



## The Consumer Law Group

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### **Free Expression Victory in Mongols Motorcycle Logo Dispute** District Court Grants Judgment Against Government Censorship by Confiscation

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In a sharply worded order, a U.S. District Court judge agreed that the federal government could not engage in “the very tactics it repudiates” by threatening to seize property from a motorcycle club member who had not been charged with any wrongdoing. In a suit brought by the ACLU of San Diego & Imperial Counties and the Consumer Law Group, Judge David O. Carter ruled that the threatened seizure exceeded the government’s legal authority under forfeiture and trademark law, and violated the First Amendment’s free speech and association protections.

The case stemmed from a RICO indictment against members of the Mongols Motorcycle Club, in which the government sought forfeiture of trademarks owned by the club. Club members and supporters display items bearing the marks to show their membership and association with the club and to express their beliefs and values.

“This is an important First Amendment victory,” said David Blair-Loy, legal director of the San Diego ACLU. “This decision recognizes that our government cannot abuse its power to force innocent citizens to censor themselves.”

The order is a complex analysis of forfeiture, trademark and First Amendment law. Judge Carter ruled that under the First Amendment, the government cannot seize expressive materials unless a court has previously determined that the materials are unprotected by the First Amendment. The government’s contention that the club’s logo might be used in connection with illegal conduct “would have effectuated an overbroad and unconstitutional restriction on unindicted individuals’ freedom of expression,” he wrote. “The government’s theory in this case is creative to a fault.”

The plaintiff in the lawsuit, Ramon Rivera, who was not charged in the indictment, said he wore patches and clothes bearing the club’s insignia to express his allegiance with Mongol members who are predominantly low-income Latino males seeking “recognition and equality.” The San Diego ACLU filed the complaint in 2009, arguing that the government’s actions violated the RICO statute, trademark law, the First Amendment, and the Due Process Clause.

On October 22, 2008, a number of current and former members of the Mongols Nation Motorcycle Club were indicted in federal court for RICO violations and other offenses. However, the government did not charge the club itself or the overwhelming majority of its members with any wrongdoing.

Because the trademarks were allegedly subject to forfeiture, the government contended it was entitled to seize any personal property bearing or displaying one or more of these marks, even from persons not charged

in the indictment. Agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) confiscated items that displayed the trademarks from uncharged members or supporters of the club and threatened others who were doing so, even if they were not charged with a crime. However, as Judge Carter found, the trademarks belong to the club, not any person indicted in the RICO case, and therefore the government had no right to forfeit them.

“The government’s aggressive actions had a substantial chilling effect on freedom of speech and association,” said Alan Mansfield, co-counsel in the case, with the firm Consumer Law Group. “Judge Carter rightly ruled that their seizures of these expressive materials represented an illegal prior restraint on speech.”

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