

JUL 21 2011

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CRIMINAL DIVISION**

**DOROTHY BROWN
CLERK OF CIRCUIT COURT**

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|----------------------------------|---|---------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | No. 10 CR 18349 |
| |) | |
| GIOVANNI CASTREJON, |) | Judge Dennis Porter |
| |) | |
| Defendant. |) | |

**MOTION TO DISMISS CHARGES OF UNLAWFUL POSSESSION OF A FIREARM BY
A STREET GANG MEMBER**

NOW COMES the Defendant, GIOVANNI (“CASTREJON”) CASTREJON, by and through his attorney, MICHAEL J. PETRO, and moves this Court to dismiss the Indictment in this cause, for the following reasons:

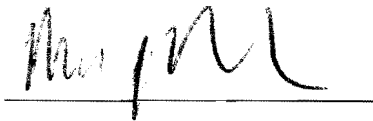
1. CASTREJON is charged in a fourteen count information with illegal possession of a firearm on September 20, 2010.
2. Of concern here, CASTREJON is charged in counts 1 and 2 with Unlawful Possession of a Firearm by a Street Gang Member in violation of 720 ILCS 5/24-1.8(a)(1).
3. Unlawful Possession of a Firearm by a Street Gang Member is a non-probationable Class 2 felony. The sentencing range is 3 to 10 years.
4. Of concern here is an enhanced penalty that attaches to CASTREJON as a result of the element of the offense of “and is a member of a street gang.”
5. For the purposes of this statute, "Street gang" or "gang" has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.

6. For the purposes of this statute, "Street gang member" or "gang member" has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.
7. First, the statute Unlawful Possession of a Firearm by a Street Gang Member is facially unconstitutional in that the law inhibits CASTREJON's exercise of his first amendment right to free assembly.
8. Freedom of assembly is protected by the First Amendment when members of a group join together for the purpose of pursuing "a wide variety of political, social, economic, educational, religious and cultural ends." *Roberts v. United States Jaycees*, 469 U.S. 609, 622 (1984).
9. There is no doubt that Association with other gang members is afforded constitutional protection. The Supreme Court put this notion to rest in *Dawson v. Delaware*, 503 U.S. 159 (1992). In *Dawson*, the Supreme Court held that Dawson's right to associate with the Aryan Brotherhood was "constitutionally protected." *Id.* at 164. ("The Aryan Brotherhood refers to a white racist prison gang that began in the 1960's in California in response to other gangs of racial minorities. Separate gangs calling themselves the Aryan Brotherhood now exist in many state prisons including Delaware.") *Id.* at 162.
10. Second, the Unlawful Possession of a Firearm by a Street Gang Member statute is facially overbroad.
11. The doctrine of overbreadth was designed to protect the First Amendment from laws written so broadly that the fear of punishment might discourage citizens from taking advantage of that freedom. *People v. Jamesson*, 768 N.E.2d. 817, 823 (2002)

12. A statute regulating conduct is overly broad if the statute (1) criminalizes a substantial amount of protected behavior, relative to the law's plainly legitimate sweep, and (2) is not susceptible to a limiting construction that avoids constitutional problems. *People v. Rokicki*, 307 Ill.App.3d 645, 652, 240 Ill.Dec. 852, 718 N.E.2d 333 (1999).
13. In short, the Unlawful Possession of a Firearm by a Street Gang Member statute criminalizes CASTREJON's protected freedom of assembly. As such, pursuant to *Dawson*, the statute is overbroad.

WHEREFORE, the Defendant requests this Honorable Court dismiss the indictment forthwith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Petro", is written over a horizontal line.

Michael J. Petro
Attorney for GIOVANNI CASTREJON
53 West Jackson Blvd., Ste. 324
Chicago, IL 60604
312- 913-1111