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

Anthony Murdock,	)	
	)	
Plaintiff,	)	
	)	20-cv-1440
-vs-	)	
	)	*(Judge Feinerman)*
City of Chicago,	)	
	)	
Defendant.	)	

PLAINTIFF'S MOTION TO CERTIFY CASE AS A CLASS ACTION

Pursuant to Rule 23(c), plaintiff, by counsel, moves the Court to order that this case proceed as a class action for:

All persons who, on and after February 27, 2018,

(a) were taken into custody by police officers of the City of Chicago on a Saturday, Sunday, or court holiday on a warrant for which a judge had set an amount of cash bail,

(b) were not permitted to post bail at the police station, and

(c) were released by posting bail after an appearance before a judge of the Circuit Court of Cook County without being held at the Cook County Jail.

I. Facts

A. Background Facts

At about 3:15 a.m. on Saturday, September 29, 2018, Chicago police officers Bahena and Diaz stopped plaintiff while he was driving a motor vehicle with one functioning headlight. Plaintiff's girlfriend Tishay Richardson was also in the car. Plaintiff produced his valid Illinois driver's

license and the officers detained plaintiff while they checked for outstanding warrants. Plaintiff does not challenge his detention while the officers conducted this "name check." *Hall v. City of Chicago*, 953 F.3d 945, 948 (7th Cir. 2020) (holding that a detention for a name check was reasonable).

The name check turned up a warrant from DuPage County that had been issued when plaintiff failed to appear in a minor traffic case. The judge who issued the warrant set bond at $3,000, meaning that plaintiff could be released upon posting 10% of that amount, or $300. Plaintiff's girlfriend had that amount of cash with her. The officers took plaintiff to the 15th district police station, where Officer Williams-Curington verified the warrant.

Plaintiff was not released on bond, even though Ms. Richardson was ready, willing, and able to post bond for plaintiff, because an express policy of the City of Chicago, discussed below, prohibited the officers from accepting bond and releasing plaintiff. Plaintiff was therefore held at the police station until the morning when he was transferred to the custody of the Sheriff of Cook County. After plaintiff appeared before a Cook County Judge, his girlfriend posted the cash bond that had been set by the DuPage County Judge. Plaintiff was released from custody at about 10 p.m. on September 29, 2018.

B. The Express Municipal Policy

The police officers did not permit plaintiff to post bond at the police station because of a written policy of the City of Chicago that prohibits police officers from accepting cash bond from any person arrested on Saturday, Sunday, or a court holiday on a warrant for which a judge had set an amount of bond even where the arrestee was ready, willing, and able to post bond.

The written policy is set out in Chicago Police Department "Special Order S06-12-02." Plaintiff attaches as Exhibit 1 the version that was in force when he was arrested in September of 2018 and, as Exhibit 2, the current version.

Special Order S06-12-02 is entitled "Non-Traffic Arrest Warrant Procedures." (Exhibit 1 at 1.) Section IV of the Rule is titled, "Processing Persons Arrested on Warrants" (Exhibit 1 at 3) and applies to all persons detained on a warrant. Relevant to this case is Section IV.B.3 which provided (and continues to provide) as follows:

> B. The station supervisor will ensure that:
> ***
> 3. the following will be transported to Central Bond Count:[1]
> ***
> (c) all persons arrested on all warrants on Saturday, Sunday, and Court Holidays.

(Ex. 1 at 4; Ex. 2 at 5.)

The written policy requires that any person arrested on a warrant on a Saturday, Sunday, or court holiday may not post bond at the police station, even when—as in this case—the judge who issued the warrant determined the amount of bond and the arrestee has available to him (or her) cash to post bond. Rather than being released, the arrestee will be held at a police station and transferred the next morning to the Sheriff of Cook County, who will present the arrestee to a judge of the Circuit Court of Cook County.

A much different fate awaits persons arrested on weekdays that are not court holidays who are able to post the bond that had been set on a warrant. The Chicago Police Department allows these persons to post bond at the police station and be released immediately. Unlike plaintiff and others similarly situated, this group is not subjected to the extended detention that results from defendant's express policy.

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[1] "Central Bond Court" is held at the George N. Leighton Criminal Court Building, 2600 South California Avenue, Chicago, Illinois. Circuit Court of Cook County, *First Municipal District Bond Courts*, http://www.cookcountycourt.org/ABOUTTHECOURT/MunicipalDepartment/FirstMunicipalDistrict-Chicago/BondCourt.aspx.

Plaintiff in this case, acting individually and for others similarly situated, challenges this municipal policy as violative of the Fourth Amendment. *See Williams v. Dart*, 19-2108,___ F.3d ___, 2020 WL 4217764 (7th Cir. July 23, 2020).

II. The Proposed Class Is Ascertainable and Is Sufficiently Numerous

Plaintiff's counsel has identified 598 persons who, from February 27, 2018 through January 31, 2020 were detained on a warrant, not permitted to post bond at the police station, and were released after an appearance before a judge of the Circuit Court of Cook County without being processed into the Cook County Jail.[2] The members of the putative class are identified in Exhibit 3 by date transferred to the Sheriff, first name and first initial of last name, and Chicago Police Department identification record number ("IR Number").

Counsel identified these persons from data produced by the Sheriff of Cook County in response to a request under the Illinois Freedom of Information Act.

[2] The starting date for the class is two years before plaintiff filed this case on February 27, 2020. The closing date for the class is the date of entry of judgment (or the date the City of Chicago abandons the policy challenged in this case). *Williams v. Lane*, 129 F.R.D. 636, 649 (N.D. Ill. 1990). Counsel's numerosity computation stops on January 26, 2020, which is the latest date in the data produced by the Sheriff of Cook County.

The Sheriff maintains records of all persons who are assigned identification numbers for potential admission to the Cook County Jail. These records, excluding date of birth and home address, are public records under the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq.

Plaintiff's counsel obtained 1,664,348 Jail intake records (ending on June 30, 2019) from the Sheriff under the Freedom of Information Act. Counsel subsequently obtained 109,067 records from July 1, 2019 through January 31 26, 2020. Included among these records is an entry for the named plaintiff, Anthony Murdock. This record shows that plaintiff was assigned a jail identification number by the Sheriff on September 29, 2018 and left the Sheriff's custody the same day. The record for plaintiff also shows a blank entry for charge and case type and a discharge type of "bond paid."

Counsel extracted all similar records from those produced by the Sheriff who arrived at the Jail on a Saturday or Sunday (using an SQL query of the database counsel created from the FOIA data) and identified the 598 potential class members, attached as Exhibit 3. The exhibit is underinclusive because it does include class members who were prohibited from posting bond on holidays.

The proposed class is therefore ascertainable from records maintained by the Sheriff of Cook County. Thus, the proposed class is

"defined clearly and … defined by objective criteria rather than by, for example, a class member's state of mind." *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657 (7th Cir. 2015).

The proposed class in this case meets the numerosity requirement of Rule 23(a)(1) because at 600 people, it is "reasonable to believe it [is] large enough to make joinder impracticable and thus justify a class action suit." *Arnold Chapman & Paldo Sign & Display Co. v. Wagener Equities Inc.*, 747 F.3d 489, 492 (7th Cir. 2014). As in *Starr v. Chicago Cut Steakhouse, LLC*, 75 F. Supp. 3d 859, 872 (N.D. Ill. 2014), counsel's estimate of the size of the proposed class satisfies the numerosity requirement of Rule 23(a). As the Seventh Circuit held in *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 859 (7th Cir. 2017), "While there is no magic number that applies to every case, a forty–member class is often regarded as sufficient to meet the numerosity requirement."

III. Commonality

To satisfy the commonality requirement of Rule 23(a)(2), the "prospective class must articulate at least one common question that will actually advance all of the class members' claims." *Phillips v. Sheriff of Cook County*, 828 F.3d 541, 550 (7th Cir. 2016). In this case, the common question is the constitutionality of defendant City of Chicago's express policy of refusing to accept bond on weekends and holidays. Once a person has been

arrested on a warrant with set bail and can pay the bail, the government "has no legitimate interest in detaining persons for an extended period of time." *Driver v. Marion County Sheriff*, 859 F.3d 489, 491 (7th Cir. 2017).

Before the decision of the Supreme Court in *Manuel v. City of Joliet*, 137 S.Ct. 911 (2017), the three circuits that had considered this issue agreed there was a "constitutionally protected liberty interest" in being released on bail and "that substantive due process protection of this liberty interest attaches once arrestees are deemed eligible for release on bail." *Steele v. Cicchi*, 855 F.3d 494, 502 (3d Cir. 2017), citing *Dodds v. Richardson*, 614 F.3d 1185 (10th Circuit, 2010) and *Campbell v. Johnson*, 586 F.3d 835, 940 (11th Cir. 2009). The Supreme Court's recent opinion in *Manuel v. Joliet*, *supra*, 137 S. Ct. 911 (2017) suggests that the question should be analyzed under the Fourth Amendment because it is unreasonable to detain a person on a warrant who is ready, willing, and able to post the cash bond that had been set on the warrant. The Seventh Circuit adopted this view in *Williams v. Dart*, 19-2108,___ F.3d ___, 2020 WL 4217764 (7th Cir. July 23, 2020), slip op. at 7-8.

Commonality is satisfied in this case because the proposed class is challenging a general policy. *Chicago Teachers Union, Local No. 1 v. Bd. of Educ. of City of Chicago*, 797 F.3d 426, 437 (7th Cir. 2015). This is a case like

Bishop v. Air Line Pilots Ass'n, Int'l, 331 F.R.D. 481 (N.D. Ill. 2019), where the "claims of all class members depend on the resolution of key common questions." *Id.* at 489. There is no meaningful factual variation in this claim, *Arreola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008), and resolution of this common question "will actually advance all of the class members' claims." *Phillips v. Sheriff of Cook County*, 828 F.3d 541, 550 (7th Cir. 2016).

IV. Typicality

Typicality in Rule 23(a)(3) "is closely related to the preceding question of commonality." *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). As this Court observed in *Bishop v. Air Line Pilots Ass'n, Int'l*, 331 F.R.D. 481 (N.D. Ill. 2019), "typicality is satisfied where the named plaintiff's claim 'arises from the same event or practice or course of conduct that gives rise to the claims of other class members and is based on the same legal theory.'" *Id.* at 490 (quoting *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009)).

Plaintiff's challenge to the City's policy arises "from the same event or practice or course of conduct that gives rise to the claims of other class members and [his] claims are based on the same legal theory." *Oshana v. Coca-Cola Co.*, 472 F.3d506, 514 (7th Cir. 2006). The case therefore satisfies the typicality requirement of Rule 23(a)(3).

V. Adequacy

Plaintiff will adequately represent the proposed class, as required by Rule 23(a)(4).

First, defendants do not have any unique defense against the named plaintiff. *Randall v. Rolls–Royce Corp.*, 637 F.3d 818, 824 (7th Cir. 2011); *Lipton v. Chattem, Inc.*, 289 F.R.D. 456, 459 (N.D. Ill. 2013).

Second, plaintiff is represented by counsel skilled and experienced in these matters.

Plaintiff's principal attorney Kenneth N. Flaxman, was admitted to practice in 1972; his work in class action litigation includes *United States Parole Commission v. Geraghty*, 445 U.S. 388 (1980) (class action challenging federal parole guidelines); *Doe v. Calumet City*, 128 F.R.D. 93 (N.D. Ill. 1989) (class action challenging strip search practice of Calumet City police department); *Calvin v. Sheriff of Will County*, 405 F. Supp. 2d 933 (N.D. Ill. 2005) (class action challenging strip search practice at Will County Jail), and *Fonder v. Sheriff of Kankakee County*, 823 F.3d 1144 (7th Cir. 2016) (class action challenging strip search practice at the Kankakee

County Jail). Plaintiff's principal attorney has also argued more than 150 federal appeals, including five cases in the United States Supreme Court.[3]

Plaintiff's second attorney Joel A. Flaxman, is also competent to represent the class; he was admitted to practice in 2007, served three years in judicial clerkships,[4] followed by four years as a trial attorney in the United States Department of Justice, Civil Rights Division, before entering private practice.[5]

VI. Rule 23(b)(3)

This Court thoroughly analyzed the predominance and superiority requirements of Rule 23(b)(3) in *Bernal v. NRA Group, LLC*, 318 F.R.D. 64 (N.D. Ill. 2016). Predominance was satisfied because "the most significant issue in this case can be resolved on a classwide basis, without any individual variation." *Id.* at 75-75. Here, the City's explicit written policy does not allow for individual determination. Commonality is therefore satisfied

[3] In addition to *Geraghty*, Flaxman argued *Browder v. Director, Department of Corrections*, 434 U.S. 257 (1978); *Jaffee v. Redmond*, 518 U.S. 1 (1996); *Ricci v. Arlington Heights, cert dismissed as improvidently granted*, 523 U.S. 613 (1998), and *Wallace v. Kato*, 549 U.S. 384 (2007).

[4] Counsel was a staff law clerk for the Seventh Circuit from 2007 to 2009 and then a law clerk for the Honorable Rebecca Pallmeyer from 2009 to 2010.

[5] With co-counsel, plaintiff's second attorney has served as class counsel in several recent cases, including *Conyers v. City of Chicago*, No. 12 CV 06144, 2017 WL 4310511 (N.D. Ill. Sept. 28, 2017); *Wilson v. City of Evanston*, No. 14 C 8347, 2017 WL 3730817 (N.D. Ill. Aug. 30, 2017); *Bell v. Dart*, No. 14 C 8059, 2016 WL 337144 (N.D. Ill. Jan. 26, 2016); *Beley v. City of Chicago*, No. 12 C 9714, 2015 WL 8153377, at *1 (N.D. Ill. Dec. 7, 2015); and *Lacy v. Dart*, No. 14 C 6259, 2015 WL 1995576 (N.D. Ill. Apr. 30, 2015).

because the policy is evenly applied to all persons arrested on a warrant on a weekend or a holiday.

In addition, a class action is superior to other methods for adjudicating the claims of the members of the proposed class. Resolution of the legality of the policy will, as the district court observed in Brown v. Cook County, 332 F.R.D. 229 (N.D. Ill. 2019), "'achieve economies of time, effort, and expense,' and the claims are therefore well-suited for class treatment." *Id.* at 247 (quoting *Amchem v. Windsor*, 521 U.S. 591, 615 (1997)). Finally, any need for an individual assessment of damages is not a ground for refusing to allow a case to proceed as a class action. *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 859 (7th Cir. 2017); *see also McMahon v. LVNV Funding, LLC*, 807 F.3d 872 (7th Cir. 2015); *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 671 (7th Cir. 2015); *Butler v. Sears, Roebuck & Co*, 727 F.3d 796, 800 (7th Cir. 2013).

VII. Conclusion

For the reasons above stated, the Court should order that this case be maintained as a class action under Rule 23(b)(3) for

> All persons who, on and after February 27, 2018,
>
> (a) were taken into custody by police officers of the City of Chicago on a Saturday, Sunday, or court holiday on a warrant for which a judge had set an amount of cash bail,
>
> (b) were not permitted to post bail at the police station, and

(c) were released by posting bail after an appearance before a judge of the Circuit Court of Cook County without being held at the Cook County Jail.

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Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 08830399
Joel A. Flaxman
200 S Michigan Ave, Ste 201
Chicago, IL 60604
Attorneys for Plaintiff