

United States District Court

EASTERN DISTRICT OF NEW YORK

225 CADMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

JACK B. WEINSTEIN
SENIOR JUDGE

January 10, 2017

Judge William H. Pryor, Jr., Chair
United States Sentencing Commission
One Columbus Circle, NE Suite 2-500, South Lobby
Washington, DC, 20002-8002

My dear Judge Pryor,

I am puzzled by the issue of how much consideration in sentencing should be given to membership in a street gang.

Section 5K2.18 of the Guidelines Manual provides for an upward departure in sentencing if 18 U.S.C. § 521 (pertaining to criminal street gangs) applies to the sentence. Would – or should – such an upward departure be warranted for sentencing under other statutes where gang membership has been established during or before the sentencing proceedings? *Cf.* Section 3A1.1 (hate crimes); Section 2K2.1 (firearms or ammunition).

Gang violence presents serious dangers in the Eastern District of New York. It is estimated that there are as many as 50,000 gang members in New York State, with 3,500 to 9,999 members in Kings County, 2,500 to 3,499 members in Queens County, and 500 to 2,499 members in the counties of Nassau, Suffolk, and Richmond. NATIONAL GANG INTELLIGENCE CENTER, NATIONAL GANG THREAT ASSESSMENT (2009). Gang violence is threatening in the counties of Suffolk and Nassau, where dozens of gang members were arrested over the past year in connection with violent crimes. *See* Liz Robbins, *35 Arrests in Long Island Gang Case as Another Body Is Found*, N.Y. TIMES (Oct. 21, 2016),


<http://www.nytimes.com/2016/10/22/nyregion/brentwood-ms-13-gang-case-arrests-long-island.html>.

In response to high incidents of gang violence, the New York City Police Department has restructured its investigative units to focus on gang activity. It carried out 107 targeted arrests of over 1,000 suspected gang members and drug traffickers in 2016. See Ashley Southall, *Shootings in New York Fell in 2016 to Lowest Level in More Than 20 Years*, N.Y. TIMES, Jan. 5, 2017, at A21.

Even in New York City, where violent crime rates have been declining, gang violence is a matter of grave concern. See Zolan Kanno-Youngs, Scott Calvert & Mara Gay, *New York City Major Crimes Fall to Lowest Recorded Level*, WALL ST. J. (Jan. 4, 2017), <http://www.wsj.com/articles/new-york-city-crime-rate-falls-to-lowest-recorded-level-1483543802>; Benjamin Mueller & Al Baker, *Steep Drop in Gang Violence Pushed City Shootings Below 1,000 in 2016*, N.Y. TIMES, Jan. 4, 2017, at A17.

In New York City, adolescents often join crews or gangs when they are only 12 years old. *Teen Gangs Linked to 40 Percent of New York City Shootings*, CBSNEWS.COM, May 1, 2014, <http://www.cbsnews.com/news/teen-gangs-linked-to-40-percent-of-new-york-city-shootings/>. These crews and gangs tend to be clustered around particular blocks or housing units, and once affiliated with a gang, it is very difficult to leave and revoke such an allegiance. *Id.*

Very Respectfully Yours,


Jack B. Weinstein
Senior United States District Judge

CC: District Judges and Magistrate Judges, E.D.N.Y.