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Superior Court of California
County of Los Angeles

Sherri R. Carter, Executive Officer/Clerk
By Cristina Alvarez, Deputy

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Erwin Chemerinsky, *Lawyers have Free Speech Rights, Too: Shy Gag Orders on Trial*

Participants Are almost Always Unconstitutional, 17 Loy. L.A. Ent. L. Rev. 311, 330 (1997) 5

1 The UCI Intellectual Property, Arts, and Technology Clinic respectfully requests this
2 Court for leave to submit this brief *amicus curiae* in support of Defendant Darrell Caldwell’s
3 Notice of Motion and Motion to Vacate the Gag Order.¹

4 STATEMENT OF INTEREST

5 *Amicus curiae* is a leading Southern California law clinic with a strong interest in
6 protecting the First Amendment right of free expression, free speech, and a free press, including
7 the free speech rights of journalists, attorneys, and artists. *Amicus* also has a strong interest in
8 ensuring that the public can hear directly from attorneys and artists who express their views about
9 their involvement in important trials that are open to the public and press.

10 The UCI Intellectual Property, Arts, and Technology Clinic (“the Clinic”) is a core clinic
11 of the University of California, Irvine School of Law. The Clinic provides pro bono
12 representation to, and advocacy for, a variety of clients, from documentary filmmakers to
13 independent journalists, with an emphasis on defending First Amendment protections for freedom
14 of expression, free speech, and a free press. Professor Jack Lerner, the clinic’s director, studies
15 copyright law and freedom of expression, and among other projects is currently studying the use
16 of rap lyrics in criminal proceedings. Adjunct Professor Susan Seager, who directs the Clinic’s
17 Press Freedom and Transparency practice, is a former journalist; as a media lawyer, Professor
18 Seager has represented journalists in promoting public access to courts and protecting the free
19 speech rights of reporters throughout California over the past two decades. She has successfully
20 challenged sealed court records, closed court proceedings, and gag orders.

21 *Amicus curiae* has a unique interest in ensuring that courts take care not to impinge on
22 First Amendment rights of parties and attorneys and thereby impede public understanding of court
23

24 ¹ The Los Angeles County Superior Court Local Rules do not address the submission of
25 amici briefs. No party or its counsel authored this brief in whole or in part. No party or its counsel,
26 or any person or entity (other than *amicus* and its counsel), made any monetary contribution
towards, or in support of, the preparation of this brief.

proceedings. *Amicus* also has an interest in helping courts safeguard and uphold the First Amendment free speech rights in cultural expression, including that of rap artists like Defendant, whose rap alias is “Drakeo The Ruler.” *Amicus* submits this brief *amicus curiae* to provide the Court with the history of how courts have assessed gag orders in California.

SUMMARY OF ARGUMENT

“Gag orders on lawyers and parties are virtually always unconstitutional[.]” So concluded Erwin Chemerinsky, First Amendment scholar and dean of the University of California Berkeley School of Law, in a law review article more than 20 years ago. Erwin Chemerinsky, *Lawyers have Free Speech Rights, Too: Shy Gag Orders on Trial Participants Are almost Always Unconstitutional*, 17 Loy. L.A. Ent. L. Rev. 311, 330 (1997). Since that article was published 1997, California courts have proved Dean Chemerinsky right by repeatedly vacating gag orders and the Ninth Circuit appears less inclined to support gag orders than in the past.

California courts require trial courts to make specific factual findings before issuing a gag order to avoid violating the First Amendment. Before issuing a gag order, a trial court must establish that: (1) the speech sought to be restrained poses a clear and present danger to a protected competing interest; (2) the order is narrowly tailored to protect that interest; and (3) no less restrictive alternatives are available.

It appears this Court did not consider this three-part test when it issued a one-sentence gag order commanding Defendant and his counsel “not to comment on anything regarding this case until after the verdicts are reached.” There is no indication that the Court found that statements pose a clear and present danger to the fair trial rights claimed by the prosecution, which sought the gag order. Nor did the Court consider less restrictive alternatives to a gag order, such as voir dire to weed out biased jurors, instructions to jurors to avoid social media, and instructing defense counsel to adhere to Rule 3.6 of Professional Conduct. Finally, the Court has not cited any evidence in its minute orders that the jury pool – comprising more than 4 million registered voters – would be so prejudiced by the statements that 12 unbiased jurors cannot be found within the

1 populous, diverse metropolitan Los Angeles region. *Amicus* urges this court to vacate the gag
2 order and consider the appropriate procedures specified by California courts.

3 SUMMARY OF PERTINENT FACTS

4 On March 6, 2020, this court issued a minute order instructing Defendant and his counsel “not
5 to comment about anything regarding this case.” 03/06/2020 Minute Order, 2. The prosecution
6 sought the gag order in a February 10, 2020 motion in limine that did not cite any law, contending
7 that criticism of the court, prosecutors, and law enforcement by Defendant and defense counsel on
8 social media and to the press was an effort to “taint prospective jurors and/or inflame the passions
9 of the public so to ultimately pressure the jury.” People’s February 10, 2020 Trial Brief 2–EC
10 402, Motions in Limine, 11. On March 20, 2020, the Court ordered Defendant’s social media
11 manager to remove statements on social media accounts, including tweets and retweets that
12 “reference to this case.” 03/20/2020 Minute Order, 2. On July 24, 2020, the Court reaffirmed the
13 gag order, stating that “the defendant [is ordered] not to discuss ... any facts about the case,
14 including his innocence, the attorneys, the judge, witnesses, and the investigating officers with
15 anyone that is not his defense counsel.” 07/24/20 Minute Order, 2.

16 The difficulty of enforcing such a broad gag order is evident. In a March 20, 2020 hearing, the
17 Court ruled that the following tweets, retweets, and statements to the press by defense counsel and
18 Defendant violated the gag order and ordered them removed: “Can someone please tell Oprah
19 about my case. Everyone listens to Oprah”; “F- the Judge”; “Free Drakeo”; “F- this corona –
20 corona virus. I’ve been in jail for 26 months for something I didn’t do”; “They can’t keep you
21 from speaking out. That is tyranny.” 03/20/2020 Hearing Transcript, 4-6, 8, 12.

22 On the other hand, the judge ruled that the following tweets and other statements by defense
23 counsel and Defendant could stay up because they did not discuss the case: “Jackie Lacey is
24 abusing her power to no end, and Sheriff Villanueva is a big fat liar”; “Prosecutors are
25 increasingly and misleading using rap lyrics as evidence”; “N- might as well work for the DA
26 office the way they don’t want me to get out”; “My judge said I’m not allowed to talk to any more

1 reporters about the case.” *Id.* at 2-3, 9-10.

2 There is no indication in the record that any of these statements by Defendant or his counsel
3 have reached a significant number of potential jurors in the populous and diverse Los Angeles
4 County. Indeed, a Google search with the term “Drakeo trial” failed to turn up any articles by any
5 Southern California news organization about these statements or even about Defendant’s
6 upcoming trial. *See* Declaration of Chunbaixue Yang with Exhibits AA-BB.

7 ARGUMENT

8 I. Prior Restraints Are Presumptively Unconstitutional and Frequently Vacated

9 “Orders which restrict or preclude a citizen from speaking in advance are known as ‘prior
10 restraints,’ and are disfavored and presumptively invalid.” *Hurvitz v. Hoefflin*, 84 Cal. App. 4th
11 1232, 1241-42 (2000). For more than a century, courts have struck down gag orders as violative
12 of the First Amendment. Courts have vacated gag orders silencing trial participants and counsel
13 and gag orders muzzling reporters covering murder trials. Court orders that ban the dissemination
14 of information are known as prior restraints. The United States Supreme Court has repeatedly
15 held that prior restraints are presumptively violative of the First Amendment.

16 The Supreme Court has ruled that a gag order directed at the press violates the First
17 Amendment, and California courts and the Ninth Circuit have been guided by those decisions in
18 deciding First Amendment challenges to court orders gagging trial participants and counsel.

19 A. The Supreme Court and Ninth Circuit Disfavor Gag Orders

20 The Court has repeatedly declared that there is a “heavy presumption” against the
21 “constitutional validity” of prior restraints on expression. *Org. for a Better Austin v. Keefe*, 402
22 U.S. 415, 419 (1971). In 1931, the Supreme Court struck down a gag order that barred reporters
23 from publishing negative information about local government officials, calling the order “the
24 essence of censorship”. *Near v. Minnesota*, 283 U.S. 713, 713 (1931). The Court relied on
25 *Patterson v. Colorado ex rel. Attorney General*, 205 U.S. 454, 462 (1907), which explained that
26

1 “[T]he main purpose of [the First Amendment] is ‘to prevent all such *previous restraints* upon
2 publications as had been practiced by other governments.’”

3 The Court’s leading case involving a gag order in court proceedings came in *Nebraska*
4 *Press Ass’n v Stuart*, 427 U.S. 539 (1976). In *Nebraska Press*, the trial court issued a gag order
5 barring the press from reporting about the defendant’s confession in a high profile murder case,
6 citing the defendant’s contention that the publication of such damaging information would violate
7 his Sixth Amendment right to a fair trial. *Id.* at 556-61. The Court agreed that “there was indeed a
8 risk that pretrial news accounts, true or false, would have some adverse impact on the attitudes of
9 those who might be called as jurors.” *Id.* at 568-69. But the court struck down the gag order,
10 describing prior restraints against the press as “the most serious and the least tolerable
11 infringement on First Amendment rights.” *Id.* at 559. The Court vacated the gag order because the
12 defendant failed to establish that “further publicity, unchecked, would so distort the views of
13 potential jurors that 12 could not be found who would, under proper instructions, fulfill their
14 sworn duty to render a just verdict exclusively on the evidence presented in open court.” *Id.* at
15 569. The Court’s rule— that a trial court may not issue a gag order unless it can be shown that trial
16 publicity would make it impossible to find 12 unbiased jurors from the entire jury pool – has been
17 adopted by federal and state courts, including California courts, in evaluating the constitutionality
18 of gag orders directed parties and counsel.

19 In *Levine v. District Court*, 764 F.2d 590 (1985), the case cited by the prosecution at oral
20 argument in support of the gag order, the Ninth Circuit examined a gag order sought by the
21 prosecution prohibiting defense attorneys from making any public statements about a high-profile
22 espionage case after the defense attorneys bad-mouthed the prosecution’s case in an lengthy
23 interview in the *Los Angeles Times*. *Id.* at 591-593. The court called the order “a prior restraint on
24 [the defense attorneys’] First Amendment right to free speech.” *Id.* at 595. The court emphasized
25 that the prosecution cannot seek a gag order based on its right to a fair trial because “[t]he Sixth
26 Amendment is a limitation on the government and does not give the prosecution the right to a fair

trial.” *Id.* at 596 (citation omitted). The court concluded, however, that there is a “fundamental interest of the government and the public in ensuring the integrity of the judicial process.” *Id.*

In *Levine*, the Ninth Circuit adopted a three-part test for evaluating the constitutionality of the gag order: such an order “may be upheld only if the government establishes that: (1) the activity restrained poses either a clear and present danger or a serious and imminent threat to a protected competing interest; (2) the order is narrowly drawn; and (3) less restrictive alternatives are not available.” *Id.* at 595. The court held that the trial court’s gag order met the three-part test, rejected the idea that twelve jurors could be found in the large Los Angeles metropolitan area who would not be biased by the publicity, and affirmed the gag order with instructions that the trial court narrow its scope. *Id.* at 467-68.

More recently, the Ninth Circuit vacated a gag order against defendants in a trademark case in *In re Dan Farr Productions*, 874 F. 3d 590 (9th Cir. 2017). As here, the trial court issued a gag order because the defendants had a “range of online networks and could reach an extensive amount of people” via Twitter and Facebook, and were using social media to “express their opinions on the merits of the case,” which prompted members of the public to amplify the conversation with more online comments. *Id.* at 593. But unlike its decision in *Levine*, the Ninth Circuit took a close look at the jury pool in the U.S. District Court for the Southern District of California – with an estimated 1.75 million registered voters – and held that the trial court failed to show that it would be impossible to find 12 unbiased jurors in the large metropolitan region. *Id.* at 593-94. “[T]here is no causal link between the numbers of social media participants and the district court’s conclusion that Petitioners’ speech will preclude the seating of an impartial jury.” *Id.*

The Ninth Circuit also chastised that the trial court for “disregard[ing] two critical factors for evaluating the likely effect of pretrial publicity on the jury pool: whether the subject matter of the case is lurid or highly inflammatory, and whether the community from which the jury will be drawn is small and rural, or large, populous, metropolitan, and heterogeneous.” *Id.* at 594.

B. California Courts Routinely Strike Down Gag Orders

The first California court decision on a gag order issued by a trial court was *Sun Company of San Bernardino v. Superior Court*, 29 Cal. App. 3d 815 (1973). The case involved a trial court's order barring local news organizations from publishing the names or photographs of nine prison inmates who were prosecution witnesses in a murder trial. As here, the prosecution sought a gag order, contending that the inmates might refuse to testify if they were named and photographed by the local news organizations, and if that happened, it would prejudice the prosecution's right to a fair trial. *Id.* at 818-819. The prosecution relied on a theory that the government has a right to a fair trial under due process. *Cf. Levine*, 764 F.2d at 764 (The Sixth Amendment right to a fair trial protects defendants – not prosecutors).

The Court of Appeal adopted a test for gag orders: "Before a court can restrict freedom of speech or press, the prohibited speech or published material must constitute a 'clear-and-present danger' to the administration of justice." *Sun Company of San Bernardino*, 29 Cal. App. 3d 815 at 826. The Court of Appeal emphasized that "in only an insignificant number of cases does the publicity factor affect the prosecution's right to due process." *Id.* at 831. "In those instances, the vast financial resources and manpower available to the Government ... should likewise be kept firmly in mind before the issuance of any order amounting to a direct prior restraint on publication." *Id.* Only when a party seeking restraint against the press can show "strong proof that the publication sought to be restrained meets the clear-and-present danger standard" should the prior restraint be upheld. *Id.* at 830. The court concluded that the prosecution failed to meet the burden to justify a prior restraint on the press because the government could not show that its due process right to a fair trial would be harmed by news reports about the confession. *Id.* at 831.

Hurvitz, 84 Cal. App. 4th at 1241 is the first California appellate decision involving a gag order against trial participants. The Court of Appeal vacated a gag order that barred multiple parties, attorneys, agents, employees from naming victims in consolidated cases against some plastic surgeons. *Id.* at 1241. The Court of Appeal adopted a three-part test from the Ninth

1 Circuit's *Levine* and held that a trial court "must make express findings showing it applied this
2 standard and considered and weighed the competing interests." *Id.*

3 **II. This Court's Gag Order Fails to Meet the Three-Part Test**

4 As these federal and California cases demonstrate, trial courts must meet a stringent three-
5 part test to justify gag orders against parties and their counsel, supported by findings and
6 evidence. Here, the record does not reflect that factual findings were made establishing that
7 public statements by Defendant or his counsel present a clear and present danger to any due
8 process rights of the prosecution. The mere possibility of danger or prejudice to the right to a fair
9 trial is not enough; there must be a "causal link" and "evidence" that the public statements have
10 both reached the jury pool and prejudiced the jury pool so completely that twelve impartial jurors
11 cannot be found. *In re Dan Farr Productions*, 874 F.3d at 593. We therefore urge the Court to
12 vacate its prior order and conduct a factual inquiry into whether the danger to a fair trial is so
13 great as to warrant such an extreme measure.

14 **III. Social Media Posts About this Case Should Be Addressed with Jury Instructions, Not** 15 **a Gag Order**

16 There is nothing new about parties and their counsel posting comments about their case on
17 social media. Recent court decisions by the California Court of Appeal and the Ninth Circuit
18 concerning social media postings have concluded that gag orders are not the answer.

19 Seven years ago, the California Court of Appeal took a deep dive into the problem with jurors
20 conducting unauthorized research on the internet during trial. In *Steiner v. Superior Court*, the
21 Second District held that the trial court issued "an unlawful prior restraint on [a trial lawyer's]
22 constitutional right to free speech" by ordering a trial lawyer to remove two pages of her website
23 touting her \$1.7-million and \$4.3-million jury verdicts against Ford Motor Company while she
24 was trying a similar personal case against Volkswagen. 220 Cal. App. 4th 1479, 1482 (2013). The
25 Court of Appeal instructed that "[t]he first line of defense against juror legal research is to address
26 the issue in jury instructions." *Id.* at 1492. The court cited Code of Civil Procedure §§ 611, 613,

1 and 1209 (jurors must be instructed not to use social media and the Internet to research or
2 disseminate information about cases).

3 The court concluded that “[t]he adoption of these amendments underscores that trial courts are
4 appropriately focusing on tougher admonition rules and contempt consequences, rather than on
5 trying to restrain speech on the Internet,” *id.* at 1493, that the trial court was correct to admonish[]
6 the jurors not to Google the attorneys [or] conduct independent research,” and that the trial court
7 “did not, however, have authority to impose, as a prophylactic measure, an order requiring [the
8 attorney] to remove pages from her law firm Web site to ensure they would be inaccessible to a
9 disobedient juror.” *Id.* In short, “the order went too far.” *Id.*

10 Similarly, in *In re Dan Farr Productions*, the plaintiffs sought a gag order, contending that the
11 defendants were posting numerous statements on Twitter and Facebook expressing “their
12 opinions on the merits of this case,” which sparked comments from the public. 874 F.3d at 593.
13 The plaintiffs argued that the jury “venire is being influenced through social media dialogue” by
14 the defendants and their followers. *Id.* at 591.

15 The trial court issued a gag order barring the defendants from posting any comments on social
16 media platforms such as on Twitter and Facebook about the underlying trademark litigation, *id.*,
17 and barred the defendants from posting any court documents on their websites and social media,
18 even though the court documents were public. *Id.* at 593. The Ninth Circuit held the gag order
19 violated the First Amendment. *Id.* at 591.

20 The Ninth Circuit held that the trial court failed to establish that the defendants’ social media
21 posts prejudiced the entire jury pool. Plaintiffs presented “no evidence” that a large number of
22 eligible jurors saw tweets about the case posted by the defendants and their followers. *Id.* at 593-
23 94. The court observed that even if every single one of the defendants’ social media followers and
24 other fans were part of the district court’s jury pool, “that group would constitute only
25 approximately 8.9 percent of the relevant jury pool, which is insufficient to demonstrate that
26 twelve unbiased jurors could not be found absent the restraining orders.” *Id.* (citations omitted).

1 As these decisions demonstrate, the correct way to deal with social media posts by parties and
2 counsel is to instruct jurors to avoid social media. Courts should also avoid gag orders where
3 there is no evidence that social media posts about the case are reaching enough potential jurors to
4 make it impossible to find twelve unbiased jurors. The record in this case does not show that
5 juror admonitions were considered, nor that Defendant's social media posts have been so
6 pervasive and prejudicial that twelve unbiased jurors cannot be found among the 4 million
7 registered voters in Los Angeles County.

8 **IV. A Gag Order Is Almost Impossible to Justify in a Populous Metropolitan Area Like**
9 **Los Angeles**

10 To justify a gag order, a trial court must establish that the pretrial publicity is so pervasive and
11 so prejudicial that it penetrates the entire community and renders it impossible to find twelve
12 unbiased jurors in the entire jury pool. *Nebraska Press*, 427 U.S. at 569

13 That means that gag orders are nearly impossible to justify in a region with a large jury pool
14 such as Los Angeles County. As the Ninth Circuit observed, in a "populous metropolitan area"
15 like Los Angeles County, with 10 million residents and more than 4 million registered voters, "the
16 pool of potential jurors is so large that even in cases attracting extensive and inflammatory
17 publicity, it is usually possible to find an adequate number of untainted jurors." *CBS v. District*
18 *Court*, 729 F.2d 1174, 1181-84 (9th Cir. 1984). In that case, the court vacated the trial court's gag
19 order barring CBS from airing a government surveillance videotapes in the high-profile criminal
20 trial of car maker John DeLorean, holding that the airing of the tapes was "extremely unlikely" to
21 produce "community-wide prejudice" in a venue of twelve million people. *See also Hunt v.*
22 *National Broadcasting Co.*, 872 F.2d 289, 295 (9th Cir. 1989) (where pre-trial broadcast would
23 likely reach slightly more than 20 percent of all adults in the relevant area, "there remain[ed] an
24 extremely large pool of untainted potential jurors from which to draw twelve"; concluding that
25 although double murder trial "may involve lurid or inflammatory subject matter, San Mateo
26 County is the type of populous, heterogeneous metropolitan area where prejudicial publicity is

1 less likely to endanger the defendant's right to a fair trial”); *Associated Press v. District Court*,
2 705 F.2d 1143, 1146 (9th Cir. 1983).

3 The record in this case does not reflect any evidence establishing that the publicity created by
4 Defendant and his counsel about this case is so persuasive and prejudicial that it would be
5 impossible to find 12 unbiased jurors. *Amicus* conducted an independent Google search of three
6 Southern California media outlets for reports about Defendant’s upcoming trial and found none.
7 See Declaration of Chunbaixue Yang with Exhibits AA-BB.

8 **V. Voir Dire and Admonishing Jurors Provide Less Restrictive Means of Addressing**
9 **the Prosecution’s Concerns about a Fair Trial**

10 Gag orders are commonly found to be an unconstitutional prior restraint when the trial
11 court fails to use less restrictive means to protect fair trial rights such as voir dire to weed out
12 prejudicial biased jurors, and admonishing impaneled jurors not to read press accounts during
13 trial. In *Sun Company*, the Court of Appeal concluded that “in balancing the constitutional right to
14 a fair trial against the rights of a free press, it should be emphasized that sufficient legal
15 safeguards presently exist to assure ... a fair trial.” 29 Cal. App. 3d at 831. The court listed
16 “change of venue, voir dire examination and challenge of prospective jurors, jury sequestration,
17 mistrial, new trial, appeal and habeas corpus” as alternatives to a gag order. *Id.* See also *Freedom*
18 *Communication, Inc. v. Superior Court*, 167 Cal. App. 4th 150, 154 (2008); *NBC Subsidiary*
19 *(KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1224 (1999). For a court to impose a prior
20 restraint, it must be able to provide case-specific reasons why these alternative actions were not
21 appropriate. *In re Dan Farr Productions*, 874 F.3d at 596.

22 Using voir dire to weed out prejudiced juror candidates and providing admonitions to the
23 empaneled jury regarding social media and the Internet are more than adequate measures to
24 safeguard a fair trial. The record does not show that the Court considered these alternative
25 measures.

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CONCLUSION

Both California courts and federal courts have held that gag orders are unconstitutional prior restraints unless they meet stringent requirements. Otherwise, they unnecessarily infringe on freedom of speech and the public's ability to observe and be informed about important judicial proceedings. Because these requirements appear not to have been met in this case, *Amicus Curiae* respectfully urges this Court to vacate the gag order. If the Court should consider a renewed motion for such an order, *amicus* respectfully requests that the Court undertake a factfinding inquiry according to the guidance set forth in *Hurvitz v. Hoefflin*.

Dated: September 16, 2020

THE UCI INTELLECTUAL PROPERTY,
ARTS, AND TECHNOLOGY CLINIC
AMICUS CURIAE

By Susan E. Seager

Jack Lerner
Susan E. Seager
Hedyeh Tirgardoone (certified law student)
Benjamin Whittle (certified law student)
Paniz Arab (certified law student)
Savannah Levin (certified law student)
Madeline Knutson (certified law student)

Counsel for *Amicus Curiae*

DECLARATION

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DECLARATION OF CHUNBAIXUE YANG

I, Chunbaixue Yang, declare:

1. I am over the age of 18 years old. I am a student at University of California Irvine School of Law and work as a certified law student under the supervision of Professors Jack Lerner and Susan E. Seager at the Intellectual Property, Arts, and Technology Clinic (the “Clinic”). I submit this declaration in support of Clinic’s Brief *Amicus Curiae* in Support of Defendant Darrell Caldwell’s Notice of Motion and Motion to Vacate the Gag Order. The facts stated below are true of my own personal knowledge, except for those matters stated on information and belief, which I am informed and believe to be true.

2. On September 15, 2020, I used the online search engine Google to conduct a search using the term “Drakeo trial.” The name “Drakeo the Ruler” is Mr. Caldwell’s pseudonym for his rap music persona. Attached as Exhibit AA is a true and correct copy of the first three pages of the search results.

3. I did not see any articles about Mr. Caldwell’s upcoming trial by any Southern California news outlet in the first 10 pages of search results.

4. I created a chart of 15 representative articles listed in the search results that were published by both established magazines, newspapers, and a national radio as well as lesser-known music industry publications. Most of these articles are music reviews, not news stories that provide detailed accounts of Mr. Caldwell’s upcoming trial on gang charges. Attached as Exhibit BB is a true and correct copy of the chart listing these 15 articles, summaries of the articles, and hyperlinks to each article.

5. On September 15, 2020 I conducted a search on three major Southern California news outlets (*Los Angeles Times*, *LA Weekly*, and local television station KTLA) using the term “Drakeo The Ruler” and “Drakeo.” I did not find any articles published by these three local news

1 outlets about Mr. Caldwell's acquittal on murder charges, his upcoming trial on gang charges, or
2 his rap lyrics being used against him in court. My search results are reflected in the chart attached
3 as Exhibit BB.

4 6. On September 15, 2020, I used the websites Twitter.com and Instagram.com to
5 research the size of Mr. Caldwell's following on those two social media platforms and the social
6 media followers of other recording artists. Mr. Caldwell apparently uses the handle
7 @IamMRMOSELY on Twitter, where he has 39,500 followers. In contrast, as of September 15,
8 2020, pop singer Taylor Swift has 87.1 million Twitter followers and rapper Drake has 39 million
9 Twitter followers. On Instagram, as of September 15, 2020 Mr. Caldwell has 221,000 followers,
10 while Drake has 72.1 million Instagram followers and Taylor Swift has 140 million Instagram
11 followers.
12

13 7. I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct, and that this Declaration was executed on the 15th day of
15 September, 2020, in Irvine, California.
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18 By: Chunbaixue Yang
19 Chunbaixue Yang
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EXHIBIT AA



drakeo trial



All

News

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Settings

Tools

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Drakeo was acquitted of murder and attempted murder charges in July 2019, but the jury was hung on charges of shooting from a motor vehicle and criminal gang conspiracy. ... Awaiting a new **trial** as the coronavirus pandemic continues to sweep through American prisons, **Drakeo** remains incarcerated to this day. Jun 10, 2020

[www.washingtonpost.com](https://www.washingtonpost.com/lifestyle/style/2020/06/09/) › lifestyle › style › 2020/06/09[Drakeo the Ruler's 'Thank You For Using GTL' is the most ...](#)[About Featured Snippets](#) [Feedback](#)[genius.com](https://genius.com/interview-drakeo-the-ruler-talks-about-murder-trial) › interview-drakeo-the-ruler-talks-about-murder-trial

Interview: Drakeo The Ruler On Facing A Second Trial For His ...

Mar 23, 2020 - Editor's Note—After being found not guilty of murder and attempted murder charges last July, **Drakeo** the Ruler is once again on **trial** for his life.

<https://twitter.com/IamMRMOSELY>[Drakeo The Ruler 🦊🐱 \(@IamMRMOSELY\) · Twitter](#)

I DONT WANNA BE A
PLAYER NO MORE 🤔🤔

Twitter · 7 hours ago

I REALLY WANNA GO
HOME CAN I GO HOME
NOW 🙄

Twitter · 7 hours ago

VOTE @GeorgeGascon

Twitter · 7 hours ago

[→ View on Twitter](#)[www.thefader.com](https://www.thefader.com/2019/07/11/drakeo-the-ruler-murder-trial) › 2019/07/11 › drakeo-the-ruler-murder-trial

Inside the murder trial of Drakeo the Ruler | The FADER

The South Central rapper faces life in prison. Over a month in the courtroom, after countless witness testimonies ...

Jul 11, 2019 - Uploaded by Drakeo The Ruler

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[www.thefader.com](https://www.thefader.com/drakeo-the-ruler-charges-refiled) › drakeo-the-ruler-charges-refiled

Drakeo The Ruler faces possibility of life in prison as DA ...

Sep 3, 2019 - A new **trial** is expected in the late fall or early winter. ADVERTISEMENT. **Drakeo** The Ruler (born Darrell Caldwell) was arrested in connection ...

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Videos



12:06

Why Drakeo The Ruler Is On Trial for The Same Murder Twice


No Jumper
YouTube - Apr 30, 2020



3:32

Drakeo the Ruler Recorded an Album on a Prison Phone

ReasonTV
YouTube - Jun 17, 2020



7:57

Rapper Drakeo the Ruler Was Accused of Murder

ReasonTV
YouTube - Jan 21, 2020

www.complex.com › music › 2020/06 › drakeo-the-rul... ▼

How Drakeo the Ruler Made His New Album in Jail While ...

Jun 5, 2020 - COVID-19 has delayed multiple trial dates and ended all visitation, but, somehow , **Drakeo** hasn't despaired. Instead, he recorded a new project ...

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www.theguardian.com › us-news › oct › drakeo-the-rul... ▼

The jailed LA rapper whose songs were used to prosecute him

Oct 2, 2019 - **Drakeo** the Ruler speaks to the Guardian about twice facing charges for a murder he didn't commit: 'It's not about justice'

www.gq.com › drakeo-the-ruler-thank-you-for-using-gtl ▼

How Drakeo the Ruler Made One of the Albums of the Year ...

Jul 20, 2020 - While awaiting trial in Los Angeles, **Drakeo** dialed in to record the instant-classic Thank You for Using GTL—and put a spotlight on the ...

www.npr.org › 2020/08/28 › prison-telecom-business-ind...

Drakeo The Ruler On 'Thank You For Using GTL' And The ...

During his original trial, the prosecution tried to use his lyrics and music videos against him.


Members of his ...

Aug 28, 2020 - Uploaded by Drakeo The Ruler


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EXHIBIT BB

| Summary | Publication Type | Media | Section | Title of Story | Date Published (from 2019 to present) | Relevance (rapping/earlier trials/new album/connection between his rapping and the charges) | Link |
|--|-------------------------------|---------------------|----------------|--|---------------------------------------|---|---|
| Three major Los Angeles news outlets have published no recent articles about Mr. Caldwell's two criminal trials. WitnessLA is a specialty publication about abuses by law enforcement. | Local News | WitnessLA | Opinion | Op-Ed: California Gang Laws are Normalized Racism | 10/10/2019 | Witness LA reports that Mr. Caldwell's rap lyrics were used against him at his murder trial. | https://witnessla.com/op-ed-california-gang-laws-are-normalized-racism/ |
| | | KTLA | | | | No news reports of Mr. Caldwell's murder trial or upcoming trial by KTLA were found. | |
| | | LA Times | Music | L.A. rapper Drakeo the Ruler is a man in demand | 3/9/2018 | No news reports of Mr. Caldwell's murder trial or upcoming trial by LA Times were found. The latest article, a music review titled "L.A. rapper Drakeo the Ruler is a man in demand" (3/9/2018), mentions his unrelated arrests and incarceration on gun charges. | https://www.latimes.com/entertainment/music/la-et-ms-drakeo-the-ruler-20180309-story.html |
| | | LA Weekly | | | | No news reports about Mr. Caldwell's murder trial or upcoming trial by LA Weekly were found. | |
| The story is covered by some major national medias under the culture/music sections, which only targets a relatively small audience. | National Media | The New Yorker | Culture | The Controversial Use of Rap Lyrics as Evidence | 9/20/2019 | Discusses Mr. Caldwell's album release and the charges against him. Speaks about how bizarre it is to use rap music as evidence at trial and the racism in the criminal system as it shows. | https://www.newyorker.com/culture/culture-desk/the-controversial-use-of-rap-lyrics-as-evidence |
| | | The Washington Post | Style / Review | The most urgent rap album of 2020? Drakeo the Ruler just phoned it in from jail. | 6/10/2020 | Music review of Mr. Caldwell's album release via a jail phone. Passing mention of his murder trial, acquittal on murder charges, and upcoming trial. Discusses prosecution's use of Mr. Caldwell's rap music as evidence against him in his murder trial. | https://www.washingtonpost.com/lifestyle/style/the-most-urgent-rap-album-of-2020-drakeo-the-ruler-just-phoned-it-in-from-jail/2020/06/09/730a5c38-a5b1-11ea-b473-04905b1af82b_story.html |
| | | NPR | | Drakeo's Acclaimed Album Highlights How Much Prisons Profit From Phone Calls | 8/28/2020 | Music review of Mr. Caldwell's album release via a jail phone. | https://www.npr.org/2020/08/28/906807077/prison-telecom-business-indicted-by-rap-album-recorded-in-jail |
| | | The Atlantic | Culture | What Incarcerated Rappers Can Teach America | 9/1/2020 | Discusses Mr. Caldwell's album release from jail, uses Mr. Caldwell's case to illustrate how rappers can have their lyrics used against them at trial. Speaks about the growing awareness of the ease with which police can label someone a potential gang member. | https://www.theatlantic.com/culture/archive/2020/09/drakeo-the-ruler-03-greedo-bl-shirelle-music-incarceration/615907/ |
| Some more in-depth coverage of Mr. Caldwell's criminal cases and the prosecutors' use of his rap lyrics as evidence at trial have been published by special interest music publications. | Music/Pop-Culture Publication | Reason | | Drakeo the Ruler Recorded an Album on a Prison Phone | 6/17/2020 | Discusses Mr. Caldwell's first trial, pending charges, the prosecutions use of his lyrics at trial, and his album release from jail. | https://reason.com/video/drakeo-the-ruler-recorded-an-album-on-a-prison-phone/ |
| | | Fader | | Stabbing, lies, and a twisted detective: Inside the murder trial of Drakeo the Ruler | 7/11/2019 | Discusses Mr. Caldwell's murder trial, upcoming trial, mentions how his rap was extensively used against him at his murder trial, and speaks about the racism in the criminal justice system as this shows. | https://www.thefader.com/2019/07/11/drakeo-the-ruler-murder-trial-los-angeles-report |
| | | Fader | | Drakeo The Ruler faces possibility of life in prison as DA refiles charges | 9/3/2019 | Discusses Mr. Caldwell's murder trial, pending trial, and the prosecutions use of Mr. Caldwell's lyrics and social media against him. | https://www.thefader.com/2019/09/03/drakeo-the-ruler-charges-refiled |
| | | SPIN | | Drakeo the Ruler Acquitted of Murder | 7/25/2019 | Mentions Mr. Caldwell's charge and the circumstance of the night and his acquittal. Does not mention the trial or rap lyrics as evidence. | https://www.spin.com/2019/07/drakeo-the-ruler-murder-trial-not-guilty/ |
| | | XXL | | Drakeo The Ruler Acquitted of Murder, Attempted Murc | 7/25/2019 | Discusses Mr. Caldwell's acquittal on charges of murder and attempted murder. Mentions Mr. Caldwell, when interviewed by the magazine before, "explained the idea that police were out to get him. He also said he believed that authorities were jealous of himself and someone like Meek Mill, who served several months behind bars for probation violation for charges related to a firearms case from 2008, because of their success." | https://www.xxlmag.com/drakeo-the-ruler-acquitted-murder-trial-verdict/ |
| | | Genius | | Interview: Drakeo The Ruler On Facing A Second Trial For His Life | 5/23/2020 | Discusses the charges against Mr. Caldwell and how his lyrics have been used against him in court. | https://genius.com/a/interview-drakeo-the-ruler-talks-about-murder-trial |
| | | Complex | | How Drakeo the Ruler Made His New Album in Jail While Awaiting Trial | 6/5/2020 | Discusses Mr. Caldwell's acquittal, pending charges, and album release. Includes a phone interview with Mr. Caldwell from jail. | https://www.complex.com/music/2020/06/drakeo-the-ruler-interview-thank-you-for-using-gt/ |
| | | GQ Magazine | Story | How Drakeo the Ruler Made One of the Albums of the Year From Prison | 7/20/2020 | Discusses Mr. Caldwell's album; recaps his murder and other charges and says his case "has become a nexus of notorious prosecutorial tactics: the institutional racism of California's gang laws..." | https://www.gq.com/story/drakeo-the-ruler-thank-you-for-using-gt/ |
| The Guardian is a British news publication. | International Media | Hotnewhiphop.com | | Drakeo The Ruler Provides Update On His Jail Sentence | 9/2/2020 | Gives an overview of Mr. Caldwell's murder trial and acquittal and the related upcoming trial up charges. Mainly summaries other reports (Pitchfork and Mr. Caldwell's tweets from September 2020), no "new" reporting. | https://www.hotnewhiphop.com/drakeo-the-ruler-provides-update-on-his-jail-sentence-news.117132.html |
| | | The [U.K.] Guardian | U.S. News | The jailed LA rapper whose songs were used to prosecute him | 10/2/2019 | Talks how Mr. Caldwell's lyrics and music videos were used against him at trial and also mentions how California Penal Code section 182.5 has been used to | https://www.theguardian.com/us-news/2019/oct/01/drakeo-the-ruler-los-angeles-rapper-songs |

PROOF OF SERVICE

I, Susan Seager, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the University of California, Irvine, School of Law, Intellectual Property, Arts, and Technology Clinic, in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is UC Irvine Law Clinics, P.O. Box 5470, Irvine, California 92616-5479.

On, September 16, 2020, I caused to be served the below listed document(s) entitled:

BRIEF OF *AMICUS CURIAE* THE UCI INTELLECTUAL PROPERTY, ARTS, AND TECHNOLOGY CLINIC IN SUPPORT OF DEFENDANT'S NOTICE OF MOTION AND MOTION TO VACATE THE GAG ORDER; DECLARATION OF CHUNBAIXUE YANG WITH EXHIBITS AA-BB.

I caused the above document(s) to be served on each person on the attached list by the following means:

- ☐ I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on, September 16, 2020 following the ordinary business practice.
(Indicated on the attached address list by an [M] next to the address.)
- ☐ I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing via Federal Express on, September 16, 2020, for guaranteed delivery on, September 16, 2020, following the ordinary business practice.
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- ☐ I consigned a true and correct copy of said document for facsimile transmission on, September 16, 2020.
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I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business. I declare under penalty of perjury, under the law of the State of California, that the foregoing is true and correct.

Executed on, September 16, 2020, Irvine, California.

SUSAN E. SEAGER

Print Name

Susan E. Seager
Signature

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