

No. 14-1848

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARK PARSONS; BRANDON BRADLEY; SCOTT GANDY; ROBERT
HELLIN; JOSEPH F. BRUCE; JOSEPH W. UTSLER,

Plaintiffs-Appellants,

v.

UNITED STATES DEPARTMENT OF JUSTICE; FEDERAL BUREAU OF
INVESTIGATION,

Defendants-Appellees.

On Appeal from the
United States District Court for the Eastern District of Michigan

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CORPORATE DISCLOSURE FORM

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 14-1848

Case Name: Mark Parsons et al. v U.S. Dep't of Justice et al.

Name of counsel: Saura J. Sahu

Mark Parsons, Brandon Bradley, Scott Gandy, Robert Hellin, Joseph Bruce and

Pursuant to 6th Cir. R. 26.1, Joseph Utsler

Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on November 12, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiffs request oral argument because this case involves important questions of Article III standing that go to the heart of federal courts' authority to adjudicate cases and controversies involving constitutional violations and government wrongdoing.

Plaintiffs bring this case to challenge the federal government's designation of Juggalos, or fans of the musical group Insane Clown Posse, as a criminal gang. As a predictable consequence of the government having discriminated against them and severely burdened their First Amendment rights of association and expression by branding them as criminals, Plaintiffs continue to suffer harassment by law enforcement, loss of liberty, and stigmatic harm to their reputations. The district court nonetheless dismissed Plaintiffs' complaint for lack of standing, reasoning that because the federal government does not *force* other government officials to mistreat Juggalos, any harm Plaintiffs have suffered was at the hands of third parties whose misdeeds cannot be blamed on Defendants.

The district court's ruling is based on a troubling misapplication of the standing doctrine. If the district court's decision is not reversed, thousands of Juggalos will continue to suffer irreparable harm with no recourse against the federal agencies responsible for wrongfully designating them as gang members. Oral argument in this important appeal will assist this Court in understanding why

the district court's application of the standing doctrine was wrong as a matter of law.

I. JURISDICTIONAL STATEMENT

This case falls within the courts' federal question jurisdiction. 28 U.S.C. § 1331. On January 8, 2014, Mark Parsons and five other plaintiffs filed a complaint in the United States District Court for the Eastern District of Michigan. (Compl., RE 1, Page ID # 1.) They asserted that Defendants United States Department of Justice and the Federal Bureau of Investigation violated their rights under the First and Fifth Amendments of the Constitution. The claims also involve disputes over the interpretation of 18 U.S.C. § 521 (relating to "criminal street gangs") and regulations codified at 28 C.F.R. §§ 23.1 and 23.20. Those federal questions have an appropriate vehicle for relief under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

On June 30, 2014, the district court entered a final order dismissing the case for lack of standing under Article III of the Constitution. (Opinion & Order Granting Defs.' Mot. to Dismiss, RE 29, Page ID # 309.) Plaintiffs filed their Notice of Appeal on July 8, 2014, within the time allotted by Federal Rules of Appellate Procedure 3 and 4(a). (Pls.' Notice of Appeal, RE 30, Page ID # 323.) This Court has jurisdiction under 28 U.S.C. § 1291.

II. STATEMENT OF THE ISSUES

Plaintiffs' complaint alleges that Defendants Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI") have improperly designated Juggalos,

or fans of the musical group Insane Clown Posse (“ICP”), as a criminal gang. Plaintiffs are law-abiding Juggalos and the members of ICP. They seek a declaratory judgment that the government’s designation of Juggalos as a gang is unconstitutional, and an order, pursuant to the Administrative Procedure Act, requiring the government to rescind its Juggalo gang designation and take other corrective measures.

Did the district court err in dismissing all six Plaintiffs’ numerous separate claims for lack of standing even though only one Plaintiff needs to have standing as to one claim in order for jurisdiction to exist, and all the Plaintiffs have properly alleged:

- (1) **injury-in-fact**, because the DOJ’s direct violations of their individualized constitutional rights are “injuries in fact” for standing purposes, and the gang designation further inflicts a stigmatic reputational injury, causes other governmental harassment and mistreatment of Plaintiffs, and has a chilling effect on their personal expression and association;
- (2) **causation**, because the Defendants are directly causing most of these injuries, and any additional injuries here – even if not *mandated* by Defendants – are “fairly traceable” to Defendants’ act of designating Juggalos as a gang; and
- (3) **redressability**, because a declaratory judgment and order requiring Defendants to rescind the Juggalo gang designation would remedy the burden and injury the DOJ is imposing on Plaintiffs’ constitutional freedoms, alleviate the federally inflicted reputational injuries, and deter the other continuing harms suffered as a result of the gang designation?

The answer to this question is yes. Therefore, the district court’s order

dismissing Plaintiffs' complaint for lack of standing must be reversed.

III. STATEMENT OF THE CASE

A. Juggalos

Mark Parsons and his fellow plaintiffs ("Plaintiffs") are "Juggalos"—that is, fans of the Insane Clown Posse ("ICP") and other bands on ICP's record label, Psychopathic Records. (Compl., RE 1, ¶¶ 3, 29, 45, 76, 89, 94, Page ID # 2, 7, 8, 11, 13, 14.) ICP is a hip-hop musical group that has been performing since the early 1990s, earning two platinum and five gold records. (*Id.* ¶¶ 21, 23, Page ID # 5-6.) The group's music deals with "social, political or religious themes." (*Id.* ¶ 22, Page ID # 6.) Although ICP's lyrics sometimes include harsh language and themes, the music is undeniably artistic. (*Id.* ¶¶ 21-22, Page ID # 5-6.)

Like other music fans, Juggalos associate together to engage in First Amendment-protected activity, namely "to listen to ICP's music, to share ideas surrounding the music, to express their support of or interest in the ideas that ICP expresses through its music, to express their affiliation with ICP and the artists on its record label, and to express their affiliation with one another." (*Id.* ¶¶ 25-26, Page ID # 6; *see also id.* ¶¶ 4, 28, Page ID # 2-3, 6-7.) As an expression of their identity that is also protected by the First Amendment, Juggalos often wear and display distinctive ICP symbols, art, and insignia on their clothing, personal belongings, and as tattoos. (*Id.* ¶ 24, Page ID # 6.) The federal government

estimates that there are over a million Juggalos in the United States. (*Id.* ¶ 5, Page ID # 3.)

The expressive activities and purposes described above are primary reasons why Juggalos associate with one another; Juggalos’ purposes as a group “do not include engaging in criminal activity.” (*Id.* ¶¶ 26-27, Page ID # 6.) Since there are so many Juggalos, it is inevitable that some of them commit crimes. But like other musical fan bases, the vast majority of Juggalos have nothing to do with criminal activity, let alone organized crime. (*See id.* ¶¶ 2, 5, Page ID # 2-3.) Plaintiffs are law-abiding citizens who do not knowingly affiliate with any criminal gang. (*Id.* ¶¶ 30, 46, 77, 90, 95, Page ID # 7, 8, 11, 13, 14.)

B. The DOJ’s Juggalo Gang Designation Rule

In 2006, Congress directed the Attorney General to “establish a National Gang Intelligence Center [(“NGIC”)] and gang information database to be housed at and administered by” the FBI¹ for the purpose of “collect[ing], analyz[ing] and disseminat[ing] gang activity information.” (*Id.* ¶ 100, Page ID # 14.) Congress directed the DOJ to make the information available to federal, state and local law enforcement agencies all over the country, and to “annually submit to Congress a report on gang activity.” (*Id.* ¶¶ 100-01, Page ID # 14-15.)

¹ Since the FBI is an agency within the DOJ, this Brief will use the term “DOJ” to refer to both Defendants.

Through the NGIC and the FBI, the DOJ has classified the Juggalos as a gang and has disseminated that designation to other law enforcement agencies. (*See id.* ¶¶ 118-19, 132-40, Page ID # 18, 20-21.) The DOJ publicly announced the Juggalo gang designation when it widely published the NGIC’s 2011 National Gang Threat Assessment. (*Id.* ¶¶ 119, 132, Page ID # 18, 20.) The 2011 Threat Assessment defines Juggalos as “traditionally fans of the musical group the Insane Clown Posse” and describes Juggalos as “a loosely-organized hybrid gang.” (*Id.* ¶¶ 132, 134, Page ID # 20.)

For law enforcement agencies and the general public, the significance of the Threat Assessment report was clear: “The FBI has classified fans of the Detroit-based hip-hop band Insane Clown Posse—who call themselves Juggalos and paint their faces like their heroes—as a violent, fast-growing ‘gang’ worth monitoring.” Dylan Stableford, *FBI classifies Juggalos as a ‘gang’*, Yahoo News (Nov. 2, 2011), available at <http://news.yahoo.com/blogs/lookout/fbi-classifies-juggalos-gang-201339557.html> (last viewed Sept. 17, 2014).² As a result of the DOJ’s

² *See also, e.g.*, Matthew Perpetua, *FBI Classifies Juggalos as Gang Threat*, RollingStone.com (Nov. 3, 2011), available at <http://www.rollingstone.com/music/news/fbi-classifies-juggalos-as-gang-threat-20111103> (last viewed Sept. 17, 2014); Sasha Goldstein, *FBI releases report on reputed gang ‘Juggalos,’ fans of hardcore rappers Insane Clown Posse*, New York Daily News, (March 10, 2013), available at <http://www.nydailynews.com/news/national/fbi-rap-group-fans-violent-street-gang-article-1.1284562> (last viewed Sept. 17, 2014).

Juggalo gang designation, law enforcement officials all over the country target music fans as criminal gang members.³ (Compl., RE 1, ¶ 6, Page ID # 3.)

In “collect[ing], analyz[ing] and disseminat[ing] gang activity information” to law enforcement agencies throughout the country (*id.* ¶ 100, Page ID # 14-15), Defendants have used and caused other law enforcement agencies to use a person’s Juggalo tattoos, clothing, insignia and ICP merchandise to infer that he or she is a Juggalo—by which they mean a “gang” member. (*Id.* ¶¶ 141-43, Page ID # 21.) The DOJ’s influence over other law enforcement agencies is by design. As noted, the NGIC’s Congressional mandate includes “disseminat[ing] gang activity information” to state and local law enforcement, prosecutors and correctional officers, and the FBI, Bureau of Prisons, DEA, and other federal agencies, as well as “annually submit[ting] to Congress a report on gang activity.” (*Id.* ¶¶ 100-01,

³ On March 21, 2014, after this lawsuit was filed, the DOJ published its 2013 Gang Threat Assessment. (*See* Butler Decl., RE 20-1, ¶ 7, Page ID # [Illegible ?180].) The 2013 Assessment does not mention the Juggalos, but it also does not retract their earlier classification as a gang or their inclusion in a state-by-state table of suspected gangs attached to the 2011 Assessment. Nor does it offer any reason to suspect that the DOJ no longer classifies Juggalos as a gang or has rendered unavailable the materials on NGIC Online classifying Juggalos as a gang. The Threat Assessments do not purport to be comprehensive listings of all gangs, but rather reports highlighting “hot topics” or “emerging trends” related to gangs. (*See id.*, ¶ 8, Page ID # [Illegible ?180].) According to the DOJ, the omission merely reflects whether the Juggalos are a current “hot topic” in gang trends. (*See id.* ¶ 21, Page ID # [Illegible ?183].) In this regard, it is important to note that the 2011 Threat Assessment is not *the* gang designation; it merely reflects that designation.

Page ID # 14-15.)

By 2008, the Attorney General reported that the NGIC had established “partnerships” with other federal, state and local agencies possessing gang-related information, that the NGIC served as a “centralized intelligence resource for gang information and analytical support,” and that the NGIC’s work “enables gang investigators and analysts . . . to further identify gangs and gang members . . . *and to guide the appropriate officials in coordinating their investigations and prosecutions.*” (*Id.* ¶ 103, Page ID # 15 (emphasis added).) The number of law enforcement inquiries to NGIC Online, the DOJ’s Internet-based system for disseminating gang information to other law enforcement agencies, exceeds 200,000 per year. (*Id.* ¶¶ 109, 112-14, Page ID # 16-17.⁴) Through its gang-related administrative materials, the DOJ plays its intended role of having a causal impact on state and local officials’ decisions and conduct. (*See id.* ¶¶ 125, 164, Page ID # 19, 25.)

C. Plaintiffs’ Injuries

By targeting and designating Juggalos as a criminal gang, the DOJ’s classification directly burdens and chills the Plaintiffs’ freedom to associate within

⁴ Defendants have confirmed that NGIC Online contains a “gang encyclopedia” of signs, symbols and tattoos “to assist gang investigations at state, local, and federal levels.” (Butler Decl., RE 20-1, ¶ 18, Page ID # [Illegible ?182-83].)

an artistic group, i.e., to associate as Juggalos. (*Id.* ¶¶ 163-66, Page ID # 25-26.) The designation also burdens Juggalos' freedom to express their identities as Juggalo music fans through distinctive tattoos, art, clothing, jewelry, bumper stickers, merchandise, and other personal belongings, which bear recognizable ICP and Psychopathic Records symbols such as the "hatchetman" logo. (*Id.* ¶¶ 4, 24, 176-80, Page ID # 2, 6, 27-28.) In branding Juggalos as criminals, the designation also stigmatizes them and damages Plaintiffs' reputations. (*Id.* ¶¶ 149, 156, Page ID # 23-24.) Plaintiffs' complaint spells out in detail examples of the numerous harms they and other Juggalos suffer as a result of the DOJ's Juggalo gang designation.

Plaintiff Mark Parsons. Parsons is a Juggalo residing in Las Vegas, Nevada. (*Id.* ¶¶ 11, 29, Page ID # 4, 7.) He is a truck driver, and when the Complaint was filed, he owned "a small trucking business entitled 'Juggalo Express LLC'" (*Id.* ¶¶ 31-32, Page ID # 7.) On his truck, he had "a large, visible ICP 'hatchetman' logo[, which] express[ed] his affinity for ICP's music, his identity as a Juggalo, and his affiliation with the Juggalo community." (*Id.* ¶ 33, Page ID # 7.) In July 2013, he was on a delivery heading down "an interstate freeway outside Knoxville, Tennessee . . . when [the truck] entered a weigh station operated by the Tennessee Department of Transportation." (*Id.* ¶ 34, Page ID # 7.) There, the state police ordered him "to stop the truck and park for a safety inspection." (*Id.* ¶ 35, Page ID

7.) The trooper “asked if [Parsons] was a Juggalo,” “detained Parsons for an inspection *because of* the hatchetman logo on the truck,” and said that “he considered Juggalos to be a criminal gang *because of the DOJ’s designation.*” (*Id.* ¶¶ 37-39, Page ID # 7-8 (emphasis added).) The trooper asked if Parsons “had any axes, hatchets, or other similar chopping instruments in the truck,” which he did not. (*Id.* ¶ 40, Page ID # 8.) There was no legitimate reason for the stop and search, and the only real cause of it was the DOJ’s designation. (*Id.* ¶¶ 42-44, Page ID # 8.) After delaying Parsons’s tightly scheduled hauling work for about an hour, the trooper found nothing. (*Id.* ¶ 41, Page ID # 8.)

Plaintiff Brandon Bradley. Bradley is a Juggalo residing in Citrus Heights, California. (*Id.* ¶ 12, 45, Page ID # 4, 8.) Because of the DOJ’s designation, police have stopped him three times. In September 2012, a “Police Officer in a patrol car flashed the car’s lights and stopped Bradley when Bradley was biking home.” (*Id.* ¶ 47, Page ID # 9.) At the time, “Bradley had visible Juggalo tattoos and was wearing a Twiztid Batman shirt, which is Juggalo merchandise.” (*Id.* ¶ 48, Page ID # 9.) He displayed the tattoos and wore the shirt “to express his affinity for the music of Psychopathic Records artists, his affiliation with the Juggalos as music fans, and his pride in being a member of the Juggalo community.” (*Id.* ¶¶ 49-50, Page ID # 9.) The officer considered the Juggalos to be a gang because of the DOJ’s designation, and “the actual and primary reason that the officer stopped

Bradley was because the officer saw Bradley's Juggalo tattoos and merchandise.” (*Id.* ¶¶ 51, 54, 74, Page ID # 9, 11.) The officer detained “Bradley for about fifteen minutes while interrogating [him] about being a Juggalo and about his Juggalo tattoos,” while taking notes. (*Id.* ¶¶ 52-53, Page ID # 9.)

Around October 2012, Bradley was crossing “a street in downtown Sacramento,” while “wearing a shirt bearing an ICP-related insignia, and some of his ICP-related tattoos were visible.” (*Id.* ¶¶ 55-56, Page ID # 9.) A “uniformed deputy from the Sacramento Sheriff’s Department approached” him and “asked if [he] was a Juggalo,” demanding to see Bradley’s identification. (*Id.* ¶¶ 57-59, Page ID # 10.) The deputy held Bradley’s “ICP-themed wallet . . . throughout the encounter” and “ran a background check on Bradley.” (*Id.* ¶¶ 60, 62, Page ID # 10.) The sheriff interrogated Bradley “for a substantial amount of time, [while] accus[ing] Bradley of being in a gang because he was a Juggalo. The deputy stated that to be a Juggalo is to be a gang member. The deputy also asked Bradley about his ICP-related tattoos.” (*Id.* ¶ 63, Page ID # 10.) The sheriff viewed the Juggalos as a gang and stopped Bradley because of the DOJ’s gang designation. (*Id.* ¶ 74, Page ID # 11.)

Again in January 2013, Bradley was stopped and interrogated – this time, late in the day by gang-squad officers. He “was walking alone in the bike lane on a stretch of road that did not have a sidewalk,” wearing “an ICP jacket with a large

red ‘hatchetman’ . . . on the back.” (*Id.* ¶¶ 64-65, Page ID # 10.) Two gang-squad officers passed him in an unmarked police cruiser, made a U-Turn, stopped him with their lights, and approached him in bullet-proof vests. (*Id.* ¶¶ 66-68, Page ID # 10.) They “immediately told Bradley that they noticed his jacket with the ‘hatchetman’ insignia” and ordered him “to stand in front of a guardrail with his back to them so that they could take pictures of his jacket,” as well as “his face and his tattoos.” (*Id.* ¶¶ 68-70, Page ID # 10-11.) They held him for a long time, “interrogat[ing him] about his status as a Juggalo and about whether he was a gang member. The[y also] took notes about the encounter and about Bradley’s responses. Although Bradley denied being in any gang, the officers translated his answers into gang-related terms” in their notes. (*Id.* ¶ 71, Page ID # 11.) “[T]he officers entered this information into a gang information database that is part of or feeds information into the gang information database that the NGIC administers.” (*Id.* ¶ 72, Page ID # 11.) These officers “relied upon the DOJ’s classification of the Juggalos as a gang when deciding whether to stop, question or otherwise detain or investigate Bradley.” (*Id.* ¶ 74, Page ID # 11.)

The DOJ’s designation and these incidents are having a chilling effect on Bradley’s speech. Due to them, “Bradley has decided on numerous occasions not to wear Juggalo-related clothing or other merchandise, not to publicly express his affinity for ICP music, and not to express his membership in the Juggalo

community. He has taken these steps in order to avoid similar negative contacts with law enforcement in the future.” (*Id.* ¶ 75, Page ID # 11.)

Plaintiff Scott Gandy. Gandy is a Juggalo residing in Concord, North Carolina. (*Id.* ¶¶ 13, 76, Page ID # 4, 11.) In 2012, he visited some familiar Army recruiters at their station. (*Id.* ¶ 78, Page ID # 12.) He wanted to enlist, but he “had large ICP-related tattoos on his chest, which he obtained to express his affinity for ICP’s music, his status as a Juggalo and his appreciation of other Psychopathic Records artists’ music.” (*Id.* ¶ 79, Page ID # 12.) “The Sergeant told Gandy that the Juggalos were on the federal government’s gang list [and] said that he considered Gandy’s Juggalo tattoos to be gang-related . . . based on the DOJ’s Juggalo gang designation.” (*Id.* ¶ 81, Page ID # 12.) “The Sergeant questioned Gandy about whether he was a gang member,” and “instructed Gandy that he must remove or permanently cover his Juggalo tattoos or the Army would immediately deny his recruitment application” without any further consideration. (*Id.* ¶¶ 82-83, Page ID # 12.) The Army bases its view that Juggalos are a gang “on the DOJ’s Juggalo gang designation.” (*Id.* ¶ 85, Page ID # 12.) As a result, “Gandy spent hundreds of dollars to undergo [an otherwise unnecessary and unwanted] painful procedure in which his Juggalo tattoos were covered with other tattoos.” (*Id.* ¶ 86, Page ID # 13.) Afterward, the Sergeant approved the new tattoos and took Gandy’s application for further review. (*Id.* ¶ 88, Page ID # 13.)

Plaintiff Robert Hellin. Hellin is a Juggalo who enlisted in the Army before the DOJ published its gang designation, and he has served honorably in a number of places overseas, including Iraq, Afghanistan and Korea. (*Id.* ¶¶ 14, 89-91, Page ID # 5, 13.) “Hellin has visible ICP-related tattoos, which he obtained and displays in order to express his identity as a Juggalo.” (*Id.* ¶ 92, Page ID # 13.) “[B]ecause of the [DOJ’s] Juggalo gang designation, Hellin’s identity as a Juggalo places him in imminent danger of suffering discipline or an involuntary discharge from the Army.” (*Id.* ¶ 93, Page ID # 13.)

Plaintiffs Joseph Bruce and Joseph Utsler. Utsler and Bruce are ICP’s two members and they identify as Juggalos. (*Id.* ¶¶ 15-16, 94, Page ID # 5, 14.) In August 2012, “ICP entered into a contract with AEG Live to perform at the Royal Oak Music Theater in Royal Oak, Michigan on October 31, 2012 for ICP’s annual musical and artistic event known as ‘Hallowicked,’ with a possible second performance on October 30, 2012 if tickets to the October 31 performance sold out.” (*Id.* ¶ 96, Page ID # 14.) Roughly three weeks before the show, the Theater cancelled the event, giving a pretextual reason at first but then admitting that it did so at the behest of the Royal Oak Police Department. (*Id.* ¶¶ 97-98, Page ID # 14.) “When asking the Royal Oak Music Theater to cancel the Hallowicked event, *the Royal Oak Police Department cited the federal Juggalo gang designation.*” (*Id.* ¶ 99, Page ID # 14 (emphasis added).)

D. Procedural History

On January 8, 2014, Plaintiffs Parsons, Bradley, Gandy, Hellin, Bruce and Utsler filed this lawsuit seeking declaratory and injunctive relief under the Administrative Procedure Act and the Declaratory Judgment Act for constitutional and statutory violations arising from the DOJ's Juggalo gang designation. Although the DOJ's designation of the Juggalos as a gang became public through the 2011 Assessment, the Complaint challenged the underlying decision to classify the group as a gang, not merely the decision to publish the report. Plaintiffs clarified that the vast majority of Juggalos are not criminals, but rather ordinary, law-abiding citizens who (a) associate with one another to enjoy ICP music, to support its musicians, and to discuss and share Juggalo-related ideas and values, and (b) express their Juggalo identity by wearing and displaying Juggalo tattoos, symbols, insignia and merchandise. Parsons and his fellow plaintiffs further alleged that their ability to continue associating with one another and to express their Juggalo identity is harmed and chilled by the federal classification of Juggalos as a gang and that their reputations and good names were damaged. They described in detail the various injuries they personally have suffered.

On April 9, 2014, Defendants filed a motion to dismiss the complaint, challenging the district court's jurisdiction on standing grounds and additionally arguing that Plaintiffs failed to state a claim. (Defs.' Mot. to Dismiss, RE 20, Page

ID # 137.) In response, Plaintiffs filed a brief discussing why the Defendants were wrong on both counts. (Pls.’ Resp. to Defs.’ Mot. to Dismiss, RE 25, Page ID # 234.) On June 30, 2014, the district court issued an opinion and order granting Defendants’ motion to dismiss, concluding that Plaintiffs lack standing to bring their lawsuit. (Opinion & Order Granting Defs.’ Mot. to Dismiss, RE 29, Page ID # 309.) This appeal followed. (Pls.’ Notice of Appeal, RE 30, Page ID # 323.)

E. The District Court’s Opinion

The district court’s opinion began by reciting the familiar three-part test for standing: injury-in-fact, causation, and redressability. (Opinion & Order, RE 29, at Page ID # 316.) In applying this test, however, the only “injuries” recognized by the district court were those inflicted on Plaintiffs by “third parties” such as police officers, Army recruiters and event organizers. (*Id.* at Page ID # 317-19.) These palpable harms help to support injunctive and declaratory relief, but they are not the sole injuries for purposes of standing. Instead, they magnify Plaintiffs’ constitutional and other injuries. The district court never addressed Plaintiffs’ allegations that the DOJ’s Juggalo gang designation itself directly and facially infringes Plaintiffs’ First Amendment rights, brands them as criminals, stigmatizes them and injures their reputations, and has an actual personal chilling effect on their exercise of First Amendment freedoms. (*See* Pls.’ Resp. to Defs.’ Mot. to Dismiss, RE 25, at Page ID # 250-52, 259.)

Then, addressing the causation requirement, the district court ruled that Plaintiffs lack standing because the DOJ never “directed” the third parties to mistreat them. (Opinion & Order, RE 29, at Page ID # 318-19.) By failing to acknowledge that the Juggalo gang designation itself injures Plaintiffs, the district court did not recognize that such injuries are caused by Defendants. Instead, it concluded that because the third parties’ acts were “independent,” “voluntary,” and an “exercise of discretion,” there is no causal link between the DOJ’s Juggalo gang designation and Plaintiffs’ injuries. (*Id.* at Page ID # 319-20.) The district court did not cite any authority for the proposition that an injury is not fairly traceable to a defendant’s actions unless the defendant actually directs or compels the injury to occur.

Using similar logic, the district court also found that Plaintiffs’ injuries are not redressable by the relief they seek. Because a retraction of the Juggalo gang designation “would not compel or enjoin any action by the various independent actors who allegedly caused Plaintiffs’ injuries,” the district court concluded that it is “merely speculative” that a ruling in Plaintiffs’ favor would redress them. (*Id.* at Page ID # 320.) Again, the district court cited no authority for reasoning that redress cannot occur unless a court order “compels” or “enjoins” action by everyone who has participated in injuring a plaintiff. Nor did the district court address the likelihood that a retraction would alleviate the direct burden that the

Juggalo gang designation places on Plaintiffs' exercise of their First Amendment rights to association and expression, or that it would immediately ameliorate the harm to their reputations caused by being branded as criminals.⁵

IV. SUMMARY OF THE ARGUMENT

Plaintiffs' complaint satisfies the three-part test for Article III standing: injury-in-fact, causation, and redressability. In addition to being injured by "third parties" such as local law enforcement agencies, Plaintiffs are injured by the DOJ's Juggalo gang designation itself because it burdens their First Amendment rights to freedom of association and freedom of expression, discriminatorily stigmatizes them as criminals while damaging their reputations, and chills their own personal speech. The DOJ directly causes these injuries, and an injunction would stop them. As to other third-parties' actions, even though the DOJ does not *require* third

⁵ In the process, and without basis, the district court also deemed an additional argument waived. The DOJ's initial brief largely left untouched Plaintiff's Count 6 – a constitutional claim seeking relief under the Declaratory Judgment Act. The DOJ's dismissal motion had only mentioned the claim in a passing footnote, stating that the statute does not provide an independent basis for jurisdiction. (RE 20 at 5 n.1, Page ID # 313.) But Plaintiffs never claimed that it did. The statute provides a form of relief. Federal question jurisdiction comes from the underlying constitutional issues that Count 6 presents. Thus, the plaintiffs called attention to that point in their Response brief and during oral argument. (Pls.' Resp. Br., RE 25 at Page ID #248-49 and n.9; Tr. of Mot. Hr'g, RE 32 at Page ID #343:05-344:09.) The court acknowledged that plaintiffs provided authority for it during oral argument. (Opinion & Order, RE 29, Page ID #321 n.4.) Inexplicably, the issue was deemed forfeited. (*Id.*) Plaintiffs did not forfeit that argument, and the claim must survive.

parties to mistreat Juggalos, Plaintiffs have standing because those injuries are “fairly traceable” to the DOJ’s Juggalo gang designation. A declaratory judgment or injunction is likely to redress Plaintiffs’ injuries by removing the direct federal burden on Plaintiffs’ constitutionally protected association and expression, diminishing both the objective chilling effect and the harm it is doing to Plaintiffs’ reputations, and deterring future harms similar to those suffered by Juggalos as a result of the gang designation. Accordingly, Plaintiffs have standing, and the district court’s order dismissing their complaint must be reversed.

V. ARGUMENT

According to the district court, Plaintiffs lack standing to challenge the DOJ’s classification of Juggalos as a gang even though this designation substantially burdens the exercise of their First Amendment rights, damages their reputations by branding them as criminal gang members, and causes other law enforcement agencies to harass and detain them. The district court construed the Complaint narrowly as if it alleged only a series of harmful third-party actions that bore no relation to the DOJ’s having designated Juggalos as a gang. That improperly restrictive approach missed the point of the Plaintiffs’ claims and misapplied the standing doctrine.

A. STANDARD OF REVIEW

This Court reviews a dismissal “for lack of standing as it reviews other

dismissals pursuant to Federal Rule of Civil Procedure 12(b): *de novo*.” *Am. Canoe Ass’n, Inc. v. City of Louisa Water & Sewer Comm’n*, 389 F.3d 536, 540 (6th Cir. 2004). “For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.” *Warth v. Seldin*, 422 U.S. 490, 501 (1975).⁶

B. PLAINTIFFS HAVE STANDING TO CHALLENGE DEFENDANTS’ CLASSIFICATION OF JUGGALOS AS A GANG.

The Supreme Court recently summarized the standing doctrine as follows:

Article III of the Constitution limits the jurisdiction of federal courts to “Cases” and “Controversies.” U.S. Const., Art. III, § 2. The doctrine of standing gives meaning to these constitutional limits by identifying those disputes which are appropriately resolved through the judicial process. The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.

⁶ Although motions challenging jurisdiction can sometimes refer to evidence outside the pleadings, Defendants’ early dismissal motion must be resolved in reference to the Complaint allegations. Defendants offered a declaration in support of their dismissal motion, which should not be considered because it does not address jurisdictional facts. (*See* Butler Decl., RE 20-1, Page ID # [Illegible ?178].) Even if the Court were to consider it, however, it often affirms *verbatim* the Complaint’s factual allegations on the merits.

To establish Article III standing, a plaintiff must show

- (1) an injury in fact,
- (2) a sufficient causal connection between the injury and the conduct complained of, and
- (3) a likelihood that the injury will be redressed by a favorable decision.

Susan B. Anthony List v. Driehaus, __ U.S. __, 134 S. Ct. 2334, 2341 (2014)

(quotation marks, citations and brackets omitted; paragraph breaks added).

Accordingly, Plaintiffs have standing if their complaint alleges an injury-in-fact, causation, and redressability.⁷ “[T]he critical question is whether at least one petitioner has ‘alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction.’” *Horne v. Flores*, 557 U.S. 433, 446-47 (2009). The district court recognized these requirements, but misapplied them in this case. Plaintiffs’ allegations articulate several different

⁷ As part of the constitutional Case or Controversy Requirement, the standing inquiry asks whether the matter is the kind of dispute that courts decide. *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 757-59 (1982). This Controversy easily fits the bill. Where, as here, courts have traditionally handled a type of dispute through litigation, that “history is well nigh conclusive with respect to . . . whether [such disputes] were ‘cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.’” *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 774 (2000). Courts, of course, have a long history of handling claims for injunctive and declaratory relief to remedy violations of an individual’s constitutional rights. See John E. Lockwood, Carlyle E. Maw & Samuel L. Rosenberry, *The Use of the Federal Injunction in Constitutional Litigation*, 43 Harv. L. Rev. 426, 426 (1930) (discussing “the [then-]common practice of raising constitutional issues by bills for injunctions in the federal courts”).

kinds of injuries, each of which are caused by the DOJ's designation of Juggalos as a gang, and each of which would be redressed by the relief that Plaintiffs seek.

1. Injuries-in-Fact

An injury-in-fact exists whenever a plaintiff has suffered the kind of infringement of personal interests that generates a live controversy. These injuries need not amount to physical injuries or economic harm. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 183 (2000); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 262-63 (1977); *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153-54 (1970). Instead, an injury-in-fact is simply a concrete, real “invasion of a legally protected interest.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).⁸ The nature of the injury-in-fact “depends on the nature and source of the claim asserted,” *E.M. v. New York City Dep't of Educ.*, 758 F.3d 442, 450 (2d Cir. 2014), and standing exists whenever “the constitutional or statutory provision on which the claim rests can properly be understood as granting persons in the plaintiff's position a right to judicial relief.” *Warth*, 422 U.S. at 500. Here, the injuries alleged by Plaintiffs easily satisfy the injury-in-fact requirement.

⁸ “A legally protected interest may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing even though no injury would exist without the statute.” *Donoghue v. Bulldog Investors Gen'l P'ship*, 696 F.3d 170, 175 (2d Cir. 2012).

a. Constitutional Injuries to First Amendment Freedoms

By focusing only on how Plaintiffs were harmed by third parties, the district court failed to recognize that Defendants themselves are harming Plaintiffs. By targeting the Juggalos and designating them as a gang, the DOJ unduly burdens Plaintiffs' present ability to exercise their First Amendment rights. This direct burden is an injury-in-fact for standing purposes.

The DOJ's Juggalo gang designation implicates Plaintiffs' First Amendment rights in two ways. First, Plaintiffs engage in expressive activity protected by the First Amendment when they perform and listen to ICP music, and when they express their Juggalo identity by wearing or displaying culturally distinctive ICP icons, insignia and tattoos. (Compl., RE 1, ¶¶ 3, 4, 21-25, 28, Page ID # 2, 5-6.) *See Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989) ("Music, as a form of expression and communication, is protected under the First Amendment."); *James v. Meow Media, Inc.*, 300 F.3d 683, 695 (6th Cir. 2002) ("Expression, to be constitutionally protected, need not constitute the reasoned discussion of public affairs, but may also be for purposes of entertainment."); *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1060-61 (9th Cir. 2010) (recognizing tattoos as protected by the First Amendment). The DOJ's gang designation, insofar as it identifies Plaintiffs as gang members because they are Juggalos, burdens their First Amendment right to freedom of expression.

Second, Plaintiffs associate with other Juggalos when they attend ICP concerts and Juggalo gatherings, and when they congregate for purposes of discussing ICP music and Juggalo culture. (Compl., RE 1, ¶¶ 4, 25, 28, Page ID # 2, 6.) “[I]mplicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647 (2000) (internal quotation marks omitted). The DOJ’s gang designation, by branding Plaintiffs as gang members because they are Juggalos, substantially burdens their First Amendment right to associate with other Juggalos.

These kinds of direct burdens generally give members of the targeted groups standing.⁹ Even when a rule burdening expression has not been enforced, an injury-in-fact exists to support a facial challenge if the rule “is aimed directly at plaintiffs, who, if their interpretation . . . is correct, will have to take significant and costly compliance measures,” *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383, 392 (1988), or otherwise risk criminal prosecution, civil penalties or similar

⁹ Indeed, not long ago, the United States asked the Supreme Court to adopt the position that *only* people like these Plaintiffs have standing in First Amendment cases. In *Virginia v. Hicks*, 539 U.S. 113, 120 (2003), the federal government asked the Court to limit jurisdiction for overbreadth challenges to people like the Plaintiffs here, “whose own conduct involved some sort of expressive activity.” The Supreme Court has not yet been so restrictive in its analysis.

disadvantages. *Id.*; *Ariz. Rt. to Life PAC v. Bayless*, 320 F.3d 1002, 1007 (9th Cir. 2003); *ACLU v. Johnson*, 194 F.3d 1149, 1154-55 (10th Cir. 1999). Here, for example, Plaintiffs must get rid of their tattoos, give up their music and put away their merchandise if they wish to avoid being considered criminal gang members.¹⁰

In such direct-targeting cases, “the injury-in-fact requirement is automatically met.” *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 819 (M.D. Tenn. 2013). Plaintiffs do not need to violate the law or await prosecution. As long as there is a credible threat “that the law will be enforced against them,” standing exists, *Am. Booksellers Ass’n*, 484 U.S. at 393, and courts “assume a

¹⁰ As alleged in Plaintiffs’ complaint:

In order to avoid being subject to police scrutiny as a gang member, individual law-abiding Juggalos must:

- a. forsake their status as Juggalos . . . ;
- b. refrain from identifying themselves as Juggalos;
- c. refrain from affiliating or associating with other Juggalos;
- d. refrain from affiliating or associating with ICP and other Psychopathic Records artists;
- e. refrain from attending concerts and events of Psychopathic Records artists;
- f. refrain from obtaining or displaying Juggalo tattoos;
- g. remove Juggalo tattoos that they already have; and/or
- h. refrain from buying, possessing, wearing, donning or displaying the clothing, symbols or other merchandise of ICP or other Psychopathic Records artists.

(Compl., RE 1, ¶ 144, Page ID # 21-22.)

credible threat of [law enforcement] in the absence of compelling contrary evidence,” *New Hampshire Rt. to Life PAC v. Gardner*, 99 F.3d 8, 15 (1st Cir. 1996). Insofar as the government “not only refuse[s] to disavow” its rule, but also engages in further “defense of it,” that also “indicates that they will some day enforce it.” *Id.* at 17.¹¹

Similarly, as to associational rights, standing exists when government targets a protected association like the Juggalos. Parties “unquestionably plead[] a constitutional injury” when they allege facts supporting that the government is violating their First Amendment freedom of association. *Miller v. Brown*, 462 F.3d 312, 316 (4th Cir. 2006). Where plaintiffs allege a violation of “their own personal constitutional rights” of freedom of association, “they have standing” *Trujillo v. Board of Cty. Comm’rs of Santa Fe Cty.*, 768 F.2d 1186, 1187 (8th Cir. 1985) (construing parallel liberty interest). By targeting Juggalos directly with the gang label, the DOJ facially impairs their ability to exercise their associational rights.¹²

¹¹ For the same basic reasons as apply under the First Amendment, people who challenge unduly vague laws have standing if the rule or law applies to them. *See Cramp v. Board of Pub. Instruction of Orange Cty., Fla.*, 368 U.S. 278, 284-85 (1961). Here, the rule personally impacts and covers the Juggalos. They have standing to challenge a vague rule that “Juggalos” are “hybrid gang” members.

¹² *National Right to Life PAC v. Connor*, 323 F.3d 684 (8th Cir. 2003), provides a good example. Campaign spending is speech, and PACs are expressive and political associations. A D.C. non-profit organization challenged two Missouri election provisions that burdened its out-of-state PAC. One said that an out-of-state committee must have an in-state treasurer and deposit account if it spent more than

Continued on next page.

Standing is especially clear when these direct burdens reasonably lead individual plaintiffs to chill their own speech, even without a direct enforcement action. For example, in *Meese v. Keene*, 481 U.S. 465 (1987), the government had designated certain films as “political propaganda.” Although the plaintiff was not actually prohibited from showing the films, the Supreme Court held that the designation itself created a cognizable injury-in-fact. *Id.* at 473. As a result of the “political propaganda” label, the plaintiff was inhibited and deterred from showing the films, because showing films that carried such a stigma would harm his reputation and would deter potential viewers from coming to see them. *Id.* at 473-776. Therefore, the chilling effect of the “political propaganda” label was an injury-in-fact for standing purposes.

Continued from previous page.

\$1500 per year. The other defined a term – “continuing committees” – and these committees were subject to additional restrictions. The NRLPAC alleged that the laws burdened its freedoms of association and expression.

Although the PAC’s claims failed on the merits, the court held that the PAC had standing. For the rule defining “continuing committees,” the court concluded that the PAC had standing simply because the facially burdensome law covered it: “[t]here is no dispute over NRLPAC’s standing to challenge section 130.011(10); NRLPAC clearly falls within the statute’s definition of a ‘continuing committee.’” *Id.* at 690. As to the law requiring an in-state account and treasurer, the court held: “Section 130.021.10 clearly applies to NRLPAC and, while there has been no threat of enforcement, there is no ambiguity as to whether the statute would burden NRLPAC’s constitutional right of association. Thus, standing is established and the ripeness hurdle overcome.” *Id.* at 694-95. Even without direct past enforcement, standing exists to challenge a law that categorically covers a protected association.

The same reasoning applies here. Plaintiffs are each Juggalos whose freedoms of association and expression are burdened and chilled by Defendants' indiscriminate and overbroad designation of all Juggalos as gang members. (*See* Compl., RE 1, ¶¶ 75, 86, 144, 149, 163, 166, 180, Page ID # 11, 13, 21-23, 25, 26, 28.) For example, as a result of the DOJ's gang designation, Plaintiff Brandon Bradley "has decided on numerous occasions not to wear Juggalo-related clothing or other merchandise, not to publicly express his affinity for ICP music, and not to express his membership in the Juggalo community." (*Id.* ¶ 75, Page ID # 11.) Given their experiences and the stigma of being branded as a criminal, it is not surprising that Mr. Bradley and other Juggalos are reluctant to exercise their First Amendment rights to the extent they once did before. The DOJ's Juggalo gang designation implies "guilt by association alone, without any need to establish that an individual's association poses the threat feared *The inhibiting effect on the exercise of First Amendment rights is clear.*" *United States v. Robel*, 389 U.S. 258, 265 (1967) (emphasis added).

b. Reputational Harms

The district court also failed to recognize that Plaintiffs' injuries-in-fact include reputational injuries. In *Meese v. Keene*, 481 U.S. at 473-74, where the government had designated films as "political propaganda," the Supreme Court recognized that this label threatened a cognizable injury-in-fact for standing

purposes because the plaintiff's "exhibition of films that have been classified as 'political propaganda' by the Department of Justice . . . would adversely affect his reputation in the community." Similarly, in *Foretich v. United States*, 351 F.3d 1198, 1211-14 (D.C. Cir. 2003), where Congress passed a law embodying a congressional determination that the plaintiff had sexually molested his daughter, the Article III injury-in-fact requirement was satisfied because the plaintiff "suffered harm to his reputation as a result of this Act and its attendant publicity," which "effectively brand[ed] him as a child abuser and an unfit parent." The court concluded: "Case law is clear that where reputational injury derives directly from an unexpired and unretracted government action, that injury satisfies the requirements of Article III to challenge that action." *Id.* at 1213 (citing *Meese v. Keene*, 481 U.S. at 472-77).¹³

Here, the DOJ's classification treats being a Juggalo, as well as wearing or donning Juggalo symbols, as a gang marker. In the DOJ's view, and in common parlance, to be a member of a gang is to be a criminal. (*See* Butler Decl., RE 20-1, ¶ 2 n.1, Page ID # [Illegible ?178].) To impute criminal behavior to someone,

¹³ Although a reputational harm does not *by itself* violate a liberty interest under the Due Process Clause, *see Paul v. Davis*, 424 U.S. 693 (1976), it is an injury-in-fact sufficient to give a plaintiff Article III standing. *See Sims v. Young*, 556 F.2d 732, 734 (5th Cir. 1977); *Shearson v. Holder*, 865 F. Supp. 2d 850, 860 (N.D. Ohio 2011).

moreover, is defamatory per se. *See, e.g., Gen. Cable Corp. v. Highlander*, 447 F. Supp. 2d 879, 885 (S.D. Ohio 2006). The reputational injury created by the DOJ's gang designation is clear. The government cannot brand a group of people as criminals and claim that they have suffered no injury-in-fact.

c. Injuries Inflicted by Third Parties

To compound and magnify these constitutional injuries-in-fact, Plaintiffs also suffered palpable harms as a result of the DOJ's gang designation. The district court correctly recognized that Plaintiffs suffer many injuries at the hands of law enforcement agencies and other third parties who harass, detain, and otherwise mistreat Plaintiffs for being Juggalos. Among the tangible injuries that give Plaintiffs a clear personal stake in the lawsuit are the following:

- Truck-driver Parsons was interrupted on a haul, stopped, detained and searched by a law enforcement officer because he had an ICP hatchetman logo on his truck. (Compl., RE 1, ¶¶ 29-44, Page ID # 7-8.)
- Law enforcement officers have stopped and interrogated Bradley numerous times due to his Juggalo merchandise and tattoos. (*See id.* ¶¶ 47-74, Page ID # 9-11.)
- An Army Recruiting Sergeant compelled Gandy to have his Juggalo tattoos removed or permanently covered. (*Id.* ¶¶ 80-83, Page ID # 12.)
- For the same reasons, Hellin is in imminent danger of discipline or involuntary discharge from the Army. (*Id.* ¶¶ 89-93, Page ID # 13.)

- Bruce and Utsler saw the cancellation of one of their big annual music concerts at the behest of police officers because it was a Juggalo event. (*Id.* ¶¶ 94-99, Page ID # 14.)

The district court erred when it treated these harms as if they were the only ones alleged by Plaintiffs and as if the DOJ had nothing to do with them. But the preliminary point for the “injury-in-fact” inquiry is that Plaintiffs suffered tangible harms that give them the clear, personal stake in this Case or Controversy.¹⁴

2. Causation

The second requirement for standing, causation, requires only that a plaintiff’s injury be “fairly traceable” to a defendant’s conduct. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998). “Proximate causation is not a requirement of Article III standing,” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, ___ U.S. ___, 134 S. Ct. 1377, 1391 n.6 (2014) (emphasis added), as

¹⁴ Administrative Law Claims. The district court dismissed all the claims at once because it did not recognize any of the DOJ-inflicted injuries above. It did not separately or expressly raise additional challenges to Plaintiffs’ procedural administrative law claims (Counts 4 and 5). In light of the discussion above, those claims should remain. Indeed, the Plaintiffs’ standing to assert those claims should be evident since the allegations otherwise state valid APA claims, the Plaintiffs are personally covered by the DOJ’s improper rule, and the continued application of that rule is having the effects on them described above. Moreover, “[j]ust as a court cannot apply its independent policy judgment to recognize a cause of action that Congress has denied, it cannot limit a cause of action that Congress [or the Constitution] has created merely because ‘prudence’ dictates.” *Lexmark Int’l, Inc.*, ___ U.S. ___, 134 S. Ct. at 1388. For the reasons set forth in the trial court below, the Plaintiffs here are clearly within the zone of interests of each of the laws they invoked to support their claims.

the standing inquiry “is not focused on whether the defendant ‘caused’ the plaintiff’s injury in a liability sense,” *Wulinger v. Mfrs. Life Ins. Co.*, 567 F.3d 787, 796 (6th Cir. 2009). Consequently, the causal link between the defendant’s conduct and the plaintiff’s injury may be “indirect.” *Vill. of Arlington Heights*, 429 U.S. at 261; *Jet Courier Servs. v. Fed. Reserve Bank of Atlanta*, 713 F.2d 1221, 1226 (6th Cir. 1983). In this case, Plaintiffs have standing because their injuries are fairly traceable to Defendants’ classification of Juggalos as a gang.

a. Constitutional Injuries to First Amendment Freedoms

Because the district court did not recognize that the Juggalo gang designation itself injures Plaintiffs by burdening and chilling their exercise of First Amendment freedoms, it did not recognize that the DOJ directly caused such injuries. Once it is clear that injuries-in-fact include direct First Amendment burdens and the personal chilling effects that Plaintiffs have reasonably suffered, there is no question that such injuries are fairly traceable to the DOJ’s act of designating Juggalos as a gang.

“When the suit is one challenging the legality of government action or inaction [and] the plaintiff is himself an object of the action . . . at issue. . . . , there is ordinarily little question that the action . . . has caused him injury” *Lujan*, 504 U.S. at 561-62. Here, the “action at issue” designates Juggalos as a gang, and Plaintiffs are Juggalos. As discussed previously, the DOJ’s gang designation itself

impairs Plaintiffs' freedoms under the First Amendment to associate with other Juggalos and to express their Juggalo identities; it has a present chilling effect because Plaintiffs such as Brandon Bradley do not associate together as Juggalos as often, knowing that doing so would cause them to be perceived and targeted as gang members. (Compl., RE 1, ¶¶ 75, 144, 149, 163, 166, 180, Page ID # 11, 21-23, 25, 26, 28.) The causal link between the DOJ's Juggalo gang designation and these First Amendment injuries-in-fact is "fairly traceable."

b. Reputational Harms

As discussed above, being branded by the government as a criminal or gang member inflicts an injury-in-fact sufficient for standing. In this case, there can be little doubt that this injury is "fairly traceable" to Defendants' conduct because Defendants are the ones who designated Juggalos as a gang and released this information to the public in their 2011 Threat Assessment. *See Foretich*, 351 F.3d at 1211-12 (causation element satisfied because "Dr. Foretich suffered harm to his reputation as a result of this Act and its attendant publicity").

c. Injuries Inflicted by Third Parties

As discussed above, the district court recognized that Plaintiffs have suffered injuries at the hands of local law enforcement agencies and other third parties, but did not regard those injuries as having been "caused" by the DOJ's act of designating Juggalos as a gang. That approach largely misses the point. Those

palpable injuries help not only to highlight why the DOJ's continuing infliction of constitutional and reputational injuries must be stopped through the relief Plaintiffs seek, but also to show why the Plaintiffs have a personal stake in this suit.

Beyond that, the allegations in Plaintiffs' complaint make it clear that these palpable injuries are "fairly traceable" to the DOJ's Juggalo gang designation, which is all that is required to satisfy the causation requirement of Article III standing. Specifically:

- Parsons was stopped, detained and searched by a Tennessee Trooper who indicated that he considered Juggalos to be a criminal gang based on the *DOJ's* designation, and that he had stopped Parsons based on the hatchetman logo displayed on Parson's truck. (Compl., RE 1, ¶¶ 29-44, Page ID # 7-8.)
- Bradley alleges that local police officers "relied upon the *DOJ's* classification of the Juggalos as a gang" (*id.* ¶ 74, Page ID # 11), when stopping him numerous times due to his Juggalo merchandise and tattoos in order to question him about criminal gang activity. (*See id.* ¶¶ 47-73, Page ID # 9-11.)
- Upon seeing Gandy's Juggalo tattoos, an Army Recruiting Sergeant told Gandy that Juggalos were on the *federal* gang list—which the DOJ generates—and that he therefore considered Gandy's tattoos to be gang-related. Based on the *DOJ's* list, the Sergeant questioned whether Gandy was a gang member and instructed him to have his tattoos removed or permanently covered. (*Id.* ¶¶ 80-83, Page ID # 12.)
- Hellin alleges that the same federal designation puts him in imminent danger of discipline or involuntary discharge from the Army. (*Id.* ¶¶ 89-93, Page ID # 13.)
- Bruce and Utsler allege that the Royal Oak Police Department cited the same federal Juggalo gang designation when persuading

the Royal Oak Music Theater to cancel their contract to perform ICP's annual "Hallowicked" concert there. (*Id.* ¶¶ 94-99, Page ID # 14.)

In reviewing these allegations, the district court's analysis focuses on the fact that the DOJ never "directed" the third parties to mistreat Plaintiffs. (Opinion & Order, RE 29, at Page ID # 318-319.) However, the fact that a defendant does not direct or compel a third party to injure a plaintiff does not mean that the plaintiff's injuries are not "fairly traceable" to the defendant.

This Court's decision in *Lambert v. Hartman*, 517 F.3d 433 (6th Cir. 2008), is dispositive. In *Lambert*, the plaintiff sued a county clerk for improperly publishing her private personal identification information and damaging her financial security and credit after an identity thief had used that private information to commit retail fraud. *Id.* at 437. Like the DOJ here, the clerk argued that a third party (i.e., the identity thief), not the government, caused the harm. *Id.* at 437 ("Specifically, [defendants] argue that the harm suffered by Lambert was caused by an intervening act—the criminal act of a third party."). This Court rejected that argument because the complaint alleged a factual connection between the government's act and the third party's conduct:

Lambert was able to link the act of identity theft to the personal information that was made available by the Clerk. . . . Lambert thus alleged sufficient facts to show that her injuries were fairly traceable to the publication of her personal information by the Clerk.

Id. at 438.

A similar result was reached *Foretich*, 351 F.3d 1198, discussed above, where Congress enacted a statute that effectively branded Dr. Foretich as a child abuser and an unfit parent. In finding that the reputational harm suffered by Dr. Foretich gave him Article III standing to sue, the *Foretich* court emphasized that “passage of the Act led to harassment by the media, estrangement from his neighbors, and loss of business and professional opportunities.” *Id.* at 1211 (emphasis added). Although the harassment, estrangement, and loss of business and professional opportunities were clearly inflicted by third parties, the court had no hesitation in concluding that these injuries were fairly traceable to Congress’s passage of the challenged law.

The same is true here. Although third parties may also be responsible for harming Plaintiffs, that fact does not deprive Plaintiffs of standing to sue Defendants. The facts alleged show that each of the injuries alleged above is fairly traceable to the DOJ designating Juggalos as a gang.

3. Redressability

The third element of standing, redressability, requires a “likelihood that the requested relief will redress the alleged injury.” *Steel Co.*, 523 U.S. at 103. “While redressability must not be speculative, it need only be ‘likely,’ not certain.” *Ala.-*

Tombigbee Rivers Coal. v. Norton, 338 F.3d 1244, 1256 (11th Cir. 2003).¹⁵

Additionally, the injury need not be completely redressable; it is sufficient that the injury be partially redressed. *Keene*, 481 U.S. at 476 (“enjoining the application of the words ‘political propaganda’ to the films would at least partially redress the reputational injury of which appellee complains”).¹⁶ In this case, for essentially the same reasons that the injuries suffered by Plaintiffs are “fairly traceable” to the DOJ’s Juggalo gang designation, it is likely that rescinding the Juggalo designation or declaring it unconstitutional will at least partially redress those injuries.

a. Constitutional Injuries to First Amendment Freedoms

The district court’s discussion of redressability was severely hamstrung by its mistaken view that only third parties inflicted any injury. The district court ignored the other injuries-in-fact that the DOJ itself inflicts and therefore did not recognize that an injunction or declaration against the DOJ could remedy those

¹⁵ See also *Beno v. Shalala*, 30 F.3d 1057, 1065 (9th Cir. 1994) (“to have standing, a federal plaintiff must show only that a favorable decision is *likely* to redress his injury, not that a favorable decision *will inevitably* redress his injury”); *Family & Children’s Ctr., Inc. v. Sch. City of Mishawaka*, 13 F.3d 1052, 1058 (7th Cir. 1994) (“the plaintiff need not show absolutely that a favorable judgment would redress his injury; a probabilistic benefit from winning a suit is adequate”).

¹⁶ See also *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007) (plaintiff “need not show that a favorable decision will relieve his *every* injury”); *Foretich*, 351 F.3d at 1215 (“courts have proceeded on the assumption that a favorable judicial decision will provide meaningful relief—even if not complete relief—to a party who alleges an injury to his or her reputation”)

injuries. As discussed previously, the DOJ's gang designation itself impairs Plaintiffs' freedoms under the First Amendment to associate with other Juggalos and to express their Juggalo identities; it has a present chilling effect because Plaintiffs do not associate with or publicly identify as Juggalos as often, knowing that doing so would cause them to be perceived and targeted as gang members. (Compl., RE 1, ¶¶ 75, 144, 149, 163, 166, 180, Page ID # 11, 21-23, 25, 26, 28.) These injuries are redressable because, if the gang designation is removed or declared unconstitutional, Plaintiffs will no longer have to choose between exercising their First Amendment freedoms and being perceived and targeted as gang members.

Meese v. Keene, 481 U.S. 465, is controlling on this point. The Supreme Court held that the plaintiff had suffered an injury-in-fact fairly traceable to the government because he was "deterred from exhibiting the films by a statutory characterization of the films as political propaganda." *Id.* at 473. Regarding redressability, the Court held that a declaratory judgment would remedy the chilling effect because it would enable the plaintiff to exhibit the films without "the Department of Justice ha[ving] placed the legitimate force of its criminal enforcement powers behind the label of 'political propaganda.'" *Id.* at 477.

The same is true here. Plaintiffs are deterred from associating with and expressing themselves as Juggalos by the DOJ's characterization of Juggalos as a

gang, and their injury is redressable because the burdens and chilling effect on their First Amendment freedoms will be alleviated, at least in large part, by a declaratory judgment or injunction nullifying the force of the federal government having labeled them as gang members.

b. Reputational Harms

As discussed above, being branded as a criminal or gang member causes injury to one's reputation, which is cognizable as an injury-in-fact for Article III standing purposes. Courts recognizing reputational harms have likewise held that declaratory and injunctive relief provides redress for these harms sufficient to satisfy the Article III redressability requirement. In *Keene, supra*, the Supreme Court held that an injunction against the government labeling the plaintiff's films "political propaganda" "would at least partially redress the reputational injury of which [he] complains," *id.* at 476, and that a declaratory judgment "would eliminate the need to choose between exhibiting the films and incurring the risk that public perception . . . will harm [his] reputation," *id.* at 477. In *Foretich*, 351 F.3d 1198, where Congress passed a law embodying a congressional determination that the plaintiff had sexually molested his daughter, the D.C. Circuit held that a declaratory judgment that the law is unconstitutional "will provide a significant measure of redress for the harm to [his] reputation," *id.* at 1214, because it "will

remove the imprimatur of government authority from an Act that effectively denounces [him] as a danger to his own daughter,” *id.* at 1215.

Here, too, the damage to Plaintiffs’ reputations will be partially redressed by a judicial determination that the DOJ’s Juggalo gang designation is unlawful. Plaintiffs’ reputations are damaged because the DOJ – the nation’s chief law enforcement agency – brands them as criminal gang members because they are Juggalos. The federal gang label is the one that made the headlines and draws national attention. A judgment for Plaintiffs’ would at least partially redress the reputational injury that the DOJ inflicts. It would eliminate the need for Plaintiffs to choose between exercising their First Amendment rights as Juggalos and incurring the risk that the public will perceive them as gang members, *see Keene*, 481 U.S. at 477, and it would “remove the imprimatur of government authority” from a designation that effectively denounces them as criminals, *see Foretich*, 351 F.3d at 1215.

c. Injuries Inflicted by Third Parties

Finally, as for the injuries that the district court recognized in its opinion, Plaintiffs allege that many local law enforcement agencies, relying on the DOJ’s Juggalo gang designation, harass and detain Juggalos and have even pressured a local concert venue to cancel an ICP event. (Compl., RE 1, ¶¶ 29-99, Page ID # 7-14.) If these third parties could no longer rely on the DOJ’s Juggalo gang

designation to justify treating Juggalos as gang members, that harassment and mistreatment would likely stop, at least in significant part, for two reasons. First, most States rely on the DOJ's gang designation and do not independently brand the Juggalos as a gang. Without the designation, a leading impetus would be gone. Second, a favorable decision would send a message by articulating the high hurdles that any law enforcement agency must satisfy before targeting these music fans.

The district court found that redressability was absent because a judgment in Plaintiffs' favor "would not *compel* or *enjoin* any action by the various independent actors who allegedly caused Plaintiffs' injuries." (Opinion & Order, RE 29 at Page ID # 320 (emphasis added).) This logic is flawed. Redressability does not require that the court be capable of directly *enjoining* every wrongdoer from causing injury; it merely requires a likelihood that the requested relief would result in the injury being halted or diminished. *See Friends of the Earth*, 528 U.S. at 185 (finding redressability where relief has a "deterrent effect" on future injury).

Again, this Court's decision in *Lambert v. Hartman*, 517 F.3d 433, governs the analysis. Recall that the defendant in that case, a county clerk, improperly publicized the plaintiff's personal information, allowing a third party to steal the plaintiff's identity. *Id.* at 435. As relief, the plaintiff asked the court to order the clerk to pay for future credit monitoring. *Id.* at 436. Challenging redressability, the defendant argued that the plaintiff lacked standing because credit monitoring could

not remedy her past injury or prevent future identity theft by a third party. *Id.* at 437-48. This Court rejected that argument and found that credit monitoring was a sufficient remedy for standing because it would help combat the risk of future identity theft that the clerk's alleged misconduct had created. *Id.* at 438. Although clearly this form of relief was not certain to prevent future identity theft by a third party and would provide only partial redress, it sufficed for Article III standing.

The same is true here. Because the DOJ's gang information "guide[s] the appropriate officials in coordinating their investigations and prosecutions" (Compl., RE 1, ¶ 103, Page ID # 15), ordering the DOJ to remove Juggalo-related information from NGIC Online as Plaintiffs requested in their complaint (*id.* at Page ID # 36-37) is likely to deter incidents of harassment similar to those alleged. Also, if the DOJ were to rescind its Juggalo gang designation as requested in Plaintiffs' complaint, law enforcement agencies that typically rely on that designation would be less likely to harass and detain Juggalos, pressure local concert venues to cancel ICP events, and otherwise inflict the kinds of injuries that Plaintiffs have experienced.

VI. CONCLUSION

Plaintiffs have standing to challenge Defendants' designation of Juggalos as a gang because their complaint properly pleads injuries-in-fact, their injuries are "fairly traceable" to the Juggalo gang designation, and the injuries are redressable

by declaratory and injunctive relief. The district court therefore erred in dismissing Plaintiffs' complaint for lack of standing. Accordingly, the order below should be reversed and the matter remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned counsel hereby certifies that this brief complies with the type-volume limitation in Federal Rule of Appellate Procedure 32(a)(7)(B) because, as counted by the Microsoft Word word-count tool, this brief contains 10,521 words,

excluding the parts exempted by Rule 32(a)(7)(B)(iii). This brief complies with the typeface requirements in Rule 32(a)(5)(A) and the type-style requirements in Rule 32(a)(6) because this brief has been prepared in proportionally spaced 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2014, I electronically filed the foregoing paper with the Clerk of the court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS**E.D. Mich. Case No. 14-cv-10071**

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