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

Montrell Carr, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 17-cv-7135
-vs-	)	
	)	
Sheriff of Cook County and Cook County, Illinois,	)	*(Judge Pacold)*
	)	
	)	*(Magistrate Judge Weisman)*
Defendants.	)	

**PLAINTIFF'S RESPONSE TO MOTION FOR
TO DISMISS (ECF No. 227)**

The Seventh Circuit remanded this case with instructions to rule on whether the proposed class is sufficiently numerous and whether the putative class will be adequately represented. *Scott v. Dart,* 99 F.4th 1076 (7th Cir. 2024). Plaintiffs demonstrated in their motion for class certification that the class consists of more than 2,000 persons. (ECF No. 129 at 14-15.) Defendants did not challenge the size of the putative class in their answering memorandum. (ECF No. 136.) As to adequacy of representation, plaintiffs have asked the Court for leave to add additional named plaintiffs (ECF No. 202) to forestall any claim that Quintin Scott cannot adequately represent the class. (It is noteworthy that the original plaintiff in *United States Parole Commission v. Geraghty,* 445 U.S. 388 (1980) represented the class on remand, even though his individual claim had become moot when he was

released from prison. *See Geraghty v. United States Parole Commission*, 552 F.Supp. 276, 278 (M.D. Pa. 1982), *aff'd* 719 F.3d 1199,. 1202-03 (3d Cir. 1983).) Plaintiffs' motion to add plaintiffs is awaiting decision by the Court.

On the same day that the Supreme Court denied defendants' petition for writ of certiorari, Supreme Court Case No. 24-464, defendants filed the motion to dismiss (ECF No. 227) that is now before the Court. Plaintiffs show below that the motion is completely without merit and must be denied.

I. The Court Must Follow the Seventh Circuit's Mandate

Defendants ask the court to reject the mandate of the Seventh Circuit based on their view that the Appellate Court's holding "is invalid as a matter of law." (ECF No. 227 at 3.) Defendants argue that the mandate of the Seventh Circuit is "in direct violation of the Rules Enabling Act." (*Id.* at 6.) To justify flouting the mandate of the Court of Appeals, defendants argue that "[t]he Seventh Circuit conspicuously failed to address either of [two] jurisdiction problems in its opinion," leaving this Court "free to address the jurisdictional defects identified here." (*Id.* at 7, 8.)

Defendants' motion is frivolous. "In a hierarchical system, decisions of a superior court are authoritative on inferior courts." *Reiser v. Residential Funding Corp.*, 380 F.3d 1027, 1029 (7th Cir. 2004). This Court is therefore "required to comply with the express or implied rulings of the appellate court." *Sullivan v. Flora, Inc.*, 63 F.4th 1130, 1137 (7th Cir. 2023).

The mandate rule extends to "any issue conclusively decided by [the Court of Appeals] on the first appeal." *United States v. Husband*, 312 F.3d 247, 251 (7th Cir. 2002). This is true even when the Court of Appeals did not explain the basis for its decision on a particular issue: "An order is an order regardless whether it contains an explanation." *In re A.F. Moore & Assocs., Inc.*, 974 F.3d 836, 840–41 (7th Cir. 2020).

Defendants are unable to argue that they are presenting an issue that was not decided by the Seventh Circuit. *See United States v. Morris*, 259 F.3d 894, 898 (7th Cir. 2001) (a district court on remand may address "issues that were timely raised before the district and/or appellate courts but which remain undecided"). Here, the Seventh Circuit found no merit defendants' jurisdictional argument, devoting Section II of its opinion to a lengthy and careful discussion of whether "we have Article III jurisdiction over this matter." *Scott v. Dart*, 99 F.4th 1076, 1082 (7th Cir. 2024). The Court should reject defendants' dismissive description of the Seventh Circuit's careful ruling on this issue as a "drive-by jurisdictional ruling." (ECF No. 227 at 7.)

The Seventh Circuit rejected both of the jurisdictional arguments defendants now seek to re-raise. *Scott v. Dart*, 99 F.4th 1076, 1082-88 (7th Cir. 2024). Even if the Court were to determine that defendants are raising new arguments, there is no dispute that defendants' arguments concern the

same issue (Article III jurisdiction) decided on appeal. The Seventh Circuit made plain in *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228 (7th Cir. 1988) that "same issue, new arguments" is not an exception to the mandate rule. *Id.* at 234. This Court therefore lacks the power to revisit this issue.

II. The Statement of Judge Easterbrook Does Not Allow this Court to Overrule the Seventh Circuit

Defendants base their request that the Court depart from the mandate of the Seventh Circuit on the separate statement of Judge Easterbrook on denial of the petition for rehearing, 108 F.4th 931 (7th Cir. 2024). (ECF No. 277 at 2.) Judge Easterbrook observed that "[t]he Supreme Court must sooner or later resolve this conflict." *Id.* at 933. The Supreme Court chose to not resolve the claimed conflict when it denied defendants' petition for writ of certiorari on February 24, 2025, Supreme Court Case No. 24-464. Defendants now ask this Court to sit as a super-Supreme Court, overrule the decision of the Seventh Circuit, and resolve what they contend is a conflict among the circuits. This argument is truly frivolous.

In *Donohoe v. Consolidated Operating & Production Corp.*, 30 F.3d 907 (7th Cir. 1994), the Court of Appeals answered the question, "What if the lower court expects the higher court, if given a chance, to see the error in its ways, and reverse the 'erroneous' precedent?" The answer is simple:

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"Ours is a hierarchical judiciary, and judges of inferior courts must carry out decisions they believe mistaken. A district judge who thinks new evidence or better argument 'refutes' one of our decisions should report his conclusions while applying the existing law of the circuit." *Id.*, *quoting Gacy v. Welborn*, 994 F.3d 305, 310 (7th Cir. 1993). The Court must therefore deny defendants' motion to dismiss.

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Respectfully submitted,

/s/ <u>Kenneth N. Flaxman</u>
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