

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

Leoncio Elizarri and, by his Special )  
Administrator Leticia Perez, Gregory L. )  
Jordan, and Ted Velleff, individually and )  
for others similarly situated, )  
 )  
*Plaintiffs*, )  
 ) No. 17-cv-8120  
-vs- )  
 ) (Judge DurkinSeeger)  
Sheriff of Cook County and Cook )  
County, Illinois, )  
 )  
*Defendants*. )

## **SECOND AMENDED COMPLAINT**

Plaintiffs, by counsel, allege as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is conferred by 28 U.S.C. § 1343.

2. Leoncio Elizarri was, at the time of his death on October 13, 2018, a resident of the Northern District of Illinois. Leticia Perez serves as the Special Administrator of the Estate of Leoncio Elizarri pursuant to the Court's order of August 5, 2019. (ECF No. 73.)

3. ~~2. Plaintiffs Leonecio Elizarrri and~~ Gregory L. Jordan and Ted  
Velleff are residents of the Northern District of Illinois

4. Plaintiffs bring this case individually and for others similarly situated to assert the following three claims, described in greater detail below:

<u>Claim</u>	<u>Para</u>	<u>Description</u>
	<u>1-16</u>	<u>Facts Common to All Claims</u>
<u>1</u>	<u>17-22</u>	<u>Fifth Amendment Takings</u>
<u>2</u>	<u>23-39</u>	<u>Fourteenth Amendment Damages</u>
<u>3</u>	<u>40-43</u>	<u>Fourteenth Amendment Equitable Relief</u>

5. ~~3.~~Defendant Sheriff of Cook County is responsible for operating the Cook County Jail and is sued in his official capacity only.

6. ~~4.~~Defendant Cook County is joined in this action pursuant to *Carver v. Sheriff of LaSalle County*, 324 F. 3d 947 (7th Cir. 2003).

~~5. To maintain a safe environment at the Cook County Jail, defendant Sheriff prohibits persons in his custody from possessing a variety of personal property.~~

### **FACTS COMMON TO ALL CLAIMS**

7. ~~The Cook County Jail is one of the largest single-site jails in the country and holds persons awaiting trial in Cook County who have been unable to secure pre-trial release.~~

8. ~~6.The Sheriff, through his employees, thus lawfully seizes many Detainees enter the Cook County Jail with various items of personal property from prisoners as they enter the Jail.~~

9. ~~Before 2010, the official policy of defendant Sheriff was to inventory and store all personal property (other than contraband or items of an evidentiary nature) that was in a detainee's possession at the time of arrest.~~

10. Starting in about 2010, defendant Sheriff revised the above described policy to limit the types of detainee personal property that would be inventoried and stored at the Jail.

11. The types of detainee personal property that the Sheriff will store at the Jail now includes the following 14 categories of property:

- a) United States currency
- b) Clothing
- c) Credit cards/debit cards (the name on any card must match the inmate's identification)
- d) Transit cards
- e) Government-issued identification cards
- f) One plain wedding band
- g) Personal keys
- h) Belt
- i) Shoelaces
- j) Prescription eyeglasses
- k) Prescription medication
- l) Soft cover religious texts (e.g., Bible, Koran)
- m) Legal documents with soft cover only
- n) Necessary medical items directly related to the treatment of a medical condition

12. Plaintiffs refer in this complaint to the above enumerated categories as "CCDOC Compliant Property."

~~7. Illinois law and the Fourth Amendment to the Constitution of the United Constitution require defendant Sheriff to safely secure the above described personal property while it remains in his custody.~~

13. 8.Illinois law requires the Sheriff, when transferring a prisoner to Each year, more than 8,000 persons leave the Cook County Jail to serve sentences of imprisonment in the Illinois Department of Corrections, to send to the receiving facility all of the prisoner's personal property that the receiving facility will accept. Such items are known as "compliant property" and consist of the following:

14. At all times relevant, the Illinois Department of Corrections ("IDOC") has limited the types of property that it would accept for a prisoner arriving from the Cook County Jail to the following:

- a) All monies held in the prisoner's commissary account
- b) Identification cards
- c) Legal papers
- d) One religious book, such a Bible or a Koran
- e) Eyeglasses or contacts and case (soft)
- f) Personal correspondence
- g) Wedding Band (without stones)
- h) Photos (up to 24)

15. 9.Prisoner Plaintiffs refer in this complaint to the above categories as "IDOC Compliant Property" and to property that the receiving facility IDOC will not accept is known as "IDOC non-compliant property."

16. Various types of property are "CCDOC compliant" but are not "IDOC compliant," as set out below:

- a) Clothing

- b) Credit cards/debit cards
- c) Transit cards
- d) Personal keys
- e) Belt
- f) Shoelaces

### **THE TAKINGS CLAIM: DETAINEE CLOTHING**

17. ~~10. Illinois law requires the Sheriff to establish procedures to dispose of non-compliant property when he transfers a prisoner to At all times relevant, the written policy of the Sheriff was to provide detainees leaving the Jail for the Illinois Department of Corrections, with an opportunity to designate, on a form made available to the detainee on or before the day of transfer, a person to take custody of the detainee's "IDOC non-compliant property."~~

18. ~~At all times relevant, the widespread practice at the Cook County Jail has been to ignore the above described designation policy. At all relevant times, the widespread practice has been to seize the clothing of detainees leaving the Jail for the Illinois Department of Corrections and either destroy the clothing or make it available to other detainees being released from the Jail who do not have appropriate street clothing.~~

19. ~~The above described practice was applied to clothing belonging to plaintiffs Elizarri, Jordan, and Velleff on the dates each left the Jail for the Illinois Department of Corrections:~~

- a. Elizarri left the Jail for the Illinois Department of Corrections on May 12, 2016.
- b. Jordan left the Jail for the Illinois Department of Corrections on May 2, 2008 and March 13, 2015.
- c. Velleff left the Jail for the Illinois Department of Corrections on January 24, 2014 and August 1, 2017.

20. To demonstrate the plausibility of the allegations about the existence of the above described practice, plaintiffs identify (by name, jail identification number, and date departed Jail for IDOC) 35 members of the putative class to whom the practice was applied in the attached Exhibit 1.

21. The Sheriff does not provide any compensation to a detainee whose property was taken in the manner described above.

22. 11. As set out below with greater specificity, plaintiff contends that the procedures established by the Sheriff do not comport with the Fourth and Fourteenth Amendments. The above described widespread practice resulted in a violation of the Takings Clause of the Fifth Amendment to the Constitution of the United States and have resulted, and continue to result, in irreparable harm to plaintiffs and others similarly situated.

**FOURTEENTH AMENDMENT DUE PROCESS CLAIM:  
DESTRUCTION OF STORED DETAINEE PROPERTY**

23. 12. Before 2008, the procedure established by the Sheriff practice at the Cook County Jail was to destroy the "IDOC non-compliant" property (other than clothing) of prisoners transferred to the Illinois Department of

Corrections unless the prisoner secured the services of another person to take custody of the property.

~~13. As part of this procedure, the Sheriff informed prisoners being transferred to the Illinois Department of Corrections that he would dispose of their personal property if it was not picked up by another person within 45 days.~~

24. ~~14.~~ Starting in 2008, the Sheriff stopped destroying the “IDOC non-compliant” property referred to in the preceding paragraph; the Sheriff adopted a new procedure of storing that property while awaiting instructions from the court presiding over *Elizarri v. Sheriff*, 07-cv-2427, *aff’d 7th Cir.*, No. 17-1522, August 23, 2018.901 F.3d 787 (7th Cir. 2016). Plaintiffs refer to this property as “stored detainee property.”

25. ~~15.~~ In 2011, the Sheriff hired an outside vendor to inventory the “~~non-compliant~~” stored detainee property ~~referred to in the preceding para-~~  
~~graph.~~”

26. ~~16.~~ The outside vendor provided the Sheriff with an inventory of 57,641 sealed ~~property bags of detainees who had been transferred from the Jail to the Illinois Department of Corrections.~~bags of “stored detainee prop-  
erty.”

27. ~~17.~~ Included within this inventory ~~are~~ of the “stored detainee  
property” were 23,415 property bags that contained “IDOC compliant

property" that should have been sent to the Illinois Department of Corrections, including cash and various forms of identification, such as a driver's ~~li-~~  
~~eenses and license or~~ social security ~~eards~~card.

~~18. One of the above described bags contains "compliant property" that belongs to plaintiff Jordan.~~

~~28.~~ ~~19.~~Also included within the above referred inventory ~~are of~~  
"stored detainee property" were 386 property bags containing non-compliant  
CCDOC property such as valuable jewelry that could not have been voluntarily abandoned; this valuable jewelry ~~includes~~included at least one diamond ring worth more than \$25,000.

~~20. Following receipt of the inventory, the Sheriff considered establishing a procedure to return this property to its owners but decided to do nothing about the prisoner property he continues to unreasonably retain.~~

~~21. Plaintiffs and thousands of others similarly situated have been and continue to be harmed because of the Sheriff's unreasonable refusal to implement a procedure to return their property.~~

~~22. Plaintiff Elizarri was serving a term of probation when, on December 30, 2015, he appeared before a judge of the Circuit Court of Cook County.~~

~~23. The judge ordered employees of the Sheriff of Cook County to take plaintiff into custody for having allegedly violated terms of his probation.~~

24. Plaintiff Elizarri had a variety of personal property in his possession when he appeared before the judge on December 30, 2015, including \$22.50 in United States currency, a driver's license, a social security card, a prepaid VISA card (which had a \$200 balance), a CTA bus card, a cell phone, and various pieces of jewelry.

25. A deputy sheriff employed by defendant Sheriff inventoried plaintiff Elizarri's personal property and placed plaintiff's possessions, including \$22.50 in United States Currency, credit cards, rings, wallet, bracelets, and belt into a sealed property bag.

26. Other employees of the Sheriff of Cook County subsequently processed plaintiff Elizarri into the Cook County Jail. Plaintiff Elizarri's personal property, including the \$22.50 in United States Currency, remained in the sealed property bag.

27. Plaintiff Elizarri was held at the Cook County Jail until May 12, 2016 when he was transferred to the custody of the Illinois Department of Corrections.

28. Plaintiff Elizarri remained in the custody of the Illinois Department of Corrections until December 9, 2016, when he was discharged on "mandatory supervised release."

29. Plaintiff Jordan has entered the Cook County Jail on several occasions, most recently on July 3, 2014.

30. When Jordan entered the Jail on July 3, 2014, his personal property included keys, social security card, state identification card, wallet, and belt.

31. Plaintiff Jordan was transferred from the Jail to the Illinois Department of Corrections in March of 2015.

32. Plaintiff Jordan remained in the custody of the Illinois Department of corrections until January of 2018.

33. The Sheriff did not send plaintiffs' personal property to the Illinois Department of Corrections; instead the Sheriff placed the property of plaintiff Elizarri and of plaintiff Jordan in storage along with other prisoner property pursuant to the above described policy.

34. The Sheriff is continuing to hold plaintiffs' personal property, as well as the personal property of thousands of other similarly situated former prisoners, awaiting instructions from a court of competent jurisdiction.

29. One of the above described bags of "stored detainee property" contained property that had been seized from plaintiff Elizarri, four bags contained property belonging to defendant Jordan, and two contain property belonging to plaintiff Velleff.

30. At the direction of the Court, defendant Sheriff located and returned the Elizarri property during the pendency of this litigation.

31. Also at the direction of the Court, defendant Sheriff located and returned two of the bags inventoried from plaintiff Jordan.

32. On July 19, 2019, during the course of this litigation, the Sheriff represented in a sworn answer to Interrogatory 4 of Plaintiffs' Second Set of Interrogatories (attached as Exhibit 2) that it was not currently disposing of "stored detainee property."

33. The Sheriff also represented during the course of this litigation in its sworn answer to Interrogatory 7 of Plaintiffs' First Set of Interrogatories (attached as Exhibit 3) that it would not dispose of any of the "stored detainee property" unless and until it established "specific policies and procedures" and acted "pursuant to due notice to any former inmate."

34. For about ten years, the Sheriff has considered establishing and publicizing a procedure to return the "stored detainee property" to its owners.

35. At all times relevant, the Sheriff has refused to provide notice to former detainees that their property was still being held at the Jail.

36. On September 28, 2020, the Sheriff revealed in this litigation that, contrary to the sworn interrogatory answers it served in 2019, the Sheriff began to dispose of the "stored detainee property" in late 2018. (Exhibit 4, Amended Answer to Second Set of Interrogatory No. 4.)

37. The Sheriff also revealed on September 28, 2020 that the number of items of “stored detainee property” being held had shrunk from the 57,641 sealed bags inventoried in 2011 to “approximately 5,000” property bags. (Exhibit 4, Amended Answer to Second Set of Interrogatory No. 4.)

38. The Sheriff did not give notice to the Court, to plaintiffs’ counsel, nor to any members of the putative class that it had begun to dispose of this property.

39. 35. As a result of the foregoing plaintiffs Plaintiffs and thousands of other similarly situated former prisoners have been deprived of rights secured by the Fourth and Fourteenth Amendments. persons have been deprived of their property without due process of law by the Sheriff’s decision to dispose of the above referred property without notice and by the loss of “stored detainee property” identified in the 2011 inventory.

**FOURTEENTH AMENDMENT DUE PROCESS CLAIM:  
PROPERTY HELD AWAITING INSTRUCTIONS**

40. The Due Process Clause of the Fourteenth Amendment requires the Sheriff to provide the best notice practicable to the persons whose property the Sheriff is holding as “stored detainee property” that their property is available for pickup.

41. The Sheriff has at all times relevant refused to provide any notice whatsoever to the persons whose property makes up the “stored detainee property” and has thereby irreparably harmed those persons.

42. The Due Process Clause of the Fourteenth Amendment also requires the Sheriff to safely secure the “stored detainee property.”

43. As reflected in the shrinkage of the number of items comprising the “stored detainee property,” the Sheriff has failed to safely secure that property and has thereby irreparably harmed the persons whose property can no longer be found among the “stored detainee property.

### **CLASS**

44. Plaintiffs seek to maintain this case as a class action for the following subclasses:

a. Fifth Amendment Takings Subclass: All persons who left the Cook County Jail to serve a sentence in the Illinois Department of Corrections on and after November 9, 2015 and who did not designate a person to take custody of their clothing and who did not freely and voluntarily abandon that property.

b. 36. Plaintiffs therefore seeks relief for a class of all Fourteenth Amendment Damages: All persons transferred to the Illinois Department of Corrections from the Cook County Jail whose property ~~remains in the custody of the Sheriff of Cook County~~ remained in the custody of the Sheriff of Cook County and was sold, destroyed, or lost on and after November 9, 2015.

- c. Fourteenth Amendment Equitable Relief: All persons transferred to the Illinois Department of Corrections from the Cook County Jail whose property remains in the custody of the Sheriff of Cook County

45. ~~37.~~The ~~Each~~ proposed ~~class~~ subclass satisfies ~~each of~~ the prerequisites of Rule 23(a) and certification is appropriate under Rules 23(b)(3) for subclasses (a) and (b), and under Rule 23(b)(2) and 23(b)(3) for subclass (c).

46. ~~38.~~ Plaintiffs hereby demands trial by jury on any issue for which a jury is available.

WHEREFORE plaintiffs request that the Court ~~grant appropriate injunctive relief requiring the Sheriff to return all property belonging to former detainees at the Jail and to make appropriate restitution for property that has been lost, misplaced, or stolen.~~ require the Sheriff:

- a. To pay reasonable compensation to the members of subclass (a) on their Takings Claim;
- b. To make appropriate restitution to members of subclass (b) for property that has been lost, misplaced, or destroyed, and
- c. To grant appropriate injunctive relief to compel the Sheriff to provide notice to all members of subclass (c) and to establish a procedure to return all “stored detainee property.”

Plaintiffs also requests that the costs of this action, including fees and costs, be taxed against defendants.

/s/ Kenneth N. Flaxman  
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Summary Report	
Title	<b>compareDocs Comparison Results</b>
Date & Time	11/25/2020 8:35:01 PM
Comparison Time	1.80 seconds
compareDocs version	v5.0.100.42

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