

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

NICHOLAS DONKERSLOOT)

Defendants.)

No. 09-00296-06-CR-W-FJG

**MOTION IN LIMINE TO PRECLUDE USE OF THE WORD “GANG”
WITH SUGGESTIONS IN SUPPORT**

COMES NOW Nicholas Donkersloot, Defendant herein, and hereby moves this Honorable Court for an order in limine precluding the use of the word “gang” to describe either the El Forastero Motorcycle Club, any of its Charters or its members, or the Galloping Goose Motorcycle Club, any of its Charters or its members, for the reason that the prejudicial impact of such references outweighs any possible probative value they might have in this case, and for the further reasons set forth in the following Suggestions in Support.

SUGGESTIONS IN SUPPORT

Count One of the indictment herein charges all six defendants, including Mr. Donkersloot, with conspiring to methamphetamine, cocaine and marijuana. Count Two of the indictment charges only Defendant John Angell with tampering with witness Michael Hensley in connection with information provided by Hensley regarding drug trafficking offenses allegedly committed by “Members of the El Forastero and Galloping Goose

Motorcycle Clubs.” The indictment makes no reference to any “gangs” or “motorcycle gangs.”

In *United States v. Street*, 548 F.3d 621 (8th Cir. 2008), Detective Steve Cook, the government’s case agent in the instant case, gave extensive testimony about “outlaw motorcycle gangs” including El Forastero and Galloping Goose. *Id.* at 629-631. Holding that none of the “motorcycle gang evidence” was “relevant to . . . the charged offenses,” *id.* at 632, the Court of Appeals reversed Street’s conviction. *Id.* at 634.

Mr. Donkersloot respectfully submits that the word “gang” has no place in the trial of this case, and would serve only to improperly inflame and prejudice the jury. The word “gang” does not appear in the indictment; although two motorcycle clubs are identified by name. At the pretrial conference on November 18, 2009, the government asserted that its evidence in this case would have nothing to do with the type of “gang” evidence at issue in *Street*, but, rather, would focus on the alleged manner and means of the drug distribution conspiracy the government alleges to be coextensive with those motorcycle clubs. Certainly, under Fed. R. Evid. 403, the danger of unfair prejudice to the defendants from the use of the word “gang” substantially outweighs any possible probative value it might have.

WHEREFORE, Mr. Donkersloot respectfully moves this Honorable Court for an order in limine precluding the use of the word “gang” to describe either the El Forastero Motorcycle Club, any of its Charters or its members, or the Galloping Goose Motorcycle Club, any of its Charters or its members

Respectfully submitted,

WYRSCH HOBBS MIRAKIAN, P.C.

By:

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ATTORNEY FOR DEFENDANT
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was delivered via electronic notification this 19th day of November, 2009, to all counsel of record.

/s/Charles M. Rogers
CHARLES M. ROGERS