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Hip-hop band and fans fight gang label

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Army Cpl. Robert Hellin served tours in Iraq, Afghanistan and Korea. He also happens to be a Juggalo, or follower of the hardcore hip-hop band Insane Clown Posse. Hellin, who sports several visible Posse tattoos, worries the FBI's characterization of Juggalos as a "hybrid gang" subjects him to military discipline, including involuntary discharge.

Hellin's concern emanates from the panic-sounding 2011 National Gang Threat Assessment report issued by the FBI's National Gang Intelligence Center identifying Juggalos as a rapidly expanding, non-traditional "hybrid gang." The report darkly warned that Juggalos were a transient criminal group threatening communities "due to the potential for violence, drug use/sales and their general destructive and violent nature."

To the Insane Clown Posse duo, Joseph Bruce, known professionally as "Violent J," and Joseph Utsler, whose stage name is "Shaggy 2 Dope," Juggalos are just organized fans, highly distinct from organized criminals. They filed suit challenging the FBI's use of the term "hybrid gang" to describe Juggalos.

Their complaint acknowledges that Juggalos may paint their faces like clowns and wear symbols, including the group's Hatchetman logo depicting a wild man running with a meat cleaver.

The Posse recognizes that certain songs fall into the "horrorcore hip-hop" genre and can use "very harsh language to tell nightmare-like stories with an underlying message that horrible things happen to people who choose evil over good."

Juggalos gather and associate to listen to the Posse's music, and they view themselves as "social outcasts striving for acceptance and support from one another." The Posse's complaint denies any gang affiliation, however, and insists organized crime is not part of the Juggalo culture.

Based on the FBI report, four states recognized Juggalos as a gang, and at least 21 states identified criminal Juggalo subsets. As a result, when Mark Parsons drove his Juggalo Express LLC truck decorated with the Hatchetman logo by a Tennessee state trooper in July 2013, he was stopped and questioned. Authorities searched his truck for nonexistent axes, hatchets or other chopping instruments.

Brandon Bradley, festooned with Juggalo tattoos and wearing Juggalo merchandise, was pulled over on his bicycle three times in 2012 and 2013 in California. He was interrogated about his Juggalo affiliation, photographed and accused of gang membership.

During a 2012 visit to an Army recruiting station, Scott Gandy, whose chest bears large Posse tattoos, was told he would have to remove or permanently cover the tattoos to enlist because they were gang-related. Gandy then

spent hundreds of dollars to cover his Juggalo tattoos with other tattoos and had his application accepted at the recruiting station, but ultimately denied by the Army.

The Insane Clown Posse was scheduled to perform in Royal Oak, Mich., at the Royal Oak Music Theater's annual Hallowicked concert in October 2012. That concert was canceled at the police department's request due to the federal Juggalo gang designation.

In response to this perceived harassment, Juggalos Hellin, Parsons, Bradley and Gandy joined their Posse idols, Violent J and Shaggy 2 Dope, in filing suit against the FBI and the Justice Department in federal court in Detroit. *Parsons v. U.S. Dept. of Justice*, No. 14-10071.

The six plaintiffs asserted that applying the term "hybrid gang" to Juggalos violated their First Amendment rights to free association and expression and their Fifth Amendment rights to due process. The FBI and Justice Department moved to dismiss for lack of standing to raise such constitutional arguments.

In an opinion issued June 30, U.S. District Judge Robert H. Cleland found each plaintiff lacked standing. Citing *Clapper v. Amnesty International USA*, 133S.Ct. 1138, 1150 (2013), Cleland recognized that courts should be reluctant to "endorse standing theories that rest on speculation about the decisions of independent actors."

Logically enough, a critical element of any standing analysis is that the challenged action cannot arise from the independent action of a non-party.

While the Posse and their fans may have received unfair treatment, the court viewed this mistreatment as coming at the hands of third parties. Trucker Mark Parsons alleges he was harassed by a Tennessee trooper, while Brandon Bradley claims it was California police officers who wrongfully pulled him over.

Similarly, would-be soldier Scott Gandy asserts the Army rejected his application, and like Parsons and Bradley, he offered no indication of FBI or Justice Department participation. Even if he could establish a link between his rejection and his Juggalo tattoos, the court found the Army's detailed grooming standards, including rules on the display of tattoos, prevented any plausible conclusion that the National Gang Intelligence Center's identification of Juggalos as a hybrid gang prompted the Army's decision.

Unlike the other Juggalos, the court found Hellin's fear of facing Army discipline or discharge amounted to no injury at all. The Supreme Court in *Clapper* reiterated that a threatened injury must be "certainly impending" to form injury in fact and that "allegations of possible future injury are not sufficient."

With no indication that Army discipline was certainly impending, Hellin's allegations were dismissed for failing to properly allege constitutional standing.

The court also found the injury complained of by Posse members Bruce and Utsler, the cancellation of their Hallowicked concert, was attributable to independent actors the Royal Oak Music Theater and the Royal Oak police. While the complaint did allege that, in seeking to cancel the concert, the Royal Oak police cited the National Gang Intelligence Center's 2011 report, it did not contend that the FBI or Justice Department directed its cancellation.

While the 2011 report is alleged to have motivated these third-party actors, the court determined that each actor exercised discretion in dealing with the plaintiffs. Constitutional standing could not be shown because "any adjudication on the merits would involve speculation about the decisions of these independent actors."

Of absolutely no help to the plaintiffs, the National Gang Intelligence Center released its 2013 National Gang Report after this suit was filed. Perhaps accepting the plaintiffs' substantive argument that Insane Clown Posse fans are not criminal gangs, an argument the district court never reached, the 2013 report makes no mention of either Juggalos or hybrid gangs.

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