

John Mejia, USB No. 13965  
Leah Farrell, USB No. 13696  
jmejia@acluutah.org  
lfarrell@acluutah.org  
ACLU of Utah Foundation  
355 North 300 West  
Salt Lake City, UT 84103  
(801) 521-9862

Nathan Freed Wessler (*pro hac vice* application pending)  
Brett Max Kaufman (*pro hac vice* application pending)  
nwessler@aclu.org  
bkaufman@aclu.org  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004  
(212) 549-2500

*Attorneys for Respondents–Intervenors*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES DEPARTMENT OF  
JUSTICE, DRUG ENFORCEMENT  
ADMINISTRATION,

*Petitioner,*

v.

UTAH DEPARTMENT OF COMMERCE and  
UTAH DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING,

*Respondents.*

Case No. 2:16-cv-611-DN

**DECLARATION OF JEREMY  
ROBERTSON IN SUPPORT OF  
MOTION TO INTERVENE**

Chief Judge David Nuffer

UNITED STATES DEPARTMENT OF  
JUSTICE, DRUG ENFORCEMENT  
ADMINISTRATION,

*Petitioner,*

v.

IAFF LOCAL 1696 et al.,

*Respondents–Intervenors.*

I, Jeremy Robertson, hereby declare and state as follows:

1. I submit this declaration based on my personal knowledge in support of the Motion to Intervene in the above-captioned case.

2. I am the President of Salt Lake County Firefighters IAFF Local 1696 (“Local 1696”), which is one of the entities seeking to intervene in this action.

3. Local 1696 is a union representing firefighters and paramedics in Salt Lake County, Utah. An affiliate of the International Association of Firefighters, Local 1696 has 391 members.

4. Local 1696’s members serve as firefighters and paramedics for the Unified Fire Authority of Greater Salt Lake (“UFA”). The UFA is Utah’s largest fire agency, serving the cities of Alta, Cottonwood Heights, Draper, Eagle Mountain, Herriman, Holladay, Midvale, Riverton, Taylorsville, and the unincorporated areas of Salt Lake County.

5. Members of Local 1696 have taken an oath to uphold and defend the Constitution of the United States for all citizens. Local 1696 defends the rights and interests of its members and the public in a number of contexts. Among the rights of its members that Local 1696 seeks to defend are the constitutional right against unreasonable searches and the right to privacy of

sensitive information. Local 1696 and its members have an interest in ensuring that prescription records held in the Utah Controlled Substance Database (“UCSD”) remain protected from searches by law enforcement unless investigators have demonstrated probable cause to a judge and obtained a warrant.

6. Because of the physical demands and dangers of firefighting, firefighters are at high risk of injury. According to the federal government, firefighters have the third highest incidence of on-the-job injury of any industry in the United States.<sup>1</sup> The majority of injuries suffered by firefighters are strains, sprains, and muscular pain.<sup>2</sup>

7. Treatment of these types of injuries often requires pain medication prescribed by a physician, including opioids. Because opioid pain medications are classified as controlled substances, prescriptions for them are tracked in the UCSD.

8. The relatively high need for pain control medication by firefighters means that, if law enforcement officials are able to access UCSD records without appropriate protections, those records can be easily misinterpreted as evidence of drug abuse or other criminal behavior.

9. The experience of Local 1696’s members demonstrates the crucial importance of requiring law enforcement officers to obtain a warrant before accessing prescription records held in the UCSD.

---

<sup>1</sup> U.S. Dep’t of Labor, Bureau of Labor Statistics, *Table SNR06: Highest incidence rates of total nonfatal occupational injury cases, 2014*, <http://www.bls.gov/iif/oshwc/osh/os/ostb4352.pdf> (last visited July 25, 2016).

<sup>2</sup> Hylton J. G. Haynes & Joseph L. Molis, Nat’l Fire Protection Assoc., *U.S. Firefighter Injuries – 2014* iii (Nov. 2015), <http://www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/the-fire-service/fatalities-and-injuries/firefighter-injuries-in-the-united-states>.

10. In April 2013, the UFA discovered that opioid pain medications had gone missing from several of its ambulances. The UFA reported this to the Unified Police Department of Greater Salt Lake (“UPD”), Cottonwoods Heights Police, and Draper City Police due to the multiple jurisdictions impacted. Draper City Police transferred their jurisdictional authority to UPD to investigate. UPD and Cottonwood Heights Police each began separate investigations. Cottonwood Heights Police assigned a detective to investigate, who an attempt to identify a suspect, obtained the prescription records of at least 480 full-time employees of the UFA from the UCSD (and perhaps the records of about 100 other UFA employees as well). He was apparently looking for evidence of opioid addiction in the records that would indicate who might have taken the medications.

11. Prior to 2015, Utah law enforcement officials were permitted to obtain records from the UCSD without a search warrant. The Cottonwoods Heights detective obtained the records without any individualized suspicion as to any UFA employee, and without applying for a search warrant or other judicial order.

12. The detective identified four UFA employees whose prescription histories he believed had the appearance of opioid dependency. He was not able to link any of them to the missing drugs, and none of them was charged with theft or misuse of those medications.

13. Among the four UFA employees were Marlon Jones, an assistant fire chief, and Ryan Pyle, a firefighter/paramedic. Both of them had several prescriptions for pain medications reflected in the records contained in the UCSD. The Cottonwoods Heights detective decided to pursue charges against Jones and Pyle for misuse of controlled substances, believing that they had obtained those prescriptions under false pretenses.

14. Criminal charges were brought against Jones in May 2013 and against Pyle in November 2013. It became clear, however, that Jones's and Pyle's prescriptions for opioid pain medications were entirely legitimate and medically justified. Prosecutors dismissed the charges against both men, with prejudice, in October 2014.

15. Jones had pain control medication prescriptions for an on-the-job back injury, double knee replacements, and gout. The medications were all properly prescribed by treating physicians.

16. Pyle had pain control medication prescriptions for a motorcycle injury and for a bone infection following a dental procedure. The medications were all properly prescribed by treating physicians.

17. Despite having done nothing wrong, Jones and Pyle were significantly harmed by the investigation and prosecution. They had to endure 17 and 12 months as criminal defendants, respectively. Their reputations suffered, as they were repeatedly identified as accused criminals and drug addicts in press coverage. They were placed on administrative leave from their jobs. They experienced financial hardship as they struggled to pay attorneys' fees. Private details about their medical histories became public as they worked to fight the charges.

18. None of these harms would have occurred if the investigating detective had been required to obtain a search warrant before requesting prescription records from the UCSD. Because the detective had no individualized suspicion as to Jones, Pyle, or any of the other approximately 480 employees of the UFA who were searched, he would almost certainly not have been able to demonstrate the probable cause required for a warrant.

19. A warrant requirement would have focused law enforcement attention on legitimate leads, and would have shielded innocent people like Jones, Pyle, and the other employees of the UFA from unjustified scrutiny and incursions on their privacy.

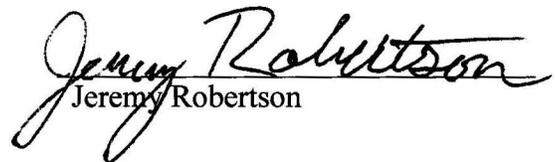
20. In light of these events, Local 1696 was a strong supporter of legislation to require law enforcement to obtain a warrant before accessing records in the UCSD. The legislature enacted that legislation in 2015.

21. Although state and local law enforcement agencies in Utah now must get a warrant before accessing UCSD records, the federal Drug Enforcement Administration's ("DEA") refusal to abide by the warrant requirement leaves the members of Local 1696, other firefighters in the state, and every Utahn who has received a controlled substance prescription, at risk of violations of their privacy and the harms that can result from such violations.

22. If the DEA were allowed to obtain prescription records from the UCSD without a warrant, Local 1696's members would fear unjustified access to their sensitive medical information, unnecessary scrutiny by law enforcement agents and groundless prosecution. This fear is not unreasonable, and could chill some people from obtaining necessary medical care.

Pursuant to 28 U.S.C. § 1746, I hereby declare and state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 27 day of July, 2016.

  
Jeremy Robertson