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

Anthony Murdock, et al., *Plaintiff,* *v.* City of Chicago, *Defendant.*	Case No. 20-cv-1440 Hon. Gary S. Feinerman

CITY OF CHICAGO'S SURRESPONSE TO PLAINTIFFS' SURREPLY ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant, the City of Chicago ("City"), by its undersigned counsel, responds to Plaintiffs' Surreply ("Surreply"), (Dkt. 124), to the City's Motion for Judgment on the Pleadings Pursuant to Federal Rule of Civil Procedure 12(c) ("Motion"). (Dkt. 115.) In support thereof, the City states:

INTRODUCTION

At the August 18, 2022 hearing on the City's Motion, the Court granted Plaintiffs leave to file a "very limited surreply" addressing: (1) whether Cook County Circuit Court General Administrative Order 2015-06 ("GAO 2015-06" or "GAO") "actually require[s] that people arrested on non-Cook-County warrants be brought before a judge for bail purposes"; and (2) assuming that it does, "whether that general order qualifies as state or federal law, in other words, a state or federal law command within the meaning of the *Bethesda Lutheran Homes* decision." (*See* Aug. 18, 2022 Hr'g Tr. 13:1-17, attached hereto as **Exhibit A**.) Instead of filing a limited surreply, Plaintiffs submitted a 14-page brief that does not answer the Court's two questions, raises a litany of irrelevant issues, offers factual assertions not alleged in the Parties' pleadings, and mischaracterizes Illinois law regarding the nature and validity of the circuit court's general

administrative orders. While Plaintiffs failed to directly answer the Court's inquiries, the City will do so here.

Based on the only reasonable interpretation of GAO 2015-06, individuals who are arrested in Cook County on out-of-county arrest warrants *must* appear in bond court. The plain language of the GAO further dictates that if an arrestee can pay the amount of bail listed on the warrant, the Cook County Sheriff's Office ("Sheriff") may accept their cash bail, *not* the Chicago Police Department ("CPD") or other arresting agencies. GAO 2015-06 constitutes a "state law" command under the Seventh Circuit's decision in *Bethesda Lutheran* because it is a valid, binding judicial order that was promulgated under the circuit court's general administrative authority. Because the GAO required Plaintiffs arrested on out-of-county warrants to appear in bond court, the City "cannot be held liable under section 1983 for acts that it did under the command of state or federal law." *Bethesda Lutheran Homes & Servs., Inc. v. Leean*, 154 F.3d 716, 718 (7th Cir. 1998).

ARGUMENT

I. GAO 2015-06 Unambiguously Requires Individuals Who Are Arrested on Out-of-County Warrants to Appear in Bond Court.

The Court initially asked Plaintiffs to explain whether GAO 2015-06 "actually require[s] that people arrested on non-Cook-County warrants be brought before a judge for bail purposes?" (Ex. A, Aug. 18, 2022 Hr'g Tr. 13:2-4.) As the Court recognized, this "turns on: What does this third paragraph – the second sentence of the third paragraph mean?" (*Id.* at 13:4-6.) This question is easily answered.

In full, GAO 2015-06 provides:

> Defendants taken into custody by an arresting agency located within Cook County on an arrest warrant issued by an Illinois state court outside of Cook County shall be required to appear in bond court in the appropriate district or division of this court. A properly executed Intrastate Hold Affidavit shall accompany the defendant. The circuit clerk shall assign the affidavit an administrative case number

> and maintain the administrative case data in an electronic case index separate from the electronic criminal case docket.
>
> A bail hearing shall be held, and the defendant shall be remanded by mittimus to the custody of the Cook County sheriff. The mittimus (remand order) shall direct the sheriff to release the defendant to the demanding authority if the demanding authority presents itself at the Cook County Department of Corrections.
>
> The sheriff may also release the defendant upon receipt of notice from the demanding authority that it has withdrawn its warrant from the Illinois Law Enforcement Agencies Data System (LEADS) and will not take the defendant into custody on that warrant. Further, when the defendant is able to post the bail set on the warrant issued by the demanding authority, the defendant shall be admitted to bail and scheduled for a court appearance in the county of the demanding authority.

(Dkt. 115, Mot. Ex. A.)[1]

GAO 2015-06 is clear, unambiguous, and demonstrates that out-of-county warrant arrestees must appear in bond court. The first paragraph is the only one that addresses the obligations of the "arresting agency," here, CPD. It provides that persons who are taken into custody by "an arresting agency located within Cook County" on an arrest warrant issued by an Illinois court outside of Cook County "shall be required to appear in bond court." (*Id.*) The only time the term "arresting agency" appears in GAO 2015-06 is in the first paragraph. (*See id.*) Accordingly, the only duties that are imposed on arresting agencies are ensuring that the arrestee is taken to bond court with a properly executed intrastate hold affidavit. (*See id.*) This is consistent with the principle of statutory construction that the meaning of any word "cannot be determined in isolation but must be drawn from the context in which it is used." *Asta, L.L.C. v. Telezygology, Inc.*, 629 F. Supp. 2d 837, 844 (N.D. Ill. 2009) (quotation omitted).

Following that requisite bail hearing, the remaining obligations set forth in GAO 2015-06

[1] In their Surreply, Plaintiffs "reformatted" GAO 2015-06 by listing each sentence individually. (*See* Dkt. 124, Surreply at 6-7.) However, this is misleading because it isolates sentences that are included in discrete paragraphs, which, when read together, demonstrate that certain provisions apply to "arresting agencies," while others relate exclusively to the Sheriff. Plaintiffs' sleight of hand should be rejected.

belong to the Sheriff. The second paragraph provides that the arrestee is "remanded to the Sheriff's custody by mittimus" or a "remand order." (Dkt. 115, Mot. Ex. A.); *see People v. Morrison*, 2016 IL App (4th) 140712, ¶ 33 (Harris, J., concurring) (citing Black's Law Dictionary for the proposition that a "mittimus is defined as 'a court order or warrant directing a jailer to detain a person until ordered otherwise.'"). The mittimus also requires that the Sheriff release the arrestee to the demanding authority if that demanding authority presents itself at the Cook County Department of Corrections. (Dkt. 115, Mot. Ex. A.)

The third paragraph is also unambiguous, and provides that the ***Sheriff*** may release the arrestee if the demanding authority withdraws the arrest warrant, and accept cash bail if the arrestee is able to pay the amount set forth on the warrant. Despite Plaintiffs' argument to the contrary, GAO 2015-06's final sentence does not apply to the City and CPD—nor could it. CPD does not have the authority to "schedule[]" the arrestee "for a court appearance in the county of the demanding authority"—such court scheduling would need to be arranged by the Sheriff with the county court at issue.

In contrast to the first paragraph, the second and third paragraphs of the GAO deal exclusively with the Sheriff, the only entity that is specifically named in those sections. It follows that the Sheriff, not CPD, may release the arrestee if the demanding authority withdraws the arrest warrant. Likewise, GAO 2015-06's final sentence also applies exclusively to the Sheriff, and not CPD; if the arrestee is able to post the bail listed on the warrant, the Sheriff is directed to admit the arrestee to bail and schedule their next court appearance in the county where the warrant was issued—not CPD.

Plaintiffs have not, and cannot, present a competing interpretation of these paragraphs. At most, Plaintiffs claim that the "appropriate construction" of the GAO is that it "applies *only* when

an arrestee is unable to post the bond set on a warrant. In that circumstance, the arresting authority arranges for the arrestee 'to appear in bond court in the appropriate district or division of this court.'" (Dkt. 124, Surreply at 10 (emphasis in original).) However, Plaintiffs ignore what the GAO actually says, and improperly attempt to read new language into it. *See People v. Dupree*, 2018 IL 122307, ¶ 31 (when interpreting a statute, courts may not "depart from the plain language or read into it exceptions, limitations, or conditions" that the drafters did not express); *Pastors Protecting Youth v. Madigan*, 237 F. Supp. 3d 746, 749 (N.D. Ill. 2017) ("As a federal court interpreting Illinois law, the Court defers to Illinois' rules of statutory interpretation."). The plain language of GAO 2015-06 does not state, or even suggest, that it only applies when an arrestee is unable to pay the cash bond indicated on the warrant. Plaintiffs' strained interpretation of the GAO is nonsensical and contrary to bedrock principles of statutory interpretation.

Finally, Plaintiffs also challenge the City's interpretation of GAO 2015-06 because it supposedly ignores "the requirement of 725 ILCS 5/107-9 that an arrest warrant '[s]pecify the amount of bail[.]'" (Dkt. 124, Surreply at 8.) According to Plaintiffs, "there is no need for a bail hearing when a judge had already set the amount of bail." (*Id.*) In making this argument, Plaintiffs ignore that, under Section 5/109-2 of the Illinois Code of Criminal Procedure ("Criminal Code"), judges conduct identification hearings for individuals who are arrested on out-of-county warrants. *See* 725 ILCS 5/109-2(a). Accepting Plaintiffs' argument would divest courts of discretion that the Criminal Code expressly provides to them to conduct such identification hearings and evaluate the propriety of bail previously set in light of new information resulting from the new arrest, including public safety factors and flight risk. For these reasons, GAO 2015-06 commands the City to present persons who are arrested on out-of-county warrants to a judge in bond court.

II. GAO 2015-06 Constitutes "State Law" Under *Bethesda Lutheran* Because it is a Valid Court Order.

The Court also asked Plaintiffs to address whether GAO 2015-06 "qualifies as state or federal law, in other words, a state or federal law command within the meaning of the *Bethesda Lutheran Homes* decision." (*See* Ex. A, Aug. 18, 2022 Hr'g Tr. 13:10-15.) As the City argued in its Reply, under the Seventh Circuit's decision in *Bethesda Lutheran*, a municipality "cannot be held liable under section 1983 for acts that it did under the command of state or federal law." (Dkt. 122, Reply at 5 (quoting *Bethesda Lutheran*, 154 F.3d at 718); *see id.* (citing *Surplus Store & Exch., Inc. v. City of Delphi*, 928 F.2d 788, 791-92 (7th Cir. 1991), and *Snyder v. King*, 745 F.3d 242, 247 (7th Cir. 2014)).) The City also explained that the GAO constitutes "state law" under *Bethesda Lutheran* because Chief Judge Evans promulgated it in accordance with Illinois Supreme Court Rule 21, which vests chief circuit judges with the authority to enact general orders dictating court procedures, and failing to abide by general orders subjects the City to enforcement proceedings. (*See id.* at 12.)

Attempting to rebut this argument, Plaintiffs contend that GAO 2015-06 is not a valid court order enacted pursuant to the Illinois Supreme Court Rules because it supposedly does not relate to "administration of the Circuit Court," and because it purportedly conflicts with the Criminal Code. (*See* Dkt. 124, Surreply at 4-6, 8-9.) Plaintiffs are wrong on both points.

First, although Plaintiffs attempt to isolate GAO 2015-06 by comparing it to other general administrative orders that the chief circuit judge has issued from 1995 to present, (*see* Dkt. 124, Surreply at 4-6), Plaintiffs fail to explain how the GAO does not comport with the authority to issue general orders.[2] Illinois courts have consistently held that "the judicial branch of government

[2] Plaintiffs claim that none of the circuit court's general administrative orders "establish procedures for the Chicago Police Department" or other branches of government. (Dkt. 124, Surreply at 4.) That is incorrect.

possesses the constitutional authority to promulgate procedural rules to facilitate the discharge of its constitutional duties." *Davidson v. Davidson*, 243 Ill. App. 3d 537, 538 (1st Dist. 1993) (citing *Cnty. of Cook, Cermak Health Servs. v. Ill. State Labor Relations Bd.*, 144 Ill. 2d 326, 332 (1991)); *see Blair v. Mackoff*, 284 Ill. App. 3d 836, 842 (1st Dist. 1996) (courts possess "the constitutional authority to promulgate procedural rules to facilitate the discharge of [the court's] duties.").

By its very title, GAO 2015-06 clearly sets forth the "***Procedures*** for Arrests on Illinois Intrastate Warrants Issued Outside of Cook County." (*See* Dkt. 115, Mot. Ex. A (emphasis added).) Specifically, the GAO lays out the procedural requirements for appearing in bond court, assigning an administrative case number for the matter, holding court, remanding the arrestee to the Sheriff's custody, and releasing the arrestee from the Sheriff's custody in certain, enumerated instances. (*See id.*; *see also* § I, *supra*.) Based on the Illinois Constitution, Supreme Court Rules, and case law interpreting them, the circuit court had the authority to issue the GAO because it dictates the administration and procedures for out-of-county warrant arrests.

Moreover, courts in this District have previously held that law enforcement agencies may rely on the Circuit Court of Cook County's general administrative orders to detain individuals, and that such detentions did not violate the arrestees' constitutional rights. *See Ali v. City of Chicago*, 503 F. Supp. 3d 661, 676 (N.D. Ill. 2020) (for purposes of qualified immunity, reasonable police

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See, e.g., General Administrative Order No. 2016-09 (where an arrestee is in custody based on the execution of a warrant or body attachment for non-payment of child support, "the law enforcement agency with custody of the arrestee ('agency') shall promptly bring the arrestee before the appropriate court for a bail hearing."); General Administrative Order No. 2015-04 (directing "arresting agenc[ies]" to present persons charged with violating prostitution or solicitation statutes to the First Municipal District); General Administrative Order No. 2014-11 (commanding the prosecution to "tender to the defense in all criminal cases the defendant's criminal history information."); General Administrative Order 2000-6 (directing "all law enforcement personnel, except those specifically designated by the [Sheriff], entering the Richard J. Daley Center [to] secure their firearms with the [Sheriff] located on the concourse level of the Daley Center.").

officers would be able to rely on GAO 2015-06 "without violating a clearly established right" to immediately post bond at the police station); *see also Bergquist v. Milazzo*, No. 18-cv-3619, 2021 WL 4439422, at *7 (N.D. Ill. Sept. 8, 2021) (police officer did not violate the Fourth Amendment by detaining the plaintiff and conducting a *Terry* stop where the police officer had reasonable suspicion to believe that the plaintiff "violated or was violating a general administrative order" of the Circuit Court of Cook County that prohibited use of electronic recording devices in the courthouse). Critically, these opinions also demonstrate that general administrative orders (including the one at issue here) carry the force of "state law" because police officers may lawfully rely on them without infringing constitutional rights.

Second, GAO 2015-06 does not conflict with the Criminal Code. Plaintiffs argue that the GAO's command for individuals to appear in bond court when they are arrested on out-of-county warrants is at odds with Illinois law that permits police officers to accept cash bail when an arrestee is able to pay that amount. (*See* Dkt. 124, Surreply at 9 (citing 725 ILCS 5/110-9).) However, Plaintiffs conveniently ignore that another provision of the Criminal Code requires out-of-county warrant arrestees to be brought before a judge, just like GAO 2015-06. *See* 725 ILCS 5/109-2(a) ("Any person arrested in a county other than the one in which a warrant for his arrest was issued shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made . . . ."). The GAO is consistent with the mandatory language of Section 5/109-2, and merely enforces that requirement as opposed to demanding that law enforcement agencies exercise their discretion in a certain way under Section 5/110-9. As a result, the GAO is in accord with Illinois law.[3]

[3] The City contends that the GAO does not conflict with the Criminal Code. But even to the extent it does, because GAO 2015-06 was enacted pursuant to the authority vested by Illinois Supreme Court Rule 21, the GAO would take precedence over Illinois law. "Where a rule of the supreme court on a matter within the

Accepting Plaintiffs' argument would also require the City and its police officers to second guess the validity and constitutionality of each of the circuit court's general administrative orders. *See Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238-39 (7th Cir. 1986) (finding absolute immunity for law enforcement officials when the challenged conduct of enforcing a foreclosure judgment was specifically ordered by the judge, because such immunity avoids the "untenable result" of requiring "sheriffs and other court officers who enforce properly entered judgments pursuant to facially valid court orders to act as appellate courts, reviewing the validity of both the enforcement orders and the underlying judgments before proceeding to collect on them."). It is thus unreasonable to charge the City with interpreting and analyzing the legalities of each general order and directive imposed on it by the circuit court.

And, placing the City in the untenable position of choosing which general orders to follow, and conversely, those to ignore, would also undermine the circuit court's authority. After all, "[j]udicial orders are the most solemn acts of the court, and if they are not obeyed they cease to be judicial; therefore, the remedy for enforcing these orders represents the life line of the court." *Slatten v. City of Chicago*, 12 Ill. App. 3d 808, 812 (1st Dist. 1973). Therefore, GAO 2015-06 constitutes state law under *Bethesda Lutheran*, and Plaintiffs' claims should be dismissed.

III. Plaintiffs' Other Arguments Are Irrelevant and Do Not Support Denying the City's Motion.

Plaintiffs' remaining contention that Special Order S06-12-02 ("SO S06-12-02" or "Special Order") does not implement GAO 2015-06's command for out-of-county warrant arrestees to appear in bond court is also baseless. Plaintiffs argue that: (1) the disputed out-of-county warrant provision in SO S06-12-02 was enacted in 2012, when GAO 2015-06 was

court's authority and a statute on the same subject conflict, the rule will prevail." *Stein v. Krislov*, 405 Ill. App. 3d 538, 543 (1st Dist. 2010) (quotation omitted).

promulgated in 2015; and (2) there are supposedly differences in the "geographic scope" of GAO 2015-06 and the Special Order. (*See* Dkt. 124, Surreply at 10-12.) These so-called "significant differences" lack merit. (*See id.*)

Plaintiffs and the members of the purported class were arrested almost three years after GAO 2015-06 was enacted and went into effect on July 6, 2015. (*See* Dkt. 56, Am. Compl. ¶ 13 (purporting to file suit on behalf of persons who were arrested and detained "on and after February 27, 2018 . . .").) Thus, the GAO commanded the City to present out-of-county warrant arrestees to a judge in bond court during all times relevant to this litigation.

Additionally, Plaintiffs' argument regarding the "geographic scope" of GAO 2015-06 and SO S06-12-02 is misplaced. According to Plaintiffs, the Special Order requires bringing individuals to bond court when they are arrested on a warrant "outside of the First Municipal District," whereas the GAO applies to arrest warrants that were issued "by an Illinois state court outside of Cook County." (Dkt. 124, Surreply at 12.) The First Municipal District is the City of Chicago for purposes of the Circuit Court of Cook County. Certain Plaintiffs were arrested on warrants that were issued by judges outside of Cook County, which necessarily includes warrants issued outside of the First Municipal District. (*See* Dkt. 56, Am. Compl. ¶ 18.) Plaintiffs present a distinction without a difference.

GAO 2015-06 commanded the City to present persons who were arrested on out-of-county warrants to a judge in bond court. The Sheriff was authorized to accept bail, *not* CPD. And, GAO 2015-06 constitutes a state law command under *Bethesda Lutheran*, such that the City may not be held liable under Section 1983 for acting in accordance with the circuit court's order. Therefore, Plaintiffs' claims should be dismissed.

CONCLUSION

For these reasons, the City respectfully requests that the Court grant the Motion, dismiss Plaintiffs' Complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(c), and grant such other and further relief as the Court deems necessary and just. Alternatively, the City respectfully requests that the Court grant the Motion and dismiss the claims of those Plaintiffs who were arrested pursuant to arrest warrants that were issued by Illinois state court judges outside of Cook County, for whom bond court appearances were required by GAO 2015-06.

Dated: September 2, 2022

Respectfully submitted,

CITY OF CHICAGO

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