

John Mejia (Bar No. 13965)
Leah Farrell (Bar No. 13696)
ACLU of Utah Foundation, Inc.
355 N. 300 W.
Salt Lake City, UT 84013
phone: (801) 521-9862
email: aclu@acluutah.org

Randall Richards (Bar No. 4503)
Richards & Brown PC
938 University Park Blvd, Suite 140
Clearfield, UT 84105
phone: (801) 773-2080
email: Randy@richardsbrownlaw.com

**IN THE SECOND DISTRICT COURT- OGDEN, WEBER COUNTY,
STATE OF UTAH**

**DANIEL JOSPEPH LUCERO, and all
others similarly situated,**

Petitioners,

vs.

**STATE OF UTAH, WEBER COUNTY,
and OGDEN CITY,**

Respondents.

**Class Petition for Relief Under the
Post-Conviction Remedies Act
Utah Code Section 78B-9-101, et seq.
and
Utah Rule of Civil Procedure 65C**

(Proposed Class Action)

Case No. _____

Judge _____

Pursuant to the Post-Conviction Remedies Act, Utah Code Section 78B-9-101, et seq. and Utah Rule of Civil Procedure 65(C)(d), Daniel Joseph Lucero, through his attorneys, petitions this Court to set aside his class B misdemeanor conviction under Utah Code § 76-10-807 for violating the injunction in *Weber County v. Ogden Trece*, primarily on the grounds that the conviction was obtained in violation of the Utah and United States Constitutions, and on other alternative grounds as specified in his attached memorandum of authorities.

Pursuant to the Post-Conviction Remedies Act, Utah Code Section 78B-9-101, et seq. and Utah Rules of Civil Procedure 65(C)(d) and 23, Mr. Lucero further requests that a class be certified consisting of all individuals convicted of violating the preliminary or permanent injunction issued in the *Weber County v. Ogden Trece*, and that the court vacate all of these convictions for every member of the class.

In support of this Petition, Mr. Lucero states as follows:

BACKGROUND

(1) On August 20, 2010, Weber County filed a complaint in the Second District Court of Utah against the Ogden Trece gang. Weber County claimed that the gang could be sued as an “unincorporated association” and requested an injunction declaring the gang a public nuisance and abating a public nuisance. As the Utah Supreme Court would later find, Weber County did not properly effectuate service on the gang, instead employing alternative service that was ineffectual.

(2) On September 28, 2010, the County obtained a preliminary injunction against the Ogden Trece, which was made permanent in August 2012. (This Petition will refer to both the preliminary and permanent injunctions as the “Injunction” unless otherwise specified.) Persons subject to the Injunction had various restrictions placed on their constitutionally protected activities when they were within an area of twenty-five square miles, consisting of virtually the entire Ogden City limits. For example, those subject to the Injunction were not allowed to be in any public place between 11 p.m. and 5 a.m. except to attend church, work, school, or an admission-charging “entertainment event,” or because of an emergency.

(3) The Injunction did not require a pre-service hearing to determine whether a person to be served with the Injunction was actually an agent of or otherwise affiliated with the Ogden Trece gang. Rather, the Injunction's restrictions became effective on the person immediately upon service, and the burden was placed on the individual served to initiate proceedings to disprove the propriety of subjecting him or her to the Injunction's restrictions, also called the "Opt Out" provision. The Injunction stated that even an individual was eligible to "Opt Out," he or she could not raise that eligibility as a defense to a charge of criminal contempt for violating the Injunction.

(4) Several individuals served with the preliminary Injunction brought a writ of extraordinary relief in the nuisance suit, arguing that the Injunction should be vacated for various reasons. On October 23, 2013, the Utah Supreme Court vacated the Injunction and permanent injunction. *See Weber Cnty. v. Ogden Trece*, 2013 UT 62, ¶¶ 43-60, 321 P.3d 1067. The Court reasoned that because Weber County had not properly served the Ogden Trece with process to initiate the suit, the Court had no jurisdiction in the suit and therefore the orders were void *ab initio*. *See id.*

FACTS REGARDING MR. LUCERO

(5) Mr. Lucero is currently incarcerated at the Central Utah Correctional Facility. He is serving a sentence on a conviction not at issue in this Petition, but has also served 6 months previously and concurrently the conviction against him for violating the Injunction.

(6) Despite not being a member of the Ogden Trece Gang, Mr. Lucero was served with a copy of the preliminary Injunction.

(7) On October 10, 2012, in Case Number 121902249 in the Second District Court for the State of Utah- Ogden, the State of Utah charged Mr. Lucero with violating Utah Code Section 76-10-807, violation of an order enjoining a public nuisance (*i.e.*, the preliminary Injunction), a class B misdemeanor. The alleged violation of the preliminary Injunction stemmed from Mr. Lucero being in public in Ogden after 11 p.m, and allegedly being in possession of drugs. In the same case, Mr. Lucero was also charged with violating Utah Code Section 58-37-8(2)(A)(I), possession or use of a controlled substance, a third degree felony, Utah Code Section 76-8-301.5, failure to disclose identity, a class B misdemeanor, Utah Code Section 53-3-202(1)(A), no valid license-expired, a class C misdemeanor, and Utah Code Section 76-8-305, interference with arresting officer, a class B misdemeanor.

(8) On July 16, 2012, Mr. Lucero pleaded guilty to the charge of violating the preliminary Injunction as well as to the charge of interfering with an arresting officer. Pursuant to a plea agreement, the state dismissed the other three charges against Mr. Lucero without prejudice.

(9) Mr. Lucero received a sentence of six months for his violation of the preliminary Injunction, with credit for time previously served, to run concurrently with the sentence in an unrelated case. He received the same sentence for the other misdemeanor charge in case 121902249.

(10) Mr. Lucero is entitled an order vacating his class B misdemeanor conviction for violating the Injunction because the Injunction was void *ab initio* because the district court had no jurisdiction over the Ogden Trece. A memorandum of law, attached, will further set forth various grounds for the requested relief.

(11) Neither the judgment of conviction against Mr. Lucero nor his sentence have been reviewed on appeal.

(12) The legality of Mr. Lucero's conviction or sentence has not been adjudicated in any prior post-conviction or other civil proceeding.

(13) Mr. Lucero does not claim entitlement to relief due to newly discovered evidence.

(14) Mr. Lucero has attached all documents listed in Rule 65(C) to which he has access, including copies of relevant records and a copy of the relevant Utah Supreme Court opinion, as exhibits to his memorandum in support of this Petition.

Class Allegations

(15) Mr. Lucero seeks to represent a class defined as "All individuals convicted of violating Utah Code Section 76-10-807 stemming from violations of the Injunction" (the "Proposed Class").

(16) This Petition may properly proceed as a class action under Utah Rule of Procedure Rule 23(a) and (b)(2) as described below.

(17) First, the Proposed Class is so numerous that joinder of all members is impracticable. On information and belief, hundreds of people were served with the Injunction over the three years before the Court's decision. On information and belief, the Proposed Class is made up of over 50 people.

(18) Second, there are questions of law and fact common to the members of the Proposed Class. The main question is whether the convictions relating to violations of the Injunction were obtained in violation of the Utah and United States Constitution, though there are many other common questions as well.

(19) Third, Mr. Lucero's claims are typical to those of the Proposed Class. All members of the Proposed Class were convicted of violating the Injunction and seek to vacate those convictions.

(20) Fourth, Mr. Lucero and his counsel will fairly and adequately protect the interests of the class.

(21) Finally, the Proposed Class can be maintained under Utah Rule of Civil Procedure 23(b)(2) because the prosecuting entities that obtained convictions based on violations of the Ogden Gang Injunction, namely Weber County and Ogden City, acted on grounds generally applicable to the Proposed Class. Specifically, among other things, those entities obtained convictions against the members of the Proposed Class related to violations of the Injunction. Class actions under Rule 23(b)(2) are especially appropriate in suits seeking to vindicate civil rights.

(22) There are no known reported cases of any of individual appealing or otherwise seeking post conviction relief of any sort relating to his or her conviction related to the Injunction. No member of the Proposed Class bases his or her claim on newly discovered evidence.

(23) On information and belief, Ogden City and Weber County (on behalf of the State of Utah) are the only two governmental entities that prosecuted individuals for alleged violations of the Injunction. If other governmental entities obtained such convictions, Petitioner will seek leave to add them as respondents here.

PRAYER FOR RELIEF

(24) Mr. Lucero seeks the following relief:

- (A) An order vacating his conviction for violating Utah Code Section 76-10-807 relating to alleged violations of the Injunction;
- (B) An order certifying this matter as a class action and allowing Mr. Lucero and his attorneys to represent the Proposed Class;
- (C) An order vacating all convictions of all members of the Proposed Class for violating Utah Code Section 76-10-807 relating to alleged violations of the Injunction.
- (D) An award of costs and attorney's fees.
- (E) An award of any other relief against Defendants that the Court deems just and proper.

(25) Mr. Lucero attaches a memorandum of authorities via the court's electronic filing system.

Respectfully submitted this 28th day of October, 2014.

/s/ John Mejia

John Mejia (Bar No. 13965)
Leah Farrell (Bar No. 13696)
ACLU of Utah Foundation, Inc.
355 N. 300 W.
Salt Lake City, UT 84013
phone: (801) 521-9862
email: aclu@acluutah.org

Randall Richards (Bar No. 4503)
Richards & Brown PC
938 University Park Blvd, Suite 140
Clearfield, UT 84105
phone: (801) 773-2080
email: Randy@richardsbrownlaw.com