

Federal judge scolds Weber County in declaring gang injunction unconstitutional

By MARK SHENEFELT Standard-Examiner

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SALT LAKE CITY — A federal judge has ruled Weber County violated the constitutional due process rights of two Ogden men charged under a gang injunction and that the pair may seek monetary damages at trial.

In his 57-page ruling, U.S. District Judge Clark Waddoups also criticized Weber County Attorney Chris Allred over his testimony in a deposition that the county never maintained a list of gang members.

Waddoups granted summary judgment to Leland McCubbin Jr. and Daniel Lucero, who were served with the anti-gang injunction in 2010 and alleged in their 2015 U.S. District Court suit against the county and Ogden City that their due process rights were violated.



The injunction process lacked adequate due process opportunities for people served with the injunction to get a hearing before being charged, and to appeal afterward, Waddoups ruled.

“The court holds that Weber County was required to provide plaintiffs with an opportunity to challenge their gang member status prior to being served and subjected to the terms of the injunctions,” Waddoups said, but it did not do so.

The county also did not demonstrate any justifiable government interest for not doing so, the judge said in his decision, posted Sept. 27.

“Weber County’s choice to deprive plaintiffs of their liberty interests without providing adequate due process was a decision that itself violated federal law,” Waddoups wrote.

“We are thrilled with this outcome,” said John Mejia, legal director of the American Civil Liberties Union of Utah, who represented Lucero and McCubbin.

“It is very vindicating that we have obtained a judgment that reaffirms that everybody, whoever you are, even a purported gang member, you have due process rights under the Constitution that the government must respect,” Mejia said.

Waddoups dismissed one of the plaintiffs’ other causes of action, that the county violated the Ogden men’s state constitutional right to free expression. But other elements of the suit remain in play and now head toward trial.

At trial, monetary damages to be paid to Lucero and McCubbin will be determined for the due process violation already established, Mejia said.

But Frank Mylar, who represents Weber County in the lawsuit, challenged Waddoups’ “confusing” decision and said appeals may be filed.

The Weber County Attorney’s Office, working with the Ogden Police Department, filed the public-nuisance injunction against the Trece gang in 2nd District Court in 2010 after the authorities cited escalating gang-related crime in the city.

Ogden police had a gang member database, adding names to it based on criteria including style of dress, hand signs, tattoos and association with known gang members.

Those served with the injunction were subjected to a curfew, banned from associating with other gang members, even family members in gangs, and other restrictions.

Waddoups noted the injunction had a mechanism where a person served could opt out of being served, but he said it placed a high burden on the person to prove he or she was not a gang member or had renounced gang membership.

The Utah Supreme Court threw out the injunction in 2014, ruling that it was invalid because no leaders of the Trece gang were identified and served with it.

After, county prosecutors said they might try to redraft the injunction to eliminate the procedure error. Subsequently, the ACLU sued, arguing a federal court ruling was necessary to prevent a similar gang injunction from being implemented, and to compensate Lucero and McCubbin for being charged under the first injunction.

McCubbin had gone to court to have the gang conviction against him dismissed after the injunction was thrown out. He said he was no longer a member of Trece by the time the gang injunction arose. He said he quit the gang and he received a “jump out” beating for leaving.

Lucero tried to get his conviction overturned too but failed because he missed a statutory deadline to appeal.

In 2018, the ACLU and Ogden City reached a settlement in the lawsuit, leaving Weber County as the sole defendant.

In a 2018 deposition for the lawsuit, attorneys asked Allred if the county had a gang database. He said no, that Ogden City's gang database was the source of information for serving the injunction on suspected Trece members.

But Waddoups's ruling referred to deposition testimony in an unrelated case by two Weber County Sheriff's Office jail deputies about gang lists and notes they gathered for investigations involving gang members in the jail as late as 2016.

If it is true that jail investigators documented gang members, "it is hard to understand how Mr. Allred could have submitted a declaration in 2018, under penalty of perjury, representing to this court that 'there is not any official or unofficial list, database, or handwritten notes related to gang membership that Weber County owns, possesses, or controls,'" Waddoups said.

That led Waddoups to add that he therefore "has a reason to question Chris Allred's bona fides" on his assertion that the county would not implement a new gang injunction that would be "substantially similar" to the first.

Mylar strongly objected to Waddoups' characterization. He said Allred and former Sheriff Terry Thompson had no idea that jail personnel may have been keeping information on gang members.

"He (Waddoups) made a leap about a gang database in the jail that is simply not true," Mylar said. "It's news to them (Allred and Thompson) if somebody claims to have one."

He said the facts cited by Waddoups were "taken from another case and taken out of context."

Efforts to reach Allred for comment were not immediately successful.

Waddoups offered Allred an opportunity to ask for a hearing to dispute the judge's conclusions about conflicting information.

"If there were findings that somebody perjured themselves, there can be serious consequences under the law," Mejia said. "Those are serious, serious issues that the court has raised."

He said the discrepancy bears examination because of the possibility that a new gang injunction may be planned at some point.

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You can reach reporter Mark Shenefelt at mshenefelt@standard.net or 801 625-4224. Follow him on Twitter at [@mshenefelt](https://twitter.com/mshenefelt).