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 REPLY IN SUPPORT OF ITS 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, respectfully submits this Reply in Support of the Motion for Judgment on the Pleadings Pursuant to Federal Rule of Civil Procedure 12(c) ("Motion"). (Dkt. 168.) In support thereof, the City states:

INTRODUCTION

Plaintiffs' Response to the Motion fails to rebut the City's arguments for dismissal or demonstrate why judgment for the City should not be entered on the pleadings. (Dkt. 175.) Plaintiffs' Fourth Amendment claims fail as alleged. Each Plaintiff was arrested pursuant to a valid arrest warrant, detained until he or she could be transported to bond court for the next regularly scheduled court call, presented to a judge who admitted them to bail, and promptly released thereafter. No Plaintiff was detained for more than 36 hours—at the absolute latest. Plaintiffs' brief detentions while they awaited bond hearings did not violate the Fourth Amendment because they were not held for more than 48 hours, which the Seventh Circuit found reasonable under the Fourth Amendment in *Alcorn v. City of Chicago*, 83 F.4th 1063 (7th Cir. 2023).

In their Response, Plaintiffs ask the Court to apply *Alcorn* "narrowly" to this case for several reasons. None have merit. Indeed, the Seventh Circuit rejected *all* of Plaintiffs' arguments when it denied the *Alcorn* plaintiff's petition for rehearing and rehearing *en banc* that raised all of the same points.[1] 2023 WL 7549893, at *1 (7th Cir. Nov. 14, 2023). Plaintiffs' counsel know this because they appeared as appellate counsel—after the Seventh Circuit issued its decision—to file the rehearing petition.[2] Nonetheless, they offer nearly identical arguments and case law in the Response, hoping for a different outcome here. This Court should faithfully apply the *Alcorn* ruling and dismiss Plaintiffs' Fourth Amendment claims with prejudice.

Plaintiffs' Equal Protection claims also lack merit and are improperly pleaded, despite having three opportunities to plead a valid Equal Protection claim. As Plaintiffs concede, the alleged "invidious and irrational discrimination" in Special Order S06-12-02 ("Special Order") does not implicate membership in a protected class and indeed, Plaintiffs do not allege in the Complaint their membership in protected classes. As such, the Special Order's distinction between all warrant arrests on weekends and Court Holidays, and Chicago warrant arrests on weekdays, is subject only to rational basis review, which places the burden on Plaintiffs to negate every conceivable basis that might support the classification. *See Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006). Plaintiffs failed to do so here, and improperly attempt to shift that burden to the City. Regardless, the City's policy furthers a legitimate state interest in ensuring compliance with arrest warrants and promptly presenting arrestees to bond court where the judge admits them to bail. Plaintiffs cannot demonstrate a violation of the Equal Protection Clause. For the reasons discussed in the Motion and below, the Court should dismiss this case with prejudice.

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[1] A true and accurate copy of the *Alcorn* plaintiff's Petition for Rehearing and Petition for Rehearing *En Banc* is attached as **Exhibit A**.

[2] *See Alcorn v. City of Chicago*, No. 22-2948 (7th Cir.) Dkts. 43-44 (Flaxman appearances), 47 (Pl.'s Pet. for Reh'g).

ARGUMENT

I. Plaintiffs' Fourth Amendment claims fail as a matter of law and should be dismissed with prejudice.

A. The Seventh Circuit's decision in *Alcorn v. City of Chicago* forecloses Plaintiffs' Fourth Amendment claims.

As the City discussed in the Motion, Plaintiffs' Fourth Amendment claims cannot survive the Seventh Circuit's ruling in *Alcorn*. (Dkt. 168, Mot. at 7-11.) There, as here, the plaintiff alleged a Fourth Amendment *Monell* claim against the City based upon the plaintiff's decedent's overnight detention at a police station after he was arrested on an outstanding arrest warrant. *Alcorn*, 83 F.4th at 1064. The *Alcorn* decedent, like Plaintiffs, was not permitted to post bond at the police station but was instead promptly taken to bond court the following morning. *Id.* After applying the 48-hour rule announced by the Supreme Court in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), the Seventh Circuit found that the decedent's Fourth Amendment rights were not violated because his detention was presumptively constitutional and that presumption was not overcome. *Alcorn*, 83 F.4th at 1065.

Plaintiffs here were all arrested on valid arrest warrants, transported to police stations, held overnight, and brought to bond court well within 48 hours after arrest. (*See* Dkt. 168, Mot. at 4-5.) Moreover, Plaintiffs allege they were detained in accordance with an express policy that applies uniformly to all arrestees who are arrested on weekends and Court holidays. (*Id.* at 3.) Even accepting Plaintiffs' allegations as true, there is no way for them to rebut the presumption that their detentions were reasonable, as they all were less than 36 hours. *Alcorn* is thus directly on point in all material respects and the same outcome is warranted in this case.

Plaintiffs disagree and instead urge the Court to read *Alcorn* "narrowly," arguing it should only apply to cases involving out-of-county warrant arrests where the arrestee is subsequently

presented to a local judge for a bond hearing. (*See* Dkt. 175, Resp. at 9-13.) Plaintiffs claim that the "General Administrative Order of the Circuit Court of Cook County," which required CPD to present out-of-county warrant arrestees to a judge in bond court, "was the foundation for the Seventh Circuit's recent decision in" *Alcorn*. (*Id.* at 1, 9-10.) The Seventh Circuit's holding in *Alcorn* is much broader than Plaintiffs suggest and applies with equal force regardless of the type of warrant on which an arrest is based.

The *Alcorn* decedent was arrested on an out-of-county warrant and detained in accordance with a Cook County circuit court general administrative order requiring all arresting agencies to bring these arrestees to court. 83 F.4th at 1064-65. The Seventh Circuit found, however, that this order was irrelevant for purposes of determining whether the decedent's detention was unreasonable under federal law. *Id.* at 1065. "The right question," the Seventh Circuit said, "is whether it would violate the Constitution for police to present *every detainee* for a prompt bond hearing in the county of arrest." *Id.* (emphasis added). Because Section 1983 does not allow federal courts to decide purported violations of state—not federal—law, the Seventh Circuit determined that federal courts "should assume that the police acted exactly as they were supposed to act under state law, then ask whether acting in this way is unconstitutional." *Id.* (citing *Gordon v. Degelmann*, 29 F.3d 295, 300-01 (7th Cir. 1994)). And, for Fourth Amendment claims, "[t]he federal rule for how much time police can take to present an arrested person to a judge is the subject of *Riverside County v. McLaughlin*, 500 U.S. 44 [(1991).]" *Id.*

Contrary to Plaintiffs' assertions, the origin of the *Alcorn* decedent's arrest warrant—whether from Cook County, Chicago, or elsewhere—was entirely irrelevant to the Seventh Circuit's analysis. The court instead asked whether it would be constitutional for "every detainee" to be held and subsequently brought to court for a bond hearing. The Seventh Circuit answered

that question in the affirmative, so long as the court appearance occurs within 48 hours. Since the Seventh Circuit's decision in *Alcorn*, another District Court has applied *Alcorn* and dismissed a similar Fourth Amendment claim. *See Oaks v. Rowald*, No. 22-cv-02435, 2023 WL 7280897, at *3-4 (S.D. Ill. Nov. 3, 2023) (applying *Alcorn* and dismissing Fourth Amendment claim because "the officer's failure to comply with state law does not support a Fourth Amendment claim, and Plaintiff does not argue that he was held without a bond hearing for a time period that exceeded the limits set in *Riverside*.").

The Court should reject Plaintiffs' misconstruction of the *Alcorn* decision, and apply its key holding that federal law does not prohibit bringing an arrestee to bond court within 48 hours of arrest.

B. Faithfully applying *Alcorn* to the facts of this case is consistent with existing Seventh Circuit and Supreme Court case law.

Plaintiffs also incorrectly argue that the application of *Alcorn* to this case would create inconsistency with prior Seventh Circuit precedent. (*See* Dkt. 175, Resp. at 10-11.) Plaintiffs offer *Harper v. Sherriff of Cook County*, 581 F.3d 511 (7th Cir. 2009), *Driver v. Marion County Sherriff*, 859 F.3d 489 (7th Cir. 2017), and *Williams v. Dart*, 967 F.3d 625 (7th Cir. 2020), in ostensible support for their argument. (*Id.*) The City anticipated Plaintiffs' reliance on *Driver* and *Williams* and distinguished those authorities in the Motion, highlighting the fact that the plaintiffs in those cases were not only eligible to post bond, but had already done so, and were nonetheless detained for days and weeks on end. (Dkt. 168, Mot. at 10-11.) *Harper* is similar. The plaintiff there claimed "that the Sheriff is unconstitutionally holding detainees *after bond has been posted*." *Harper*, 581 F.3d at 514-15 (emphasis added). None of these cases are inconsistent with *Alcorn*.

Unlike Plaintiffs' cited authorities, where the plaintiffs posted bond and were detained thereafter for unreasonable lengths of time, *Alcorn* involved an arrestee who was not permitted to

post bond at the police station but was detained until being transferred to the sheriff's custody at bond court. *Alcorn* is distinguishable from *Harper*, *Williams*, and *Driver* on the facts, so the Seventh Circuit had no need to consider those cases. But *Alcorn* is on all fours with this case because Plaintiffs *did not* post bond before they appeared in bond court. Thus, unlike *Harper*, *Williams*, and *Driver*, the City did not unlawfully detain Plaintiffs for an unreasonable length of time after the legal authority for Plaintiffs' detentions ceased.

Likewise, Plaintiffs argue that adopting the City's interpretation of *Alcorn* would conflict with the Seventh Circuit's ruling in *Mitchell v. Doherty*, 37 F.4th 1277 (7th Cir. 2022). (Dkt. 175, Resp. at 11.) It would not. Judge Feinerman previously denied the City's earlier Rule 12(c) motion, in part, holding *Mitchell* did not apply to the facts of this case because the plaintiffs there were arrested without warrants. (Dkt. 136, Mem. Op. at 8.) Judge Feinerman said that *Mitchell* was inapposite to Kennedy because, unlike the *Mitchell* plaintiffs, Kennedy had been arrested on a warrant where a judge had previously determined the amount of bail. (*Id.* at 10.) Judge Feinerman disagreed with the City's dismissal argument as to Kennedy's claims and distinguished *Mitchell* because:

> [T]he state interests cited by *Mitchell* are not implicated here, as the judge who issued Kennedy's warrant had already made the initial bail determination by the time she was arrested. *Mitchell* therefore does not defeat Kennedy's claim that Section IV.B.3 violates the Fourth Amendment insofar as it applies to persons arrested on weekend or holidays on warrants issued in Chicago.

(*Id.*)

Regardless of whether *Mitchell* only applies to cases involving warrantless arrests, *Alcorn* concerned an arrest based on an already-issued warrant—just like each Plaintiff here. The Seventh Circuit therefore had no need to address or overrule *Mitchell* when it decided *Alcorn* as the two cases involved different facts and legal considerations. Relevant for purposes of this Motion,

however, is that the facts and legal considerations here are identical to those presented in *Alcorn*, which the Seventh Circuit held defeated the plaintiff's Fourth Amendment claim as a matter of law. The Court should therefore follow *Alcorn* and dismiss Plaintiffs' Fourth Amendment claims with prejudice.

Plaintiffs also argue that interpreting *Alcorn* in a manner fatal to their claims would be inconsistent with the Supreme Court's decisions in *Gerstein v. Pugh*, 420 U.S. 103 (1975), *Baker v. McCollan*, 443 U.S. 137 (1979), and *McLaughlin*, claiming the 48-hour rule is inapplicable to arrests made pursuant to outstanding warrants. (Dkt. 175, Resp. at 8-9.) Plaintiffs are wrong. This Court has recognized that "on their own terms, *Gerstein* and *McLaughlin* do not require a bail hearing within 48 hours of an arrest[.]" *Mitchell v. Doherty*, 530 F. Supp. 3d 744, 751 (N.D. Ill. 2021), *aff'd*, 37 F.4th 1277 (7th Cir. 2022). These cases therefore did not address whether bail hearings held within 48 hours after a valid warrant arrest pass muster under the Fourth Amendment. *Alcorn* did, and found this timeframe constitutionally permissible. *Baker* also does not aid Plaintiffs' cause, as the Supreme Court found that, absent an attack on the arrest warrant's validity, the plaintiff could not demonstrate a constitutional violation even though he was in police custody for three days awaiting a court appearance. 433 U.S. at 143-44. Unlike this case, however, the Supreme Court in *Baker* assessed the plaintiff's challenge to his detention under the Fourteenth Amendment, not the Fourth Amendment (*id.*), which was the Seventh Circuit's focus in *Alcorn*.

Plaintiffs were all arrested on valid, outstanding arrest warrants and promptly brought to bond court the next morning. None of them were detained for more than 48 hours—not even close. On these facts, can Plaintiffs allege or prove a Fourth Amendment violation? "Given [*Alcorn*], the answer is obvious." 83 F.4th at 1065. No, they cannot. The Court should enter judgment on the pleadings and dismiss Plaintiffs' Fourth Amendment claims with prejudice.

C. Plaintiffs improperly ask this Court to reconsider the Seventh Circuit's denial of the petition for rehearing and petition for rehearing *en banc* in *Alcorn*.

Plaintiffs' interpretation of the Seventh Circuit's decision in *Alcorn* is flawed and should be rejected outright. Plaintiffs' counsel already offered these same arguments to the Seventh Circuit, and the Seventh Circuit rejected them. This Court should not—and cannot—ignore the Seventh Circuit's decision to reject all of the same arguments. *See Levin v. Madigan*, 41 F. Supp. 3d 701, 704 (N.D. Ill. 2014) (citing *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)) (district courts should reject a party's attempt to "mak[e] what the litigant believes is an argument that undermines the holding of an appellate-court decision."). That is precisely what Plaintiffs ask the Court to do in this case.

Plaintiffs' counsel here appeared on the plaintiff's behalf in *Alcorn*, moved for rehearing and rehearing *en banc*, and argued: (1) the panel's decision was inconsistent with *Driver* and *Williams* (Ex. A, Pet. for Reh'g at 1-2, 5-7); (2) there is a constitutional right to immediately post bond if an arrestee is able to (*id.* at 2-3); and (3) the panel's application of the 48-hour rule to warrant arrests was inconsistent with Supreme Court case law including *Gerstein*, *Baker*, and *McLaughlin*. (*Id.* at 7-9.) As discussed above, Plaintiffs' Response argues the same points and relies on the same case law already rejected by the Seventh Circuit. (*See* Dkt. 175, Resp. at 4, 8-11.)

If the Seventh Circuit found any of Plaintiffs' arguments persuasive, it would have requested a response to the petition for rehearing in *Alcorn*. It did not. And, not even a single judge called for a vote on the *Alcorn* plaintiff's request for rehearing *en banc*. *See* 2023 WL 7549893, at *1 (7th Cir. Nov. 14, 2023) ("No judge in regular active service has requested a vote on the petition for rehearing en banc, and all the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED."). The entire Seventh Circuit would have at least considered

rehearing *Alcorn* if it believed *en banc* consideration was "necessary to secure or maintain uniformity of the court's decisions[.]" Fed. R. App. P. 35(a)(1). But again, it did not. This also undermines Plaintiffs' assertions that *Alcorn* conflicts with prior case law from the Seventh Circuit and Supreme Court.

Alcorn remains the law in this Circuit regarding the time in which an arrestee must be brought before a judge following their arrest on a warrant. Accordingly, Plaintiffs cannot repackage the same arguments the Seventh Circuit deemed immaterial and hope for a different outcome in this Court.

II. The Equal Protection claims should also be dismissed on the pleadings.

A. Plaintiffs' Equal Protection claims fail as a matter of law because the Special Order satisfies rational basis review.

Plaintiffs' Equal Protection claims are also without merit and should be dismissed. As the City discussed in the Motion, this case does not involve invidious discrimination based on membership in a protected class. (Dkt. 168, Mot. at 12.) It also does not involve unlawful, arbitrary government action. Even accepting as true Plaintiffs' asserted "disparate" treatment for warrant arrestees who are arrested on weekends and Court holidays compared to those who are arrested on a Chicago warrant on a weekday, the Special Order easily satisfies rational basis review. Plaintiffs cannot plead or prove a constitutional violation on this basis either.

Plaintiffs admit that their Equal Protection claims are subject to rational basis review and no other level of scrutiny. (*See* Dkt. 175, Resp. at 14-15.) Plaintiffs do not allege they were discriminated against based on their membership in a protected class or that the Special Order infringes on a fundamental right. (*See* Dkt. 56, Am. Compl. ¶¶ 10-12.)

Rational basis review is "highly deferential to the government," and the Court merely determines whether "there is any reasonably conceivable state of facts that could provide a rational

basis for the classification." *Hope v. Comm'r of Ind. Dep't of Corr.*, 66 F.4th 647, 650 (7th Cir. 2023). Indeed, if the Court "can hypothesize a sound reason for the classification, the law survives." *Id.* (citing *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)). This level of scrutiny permits courts to engage in "rational speculation unsupported by evidence or empirical data." *Beach Commc'ns, Inc.*, 508 U.S. at 315. As the party challenging the Special Order, Plaintiffs must "eliminate any reasonably conceivable state of facts that could provide a rational basis for the classification." *Srail v. Vill. of Lisle*, 588 F.3d 940, 946-47 (7th Cir. 2009) (cleaned up); *accord Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 367 (2001) (explaining that "the burden is upon the challenging party to negative any reasonably conceivable state of facts that could provide a rational basis for the classification"). Plaintiffs cannot meet that exacting burden.

The City has a legitimate interest in ensuring the efficient and effective disposition of criminal proceedings that relate to arrest warrants. *See Mitchell*, 37 F.4th at 1288 (recognizing states' interests in managing a large volume of bail proceedings with limited resources); *Bradley v. Edgar*, No. 83 C 7293, 1986 WL 902, at *10 (N.D. Ill. Jan. 10, 1986) (dismissing Equal Protection claim based upon the legitimate state interest of "enforcing court warrants"). The Special Order is rationally related to these interests because it requires warrant arrestees to appear, without unreasonable delay, before a judge who is empowered to admit the arrestee to bail and clear the warrant.

Moreover, it was certainly rational for CPD to allow Chicago warrant arrestees to post bond at the police stations on weekdays when the warrant may be easily verified. CPD could determine the warrant's validity through its own CLEAR system because the warrant was issued from within CPD's jurisdiction. The same cannot be said for warrants issued in other jurisdictions, even those within Cook County, which would require coordination between CPD and another

police department, all of which do not staff personnel in their warrant divisions at all hours of each day. *See Cain v. City of New Orleans*, 327 F.R.D. 111, 120-21 (E.D. La. 2018) (noting "[d]ifferential treatment based on jurisdiction alone does not violate the Equal Protection Clause," and finding "[t]hat civil judgment debtors outside [the defendant's] jurisdiction and criminal judgment debtors in [the defendant's jurisdiction] are treated different, without more, does not show an equal protection violation."). In those circumstances, it would be more expeditious to bring the arrestee to bond court where they may be admitted to bail by a judge, processed, and released shortly thereafter. *See Walker v. City of Calhoun*, 901 F.3d 1245, 1261-62 (11th Cir. 2018) (the plaintiffs could not sustain an Equal Protection claim where they were temporarily denied the right to post bond and thus their claims only involved the "[m]ere diminishment of a benefit").

Although it is not the City's burden to demonstrate a rational relationship to a legitimate state interest, *Smith*, 457 F.3d at 652, the City has done so here. Plaintiffs cannot demonstrate otherwise. Therefore, the alleged "discrimination" passes rational basis review and complies with the Equal Protection Clause.

B. Plaintiffs failed to plead class-of-one claims but even if they had, the claims lack merit.

Plaintiffs also seek to use their Response to amend their deficient pleading by now asserting, for the first time, "class-of-one" Equal Protection claims that were not set forth in their scantily pled original Complaint, Amended Complaint, or Amendment to Amended Complaint. (*See* Dkt. 175, Resp. at 14-15.) The Equal Protection claims, such as they are, are poorly defined in two paragraphs of Plaintiffs' Amended Complaint, which discuss the supposedly disparate treatment given to those who are "arrested on a Saturday, Sunday, or court holiday or a person arrested on a warrant issued by a judge outside of the City of Chicago," compared to others who are "arrested on a weekday that is not a court holiday on a warrant issued in Chicago[.]" (Dkt. 56,

Am. Compl. ¶¶ 10-11.) According to Plaintiffs, this supposed distinction "imposes an invidious and irrational discrimination." (*Id.* ¶ 12.) There are no allegations—none—suggesting Plaintiffs intended to pursue class-of-one claims. Had they included such allegations and claims, the City would have moved to dismiss under Rule 12(b)(6) as Plaintiffs would have failed to state a claim for relief.

Pleading deficiencies aside, the class-of-one claims fail for the reasons discussed above, namely, the Special Order satisfies rational basis review. *See Fares Pawn, LLC v. Ind. Dep't of Fin. Insts.*, 755 F.3d 839, 848-49 (7th Cir. 2014) (affirming dismissal of class-of-one claim where the alleged discrimination was rationally related to some legitimate state purpose). Moreover, Plaintiffs' own allegations defeat these claims regardless of whether they were pleaded (and they were not). Plaintiffs are all similarly situated to each other, having been arrested on active arrest warrants on weekends. (Dkt. 168, Mot. at 4-5.) Plaintiffs were treated identically: they were detained at police stations overnight and then transported to bond court the following morning. (*Id.*) Plaintiffs cannot show that they were arbitrarily singled out based on the subjective enforcement of a facially neutral law. *See, e.g.*, *Geinosky v. City of Chicago*, 675 F.3d 743, 748 (7th Cir. 2012) (the plaintiff sufficiently alleged a class-of-one claim where police officers issued 24 "bogus" parking tickets based on improper motives). This, too, defeats their individual class-of-one claims.

It also bears mention that Plaintiffs' class-of-one claims are inherently contradictory to the putative class action claims they seek to bring on behalf of others similarly situated. Indeed, courts have noted that class-of-one Equal Protection claims are inconsistent with, and inappropriate for, class action proceedings. *See, e.g., Stahlman v. Lane*, Case No. 5:23-cv-272, 2023 WL 3568621, at *1 (M.D. Fla. May 18, 2023) ("[the plaintiff] attempts to bring a class-of-one equal protection

claim—that claim is logically inconsistent with a class action."); *Melnick v. US Bank Nat'l Ass'n*, No. 21-cv-03112, 2022 WL 2753633, at *3 (D. Colo. May 24, 2022) (acknowledging that class-of-one claims are inappropriate for class treatment). Thus, to the extent the class-of-one claims survive dismissal—which, for the reasons discussed above, they cannot—Plaintiffs should not be permitted to pursue these claims on a class-wide basis.

Plaintiffs do not allege that their detentions were based on individual police officers' animus towards them or arbitrary, individualized decision-making. Rather, Plaintiffs allege that they were detained based on the uniform application of a neutral City policy, specifically, the Special Order. The Special Order's purported distinction satisfies rational basis review. Plaintiffs thus cannot allege, much less prove, a violation of their constitutional rights in this respect either. The Equal Protection claims should be dismissed accordingly.

III. Plaintiffs concede that they cannot maintain substantive Due Process claims.

The City argued in the Motion that, to the extent Plaintiffs sought to advance unalleged substantive Due Process claims, they should be dismissed under binding Circuit precedent. (Dkt. 168, Mot. at 13-14.) As the Seventh Circuit has previously held, "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.* at 13 (quoting *Lewis v. City of Chicago*, 914 F.3d 472, 479 (7th Cir. 2019).) Plaintiffs' claims center around their alleged unlawful detentions after they were arrested by CPD on outstanding arrest warrants. Their claims must therefore sound in the Fourth Amendment, *not* the Fourteenth Amendment's Due Process Clause. *See Lewis*, 914 F.3d at 479; *Williams*, 967 F.3d at 637. And for the reasons discussed above, Plaintiffs' Fourth Amendment claims fail as a matter of law.

Plaintiffs did not address, much less attempt to rebut, the City's argument in their

Response. The Seventh Circuit has found that "[f]ailure to respond to an argument . . . results in waiver," and "silence leaves us to conclude" the argument is conceded. *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010). To that end, courts regularly dismiss claims where a plaintiff fails to contest the defendant's arguments for dismissal. *See, e.g.*, *Boogaard v. NHL*, 891 F.3d 289, 294-96 (7th Cir. 2018) (affirming district court's holding that the plaintiffs forfeited their claims by failing to respond to the defendant's argument that they failed to state a claim for relief); *Lacy v. Progressive Direct Ins.*, No. 15 C 50110, 2016 WL 25717, at *2 (N.D. Ill. Jan. 4, 2016) (dismissing certain claims with prejudice where the plaintiff "concede[d] these arguments by failing to respond to them, thereby abandoning those bases for her suit.").

By failing to address the City's argument, Plaintiffs waived their opposition and conceded that dismissal is proper. Any substantive Due Process claims should therefore be dismissed with prejudice.

CONCLUSION

For these reasons and those discussed in the Motion, 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: January 3, 2024

Respectfully submitted,

CITY OF CHICAGO

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