

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

Theresa Kennedy, et al.,)	
)	
<i>Plaintiff,</i>)	
)	No. 20-cv-1440
-vs-)	
)	
City of Chicago,)	<i>(Judge Durkin)</i>
)	
<i>Defendant.</i>)	

PLAINTIFFS' MOTION TO RECONSIDER

Plaintiffs respectfully request that the Court reconsider its order of April 29, 2024 (ECF No. 184) upholding defendant's policy of refusing to accept cash bail for warrants issued in Cook County but outside Chicago.

The Court based its ruling on defendant's erroneous assertion that "non-Chicago warrants cannot be validated through the Chicago Police Department's 'CLEAR' system." (ECF No. 184 at 5.) As plaintiff explains below, Chicago does not use the CLEAR system to validate warrants.

Chicago uses "LEADS" (the Illinois "Law Enforcement Agencies Data System") to validate warrants. LEADS works throughout the state and there is no difference in validating a warrant issued in Chicago or Rolling Meadows. Moreover, even if the CLEAR system is somehow involved in checking warrants, CLEAR is used by almost all municipalities in Cook County.

I. Facts

Before September 18, 2023, all arrest warrants issued by a judge sitting in Illinois included the amount of cash bail, if any, that could be posted to obtain pre-trial release.¹ 725 ILCS 5/107-9(d)(7) (2022). Outside of the City of Chicago, a person arrested on an Illinois warrant could be released by the arresting agency after posting the amount of cash bail set in the warrant.² Not so in Chicago, unless the warrant had been issued by a judge sitting in Chicago—the “First Municipal District” in the Cook County Court System.³

Before September 18, 2023, persons arrested on a Chicago warrant with cash bond set in the warrant could post bond and be released from the police station, so long as the arrest was on a weekday. But Chicago police refused to accept bond from persons who were arrested on a Cook County

¹ This changed on September 18, 2023, when the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act, Public Act 101-652, took effect. Under the SAFE-T Act, rather than including an amount of cash bail, an arrest warrant must now “specify the conditions of pretrial release.” 725 ILCS 5/107-9(d)(7) (2023). For persons “arrested with or without a warrant,” the Act permits a law enforcement officer, on arrest “for an offense for which pretrial release may not be denied” to release the arrestee on a “notice to appear.” 725 ILCS 5/109-1(a-3) (2023).

² In *Doyle v. Elsea*, 658 F.2d 512 (7th Cir. 1981), the Seventh Circuit held that the constitutional right to “release on bail arises after a magistrate has determined that an accused may be released upon deposit of whatever sum of money will ensure the accused’s appearance for trial.” *Id.* at 516 n.6. The Court of Appeals held in *Williams v. Dart*, 967 F.3d 625 (7th Cir. 2020) that this right arises under the Fourth Amendment. *Id.* at 635.

³ There are six districts in the Circuit Court of Cook County, as set out at <https://www.cookcountycourt.org/ABOUT-THE-COURT/Organization-of-the-Circuit-Court>.

warrant that was not a “Chicago warrant.” Chicago required those persons, like plaintiff Bravo, to spend the night at a police station and be brought (in handcuffs) to bond court the next day. The City applied the same policy to persons arrested on a weekend or a holiday on a “Chicago warrant.”⁴

The appearance in bond court for someone arrested on a warrant that included the amount of cash bond was a meaningless formality: The bond court judge did not conduct a de novo bond hearing but merely inquired if the arrestee was able to post the amount of cash bond set in the warrant. As Brian Neals⁵ explained at his deposition:

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

(Neals Dep. 91:8-13, ECF No. 117-1 at 90.) The arrestee is not permitted to speak:

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

⁴ The City adopted this policy in April of 2012, when it amended Chicago Police Department Special Order S06-12-02 to require persons arrested on warrants issued in Cook County outside of Chicago, as well as persons arrested on Chicago warrants on weekends or holidays, to appear the morning after arrest in Central Bond Court, located at the Leighton Courthouse at 2650 South California Avenue.

⁵ Neals is one of the plaintiffs whose claim was dismissed because his warrant had been issued by a judge sitting outside of Cook County. (ECF No. 136 at 8.)

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

(Neals Dep. 92:14-19, ECF No. 117-1 at 91.)

Plaintiffs challenge defendant's policy as violating the Fourth and Fourteenth Amendments. This Court held that the decision of the Seventh Circuit in *Alcorn v. City of Chicago*, 83 F.4th 1063 (7th Cir. 2023) is dispositive of plaintiffs' Fourth Amendment claim. Plaintiffs respectfully disagree with the Court's ruling and will present their arguments to the Court of Appeals after entry of a final decision.

This Court also ruled on plaintiffs' Equal Protection claim in its order of April 29, 2024. (ECF No. 184). The Court concluded that "[p]laintiffs' allegations do not reveal a conceivable reason for the Policy's discrimination among arrestees based on the day of the week." (ECF No. 184 at 6.) Accordingly, the Court allowed the claims of plaintiffs Kennedy and Plummer, who were arrested on a Chicago warrant during a weekend, to continue.

The Court reached a different result on the claim of plaintiff Bravo, who had been arrested in Chicago on a warrant issued by a Cook County judge sitting outside of the City of Chicago:

The City argues that the Police Department is justified in not releasing people arrested on non-Chicago warrants because, unlike Chicago warrants, non-Chicago warrants cannot be validated through the Chicago Police Department's "CLEAR" system. See R. 179 at 10. Perhaps this is true. Assuming that it is, this justification is conceivably and rationally related to the

legitimate purpose of ensuring that non-Chicago warrants are properly administered

(ECF No. 184 at 5.) Plaintiffs ask the Court to reconsider this ruling.

II. The Arbitrary and Irrational Justification for Defendant's Policy for Non-Chicago Warrants

The Court granted the motion to dismiss by accepting defendant's argument that "unlike Chicago warrants, non-Chicago warrants cannot be validated through the Chicago Police Department's 'CLEAR' system." (ECF No. 184 at 5.) This argument rests on two equally incorrect assumptions.

A. LEADS, and not CLEAR, is not used to validate warrants

The Chicago Police Department does not validate warrants through the CLEAR system. The Chicago Police Department, like all police departments throughout Illinois, uses the "Law Enforcement Agencies Data System" (LEADS) for this purpose.

LEADS is "a statewide, computerized telecommunications system" for law enforcement in the State of Illinois. 20 Illinois Administrative Code § 1240.10. The system has been in operation for more than 50 years. *Leads Daily Briefing for December 14, 2020* (Exhibit 1) and provides police officers with critical information about persons they encounter.⁶

⁶ In addition to information about warrants, the information available through LEADS includes orders of protection, *Reynolds v. Jamison*, 488 F.3d 756, 760 & n.2 (7th Cir. 2007), whether a person is on supervised release, *United States v. Erving*, No. 22-CR-10033, 2023 WL 3059139, at *2 (C.D. Ill. Apr. 24, 2023), the status of firearms, *Patterson v. Sandage*,

Illinois law requires each police department in the state to promptly enter arrest warrants into the LEADS database. 20 Illinois Administrative Code, § 1240.60(a)(4). All agencies that enter records into LEADS are required to maintain an operating LEADS terminal on a 24 hour-per-day basis. *Illinois Leads Reference Manual (2021)* at REGS-25, Exhibit 6. In addition, all agencies “must be supported by an investigative document, active warrant, or complaint.” *Id.* at REGS-26. The backup documents “must be available on a 24-hour-per-day basis.” *Id.* The result is that LEADS includes information and backup documentation about all active warrants in the state. *Ruehman v. Sheahan*, 34 F.3d 525, 526 (7th Cir. 1994).

The City of Chicago requires its police officers to use LEADS to validate warrants issued outside the City of Chicago. Chicago Police Department Special Order S06-12-02 (Exhibit 2) requires the arresting officer to contact,

The LEADS Desk for initial verification, providing the LEADS warrant number, for Illinois warrants originating from outside the City of Chicago.

Special Order S06-12-02, IV(A)(2)(b) (Exhibit 2 at 4.)

No. 1:20-CV-01073, 2023 WL 2582613, at *7 (C.D. Ill. Mar. 20, 2023), driver’s license status, *Waterworth v. City of Joliet*, No. 17-CV-04990, 2021 WL 6049963, at *2 (N.D. Ill. Dec. 21, 2021), vehicle registration, *Maldonado v. County of Cook*, No. 20 C 213, 2021 WL 428828, at *1 (N.D. Ill. Feb. 8, 2021), and sex offender registration, *Frederickson v. Landeros*, No. 11 C 3484, 2018 WL 1184730, at *1 (N.D. Ill. Mar. 7, 2018), *aff’d on denial of qualified immunity*, 943 F.3d 1054, 2019 (7th Cir. 2019).

The City used LEADS when it verified the warrant for plaintiff Bravo (whose claim the Court dismissed because of the asserted rational basis for disparate treatment, ECF No. 184 at 5). The use of LEADS, as required by the City's explicit policy set out in the Special Order, appears on the face of Bravo's arrest report, excerpted and reformatted (with mixed case letters) below:

Event #06164 in summary, while on patrol at OHare airport R/O's received a call to Terminal 5 Customs Office. While on scene, R/O's spoke with Customs Agent IEVI #764191 who stated that Bravo was a passenger on a United Airlines Flight to Mexico had an active warrant and was detained by customs agents who later contacted CPD.

A/O's confirmed the warrant via LEADS and then notified Extradition (NELSON #11381) who confirmed the warrant was active at 1251 hrs.

Subject taken into custody, taken to unit 050 for processing and then transported to 016 for further processing. Warrant issued for D.U.I. No investigative alerts.

Bravo Arrest Report at 2, Exhibit 3 (emphasis supplied).

The City also used LEADS when it verified the warrant for plaintiff Kennedy, who was arrested on a Chicago warrant but on a weekend. The following appears in Kennedy's arrest report, reformatted with mixed case, emphasis added:

BWC E# 15080. Above arrested on a warrant, driving on a revoked DL and driving without valid insurance in that: While on routine patrol A/O's observed the above subject driving the above vehicle on the public way. A/O's ran said vehicle's plate via PDT and the info revealed a possible warrant hit as well as the registered owner to have a revoked DL. A/O'S Curbed the

vehicle (ISR#001286880). Name check revealed the driver to be the registered owner with a Revoked DL and an active warrant #W19F4026. Driver has prior DL revocation for DUI. Driver was unable to provide valid insurance.

Warrant verified via leads by Jasinki #18739 @2208hrs.

No further wants or warrants. Prisoner property inventoried under #14433603.

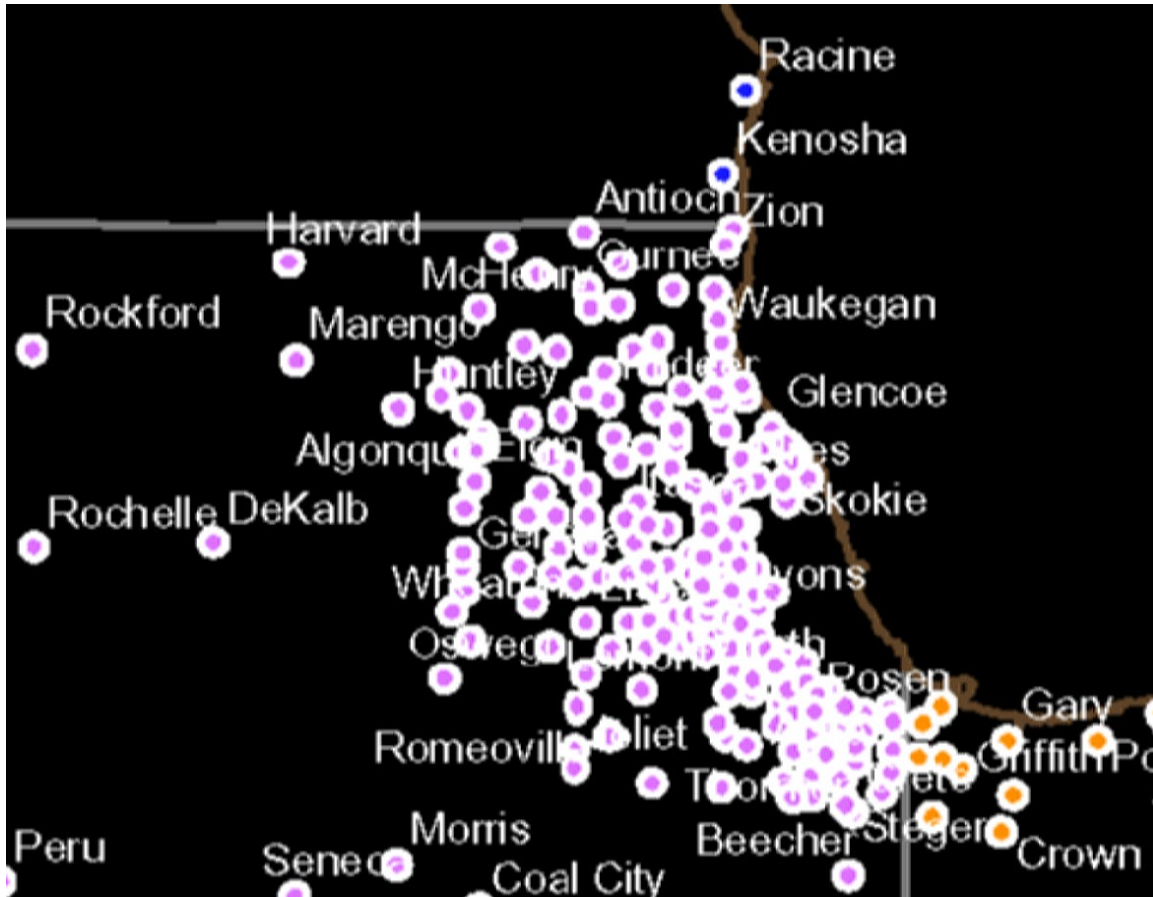
Kennedy Arrest Report at 2, Exhibit 4 (emphasis supplied).

Accordingly, the Court should reject defendant's claim that the CLEAR system is used to verify warrants. As explained, LEADS is the system used to verify warrants, and the system allows Chicago police officers to verify warrants issued anywhere in the state of Illinois.

B. CLEAR includes nearly all municipalities in Cook County

Nearly all municipalities in Cook County are part of the CLEAR system. In 2003, its first full year of operation, 107 of the 122 suburban police departments in Cook County became part of CLEAR. *Policing Smarter Through IT: Learning from Chicago's Citizen and Law Enforcement Analysis and Reporting (CLEAR) System* (2003) at 65. (This report is attached as Exhibit 5.) By 2007, "access was soon being offered in the border counties and to federal agencies. Interest has since spread beyond the Illinois borders to Wisconsin, Indiana, and Minnesota." *Clear and I-Clear: A Report on New Information Technology in Chicago and Illinois* (2007) at 4. (This report is attached as Exhibit 6.) A map showing widespread participation in

CLEAR throughout Cook County in 2007, extracted from *Clear and I-Clear*, *supra*, at 26, appears below:



It is likely that participation in CLEAR has increased in the past 21 years: The foreword to *Policing Smarter Through IT* predicted that CLEAR would “soon be adopted by the entire state of Illinois.” (Exhibit 5 at unnumbered page 4.)

Accordingly, even if the CLEAR system was used to verify warrants, use of the system would not justify defendant’s policy.

III. Reconsideration is Appropriate

Defendant did not present its claimed justification for refusing to permit a person like Mr. Bravo to post bond at the police station until its reply brief. This tactic made it impossible for plaintiffs to meet their burden of showing that the “facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.” *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 84 (2000) (cleaned up).

Any argument that plaintiffs should have sought leave to file a sur-reply to challenge the arguments defendant raised for the first time on reply would be contrary to *Hardrick v. City of Bolingbrook*, 522 F.3d 758 (7th Cir. 2008) because,

[T]here is no requirement that a party file a sur-reply to address an argument believed to be improperly addressed, and defendants provide no support for this contention. Should a party be required to seek leave to file a sur-reply in order to preserve an argument for purposes of appeal, arguments before the district court would proceed ad infinitum making litigation unruly and cumbersome.

Id. at 763 n.1. Accordingly, this filing is the first chance plaintiffs have had to address defendant’s erroneous claim. A motion to reconsider is appropriate to direct the Court’s attention to a manifest error of fact. *Wereko v. Rosen*, No. 22 C 02177, 2022 WL 16636841, at *2 (N.D. Ill. Nov. 2, 2022.)

Defendant articulated its justification for the rule refusing to permit persons to post bond on Cook County warrants issued by a judge sitting

outside of Chicago in a terse paragraph in its reply memorandum at ECF No. 179 at 10-11. Plaintiffs reproduce below the three sentences that make up that paragraph below and follow each contention with a factual response:

1. 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.

This sentence assumes that there is a difference between verifying a warrant on a weekday and verifying a warrant on a weekend or a holiday.⁷ This is incorrect. As explained above, warrants are verified through the LEADS computer system, which is available to law enforcement officers seven days a week, 24 hours a day.

2. CPD could determine the warrant's validity through its own CLEAR system because the warrant was issued from within CPD's jurisdiction.

CPD officers use LEADS to verify arrest warrants. Nothing in either of the attached reports describing the CLEAR system (Exhibits 5 and 6) suggests that CLEAR replaces LEADS in validating arrest warrants.

3. 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.

⁷ The phrase "certainly rational" is appropriate in a judicial finding, but when used by an advocate is an example of using an adverbial intensifier to fortify a "lame proposition." See Malcolm Coulthard, Alison May & Rui Sousa-Silva, *The Routledge Handbook of Forensic Linguistics* (ROUTLEDGE HANDBOOKS IN APPLIED LINGUISTICS) 52 (Taylor & Francis, Kindle ed.).

This sentence assumes that “coordination” is required to determine the validity of a warrant. This may have been true before the LEADS system was implemented 50 years ago, but as shown by the arrest reports of plaintiffs Bravo and Kennedy, the Chicago Police Department verifies warrants electronically through LEADS.

The City’s differential treatment of persons arrested on warrants issued in Cook County outside of Chicago “does not rest upon any reasonable basis, but is essentially arbitrary.” *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 62, 78 (1911). The policy does not “rationally further[] a legitimate state interest.” *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992) because there is not “a rational reason for the difference.” *Engquist v. Oregon Dept. of Agr.*, 553 U.S. 591, 602 (2008).

IV. Conclusion

The Court should therefore reconsider its order of April 29, 2024 (ECF No. 184) upholding defendant’s policy of refusing to accept cash bail for warrants issued in Cook County but outside Chicago.

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