

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

Anthony Murdock, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	20-cv-1440
-vs-)	
)	(Judge Feinerman)
City of Chicago,)	
)	
<i>Defendant.</i>)	

**PLAINTIFFS' MOTION FOR LEAVE TO FILE
RESPONSE TO DEFENDANT'S MOTION (ECF No. 130)**

Plaintiffs respectfully request leave to respond to the arguments defendant advances in ECF No. 130 about *Alcorn v. City of Chicago*, 2022 WL 4483834 (No. 17-cv-5859, September 27, 2022).

Plaintiffs briefly discuss the facts of *Alcorn* in Part I below and show in Part II that the police department policy discussed in *Alcorn*—Bureau of Patrol Directive 15-0174—was not in force on February 27, 2018, the proposed starting date for the plaintiff class in this case. Plaintiffs demonstrate in Part III that *Alcorn* is not instructive on whether the policy plaintiffs challenge in this case, set out in Police Department Special Order S06-12-02, is compelled by Cook County Circuit Court General Administrative Order 2015-06. Plaintiffs show in Part IV that the unpublished (and non-citable) order from the Seventh Circuit, *Palermo v. City of Chicago*, 980 F.2d 733 (Table) (7th Cir. 1992), relied on by the district court in *Alcorn*, is contrary to the published decisions

of the Court of Appeals 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).

I. *Alcorn v. City of Chicago*, 17-cv-5859

Alcorn v. City of Chicago arises from the death of Tyler Lumar while in Chicago Police custody. Lumar was arrested on August 18, 2016 and held on a warrant from Lee County for “failing to appear on pay or appeal/contempt non-pay,” 2022 WL 4483834 at *1, which required that Lumar post fifty dollars to be released on bond.¹ *Id.* at *2. The officers at the police station refused to permit Lumar to post bond and asserted in their summary judgment motion that their action was compelled by Chicago Police Department Bureau of Patrol Directive 15-0174. *Id.* at 3.

Lumar was transported to Central Bond Court on August 19, 2016, the day after his arrest, where he was accused of possession of a controlled substance by a Deputy Sheriff, 2022 WL 4483834 at *3, and returned to the police station “to be processed for possession of a controlled substance.”² *Id.*

After he was returned to the police lockup, Lumar used his t-shirt to end his life. 2022 WL 4483834 at *4.

¹ The Illinois “10% bond deposit rule,” set out in 725 ILCS 5/110-7(a), requires a minimum deposit of twenty-five dollars. *Id.* The Chicago Police Department requires a minimum deposit of \$120. (Bail Bond Manual at 2, filed as ECF 117-1 at 389, Section VII(A).) As stated in the Manual, “[b]ail of \$500 would require a deposit of \$120.” *Id.* Lumar had \$130 in cash when he was arrested. *Alcorn, supra*, 2022 WL 4483834 at *2.

² It is unclear why Lumar was not processed at Central Bond Court.

The order of September 27, 2022 in *Alcorn* resolved the plaintiff's claims against the police sergeant who implemented Bureau of Patrol Directive 15-0174 as well as the plaintiff's claims against the City of Chicago. The district court concluded that the sergeant was entitled to qualified immunity, 2022 WL 4483834 at *4-*6. The district judge also rejected the *Monell* claim against the City of Chicago, *id.* at *6-*9, as well as a supplemental state-law claim. *Id.* at *9-*10. The district court resolved the remaining claims in favor of a Cook County deputy sheriff and the Sheriff of Cook County in an order entered on September 28, 2022, 2022 WL 4537250.

II. Bureau of Patrol Directive 15-0174 (July 29, 2015) Does Not Appear to Have Been in Force in 2018

The defendant in this case does not rely on Chicago Police Department Bureau of Patrol Directive 15-0174 but agrees (ECF No. 115 at 2-4) that this case involves Chicago Police Department Special Order S06-12-02, which in 2012 implemented a policy that continues to the present and which diverges in important aspects from the policy subsequently implemented by Circuit Court of Cook County General Administrative Order 2015-06.³

Plaintiffs attach a copy of Bureau of Patrol Directive 15-0174, filed in *Alcorn* as ECF 351-11, as Exhibit 1. The Directive, which tracks the language

³ Plaintiffs discuss the history and relevant provisions of Special Order S06-12-02 in their motion for class certification (ECF No. 117 at 11-12) and in their surreply on defendant's motion for judgment on the pleadings. (ECF No. 124 at 10-12.)

of Circuit Court of Cook County General Administrative Order 2015-06, was “clarified” on September 4, 2015 to exclude “[b]ody attachment warrants for civil proceedings.” (Exhibit 1 at 2.) This exception does not appear in General Administrative Order 2015-06.⁴

Nothing in the record suggests that Bureau of Patrol Directive 15-0174 was in force on February 27, 2018, the starting date for the class proposed by plaintiffs. Nor is there anything from which the Court may take judicial notice to establish this fact.

Bureau of Patrol Directive 15-0174 is not among the current directives of the Chicago Police Department that defendant lists at <http://directives.chicagopolice.org/> (visited September 29, 2022). The Bureau of Patrol is referred to in two department notices: D14-10, relating to a pilot program for a 10.5 hour squad schedule, <http://directives.chicagopolice.org/#directive/public/6128>, and D18-02, establishing a “bean bag shotgun pilot program.” <http://directives.chicagopolice.org/#directive/public/6143>.

⁴ The General Administrative Order appears in the record as ECF No. 115-1.

The September “clarification” of Directive 15-0174 also provides that “[f]or any other conflicting issues surrounding these types of arrests, department members will refer to appropriate department orders for guidance.” (Exhibit 1 at 1.)

There are “conflicting issues” between Special Order S06-12-02 and Directive 15-0174. The Directive (as clarified) does not apply to body attachment warrants; this distinction does not appear in the Special Order. The Directive applies to all other warrants issued by a judge sitting outside of Cook County; the Special Order includes all warrants issued by judges sitting outside of Chicago (the First Municipal District). The Special Order also applies to persons arrested on warrants issued in the City of Chicago and arrested on weekends and Holidays; this provision does not appear in the Directive.

The current policy of the City of Chicago is that only the Superintendent of Police may issue or establish explicit police department policies. General Order G01-03, available at <http://directives.chicagopolice.org/#directive/public/6386>. The directive at issue in *Alcorn* was not issued by the Superintendent, but by the Chief of the Bureau of Patrol. (Exhibit 1.)

Plaintiffs show below that Patrol Directive 15-0174 is not helpful to resolve the question of whether the policy at issue in this case is compelled by Cook County Circuit Court General Administrative Order 2015-06.

III. *Alcorn* Is Not Instructive on Whether the Policy of Special Order S06-12-02 Is Compelled by General Administrative Order 2015-06

The main issue debated by the parties on defendant's motion for judgment on the pleadings is whether General Administrative Order 2015-06 compels defendant to deny plaintiffs and their putative class the opportunity to post bail at the police station following an arrest on a warrant issued by a judge sitting outside of the City of Chicago. Defendant contends that Special Order S06-12-02 is compelled by the General Administrative Order and is therefore not an action of the municipality. (ECF No. 115 at 4.) Plaintiffs disagree. (ECF No. 124 at 10-12.)

The municipality in *Alcorn* sought to raise this issue in its reply brief on summary judgment. *Alcorn*, ECF No. 389 at 10-11. The district court did not discuss this argument in its summary judgment ruling but concluded that the

challenged policy did not violate any federal rights. *Alcorn*, 2022 WL 4483834 at *9. The *Alcorn* court supported this conclusion with an unpublished (and non-citable) order from the Seventh Circuit, *Palermo v. City of Chicago*, 980 F.2d 733 (table) (7th Cir. 1992). *Alcorn*, 2022 WL 4483834 at *9. Plaintiffs show below that the unpublished order cannot be squared with the Seventh Circuit's subsequent decisions 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).

IV. The Court Should Not Rely on an Unpublished and Non-citable Order from the Seventh Circuit that Is Contrary to Subsequent Decisions from the Court of Appeals

The district court in *Alcorn* held that the Constitution is not violated when a police officer refuses to permit a person arrested on a warrant, which set the amount of bond, to post cash bail and be released. *Alcorn, supra*, 2022 WL 4483834, at *9.

The *Alcorn* court did not explain its rejection of note 6 in *Doyle v. Elsea*, 658 F.2d 512, 516 (7th Cir. 1981), which in pertinent part stated:

For due process purposes, 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.

Nor did the *Alcorn* court discuss the holding of *Williams v. Dart*, 967 F.3d 625, (7th Cir. 2020), where the Seventh Circuit accepted “the principle that bail orders terminate law enforcement's authority to seize on the same charges.” *Williams v. Dart*, 967 F.3d 625, 635 (7th Cir. 2020). As the Court there explained:

[C]ourts tolerate only brief and reasonable administrative delay by a jailer in processing the release of an arrestee admitted to bail. In *Driver v. Marion County Sheriff*, reversing a denial of class certification, we addressed a proposed class of Fourth Amendment plaintiffs “composed of persons for whom legal authority for detention has ceased, whether by acquittal after trial, release on recognizance bond, completion of jail time in the sentence, or otherwise.” 859 F.3d 489, 491 (7th Cir. 2017). As to that class, further detention was lawful for only such time as reasonably needed “to merely process the release.” *Id.* In *Harper v. Sheriff of Cook County*, reversing a grant of class certification, we observed similarly that the constitutionality of “holding detainees after bond has been posted” depended on “whether the length of the delay between the time the Sheriff was notified that bond had been posted and the time that the detainee was released was reasonable in any given case.” 581 F.3d 511, 514–15 (7th Cir. 2009).

Williams v. Dart, 967 F.3d at 635.

Plaintiffs’ theory in this case is that Special Order S06-12-02 infringed on the constitutional rights explained in *Williams* by prohibiting police officers from accepting bail at the police station solely because the judge who issued the warrant was sitting outside of the City of Chicago or because the person sought in the warrant was arrested on a weekend or holiday. While the *Alcorn* court may have implicitly rejected this theory, it did so by relying on a non-citable decision. As stated in Seventh Circuit Rule 32.1(d):

(d) Citation of older orders. No order of this court issued before January 1, 2007, may be cited except to support a claim of preclusion (*res judicata* or collateral estoppel) or to establish the law of the case from an earlier appeal in the same proceeding.

This Court should not repeat the mistake of the *Alcorn* court and rely on an unpublished and non-citable order from the Seventh Circuit to the exclusion of the recent, binding precedent discussed in *Williams v. Dart, supra*.⁵

Respectfully submitted,

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⁵ *Palermo* did not involve an arrest on a warrant. The plaintiff there had been arrested “for allegedly violating a municipal ordinance prohibiting the solicitation of passengers for transportation.” *Palermo v. City of Chicago*, 1991 WL 268661 at *1 (No. 91-cv-4231. N.D.Ill., December 4, 1991). Pursuant to a municipal ordinance, the plaintiff was not permitted to post bond at the police facility at O’Hare airport but was allowed to post bond after he had been transported to another police station. *Id.* The plaintiff asserted that the municipal policy “violated his fourth amendment rights and his fourteenth amendment substantive due process rights under the United States Constitution.” *Id.* The district court rejected this argument and the Court of Appeals affirmed.

BUREAU OF PATROL

**29 JULY 2015
BOP 15- 0174**

TO: Deputy Chief SFD
Deputy Chiefs: All
District Commanders: All
Unit Commanders: All

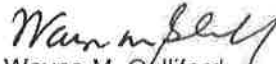
FROM: Wayne M. Gulliford
Chief
Bureau of Patrol

SUBJECT: Arrest Warrants Issued Outside of Cook County

Effective immediately, every person arrested by the Chicago Police Department on an arrest warrant issued by an Illinois state court outside of Cook County shall be required to appear in bond court.

After local processing, all persons arrested on an arrest warrant issued by an Illinois state court outside of Cook County will be transported to the appropriate holding facility as determined by Special Order S06-12-02 "Non-Traffic Arrest Warrant Procedures." No law enforcement agency will be permitted to obtain custody of an arrestee for a warrant issued by their jurisdiction prior to that arrestee being taken into custody by the Cook County Sheriff following a bond hearing.

This notice is to be placed in the CO Book and read at roll call for seven (7) consecutive days.


Wayne M. Gulliford
Chief
Bureau of Patrol

WMG/ETJ/MP/cgm
Attachments

Murdock v. City, 20-cv-1440, Exhibit 1, page 1



CITY-ALCORN-007904
EXHIBIT 11

DOC # BOP1500911

BUREAU OF PATROL

4 September 2015
BOP # 15- 0174.01

TO: Deputy Chief SFD
Deputy Chiefs All
District Commanders All
Unit Commanders All

FROM: Wayne M. Gulliford
Chief
Bureau of Patrol

SUBJECT: Arrest Warrants Issued Outside of Cook County
****Clarification****

In June 2015, Chief Judge Timothy C. Evans issued an order stating that every person arrested by the Chicago Police Department on an arrest warrant issued by an Illinois state court outside of Cook County shall be required to appear in bond court.

Body attachment warrants for civil proceedings are exempt from the Judge's original order. Department members will follow Department Special Order S06-12-02 "Non-Traffic Arrest Warrant Procedures" when handling these types of arrests.

For any other conflicting issues surrounding these types of arrests, department members will refer to appropriate department orders for guidance.

This notice is to be placed in the CO Book and read at roll call for seven (7) consecutive days.

Wayne M. Gulliford
Wayne M. Gulliford
Chief
Bureau of Patrol

WMG/ETJ/rjl
Attachments

Murdock v. City, 20-cv-1440, Exhibit 1, page 2

