

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Keith Rogers, et al.,)
)
)
 Plaintiff,)
)
 (Judge Chang)
-vs-)
)
 15-cv-11632
Sheriff of Cook County and Cook)
County, Illinois,)
)
)
 Defendants)

**PLAINTIFFS' REPLY IN SUPPORT
OF MOTION TO RECONSIDER**

Defendants do not challenge the accuracy of the graphs plaintiffs included in their motion to reconsider. (ECF No. 247 at 2-5.) These graphs conclusively show that defendants did not abandon their mandatory tapering policy on July 1, 2017. The Court's ruling was therefore manifestly erroneous.

Defendants do not argue to the contrary and even concede that there is no support for their claimed July 1, 2017 closing date in a footnote:

If there is ambiguity in testimony and reports about when in July 2017 the practice changed, it may be justifiable to consider July 15, 2017 or July 31, 2017 as a closing date.

(ECF No. 247 at 8 n.3.)

The Court should base its finding about when defendants abandoned the mandatory tapering policy on data, rather than the erroneous testimony of Dr. Richardson that the policy ended in “July of 2017.”

Plaintiffs requested data to support this claim on May 10, 2018, at the deposition of Dr. Richardson when she first advanced her claim about the “July of 2017” ending date. Plaintiffs asked Dr. Richardson if she had any data about the purported 2017 change in the tapering policy. (Richardson Dep. 43:15-19, ECF No. 153-21 at 12.) Dr. Richardson responded as follows:

If there are, I don’t have that data yet. We are still developing.
The data is constantly changing.

(Richardson Dep. 43:20-22, ECF No. 153-21 at 12.) Dr. Richardson did not produce any additional data in the report defendants filed with their motion to decertify. (ECF No. 218-5 at 2.)

Defendants presented data in their reply memorandum, including a PDF printout of a spreadsheet (using 4.5 point type) as ECF 233 at 1-4. This PDF version of a spreadsheet shows all persons defendants assert were not subjected to the mandatory tapering policy. Plaintiffs converted the PDF version of the spreadsheet into an excel spreadsheet and, using other data, identified the persons identified by defendants as not having been subjected to mandatory tapering from August 2, 2017 to August 2, 2019, the last date in defendant’s data.

The data shows that the overwhelming number of persons who entered the jail between August 1, 2017 and December 31, 2017 were subjected to the mandatory tapering policy. The continuation of the tapering policy is more pronounced when female detainees, who have always been excused from tapering if pregnant, are excluded:

Month	Year	Number Not Tapered	Number Female Not Tapered	Total Entering Program	Pct Tapered	Pct Non-Female Tapered
Aug	2017	3	1	38	92%	95%
Sep	2017	4	3	34	88%	97%
Oct	2017	15	6	32	53%	72%
Nov	2017	11	4	35	69%	80%
Dec	2017	15	6	38	61%	76%

Tapering remained the standard operating procedure in 2018, as shown below:

Month	Year	Number Not Tapered	Number Female Not Tapered	Total Entering Program	Pct Tapered	Pct Non-Female Tapered
Jan	2018	22	5	44	50%	61%
Feb	2018	15	2	42	64%	69%
Mar	2018	16	1	37	57%	59%
Apr	2018	16	4	51	69%	76%
May	2018	19	8	66	71%	83%
Jun	2018	16	1	52	69%	71%
Jul	2018	24	4	64	63%	69%
Aug	2018	19	10	68	72%	87%
Sep	2018	20	1	45	56%	58%
Oct	2018	14	2	42	67%	71%
Nov	2018	16	7	45	64%	80%
Dec	2018	14	4	40	65%	75%

The tapering policy continued to be the standard operating procedure in 2019:

Month	Year	Number Not Tapered	Number Female Not Tapered	Total Entering Program	Pct Tapered	Pct Non- Female Tapered
Jan	2019	19	10	47	60%	81%
Feb	2019	15	3	42	64%	71%
Mar	2019	19	5	53	64%	74%
Apr	2019	24	6	40	40%	55%
May	2019	21	3	46	54%	61%
Jun	2019	22	7	47	53%	68%
Jul	2019	23	3	47	51%	57%

Defendants have not produced any data to support a closing date before October 7, 2019, when defendants rescinded the written, mandatory tapering policy. Defendants' demonstrably false claim that they abandoned mandatory tapering in "July of 2017" does not meet the "formidable burden," *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013), of a party attempting to show the voluntary cessation of a challenged policy.

The Court should apply the same standard to defendants that it applied to the *Monell* claims in *Velez v. City of Chicago*, No. 1:18-CV-08144, 2023 WL 6388231, at *23-*26 (N.D. Ill. Sept. 30, 2023): To show that defendants stopped following the tapering policy, the Court should require defendant to come forward with evidence that mandatory tapering had stopped being the "standard operating procedure" at the Jail. *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989). As appears in the tables set out above,

this is an impossible task: mandatory tapering remaining the standard operating procedure until the defendants abandoned the policy on October 7, 2019.

The Court should therefore grant plaintiff's motion and reconsider its order setting ending the class on July 1, 2017.

Respectfully submitted,

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