

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

Vondell Wilbourn, individually and	)	
for others similarly situated,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	No. 23-cv-1782
-vs-	)	
	)	
Sheriff of Cook County and Cook	)	<i>(Judge Shah)</i>
County, Illinois,	)	
	)	
<i>Defendants.</i>	)	

**PLAINTIFF'S MOTION TO COMPEL**

Plaintiff, by counsel, moves the Court to order defendant Sheriff of Cook County to produce the names and jail identification numbers of the 79 persons referred to in redacted reports produced by defendant Sheriff.

Grounds for this motion are as follows:

1. As detailed in paragraphs 2-12 below, the parties have fully exhausted the meet and confer procedure, resolving many of their differences but leaving one critical dispute that requires resolution by the Court:

a) Plaintiff contends that the Sheriff has a policy instructing his deputies that they do not require a warrant to enter a dwelling to return to custody a person who had been released on electronic monitoring. The first deputy who has been deposed acknowledged the existence of this policy (Exhibit 1 at 2-3, Halt Dep. 7:22-8:9, App. 2-3), but the Sheriff has not produced any written policy. Plaintiff therefore suspects that, rather than an explicit

policy, there is a widespread practice creating a standard operating procedure of entering dwellings without a warrant.

- b) The Sheriff has denied the existence of this alleged policy (Exhibit 2 at 4-5, Sheriff's Answer to Complaint, ¶ 17, App. 9-10), and plaintiff therefore has the burden of proving that entering homes without a warrant is the Sheriff's "standard operating procedure." *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 738 (1989).
- c) One important source of evidence to show "a widespread practice or custom," *Clemons v. Wexford Health Sources, Inc.*, 106 F.4th 628, 638 (7th Cir. 2024), will be the experiences of persons, other than plaintiff, who were returned to the Jail for alleged violations of the electronic monitoring program by officers who had entered the dwelling.
- d) Sheriff's deputies prepare a report each time they return a pre-trial detainee to the Cook County Jail from release on electronic monitoring. Defendant Sheriff has produced these reports but insists on redacting the personal identifying information of the persons who were returned to the Jail.
- e) Unless the Sheriff admits the existence of the alleged policy, plaintiff must marshal evidence of a widespread practice based on the experiences of others to whom the practice was applied.

The Seventh Circuit has “repeatedly rejected *Monell* claims that rest on the plaintiff's individualized experience without evidence of other constitutional violations.” *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 240 (7th Cir. 2021).

- f) The reports produced do not unambiguously state whether the deputies entered the home of the person returned to the Jail. Accordingly, plaintiff seeks to contact persons on electronic monitoring who were returned to the Jail following an apparent warrantless entry to their home. This of course is impossible without knowledge of the name, jail identification number, and address of the persons returned to the Jail. Defendant refused to produce this information and insists on redacting it.

2. Plaintiff served his Rule 34 production request on May 3, 2024. (Exhibit 3, attached, App. 18.) Request 1 sought the following:

- 1. For the period of March 2, 2021 through May 2, 2024, produce in native format, or other computer readable format, such as an xlsx spreadsheet, the data maintained by or on behalf of the Sheriff, for all “incident reports,” where one of the “incident categories” is “EM – Reincarceration.” This request seeks, for persons other than plaintiff, the data that has been produced in pdf format for the “Reincarceration of Plaintiff on March 3, 2023,” Bates Numbers 000010-000013.

3. Defendant responded to the production request on June 3, 2024 (Exhibit 4, App. 21 ), making the following objection to Request 1:

RESPONSE: Defendant objects that disclosure of the requested information would violate the privacy rights of individuals. Defendant also objects that Plaintiff filed his complaint on March 22, 2021, and

information before that date is outside the applicable statute of limitations. Defendant further objects that the request is overbroad and unduly burdensome, as it is not limited to the type of “reincarceration” being challenged in this lawsuit, and therefore seeks information not related to the claims of either party nor proportionate to the needs of the case. The request is also unduly burdensome to the extent it seeks data in a format other than that in which it is routinely kept/maintained, as incident report data is not stored in page or PDF format, and converting each data entry into a PDF requires individual manual conversion for every incident report number.

4. Plaintiff responded to these objections by letter dated June 12, 2024 (Exhibit 5, App. 26), and counsel for the parties discussed all discovery disputes by telephone on June 17, 2024.

5. Following the telephone conversation, plaintiff further narrowed request 1 by letter dated June 18, 2024. (Exhibit 6, App. 28)

6. Defendant responded to the narrowed request on June 21, 2024, and agreed to produce ten “EM-Reincarceration incident reports,” subject to a protective order.

7. Defendant produced on July 1, 2024 the ten incident reports, but redacted all personal identification action.

8. Plaintiff reviewed the sample reports, and on July 3, 2024 further narrowed Request 1 as follows:

For the period of *March 22, 2021 through June 30, 2024*, produce in native format, or other computer readable format, such as an xlsx spreadsheet (*but not a pdf representation of tabular data*), the data maintained by or on behalf of the Sheriff, for all "incident reports," where one of the "incident categories" is EM-Reincarceration *and the "Details of Incident" do not include the word "warrant" or the phrase "turned himself in."*

9. Defendant produced a spreadsheet containing the narrative information from 228 incident reports on July 22, 2026. Plaintiff reviewed the spreadsheet and further narrowed the request to production to 79 specific reports, to be produced without redactions. (Exhibit 7, Letter of July 26, 2024, App. 30, and Chart, App. 31.)

10. In a letter dated August 3, 2024 (Exhibit 8, App. 33), plaintiff's counsel explained plaintiff's need for production of the unredacted reports:

The 79 persons referred to in the redacted reports have personal knowledge of whether the deputies who returned each person to the Jail entered their dwelling without a warrant. Plaintiff therefore seeks to interview as many of these persons as time allows. The identity of these persons will allow counsel to examine the court files, which will likely contain information about whether there was probable cause to believe that any of these 79 persons had committed a crime. The claimed privacy objection overlooks the fact that the identify of persons who enter the Jail is a matter of public record. The same is true for the identify of persons released on Electronic Monitoring. Plaintiff's need to gather relevant evidence far outweighs any privacy interest.

11. Plaintiff's counsel also pointed out that the Sheriff "could obviate the need for this discovery by admitting the explicit policy to enter dwellings without a warrant." (Exhibit 8, App. 33.)

12. Counsel for the parties discussed this issue by telephone on Friday, August 9, 2024 at about 3:10 p.m. Kenneth Flaxman participated for plaintiff, and Samuel Branum participated for defendant. The parties agreed that they had fully exhausted all good faith efforts to resolve the discovery dispute without recourse to the Court.

13. There is no merit in any argument by the Sheriff that it is protecting the privacy interest of persons on electronic monitoring who were returned to the Jail because plaintiff will accept the identifying information subject to a confidentiality order. Nor is there any merit to an argument that discovery of the identity of members of the putative class should await ruling on the impending motion for class certification. The persons aggrieved by the alleged policy are fact witnesses whose observations are crucial for plaintiff to establish his *Monell* claim. Moreover, this discovery cannot be deferred until a ruling on class certification because the Court has declined to bifurcate class and merits discovery. (Exhibit ECF No. 30, Order, March 25, 2024.)

The Court should therefore order defendant Sheriff to produce without redactions the 79 reports identified at App. 31.

Respectfully submitted,

/s/ Kenneth N. Flaxman  
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*Attorneys for Plaintiffs*

## **Exhibit 1**

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

VONDELL WILBOURN, )  
individually and for )  
others similarly situated, )  
Plaintiffs, )  
vs. ) Case No. 23-CV-1782  
SHERIFF OF COOK COUNTY )  
AND COOK COUNTY, ILLINOIS, )  
Defendants. )

The discovery videoconference deposition of  
MARK HALT, taken in the above-entitled cause,  
before BRIANNA M. STEVENS, a Certified Shorthand  
Reporter of Cook County, Illinois, at 1:00 p.m.  
on July 16, 2024, via Zoom, pursuant to notice.

Reported by: BRIANNA M. STEVENS, CSR  
License No.: 084-004917





1 written policy about use of leg shackles when  
2 you were apprehending a person on EM?

3 A. I know there is -- there is some policy  
4 covering leg shackles. Yes.

5 Q. Okay. Do you know if there's a policy  
6 about using lights and siren when you were  
7 returning with an apprehending EM person?

8 A. Yes, there is.

9 Q. And what is that policy?

10 A. I don't re- -- yeah, I don't recall the  
11 exact number to the policy.

12 Q. But could you tell us as best as you  
13 can the substance of that policy?

14 A. I think it's about, you know, securing  
15 the scene depending on -- really depending on a  
16 situation and the supervisor's instruction.

17 Q. Well, is it the policy that you should  
18 use your lights and sirens to avoid stopping at  
19 red lights?

20 A. Well, at times lights and sirens are  
21 just to avoid traffic jams.

22 Q. Do you recall any written policy that  
23 speaks to whether and under what circumstances  
24 you may enter a dwelling to apprehend a person



1 who is on EM?

2 A. Yes, there is a policy to cover that.

3 Correct. Yes.

4 Q. Could you tell us as best you can what  
5 that policy is?

6 A. Well, based on -- well, in short -- I  
7 can't repeat it word for word, but in short,  
8 it's based on the electronic monitoring  
9 participants' consent and our ability to ensure  
10 compliance with the electronic monitoring  
11 program. I mean, that's --

12 Q. And as -- am I correct the policy as  
13 you understand it is that when you're  
14 apprehending a person who is on EM you can enter  
15 a dwelling to apprehend them?

16 A. Yes.

17 Q. Okay. Is there a policy about the  
18 extent, if any, to which you can search that  
19 dwelling when you enter it to apprehend who is  
20 on EM who you're returning to the jail?

21 A. Well, the consent to search is provided  
22 by the EM participant. In this case, it would  
23 have been Vondell Wilbourn. He would have given  
24 the consent.



## **Exhibit 2**

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

VONDELL WILBOURN, individually  
and for others similarly situated,

*Plaintiff,*

-vs-

SHERIFF OF COOK COUNTY and  
COOK COUNTY, ILLINOIS,

*Defendants.*

Case No. 23-cv-1782

Honorable Manish S. Shah  
Magistrate Judge Young B. Kim

**DEFENDANT SHERIFF OF COOK COUNTY'S ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant, SHERIFF OF COOK COUNTY, by its attorney KIMBERLY M. FOXX, State's Attorney of Cook County, through her Special Assistant State's Attorneys, JOHNSON & BELL, LTD., answers Plaintiff's amended complaint as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is conferred by 28 U.S.C. § 1343.

**ANSWER:** Defendant admits that Plaintiff has brought this action pursuant to 42 U.S.C. § 1983 and that the Court has jurisdiction pursuant to 28 U.S.C. § 1343, but Defendant denies it engaged in any misconduct.

2. Vondell Wilbourn is a resident of the Northern District of Illinois.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

3. Plaintiff brings this case individually and for others similarly situated, as described in greater detail below.

**ANSWER:** Defendant admits Plaintiff has brought this action individually and for others similarly situated, but Defendant denies this case may be certified as a class action.

4. Defendant Sheriff of Cook County is sued in his official capacity for the denial of rights secured by the Fourth and Fourteenth Amendments caused by an explicit policies [*sic*].

**ANSWER:** On March 1, 2024, the Court dismissed Plaintiff's Fourteenth Amendment claim. (Order, ECF No. 26.) Defendant admits Plaintiff sues Defendant Sheriff of Cook County in his official capacity, but Defendant denies Plaintiff's Fourth Amendment rights were violated or that Plaintiff's Fourth Amendment rights were violated by an explicit policy.

5. Defendant Cook County is joined in this action pursuant to *Carver v. Sheriff of LaSalle County*, 324 F. 3d 947 (7th Cir. 2003).

**ANSWER:** Defendant admits Plaintiff joins Cook County in this action pursuant to *Carver*.

6. In 2019, plaintiff was charged with felony offenses in the Circuit Court of Cook County.

**ANSWER:** Admitted.

7. Bond was set at plaintiff's initial appearance at \$10,000 cash deposit, subject to electronic monitoring.

**ANSWER:** Defendant admits that bond was set at Plaintiff's initial appearance and that electronic monitoring was a court-ordered condition of bond. Plaintiff's bond was \$100,000 with a deposit amount of \$10,000. Defendant denies all other claims in paragraph 7.

8. Plaintiff posted bond on September 27, 2019 and was released from the Cook County Jail, subject to the rules of the electronic monitoring program.

**ANSWER:** Defendant admits that Plaintiff was released from the Cook County Department of Corrections, subject to the rules of the electronic monitoring program. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

9. After leaving the Jail, plaintiff returned to living with his wife and their young children.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

10. While on bail, and as authorized by the judge presiding over the criminal case, plaintiff transported his two school age children to and from school.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

11. On Friday, February 25, 2023, an employee or employees of defendant Sheriff of Cook County determined that on four occasions between January 31, 2023 and February 23, 2023, plaintiff did not return home by the route he had followed while driving his children to school.

**ANSWER:** Defendant denies Plaintiff's characterization of the Sheriff's Office's determination. Defendant admits only that on or about February 24, 2023, an employee or employees of the Cook County Sheriff's Office determined that Plaintiff violated the rules and regulations of the electronic monitoring program by deviating in his essential movement on four occasions between January 21, 2023, and February 23, 2023. Defendant denies all other claims in paragraph 11.



12. Plaintiff did not violate any Illinois statute when he allegedly failed to return home by the same route he had followed while driving his children to school.

**ANSWER:** Denied.

13. Plaintiff did not violate any of the Rules and Regulations of the Electronic Monitoring program when he allegedly failed to return home by the same route he had followed while driving his children to school.

**ANSWER:** Denied.

14. At some time before March 22, 2021, the Sheriff adopted an express policy requiring his employees to arrest, without an order from a judicial officer, any pre-trial detainee who had been released on electronic monitoring based on a determination by an employee of the Sheriff that the pre-trial detainee had violated a condition of electronic monitoring.

**ANSWER:** Denied.

15. The policy described in paragraph 14 violates the Due Process Clause of the Fourteenth Amendment because it does not provide notice or hearing before the deprivation of the conditional liberty of release on bail.

**ANSWER:** On March 1, 2024, the Court dismissed Plaintiff's Fourteenth Amendment claim. (Order, ECF No. 26.) Defendant denies the allegations in this paragraph.

16. The policy described in paragraph 14 subjects persons arrested for alleged violations of electronic monitoring to an unreasonable seizure contrary to rights secured by the Fourth Amendment.

**ANSWER:** Denied.

17. At all times relevant, the Sheriff has authorized his employees to enter without a warrant the residence of the persons described in paragraph 14 to make an arrest for a violation

of the electronic monitoring rules. This policy violates the Fourth Amendment's protection against intrusions into the home.

**ANSWER:** Denied.

18. In adopting these policies, the Sheriff acted in deliberate indifference to clearly established constitutional rights.

**ANSWER:** Denied.

19. On Friday, March 3, 2023, officers from the Sheriff's Electronic Monitoring "EM" unit traveled to plaintiff's home and, without a warrant or a court order of any sort, entered the dwelling, handcuffed plaintiff in front of his minor children, and brought plaintiff to the Cook County Jail.

**ANSWER:** Defendant admits that on March 3, 2023, Plaintiff was returned to the Cook County Department of Corrections for violating the terms of the Sheriff's electronic monitoring program, which Plaintiff was court ordered to comply with as a condition of release on bond. Defendant denies the remaining allegations contained in this paragraph.

20. The next court day after the warrantless arrest was Tuesday, March 7, 2023. Plaintiff and counsel appeared via Zoom.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

21. At the hearing on March 7, 2023, the prosecutor made the following proffer: There were four incidents on the report that were violations of the EM program. On January 31, the defendant deviated in his essential movement from 7:45 to 7:54. On 2-8, he deviated from 7:42 a.m. to 8:04 a.m. On February 15, he deviated from 7:52 to 8:06 a.m. On February 23, he was traced traveling outside of his placement from 7:32 a.m. to 8:00 a.m., Judge.



**ANSWER:** Admitted.

22. Without receiving any further evidence, the trial judge made the following ruling:  
THE COURT: State granted leave to file petition for violation of bail bond. He will be held no bail right now.

**ANSWER:** Defendant admits the court granted the State leave to file petition for violation of bail bond and ordered that Plaintiff be held no bail. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

23. The “halfsheet” of the proceedings of March 7, 2023 mistakenly recites that the trial judge that day granted a petition to violate bail bond. Under Illinois law, the transcript controls over the “halfsheet.”

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. The second sentence in this paragraph calls for a legal conclusion to which no answer is necessary; should any answer be required, Defendant denies same and demands strict proof thereof.

24. Plaintiff remained at the Cook County Jail for 19 days until March 21, 2023, when the Illinois Appellate Court reversed the trial court’s order and reinstated plaintiff’s original bond.

**ANSWER:** Defendant admits the Illinois Appellate Court reinstated Plaintiff’s original bond, including the original bond condition of an electronic monitoring requirement. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

25. While confined at the Cook County Jail in March of 2023, plaintiff was deprived of daily contact with his spouse and children, required to live with dangerous persons, and subjected to much harsher conditions of confinement than he had been subjected to while on bail.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

26. After plaintiff had served 1,371 days of pretrial custody (which includes the time he spent on electronic monitoring), he accepted the prosecution's proposal to reduce the charges and recommend a two-year sentence in exchange for a plea of guilty. The trial judge imposed the two-year sentence on May 9, 2023.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

27. At all times within the two years immediately preceding the filing of this action, more than 1,500 persons charged with felony offenses in Cook County, Illinois have been on bail subject to electronic monitoring.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

28. Plaintiff believes that discovery will reveal that, within the two years immediately preceding the filing of this lawsuit, employees of defendant Sheriff have applied the express policies described above to deprive more than 40 individuals of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States.

**ANSWER:** On March 1, 2024, the Court dismissed Plaintiff's Fourteenth Amendment claim. (Order, ECF No. 26.) Defendant denies it deprived individuals of rights secured by the

Fourth and Fourteenth Amendments. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

29. Plaintiff brings this action individually and for those similarly situated who, within the two years preceding the filing of this action, have been arrested by employees of the Sheriff's "EM" unit solely for claimed deviations from the conditions of electronic monitoring and without a warrant or other court order. A subclass might be appropriate for plaintiff's claim about the warrantless home entries authorized by the Sheriff.

**ANSWER:** Defendant admits Plaintiff has brought this action individually and for those similarly situated, but Defendant denies this case may be certified as a class action.

30. Plaintiff hereby demands trial by jury.

**ANSWER:** Defendant admits Plaintiff demands a jury trial.

### **AFFIRMATIVE DEFENSES**

Further answering Plaintiff's amended complaint, Defendant alleges the following separate affirmative defenses against Plaintiff:

#### **I. Exhaustion of Administrative Remedies**

1. Discovery may reveal that on the date Plaintiff filed his complaint or amended complaint, he was a "prisoner," as that term is defined in the Prison Litigation Reform Act ("PLRA"). *See* 42 U.S.C. § 1997e(h) ("[T]he term 'prisoner' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."); *Dixon v. Page*, 291 F.3d 485, 489 (7th Cir. 2002) ("[A] plaintiff's status as a 'prisoner' is to be determined as of the time he brought the lawsuit.").

2. The PLRA provides that “[n]o action shall be brought with respect to prison conditions under . . . 42 U.S.C. 1983 . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a); *see also Dale v. Lappin*, 376 F.3d 652, 655 (7th Cir. 2004).

3. To the extent Plaintiff was a prisoner on the date he filed his complaint or amended complaint and failed to properly exhaust his administrative remedies, his claims are barred by the PLRA.

## **II. Mental or Emotional Injury**

4. The PLRA provides that “[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act . . . .” 42 U.S.C. § 1997e(e).

5. Plaintiff did not suffer any physical injury as required by Section 1997e(e). *Pearson v. Welborn*, 471 F.3d 732, 744 (7th Cir. 2006).

6. To the extent Plaintiff was a prisoner on the date he filed his complaint or amended complaint and seeks damages for mental or emotional injury, his claim is barred because he cannot show physical injury as required by Section 1997e(e) of the PLRA.

## **III. Immunity from Punitive Damages**

7. Local governments are immune from punitive damages liability under 42 U.S.C. § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

8. Therefore, to the extent Plaintiff seeks punitive damages from Defendant, Defendant asserts immunity from the same.



#### **IV. Failure to Mitigate**

9. To the extent Plaintiff claims any damages against Defendant, Plaintiff had a duty to mitigate those damages. *Wells v. City of Chicago*, No. 07 C 3372, 2009 WL 528307, at \*8 (N.D. Ill. Feb. 25, 2009).

10. Without waiving its denials to Plaintiff's allegations and to the extent Plaintiff may pursue damages but has failed to mitigate those damages, any award of damages must be reduced or eliminated for his failure to mitigate.

#### **V. Statute of Limitations**

11. To the extent Plaintiff seeks damages from Defendant for injuries occurring more than two years before filing his complaint or amended complaint, Plaintiff's claims are barred by the statute of limitations. *See Lewis v. City of Chicago*, 914 F.3d 472, 478 (7th Cir. 2019) ("A § 1983 claim borrows the statute of limitations for analogous personal-injury claims in the forum state; in Illinois that period is two years.").

#### **VI. Plaintiff's Willful and Wanton Conduct**

12. To the extent any injuries or damages claimed by Plaintiff were proximately caused, in whole or in part, by negligent, willful, wanton, and/or other wrongful conduct on the part of Plaintiff, any verdict or judgment obtained by Plaintiff must be reduced by application of the principles of comparative fault in an amount commensurate with the degree of fault attributed to Plaintiff by the jury in the case.

#### **VII. Additional Affirmative Defenses**

13. Defendant reserves the right to assert additional affirmative defenses as they become known through the course of litigation.

**JURY DEMAND**

With regard to any issue that may be appropriately heard by a jury in this cause of action, Defendant hereby demands a jury trial.

WHEREFORE, based on the foregoing, Defendant, SHERIFF OF COOK COUNTY, denies that Plaintiff is entitled to any damages, injunctive relief, costs, attorney's fees, witness fees, or other relief. Defendant prays this Honorable Court grant judgment in its favor and against Plaintiff on all aspects of his amended complaint and further requests this Honorable Court grant judgment of Defendant's fees, costs, and such other relief this Court deems just and appropriate.

Respectfully submitted,

KIMBERLY M. FOXX  
State's Attorney of Cook County

Dated: March 15, 2024

/s/ Samuel D. Branum  
Special Assistant State's Attorney

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Chicago, Illinois 60603  
(312) 372-0770

## **Exhibit 3**

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

Vondell Wilbourn, individually	)	
and for others similarly situated,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	No. 23-cv-1782
-vs-	)	
	)	
Sheriff of Cook County and Cook	)	(Judge Shah)
County, Illinois,	)	
	)	
<i>Defendants.</i>	)	

**PLAINTIFF'S RULE 34 REQUEST**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendant Sheriff of Cook County is requested to produce the following:

1. For the period of March 2, 2021 through May 2, 2024, produce in native format, or other computer readable format, such as an xlsx spreadsheet, the data maintained by or on behalf of the Sheriff, for all “incident reports,” where one of the “incident categories” is “EM – Reincarceration.” This request seeks, for persons other than plaintiff, the data that has been produced in pdf format for the “Reincarceration of Plaintiff on March 3, 2023,” Bates Numbers 000010-000013.

2. Any rules, regulations, or policies that relate to the reincarceration of persons who had been released on bail subject to electronic monitoring in effect from March 2, 2021 through May 2, 2024.



3. The “rules of the electronic monitoring program” referred to in paragraph 8 of Defendant Sheriff’s Answer to Plaintiff’s Amended Complaint.

4. All documents relating to the contention in paragraph 11 of Defendant Sheriff’s Answer to Plaintiff’s Amended Complaint that “on or about February 24, 2023, an employee or employees of the Cook County Sheriff’s Office determined that Plaintiff violated the rules and regulations of the electronic monitoring program by deviating in his essential movement on four occasions between January 21, 2023, and February 23, 2023.”

5. All rules, regulations, or policies that governed the conduct of the employee or employees referred to in the previous request.

6. All Rules and Regulations of the Electronic Monitoring program referred that you contend that plaintiff violated when he allegedly failed to return home by the same route he had followed while driving his children to school. *See* Paragraph 13 of Defendant Sheriff’s Answer to Plaintiff’s Amended Complaint.

/s/ Kenneth N. Flaxman  
Kenneth N. Flaxman  
Joel A. Flaxman  
200 South Michigan Ave Ste 201  
Chicago, Illinois 60604  
(312) 427-3200  
*Attorneys for Plaintiff*

## **Exhibit 4**

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

VONDELL WILBOURN, individually  
and for others similarly situated,

*Plaintiff,*

-VS-

SHERIFF OF COOK COUNTY and  
COOK COUNTY, ILLINOIS,

*Defendants.*

Case No. 23-cv-1782

Honorable Manish S. Shah  
Magistrate Judge Young B. Kim

**DEFENDANT SHERIFF OF COOK COUNTY'S RESPONSE TO  
PLAINTIFF'S RULE 34 REQUEST FOR PRODUCTION**

Defendant, SHERIFF OF COOK COUNTY, by his attorney KIMBERLY M. FOXX,  
State's Attorney of Cook County, through her Special Assistant State's Attorneys, JOHNSON &  
BELL, LTD., responds to Plaintiff's Rule 34 request for production as follows:

1. For the period of March 2, 2021 through May 2, 2024, produce in native format, or other computer readable format, such as an xlsx spreadsheet, the data maintained by or on behalf of the Sheriff, for all “incident reports,” where one of the “incident categories” is “EM – Reincarceration.” This request seeks, for persons other than plaintiff, the data that has been produced in pdf format for the “Reincarceration of Plaintiff on March 3, 2023,” Bates Numbers 000010-000013.

**RESPONSE:** Defendant objects that disclosure of the requested information would violate the privacy rights of individuals. Defendant also objects that Plaintiff filed his complaint on March 22, 2021, and information before that date is outside the applicable statute of limitations. Defendant further objects that the request is overbroad and unduly burdensome, as it is not limited to the type of “reincarceration” being challenged in this lawsuit, and therefore seeks information not related to the claims of either party nor proportionate to the needs of the case. The request is also unduly burdensome to the extent it seeks data in a format other than that in which it is routinely kept/maintained, as incident

report data is not stored in page or PDF format, and converting each data entry into a PDF requires individual manual conversion for every incident report number.

2. Any rules, regulations, or policies that relate to the reincarceration of persons who had been released on bail subject to electronic monitoring in effect from March 2, 2021 through May 2, 2024.

**RESPONSE:** Defendant objects to this request to produce as it seeks “any” rules, regulations, or policies that “relate to” the reincarceration of persons who had been released on bail subject to electronic monitoring in effect from March 2, 2021, through May 2, 2024. As such, this request is vague, overbroad, not limited in scope, and unduly burdensome. *See, e.g., Motorola, Inc. v. Lemko Corp.*, No. 08 C 5427, 2010 U.S. Dist. LEXIS 121572, at \*11–12 (N.D. Ill. Nov. 17, 2010) (stating that a request “seeking ‘all documents that *relate to* [a particular subject]’ (emphasis added), is impossibly vague and overly broad, and the Court likewise declines to enforce it”). This request is also not limited to rules, regulations, or policies of the Sheriff’s Office in the context of the specific facts of this case.

3. The “rules of the electronic monitoring program” referred to in paragraph 8 of Defendant Sheriff’s Answer to Plaintiff’s Amended Complaint.

**RESPONSE:** Please see Defendant’s Rule 26 initial disclosures produced on April 15, 2024, for information responsive to this request. Investigation continues. Defendant will supplement this response if necessary.

4. All documents relating to the contention in paragraph 11 of Defendant Sheriff’s Answer to Plaintiff’s Amended Complaint that “on or about February 24, 2023, an employee or employees of the Cook County Sheriff’s Office determined that Plaintiff violated the rules and regulations of the electronic monitoring program by deviating in his essential movement on four occasions between January 21, 2023, and February 23, 2023.”

**RESPONSE:** Defendant objects to this request to produce as it seeks “all” documents “relating to” the contention in paragraph 11 of Defendant Sheriff’s Answer to Plaintiff’s Amended Complaint. As such, this request is vague, overbroad, not limited in scope, and unduly burdensome. *See, e.g., Motorola, Inc. v. Lemko Corp.*, No. 08 C 5427, 2010 U.S. Dist. LEXIS 121572, at \*11–12 (N.D. Ill. Nov. 17, 2010) (stating that a request “seeking ‘all documents that *relate to* [a particular subject]’ (emphasis added), is impossibly vague and overly broad, and the Court likewise declines to enforce it”). Notwithstanding and without waiving said objections, please see Defendant’s Rule 26 initial disclosures produced on April

**15, 2024, for information responsive to this request. Investigation continues. Defendant will supplement this response if necessary.**

5. All rules, regulations, or policies that governed the conduct of the employee or employees referred to in the previous request.

**RESPONSE: Defendant objects to this request to produce as it seeks “all” rules, regulations, or policies that “governed” the conduct of the employee or employees referred to in the previous request without limitation to the context of the specific facts of this case. As such, this request is vague, overbroad, not limited in scope, and unduly burdensome.**

6. All Rules and Regulations of the Electronic Monitoring program referred that you contend that plaintiff violated when he allegedly failed to return home by the same route he had followed while driving his children to school. See Paragraph 13 of Defendant Sheriff’s Answer to Plaintiff’s Amended Complaint.

**RESPONSE: Please see Defendant’s Rule 26 initial disclosures produced on April 15, 2024, for information responsive to this request. Investigation continues. Defendant will supplement this response if necessary.**

Respectfully submitted,

KIMBERLY M. FOXX  
State’s Attorney of Cook County

Dated: June 3, 2024

/s/ Samuel D. Branum  
Special Assistant State’s Attorney

Monica Burkoth ([burkothm@jbltd.com](mailto:burkothm@jbltd.com))  
Samuel D. Branum ([branums@jbltd.com](mailto:branums@jbltd.com))  
JOHNSON & BELL, LTD.  
33 W. Monroe, Ste. 2700  
Chicago, Illinois 60603  
(312) 372-0770

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on **June 3, 2024**, the foregoing document was served upon Plaintiff via electronic mail to the below named individuals:

Kenneth N. Flaxman  
Joel A. Flaxman  
200 South Michigan Ave Ste 201  
Chicago, Illinois 60604  
(312) 427-3200  
Email: [knf@kenlaw.com](mailto:knf@kenlaw.com)  
Email: [jaf@kenlaw.com](mailto:jaf@kenlaw.com)

/s/ Samuel D. Branum  
Special Assistant State's Attorney

## **Exhibit 5**

— LAW OFFICES —  
**KENNETH N. FLAXMAN P.C.**  
—

June 12, 2024

Samuel D. Branum, Esq.  
Johnson & Bell, Ltd.  
33 W Monroe, Ste 2700  
Chicago, IL 60603

*Re: Wilbourn v. Sheriff, 23-cv-1782*

Dear Mr. Branum:

It looks like we need to meet and confer about the Sheriff's responses to plaintiff's production request.

The most important issue is your objection to request 1. The defense objection to the invasion of the privacy rights of others can be resolved by a protective order. We suggest entry of the Court's model order.

Regarding the scope of the request, plaintiff will agree to limit the request to a start date of March 22, 2021, rather than March 2, 2021.

Finally, the "type of 'reincarceration'" being challenged in this lawsuit is any reincarceration that is undertaken by Sheriff's deputies without prior advance judicial approval. The request seeks production of the computer data "in native format, or other computer readable format." The defense objection to production in "page or PDF format" misreads the request. Based on our experience in other cases, we are confident that the Sheriff's office can produce the requested material without an undue burden.

Next, several of defendant's responses include a general reference to defendant's Rule 26 initial disclosures. (Response to Requests 3, 4, and 6.) Please provide the production numbers that defendant believes are responsive to each request.

To respond to your objections to "any rules" in Request 2, plaintiff proposes the following revised language:

2. The rules, regulations, or policies about the reincarceration of persons who had been released on bail subject to electronic monitoring in effect from March 22, 2021 through May 2, 2024.

Defendant also raised what appears to be a relevancy objection, that the request is not limited to "the context of the specific facts of the case." I am hopeful that you can clarify this objection at our meet and confer.

Are you available on Friday, June 14, 2024 for a telephonic or video meet and confer?

Very truly yours  
/s/ Kenneth N. Flaxman

**Kenneth N. Flaxman**

knn@kenlaw.com

**Joel A. Flaxman**

jaf@kenlaw.com



## **Exhibit 6**

— LAW OFFICES —  
**KENNETH N. FLAXMAN P.C.**  
—

June 18, 2024

Samuel D. Branum, Esq.  
Johnson & Bell, Ltd.  
33 W Monroe, Ste 2700  
Chicago, IL 60603

*Re: Wilbourn v. Sheriff, 23-cv-1782*

Dear Mr. Branum:

I write to memorialize several of the matters we discussed during our telephonic “meet and confer” on June 17, 2024.

You agreed to consult with your client about resolving the claimed privacy objection to plaintiff’s Request for Production 1 by entry of a protective order.

To move towards a resolution of the issues you raised about plaintiff’s request for computerized data, I asked that you disclose the number of incident reports where one of the “incident categories” is “EM – Reincarceration.” And to allow the parties to explore narrowing of the request, I asked that you produce ten incident records categorized as “EM – Reincarceration.”

We also discussed whether the Rules of Civil Procedure permit a party to respond to a request for production by stating that responsive documents have been disclosed in Rule 26 disclosures without identification of the specific documents. Judge Grady condemned this practice in *Montaña v. Aetna Cas. and Sur. Co.*, 153 F.R.D. 620 (N.D. Ill. 1994): “Defendant should not be required to guess which documents relate to which request, especially since the requests were clear and specific.” *Id.* at 621. Please let us know if you are aware of any contrary authority.

I expect to hear from you by the end of this week about these matters.

Very truly yours

/s/ Kenneth N. Flaxman

**Kenneth N. Flaxman**

knf@kenlaw.com

**Joel A. Flaxman**

jaf@kenlaw.com

## **Exhibit 7**

— LAW OFFICES —  
**KENNETH N. FLAXMAN P.C.**  
—

July 26, 2024

Samuel D. Branum, Esq.  
Johnson & Bell, Ltd.  
33 W Monroe, Ste 2700  
Chicago, IL 60603

*Re: Wilbourn v. Sheriff, 23-cv-1782*

Dear Mr. Branum:

We have reviewed the redacted incident reports you produced on July 26, 2024. The 79 reports identified in the attached list appear to relate to members of the putative class. Please provide the unredacted reports (excel format is fine) for these persons as soon as possible.

Plaintiff disagrees with your assertion that Rule 26 is satisfied by the identification of 28 persons who “are likely to have discoverable information regarding the allegations in the complaint and amended complaint(s), the Sheriff’s Office electronic monitoring program, Plaintiff’s agreement to participate in the electronic monitoring program, and Plaintiff’s deviations in essential movement while on the electronic monitoring program.” Will you agree to provide more specific information about the discoverable information possessed by these witnesses? And to eliminate persons whose knowledge is cumulative?

I expect to provide you with Mr. Wilbourn’s responses to your outstanding discovery later today, although this might not be possible until Monday.

Finally, do you have a date for production of the policies identified by Investigator Halt?

Very truly yours

/s/ Kenneth N. Flaxman

**Kenneth N. Flaxman**

knf@kenlaw.com

**Joel A. Flaxman**

jaf@kenlaw.com

**POTENTIAL MEMBERS OF THE PUTATIVE CLASS, 7/26/24**

Incident Name	
1	EM-2021-4403
2	EM-2021-4414
3	EM-2021-4644
4	EM-2021-4669
5	EM-2021-4791
6	EM-2021-4877
7	EM-2021-4921
8	EM-2021-5496
9	EM-2021-5937
10	EM-2021-6266
11	EM-2021-6973
12	EM-2021-7329
13	EM-2021-8900
14	EM-2021-9080
15	EM-2021-9175
16	EM-2021-11067
17	EM-2021-11176
18	EM-2021-12063
19	EM-2021-12217
20	EM-2021-12371
21	EM-2021-12769
22	EM-2021-13730
23	EM-2021-13793
24	EM-2021-13899
25	EM-2021-13911
26	EM-2021-15175
27	EM-2021-15260
28	EM-2021-15260
29	EM-2021-15261
30	EM-2021-15260
31	EM-2021-15261
32	EM-2021-15254
33	EM-2021-15253
34	EM-2021-15277
35	EM-2021-15303
36	EM-2021-15280
37	EM-2021-15307
38	EM-2021-15310
39	EM-2021-16161
40	EM-2021-17331

41	EM-2021-17684
42	EM-2021-20103
43	EM-2021-21864
44	EM-2021-22410
45	EM-2021-22432
46	EM-2021-23214
47	EM-2021-23824
48	EM-2022-2260
49	EM-2022-2876
50	EM-2022-10375
51	EM-2022-14906
52	EM-2022-17059
53	EM-2022-17721
54	EM-2022-20635
55	EM-2022-20646
56	EM-2022-24299
57	EM-2023-2484
58	EM-2023-3204
59	EM-2023-3928
60	EM-2023-4419
61	EM-2023-7541
62	EM-2023-7632
63	EM-2023-7706
64	EM-2023-7791
65	EM-2023-8198
66	EM-2023-8272
67	EM-2023-8277
68	EM-2023-8883
69	EM-2023-11268
70	EM-2023-11576
71	EM-2023-13078
72	EM-2023-14580
73	EM-2023-15429
74	EM-2023-17431
75	EM-2023-18052
76	EM-2023-19061
77	EM-2023-20334
78	EM-2023-24297
79	EM-2023-26218

91 \ JVh,

— LAW OFFICES —  
**KENNETH N. FLAXMAN P.C.**  
—

August 3, 2024

Samuel D. Branum, Esq.  
Johnson & Bell, Ltd.  
33 W Monroe, Ste 2700  
Chicago, IL 60603

*Re: Wilbourn v. Sheriff, 23-cv-1782*

Dear Mr. Branum:

I write to follow up on the phone conversation we had yesterday about plaintiff's request for production of the 79 unredacted reports identified in my letter of July 26, 2024.

Plaintiff's burden in this case is to show that the Sheriff has a policy that "allows law enforcement to enter a house to make an arrest without a warrant and to seize an individual without probable cause that they committed a crime." (Mem.Op., March 1, 2024, at 8.) The Sheriff has denied that this is an explicit policy. (Answer to Complaint, ¶¶ 14, 17.) Plaintiff must therefore show "a widespread practice that permeates a critical mass of an institutional body." *Rossi v. City of Chicago*, 790 F.3d 729, 737 (7th Cir. 2015).

The 79 persons referred to in the redacted reports have personal knowledge of whether the deputies who returned each person to the Jail entered their dwelling without a warrant. Plaintiff therefore seeks to interview as many of these persons as time allows. The identity of these persons will allow counsel to examine the court files, which will likely contain information about whether there was probable cause to believe that any of these 79 persons had committed a crime. The claimed privacy objection overlooks the fact that the identify of persons who enter the Jail is a matter of public record. The same is true for the identify of persons released on Electronic Monitoring. Plaintiff's need to gather relevant evidence far outweighs any privacy interest.

The Sheriff, of course, could obviate the need for this discovery by admitting the explicit policy to enter dwellings without a warrant.

I look forward to hearing from you about this early next week.

Very truly yours

/s/ Kenneth N. Flaxman

**Kenneth N. Flaxman**

knnf@kenlaw.com

**Joel A. Flaxman**

jaf@kenlaw.com