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

Anthony Murdock, Andrew Cruz, Johonest Fischer, Theresa Kennedy, and Brian Neals,	)	
Plaintiffs,	)	20-cv-1440
-vs-	)	
	)	*(Judge Feinerman)*
City of Chicago,	)	
Defendant.	)	

PLAINTIFFS' AMENDED MOTION TO CERTIFY CASE AS A CLASS ACTION

Pursuant to Rule 23(c), plaintiffs, by counsel, move the Court to order that this case proceed as a class action for:

> All persons who, on and after February 27, 2018,
>
> (a) were detained by police officers of the City of Chicago on a warrant for which a judge had set an amount of cash bail,
>
> (b) were not permitted to post bail at the police station pursuant to the explicit policies set out in Section IV.B.3(a) or IV.B.3(c) of Chicago Police Department Special Order S06-12-02, and
>
> (c) were released by posting bail after an appearance before a judge of the Circuit Court of Cook County without being held at the Cook County Jail.

I. Introduction

This case involves what Professor Sekhon has described as "non-compliance warrants." Nirej Sekhon, *Dangerous Warrants*, 93 WASH. L. REV.

967, 984 (2018). "[A] a non-compliance warrant is an arrest warrant issued for failing to comply with a legal obligation imposed on an individual, typically by a court or executive official in connection with a criminal or traffic-related proceeding." *Id.* at 983.

The experiences of the named plaintiffs support Professor Sekhon's observation that

> [N]on-compliance warrants do not generally operate as directives to specific officers to seek out and arrest particular individuals. Instead, non-compliance warrants tend to function as "red flags" in law enforcement databases. These warrants remain suspended in the digital ether until an officer comes across the individual in the future, identifies the outstanding warrant, and has reason to execute it.

Id. at 986.

II. The Named Plaintiffs

A. Anthony Murdock

Plaintiff Anthony Murdock was stopped by Chicago police officers at 3:15 a.m. on Saturday, September 29, 2018, while he was driving a motor vehicle with one functioning headlight. (Exhibit 1, Answer to Amended Complaint, ¶ 17, App. 5; Exhibit 2, Murdock Arrest Report at 2, App. 27.[1]) A "name check" turned up a warrant from DuPage County that had been issued when Murdock failed to appear in a minor traffic case.[2] (Exhibit 1,

[1] Plaintiffs have numbered their exhibits sequentially. The exhibits are filed as an ECF attachment to this motion.

[2] Plaintiffs do not challenge detention while officers conduct this "name check." *Hall v. City of Chicago*, 953 F.3d 945, 948 (7th Cir. 2020) (holding that detention for a name check is reasonable).

Answer to Amended Complaint, ¶ 18, App. 6.) The officers took Murdock to the 15th district police station. (Exhibit 1, Answer to Amended Complaint, ¶ 19, App. 6.)

The DuPage County judge who issued the warrant had set bond at $3,000 and authorized Murdock's release by posting 10% of that amount, or $300. (Exhibit 1, Answer to Amended Complaint, ¶ 18, App. 6; Exhibit 2, Murdock Warrant, App. 25.)

An express policy of defendant City of Chicago, discussed below, prohibited the officers from accepting bond and releasing plaintiff on bail. Instead, the officers, acting pursuant to the policy, held Murdock at the police station until 5:00 a.m. on June 18, 2019 when they transferred him to the custody of the Sheriff of Cook County. (Exhibit 1, Answer to Amended Complaint, ¶ 18, App. 6; Exhibit 3, Murdock Arrest Report at 4, App. 41.) Murdock then appeared before a Cook County Judge, his girlfriend posted the $300 to pay the bond that had been set by the DuPage County Judge, and Murdock was released from custody. (Exhibit 1, Answer to Amended Complaint, ¶ 21, App. 7.)

Nor do plaintiffs raise any claim about the legality of the original stop. *Utah v. Strieff*, 579 U.S. 232 (2016).

B. Andrew Cruz

Plaintiff Andrew Cruz was lawfully operating his vehicle on Tuesday, June 18, 2019 at 7:30 p.m. when Chicago police officers "performed a plate check" on Cruz's vehicle and found an outstanding warrant for the owner of that vehicle from DuPage County. (Exhibit 6, Cruz Arrest Report at 2, App. 39.) The warrant had been issued for failure to pay a fine. (Exhibit 5, Cruz Warrant, App. 37.) The judge who issued the warrant had set bond at $3,000 and authorized Cruz's release by posting 10% of that amount, or $300. (Exhibit 5, Cruz Warrant, App. 37.) Cruz had $300 with him when he was arrested. (Exhibit 7, Cruz Interrogatory Answer 1(c), App. 44.)

Cruz was held overnight at the police station until 5:00 a.m. on June 19, 2019 when he was transferred to the custody of the Sheriff of Cook County. (Exhibit 1, Answer to Amended Complaint, ¶ 24, App. 8; Exhibit 6, Cruz Arrest Report at 4, App. 41.) Cruz appeared before a Cook County Judge, posted the $300 bond that had been set by the DuPage County Judge, and he was released from custody. (Exhibit 7, Cruz Interrogatory Answer 1, 2, App. 43-44.)

C. Johonest Fischer

1. Arrest on September 10, 2018

Plaintiff Johonest Fischer was driving his car on Monday, September 10, 2018 at 2:02 p.m. when Chicago police officers stopped him for

expired temporary license plates. (Exhibit 9, Fischer Arrest Reports at 2, App. 59.) A "name check" turned up a warrant from Pike County, Illinois that had been issued in June of 2017 when Fischer had failed to appear in a minor traffic case. (Exhibit 8, Fischer Warrants at 1, App. 56.) The judge who issued the warrant had set bond at $1,000 and authorized Fischer's release by posting 10% of that amount, or $100. (*Id.*)

Fischer was held overnight at the police station until 5:35 a.m. on September 11, 2018 when he was transferred to the custody of the Sheriff of Cook County. (Exhibit 8, Fischer Arrest Reports at 4, App. 61.) Fischer appeared before a Cook County Judge and his girlfriend or his stepfather posted the $100 bail that had been set by the Pike County Judge and he was released from custody. (Exhibit 10, Fischer Interrogatory Answer 1(c), App. 69.)

2. Arrest of March 1, 2019

Plaintiff Fischer was subjected to the challenged policy again when he was driving his car on Friday, March 1, 2019 at 11:54 p.m. Chicago police officers stopped him for "fail[ing] to use his operator signal to change lanes from left to right." (Exhibit 9, Fischer Arrest Reports at 7, App. 64.) A "name check" turned up a warrant from Rockford, Illinois that had been

issued in December of 2018.[3] (Exhibit 8, Fischer Warrants at 2, App. 57.) The judge who issued the warrant had set bond at $2,500 and authorized Fischer's release by posting 10% of that amount, or $250. (*Id.*)

Fischer was held at the police station until 7:00 a.m. on March 2, 2019 when he was transferred to the custody of the Sheriff of Cook County. (Exhibit 9, Fischer Arrest Reports at 9, App. 66.) Fischer appeared before a Cook County Judge, his girlfriend posted the $250 bail that had been set by the Winnebago County Judge, and he was released from custody. (Exhibit 10, Fischer Interrogatory Answer 1(c), App. 69.)

D. Theresa Kennedy

Plaintiff Theresa Kennedy was driving her car on Saturday, April 27, 2019 at 9:40 p.m. when Chicago police officers ran her license plate on their squad car computer and learned of "a possible warrant hit as well as the registered owner to have a revoked DL." (Exhibit 13, Kennedy Arrest Report at 2, App. 86.)

The warrant had been issued by a judge of the Circuit Court of Cook County, First Municipal District, on April 17, 2019. (Exhibit 12, Kennedy

[3] Unlike the other warrants discussed in this motion, this warrant had been issued at the initiation of a criminal case and was not a "non-compliance warrant." The criminal case began with the filing of a criminal complaint and issuance of an arrest warrant on December 17, 2018; the publicly available court records for Winnebago County, App. 81-83, and available at http://fce.wincoil.us/fullcourtweb/start.do show that the criminal case was dismissed on the motion of the prosecution on August 27, 2019, and $225 from the $250 bond was returned on September 4, 2019.

Warrant, App. 84.) The online records of the Circuit Court of Cook County (Exhibit 15, App. 103-110) show that a judge issued the warrant after Kennedy had failed to pay a fine: Kennedy pleaded guilty on January 24, 2018 and received a sentence of one year probation or conditional discharge, community service for an unspecified number of hours, and a fine of $394. (Exhibit 15, App. 107-08.) The case was on the call on January 23, 2019 and again on April 17, 2019 (App. 106), most likely because Kennedy had failed to pay the fine. The judge issued a warrant on April 17, 2019 (*id.*) and Kennedy subsequently paid a fine and appears to have performed community service. (App. 104-05.)

Kennedy was held at the police station until 7:43 a.m. on April 28, 2019 when she was transferred to the custody of the Sheriff of Cook County. (Exhibit 13, Kennedy Arrest Report at 4, App. 88.) Kennedy appeared before a Cook County Judge, her brother posted bond on the warrant, and she was released from custody. (Exhibit 14, Kennedy Interrogatory Answer 1(c), App. 91.)

E. Brian Neals

Plaintiff Brian Neals was driving his car on Sunday, July 21, 2019 at 9:42 a.m. when Chicago police officers claim that they saw him not

wearing a seat belt.[4] (Exhibit 17, Neals Arrest Report 2, App. 113.) The officers conducted a computer name check and learned that Neals was driving on a suspended driver's license and was sought in a warrant issued by a judge in DuPage County when Neals had failed to appear in a traffic case. (*Id.*)

The judge who issued the warrant had set bond at $5,000 and authorized Neals's release by posting 10% of that amount, or $500. (Exhibit 16, Neals Warrant, App. 111; Exhibit 19, Neals Dep. 66:3-5, App. 195.)

Neals was held at the police station until 6:00 a.m. on July 21, 2019 when he was transferred to the custody of the Sheriff of Cook County. (Exhibit 17, Neals Arrest Report at 4, App. 115.) Neals appeared before a Cook County Judge, his friend, Ebony Coleman, posted bond on the warrant, and he was released from custody. (Exhibit 18, Neals Interrogatory Answer 1(c), App. 118.)

III. Arrests on Warrants in the City of Chicago

During the proposed class period, Chicago police officers arrested more than 34,000 persons on warrants.[5] 1,529 of these arrestees, identified

[4] Neals was driving a car that had automatic fastening seatbelts and questioned the officer's veracity at his deposition. (Neals Dep. 68:12-23, App. 197; Neals Dep. 75:6-76:7, App. 204.) Neals does not assert any claim about the legality of the stop in this case.

[5] The data available at https://data.cityofchicago.org/Public-Safety/Arrests/dpt3-jri9/data shows 34,848 arrests on warrants. The data available at https://publicsearch1.chicagopolice.org/ shows 37,026 arrests on warrants.

in Exhibit 21, App. 301-344, were released several hours after arrest by posting bond at a police station.[6] 2,355 arrestees, identified in Exhibit 20, App. 242-300, were held at a police station until the morning following the arrest and then brought to "Central Bond Court" before being permitted to post bond.[7]

The experiences of the named plaintiffs show the dehumanizing effect of refusing to permit an arrestee to post bond at the police station when the arrestee is ready, willing, and able to do so

Each plaintiff was held until the early morning hours in a detention cell at a police station. (Exhibit 4, Murdock Interrogatory Answers, ¶ 6, App. 32; Exhibit 7, Cruz Interrogatory Answers, ¶ 11, App. 47; Exhibit 10, Fischer Interrogatory Answers, ¶ 11, App. 74; Exhibit 14, Kennedy Interrogatory Answers, ¶ 11, App. 94; Exhibit 18, Neals Interrogatory Answers, ¶ 11, App. 121). Plaintiff Neals explained at his deposition that the only place to sit in the detention cell was on "[a] big piece of concrete … three feet by six feet." (Exhibit 19, Neals Dep. 105:9-14, App., 234.)

Each plaintiff was handcuffed when transported from the police station to Central Bond Court. (Exhibit 7, Cruz Interrogatory Answers, ¶ 11,

[6] This number is derived from the data available at https://publicsearch1.chicagopolice.org/.

[7] Plaintiffs explain this computation in their discussion of numerosity, *infra* at 15-16.

App. 47; Exhibit 10, Fischer Interrogatory Answers, ¶ 11, App. 74; Exhibit 14, Kennedy Interrogatory Answers, ¶ 11, App. 94; Exhibit 18, Neals Interrogatory Answers, ¶ 11, App. 121).

Before seeing the judge at bond court, arrestees are placed in a holding cell with many other arrestees: Neals recalls about 200 other persons in that cell. (Exhibit 19, Neals Dep. 91:1-7, App. 220.) A deputy sheriff uses a marker to write a jail booking number on the arm of each arrestee while they wait to see the judge. (Exhibit 19, Neals Dep. 103:14-17, App. 232.) The marker is difficult to remove, (*id.* at 103:18-19), and left Neals feeling "very disrespecting, because my whole arm was written up with numbers." (*Id.* at 103:22-23.)

The actual appearance before the judge is anticlimactic. As Neals explained:

> You can't say two words. You walk up there, they say your name, you let them know what your name is, and then they tell you if you got a bond, what your bond is, and then you go right back. And then they let you know–and they ask if you can post bond.

(Exhibit 19, Neals Dep. 91:8-13, App. 220.) The arrestee is not permitted to speak:

> He [the bond court judge] called my name, I agreed. He told me what my bond was. Asked me if I could post bail. I looked back and saw my girlfriend was there, and they took me in the back.

> You don't get to say nothing, except yes or no if you can post bail.

(Exhibit 19, Neals Dep. 92:14-19, App. 221.)

IV. The Municipal Policy

Plaintiffs were not permitted to post bond at the police station because of a written policy of the City of Chicago.

Before April 24, 2012, the Chicago Police Department permitted persons arrested on a warrant where "the bond amount is indicated on the warrant … to post the indicated bond." (Exhibit 23, General Order 97-12, Section IV(A)(5)(a), App. 359.) This policy is continued in Section VII of the Chicago Police Department Bail Bond Manual, Exhibit 27:

> **VII. Arrest on Warrant (Ordinance, Misdemeanor, or Felony)**
>
> When a person is arrested on a warrant (amount of bail is listed on all warrants), the offender may be let to bail by:
>
> A. depositing 10% of the amount stated on the warrant with the desk sergeant in accordance with 725 ILCS 5/110-7 ("D" Book). A minimum of $120 will be taken. Therefore, bail of $500 would require a deposit of $120.
>
> B. depositing with the desk sergeant, in cash, the full amount of the bail stated in the warrant ("C" Book).

(Exhibit 27, Bail Bond Manual, Section VII, App. 388.) The Chicago Police Department subsequently added the exception to this policy that plaintiffs challenge in this case.

The Department added a new provision to Special Order S06-12-02 effective April 24, 2012.[8] That provision, Section IV(B) (3), states as follows:

> B. The station supervisor will ensure that:
>
> * * *
>
> 3. the following will be transported to Central Bond Court:
>
> a. all persons arrested on a warrant outside of the First Municipal District and no local charges,
>
> b. all persons arrested on a warrant issued from Criminal Trial Court and no local charges, and
>
> c. all persons arrested on all warrants on Saturday, Sunday, and Court Holidays.

(Exhibit 24, App. 369.) Defendant retained this provision in the version of the policy that was in force from June 13, 2013 through August 26, 2019 (App. 372-77) and this provision exists in the current version that became effective on August 26, 2019. (App. 378-85.)

V. Plaintiffs' Legal Theories

The obvious flaw in the municipal policy is its disparate treatment of warrants issued by judges sitting in the City of Chicago and warrants issued by all other judges in the State of Illinois. Plaintiffs contend that this distinction does not have a "rational connection to a legitimate state interest,"

[8] Special Order S06-12-02 was originally issued on December 31, 1997. (Exhibit 22, Response to Request to Admit, ¶ 5, App. __.)

Ostrowski v. Lake County, 33 F.4th 960, 967 (7th Cir. 2022), and therefore violates the Equal Protection Clause of the Fourteenth Amendment.

Another infirmity in the municipal policy is apparent from the rule the Seventh Circuit recognized in *Doyle v. Elsea*, 658 F.2d 512 (7th Cir. 1981) that "the constitutional liberty interest in release on bail arises after a magistrate has determined that an accused may be released upon deposit of whatever sum of money will ensure the accused's appearance for trial." *Id.* at 516 n.6. Defendant's policy that persons held on warrants issued outside of Chicago and those seized on weekends may not post bail at the police station runs afoul of this liberty interest.

Pursuant to the decisions of the Seventh Circuit in *Driver v. Marion County. Sheriff*, 859 F.3d 489, 490 (7th Cir. 2017) and *Williams v. Dart*, 967 F.3d 625, 632 (7th Cir. 2020), the municipal policy also violates the Fourth Amendment because the policy caused plaintiffs "to be detained for an unconstitutionally-unreasonable length of time." *Driver*, 859 F.3d at 492.

Other circuits have also explicitly analyzed the constitutional question as interference with a Fourteenth Amendment liberty interest in being free from detention once bail has been set. *See, e.g.*, *Campbell v. Johnson*, 586 F.3d 835, 840 (11th Cir. 2009) ("The Fourteenth Amendment Due Process Clause includes the right to be free from continued detention after it

was or should have been known that the detainee was entitled to release.") (cleaned up); *Dodds v. Richardson*, 614 F.3d 1185, 1194 (10th Cir. 2010) (once bail has been set, an arrestee has "a protected liberty interest in posting bail and being freed from detention"); *Steele v. Cicchi*, 855 F.3d 494, 502 (3d Cir. 2017) (arrestee has "a constitutionally protected liberty interest in exercising his bail option, once bail had been set, sufficient to trigger substantive due process protection").

The legality of the municipal policy turns on the reason for that policy, whether plaintiffs' claim is analyzed as an Equal Protection violation, as an unreasonable seizure under the Fourth Amendment, or as a denial of substantive due process under the Fourteenth Amendment. This is an obvious common question of law ripe for resolution on a class basis in "one fell swoop" under Rule 23.

VI. The Proposed Class Is Ascertainable and Is Sufficiently Numerous

Plaintiffs' counsel has identified 2,355 persons who, from February 27, 2018 through June 30, 2022, were arrested by Chicago police officers on a warrant, not permitted to post bond at the police station, and were released after an appearance before a judge of the Circuit Court of Cook County

without being processed into the Cook County Jail.[9] A fair inference is that these persons could have posted bail at the police station and avoided the dehumanizing experience of overnight detention and an appearance at central Bond Count if defendant allowed persons arrested on out-of-Chicago warrants to post bail at the police station. These potential members of the putative class are identified in Exhibit 20, App. 240-300.

Counsel identified these persons from data produced by the Sheriff of Cook County in response to requests under the Illinois Freedom of Information Act and from data that the City of Chicago makes available on its website, https://publicsearch1.chicagopolice.org/.

The Sheriff maintains records of all persons who are assigned identification numbers for potential admission to the Cook County Jail. The Sheriff treats those records, excluding date of birth and home address, as public records under the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq.

Plaintiffs' counsel obtained Jail intake records from the Sheriff through several Freedom of Information Act requests. The Sheriff's record

[9] The starting date for the class is two years before plaintiff Murdock filed this case on February 27, 2020. The closing date for the class is the date of entry of judgment (or the date the City of Chicago abandons the policy challenged in this case). *Williams v. Lane*, 129 F.R.D. 636, 649 (N.D. Ill. 1990). Counsel's numerosity computation stops on June 30, 2022, the latest date in the data produced by the Sheriff of Cook County.

for each of the named plaintiffs shows that each was discharged without an overnight stay at the jail with a discharge type of "bond paid."

Plaintiffs' counsel also obtained records from the City of Chicago through its publicly available websites.[10] This data allowed counsel to prune from the Jail records persons who were not arrested by Chicago police officers. This produced a more accurate estimate of class size than counsel's previous estimates, prepared solely from the Jail records.

Counsel extracted from these records the list of class members (Exhibit 20, App. 240-300) and the list of persons arrested on warrants in the class period who were permitted to post bail at the police station. (Exhibit 21, App. 301-44.) As of June 30, 2022, the proposed class consists of 2,354 identifiable persons.

The proposed class is therefore ascertainable from records maintained by the City of Chicago and by the Sheriff of Cook County. As shown above, the proposed class is "defined clearly and … defined by objective criteria rather than by, for example, a class member's state of mind." *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657 (7th Cir. 2015).

The proposed class in this case meets the numerosity requirement of Rule 23(a)(1) because 2,354 persons is "large enough to make joinder

[10] The websites are https://data.cityofchicago.org/Public-Safety/Arrests/dpt3-jri9/data and https://publicsearch1.chicagopolice.org/.

impracticable and thus justify a class action suit." *Arnold Chapman & Paldo Sign & Display Co. v. Wagener Equities Inc.*, 747 F.3d 489, 492 (7th Cir. 2014). As in *Starr v. Chicago Cut Steakhouse, LLC*, 75 F. Supp. 3d 859, 872 (N.D. Ill. 2014), the size of the proposed class satisfies the numerosity requirement of Rule 23(a): "While there is no magic number that applies to every case, a forty–member class is often regarded as sufficient to meet the numerosity requirement." *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 859 (7th Cir. 2017).

VII. Commonality, Typicality, and Predominance

Commonality, typicality, and predominance under Rule 23(b)(3) all turn on the legal theories presented by the proposed class. *Montoya v. Jeffreys*, No. 18 C 1991, 2020 WL 6581648, at *11 (N.D. Ill. Nov. 10, 2020). Class claims must be "based on the same legal theory." *Douglas v. W. Union Co.*, 328 F.R.D. 204, 212 (N.D. Ill. 2018) (quoting *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009).)

As in *Driver v. Marion County Sheriff*, 859 F.3d 489 (7th Cir. 2017), "the plaintiffs assert that the defendants' policy or practice caused them to be detained for an unconstitutionally-unreasonable length of time." *Id.* at 492. The three legal theories presented in this case, discussed above at 13-14, all turn on defendant's justification for its policy. These common questions satisfy Rule 23.

A. Commonality

To satisfy the commonality requirement of Rule 23(a)(2), the "prospective class must articulate at least one common question that will actually advance all of the class members' claims." *Phillips v. Sheriff of Cook County*, 828 F.3d 541, 550 (7th Cir. 2016).

Commonality is satisfied in this case because the proposed class is challenging a general policy. *Chicago Teachers Union, Local No. 1 v. Bd. of Educ. of City of Chicago*, 797 F.3d 426, 437 (7th Cir. 2015). This is a case like *Bishop v. Air Line Pilots Ass'n, Int'l*, 331 F.R.D. 481 (N.D. Ill. 2019), where the "claims of all class members depend on the resolution of key common questions." *Id.* at 489. There is no meaningful factual variation in plaintiffs' claim, *Arreola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008), and resolution of the common question "will actually advance all of the class members' claims." *Phillips v. Sheriff of Cook County*, 828 F.3d 541, 550 (7th Cir. 2016).

In this case, the common question is the constitutionality of defendant City of Chicago's express policy of refusing to accept bond for all out-of-county warrants and for all persons arrested on Saturday, Sunday, and holidays. This question satisfies the commonality requirement of Rule 23(a)(2).

B. Typicality

Typicality in Rule 23(a)(3) "is closely related to the preceding question of commonality." *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir.

1992). As this Court observed in *Bishop v. Air Line Pilots Ass'n, Int'l*, 331 F.R.D. 481 (N.D. Ill. 2019), "typicality is satisfied where the named Plaintiffs' claim 'arises from the same event or practice or course of conduct that gives rise to the claims of other class members and is based on the same legal theory.'" *Id.* at 490 (quoting *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009).)

Plaintiffs' challenge to the City's policy arises "from the same event or practice or course of conduct that gives rise to the claims of other class members and [their] claims are based on the same legal theory." *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006). The case therefore satisfies the typicality requirement of Rule 23(a)(3).

C. Predominance

This Court thoroughly analyzed the predominance and superiority requirements of Rule 23(b)(3) in *Bernal v. NRA Group, LLC*, 318 F.R.D. 64 (N.D. Ill. 2016). Predominance was satisfied in that case because "the most significant issue in this case can be resolved on a classwide basis, without any individual variation." *Id.* at 76. Here, the City's explicit written policy does not allow for individual determination. Predominance is therefore satisfied because the policy is evenly applied to all persons arrested on an out-of-county warrant or on a warrant on a weekend or a holiday.

VIII. Adequacy

Plaintiffs will adequately represent the proposed class, as required by Rule 23(a)(4).

First, defendants do not have any unique defense against the named plaintiffs. *Randall v. Rolls–Royce Corp.*, 637 F.3d 818, 824 (7th Cir. 2011); *Lipton v. Chattem, Inc.*, 289 F.R.D. 456, 459 (N.D. Ill. 2013).

Second, plaintiffs are represented by counsel skilled and experienced in these matters. Plaintiffs' principal attorney Kenneth N. Flaxman, was admitted to practice in 1972; his work in class action litigation includes *United States Parole Commission v. Geraghty*, 445 U.S. 388 (1980) (class action challenging federal parole guidelines); *Doe v. Calumet City*, 128 F.R.D. 93 (N.D. Ill. 1989) (class action challenging strip search practice of Calumet City police department); *Calvin v. Sheriff of Will County*, 405 F. Supp. 2d 933 (N.D. Ill. 2005) (class action challenging strip search practice at Will County Jail), and *Fonder v. Sheriff of Kankakee County*, 823 F.3d 1144 (7th Cir. 2016) (class action challenging strip search practice at the Kankakee County Jail). Plaintiffs' principal attorney has also argued more than 150 federal appeals, including five cases in the United States Supreme Court.[11]

[11] In addition to *Geraghty*, Flaxman argued *Browder v. Director, Department of Corrections*, 434 U.S. 257 (1978); *Jaffee v. Redmond*, 518 U.S. 1 (1996); *Ricci v. Arlington Heights, cert dismissed as improvidently granted*, 523 U.S. 613 (1998), and *Wallace v. Kato*, 549 U.S. 384 (2007).

Plaintiffs' second attorney Joel A. Flaxman, is also competent to represent the class; he was admitted to practice in 2007, served three years in judicial clerkships,[12] followed by four years as a trial attorney in the United States Department of Justice, Civil Rights Division, before entering private practice.[13] Most recently, Joel Flaxman was the attorney of record in *Smith v. City of Chicago*, 142 S. Ct. 1665 (2022), vacating and remanding the decision of the Seventh Circuit in 3 F.4th 332 (7th Cir. 2021), opinion following remand available at 2022 WL 2752603 (7th Cir. July 14, 2022).

IX. Rule 23(b)(3)

A class action is superior to other methods for adjudicating the claims of the members of the proposed class.

First, as this Court observed in *Figueroa v. Kronos Inc.*, 454 F. Supp. 3d 772 (N.D. Ill. 2020), "the class action device is a superior means of resolving disputes where, as here, any individual class member's recovery is likely to be small." *Id.* at 788. "Predominance is satisfied when common questions represent a significant aspect of a case and can be resolved for all members

[12] Counsel was a staff law clerk for the Seventh Circuit from 2007 to 2009 and then a law clerk for the Honorable Rebecca Pallmeyer from 2009 to 2010.

[13] With co-counsel, plaintiffs' second attorney has served as class counsel in several recent cases, including *Conyers v. City of Chicago*, No. 12 CV 06144, 2017 WL 4310511 (N.D. Ill. Sept. 28, 2017); *Wilson v. City of Evanston*, No. 14 C 8347, 2017 WL 3730817 (N.D. Ill. Aug. 30, 2017); *Bell v. Dart*, No. 14 C 8059, 2016 WL 337144 (N.D. Ill. Jan. 26, 2016); *Beley v. City of Chicago*, No. 12 C 9714, 2015 WL 8153377, at *1 (N.D. Ill. Dec. 7, 2015); and *Lacy v. Dart*, No. 14 C 6259, 2015 WL 1995576 (N.D. Ill. Apr. 30, 2015).

of a class in a single adjudication." *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1059 (7th Cir. 2016) (cleaned up.) Class treatment is appropriate here because litigating the legality of the challenged policy on a class basis will "achieve economies of time, effort, and expense." *Amchem v. Windsor*, 521 U.S. 591, 615 (1997).

Second, any need for an individual assessment of damages is not a ground for refusing to allow a case to proceed as a class action. *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 859 (7th Cir. 2017); *see also McMahon v. LVNV Funding, LLC*, 807 F.3d 872 (7th Cir. 2015); *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 671 (7th Cir. 2015); *Butler v. Sears, Roebuck & Co*, 727 F.3d 796, 800 (7th Cir. 2013).

X. Conclusion

For the reasons above stated, the Court should order that this case be maintained as a class action under Rule 23(b)(3) for:

> All persons who, on and after February 27, 2018,
>
> (a) were detained by police officers of the City of Chicago on a warrant for which a judge had set an amount of cash bail,
>
> (b) were not permitted to post bail at the police station pursuant to the explicit policies set out in Section IV.B.3(a) or IV.B.3(c) of Chicago Police Department Special Order S06-12-02, and
>
> (c) were released by posting bail after an appearance before a judge of the Circuit Court of Cook County without being held at the Cook County Jail.

Respectfully submitted,

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