

Weber County gang injunction lawsuit ends with out-of-court settlement

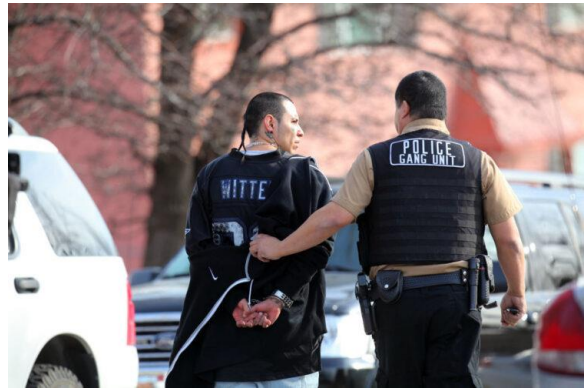
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<https://www.standard.net/police-fire/2021/oct/27/weber-county-gang-injunction-lawsuit-ends-with-out-of-court-settlement/>

Several suspected area gang members were taken into custody in or near 3091 Eccles Ave. in Ogden on Tuesday, Feb. 7, 2012.

Remaining issues in a long-running civil lawsuit over Weber County's gang injunction of more than a decade ago have been settled out of court. One lasting goal of the suit was clearly achieved: There will be no new gang injunction.

In their suit, filed in 2015, Daniel Lucero and Leland McCubbin Jr. argued their civil rights were violated by the 2010 injunction, which was served upon people identified in an Ogden Police Department database as gang members.



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In 2019, U.S. District Judge Clark Waddoups granted summary judgment to the pair, saying their due process rights were violated. But remaining elements of the suit, including monetary damages to be paid to the two Ogden men for the due process violations, were in play until the case was dismissed Tuesday.

American Civil Liberties Union of Utah attorney John Mejia, who represented Lucero and McCubbin, declined Wednesday to divulge details of the settlement, citing terms of the agreement. Frank Mylar, an indemnity pool attorney who handled the case for the county, said only that the injunction fight was 11 years old "and it was just time to settle it."

Weber County Attorney Christopher Allred likewise declined to offer details about the settlement, but he confirmed a court notation that said, "Plaintiffs' claims for equitable relief and declaratory judgment are moot because defendants will not seek a future injunction."

"We're not going to pursue any other gang injunction," Allred said, adding he had no immediate further comment on that point pending consultation with Mylar about what can be discussed under the settlement terms.

In 2010, Ogden City and the county identified a civil injunction as a way to get at gang activity in Ogden. Those served with the injunction were forbidden from associating with other gang members, violating a curfew and other provisions. Once enjoined, some people later were charged with misdemeanors for allegedly violating it.

The gang injunction itself was declared unconstitutional and thrown out in 2013 by the Utah Supreme Court, but county officials soon said they might file an amended version of the injunction to pass court muster.

In the 2015 litigation, the ACLU sought court mandates that the two men be protected from possible future gang injunction action and that their names be kept out of any gang database.

The database question raged throughout, especially beginning in 2017, when Allred said in a deposition, "Weber County has never kept a database or any sort of list of Ogden Trece gang members nor has Weber County ever had the ability to put a person on the (Ogden police) Trece database or remove a person from the list."

In its motion to dismiss the suit in 2018, the county said, "Weber has no ownership, access to, or control over a gang database." In a March 2018 deposition, Allred added the county had no plans to serve McCubbin or Lucero with a future gang injunction. He also said he would instruct agencies not to serve someone with the injunction "if there is a reasonable doubt that the person is not an active and present gang member."

McCubbin said in the suit that he “jumped out” of Trece about 12 years earlier but was still served with the injunction.

Waddoups ruled in 2019 that Allred had presented contradictory declarations about the lack of a gang database, because two former jail investigators testified they tracked gang membership and the information was available in the inmate tracking system. One former jail investigator testified he worked with the Ogden Metro Gang Unit, shared information about gang members in the jail and also served dozens of them with the injunction in 2010-12. After the ruling, Allred said the jail kept notes only to separate members of different gangs in cell blocks and that they have no purpose related to a gang injunction. Allred reacted strongly to Waddoups’ declaration that the court “has reason to question Chris Allred’s bona fides” because of the discrepancies.

Allred and the county tried to have Waddoups removed from the case, but another judge refused. In a subsequent ruling in June 2020, Waddoups granted the ACLU’s request to delve further into the issue with additional discovery.

In an August 2020 deposition, Lt. Nealy Adams, who was in charge of the jail’s investigations unit, said there was some information gathering on gangs. “Gangs are a growing concern in Weber County,” Adams testified. “That is factual. And I would say, yes, information is shared with agencies outside of the jail only when they come in specifically and ask for it.”

In its motion for sanctions, the ACLU alleged the county was trying to avoid liability in the case by attempting to convince the court that its gang intelligence effort “at any point was non-existent or minimal.” It added, “Weber did so in an attempt to pin all of the blame” on Ogden police and their gang database.

Ogden City earlier settled its part of the case out of court.

“The consequences of Weber submitting false information to the court in a case seeking accountability for Weber’s violations of rights should be treated as the serious breach of public trust that it is,” the ACLU said.

In an earlier court filing, Mylar said Waddoups’ allowance of additional discovery “incorrectly infers that there were false statements made” by county officials. “Weber County and the jail still do not have a Trece gang database and no evidence states as much,” he said.

In a Sept. 15, 2020, document submitted in response to the additional discovery demands, the county said, “Weber County Jail would provide bulletins to other law enforcement agencies in the area and would occasionally include gang related information.”

In April this year, Waddoups sealed all subsequent case documents from public view, including further arguments over the actions and statements of Allred and Dee Smith, who was county attorney when the injunction was formulated, until the settlement order was published Tuesday.

Smith, who later returned to the county attorney’s office as a deputy attorney focusing on major crime cases and was involved in the defense against the civil suit, died while on a bicycle outing in June 2020.