

# Box Elder jail ruling gives boost to suit against Weber County's gang injunction

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By Mark Shenefelt  
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Daniel Lucero of Ogden is a plaintiff in civil suit against the Weber County gang injunction.  
Photo supplied Weber County Jail



Leland McCubbin Jr., of Ogden, a plaintiff in a civil lawsuit against the Weber County gang injunction  
Photo supplied Weber County Jail



Kathy Rios holds up a sign on Washington Boulevard protesting the reintroduction of the Ogden gang injunction on Saturday, Nov. 14, 2015. Around 15 people met in front of the Ogden Municipal Building to speak out against the past injunction, which was overturned by the Utah Supreme Court, as well as a possible new injunction.  
Benjamin Zack

SALT LAKE CITY — A recent Utah Supreme Court ruling on the treatment of a Box Elder County DUI arrestee has bolstered a 4-year-old federal suit that targets Weber County's long-controversial gang injunction.

Robert Kuchcinski sued Box Elder after he was arrested on suspicion of DUI and spent 17 days in jail without seeing a judge. His blood alcohol tests showed no legal impairment and the charges were dismissed.

He sued the county alleging violation of his due process rights, but the 1st District Court dismissed the suit, saying Kuchcinski could not demonstrate flagrant violation of his rights and did not name the individuals who violated those rights.

But the state's high court ruled June 3 that a government entity can be held liable for policies and procedures that violate due process rights even without individuals being named, said John Mejia, legal director of the American Civil Liberties Union of Utah.

Mejia cited the Kuchcinski ruling in the filing of additional documents June 14 in support of the ACLU's case against Weber County involving the 2010 anti-gang injunction.

The ACLU represents Leland McCubbin and Daniel Lucero, Ogden men who were served with the gang injunction and alleged in their 2015 U.S. District Court suit against the county that their due process rights were violated.

Mejia said Wednesday the Kuchcinski ruling adds weight to the ACLU's 2018 motion urging Judge Clark Waddoups to grant summary judgment against the county. The plaintiffs seek an order against the county's gang injunction activities and against any renewal of the injunction.

County attorneys, meanwhile, filed their own request for summary judgment in 2018, asking Waddoups to dismiss the suit.

"We're just waiting for the judge to rule now," Mejia said.

The suit originally named Ogden City as well, because local police were those serving the injunction on suspected gang members. But the ACLU and the city reached an out-of-court settlement in the case in 2018.

Mejia also cited a recent ruling by the California Court of Appeal that said gang members being served an injunction "without pre-deprivation due process" is a violation of the person's due process rights.

In 2013, the Utah Supreme Court struck down the injunction because it was not served against leaders of the Trece gang, the group targeted by Ogden City and Weber County.

The county said it hoped to cure the defects and introduce a revised gang injunction.

ACLU attorneys positioned the 2015 Lucero and McCubbin case against not only the overturned 2010 gang injunction, but also a potential renewed injunction. Lucero and McCubbin were among 300 people served with the injunction before it was invalidated.

The Weber County Attorney's Office has been adamant an injunction is needed to help control crime by violent gang members. But in its 2018 summary judgment motion, the county said it had nothing specifically planned for a new injunction.

The ACLU said the 2010 injunction, which placed a curfew on Trece members and forbade them from associating with one another, violated the constitutional rights of those enjoined.

In its amended complaint in 2016, the ACLU also said Lucero and McCubbin were victims of "a continuing conspiracy to deprive plaintiffs of their civil rights based on ethnic animus" — most Trece members and those served by the injunction are Hispanic.

The ACLU lamented a lack of requirements in the injunction for law enforcement to prove a person's gang membership or demonstrate that his or her activities constitute a public nuisance.

"In any possible future request for a state injunctive order, Weber County would request a gang injunction with more procedural protections for both the person being served and for protection of the officers" who served the injunction, the county said in its summary judgment motion.

No one would be cited, the county said, unless Trece gang membership could be proved beyond a reasonable doubt.

In their arguments to the Utah Supreme Court in 2013, Trece lawyers and the ACLU called the injunction unconstitutionally "overbroad" with definitions of a gang member loose enough to fit almost any Ogden resident.