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

Theresa Kennedy, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 20-cv-1440
-vs-	)	
	)	
City of Chicago,	)	*(Judge Durkin)*
	)	
Defendant.	)	

REPLY IN SUPPORT OF MOTION TO RECONSIDER

Defendant agrees (ECF No. 192 at 8-9) that it misled the Court when it asserted in a reply memorandum that the "CLEAR" system is used to validate warrants. The Court relied on this false statement when it granted judgment on the pleadings against plaintiff Bravo on his equal protection claim concerning persons arrested in Chicago on warrants issued in Cook County but outside of Chicago. (ECF No. 184 at 5.)

The Court should reject defendant's argument that the misstatement about the "CLEAR" system was harmless because defendant predicts the Court will grant its third motion for judgment on the pleadings. (ECF No. 192 at 2, 6, 10-11.) That motion is based on the assertion that a 2004 order from the Presiding Judge of the First Municipal District remains in effect to the present day. That order, however, deals with the same matters as General Administrative Order 2015-1 issued by the Chief Judge of the Circuit

Court of Cook County. Plaintiff showed in response to defendant's motion that ordinary rules of statutory construction mean that the latter order, from the Chief Judge of the Circuit Court, controls. (ECF No. 193 at 4-11.)

As an alternative argument, defendant contends that there is a rational basis for its policy of refusing to accept cash bail from persons arrested on warrants issued in Cook County but outside of Chicago. (ECF No. 192 at 9.) Plaintiffs show below that this claimed rational basis "could not reasonably be conceived to be true by the governmental decisionmaker." *Kimel v. Florda Bd. of Regents*, 528 U.S. 62, 84 (2000) (cleaned up). More importantly, defendant fails to identify any purpose that its policy "rationally furthers." *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976).

1. There is no "evil at hand for correction"

The Supreme Court has made plain that before the government may treat similarly situated persons differently, there must be "an evil at hand for correction." *Williamson v. Lee Optical, Inc.*, 348 U.S. 483, 487–88 (1955). For example, this "evil" can include the need "to protect the public from unqualified medical practitioners," *Maguire v. Thompson*, 957 F.2d 374, 377 (7th Cir. 1992), or concerns about the "proper disposal of fetal remains." *Box v. Planned Parenthood of Indiana & Kentucky*, 587 U.S. 490, 492 (2019).

In its order of April 29, 2024 (ECF No. 184), the Court accepted defendant's claim that a need to "validate" non-Chicago warrants through the "CLEAR" system justified its policy of refusing to accept cash bail from persons arrested on non-Chicago warrants. (ECF No. 189 at 5.) Defendant now agrees that it does not validate warrants through the "CLEAR" system and concedes that all warrants are validated through the "LEADS" system that is available to and used by law enforcement agencies through the state. (ECF No. 189 at 8-9.)

Other than its groundless reliance on the "CLEAR" system, defendant is unable to identify a rational basis for its policy of refusing to accept cash bail from persons arrested on non-Chicago warrants. Defendant does not disagree that the Equal Protection Clause "imposes a requirement of some rationality." *Rinaldi v. Yeager*, 384 U.S. 305, 308 (1966). Nor does defendant ask the Court to depart from the requirement of *James v. Strange*, 407 U.S. 128, 140–41 (1972), that "there must be some rationality in the nature of the class singled out."

The Supreme Court had made plain that evaluating an equal protection challenge begins with the "purpose identified by the State." *Board of Trustees of University of Alabama v. Garrett*, 531 U.S. 356 (2001). This must be a "legitimate, articulated state purpose." *San Antonio Indep. Sch. Dist.*

v. Rodriguez, 411 U.S. 1, 17 (1973). This standard is illustrated in *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985), where the Court held that "promotion of domestic business within a State, by discriminating against foreign corporations that wish to compete by doing business there, is not a legitimate state purpose." *Id.* at 880.

Defendant offers the insufficient claim that "warrants issued in other jurisdictions—even within Cook County—may sometimes require coordination between CPD and other police departments" to obtain "additional information … other than that which can be obtained through LEADS." (ECF No. 192 at 9.)

Defendant is unable to identify the "additional information" that is not available through LEADS. This is not surprising: Once the police identify a person named in a LEADS record as sought in a warrant, the Fourth Amendment permits the police to make an arrest. *Brown v. Patterson*, 823 F.2d 167, 169 (7th Cir. 1987); *Dakhlallah v. Zima*, 42 F. Supp. 3d 901, 908-09 (N.D. Ill. 2014).

Defendant is likewise unable to explain the nature of any "coordination" after a person is arrested on a warrant. Defendant bases this argument on its concededly incorrect factual claim that it uses the CLEAR system to

validate warrants. (ECF No. 179 at 10.) Defendant cannot explain what would be "coordinated."

In addition, defendant is unable to explain how the purported need to "coordinate" or to "obtain further information" is related to its policy of refusing to accept cash bail from all persons arrested on warrants issued in Cook County but outside of the City of Chicago. Defendant's policy requires that persons arrested on Cook County warrants issued outside of the City of Chicago, who are able to post cash bail, must remain overnight at the police station to be transported in handcuffs the next morning to Central Bond Court, where they will remain in custody until the afternoon, when a judge will finally allow the arrestee to post cash bail. This policy does not meet the rationality requirement of the Equal Protection Clause.

Finally, as plaintiff shows below, the Court should not consider defendant's factual arguments on a Rule 12(c) motion for judgment on the pleadings when those arguments are not based on the complaint, on materials attached to the complaint, or on matters that are properly the subject of judicial notice.

2. The Court may not consider a movant's hypothesized facts on a Rule 12(c) motion

"A defendant filing a motion under Rule 12(b)(6) or 12(c) can base its motion on only the complaint itself, documents attached to the complaint,

documents that are critical to the complaint and referred to in it, and information that is subject to proper judicial notice." *Kuebler v. Vectren Corp.*, 13 F.4th 631, 636 (7th Cir. 2021) (cleaned up.) The Court should reject defendant's request to disregard these limitations.

Defendant asks the Court to assume that "it is possible that during the relevant time period, not all police departments in Illinois—or even Cook County—necessarily utilized the LEADS system." (ECF No. 192 at 9.) This claim is analogous to defendant's original misleading reliance on the CLEAR system.

First, the arrests in this case were made after a LEADS inquiry turned up a warrant. See Plaintiffs' Motion to Reconsider, ECF No. 189 at 7-8. If a warrant is not in the LEADS system, Chicago police officers will not know about the warrant.

Second, warrants are issued by courts, inquiries about whether a warrant is valid are made to the County Sheriff, and all County Sheriffs in Illinois are required by Illinois statutes to be users of LEADS. (Several Illinois statutes, including the Domestic Violence Act, 750 ILCS 60/322(b), the Civil No Contact Order Act, 740 ILCS 22/218(b), and the Stalking No Contact Order Act, 740 ILCS 21/115(b), require County Sheriffs to enter into LEADS particular orders on the same day they are entered.

More importantly, defendant is unable to identify any government purpose that is furthered by its policy of refusing to accept the cash bond set on a warrant from persons who are ready, willing, and able to post cash bond at the police station.

3. Conclusion

For the reasons above stated and those previously advanced, the Court should grant plaintiffs' motion to reconsider and vacate the order granting judgment on the pleadings against plaintiff Bravo.

Respectfully submitted,

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