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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MANUEL VASQUEZ, et al.,  
Plaintiff-Petitioners,  
  
vs.  
  
TONY RACKAUCKAS, et al.,  
Defendant-Respondents.

) Case No: SACV09-1090 VBF(RNBx)  
)  
) The Honorable Valerie B. Fairbank

) ~~PROPOSED~~ **FINDINGS OF FACT**  
) **SUPPORTING RULING RE:**  
) **PLAINTIFFS' MOTION FOR**  
) **ATTORNEYS' FEES AND COSTS**

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1 ~~PROPOSED~~ FINDINGS OF FACT IN SUPPORT OF  
2 THE COURT'S RULING RE PLAINTIFFS' MOTION FOR ATTORNEYS'  
3 FEES

4 1. Plaintiffs are prevailing parties under federal law and are entitled to  
5 fees and costs under 42 U.S.C. Section 1988. Following trial, this Court entered  
6 an enforceable judgment in Plaintiffs' favor on their Section 1983 claim and  
7 obtained substantially all the relief they sought, as the Court issued a declaratory  
8 judgment that Defendants violated Plaintiffs' due process rights and enjoined  
9 Defendants from enforcing the Order for Permanent Injunction against "Orange  
10 Varrio Cypress Criminal Street Gang," dated May 14, 2009, in *People v. Orange*  
11 *County Varrio Cypress Criminal Street Gang, et. al.*, Orange County Superior  
12 Court, 30-2009 00118739, against Plaintiffs. *See Farrar v. Hobby*, 506 U.S. 103,  
13 111 (1992) (plaintiff qualifies as "prevailing party" where they "obtain an  
14 enforceable judgment against the defendant from whom fees are sought"); *see also*  
15 *Barrios v. California Interscholastic Fed'n*, 277 F.3d 1128, 1134 (9th Cir. 2002) .

16 2. Plaintiffs are also the prevailing parties under California law and are  
17 entitled to attorneys' fees and costs pursuant to California Code of Civil Procedure  
18 Section 1021.5. Under C.C.P. § 1021.5, courts apply a multi-prong test to assess  
19 whether a party should be awarded fees. A party will be deemed "prevailing" if  
20 the action resulted "in the enforcement of an important right affecting the public  
21 interest," by showing that, as a result of the action, "(a) a significant benefit,  
22 whether pecuniary or nonpecuniary, has been conferred on the general public or a  
23 large class of persons, (b) the necessity and financial burden of private  
24 enforcement . . . , are such as to make the award appropriate, and (c) fees should  
25 not in the interest of justice be paid out of the recovery, if any." *Adoption of*  
26 *Joshua S.*, 42 Cal. 4th 945, 952, n.2 (2008) (quoting C.C.P. § 1021.5). Here, as set  
27 forth above, Plaintiffs obtained substantially the relief they sought in the form of a  
28 permanent injunction against Defendants. Also, the action enforced the right to

1 procedural due process, among the most central protections against arbitrary  
2 government restriction of liberties; the litigation conferred a significant benefit on  
3 the public as a whole by protecting the right to due process; and given that  
4 Plaintiffs neither sought nor will receive monetary damages in this case, Plaintiffs  
5 have no financial interest in the relief they have achieved.

6         3.       The Court finds that the ACLU/SC and MTO have demonstrated that  
7 the fees and costs they sought were reasonable and necessary to their successful  
8 litigation of this matter. To support the lodestar, Plaintiffs submitted the  
9 declarations of attorneys Peter Bibring, Joseph Ybarra, Carol Sobel, Peter  
10 Afrasiabi, Anne Richardson, James Gilliam, and Douglas E. Mirell. These  
11 declarations and exhibits providing awards in other cases in the Central District  
12 legal market establish that the rates sought and approved are within the range of  
13 reasonable market rates for attorneys of comparable skill, experience and  
14 reputation. Moreover, the Court notes that Defendants did not submit any  
15 admissible evidence to contradict the reasonableness of the rates sought for the  
16 lawyers and paralegals.

17         4.       The declarations and briefs submitted by Plaintiffs explained in detail  
18 the various tasks counsel performed over the course of this litigation as well as the  
19 various ways Plaintiffs' counsel exercised billing judgment. Overall, Plaintiffs  
20 reduced their total lodestar by approximately 18% to arrive at the amount of fees  
21 they sought in their motion. In addition, detailed contemporaneous time records  
22 were attached to the declarations of Peter Bibring and Joseph Ybarra as exhibits.

23         5.       This Court has considered and rejected Defendants' arguments as to  
24 the reasonableness of Plaintiffs' fees, for the reasons set forth in Plaintiffs' briefs.  
25 This was a complicated case raising novel issues that was litigated vigorously by  
26 Defendants through discovery and trial. Plaintiffs' success was not limited: they  
27 prevailed entirely on two claims and in all meaningful respects obtained the full  
28 relief they sought for themselves and the Plaintiff class. Further, the habeas

1 corpus claim, on which Plaintiffs did not prevail on jurisdictional grounds, raised  
 2 the identical due process issue on the merits as the claims on which they did  
 3 prevail and obtained full relief. To the extent that Defendants have raised  
 4 objections that Plaintiffs' request reflects duplicative time and unnecessary or  
 5 unreasonable labor expended, their objections are unfounded or adequately  
 6 addressed by Plaintiffs' own cuts to the fees they seek. This Court has reviewed  
 7 the billing records and found that, with the exception of intern time, the hours  
 8 spent by Plaintiffs' attorneys and paralegals for which they seek compensation are  
 9 reasonable given the duration, complexity and difficulty of the case; the vigor with  
 10 which Defendants litigated; and the extent of the relief obtained.

11 6. However, the Court also finds that Plaintiffs did not sufficiently  
 12 justify the reasonableness of the time spent by law student interns on this matter,  
 13 and thus is denying fees for time spent by law student interns.

14 7. Based on review of the evidence Plaintiffs submitted, the billing  
 15 judgment Plaintiffs' counsel exercised, and the Court's detailed knowledge of all  
 16 proceedings in this matter, the following rates and time are found reasonable:

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 18 **a. ACLU Attorney Fees Through Judgment - May 10, 2011**

Name	Year Graduated	Rate	Hours	Amount
Hector O. Villagra	1994	\$600	560.0	\$336,000.00
Belinda Escobosa Helzer	2000	\$525	1526.1	\$801,202.50
Peter Bibring	2002	\$490	894.6	\$438,354.00
Linda Dominic Ashe	Paralegal	\$200	431.7	\$86,338.50
Christian Lebano	Paralegal	\$200	78.4	\$15,680.00
<b>TOTAL</b>			<b>3,490.8</b>	<b>\$1,677,575.00</b>

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**b. ACLU Attorneys' Fees Post Judgment**

Name	Year Graduated	Rate	Hours	Amount
Belinda Escobosa Helzer	2000	\$525	28.3	\$14,857.50
Peter Bibring	2002	\$490	90.10	\$41,100.50
Christian Lebano	Paralegal	\$200	30.50	\$6,100.00
Maria Esquivel	Paralegal	\$165	12.90	\$2,128.50
<b>TOTAL</b>			<b>161.8</b>	<b>\$64,186.50</b>

**c. MTO's Attorneys' Fees Through Judgment - May 10, 2011**

Name	Year Graduated	Rate	Hours	Amount
Joseph J. Ybarra	2001	\$550	240.0	\$132,000.00
Jacob A. Kreilkamp	2003	\$505	709.9	\$358,499.50
Laura D. Smolowe	2006	\$460	240.0	\$110,400.00
Marina A. Torres	2008	\$385	426.7	\$164,279.50
Sarala V. Nagala	2008	\$385	209.8	\$80,773.00
Sonia Arteaga	Paralegal	\$200	238.0	\$47,600.00
Raphael Sepulveda	Paralegal	\$210	154.3	\$32,403.00
Patrick Justesen	ALS	\$250	15.7	\$3,925.00
<b>TOTAL</b>			<b>2,234.4</b>	<b>\$929,880.00</b>

**d. MTO Attorneys' Fees Post Judgment**

Name	Year Graduated	Rate	Hours	Amount
Joseph J. Ybarra	2001	\$550	76.1	\$41,855.00
Jacob A. Kreilkamp	2003	\$505	1.6	\$808.00
Laura D. Smolowe	2006	\$460	0.9	\$414.00
Sarala V. Nagala	2008	\$385	2.7	\$1,039.50
<b>TOTAL</b>			<b>81.3</b>	<b>\$44,116.50</b>

1           4.     Under California law, the Plaintiffs are also entitled to a multiplier of  
2 attorneys' fees incurred before judgment, which was entered in this case on May  
3 10, 2011. This case raised complex and novel issues, both in the jurisdictional  
4 questions regarding abstention and in the core constitutional question of what  
5 process is due individuals before they can be subjected to a gang injunction that  
6 precludes them from engaging in otherwise lawful activities. Given the novel and  
7 uneven state of the law in cases involving gang injunctions in state court,  
8 Plaintiffs' success was far from guaranteed at the outset, and their result was  
9 exceptional. Not only were Plaintiffs unable to advance any fees or cover any of  
10 the out-of-pocket expenses to support this lawsuit (which included expert witness  
11 fees and substantial trial expenses), but Defendants also mounted a tenacious  
12 defense requiring Plaintiffs' legal team to expend significant time litigating this  
13 case (both increasing the contingency risk and precluding plaintiffs' counsel from  
14 taking other work, another factor warranting enhancement of the fees). The  
15 enormous time required and the substantial risk that no fees would be recovered  
16 justify a contingency enhancement, "to bring the financial incentives" for taking  
17 such a case into line with work for fee-paying clients." *Ketchum v. Moses*, 24  
18 Cal.4th 1122, 1132 (2001). An additional justification for enhancement is that the  
19 important result and the complete relief obtained in part reflects a level of skill of  
20 Plaintiffs' counsel not captured by market rates, which are based primarily on

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1 counsel's year of graduation. Accordingly, the Court finds that a 1.2 multiplier is  
2 appropriate in this case. Applying this multiplier to fees incurred before judgment,  
3 but not after judgment, the total fee award is \$3,237,249.00

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Date: 7-28-11 *Valerie Baker Fairbank*  
The Honorable Valerie Baker Fairbank  
U.S. District Court, Central District of California

Respectfully submitted,  
ACLU FOUNDATION OF SOUTHERN CALIFORNIA

s/Belinda Escobosa Helzer  
Belinda Escobosa Helzer  
Attorneys for Plaintiffs