

CA NO. 21-50131

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS NUNEZ,

Defendant - Appellant.

On Appeal from the United States District Court
for the Central District of California, No. 2:19-cr-00212-SVW-2
Honorable Stephen V. Wilson

**BRIEF OF AMICUS CURIAE DIGNITY AND POWER NOW IN
SUPPORT OF DEFENDANT JOSE LUIS NUNEZ**

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Statement of Interest of Amicus Curiae and of Authority to File

Dignity and Power Now is a grassroots organization fighting to end violence at the hands of the Los Angeles County Sheriff's Department ("LASD"). It successfully pushed the county to establish a Civilian Oversight Commission to address violence by LASD, and it takes a multifaceted approach to help individuals and families affected by police violence and incarceration. Because this case hinges on testimony from deputies who are members of a violent LASD deputy gang, Amicus Curiae has a strong interest in the Court's decision.

As required by Federal Rule of Appellate Procedure 29(c)(5)(A), counsel attests that no party's counsel authored this brief in whole or in part, or contributed any moneys toward this brief.

This brief is accompanied by a motion for leave to file, and counsel acknowledges the brief is beyond the time limit set in Federal Rule of Appellate Procedure 29(a)(6). Nonetheless, Counsel for both Defendant-Appellant and Plaintiff-Appellee have consented to the filing of this brief.

I. INTRODUCTION

In February 2019, LASD Deputies Taylor Ingersoll and Edwin Barajas conducted a warrantless search of Jose Luis Nunez's home. The district court, in turn, upheld this illegal search based on Ingersoll and Barajas's testimony that the home was associated with purportedly threatening gang members.

But recently revealed evidence makes clear that the real gang members involved in this case were the sheriff's deputies themselves. According to testimony before the County's Civilian Oversight Commission (the "Commission"), Ingersoll and Barajas were likely seeking initiation into a violent sheriff's deputy gang called the Executioners at the time they illegally searched Mr. Nunez's home. The Executioners are a subgroup of LASD deputies in the Compton station who demarcate themselves with numbered tattoos featuring Nazi imagery, and who perpetrate violence, and other civil rights violations, upon community members. Prospective gang members, or "prospects," become formally admitted into the Executioners and tattooed only after committing a fatal shooting or beating. Executioners are also known to lie and conceal information.

Chillingly, in July 2019, Ingersoll and Barajas formally joined the Executioners when they shot and killed an innocent bystander.

Contemporaneous text messages revealed that the deputies held a drinking party, described as a “celebration” of that shooting, and were likely tattooed that same night.

The timing here is key: Although Ingersoll and Barajas were likely attempting to join the Executioners when they violated Mr. Nunez’s rights, they formally joined the violent gang which is known for fabricating evidence, one month *before* they submitted affidavits in opposition to Mr. Nunez’s motion to suppress. The district court, in turn, relied heavily on those affidavits when it upheld the warrantless search.

This Court is tasked with “jealously and carefully” guarding the constitutional rights of its community members. The clear evidence of Ingersoll and Barajas’ own gang membership, motivations, and patterns of rights violations must be brought to light, and are but one more reason to reverse and vacate Mr. Nunez’s conviction. In the alternative, this Court should reverse and remand for further proceedings.

II. FACTUAL BACKGROUND

A. The Executioners are a Dangerous Sheriff's Deputy Gang.

Numerous institutions, reports, and community leaders—from Federal Judge Terry Hatter to the L.A. Times and the Los Angeles County Inspector General—have meticulously documented the violent, aggressive, and conspiratorial behavior of deputy gangs within LASD.¹ Deputy gangs, sometimes called “cliques” or “subgroups,” are groups of sheriff's deputies that carry out gang-like behavior while violating the rights of the community members they're tasked with protecting. According to independent reports, the gangs commonly “violat[e] constitutional rights, use[] excessive force, glorif[y] shootings committed

¹ See, e.g., Samuel Peterson, et al., *Understanding Subgroups Within the Los Angeles County Sheriff's Department: Community and Department Perceptions with Recommendations for Change*, RAND CORPORATION (2021), available at <https://tinyurl.com/4bpjwjzp> (hereinafter “Rand Report”); Center for Juvenile Law & Policy, Loyola Marymount University-Loyola Law School, *50 Years of Deputy Gangs in the Los Angeles County Sheriff's Department: Identifying Root Causes and Effects to Advocate for Meaningful Reform* (2021), available at <https://tinyurl.com/2p9ywyrv> (hereinafter “Loyola Report”); Hector Tobar, *Deputies In 'Neo-Nazi' Gang, Judge Found: Sheriff's Department: Many at Lynwood Office Have Engaged in Racially Motivated Violence Against Blacks And Latinos, Jurist Wrote*, LA TIMES (Oct. 12, 1991), available at <https://tinyurl.com/2p98m46t> (quoting Judge Hatter describing a deputy gang as “neo-Nazi” and “white supremacist”).

by deputies, and foster a code of silence.” Rand Report at xi. They are also known for “bullying, harassment, intimidation of and retaliation toward other department members, [and] resistance to supervision.” *Id.*

The gangs are also widespread, actively operating across six LASD stations, with over sixteen percent of deputies reporting having been recruited to join one. Rand Report at xiv; *see also* Loyola Report at 40. Finally, deputy gangs are longstanding, having existed for the last forty to fifty years. *See* Rand Report at xi; Loyola Report at 1.

1. The Compton LASD Station is Home to Numerous Tattooed Members of the Executioners Gang.

The Executioners are one such deputy gang. The Executioners operate out of the Compton LASD Station, where Mr. Nunez lives and where this case occurred. *See Lockett v. County of Los Angeles, et al.*, 18-cv-5838-DSF-JPR, ECF No. 197-2 at 84-85 (C.D. Cal., Aug. 17, 2020); *see also* Rand Report at 97. It is estimated that between nine to twenty current LASD deputies at the Compton station are members of the Executioners gang. *See* Civilian Oversight Commission, Los Angeles County, *Special Hearing on Deputy Gangs within LASD* (May 24, 2022), at 1:09:31-1:09:55, available at <https://tinyurl.com/2p9dkz8h> (hereinafter “Commission Testimony”). In other words, the Compton

station has been “permeated” by “violent” Executioners. *See Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 20.

A distinguishing characteristic of deputies in the Executioners gang is their matching tattoos. *See Loyola Report* at 11 (citing testimony that up to twenty deputies are marked with the Executioner tattoo); *see also Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 25 (testifying to observing the Executioner tattoo 12-15 times). The tattoos, pictured below, feature a skeleton wearing a Nazi-era helmet and wielding an AK-47 style assault rifle:



Rand Report at 108. As Judge Walsh recently concluded, that the deputies' tattoos are sequentially numbered and identically placed on each deputies' right calf strongly suggests they indicate gang membership. *Lockett, et al. v. County of Los Angeles, et al.*, 18-cv-5838-DSF-JPR, ECF No. 211 at 7 (C.D. Cal. Aug. 23, 2020) ("The clear inference to be drawn from this fact is that the tattoos are connected and that they are emblematic of this clique."). Indeed, Executioners proudly display their tattoos to fellow deputies and community members, including by wearing shorts in the winter. *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 33. Some Executioners even display the tattoo's logo at their Compton station desks. *Id.* at 90-91.

2. The Executioners Carry Out Civil Rights Violations, including Deadly Violence, Against Compton's Community Members.

LASD deputies at the Compton station become tattooed members of the Executioners gang by killing or injuring civilians. *See e.g.*, *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 39. In one high profile 2016 case, a deputy gang member who admitted having an Executioners tattoo fatally shot a young Black man, Donta Taylor, and fabricated evidence about seeing Mr. Taylor carry a gun. *See Rand Report at 2 n.2; Loyola Report at 11.* After a superior court judge

ordered LASD officials to disclose the names of other Executioners, Los Angeles County settled Mr. Taylor's case for \$7 million. *See id.*² More recently in 2020, Andres Guardado, a Latino teenager who worked in Compton, was killed by two deputies who were "prospects" seeking to join the Executioners gang. *See Loyola Report at 12; see also Commission Testimony at 1:44:40-1:44:59.* These well-reported shootings are likely just two of many deaths the Executioners are responsible for.

Executioners also regularly hurt community members and violate their rights. Since 2016, at least six lawsuits have alleged Executioner involvement in excessive force, wrongful death, and other civil rights violations. *See Rand Report at 13-14 (citing cases).*³ What's more, a whistleblower recently testified that the vast majority of high profile shootings and out-of-policy beatings in Compton were carried out by Executioners or their "prospects," and that Executioner activity has "resulted in the violation of the civil rights of *hundreds* of residents of

² *See also* Maya Lau, et al., *Judge says L.A. County Sheriff's Officials Must Reveal if They Know Which Deputies Have Skull Tattoos*, LA TIMES (Oct. 26, 2018), available at <https://tinyurl.com/2usrdtvp>.

³ Many of the lawsuits are pending, while some settled for significant sums. *See Rand Report at 13 (describing and citing cases).*

the Compton patrol area.” *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 74, 111 (emphasis added). Indeed, a federal judge concluded that the Executioners “treat[] suspects, particularly suspects of color, more aggressively than circumstances warranted and at times violate[] their rights.” *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 211 at 5.

Not only do Executioners inflict violence on residents of Compton, they also commonly celebrate doing so. For example, according to testimony from a former LASD lieutenant, after fatally shooting Donta Taylor, the Executioners hosted a party at a bar, where deputies had drinks to celebrate the shooting—and the fact that a new Executioner would be tattooed or “inked.” *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 35, 38-39. Executioners call these celebrations “998 parties,” a reference to the police radio code for an “officer-involved shooting.” *Id.* at 35. Executioner deputies are often tattooed or inked “immediately” after being involved in a fatal shooting. *Id.* at 77, 80. In short, Compton residents are injured and killed—and their rights violated—all in the name of the Executioners gang.

3. Through Concealment, Retaliation and Threats, the Executioners Gang Exerts Control Over the Compton LASD Station.

The Executioners are able to inflict their destructive acts of violence on the community as a result of their tight control over LASD's Compton station. According to recent whistleblower testimony, Jaime Juarez, who was promoted into leadership at the Compton station, is also the Executioners' "shot-caller," a term that law enforcement officials commonly use to refer to the leader of a criminal gang. *See* Commission Testimony at 1:09:14-1:09:31.⁴ As a shot-caller, Juarez "wields extreme power," giving other Executioners orders and making major decisions for the gang. *See id.* at 1:08:43-1:09:08.⁵ To obtain this mafia-like position, Juarez played a part in *four* fatal shootings of

⁴ *See also* Civilian Oversight Commission, Los Angeles County, *Exhibits to Special Hearing on Deputy Gangs within LASD*, at 204-231 (May 24, 2022), available at <https://tinyurl.com/2p9d959u> (documenting the four shootings).

⁵ *See, e.g., United States v. Patino*, 18-cr-250-CJC, ECF No. 286-1 at 5-6 (C.D. Cal. June 25, 2021) (federal agent testifying that "shot callers are . . . a group of veteran [gang members] who make decisions for [gang members]" including ordering killings and beatings); Press Release, Dep't Just., U.S. Atty's Office for Central District of Cal., Task Force Investigation Targets Leadership of MS-13, including Former Top "Shot-Caller" of L.A. Faction, a Dozen "Shot-Callers" who Supervised Cliques and Three Members Accused of Murder (May 17, 2017), available at <https://tinyurl.com/2p9dmm2h>.

community members over the course of just nine years. *See id.* at 1:17:24-1:17:28. But in addition to being the gang’s “shot-caller,” Juarez also serves as a member of LASD’s official management team as the Compton station’s scheduling deputy, who is responsible for assigning all deputies at the stations their days off and overtime, and for making other personnel decisions. *Id.* at 1:14:01-1:14:15. Indeed, a federal judge recently concluded that “command staff at the [Compton] station knew about the clique and what its members were doing and not only did not stop them but actively encouraged them by placing them in positions of authority at the station.” *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 211 at 5.

In a recent successful effort to control the Compton station in March 2019, for example, Juarez instructed members of the Executioners gang to conduct fewer arrests (a so-called “slowdown”) as a form of retaliation against his supervisor who refused to promote an Executioner. *See* Commission Testimony at 1:17:20-1:26:10, 1:38:01-1:39:01; *see also Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 66 (explaining the Executioners “absolutely” influenced policy at the station). The Executioners have also persuaded Compton station leaders to assign non-gang members to cover overtime shifts so that

gang members could attend nighttime celebrations of officer-involved shootings and tattooings. *Id.* at 195-96.

Executioners further exert their authority in the Compton station by threatening nonmembers who speak out. Deputies at the Compton station who are not members of the gang, or who speak out against the gang, “fear for their li[ves].” *See Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 118 (testifying as to a genuine fear the Executioners would order a “hit” against him). In 2020, for example, a tattooed Executioner “took [a deputy] to the ground” and physically assaulted him. *Id.* at 21-22. That same year, after one deputy reported Executioners’ misconduct to internal affairs, members of the gang graffitied the Compton station, specifically writing that the whistleblowing deputy was “a rat.” *Id.* at 125. These types of actions effectively chill other deputies from going against the Executioners gang.

The Executioners also control the Compton station through racism and secrecy. For example, the gang excludes women and black deputies from membership. *See Commission Testimony* at 1:10:31-1:10:47. And in a likely effort to hide their crimes, Executioners utilize encrypted messaging applications to communicate with one another. *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 80; *see also id.* (referring to the

gang as a “secretive society”). Through all of these mechanisms, the Executioners “de facto control” the Compton station, where Mr. Nunez’s case arose. *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-2 at 84-85.

4. When Executioners Carry Out Violence, Violate Rights, and Conceal Information, They Destroy Community Trust.

The insidious presence of deputy gangs, and the violence and lies that accompany them, are devastating not only in the dangerous acts themselves, but also in the harm they do to the community’s trust in the police. As one community member described,

There have been many cases where the sheriffs have beaten or killed people. Now we are scared to call them. They come into your homes without warrants and do what they want. They don’t think about what they leave behind in terms of the trauma. They insult us verbally and physically. We don’t trust them anymore.

Rand Report at 54.

Amicus Curiae, as a grassroots organization made up of community leaders, many of whom live and work in Compton, has likewise described the harms that LASD gangs impart. According to one Dignity and Power Now advocate, LASD’s “secrecy jeopardizes the safety of the community—specifically Black and Brown communities that are disproportionately policed and imprisoned. Fear should never

be an excuse to allow abusive deputies to run amok[.]” Press Release, Dignity and Power Now, Local Watchdog Group Solicits Tips on Bad Sheriff’s Deputies Via New Website (July 24, 2017), *available at* <https://tinyurl.com/m62n28de>. Likewise, Dignity and Power Now’s founder explained that the “systemic violence and misconduct committed by [LASD] have deeply impacted marginalized communities, causing harm and trauma for many families and their loved ones.” Press Release, Dignity and Power Now, Coalition to End Sheriff Violence in L.A. Jails Issues Statement (July 11, 2017), *available at* <https://tinyurl.com/msn32d5y>.

Beyond causing painful and irreparable damage for the individuals and families directly involved, the Executioners’ violence and concealment threatens the trust of the entire Compton community, where this case occurred.

B. Recent Public Hearings Revealed Deputies Ingersoll and Barajas are Members of the Executioners Gang.

On May 24, 2022, Lieutenant Larry Waldie, a 22-year veteran on the force, publicly revealed in sworn testimony that Ingersoll and Barajas—the two deputies who testified in this case—belonged to the Executioners gang. *See* Commission Testimony at 1:10:10-1:10:29,

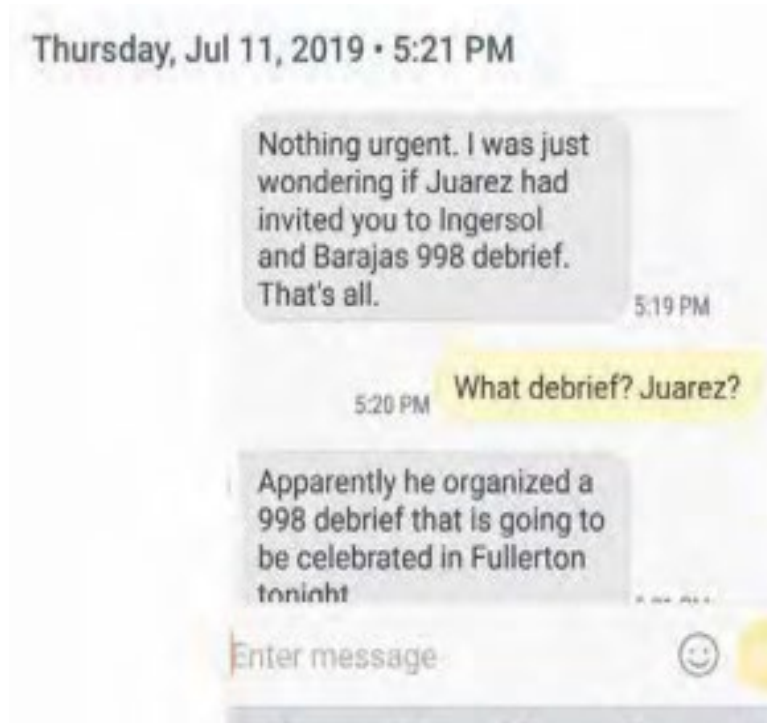
1:26:45-55. According to Waldie, the deputies were formally admitted into the gang in July 2019, when they celebrated after shooting and killing an innocent bystander. *Id.*

In the months preceding this fatal shooting, Ingersoll and Barajas acted as Executioner “prospects,” or deputies carrying out rights violations in order to join the gang. As a former Compton lieutenant explained, for a period of time, “[p]rospects are encouraged to do shooting or violent acts in order to get inked . . . we call it ‘ink chasers.’” *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 39. As one example of a rights violation before their fatal July 2019 shooting, Ingersoll admonished a deputy who made a gun arrest during the Executioners’ retaliatory March 2019 “slowdown.” *See* Commission Testimony at 1:26:10-1:26:45. Another example is Ingersoll and Barajas’s warrantless search of Mr. Nunez’s home in February 2019. The timing of these violations—viewed in concert with the Executioners’ well documented modus operandi of easing deputies into the gangs through increasingly serious rights violations—provides strong evidence that Ingersoll and Barajas were Executioner prospects when they searched Mr. Nunez’s home without a warrant.

Sadly, Ingersoll and Barajas’s rights violations escalated from unlawfully searching Mr. Nunez’s home in February 2019, to shooting and killing an innocent bicyclist in July 2019. *Id.* at 1:04:10-1:04:15, 1:40:25-1:43:56. According to details contained in a pending federal case, Ingersoll and Barajas fatally shot Rickie Starks, a 65-year-old black man, who was riding his bicycle home in Compton while the deputies engaged in a high speed chase. *See Starks v. County of Los Angeles, et al.*, 21-cv-5209-ODW-GJS, ECF No. 24 ¶¶ 1, 34-44 (C.D. Cal. Feb. 7, 2022). The complaint alleges that Ingersoll and Barajas intentionally killed Mr. Starks, and failed to get him medical attention, all in an effort “to become members of the [LASD] Compton Station Deputy Gang called the ‘Executioners.’” *Id.* ¶ 31; *see also id.* ¶¶ 46-54 (alleging the deputies were hoping to receive an Executioners tattoo).

Further, and even more disturbingly, documentary evidence and sworn testimony before the Civilian Oversight Commission demonstrated that Ingersoll and Barajas were tattooed at a “998 debrief” the night they shot Mr. Starks. The “998 debrief,” as Waldie explained, “celebrated” the fact that Ingersoll and Barajas fatally shot an innocent man who was biking home. *See Commission Testimony at 1:40:01-1:42:20.* According to contemporaneous text messages, Ingersoll

and Barajas's 998 party was organized by the Executioners' shot-caller Jaime Juarez, and took place at a bar called "Heroes" in Fullerton:



Commission Testimony at 1:42:03, 1:43:57.

These chilling details demonstrate that Ingersoll and Barajas joined the deadly Executioners gang. They were very likely attempting to become Executioners in February 2019 when they violated Mr. Nunez's rights. And they were certainly members when they testified against Mr. Nunez in August 2019, just one month after they celebrated killing an innocent bystander. *See United States v. Nunez*, 21-50131, ECF No. 12 at 196 (9th Cir. March 15, 2022) (hereinafter "Excerpts of

Record” or “ER”) (affidavit signed under oath by Barajas on August 6, 2019).

III. ARGUMENT

A. **The Deputies’ Recently Revealed Gang Membership Calls their Testimony into Doubt, and Undermines the District Court’s Reliance on that Testimony.**

In denying Mr. Nunez’s motion to suppress, the district court relied on a warrant exception, which in turn hinged almost exclusively on testimony from deputies we now know are members of a deceitful and dangerous gang. Under Fourth Amendment principles, which call for narrowly interpreting exceptions and suppressing repeated bad conduct, the district court erred.

1. **By Suppressing the Evidence Uncovered During the Warrantless Search, this Court Can Deter Future Violations.**

This Court has a duty to safeguard the Fourth Amendment rights of every community member, including Mr. Nunez. As part of that duty, this Court should hold the government to its obligation to obtain a warrant *before* it searches, and should only find exceptions to the warrant rule in the most narrow and unusual of circumstances. *See United States v. Carbajal*, 956 F.2d 924, 930 (9th Cir. 1992) (requiring the government to demonstrate “that the search comes within one of the

narrow exceptions to the warrant requirement”) (emphasis added).⁶ As the Supreme Court described, “[t]he exceptions to the rule that a search must rest upon a search warrant have been jealously and carefully drawn.” *Jones v. United States*, 357 U.S. 493, 499 (1958) (citations omitted).

Suppression is a critical tool for upholding the Fourth Amendment’s protections, and should be utilized to deter Ingersoll and Barajas from future unlawful searches and seizures. Where “the police exhibit ‘deliberate,’ ‘reckless,’ or ‘grossly negligent’ disregard” for community members’ constitutional rights, the suppression rule’s purposes are at their zenith. *See Davis v. United States*, 564 U.S. 229, 238 (2011) (citation omitted). Here, there is concrete reason to fear Deputies Ingersoll and Barajas will continue to disregard the rights of the community, given that their gang’s membership thrives on conduct beyond the bounds of the law, including repeated violence, coercion, and a code of concealment. *See supra*. Here, more so than ever, “the deterrent value of exclusion” should be given “strong” weight for its role

⁶ Indeed, the district court itself pronounced the same principle. ER 73 (quoting *United States v. Dadd*, 1992 U.S. App. LEXIS 12272, at *6 (9th Cir. May 21, 1992)).

in preventing police officers from committing repeated and serious misconduct. *Davis*, 564 U.S. at 238.

2. The District Court Upheld the Warrantless Search Based Almost Exclusively on Testimony by Known Deputy Gang Members.

It is undisputed that Ingersoll and Barajas searched Mr. Nunez's home without a warrant. *See United States v. Nunez*, 21-50131, ECF No. 20 at 15-16 (9th Cir. March 15, 2022) (hereinafter "Government's Answering Brief" or "GAB"). The district court nonetheless upheld the search under the protective sweep exception to the Fourth Amendment. *See* ER 75. In doing so, the district court relied exclusively on testimony from Ingersoll and Barajas, who explained the protective sweep was necessary because "gang members" were in or near the home. *See* ER 74 (citing specifically to Barajas's affidavit testifying that the deputies "conducted the sweep to secure the area against other potential gang members"). Aside from this testimony, and similar written statements from Ingersoll and Barajas, the district court cited no evidence to support the proposition that gang members were near the home, nor is any apparent in the record. *See* ER 73-75 (district court order citing only testimony from Ingersoll and Barajas); *see, e.g.,*

ER 166 (government’s statement of facts citing to the same, as well as police report authored by Ingersoll and Barajas).

Ingersoll and Barajas’s testimony was indisputably critical to the district court’s decision to uphold the search of Mr. Nunez’s home. The word “gang” appeared sixteen and twelve times in the deputies’ respective affidavits, underscoring their reliance on this purported gang presence to justify the search. *See* ER 188-196. The district court’s decision mirrored that reliance—employing the word “gang” *thirteen* times to uphold the warrantless search. *See* ER 72-79.

In fact, the district court relied on the deputies’ testimony regarding gangs to distinguish Mr. Nunez’s case from this Court’s own on-point case, *United States v. Garcia*, 749 Fed. App’x. 516 (9th Cir. 2018). *Id.* at 75 (distinguishing *Garcia* because the deputies recognized “gang members” which “would give an officer a reasonable suspicion of danger”). In *Garcia*, this Court suppressed evidence found in a home during a nearly identical protective sweep. *See Garcia*, 749 F. App’x at 517 (holding suppression was appropriate for warrantless search of a home after someone ran through it with a gun, and others emerged from the home). Given what we know about Ingersoll and Barajas’s credibility, that justification is unavailing.

The testimony that formed the cornerstone of the district court's ruling omitted crucial information: Namely, that Deputies Ingersoll and Barajas are themselves members of a dangerous gang, the Executioners, which is known to violate community members' civil rights and fabricate information. *See supra*. They were prospective Executioners when they violated Mr. Nunez's rights. *Id.* And they were active gang members when they signed the pivotal affidavits opposing suppression. *See* ER 196 (affidavit signed under oath by Barajas on August 6, 2019).

There is a twisted irony in the fact that Mr. Nunez's conviction hangs on evidence about gang ties, which in turn came exclusively from deputies who are themselves gang members. As one community member described, it's "like, 'The gang expert against me is in a gang himself.'" Dana Goodyear, *The L.A. County Sheriff's Deputy-Gang Crisis*, NEW YORKER (May 30, 2022), available at <https://tinyurl.com/4cj855cp>.

3. The Deputies' Conduct in this Case Closely Resembled the Executioners' Modus Operandi.

In addition to undermining the deputies' testimony about the existence of gang ties (on which the district court so heavily relied),

Ingersoll and Barajas's gang membership may also call into question other more fundamental aspects of Mr. Nunez's case, including—potentially—the very existence of guns.

Whistleblowers, including a former lieutenant deposed in a civil rights lawsuit, have explained that before Executioners violate a community member's civil rights, they are known to engage in a common subterfuge. Under that subterfuge, Executioners will place a call on their radio for “all the deputies to come and contain” because they purportedly “saw a person with a gun run [] in whatever direction.” *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 68; *see also id.* at 67 (testifying it is “common knowledge where they'll say they see a person running with a gun” and then there's a rights violation such as “force involved”). One whistleblower reported seeing Executioners utilize this so-called “ghost gun” tactic “quite often,” including in circumstances where there was never, in fact, a gun. *Id.* at 68, 70-71.

Ingersoll and Barajas utilized nearly identical language in the affidavits the district court relied upon to justify the warrantless search. *See* ER 74 (district court citing to Barajas's affidavit at ECF No. 58-2 at 3); ER 194 (Barajas's affidavit, which is located at ECF No. 58-2 at 3). Deputy Ingersoll, for example, testified that he called for a

“containment” after he saw a purported gang member “change[] the direction he was facing, grab[] his waistband, and r[u]n inside [of the home] . . . with a magazine protruding from his waistband.” ER 250; ER 189 ¶ 5; *see also id.* at 193 ¶ 6 (Deputy Ingersoll testifying identically in an affidavit).

Much like the whistleblower’s testimony that rights violations “often” follow Executioners’ false statements about a gun, so too did Ingersoll and Barajas violate Mr. Nunez’s rights when they searched his home without a warrant after making uncannily similar statements about a gun. *Compare Lockett*, 18-cv-5838-DSF-JPR, ECF No. 197-1 at 71. Because (1) Executioners are known to falsify evidence—especially about the presence of guns—and, (2) Ingersoll and Barajas were likely Executioner prospects at the time they arrested Mr. Nunez based on their testimony about guns, the basic facts of this case are fraught with the stain of Executioner misconduct.

A “jealously and carefully” guarded Fourth Amendment should not rest on the unchecked testimony of deputies who are members of a violent gang. *See Jones*, 357 U.S. at 499. And it cannot rest on testimony about guns in particular, from members of a gang with a documented pattern of lying about guns.

B. A Reversal is Needed to Bring These Concerning Facts to the Light of Day.

This Court’s intervention, in the form of a reversal, would shine light on highly relevant and disturbing information about Ingersoll and Barajas’s gang membership. Doing so would also satisfy applicable standards and legal principles.

1. Under Governing Appellate Standards, An Appropriate Disposition Can Take Into Account These Newly Discovered Facts.

A just appellate disposition can and should accommodate newly discovered evidence. At the outset, the facts contained in this brief—from public court records, hearings, and reports—are judicially noticeable. *See* Fed. R. Evid. 201(b)(2). More importantly, as this Court has previously explained, it “has the power to make such disposition of the case as justice may require.” *Bank of China v. Wells Fargo Bank & Union Tr. Co.*, 190 F.2d 1010, 1012 (9th Cir. 1951) (citing 28 U.S.C. § 2106); *see also* 28 U.S.C. § 2106 (indicating this Court has authority to issue a disposition “as may be just under the circumstances”).

Accordingly, “not only will an Appellate court correct error, but will also do substantial justice, and in so doing, will consider changes of law or

fact which have occurred since the decision below.” *Washington v. United States*, 214 F.2d 33, 47 (9th Cir. 1954) (citations omitted).

Here, substantial justice requires a reversal so these facts can be brought to light. As Judge Walsh explained, information regarding the conduct and operation of deputy gangs “is similar to when a police officer shoots and kills a suspect in an isolated area, leaving only the officer to tell what happened.” *Lockett*, 18-cv-5838-DSF-JPR, ECF No. 211 at 7 (citing *Estate of Lopez ex rel. Lopez v. Gelhaus*, 871 F.3d 998 (9th Cir. 2017)). Much like in these fatal excessive force cases, deputy gang members like Ingersoll and Barajas—as well as the department that enables them—fully “control the information about the existence, or lack thereof, of this secret clique.” *Id.* at 8.

As such, this Court should follow its precedent from fatal excessive force cases, and “ensure that the [deputies are] not taking advantage of the fact that” they alone control information about deputy gang membership. *Estate of Lopez*, 871 F.3d at 1006. To do so, this Court should take judicial notice of the facts in this brief, and reverse the district court’s ruling which relied exclusively on testimony from witnesses who cannot be trusted. In the alternative, this Court should

reverse and remand so the district court can shine light on Ingersoll and Barajas's lack of credibility and concerning motives.

2. Reversing the District Court Would Also Shine Light on Misconduct, in Accordance with the Principles of *Brady*.

This Court's light-shining role is all the more important because California's strict legal framework often frustrates efforts to reveal police misconduct. Despite constitutional obligations to disclose information that might undermine a government witness under *Brady* and its progeny, *see, e.g., Giglio v. United States*, 405 U.S. 150, 154 (1972), California's statutory scheme unusually constricts access to police personnel records, including information about gang membership.⁷ Indeed, this obfuscating legal framework, often referred to as "Pitchess law," is named after the former Los Angeles County Sheriff Peter Pitchess, under whose leadership deputy gangs first grew and spread. *See Pitchess v. Superior Court*, 11 Cal.3d 531, 531 (1974);

⁷ *See* Corina Knoll, et al., *Must Reads: An L.A. County Deputy Faked Evidence. Here's How his Misconduct was Kept Secret in Court for Years*, LA TIMES (Aug. 9, 2018), available at <https://tinyurl.com/297eepyp>; Kyle C. Barry, *California Supreme Court Fails to Resolve "Constitutional Crisis" Created by Police Privacy Laws*, THE APPEAL (Sept. 18, 2019), available at <https://tinyurl.com/bdh9ap7s> ("For years, California courts have bent over backward to reconcile the state's unusually strict police privacy laws with *Brady v. Maryland*[.]").

see also Loyola Report at 26, 44, 49.⁸

By the time the district court held the suppression hearing and issued its ruling in this case, Ingersoll and Barajas had already shot and killed an innocent bystander. *See* Commission Testimony at 1:40:25-1:43:56. An acting LASD Captain was already aware the deputies were tattooed members of the Executioners. *Id.* at 1:42:03. If this information did not meet bare minimum of implicating the “credibility [of] a witness,” as required under the constitution, it is hard to imagine what would. *See Giglio*, 405 U.S. at 154.⁹

The well-documented and highly relevant evidence showing Deputies Ingersoll and Barajas are members of the violent Executioners gang must “see the light of the courtroom.” *See Lockett*, 18-cv-5838-DSF-JPR, ECF No. 211 at 8. Any other outcome “would not be a just

⁸ *See also* Cerise Castle, *The Protected Class: An Examination of the First Documented Gangs in the Los Angeles County Sheriff’s Department*, KNOCK LA (March 22, 2021), available at <https://tinyurl.com/6346ahhb>.

⁹ This problem is not unique to this case. As one law professor explained: “[E]veryday there are investigating officers and gang experts testifying in L.A. Superior Court against accused people who are gang members. . . . And yet no one is telling the accused or the public defender representing them that this person testifying is known to be, or believed to be by the department, a [an LASD gang member].” *See Goodyear, supra*.

result.” *Id.*

IV. CONCLUSION

Deputies Ingersoll and Barajas are documented members of a dangerous gang. As Executioners, they are known to lie, falsify evidence about guns, and carry out acts of physical violence against individuals, up to and including fatal shootings. The Fourth Amendment exists to protect every member of our community from this deliberate mistreatment, including Mr. Nunez. Because this Court is tasked with vigorously upholding those rights, Dignity and Power Now respectfully asks the Court to reverse the district court’s decision and vacate Mr. Nunez’s conviction. In the alternative, this Court should reverse and remand for further proceedings. This information deserves to see the light of day.

DATED: July 1, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I am the attorney and hereby certify that this brief contains 5,486 words and complies with the word limit of Cir. R. 32-1, excluding the items exempted by Fed. R. App. P. 32(f) and 29(a)(5). The brief's type size is 14 point font and the typeface is proportionally spaced in Century Schoolbook in Compliance with Fed. R. App. P. 32(a)(5) and (6).

DATED: July 1, 2022

By: */s/ Claire Simonich*
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