Chicago, for example, Weed and Seed contributed \$250,000 in Asset Forfeiture to the Joint Task Force on Gangs. The Task Force, which included federal officials from the FBI and the IRS, and state and local officials from the Chicago Housing Authority Police, the Chicago Police Department, the Cook County Sheriff's Office, and the Illinois State Police, conducted an investigation that led to the indictment of members of a leading Chicago gang, the Gangster Disciples. The City Attorney's office in Los Angeles has pioneered the "gang abatement" concept to eradicate gang activity from a neighborhood Weed and Seed site. Under this approach, the City files civil nuisance lawsuits against gangs and individual gang members and obtains an anti-gang injunction prohibiting the enjoined parties from operating in particular areas and associating with other gang members.

Bureau of Justice Assistance (BJA). BJA has grant monies to fund demonstration projects that are designed to combat criminal street gang activity. One such grant program allocates funds to assist state and local prosecutors in carrying out their drug enforcement strategy. Another BJA grant program, the Comprehensive Gang Initiative, provides monies to community police and social services agencies to aid them in developing a multi-disciplinary, multi-task, and problem-solving approach to gang activity.

HUD's Public Housing Drug Elimination Program. In FY 1997, Congress authorized \$250 million for this HUD-operated grant program designed to empower residents of public housing to combat drugs and drug-related crime in their communities through community policing and drug and crime elimination strategies. Grant funds may be used to employ security personnel and investigators; reimburse local law enforcement for additional security; and support voluntary tenant patrols.

SUPPORTERS OF CHICAGO'S ANTI-GANG LOITERING ORDINANCE

The Resurrection Project
United Neighborhood Organization
West Woodlawn Council of Block Clubs
Hegwisch Community Committee
Chicago Roseland Coalition for Community Control
South Chicago Chamber of Commerce
Ravenswood Community Council
Nobel Neighbors
Hermosa Community Organization
Reach Out and Touch Ministries
West Humboldt Park Family and Community Development Council
United States Conference of Mayors
The National League of Cities
The National Association of Counties
The International City/County Management Association
The International Municipal Lawyers
The National Association of Chief of Police
The State of Ohio
The State of California
The State of Illinois
The State of Kansas
The State of Louisiana
The State of Michigan
The State of Mississippi
The State of Nebraska
The State of Nevada
The State of South Carolina
The State of South Dakota
The Commonwealth of Pennsylvania
The Commonwealth of Virginia

RESOLUTION

WHEREAS, the 1998 Chicago Community Policing Convention, consisting as it does of representatives of district advisory committees, community-based organizations participating in community policing and beat facilitators, is thoroughly familiar with Chicago's community policing programs, and in particular the importance of proactive efforts to prevent breaches of the peace rather than delaying intervention until crimes are committed; and

WHEREAS, one of the major factors that threatens to destabilize neighborhoods is the visible presence of criminal street gang members, who all too often blatantly engage in drug deals and other crimes in the public way in full view of neighborhood residents, but merely stand about pretending to be innocently loitering once the police arrive; and

WHEREAS, even when gang members are not committing other crimes while loitering on the public ways, the mere presence of a collection of obviously brazen, lawless and violent persons on the public ways intimidates residents, detracts from property values, and ultimately can threaten to destabilize communities; and

WHEREAS, Chicago's Anti-Gang Loitering Ordinance represents an important effort to deal with the problems posed by gang crime by empowering police to disperse gang loiterers, rather than waiting until they commit some other crime which may itself have even more serious consequences; and

WHEREAS, during the period of time that the Anti-Gang Loitering Ordinance was in effect before it was invalidated by the Illinois courts, levels of gang-related crime in Chicago declined

at rates considerably steeper than the rate at which the overall crime rate declined; and

WHEREAS, available statistical evidence also reflects an increase in gang-related crime in 1996, when the anti-gang loitering ordinance was no longer enforced as a result of adverse judicial decisions even though the overall crime rate continued to decline; and

WHEREAS, the experience of community residents confirms that the anti-gang loitering ordinance was an important tool in removing a visibly lawless and disruptive element from the public ways,

NOW, THEREFORE, BE IT RESOLVED, that the 1998 Chicago Community Policing Convention endorses Chicago's Anti-gang Loitering Ordinance, expresses its view that the ordinance made an important contribution to the fight against gang crime in the City of Chicago, and authorizes the filing of a brief on behalf of the Convention in the United States Supreme Court urging that Court to uphold this ordinance as an important community-based and proactive initiative in the fight against gang crime.

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
Stephen Martin	CAPS - 6 District	7943 S. Perry
Ernest Williams III	O.E.C.	2341 E. 103rd St
Vance Terry	CAPS Office	377 S. STATE
Ricardo Contreras	CAPS office	333 S. STATE
Steven Bayle	CAPS office	333 S. STATE
John M. Ceylan	C.A.P.S.	1904 W. Cermak
Phyllis Maben	CPD	4844 STATE ST
Joe C. Wilson	CAPS	134 S. Ylason
A. Leroy N. Knox	Caps. 4th Dist	8536 P. Ellis 60611
Cal Kelly	Caps 22nd	9330 So. Jackson 60620
Corey Diller	48th Ward	5457 N. Broadway
Larry Sumpter	CAPS	1839 S. Springfield 606
Earnest Walker	CAPS	92385 DOBSON
Carl L. Smith	15th District DAC Beat 1512	2233 N. Orchard 60614
Guadalupe De La Rosa	Beat 1124	2442 S. Trumbull
Francisco Owens	21st Ward	9328 S. Parkell Av. 60620
Martin Cicheli	CAPS, 22nd Ward	7414 S-BELL
Monte Hany	CAPS 26th District	3143 S. Prairie
Beng Martin	21	3134 S. PRAIRIE
Khalil Williams	22	9541 N. Halsted
John Brown	22	10233 Wood
John Brown	22 - 2nd	1840 N. ... 60614

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
Julio Martinez	1421 FACILITATOR	1637 N. ALBANY
Judi LaVelle	923	3028 LYMAN
~~John A. Smith~~	CPD.	2150 N. CALIFORNIA
Renee Hiaz	BEAT 1031 CAPS VOLUNTEER	2801 S. KILBOURN
Porter Billingsley	BEAT 1115	658 W. Washington Blvd.
Elina Sanchez	Wood Street Block Club	4522 S. WOOD
Willie C. Anderson	CAPS 6D.	7800 S. DAMEN
James T. Drake	CAPS-6th DIST	7730 S. HERMITAGE
Gary Brubaker	CAPS 006TH DIST	8445 S. ABERDEEN
Angela Asileman	CAPS	650 W. GORDEN TURN
Nina Montelone	Chgo. Ruffie Center	321 N. La Salle St. Chgo.
~~Donna L. Johnson~~	COC	524 S. GARY ST. CHGO.
Althea Lynne	Chgo. Dept Public Health	2327 W. 23rd Pl
Louis Portocarrero	CPD	4844 S. STATE 60609
Andre Sosinski	CPD	717 E 111TH ST 60628
Bernie Cannon	623 Facilitator	7526 N. WENTWORTH 60640
Larry Perry	AMIA	4426 N. SAWYER 60622
Erica Snuggs	Beat 2424 Facilitator	7070 N. CLARK ST. 60626
Carol Lina Luvon	UNION LEAGUE BOYS & GIRLS CLUB	1223 2157 W. 19th St. 60608
Debra M. Hicks Jr	Beat 1532 SACC	4919 W. WESTERN 60644
Barbara Keller	1124	330 S. RICHMOND 60645
T.O. H. A. D. C.	EXECUTIVE DIRECTOR	773-379-7822

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
William Lambert	7 th West Police District	5676 S. Normal
Frank M. Gregg	6 th Dist CAPS	8722 Calumet Ave
Willie Terba	25 th CAPS	1211 N. MENARD
Barbara Bugel	17 th Dist. Police	5124 W. Monticello
Jesse J. Roux	Block Club	7916 So. Loomis
Gloria Jackson	CAPS - 20 th	5440 N. Kenmore
Jorge Sotelo	CAPS - 17 th	4836 N. Bernard
GERMAN GONZALEZ	MANY KIDS	5038 SO PAULINA ST
M SATTERFIELD	AMIA	4455 N. SAWYER
Jorge Marcos	AMIA	4427 N Sawyer
Nellie C. Lack	Beat 1724	4041 N. Sawyer
Patricia Martell	Civilian ¹⁷³³ Patrol	3941 N. Kedzie
Catherine Maurer	Civilian ¹⁷¹² Patrol	4837 N. Hamlin
Mary Brozynski	COURT WATCH 44 th Dist CAPS	2830 E 93rd St.
Diana H. Mason	13 th District	944 N. Winchester
Lawrence F Ramos	14 th District	5417 N. Broadway
May Ann Berry	5936 W. Michigan	Capp - 233
Leshaun Johnson	5813 S. Wabash	Beat Facility 233
Grace M. Taylor	Beat 613	8237 S. Aberdeen 6062
Nedra Myron	Thermite Manor Beat 1333	1725 W Lake
Fachal Cordova	825	2923 W. 56 th St
Wm. L. Edwards	Harold D. N. S.	don't know

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
Jessie Medina	4th District	10632 S. Ewing
Herald Ross	community Out Reach	6210 E. 1st St
James J. Mazur	Court Advocacy - 17th District	4063 N. Elston #20, Chgo 60618
John Wiley	Wicker Park Chamber	1532 N. Milwaukee ⁶⁰⁶²²
Betty Hanson	11 District	3538 W. Van Buren Chgo 60612
Larry Kelly	600 W. 61st Black ^{POPP}	453 W. 61st St -
Barbara Washington	7600 Loflin ^{BEAT 612} ~~Black Club~~	7629 S Loflin ⁶⁰⁶²⁰⁻⁴³¹
JOHNNY WILLIAMS	11th DIST. BT FACILITATOR	121 N. KILDARE
STELLA F. GRACE	GAPCO / CAPS	3348 S. Calumet
ANNETTE OUTTEN	AUBURN PARK CITIZENS COUNCIL	8001 S. PEORIA 60620
Allen Kuleta	13th DIST. DAC COPI	1444 W. Chicago
Paul Johnson	17th District CAPS	1101 BOX 213355 MAIL # 6914 S. LANGLEY AVE 60621
Shirley Rhine	East Blk Assoc	1740 W. 100th St Chicago, IL 60643
Margaret Tipton	3rd Dist - Beat 322	7111 So. Calumet Chgo 60611
Maria Krol	8th Dist Beat ⁸⁷³	3353 W. 60TH ST.
Jimmy Longin	11 District ^{Beat} 1112	1052 N. Harding
Beverly Taylor Williams	C.A.P.S.	
Sue Green	C.A.P.S.	1420 W. Glenlake 60007
Robert Carson	C.A.P.S., CCC, ALLU	840 N. KEELER CHICAGO 60607
Linda Mayne	3rd District	7040 S. Cottage
LAREN C. MILLER	BEAT 222 / CAPS	4629 S. LANGLEY
Samuel L...	2nd Dist	7...

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
David F. Rosa		4635 S. KEATING 6063
Michael D. James	22-2300 S KIRKLAND ^{BLK} CLUB	2327 SKIRKLAND 60623
Ann Green	4100 W. Oak 10 th	4100 W. 24th St.
Joe Satterfield	2311 S Kostner	Beat 1013
Robert L. Clark	4537 N. Monticello	Beat 1712
Betty Boock	17 th	5222 N. Kimball
Jay Boock	Court Advocate	5222 Kimball
Juan Cruz	17 th Dist	4553 N HARDING
Elia A. Solobay	17 th Dist	4836 N Bernard
Mary Gonzalez	Mary's Kids 5035 S. Paulina	931-
Margaret C. Gies	2958 W. Pershing Rd	913 W
Committ Hodge	Court Advocate	3822 W. Irving 60624
Joe Arnold	NRC	3206 W. Hinsdale
Mary Nguyen	#1712 Beat	3322 W Catalpa
Earl Wilson	1712 Beat	5254 N. KIMBALL
Michael Nguyen	1712	3344 W. Foster
Al E. C. Whitman	CISOC	427 E. 41st
Marvin Byrner	Yellow Moon Crime Watch	9716 S. Van Vorst
Alfonso Sureda	Park Manor Neighbors	7549 So Prairie 60619
Frank J. Kelly	FAC. BEAT 123	36 90. GATE
Will H. Taylor	Beat 613	2237 So. Aberdeen
Frank		

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
Theresa A. Morris	17 th CAPS - Housing	4857 N. Hamden
Henry Sabatelli	10 th CAPS	2718 W 23 rd St.
Jose Martinez	CAPS	3435 S. KARLOV
TIRON K. SMITH	CAPS	7829 SO. CHAPPEL
Gregory E. Charles	2525 CAPS	2312 N. Springfield
Bill Murray	CAPS 25 th	3162 N. ALLEN
Margarita Padilla	8 th Dist	3557 W. 60 th St.
Linda S. Connell	134 th Dist	910 N. Richmond
Ralph Robinson	Caps 1524	5407 W. Madison
Joe	9 th District	954 W. Belmont
Joe Parnas	20 th District	5281 W. CANTON
Brian Rich		4747 S. Ingleside
Delon Bees	5 th DIST ENVIRONMENT	501 E 107 th ST
Mohammed N. Sharif	17 th CAPS Beat 1712	5722 N. CHRISTIANA AVE.
Lethine Hilde	CAPS 11 th	829 N. Kedzie
Robert Shannon	6 th District CAPS	7808 S. Emerald Ave.
Jim Merrett	NORTHEAST AUSTIN ORG.	5057 W. NORTH
Chae Chae Hwa	18 th DIST CAPS	525 W. EUGENIE
Donnette Washington	15 TH DIST	5327 W. Chicago
Jasmine Kogali	22 ND DIST	1730 W. 100 th St
Christina Fogwell	"	1726 W. 100 th St
Theresa Kuhn	22 nd Dist	9947 L. M. Ave.

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
 ENDORSING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

NAME	ORGANIZATION	ADDRESS
C. Williams	Beat 621	7621 S. Normal Ave. Chgo IL 60621
Cash Jeff Clark	014 th Dist	2150 N. California
Cathy Daly	008 th District	3515 W 63 rd St
Roder Williams	9 th	2056 W. 55
Ellen Lee	# 07 Rm	5617. So. Jackson
Mereesa Douglas	# 1533 / SACEE	5039 E/W Gladys S.
MIN. L. WHEELER	CAPS BEAT 2313	927. W. WILSON
Elois Bills	005 th ENVIRONMENTAL DIST	501 E. 107 St.
Charmelle Brown	Beat 323	7431 S Ingleside
Marie Baltazar	9 th	4738 S Hermitage
Dora Baltazar	9 th	4843 S Paulina
Olympia Rubio	9 th - H.A.S.	4736 W. 47 th St
Fabiana Chavez	9 th	4849 S. Paulina
Victoria Vences	San Diego Community Center	8802 S. Exchange ^{Beat 424}
NORMAN ROUSE	21st DIST	3308 S. CALUMET
LORI Cooper	23rd Dist	3600 N. HALSTED.
Sheldoss	5th District	1114 N. Ellis
Resty H. Smith	6 District	7118 S. Vernon
Diana Dubble	CPD - 006 th Dist	819 W 85 th
James Garcia	Beat 2213 - Court House	9955 So. Lake
Marlene Garcia	2534 Spring Comm.	1435 N. Kolmar Ave
Norman L. Smith	5632 S. L...	Beat 077 L. 111

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
Emma Burks	7	566 S. JUSTINE
Lillian Drummond	5 ACCE-15th	5090 2N Congress ^{pkwy}
~~Supriya~~	5 th DIST CAPS ^{PAE}	10321 So CALUMET
~~Max~~	CPD	100 S. RACINE
Christine Cyprian ³²³	Caps - 323	7431 S Ingleside ⁶⁰⁶
Jane M. Lynn	CAPS - 824	5556 S. ALBANY
Liana Orr	9th	1741 W. 43rd
Bob Vondraich	South Austin Council	5090 W. Harrison ^{Chicago 6064}
Phyllis Spears ⁵³¹	Northwest Austin Council	5758 W. PULASKI
Kevin Blum	W.S.M.C	5707 W. HURON
Mae C. Campbell	Cap-111	4732 W. Erie ⁶⁰⁶⁴
Samuel R. Ruzick	Caps ICA	1058 S. MONITOR ⁶⁰⁶⁴
Jen. Plun	8th District	4338 S. KENNEDY
Georgea Dawn	~~8th DIST.~~	9001 S. CORDA
Norman J. Cielucha	16 th BT 33	5756 W. NEWPORT
Richard G. Dove	18th DIST CAPS ^(WSNA)	122 W. OAK ST.
Bernice Furdy	8 Dist	6942 So. Maplewood
Maggie Schumacher	9th (911)	5209 S. ALBANY
Shirley Nelson	15 Dist 1532	617 N. Leamington
Mary Mann	006 DIST BT. 632	819 W. 85th St.
Leticia Ransom	3rd DIST	7333 S. Chappel
Paul Matthews	15th DIST	2900 N. Mulligan

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
CONRAD DEMBOWSKI	C.P.D	4461 N. PULASKI
Maini Yang	017th	4461 N. Pulaski
Edith Horlowski	1034 Best Cape	1834 W 22nd Place
Michelle M Bower	CPD	3501 S. Lowe
Nellie Z Jones	31-35 Black Club	3425 So. Prairie
John M. Swain	25th District	2338 N. Randolph
Christine Crandall	14th District	1920 N. Sangre
Rogina Petilla	8th Dist.	3557 W 60th ST
Ed Chen	23rd Dist. G/L ADVISORY	1433 W FARWELL
Adrienne Rich	21st Dist	4747 S. Engleside
M. Shahabuddin		5039 Fairview Ln. Skokie
Fred Davis Jr	9th Dist	4052 S. Maplewood 60637
Harold Long	20th District	5646 N. Wayne 60640
Angelo Knowles	18th District	550 W. Armitage, 60614
William A. Ashkan	23rd District	4247 N. Hazel 60619
James A. Conner	West Beverly Assoc. 22nd District	1735 W. 100th Street
Richard M. Smith	4th District	8132 S. Quince 60617
Anthony M. Smith	9th Dist	5232 So. Paulina Chicago 60609
Delia R. Perry	5th Dist	9033 A. Ellis, 60619
Thomas J Green	7th District	7333 S. Green 60621
Elizabeth Haywood	7th D.	6720 S. Union 60621
Carlton Williams	3rd District	1244 E. Kimbark 60617

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
Jesse Haines	621 Beat	819 W. 85 th St.
William Pruitt	10714 S. Wallace ^{Beat 22}	10714 S. Wallace
Florence P. Smith	10714 S. Wallace ^{Beat 223}	10714 S. Wallace
Carmen Valdez	25 th District ^{Beat 2514}	5250 W. Schubert
Ronell S. S.	BEAT 2512	2440 N. RUTHERFORD
Ree Charlito	522	121 W. 116 th ST.
Dr. M. Hankins	C DOT	30 N. La Salle
Maggie Imucane	009 th DAC	2912 S. Loomis Chgo 60608
Alexander Pratt	007 th STEERING ^{COMMITTEE}	7341 S. GREEN ST.
LITTY MAY	1105	727 E. 111 th ST.
J. GERRARD	005	727 E. 111 th ST
P. La Porta	010	2746 S. KILDARE
Mark La Porta	Beat 1031 ^{Court Advocate}	Chgo IL 60623
Rodman Ramsey	11 th	205 S. TROY
John Bell	610	6101 S. WENTWORTH
John A. Wilson	213	4107 So. Van Curen ⁶⁰⁶⁵³
Maggie Taylor	007	7017 S. MARY ST
Rudolph A. Walker	DAC 15 th	5719 W. MIDWAY PARK
GRACE GARCIA	WOOD ST BLK CLUB ^{Beat 914}	4434 S. Wood St. 60609
Lylea Sanchez	914	4522 S. Wood St
Rene Snowden	CAP 6 th	8541 S. Throp
John A. H.	CAP 1630	5019 N. GARY ST.

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

1

[illegible]

ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

NAME	ORGANIZATION	ADDRESS
Bessie L. Beuten	CAPS -	4923 S. Washington Ave
Patrice Bann	C.A.P.S.	9059 Cottage
Indygo H. Effie	CAPS #634	9150 S. Harvard Ave 606
Barbara McDonald	CPD	5426 E View PK 60615
Maia Glen	CPD	921 S. KODOLIS 60613
Beverly C. H.	CAPS	7748 S. Drexel
MARY TONEY	N.S.C.	4542 So VERNON
Charly Armstrong	CAPS - 2023	5455 N. Kenmore #3 N 6061
Robbie JACQUETTE	N.A.C.	5730 W. DIVISION
Theodore Maltail		2160 N. MANHATTAN
Lynne Danner	Church Street Block Club CAPS 2212	10860 Church St
Vyni N. Cherry	CAPS #814	4609 S. LECIAIRE CHICAGO IL 60638
LORETTA GUBIE	CAPS #1531	222 N. LAVERGNE CHICAGO IL 60651
Lida Taylor	NOBEL NEIGHBORS	4048 Potomac 60651
Brenda Scurlock	CAPS--6TH DIST B. FACIL.	7826 So. EBERHART 60619
Arthur Wilford	BEAT 213 / OAKWOOD BLVD intersection	448 E OAKWOOD BLVD 60653
Fred Hunter	600 E. 50th Pl Block Club / CAPS	611 E. 50th Place 60615
Josephine Terkin	9325 So. LaSalle	9325 So. LaSalle

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

1

[illegible]

f

[illegible]

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

1

[illegible]

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

[illegible]

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

1

[illegible]

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION ENDORISING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

[illegible]

ENDORSORING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

**1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION
ENDORING CHICAGO'S ANTI-GANG LOITERING ORDINANCE**

[illegible]

1998 CHICAGO COMMUNITY POLICING CONVENTION RESOLUTION ENDORING CHICAGO'S ANTI-GANG LOITERING ORDINANCE

[illegible]

AMENDMENT OF TITLE 8, CHAPTERS 4 AND 16 OF MUNICIPAL
CODE OF CHICAGO BY IMPLEMENTATION OF RESTRICTIONS
ON GANG RELATED CONGREGATIONS IN PUBLIC
WAYS AND BY EXPANSION OF CURFEW
REGULATIONS REGARDING MINORS.

On motion of Alderman Burke, the City Council took up for consideration the report of the Committee on Police and Fire, deferred and published in the Journal of Proceedings of May 20, 1992 pages 16474 through 16479, recommending that the City Council pass a proposed substitute ordinance to restrict gang related congregations in the public way and to expand curfew regulations regarding minors.

On motion of Alderman Beavers, the said proposed substitute ordinance was *Passed* by yeas and nays as follows:

Yeas -- Aldermen Mazola, Preckwinkle, Beavers, Dixon, Buchanan, Huels, Fary, Madrzyk, Burke, Murphy, Rugai, Laski, Gutierrez, E. Smith, Bialczak, Suarez, Gabinski, Austin, Wojcik, Banks, Giles, Cullerton, O'Connor, Doherty, Natarus, Eisendrath, Hansen, Levar, Schulter, M. Smith, Stone -- 31.

Nays -- Aldermen Tillman, Bloom, Steel, Shaw, Jones, Coleman, Evans, Miller, Hendon, Shiller, Moore. -- 11.

Alderman Natarus moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

WHEREAS, The City of Chicago, like other cities across the nation, has been experiencing an increasing murder rate as well as an increase in violent and drug related crimes; and

WHEREAS, The City Council has determined that the continuing increase in criminal street gang activity in the City is largely responsible for this unacceptable situation; and

WHEREAS, In many neighborhoods throughout the City, the burgeoning presence of street gang members in public places has intimidated many law-abiding citizens; and

WHEREAS, One of the methods by which criminal street gangs establish control over identifiable areas is by loitering in those areas and intimidating others from entering those areas; and

WHEREAS, Members of criminal street gangs avoid arrest by committing no offense punishable under existing laws when they know police are present, while maintaining control over identifiable areas by continued loitering; and

WHEREAS, The City Council has determined that loitering in public places by criminal street gang members creates a justifiable fear for the safety of persons and property in the area because of the violence, drug-dealing and vandalism often associated with such activity; and

WHEREAS, The City also has an interest in discouraging all persons from loitering in public places with criminal gang members; and

WHEREAS, Aggressive action is necessary to preserve the City's streets and other public places so that the public may use such places without fear; and

WHEREAS, The City Council has also determined that it is necessary to amend the Municipal Code of Chicago to provide for a stronger curfew ordinance and a more effective means of enforcement; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Chapter 8-4 of the Municipal Code of Chicago is hereby amended by adding a new Section 8-4-015 as follows:

8-4-015.

(a) Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

(b) It shall be an affirmative defense to an alleged violation of this section that no person who was observed loitering was in fact a member of a criminal street gang.

(c) As used in this section:

(1) "Loiter" means to remain in any one place with no apparent purpose.

(2) "Criminal street gang" means any ongoing organization, association in fact or group of three or more persons, whether formal or informal, having as one of its substantial activities the commission of one or more of the criminal acts enumerated in paragraph (3), and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(3) "Criminal gang activity" means the commission, attempted commission, or solicitation of the following offenses, provided that the offenses are committed by two or more persons, or by an individual at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members:

The following sections of the Criminal Code of 1961: 9-1 (murder), 9-3.3 (drug induced homicide), 10-1 (kidnapping), 10-4 (forcible

detention), subsection (a) (13) of Section 12-2 (aggravated assault-discharging firearm), 12-4 (aggravated battery), 12-4.1 (heinous battery), 12-4.2 (aggravated battery with a firearm), 12-4.3 (aggravated battery of a child), 12-4.6 (aggravated battery of a senior citizen), 12-6 (intimidation), 12-6.1 (compelling organization membership of persons), 12-11 (home invasion), 12-14 (aggravated criminal sexual assault), 18-1 (robbery), 18-2 (armed robbery), 19-1 (burglary), 19-3 (residential burglary), 19-5 (criminal fortification of a residence or building), 20-1 (arson), 20-1.1 (aggravated arson), 20-2 (possession of explosives or explosive or incendiary devices), subsection (a) (6), (a) (7), (a) (9) or (a) (12) of Section 24-1 (unlawful use of weapons), 24-1.1 (unlawful use or possession of weapons by felons or persons in the custody of the Department of Corrections facilities), 24-1.2 (aggravated discharge of a firearm), subsection (d) of Section 25-1 (mob action-violence), 33-1 (bribery), 33A-2 (armed violence); Sections 5, 5.1, 7 or 9 of the Cannabis Control Act where the offense is a felony (manufacture or delivery of cannabis, cannabis trafficking, calculated criminal cannabis conspiracy and related offenses); or Sections 401, 401.1, 405, 406.1, 407 or 407.1 of the Illinois Controlled Substances Act (illegal manufacture or delivery of a controlled substance, controlled substance trafficking, calculated criminal drug conspiracy and related offenses).

(4) *"Pattern of criminal gang activity" means two or more acts of criminal gang activity of which at least two such acts were committed within five years of each other and at least one such act occurred after the effective date of this Section.*

(5) *"Public place" means the public way and any other location open to the public, whether publicly or privately owned.*

(d) *Any person who violates this Section is subject to a fine of not less than \$100 and not more than \$500 for each offense, or imprisonment for not more than six months, or both.*

In addition to or instead of the above penalties, any person who violates this Section may be required to perform up to 120 hours of community service pursuant to Section 1-4-120 of this Code.

SECTION 2. Chapter 8-16 of the Municipal Code of Chicago is hereby amended in Section 8-16-020 by inserting the language in italics and by deleting the language in brackets, and by adding new Sections 8-16-022 and 8-16-024, as follows:

8-16-020.

It shall be unlawful for any person under the age of 17 years to be present at, or upon any public assembly, building, place, street or highway, in the city between the hours of 11:30 P.M. Friday and 6:00 A.M. Saturday, [or] between the hours of 11:30 P.M. Saturday and 6:00 A.M. Sunday, and [or] between the hours of 10:30 P.M. and 6:00 A.M. on any other day of the week, *provided, however, that the provisions of this section shall not apply when:*

(a) the minor is accompanied and supervised by his or her parent, legal guardian or other adult having the legal care or custody of such minor, or by the minor's spouse if the spouse is 18 years of age or older, or by any other responsible companion at least 21 years of age or older approved by the minor's parent or legal guardian or other adult having the legal care or custody of such minor;

(b) the presence of such minor in said place is required by an occupation or business in which the minor is lawfully engaged; or

(c) the minor is going directly to or from any adult-supervised activity sponsored by any school, church, civic or not-for-profit organization.

[unless accompanied and supervised by a parent, legal guardian or other responsible companion at least 21 years of age approved by a parent or legal guardian, or unless engaged in some occupation or business in which such child may lawfully engage under the statutes of this state.]

[Any police officer finding a child violating the provisions of this section shall warn the child to desist immediately from such violation and shall promptly report the violation to his superior officer who shall cause a written notice to be served upon the parent, guardian, or person in charge of such child, setting forth the manner in which this section has been violated. Any parent, guardian, or person in charge of such child who shall knowingly permit such child again to violate the provisions of this section after receiving notice of the first violation shall be fined not less than \$5.00 nor more than \$100.00 for each offense.]

8-16-022.

Any police officer who finds a minor in violation of section 8-16-020 is authorized to take such minor into custody until such time as the minor's parent, legal guardian, or other adult having legal care or custody of the minor is located and notified of the violation, and takes custody of the minor from the police. If no such person can be located within a reasonable period of time, the minor shall be referred to the appropriate juvenile authorities.

8-16-024.

Any parent, legal guardian or other adult having the legal care or custody of a minor who shall knowingly permit such minor to violate any provision of section 8-16-020 shall be fined not less than \$25.00 nor more than \$100.00 for each offense.

SECTION 3. This ordinance shall take effect 30 days after its passage and publication.



s-drizin@nwu.edu on 05/28/98 06:09:40 PM

To: David Kennedy/FS/KSG
cc:
Subject: Re: Community policing

Thanks for your paper. I'll read it at home tonight. Sorry to take up so much of your time but I am very interested in the Boston Project, am struck by the differences between Boston and Chicago, and do believe that our approach here is destined to fail. I am also a firm believer that sweeping kids off of the streets is not the answer to the city's violence problems (and am probably a bit more optimistic about the prospects of "saving" the vast majority of these kids than you may be). In any event, I've taken another crack at the op-ed. Feel free to comment upon it.

GANG LOITERING ORDINANCE UNDERMINES COMMUNITY POLICING EFFORTS

Last October, the Illinois Supreme Court, in a unanimous opinion, struck down Chicago's gang loitering ordinance as unconstitutionally vague and an arbitrary exercise of police power. If Chicago officials have their way, Chicago police officers will once again be able to use the ordinance to first warn teenagers who are hanging out on street corners to disburse and then arrest all who refuse to leave the scene. City officials are now lobbying community organizations and law enforcement agencies throughout Illinois and the United States to stand behind the city's ordinance when the case is reviewed by the United States Supreme Court in the Fall.

Most of the criticism of the city's gang-loitering ordinance has centered around the constitutionality of the law, which is closely tied to such basic civil liberties as the right to travel and the right to assemble. But there are other equally compelling reasons why the City should abandon its efforts to have the ordinance reinstated. If the highly successful Boston Gun Project is any indication, such suppression-only strategies are out of step with more innovative policing and are destined to undermine the City's own community policing initiatives.

Several weeks ago, representatives from the Boston Gun Project, met with a packed auditorium of concerned Chicagoans to share their success story. In Boston, a coalition comprised of city police, federal agents, state and federal prosecutors, probation and parole authorities and a broad alliance of community-based organizations developed a strategy to target guns and those who use them. After experiencing 155 homicides involving youths under the age of 21 between 1991 and 1995, over 90% of which involved guns, Boston has been able to reduce homicides among young people aged 24 and younger by about 75%.

Speaking at the conference, Lieutenant Gary French, head of Boston's Youth Violence Strike Force, disabused audience members of the popular notion that Boston's success was solely the result of highly publicized

law-enforcement tactics such as police partnerships with parole and probation, aggressive gun seizures and gun tracings, and crackdowns on the most violent gang members. Stating that "we can't be credible on suppression, unless we are credible on prevention and intervention," Lieutenant French listed an array of prevention programs developed by the police, including after-school programs, youth athletic leagues, a program offering summer jobs for youths, and a violence prevention curriculum taught by youth officers to grade school children, as equally integral to the city's success in reducing violence.

Lieutenant French also criticized the use of "zero tolerance" enforcement strategies that indiscriminately sweep large numbers of young people off the streets and into the criminal justice system. In stark contrast to Chicago's aggressive defense of its gang-loitering ordinance, Lieutenant French remarked that "every time we pick up an A or B student and haul him off a street corner simply because of the way he is dressed," we alienate the community and undermine police efforts to enlist the community's cooperation to make the streets safer.

Don't get me wrong, there was plenty of law enforcement in Boston's approach. But it was enforcement targeted specifically at gang members with a predilection for violence. Police and prosecutors, together with partners from the community and social services, first spoke with gangmembers and told them that any violence would be met with swift and harsh criminal justice consequences. Then they backed up their threats with several high-profile prosecutions of gang members who ignored their warnings. And finally, they went back to the streets to tell other gangmembers what their associates had done to deserve such a harsh response. After a series of these sessions, gang members have apparently learned that they can avoid such a harsh response by resolving their disputes without using guns. The lasting partnerships between police and community groups have also helped to prevent gangs from retaliating when violence does occur. Rather than a large scale "war on gangs" or a "war on drugs," Boston struck specifically at gang violence and has been largely successful in causing a ceasefire.

The success of the Boston Gun Project should cause Chicago city officials to reexamine their efforts to revive the gang-loitering ordinance. While what works for Boston may not necessarily work for Chicago, it is hard to argue with Boston's success. Chicago's reductions in youth and gun violence -- which have been achieved with a strategy almost entirely focussed on suppression -- have not been nearly as dramatic as Boston's. With far too much regularity, Chicagoans are still greeted with news reports of youth gun-related homicides. As long as Chicago's children continue to kill and injure each other with such regularity, it behooves Chicago to invest more of its energy towards police-based prevention and targeted intervention strategies designed to deter violence and greater collaboration between police and community groups to engage our youth rather than to simply arrest and incarcerate them.

Chicago's suppression-centered strategy has also come with a heavy price. Increases in police brutality complaints and the arrest of large numbers of innocent bystanders (as has been the case with Chicago's gang-loitering law), breed disrespect for law enforcement and strain relationships between



law enforcement and community groups — the very relationships which Chicago police officers depend upon to make their community policing initiative work. Because most of those arrested have been African-American and Latino youths, these strategies have led many to suspect that the police are discriminating against youths of color. The fact that most of the juvenile gang-loitering arrests are not prosecuted or do not result in convictions has only compounded the feelings of the youths and their families that they are victims of harassment.

On a positive note, Mayor Daley and Superintendent Hilliard, at a celebration of the fifth anniversary of Chicago's community policing initiative, announced their intention to focus their energies on reaching out to at-risk youths. Superintendent Hilliard has been quoted as stressing the need to "bring [at risk youths] into the loop" and "start listening to them." In moving forward, the City should look for guidance to the Boston model, with its recipe of equal parts prevention, intervention, and deterrence. They should survey other cities and replicate programs that are less designed to intimidate unruly youths and are more inclined to view youths as part of the solution to reducing violence rather than as the problem. In this way, the city can both redefine community policing by giving disenfranchised teens a voice and make even greater strides at reducing youth violence.

Steven A. Drizin
Supervising Attorney
Children and Family Justice Center
Northwestern University Legal Clinic

1ST STORY of Level 1 printed in FULL format.

Copyright 1998 The Washington Post
The Washington Post

April 21, 1998, Tuesday, Final Edition

SECTION: A SECTION; Pg. A05

LENGTH: 541 words

HEADLINE: Court to Rule on Loitering Law Aimed at Gangs; Chicago Officials Say Ordinance Deters Presence; Rights Groups Call It Unconstitutional

BYLINE: Joan Biskupic, Washington Post Staff Writer

BODY:

The Supreme Court agreed yesterday to hear Chicago's defense of an anti-loitering ordinance aimed at gang members, who, the city says, "blatantly engage in drug deals" but once police arrive pretend to be innocently hanging out.

Numerous states and municipal groups urged the high court to take the case in light of increasing legislation targeting gangs as well as many types of public conduct on the streets. Civil libertarians and defense lawyers, meanwhile, contend authorities are going too far, curtailing harmless behavior and violating constitutional rights.

The ordinance adopted by the Chicago City Council in 1992 allows a police officer to order any group of individuals loitering in a public place to disperse if the officer "reasonably believes" that someone who belongs to a street gang is in the group. Anyone who fails to leave can be sentenced to six months in prison, a \$ 500 fine or up to 120 hours of community service. "Loiter" is defined as "to remain in any one place with no apparent purpose."

The Illinois Supreme Court ruled last year that the law was impermissibly vague and violated constitutional due process of law. The state court said the law failed to give people notice of exactly what conduct was prohibited and deprived "persons suspected of being in criminal street gangs . . . of the personal liberty of being able to freely walk the streets and associate with friends, regardless of whether they are actually gang members or have committed any crime."

But the city, in its appeal, said "no one who has been given a police order to move on could fail to understand what is required of him." It noted that the ordinance says no arrest can be made unless there is first a police order to move on and a refusal by the subject to abide by the officer's order.

Brian L. Crowe, lawyer for the city, told the court that the ordinance was carefully crafted after public hearings and a determination that "the intimidating presence of gangs . . . has a palpable detrimental effect on a family's sense of well-being, on the willingness of parents to allow their children outside and on the willingness of Chicago residents to remain in the city."

Defense lawyers urged the high court not to take the case or to revive the ordinance.

The Washington Post, April 21, 1998

"The city's rigid enforcement policy," said Harvey Grossman of the American Civil Liberties Union, makes it nearly impossible for potential arrestees to explain why they are waiting at some corner. Grossman referred to "persons who wish to inform an officer that they are waiting for a taxi, which may take some time on the south side of Chicago, or for a friend or family member to arrive."

Thirteen states, including Virginia, had urged the high court to take Chicago's appeal, saying that the Illinois court's decision "overprotects criminal gangs but also underprotects other members of urban communities." In a similar vein, the U.S. Conference of Mayors, the National League of Cities and other municipal groups said Chicago's ordinance was a proper response to the serious problem of gang intimidation.

The case of Chicago v. Morales will be heard in the term that begins next October, and a ruling is likely to be handed down sometime in 1999.

LANGUAGE: ENGLISH

LOAD-DATE: April 21, 1998

High Court to Review Law Aimed at Gangs

By JOAN BISKUPIC
Washington Post Staff Writer

As an African American woman who'd seen black men tormented by police, Jamesetta Harris was suspicious when she first heard about proposals to allow police to stop gang members from gathering on street corners. But that was before she moved to Chicago's South Side.

"There were 20, 30 people hanging out on the corner," Harris said of her neighborhood. "Gangs that sold drugs owned the block. There was shooting 24 hours a day. You didn't raise your shades or open your blinds. You crawled around in the house."

Harris bought her graystone in 1992, the same year Chicago passed an ordinance that allowed police to arrest suspected gang members who refused to move on when ordered to disperse. The city's rationale, echoed by law enforcement nationwide, was that gang members stake out their territory by loitering on street corners and exert power over the rest of the neighborhood by their sheer menacing presence.

Now, a debate over these laws that has consumed local communities, police departments and civil libertarians will come to the Supreme Court. The justices on Wednesday will hear oral arguments on the constitutionality of the Chicago law and whether it unfairly infringes on the rights of people to gather on the streets.

Other cities, including the District, have taken similarly controversial steps to fight gangs, by employing such measures as curfew laws that are designed to keep mere loitering from escalating into serious crime.

While some neighborhood residents say zero-tolerance policies help clean up communities and protect their residents from violence, others say they trample on personal liberties and, intentionally or not, target minorities.

"Who do you think police are going to look for?" said Luis Gutierrez, who in 1995 was arrested on the streets of Chicago as he talked with old friends. "Young Latino men. Young black men."

The Chicago law enabled police to disperse any groups of two or more people in a public place "with no apparent purpose" if one of them could "reasonably" be suspected of being a gang member. Anyone who didn't move on could be arrested, fined up to \$500 and jailed for six months.

But last year, the Illinois Supreme Court struck down the law as unconstitutionally vague and a restriction on personal liberties. "The freedom to engage in such harmless activities [as loitering and loafing] is an aspect of the personal liberties protected by" the Constitution, the state court said. It also criticized the law for requiring only that the arresting officer have a reasonable belief that one of the persons in the group of loiterers is a gang member.

Relying on a 1972 high court ruling that declared a Jacksonville, Fla., vagrancy ordinance unconstitutionally vague, the Illinois court faulted the Chicago law for not separating innocent conduct from harmful activities.

In the late 1960s and early '70s, judges were especially suspicious of anti-loitering laws that encouraged what came to be known as "street sweeps" targeting blacks and Hispanics. Mindful of that era, many of those supporting the Chicago ordinance (including 31 states) stress

that times have changed and that courts should realize that anti-loitering laws that might have once been used to target racial minorities are being used to make the inner cities, where many minorities reside, more livable.

"Minority citizens are no longer so disenfranchised," said a "friend of the court" brief from The Chicago Neighborhood Organizations, one of the local groups supporting the law. "They are using their new-found political power to secure effective law enforcement in the form of anti-loitering laws, curfews and other community policing."

In its written filing in *City of Chicago v. Morales*, city lawyers also rebut the complaint that the law is too vague and that innocent bystanders would be unfairly affected. "No one who has been given an order to move on could fail to understand what is required of him, and under our ordinance, no arrest can be made unless there is first a police order and then a refusal to comply with that order," deputy corporation counsel Lawrence Rosenthal said.

The city also contends that police have many ways to detect gang membership: distinctive clothes, signs and signals, or the ways in which members communicate with each other.

Harris, who is active in her neighborhood policing efforts, said the law worked well before it was blocked by the lawsuit. "When I first moved in, I thought about putting armor all around the house," said Harris, who lives with her mother, a sister, a grown daughter, two grown nieces, one grandniece and two grandnephews. "Now, I want to put out flowers and nice lawn furniture."

About 45,000 people were arrested during the three-year period in 1992-95 when the law was enforced. But American Civil Liberties Union lawyer Harvey Grossman, protesting the city's policy on behalf of some of the people who were arrested, said most of those picked up were African Americans or Hispanics who were innocently milling about.

"The city's ordinance simply cannot be reconciled with our constitutional tradition" of allowing people to move about freely and associate with whomever they choose, he said. Grossman and others challenging the law say it is nothing more than a return to the street sweeping laws of the 1960s.

"People need to understand that young Latinos and young black males are just like everyone else," said Gutierrez, who was 23 and visiting his parents near their South Side neighborhood when he was picked up by police. "They just want to talk, get together, ask 'How's the family? How's school going?'"

Gutierrez, who runs an immigration consulting business, said he understands the desire to feel safe in a neighborhood. But he contends the cost of the Chicago policy is too high and served mostly to create "a gap between the elderly and the young."

Warren Friedman, executive director for the Chicago Alliance for Neighborhood Safety, one of the local groups opposing the policy, similarly contends that the anti-loitering law divides, rather than helps, communities.

"We want the community and police to work on a crime problem together," Friedman said. "The loitering law not only violates people's rights but it makes community residents passive. It becomes all the cops' work."

THE WASHINGTON POST

NATIONAL NEWS | Supreme Court

SUPREME COURT CALENDAR

The Supreme Court will hear arguments from 10 a.m. until noon today in the following cases:

No. 97-1709. *Kumho Tire Co. v. Carmichael*. Regarding the standards for admitting at trial testimony based on an expert's experience and observations. (One hour.)

No. 97-1139. *United States v. Rodriguez-Moreno*. Regarding the venue for a defendant charged with using firearms in one state during a multistate kidnapping. (One hour.)



BY BOB BLACK—CHICAGO SUN-TIMES
Jamesetta Harris, at first suspicious of a law to keep gangs off the streets, now supports such measures.



BY BILL SPANIER FOR THE WASHINGTON POST
Under the contested 1992 Chicago law, Luis Gutierrez was arrested while talking to friends on the street.

PHOTOCOPY
PRESERVATION



U.S. Department of Justice

Office of Policy Development

Assistant Attorney General
Telephone: (202) 514-4601
Fax: (202) 514-2424

Room 4234
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

May 21, 1998

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: City of Chicago v. Jesus Morales, et al., No. 97-1121, petition for a writ of certiorari granted, April 20, 1998

You have asked the Office of Policy Development to review the interests of the Department of Justice and other federal agencies in this case. This memorandum describes the anti-gang loitering ordinance being reviewed by the Supreme Court, provides four bases for the federal government's involvement in the case, and recommends participation as amicus curiae in support of the City of Chicago, provided that you conclude that the ordinance withstands constitutional scrutiny.

STATEMENT

In 1992, the Chicago City Council enacted an anti-gang loitering ordinance in an effort to address the growing problem of criminal street gang activity. The ordinance proscribes loitering by members of criminal street gangs. Under the ordinance, Chicago police may order two or more persons loitering in a public place to disperse if the officer reasonably believes that one of them is a member of a criminal street gang. Failure to comply with the order is punishable by up to six months imprisonment, a \$500 fine or 120 hours of community service.

In enacting the ordinance, the Chicago City Council made a number of specific findings, based on testimony and other information, describing how loitering is an essential part of gang activity. In particular, the City Council found the following: First, street gangs loiter as part of a strategy to recruit members, claim territory and antagonize and drive off rival gangs. Second, existing laws are inadequate to control gang loitering. Gang members evade arrest because they do not commit punishable offenses in the presence of police, and residents in the community are afraid to report gang crimes for fear of reprisals. Third, gangs are menacing and intimidating to ordinary citizens and the community as a whole; they are destructive regardless of whether their members are committing crimes. People are afraid to be on the street if gang members are present in the community, or if a gang controls the area.

Citing statistics, Chicago city officials report that the ordinance proved to be a strong and effective law enforcement tool to attack gang violence. In a two-year period from 1994 through

1995, the Chicago Police made 31,000 dispersals and 37,000 arrests using the ordinance.¹ In 1995, gang-related homicides dropped 25 percent, and there was a 13 percent decline in the number of homicides involving victims under the age of 21.² In contrast, the rate of gang-related homicides rose 11 percent in 1996, after the ordinance was no longer in effect. More generally, where Chicago police removed gang members from the streets, residents reportedly were able to emerge from their homes and function fully in their communities.

The ordinance was in effect from 1992 until December of 1995, when it was declared unconstitutional by the Illinois Supreme Court. The Supreme Court granted the City of Chicago's petition for a writ of certiorari.

DISCUSSION

Over the past two decades, criminal street gangs have become a serious law enforcement problem for federal and state governments alike. By the early 1990's, 95 percent of the nation's largest cities and 88 percent of smaller cities in the nation reported gang problems.³ Most prevalent in areas in which the population is economically disadvantaged, criminal street gangs have attracted a growing number of young people to a life of violence and crime. The Department of Justice has identified over 23,000 youth gangs in the nation, with over 650,000 members.⁴ In 1994, criminal street gangs accounted for over 1,000 gang-related homicides in Chicago and Los Angeles alone.⁵ President Clinton has called the problem of gang violence "among the most profound we as a people have ever faced."⁶

To respond to the problem of gangs, the federal government has put into place a comprehensive gang-fighting strategy. The Chicago anti-loitering ordinance advanced three key elements of this strategy, each of which is considered in greater detail below. First, it furthered the federal government's cooperation with state and local law enforcement and contributed to the efficient use of federal resources. Second, the ordinance provided a tool for community police officers, advancing the federal community policing initiative. Third, the ordinance demonstrated

¹ "Mayor, Superintendent Endorse Assault Weapons Ban, Anti-Gang ordinance," City of Chicago Community Policing Press Release.

² *Id.*

³ U.S. Department of Justice, *Reducing Violent Crime in America: A Five-Year Strategy*, at 4 (May 1996).

⁴ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention 1995 National Youth Gang Survey (August 1997).

⁵ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention Fact Sheet #72 (Dec. 1997).

⁶ Proclamation by the President, "National Gang Violence Prevention Week, 1994," September 10, 1994.

the importance of using innovative laws in community efforts to fight crime and restore order, a strategy advanced by the federal government. The federal government must, however, assure that aggressive efforts to fight crime do not infringe the rights of individuals or encourage unlawful police practices. To this end, it is important for the federal government to be involved in this case, which may well establish the appropriate constitutional bounds for anti-crime public order measures.

1. The Chicago Ordinance Supported Cooperative Federal, State, and Local Efforts to Eradicate Criminal Street Gangs and Contributed to the Efficient Use of Federal Resources

Through the federal government's Anti-Violent Crime Initiative, launched in 1994, federal law enforcement agencies, under the leadership of United States Attorneys' Offices, have combined forces with state and local law enforcement agencies to tackle tough crime problems.⁷ These federal agencies include the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the U.S. Marshals Service, the Immigration and Naturalization Service (INS), the Bureau of Alcohol, Tobacco and Firearms (ATF), and other federal law enforcement agencies. The Attorney General directed participating jurisdictions specifically to consider the problem of street gangs through this multi-jurisdictional team. Federal, state, and local officials work together to direct criminal defendants to the state or federal criminal justice system for prosecution, depending on which system has the most effective laws for the crime in question, available resources, and whether state or federal prosecution would best serve the region's crime-fighting strategy.

The Chicago ordinance advanced the federal government's work with state and local law enforcement agencies and supported federal efforts to dismantle criminal street gangs in important ways.

First, according to the U.S. Attorney's Office in Chicago, the City's anti-loitering ordinance proved to be a useful tool in the federal and local anti-gang enforcement efforts in Chicago. In 1995, the U.S. Attorney in Chicago succeeded in removing entire cells of the Gangster Disciples gang from geographic areas of the city in which they had operated and prosecuting the leaders of this notorious gang.⁸ The U.S. Attorney's Office worked closely with community police stationed in the affected areas, encouraging them to increase their presence and visibility when necessary to support federal enforcement efforts. Community police backed up the federal prosecution by keeping new gangs from taking hold in areas cleared of Gangster Disciples. The quality of life in these areas improved considerably as a result of the federal

⁷ The federal government's various law enforcement activities and grant programs that target criminal street gang activity are described in the attached Appendix.

⁸ Interview with Chief of the Criminal Section of the U.S. Attorney's office for the Northern District of Illinois, May 15, 1998.

prosecution and subsequent enforcement of the ordinance. Without the coordination that occurred between the federal prosecutors and the community police, the successful federal prosecution might have been ineffective, and a new gang could have taken control of areas vacated by the Gangster Disciples.

Ongoing cooperative federal law enforcement efforts would also benefit from use of the Chicago anti-gang loitering ordinance, were it still in effect. For example, the Department of Justice and the Department of Housing and Urban Development teamed with city officials in an operation to clean up the Wentworth Gardens housing project and surrounding areas, a community imperiled by illegal street gangs. Had it been available, the ordinance might have proven extremely useful in this effort to eradicate gangs from Chicago public housing projects.

Second, the effective enforcement of the anti-gang loitering ordinance by local law enforcement in Chicago has helped to conserve federal resources. Through this local enforcement of the ordinance, volatile situations that otherwise could have escalated to violence, and necessitated a federal response, were instead diffused by removing gang members from the streets. Federal government resources that would ordinarily be used to respond to the escalation could instead be diverted to other crime-fighting efforts. Federal funds were used more efficiently as a result.

2. The Ordinance Supported the Work of Federally-Funded Community Police Officers and Advanced the Federal Government's Community Policing Strategy

The federal government has made a major commitment to funding community police officers and providing other support for law enforcement to fight street gangs and local criminal activity. As part of a national community policing strategy, the federal government is funding up to 100,000 new community police officers through the COPS program, enacted as part of the 1994 Crime Act.⁹ The goal of the community policing program is to have each community use its officers to address local crime problems in the best way that the community sees fit. These police officers establish order in neighborhoods, and enforce public safety codes and other laws to prevent serious crimes from occurring.

The COPS program has funded 571 new community police officers in Chicago to date. In addition, Chicago was one of 15 communities nationwide to participate in the COPS Anti-Gang Initiative and to develop innovative approaches to solve gang problems. Chicago established its own citywide community policing program in 1993, and used community police officers to combat the activity of criminal street gangs in part through the enforcement of the anti-gang loitering ordinance. The Chicago community police officers came to rely on this

⁹ The Department of Justice also administers a number of specific grant programs to help communities combat gang violence and to develop new approaches to the problem of gangs.

ordinance as a critical tool to fight gangs, and it served as a central element in the Chicago community policing program.

3. The Federal Government Supports the Use of Public Order Measures to Fight Crime

The Clinton Administration has supported local communities in their decisions to adopt and enforce public order and quality of life laws as part of a strategy to reduce crime and violence. Today, many communities around the country are enforcing curfews, requiring school uniforms, enforcing anti-truancy laws, and adopting other public safety measures, such as anti-gang loitering ordinances, to disrupt patterns of criminal behavior that have taken hold on community streets. Many communities receive federal funding or other support to advance these measures. For example, in the Los Angeles area, Weed and Seed sites have used federal funds to enforce anti-loitering ordinances, and in Sioux Falls, South Dakota, the local police, with the help of the FBI and ATF, enforce curfew violations.

Having encouraged these efforts, the federal government now has an important role to play in defending communities' ability to use these tools to fight crime. If the Supreme Court affirms the Illinois Supreme Court's holding that the Chicago ordinance is unconstitutional, the validity of other anti-loitering ordinances and other public order measures could be called into question. Such a result would thus implicate federal efforts to fight gangs and control illegal drug trafficking and violence in Chicago and around the country.

4. The Federal Government Has An Interest in Ensuring That Community Public Order Measures Do Not Infringe Constitutional Rights

In its review of the Chicago anti-gang loitering ordinance, the Supreme Court may well delineate the constitutional parameters for such anti-loitering ordinances and public order laws generally. Both parties in this case have taken an absolute position on the question of the constitutionality of the Chicago ordinance. By contrast, the federal government can offer a balanced view -- one that both supports the interests of law enforcement and has a high regard for the importance of protecting individual civil liberties.

In the case before the Supreme Court, the City of Chicago will argue that its anti-loitering ordinance is constitutional both on its face and as applied. Chicago will cite police guidelines that accompany the ordinance and dictate how it must be applied to prevent its arbitrary enforcement.¹⁰ These guidelines require a police officer to have probable cause that a member of a criminal street gang is loitering, limit a police officer's discretion by requiring an officer to

¹⁰ General Order No. 92-4 (Effective date, August 8, 1992), reprinted in Pct. App. 64a-73a.

have "specific, documented and reliable information" of gang membership, and set forth a process for determining the specific locations where the ordinance can be enforced.¹¹

At the same time, the respondents will argue that the Chicago ordinance is unconstitutional and that the use of broad anti-loitering ordinances opens the door to abusive and discriminatory enforcement practices. Indeed, there are components within the Department of Justice that believe that the Chicago ordinance is overly broad, particularly in its reach beyond gang members.

The federal government, by participating in this case, can provide guidance to the Supreme Court on how to approach the question of whether the anti-gang loitering ordinance, and other similar types of public order laws, can withstand constitutional scrutiny, recognizing that there are ways to limit the potential for police abuse, as reflected in the Chicago administrative guidelines. In addition, this case provides a likely vehicle for the Supreme Court to reinterpret, and possibly narrow or overrule, its 1972 decision in Papachristou v. City of Jacksonville, 405 U.S. 156. The federal government is uniquely positioned to present legal theories to the Court that would both serve the interest in fighting crime and the need to protect civil liberties. No other participant in the case can be expected to give the court tailored and balanced guidance on the appropriate development of the law in this area.

CONCLUSION

The outcome of this case could significantly affect the federal government's efforts to reduce criminal street gang activity. The ordinance has helped our work with state and local law enforcement, our community policing program, and our strategy to encourage local use of innovative crime-fighting strategies, including enforcement of a range of public order laws.

RECOMMENDATION

The Office of Policy Development recommends amicus curiae participation in support of the City of Chicago, provided that you conclude that the ordinance withstands constitutional scrutiny. The Office of Intergovernmental Affairs, the Office of Juvenile Justice and Delinquency Prevention, and the Drug Enforcement Administration concur in this recommendation. The Executive Office for Weed and Seed recommends against amicus curiae participation.


Eleanor D. Acheson
Assistant Attorney General
Office of Policy Development

Attachment

¹¹ Id.; Pet. App. 67a-68a.

APPENDIX

FEDERAL ANTI-GANG PROGRAMS AND INITIATIVES

Multi-Agency Programs and Initiatives

Anti-Violent Crime Initiative. In the Anti-Violent Crime Initiative, the Department of Justice and the Department of the Treasury have combined crime-fighting resources with state and local law enforcement to achieve collectively what no single entity can accomplish on its own. In 1994, the federal government launched the AVCI, a multi-jurisdictional approach that employs a wide array of investigative and prosecutorial tools to attack violent crime, including criminal street gangs. The AVCI serves as an umbrella for cooperative efforts to take place among federal, state, and local law enforcement agencies. These cooperative efforts are then deployed effectively in specific communities in order to target the violent crime problems in the particular area. United States Attorneys serve as their district's Violent Crime Coordinator, and the other participating federal entities include the FBI, DEA, IRS, INS, ATF, the U.S. Marshals Service, the Bureau of Prisons, U.S. Customs, the Park Service, the Fish and Wildlife Service, and the Armed Forces. On May 1996, the Attorney General requested that U.S. Attorneys in each district include a focus on violent gangs in their AVCI enforcement activities.

The AVCI brings under its umbrella numerous task forces and ongoing federal crime-fighting efforts that in the past competed for the attention of and participation from state and local law enforcement. The FBI, DEA, INS, the U.S. Marshals Service, ATF, and the Secret Service all have long histories of working together with local law enforcement in anti-gang and anti-drug activities.

HUD/DOJ. In coordination with HUD, the Department of Justice has launched a coordinated effort to fight violent crime in public housing. The effort focuses on thirteen cities, including Philadelphia, Chicago, Detroit, New Orleans, San Francisco, and Washington, D.C. A primary focus of this effort has been to root out the gang activity in public housing that has made public housing dangerous and unlivable.

Indian Country. There are several federal agencies with law enforcement responsibilities in Indian country. Violent crime in Indian country has increased significantly, corresponding with a significant rise in gang activity. According to a 1997 survey conducted by the Department of the Interior's Bureau of Indian Affairs (BIA), there are 375 gangs with approximately 4,650 members on or near Indian country, which is double the number of gangs identified by BIA in 1994.

The federal government's anti-gang activities in Indian country include the following programs.

1. Twenty-seven FBI field divisions have investigative jurisdiction in Indian country with respect to criminal matters. The FBI shares this responsibility with the BIA.

The FBI has created an Office of Indian Country Investigations within its Violent Crime and Major Offenders Section.

The FBI has adapted its Safe Streets Task Force model to Indian country by creating a Safe Trails Task Force to coordinate anti-gang activities with other federal, tribal, and state law enforcement groups.

2. U.S. Attorneys are responsible for prosecuting major crimes and crimes involving Indians and non-Indians in most of Indian country. The Attorney General has directed those U.S. Attorneys with jurisdiction in Indian country to designate AUSAs to serve as tribal liaisons and work with tribal police, prosecutors, and judges to address youth violence, including gang activity.
3. The BIA has created a Gang Resistance Education and Training (GREAT) program to use tribal and BIA police officers in schools to prevent kids from becoming involved in gangs.

Individual Agency and Component Programs and Initiatives

FBI. The FBI has developed the National Gang Strategy. Using the investigative and prosecutorial theories that have proven successful in the Organized Crime/Drug Program National Strategy, the FBI, in cooperation with other interested federal, state, and local law enforcement agencies, combats criminal street gang activity through sustained, multi-divisional, coordinated investigations leading to successful prosecutions. The National Gang Strategy contemplates support from U.S. Attorneys Offices, including the assignment of a full-time AUSA to significant, long-term investigations, and the development of relationships between AUSAs and their state and local counterparts.

In furtherance of the National Gang Strategy, the FBI has established the Safe Streets Violent Crime Initiative ("Safe Streets"). Under the Safe Streets program, the Special Agent in Charge of each FBI field division can combat criminal street gang activity by sponsoring task forces that coordinate the gang-fighting activities of federal, state, and local law enforcement agencies. As of September 1997, the FBI identified 153 Violent Crime/Gang Task Forces composed of 726 FBI Special Agents, 175 other federal agents, and over 1,100 state and local law enforcement officials. The FBI also maintains a Violent Gang and Terrorist Organizations File in the FBI's criminal history information system to support the gang-fighting efforts of local law enforcement officials.

DEA. Because the lifeblood of most gang activity in the nation is drug trafficking, DEA has a long history of participating in multi-jurisdictional, anti-gang task forces. DEA's primary tool to assist in coordinated gang investigations is the Mobile Enforcement Team (MET). METs are deployed at the request of local police chiefs, sheriffs, or district attorneys to work in concert with local police to dislodge violent drug offenders from the community.

U.S. Marshals Service. The Marshals Service works with state and local law enforcement in their efforts to locate and arrest federal fugitives, including gang members and their associates. In 1995, the U.S. Marshals Service participated in 140 task forces as part of the AVCI and arrested 12,500 fugitives.

INS. INS has formed Violent Gang Task Forces in sixteen major cities. These task forces target criminal street gangs comprised primarily of aliens.

Federal Grant Programs

Office of Juvenile Justice and Delinquency Prevention (OJJDP). OJJDP administers a number of grant programs to enable communities to combat gang activities. These include discretionary grants as part of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression. Recipients of this grant develop and implement a comprehensive gang program. Other OJJDP grants fund mentoring programs for juvenile delinquents, a career preparation initiative, local police departments to enable them to develop innovative strategies to combat gang violence, and a program to enable the designated Empowerment Zones to implement youth-oriented community policing.

For FY 1998, Congress allocated \$250 million for a new program, the Juvenile Accountability Incentive Block Grant. Grant recipients may use these funds for, inter alia, hiring additional prosecutors to enable them to address gang, drug, and youth violence activities more effectively.

COPS. The COPS program is putting up to 100,000 new police officers on the streets. Under the authority delegated to her in the 1994 Crime Act, the Attorney General carried out her responsibility to fund the 100,000 additional officers by creating the Office of Community Oriented Policing Series. The officers who are funded by the COPS program conduct community policing and enter into close partnerships with affected communities to attack endemic community problems, such as gang activity. In addition, between 1994 and 1996, COPS selected fifteen sites, including Chicago, to participate in an Anti-Gang Initiative. Grant recipients used the funds to develop innovative, community-specific approaches to gang problems, including using the police to target known gang gathering places, combating gang intimidation, and mobilizing communities.

In 1997, the COPS program instituted Problem-Solving Partnerships to enable communities to enter into partnerships with local police and sheriff's departments to address specific neighborhood problems, including loitering. Thus far, \$40 million in grants have been distributed to over 450 communities to form Problem-Solving Partnerships.

Weed and Seed. The Weed and Seed grant program, established in 1991, pioneered the adoption on a nationwide basis of community-based crime prevention and control strategies. At participating Weed and Seed sites, the U.S. Attorneys provide leadership to communities to

develop and implement comprehensive strategies to "weed out" violent crime, including gang activity, and "seed" the neighborhood through economic and social revitalization. For FY 1998, Congress appropriated \$33.5 million to fund 176 sites, which receive an additional \$9 million in Weed and Seed monies from the Asset Forfeiture Fund.

Consistent with the philosophy of the Weed and Seed program that relies on community policing and community residents to identify the problems their communities face, Weed and Seed grantees have adopted a range of strategies to deal with criminal street gangs. These strategies include prevention programs designed to persuade children to stay away from joining a gang and to teach non-violent means of conflict resolution.

Weed and Seed grants also have been used for multi-jurisdictional criminal investigations. In Chicago, for example, Weed and Seed contributed \$250,000 in Asset Forfeiture to the Joint Task Force on Gangs. The Task Force, which included federal officials from the FBI and the IRS, and state and local officials from the Chicago Housing Authority Police, the Chicago Police Department, the Cook County Sheriff's Office, and the Illinois State Police, conducted an investigation that led to the indictment of members of a leading Chicago gang, the Gangster Disciples. The City Attorney's office in Los Angeles has pioneered the "gang abatement" concept to eradicate gang activity from a neighborhood Weed and Seed site. Under this approach, the City files civil nuisance lawsuits against gangs and individual gang members and obtains an anti-gang injunction prohibiting the enjoined parties from operating in particular areas and associating with other gang members.

Bureau of Justice Assistance (BJA). BJA has grant monies to fund demonstration projects that are designed to combat criminal street gang activity. One such grant program allocates funds to assist state and local prosecutors in carrying out their drug enforcement strategy. Another BJA grant program, the Comprehensive Gang Initiative, provides monies to community police and social services agencies to aid them in developing a multi-disciplinary, multi-task, and problem-solving approach to gang activity.

HUD's Public Housing Drug Elimination Program. In FY 1997, Congress authorized \$250 million for this HUD-operated grant program designed to empower residents of public housing to combat drugs and drug-related crime in their communities through community policing and drug and crime elimination strategies. Grant funds may be used to employ security personnel and investigators; reimburse local law enforcement for additional security; and support voluntary tenant patrols.

- What is the Drug Strategy

Benny Solomon

↳ (312) 744-4600

- (312) 744-7764

↳ 92 ACLU II

made a decision
not to challenge.

↳ only prosecutions
↳ can't throw out.

↳ Phil Public Def. Ad. Sect.

↳ Phil-Chicago ACLU

↳ Group of Chicago Org.

↳ Resurrection Project.

↳ Washington Legal Foundation

↳ Phil Case + Harvey Apple

LOW - BISSER

- looked for UoPC lawyers
+ looked

↳ Atlantic Monthly article

↳ Gibson, Dennis, Conter

↳ Miguel Estrada, Neil Olson.

① Mayor Bawn

NLC, USMC, NACO

, City Manager,

City Attorney, + PACA

3rd Street

OH AG's +

signed by 12
states.



DRAFT

U.S. Department of Justice

Office of Policy Development

Assistant Attorney General
Telephone: (202) 514-4601
Fax: (202) 514-2424

Room 4234
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

-- STAFF LEVEL DRAFT --

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: City of Chicago v. Jesus Morales, et al., No. 97-1121, petition for a writ of certiorari granted, April 20, 1998

You have asked the Office of Policy Development to review the interests of the Department of Justice and other federal agencies in this case. This memorandum describes the anti-gang loitering ordinance being reviewed by the Supreme Court, provides four bases for the federal government's involvement in the case, and recommends participation as amicus curiae.

STATEMENT

In 1992, the Chicago City Council enacted an anti-gang loitering ordinance in an effort to address the growing problem of criminal street gang activity. The ordinance proscribes loitering by identified gang members. Under the ordinance, Chicago police may order any group of individuals loitering in a public place to disperse if the officer reasonably believes that the group contains a member of a criminal street gang. Failure to comply with the order is punishable by up to 6 months imprisonment, a \$500 fine, or up to 120 hours of community service.

In enacting the ordinance, the Chicago City Council made a number of specific findings, based on testimony and other information, describing how loitering is an essential part of gang activity. In particular, the City Council found the following: First, street gangs loiter as part of a strategy to recruit members, claim territory, and antagonize rival gangs and ordinary citizens. Second, existing laws are inadequate to control gang loitering. Gang members evade arrest because they do not commit punishable offenses in the presence of police, and residents in the community are afraid to report gang crimes for fear of reprisals. Third, gangs are menacing, intimidating, and destructive regardless of whether gang members are committing crimes. People are afraid to be on the street if gang members are present or if a gang controls the area.

The ordinance proved to be a strong and effective law enforcement tool to attack gang violence. In a two year period from 1994 through 1995, the Chicago Police made 31,000 dispersals and 37,000 arrests using the ordinance.¹ In 1995, gang-related homicides dropped 25

¹ "Mayor, Superintendent Endorse Assault Weapons Ban, Anti-Gang ordinance," City of Chicago Community Policing Press Release.

percent, and there was a 13 percent decline in the number of homicides involving victims under the age of 21.² In contrast, the rate of gang-related homicides rose 11 percent in 1996, after the ordinance was no longer in effect. More generally, where Chicago police removed gang members from the streets, residents were able to emerge from their homes and enjoy their communities.

The ordinance was in effect from 1992 until December of 1995, when it was declared unconstitutional by the Illinois Supreme Court. The Supreme Court granted the City of Chicago's petition for a writ of certiorari.

DISCUSSION

Over the past two decades, criminal street gangs have become a serious law enforcement problem for federal and state governments alike. By the early 1990s, 95 percent of the nation's largest cities and 88 percent of smaller cities in the nation reported gang problems.³ Most prevalent in areas in which the population is economically disadvantaged, criminal street gangs have attracted a growing number of young people to a life of violence and crime. The Department of Justice has identified over 23,000 youth gangs in the nation, with over 650,000 members.⁴ Criminal street gangs accounted for over 1,000 gang-related homicides in Chicago and Los Angeles alone.⁵ President Clinton has called the problem of gang violence, "among the most profound we as a people have ever faced."⁶

To respond to the problem of gangs, the federal government has put in place a comprehensive, targeted gang-fighting strategy. The Chicago anti-loitering ordinance advanced three key elements of this strategy, each of which is considered in greater detail below. First, it furthered the federal government's cooperation with state and local law enforcement and contributed to the efficient use of federal resources. Second, the ordinance supported the work of community police officers, advancing the federal community policing initiative. Third, it demonstrated the importance of using innovative laws in community efforts to fight crime and restore order, a strategy advanced by the federal government. The federal government must, however, assure that in our aggressive efforts to fight crime, we do not infringe the rights of individuals or encourage unlawful police practices. To this end, it is important for the federal

² Id.

³ U.S. Department of Justice, Reducing Violent Crime in America: A Five-Year Strategy, at 4 (May 1996).

⁴ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention Fact Sheet #72 (Dec. 1997) ("OJJDP Fact Sheet").

⁵ Id.

⁶ Address of President Clinton, [CITE].

government to be involved in this case, which may well establish the appropriate bounds for public order measures to combat crime.

1. The Chicago Ordinance Supported Cooperative Federal, State, and Local Efforts to Eradicate Criminal Street Gangs and Contributed to the Efficient Use of Federal Resources

Through the federal government's Anti-Violent Crime Initiative, launched in 1994, the Justice Department heads a multi-jurisdictional crime task force in every U.S. Attorney district.⁷ The Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Immigration and Naturalization Service (INS), the Bureau of Alcohol, Tobacco and Firearms (ATF) and other federal law enforcement agencies have combined forces with state and local law enforcement agencies to tackle tough crime problems.⁸ The Attorney General directed every jurisdiction to specifically address the problem of street gangs through this multi-jurisdictional team.

The Chicago ordinance has advanced the federal government's work with state and local law enforcement agencies and supported federal efforts to dismantle criminal street gangs in key ways.

First, the Chicago anti-loitering ordinance proved to be a useful tool in the federal and local anti-gang enforcement efforts in Chicago. In particular, Chicago community police officers enforced the ordinance as a way to keep Chicago communities gang-free after the successful federal prosecution of the leaders of the Gangster Disciples. In this prosecution, the U.S. Attorney in Chicago succeeded in removing entire cells of the notorious Gangster Disciples gang from geographic areas of the city in which they had operated.⁹ The U.S. Attorney's office worked closely with community police stationed in the affected areas, encouraging them to increase their presence and visibility when necessary to support federal enforcement efforts. Community police backed up the federal prosecution by keeping new gangs from taking hold in areas cleared of Gangster Disciples. The quality of life in these areas improved considerably as law-abiding citizens once again felt safe on their streets, as a result of the federal prosecution and subsequent enforcement of the ordinance. Without the coordination between the federal prosecutors and the community police, the successful federal prosecution would have been ineffective and a new gang would have taken control of areas vacated by the Gangster Disciples.

If it still were in effect, ongoing cooperative federal law enforcement efforts would also benefit from use of the Chicago anti-loitering ordinance. For example, the Department of Justice

⁷

⁸ The federal government's various law enforcement activities and grant programs that target criminal street gang activity are appended hereto at Tab A.

⁹ Interview with Chief of the Criminal Section of the U.S. Attorney's office for the Northern District of Illinois, May 15, 1998.

and the Department of Housing and Urban Development teamed with city officials in an operation to clean up the Wentworth Gardens housing project and surrounding areas, a community imperiled by illegal street gangs. Had it been available, the ordinance would have proven extremely useful in this effort to eradicate gangs from Chicago public housing projects.¹⁰

Second, the effective enforcement of the anti-gang loitering ordinance by local law enforcement in Chicago has helped to conserve federal resources. Through this enforcement, volatile situations that would otherwise escalate to violence that could necessitate a federal response were instead diffused by removing gang members from the streets. Federal government resources that would ordinarily be used to respond to the escalation could instead be diverted to other crime-fighting efforts and federal funds were used more efficiently as a result.

2. The Ordinance Supported the Work of Federally-Funded Community Police Officers and Advanced the Federal Government's Community Policing Strategy

The federal government has made a major commitment to funding community police officers and providing other support for law enforcement to fight street gangs and local criminal activity that has endangered communities. As part of a national community policing strategy, the federal government is funding 100,000 new community police officers through the COPS program, enacted as part of the 1994 Crime bill.¹¹ The goal of the community policing program is to have each community use its officers to address local crime problems in the best way that the community sees fit. These police officers establish order in neighborhoods and enforce public safety codes and other laws to prevent serious crimes from occurring.¹²

The COPS program has funded 571 community police officers in Chicago to date. In addition, Chicago was one of 15 communities nationwide to participate in the COPS Anti-Gang Initiative and to develop innovative approaches to solve gang problems. The City of Chicago chose to combat the activity of criminal street gangs by enforcing a targeted, tailored anti-loitering ordinance. The ordinance proved to be a powerful device. The community policing program in Chicago -- and community police officers there and in other parts of the country -- who rely on similar types of public order laws would be less effective without these crime-fighting tools.

¹⁰ [cite].

¹¹ The Department of Justice also administers a number of specific grant programs (totaling \$x) to help communities combat gang violence and to develop new approaches to the problem of gangs.

¹²

3. The Federal Government Supports the Use of Public Order Measures to Fight Crime

The Clinton Administration has supported local communities in their decisions to adopt and enforce public order and quality of life laws as part of a strategy to reduce crime and violence. Today, many communities around the country are enforcing curfews, requiring school uniforms, enforcing anti-truancy laws and adopting other public safety measures such as anti-loitering ordinances to restore the rule of law to their streets. Many communities receive federal funding to advance these measures. For example, in the Los Angeles area, Weed and Seed sites have used federal funds to enforce anti-loitering ordinances, and the City of Los Angeles has also obtained anti-gang injunctions to control loitering by gang members. In Sioux Falls, South Dakota, the local police, with the help of the FBI and ATF, enforce curfew violations.

Having encouraged these efforts, the federal government now has an important role to play in defending communities' ability to use these tools to fight crime. If the Supreme Court affirms the Illinois Supreme Court's holding that the Chicago ordinance is unconstitutional, the validity of other anti-loitering ordinances and other public order measures could be called into question. Such a result would thus bear directly on federal efforts to fight gangs and control illegal drug trafficking and violence in Chicago and around the country.

4. The Federal Government Has An Interest in Ensuring That Community Public Order Measures Do Not Infringe Constitutional Rights

The Chicago law succeeded where other laws have failed. By using the ordinance to help control the menacing and violent activities of street gangs, the Chicago experience establishes the utility of using such laws to combat gang violence. Communities around the country will be following the Court's deliberations closely to see whether the targeted anti-gang ordinance survives constitutional scrutiny. Because, the Court's decision may well delineate the constitutional parameters of public order laws directed at crime, the federal government has an interest in identifying the elements of a lawful crime-fighting strategy.

To be sure, the use of broad anti-loitering ordinances opens the door to abusive enforcement practices. Indeed, there are components within the Department of Justice that believe that the Chicago ordinance is overly broad, in particular in its reach beyond gang members. However, there are ways to curb the potential for abuse and the federal government has an interest in delineating how this and other public order laws can be written and enforced in a manner consistent with the Constitution.

Chicago developed narrowly-tailored guidelines that accompany the order and dictate how it must be enforced to prevent its arbitrary enforcement and to assure that it is applied in a

manner consistent with the Constitution.¹³ The guidelines require a police officer to have probable cause that a member of a criminal street gang is loitering, limit a police officer's discretion by requiring an officer to have "specific, documented and reliable information" of gang membership, require specific training for officers who enforce the ordinance, and set forth a process for determining the specific locations where the ordinance can be enforced.¹⁴ These administrative guidelines may be entitled to more weight than the Illinois Supreme Court was willing to give them.

The federal government, by participating in this case can help guide the court on how to approach the question of whether the anti-loitering ordinance and other similar types of public order laws can withstand constitutional scrutiny, recognizing that there are ways to limit the potential for police abuse, such as those that are reflected in the Chicago administrative guidelines. The federal government is uniquely positioned to raise alternative approaches for the Court to consider in this case that would both serve the federal interest in fighting crime and the need to protect civil liberties. No other parties can be counted on to give the court tailored guidance on the appropriate development of the law in this area.

CONCLUSION

The outcome of this case will affect the federal government's efforts to reduce criminal street gang activity. The ordinance has had a direct impact on our work with state and local law enforcement, our community policing program, and our strategy to encourage local use of innovative crime-fighting strategies, including enforcement of a range of public order laws.

RECOMMENDATION

The Office of Policy Development recommends amicus curiae participation.

Eleanor D. Acheson
Assistant Attorney General
Office of Policy Development

¹³ General Order No. 92-4 (Effective date, August 8, 1992), reprinted in Pet. App. 64a-73a.

¹⁴ Id.; Pet. App. 67a.

APPENDIX

FEDERAL ANTI-GANG PROGRAMS AND INITIATIVES

Multi-Agency Programs and Initiatives

Anti-Violent Crime Initiative. The Department of Justice and the Department of the Treasury have combined crime-fighting resources with state and local law enforcement to achieve collectively what no single entity can accomplish on its own. In 1994, the federal government launched the Anti-Violent Crime Initiative (AVCI), a multi-jurisdictional approach that employs a wide array of investigative and prosecutorial tools to attack violent crime, including criminal street gangs. AVCI serves as an umbrella for cooperative efforts to take place between federal, state, and local law enforcement agencies. These cooperative efforts are then deployed effectively in specific communities in order to strike at the heart of the violent crime problems in the particular area. United States Attorneys serve as their district's Violent Crime Coordinator, and the other participating federal entities include the FBI, DEA, IRS, INS, ATF, U.S. Customs, the Park Service, the Fish and Wildlife Service, and the Armed Forces. On May 1996, the Attorney General requested that U.S. Attorneys in each district include a focus on violent gangs in its AVCI enforcement activities.

The AVCI brings under its umbrella numerous task forces and ongoing federal crime-fighting efforts that in the past competed for the attention of and participation from local law enforcement. The FBI, DEA, INS, the U.S. Marshals Service, ATF, and the Secret Service all have long histories of working together with local law enforcement in anti-gang and anti-drug activities.

HUD/DOJ. In coordination with HUD, the Department has launched a coordinated effort to fight violent crime in public housing. The effort has focused initially on six cities: Philadelphia, Chicago, Detroit, New Orleans, San Francisco, and Washington, D.C. A primary focus of this effort has been to root out the gang activity in public housing that has made public housing dangerous and unlivable.

Indian Country. There are several federal agencies with law enforcement responsibilities in Indian country. Violent crime in Indian country has increased significantly, corresponding with a significant rise in gang activity. According to a 1997 survey conducted by the Department of the Interior's Bureau of Indian Affairs (BIA), estimated that there are 375 gangs with approximately 4,650 members on or near Indian country, which is double the number of gangs identified by BIA in 1994.

The federal government's anti-gang activities in Indian country include the following programs.

1. Twenty-seven FBI field divisions have investigative jurisdiction in Indian country with respect to criminal matters. The FBI shares this responsibility with the

Department of the Interior's Bureau of Indian Affairs. The FBI has created an Office of Indian Country Investigations within its Violent Crime and Major Offenders Section.

The FBI has adapted its Safe Streets Task Force model to Indian country by creating a Safe Trails Task Force to coordinate anti-gang activities with other federal, tribal, and state law enforcement.

2. U.S. Attorneys are responsible for prosecuting major crimes and crimes among Indians and non-Indians in most Indian country. The Attorney General has directed U.S. Attorneys in Indian country to designate AUSAs to serve as tribal liaisons and work with tribal police, prosecutors, and judges to address youth violence, including gang activity.
3. The BIA has created a Gang Resistance Education and Training (GREAT) program to use tribal and BIA police officers in schools to prevent kids from becoming involved in gangs.

Individual Agency and Component Programs and Initiatives

FBI. The FBI has developed a National Gang Strategy. Modeled on the investigative and prosecutorial theories that have proven successful in the Organized Crime/Drug Program National Strategy, the FBI, in cooperation with other interested federal, state, and local law enforcement agencies, combats criminal street gang activity through "sustained, multi divisional, coordinated investigations" leading to successful prosecutions. The Strategy contemplates support from U.S. Attorney's offices, including the assignment of a full-time AUSA to significant, long-term investigations, and the development of relationships between AUSAs and their state and local counterparts.

In furtherance of the National Gang Strategy, the FBI has established the Safe Streets Violent Crime Initiative ("Safe Streets"). Under the Safe Streets program, the Special Agent in Charge of each FBI field division can criminal street gang activity by sponsoring task forces that coordinate the gang-fighting activities of federal, state, and local law enforcement. As of September 1997, the FBI identified 153 Violent Crime/Gang Task Forces composed of 726 FBI Special Agents, 175 other federal agents, and over 1,100 state and local law enforcement officials. The FBI also maintains a Violent Gang and Terrorist Organizations File in the FBI's criminal history information, and a Regional Information Sharing System, both of which support gang-fighting efforts of local law enforcement.

DEA. Because the lifeblood of most gang activity in the nation is drug trafficking, DEA has a long history of participating in multi-jurisdictional anti-gang task forces. DEA's primary tool to assist in coordinated gang investigations is the Mobile Enforcement Team (MET). METs

are deployed at the request local police chiefs, sheriffs or district attorneys to work in concert with local police to dislodge violent drug offenders from the community.

U.S. Marshals Service. The Marshals Service works with state and local law enforcement in their efforts to locate and arrest federal fugitives, including gang members and their associates. In 1995, the U.S. Marshals Service participated in 140 task forces as part of the AVCI and arrested 12,500 fugitives.

INS. INS has formed Violent Gang Task Forces in sixteen major cities. These task forces target criminal street gangs comprised primarily of aliens.

Federal Grant Programs

Office of Juvenile Justice and Delinquency Prevention (OJJDP). OJJDP administers a number of grant programs to enable communities to combat gang activities. These include discretionary grants as part of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression. Recipients of this grant develop and implement a comprehensive gang program. Other OJJDP grants fund mentoring programs for juvenile delinquents, a career preparation initiative, local police departments to enable them to develop innovative strategies to combat gang violence, and a program to enable the designated Empowerment Zones to implement youth-oriented community policing.

For FY 1998, Congress allocated \$250 million for a new program, the Juvenile Accountability Incentive Block Grant. Grant recipients may use these funds for, inter alia, hiring additional prosecutors to increase prosecutions of violent juvenile offenders and funding prosecutors to enable them to address gang, drug, and youth violence more effectively.

COPS. The COPS program is responsible for putting 100,000 new police officers on the streets. Under the authority delegated to her in the 1994 Crime Act, the Attorney General carried out her responsibility to fund the 100,000 additional officers by creating the Office of Community Oriented Policing Series. The officers who are funded by the COPS program conduct community policing and enter into close partnerships with affected communities to attack endemic community problems, such as gang activity. Between 1994 and 1996, COPS selected fifteen sites, including Chicago, to participate in an Anti-Gang Initiative. Grant recipients used the funds to develop innovative, community-specific approaches to gang problems, including using the police to target known gang gathering places, combating gang intimidation, and mobilizing communities.

In 1997, the COPS program instituted Problem-Solving Partnerships to enable communities to enter into partnerships with local police and sheriff's departments to address specific neighborhood problems, including loitering. Thus far, \$40 million in grants has been distributed to over 450 communities to form Problem-Solving Partnerships.

Weed and Seed. The Weed and Seed grant program, established in 1991, pioneered the adoption on a nationwide basis of community-based crime prevention and control strategies. At participating Weed and Seed sites, the U.S. attorneys provide leadership to communities to develop and implement comprehensive strategies to “weed out” violent crime, including gang activity, and “seed” the neighborhood through economic and social revitalization. For FY98, Congress appropriated \$33.5 million to fund 176 sites, which receive an additional \$9 million in Weed and Seed monies from the Asset Forfeiture Fund.

Consistent with the philosophy of the Weed and Seed program that relies on community policing and community residents to identify the problems their communities face, Weed and Seed grantees have adopted a range of strategies to deal with criminal street gangs. These strategies include prevention programs designed to persuade children to stay away from joining a gang and to teach non-violent means of conflict resolution.

Weed and Seed grants also have been used for multi-jurisdictional criminal investigations. In Chicago, for example, Weed and Seed contributed \$250,000 in Asset Forfeiture to the Joint Task Force on Gangs. The Task Force, which included federal officials from the FBI and the IRS, and state and local officials from the Chicago Housing Authority Police, the Chicago Police Department, and the Cook County Sheriff’s Office, and the Illinois State Police, conducted an investigation that led to the indictment of members of a leading Chicago gang, the Gangster Disciples. Alternatively, the City Attorney’s office in Los Angeles has pioneered the “gang abatement” concept to eradicate gang activity from a neighborhood Weed and Seed site. Under this approach, the City files civil nuisance lawsuits against gangs and individual gang members and obtains an anti-gang injunction prohibiting the enjoined parties from operating in particular areas and associating with other gang members.

Bureau of Justice Assistance (BJA). BJA has grant monies to fund demonstration projects that are designed to combat criminal street gang activity. One such grant program allocates funds to assist state and local prosecutors in carrying out their drug enforcement strategy. Another BJA grant program is the Comprehensive Gang Initiative, which provides monies to community police and social services agencies to aid them in developing a multi-disciplinary, multi-task, and problem-solving approach to gang activity.

HUD’ Public Housing Drug Elimination Program. In FY1997, Congress authorized \$250 million for this HUD-operated grant program designed to empower residents of public housing to combat drugs and drug-related crime in their communities through community policing and drug and crime elimination strategies. Grant funds may used to employ security personnel and investigators; reimburse local law enforcement for additional security; and support voluntary tenant patrols.