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

Theresa Kennedy, Santiago Bravo, and John Plummer, individually and for others similarly situated, *Plaintiffs,* *v.* City of Chicago, *Defendant.*	Case No. 20-cv-1440 Hon. Thomas M. Durkin

CITY OF CHICAGO'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(c)

Defendant, the City of Chicago ("City"), by its undersigned counsel, moves for judgment on the Amended Complaint (Dkt. 56), and Amendment to the Amended Complaint (Dkt. 163),[1] pursuant to Federal Rule of Civil Procedure 12(c). In support thereof, the City states:

INTRODUCTION

Plaintiffs Theresa Kennedy, Santiago Bravo, and John Plummer allege claims against the City under 42 U.S.C. § 1983, individually and on behalf of a putative class. (*See generally* Dkt. 56, Am. Compl.; Dkt. 163, Am. to Am. Compl.) Asserting violations of their Fourth and Fourteenth Amendment rights, Plaintiffs allege the Chicago Police Department ("CPD") arrested them pursuant to valid, outstanding arrest warrants, but did not allow them to post cash bonds at the police stations where they were initially detained. (Dkt. 56, Am. Compl., ¶¶ 9, 12, 15.) All were nonetheless released from custody within 48 hours. (*See* pp. 4-5, *infra*.) Plaintiffs claim their alleged constitutional injuries were caused by a CPD Special Order that purportedly requires

[1] The Amended Complaint and Amendment to the Amended Complaint are collectively referred to as the "Complaint."

arrestees who are arrested on warrants on weekends and Court Holidays to be brought before a judge in bond court, even when the amount of bail is included on the warrant and they are able to post that amount. (*Id.*) The City admits that Plaintiffs were arrested on outstanding arrest warrants that were supported by probable cause, but denies that Plaintiffs' constitutional rights were violated. (*See* Dkt. 63, Ans. ¶ 12.)

Binding Circuit precedent forecloses Plaintiffs' Fourth Amendment claims. Specifically, the Seventh Circuit recently ruled that the Constitution does not prohibit presenting a warrant arrestee to a judge, provided that this is accomplished in a reasonable time not to exceed 48 hours. *Alcorn v. City of Chicago*, 83 F.4th 1063, 1065 (7th Cir. 2023), *Pet. for Reh'g Den.*, Case No. 22-2948, Dkt. 49 (Nov. 14, 2023). Plaintiffs were arrested on valid warrants, detained until they could be transported to bond court the following morning, and presented to a judge within 48 hours after arrest. Accordingly, the City complied with the Fourth Amendment, and Plaintiffs cannot allege otherwise.

Moreover, Plaintiffs' Fourteenth Amendment Equal Protection claims, and potential substantive due process claims—if even alleged[2]—are also foreclosed by Seventh Circuit precedent. Plaintiffs do not allege that they were discriminated against as members of a constitutionally-protected class, and they also cannot demonstrate that the City's actions were arbitrary or irrational. Their Equal Protection claim thus fails as a matter of law. To the extent Plaintiffs alleged a due process claim, the Seventh Circuit has consistently held that the Fourth Amendment, *not* the Fourteenth Amendment, governs claims for unlawful pretrial detention. For the reasons discussed below, the Complaint should be dismissed with prejudice.

[2] To date Plaintiffs have not alleged a substantive due process claim under the Fourteenth Amendment. However, in responding to the City's previous stay motion, Plaintiffs argued that they will demonstrate that the Fourteenth Amendment creates a protected liberty interest in posting bond. (*See* Dkt. 111, Pls.' Resp. to Mot. to Stay at 2-3, and n.3.)

FACTUAL BACKGROUND

A. CPD Special Order S06-12-02

Special Order S06-12-02 ("Special Order") sets forth CPD's procedures for handling non-traffic arrest warrants. (Dkt. 63, Ans. ¶ 6.) Section IV of the Special Order defines the responsibilities of CPD personnel when an individual is arrested on a warrant. (*Id.*) Relevant here, Section IV(B)(3) provides:

> B. The station supervisor will ensure that: . . .
>
> 3. the following will be transported to Central Bond Court:[3]
>
> (a) all persons arrested on a warrant outside of the First Municipal District[4] 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.

(*Id.*; Dkt. 56, Am. Compl. Exs. 1-2.)

Plaintiffs claim their Fourth and Fourteenth Amendment rights were violated when CPD acted in accordance with the Special Order and allegedly prevented them from posting the cash bonds set forth on their warrants at the police stations where they were detained. (Dkt. 56, Am. Compl. ¶ 12.) Namely, Plaintiffs allege that they were unreasonably detained because they claim they could pay the bond, but were kept in custody until being transported to bond court, where they were presented to a judge and eventually bonded out for the amounts listed on the warrants. (*Id.* ¶¶ 9, 15.) Plaintiffs do not challenge the validity of the arrest warrants, and do not challenge their detentions while CPD conducted warrant checks. (*See id.* ¶ 17.)

[3] Central Bond Court is located at the George N. Leighton Criminal Court Building, 2600 South California Avenue, Chicago, Illinois. (Dkt. 56, Am. Compl. ¶ 7.)
[4] The "First Municipal District" consists of courts of the Circuit Court of Cook County that are located within the City of Chicago. (Dkt. 56, Am. Compl. ¶ 8.)

The City denies Plaintiffs' constitutional rights were violated. (Dkt. 63, Ans. ¶¶ 12, 20, 23, 28, 33, 43, 63.) The City asserts that the Special Order's bond procedures were mandated by Illinois law, Illinois Supreme Court Rules, and orders promulgated by the Circuit Court of Cook County (*id.*, Aff. Def. No. 3), such that Plaintiffs' claims are foreclosed by Seventh Circuit precedent as their detentions were not for unreasonable amounts of time. (Dkt. 167, Ans. Aff. Def. No. 4 (citing *Chortek v. City of Milwaukee*, 356 F.3d 740, 748 (7th Cir. 2004), and *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).)

The alleged circumstances of Plaintiffs' arrests are set forth below.

B. Theresa Kennedy

At 9:40 p.m. on Saturday, April 27, 2019, CPD officers stopped Kennedy. (Dkt. 63, Ans. ¶ 42.) The officers determined that she had an outstanding warrant for her arrest, arrested her, and brought her to the police station. (*Id.* ¶¶ 43-44.) On Sunday, April 28, 2019, Kennedy was transferred to the custody of the Sheriff, and taken before a judge at bond court, where she was permitted to post the cash bond as indicated on her outstanding warrant. (Dkt. 56, Am. Compl. ¶¶ 45-46.) She was released from custody later that same day. (*Id.* ¶ 46.) Kennedy was detained for, at most, approximately 26 hours (from 9:40 p.m. on Saturday, April 27, 2019 through, at the latest, 11:59 p.m. on Sunday, April 29, 2019).

C. Santiago Bravo

Bravo was arrested by CPD officers at approximately 12:30 p.m. on Sunday, November 20, 2022, after police determined he had an outstanding warrant for his arrest. (Dkt. 167, Ans. ¶¶ 87-88.) He was taken to the police station, held overnight, and transported to Central Bond Court the following morning where Bravo was transferred to the custody of the Sheriff. (*Id.* ¶ 89.) Bravo appeared in bond court on Monday, November 21, 2022, posted the bond set forth on his arrest warrant, and was released thereafter. (Dkt. 163, Am. to Am. Compl. ¶ 91.) Bravo was detained

for, at most, approximately 36 hours (from 12:30 p.m. on Sunday, November 20, 2022. through, at the latest, 11:59 p.m. on Monday, November 21, 2022).

D. John Plummer

On Sunday, June 19, 2022, CPD officers determined Plummer was the subject of an outstanding arrest warrant and arrested him at 7:10 p.m. (Dkt. 167, Ans. ¶ 92.) Plummer was brought to the police station, held there overnight, and was transferred to the Sheriff's custody the next morning. (*Id.* ¶¶ 94-95.) Plummer was presented to a judge in Central Bond Court on Monday, June 20, 2022. (Dkt. 163, Am. to Am. Compl. ¶ 96.) He posted bond and was released from custody in the late afternoon or early evening on June 20, 2022. (*Id.*) Plummer was detained for, at most, approximately 29 hours (from 7:10 p.m. on Sunday, June 19, 2022, through at the latest, 11:59 p.m. on Monday, June 20, 2022).

LEGAL STANDARD

Rule 12(c) provides that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). The Court reviews a Rule 12(c) motion for judgment on the pleadings under the same standard as a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Great Am. Ins. Co. v. State Fire & Cas. Co.*, No. 22 C 3765, 2023 WL 2745076, at *1 (N.D. Ill. Mar. 31, 2023) (Durkin, J.). A Rule 12(c) motion assumes the truth of the operative complaint's well-pleaded factual allegations, but not its legal conclusions, and considers the facts in the light most favorable to the non-moving party. *Giannopoulos v. Iberia Lìneas Aèreas De España, S.A.*, 17 F. Supp. 3d 743, 746 (N.D. Ill. 2014) (Durkin, J.). A Rule 12(c) motion should be granted where the non-movant cannot prove facts sufficient to support its claims, and the movant is entitled to relief. *Nicaj v. Shoe Carnival, Inc.*, No. 13 C 7793, 2014 WL 184772, at *1 (N.D. Ill. Jan. 16, 2014) (Durkin, J.). A complaint that alleges facts to "supply an impenetrable defense to what would otherwise be a good claim" should

be dismissed under Rule 12(c). *Renfro v. Rotary Int'l*, No. 22 C 6132, 2023 WL 5487061, at *3 (N.D. Ill. Aug. 24, 2023) (Durkin, J.) (citing *Brownmark Films LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012)). "In other words, a plaintiff whose allegations show that there is an airtight defense 'has pleaded himself out of court.'" *Id.* (quoting *Brownmark*, 682 F.3d at 690).

ARGUMENT

The City is entitled to judgment on the pleadings on Plaintiffs' Section 1983 claims because Plaintiffs have not alleged, nor can they demonstrate, an underlying constitutional violation. Although their claims are not styled as such, Plaintiffs presumably seek to hold the City liable in accordance with *Monell v. Department of Social Services*, 436 U.S. 658 (1978). Under *Monell*, a municipality "may be found liable under § 1983 when it violates constitutional rights via an official policy or custom." *Wragg v. Vill. of Thornton*, 604 F.3d 464, 467 (7th Cir. 2010).

To show the existence of an official policy or custom, "a plaintiff must show that [her] constitutional injury was caused 'by (1) the enforcement of an express policy of the [municipal entity], (2) a widespread practice that is so permanent and well settled as to constitute a custom or usage with the force of law, or (3) a person with final policymaking authority.'" *Id.* (quoting *Latuszkin v. City of Chicago*, 250 F.3d 502, 504 (7th Cir. 2001)). However, a municipality cannot be held liable under Section 1983 where a plaintiff's constitutional rights were not violated. *See, e.g., First Midwest Bank Guar. of Est. of LaPorta v. City of Chicago*, 988 F.3d 978, 986 (7th Cir. 2021); *Swanigan v. City of Chicago*, 775 F.3d 953, 962 (7th Cir. 2015).

Plaintiffs claim that their constitutional rights were violated because of an express City policy—the Special Order. (*See* Dkt. 56, Am. Compl. ¶¶ 5, 9, 12.) Plaintiffs challenge the Special Order because it allegedly violates "the Fourth and Fourteenth Amendments because it results in an unreasonable duration of post-arrest detention and imposes an invidious and irrational

discrimination." (*Id.* ¶ 12.) However, Plaintiffs cannot allege an underlying constitutional violation. The Court should enter judgment on the pleadings.

I. The Complaint does not allege a viable Fourth Amendment claim.

There is no absolute right to bail under the Constitution. *See United States v. Salerno*, 481 U.S. 739, 752-53 (1987); *United States v. Portes*, 786 F.2d 758, 766 (7th Cir. 1985) (no recognition of right to bail as a "basic human right" subject to constitutional protection). The Constitution prohibits "excessive bail," U.S. Const. amend. VIII, but "says nothing about whether bail shall be available at all," *Salerno*, 481 U.S. at 752, or about the timing of bail determinations.

The Fourth Amendment does not address bail. In relevant part, it guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . and no Warrants shall issue, but upon probable cause . . ." U.S. Const. amend. IV. The Fourth Amendment establishes the procedure for issuing warrants, setting forth a key protection against "rash and unreasonable interferences with privacy and from unfounded charges of crime," *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975), but does not address bail hearings. Following the U.S. Supreme Court's decision in *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017), the Seventh Circuit has determined that Section 1983 claims for wrongful pretrial detention sound in the Fourth Amendment. *Lewis v. City of Chicago*, 914 F.3d 472, 749 (7th Cir. 2019). Plaintiffs cannot demonstrate a Fourth Amendment violation, so the Complaint should be dismissed with prejudice.

A. The Seventh Circuit's decision in *Alcorn* held that presenting persons arrested pursuant to valid arrest warrants to a judge for bond proceedings within 48 hours after arrest is presumptively constitutional.

On October 12, 2023, the Seventh Circuit issued its decision in *Alcorn v. City of Chicago*, 83 F.4th 1063 (7th Cir. 2023), which requires dismissal of Plaintiffs' Fourth Amendment claims. In *Alcorn*, the plaintiff-estate filed suit against the City (among others) alleging a Section 1983

Monell claim based on the decedent's allegedly unreasonable detention in violation of the Fourth Amendment. *Id.* at 1064. The decedent was arrested by CPD after police officers determined the decedent was the subject of an outstanding arrest warrant. *Id.* The decedent was subsequently taken to the police station, held overnight, and was transported to bond court the following morning. *Id.* The arrest warrant set forth the amount of the decedent's bail at $500, 10% authorized, and the decedent possessed sufficient funds to post bond. *Id.* However, CPD did not permit the decedent to post bond at the police station based on a CPD Bureau of Patrol Order that implemented a Circuit Court of Cook County general administrative order requiring all out-of-county warrant arrestees to appear in bond court.[5] *Id.* at 1064-65. The plaintiff was detained by CPD for approximately 17 hours between the time he was booked at the police station and when he was transferred to the Cook County Sheriff's custody at bond court. *Id.*

The plaintiff claimed that the decedent should have been allowed to post bond immediately at the police station after officers completed administrative processing, but was instead held overnight due to the enforcement of the Patrol Order. *Id.* According to the plaintiff, this constituted an unreasonable detention and violated the decedent's constitutional rights.

The District Court dismissed the plaintiff's *Monell* claim on summary judgment after determining the plaintiff failed to establish a violation of the decedent's constitutional rights. *Alcorn v. City of Chicago*, 631 F. Supp. 3d 534, 547-49 (N.D. Ill. 2022) (Kendall, J.). In so holding, the District Court found that the 48-hour timeframe for determining probable cause as set forth by the U.S. Supreme Court in *County of Riverside v. McLaughlin* also applied to presenting a warrant

[5] The Bureau of Patrol Order in *Alcorn* is not presently at issue in this case. Judge Feinerman previously relied on the Circuit Court's general administrative order when partially granting the City's Rule 12(c) motion, resulting in the dismissal of four previously named Plaintiffs who were arrested on out-of-county warrants. (Dkt. 136, Mem. Op. at 5-8.)

arrestee to a judge in bond court. *Id.* The Supreme Court in *McLaughlin* held that arrestees must be brought before a judge for probable cause determinations or other pretrial proceedings as soon as is reasonably feasible, but in no event later than 48 hours after arrest. 500 U.S. 44, 56-57 (1991). Moreover, the Court found that detentions lasting fewer than 48 hours are presumptively reasonable while those lasting longer are presumptively unreasonable. *Id.* The District Court held that because the decedent was brought to bond court within 48 hours, the burden shifted to the plaintiff to demonstrate that the detention was nonetheless unreasonable. *Alcorn*, 631 F. Supp. 3d at 547-49. The plaintiff could not satisfy that burden, the District Court said, because she failed to adduce any facts demonstrating that the decedent was detained for any reason other than being promptly brought to bond court the following morning. *Id.* at 549. The plaintiff appealed.

The Seventh Circuit affirmed the dismissal of the *Monell* claim against the City. *Alcorn*, 83 F.4th at 1066. The Seventh Circuit disregarded the general administrative order and other Illinois law the plaintiff relied on, and instead reaffirmed the District Court's application of *McLaughlin*'s 48-hour rule to determine whether the plaintiff was unreasonably detained in violation of federal law. *Id.* at 1065. The Seventh Circuit found that the decedent was detained for less than 48 hours, meaning his detention was presumptively reasonable. *Id.* The Seventh Circuit also affirmed the District Court's finding that there was no evidence to rebut that presumption because the decedent was simply detained at the police station until he was brought to bond court the following morning. *Id.* The Seventh Circuit concluded by acknowledging: "[g]iven *Riverside*, the answer is obvious. Federal law does not prohibit presenting the arrestee to a local judge, provided that this is accomplished in a reasonable time not to exceed 48 hours." *Id.*

B. Plaintiffs cannot demonstrate a constitutional violation because they were arrested on valid warrants and presented to judge in bond court within 48 hours.

Alcorn forecloses Plaintiffs' alleged Fourth Amendment claims. In this case, like *Alcorn*, Plaintiffs were all arrested based on valid, outstanding arrest warrants. After Plaintiffs were arrested, they were transported to police stations where their outstanding warrants were verified. As was the case in *Alcorn*, Plaintiffs' warrants included the amount of bond previously set by a judge, and Plaintiffs claim they could pay that amount. Moreover, as in *Alcorn*, Plaintiffs appeared in bond court the day following their arrests, after which point they were promptly processed for release. Critically, Plaintiffs were transferred to the Sheriff's custody and presented to a judge in bond court within 48 hours of their arrests—at most, 36 hours in the case of Bravo. (*See* pp. 4-5, *supra*.) Moreover, Plaintiffs do not contest the validity of the arrest warrants nor their detentions while CPD conducted warrant checks. Therefore, under *Alcorn*, Plaintiffs cannot demonstrate an underlying violation of their Fourth Amendment rights.

In opposing the City's prior Motion to Stay Discovery and Class Certification Proceedings, Plaintiffs suggested that Seventh Circuit precedent established a "constitutional liberty interest in release on bail." (*See* Dkt. 111, Pls.' Resp. to Mot. to Stay at 2-3.) But the Seventh Circuit decisions Plaintiffs cited in support of that notion, *Driver v. Marion County Sheriff*, 859 F.3d 489 (7th Cir. 2017), and *Williams v. Dart*, 967 F.3d 625 (7th Cir. 2020), do not support their claims. In *Driver*, for example, the plaintiffs appeared before a judge who set bond, the plaintiffs posted their bonds, and should have been released immediately afterwards, but were kept in police custody for days despite already posting bond. *See Driver v. Marion Cnty. Sheriff*, No. 1:14-cv-02076, 2016 WL 5946839, at *1-2 (S.D. Ind. Sept. 30, 2016), *rev'd*, 859 F.3d 489 (7th Cir. 2017). In finding that the district court erred by denying class certification for certain sub-classes, the court noted that the proposed class was composed of persons "for whom legal authority for detention ha[d] ceased,

whether by acquittal after trial, release on recognizance bond, completion of jail time in the sentence, or otherwise." *Driver*, 859 F.3d at 491. Here, Plaintiffs cannot allege that the legal authority for their detentions had ceased.

Likewise, the *Williams* plaintiffs claimed their Fourth Amendment rights were violated when they were held in the sheriff's custody for up to two weeks after trial court judges ordered their release subject to supervised electronic monitoring. 967 F.3d at 629-30. The Seventh Circuit determined that the plaintiffs stated viable Fourth Amendment claims because they alleged that the defendant continued to hold individuals who posted bond "without purpose or plan for their release . . . ." *Id.* at 632. In contrast to *Driver* and *Williams*, a court did not order Plaintiffs' release. Plaintiffs also do not allege that they were unreasonably detained after they appeared before a bond court judge.[6] Unlike *Driver*, the "legal authority for detention" had not yet ceased for Plaintiffs because their bonds had not been posted. And unlike *Williams*, each Plaintiff here alleges that they were taken to bond court the day after their arrest (at the absolute latest), and thus cannot demonstrate that the City unreasonably detained them "without purpose or plan for their release." 967 F.3d at 632. Plaintiffs here were timely brought to bond court and permitted to post bond thereafter. The City did not detain Plaintiffs following their posting of bond at the bond court.

Based on *Alcorn*, Plaintiffs cannot demonstrate that the City violated their Fourth Amendment rights. Their Section 1983 claims cannot proceed on this basis because Plaintiffs' arrests were supported by probable cause and they were all taken to bond court well before 48 hours after arrest. Therefore, the Complaint should be dismissed on the pleadings.

[6] Plaintiffs were no longer in CPD's custody after they were transferred to the Sheriff's custody at Central Bond Court.

II. The Complaint does not, and cannot, state Equal Protection claims.

Plaintiffs also have not alleged viable Section 1983 claims based on the City's purported "invidious and irrational discrimination" in violation of the Fourteenth Amendment's Equal Protection Clause. (*See* Dkt. 56, Am. Compl. ¶ 12.) The Equal Protection Clause prohibits state action that: (1) discriminates on the basis of membership in a protected class; or (2) irrationally targets an individual for discriminatory treatment as a so-called "class of one." *See Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 601 (2008); *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

Here, the Complaint is silent as to Plaintiffs' membership in any protected class. Moreover, the Special Order is a neutral policy that applies to persons of all races, sexes, genders, and other protected classes. The only "discrimination" alleged in the Complaint concerns arrestees who are arrested on warrants on weekends and Court Holidays, and those "arrested on a weekday that is not a court holiday on a warrant issued in Chicago[.]" (*See* Dkt. 56, Am. Compl. ¶ 12.) However, when and where someone is arrested on a valid warrant does not implicate membership in a protected class.

The Special Order's alleged distinction satisfies rational-basis review. *See Srail v. Vill. of Lisle*, 588 F.3d 940, 943 (7th Cir. 2009) ("In the absence of deprivation of a fundamental right or the existence of a suspect class, the proper standard of review is rational basis."). Courts in the City do not always hold regular bond hearings on weekends and holidays, so presenting an arrestee to a judge when the court is open is perfectly rational, and constitutionally permissible. Moreover, it is neither irrational nor unreasonable for police departments to transport arrestees to bond court at the same time each day, when court is open and when CPD may transfer custody to the Sheriff, so long as they are presented to a judge within 48 hours after arrest. *See Alcorn*, 83 F.4th at 1065; *McLaughlin*, 500 U.S. at 56-57.

Finally, because the U.S. Supreme Court has instructed plaintiffs to seek relief under the constitutional amendment that most directly addresses their concerns, *Graham v. Connor*, 490 U.S. 386, 395 (1989), and because that provision—the Fourth Amendment—does not provide relief, their Equal Protection claims must fail. *See Vukadinovich v. Bartels*, 853 F.2d 1387, 1391-92 (7th Cir. 1988) (Equal Protection claim was properly dismissed where it constituted "a mere rewording of plaintiff's First Amendment-retaliation claim"); *Conner v. Schwenn*, 821 F. App'x 633, 636 (7th Cir. 2020) (same). For these reasons, Plaintiffs' Equal Protection claims should be dismissed.

III. Plaintiffs have not alleged Fourteenth Amendment Due Process claims, and even if they did, binding precedent forecloses them.

Although the Complaint fails to remotely allege substantive due process claims, Plaintiffs may intend to assert them. (*See* Dkt. 111, Pls.' Resp. to Mot. to Stay at 2-3, and n.3.) However, Seventh Circuit precedent forecloses such a claim.[7]

In *Lewis v. City of Chicago*, 914 F.3d 472 (7th Cir. 2019), the Seventh Circuit took care to distinguish between Fourth Amendment unlawful pretrial detention claims, and unlawful detention claims based on due process under the Fourteenth Amendment. The court noted that it had previously determined that all Section 1983 claims for wrongful pretrial detention, whether based on fabricated evidence or some other defect, sound in the Fourth Amendment. *Lewis*, 914 F. 3d at 479. "In other words, the Fourth Amendment, *not the Due Process Clause*, is the source of the right in a § 1983 claim for unlawful pretrial detention, whether before or after the initiation of formal legal process." *Id.* (emphasis added); *see Williams*, 967 F.3d at 637 ("the Fourth

[7] As Judge Feinerman previously determined in his July 24, 2020 Minute Order denying the City's Rule 12(b)(6) motion to dismiss, the alleged constitutional violation raised in Plaintiffs' pleadings sounded in the Fourth Amendment. (Dkt. 25, Minute Order.) Plaintiffs also tacitly acknowledged this fact when responding to the City's dismissal motion. (*See* Dkt. 19, Pl.'s Mem. at 5 ("As the Seventh Circuit held in *Lewis v. City of Chicago*, 914 F.3d 472 (7th Cir. 2019), '*Manuel I* makes clear that the Fourth Amendment, not the Due Process Clause, governs a claim for wrongful pretrial detention.'").)

Amendment applies to plaintiffs' wrongful pretrial detention claims, so there is no need to resort to the 'more generalized notion' of substantive due process." (quoting *Graham*, 490 U.S. at 395)).

Because Plaintiffs' claims all arise under the Fourth Amendment, the Fourteenth Amendment's Due Process Clause does not apply. To the extent Plaintiffs attempt to assert unlawful pretrial detention claims under the Fourteenth Amendment based on their alleged prevention from posting bond at the police station, those claims should be dismissed with prejudice.

CONCLUSION

For these reasons, the City respectfully requests that the Court 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.

Dated: November 15, 2023

Respectfully submitted,

CITY OF CHICAGO

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