IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 17-1449

MICHAEL BELEY AND DOUGLAS MONTGOMERY,
INDIVIDUALLY AND FOR A CLASS,

Plaintiffs-Appellants,

-vs-

CITY OF CHICAGO,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois
No. 12-cv-9714— John Robert Blakey, District Judge.

BRIEF AND SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-1449

Short Caption: Beley v. City of Chicago

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Michael Beley and Douglas Montgomery

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Thomas G. Morrissey, Ltd. and Kenneth N. Flaxman, P.C.

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ Patrick W. Morrissey Date: May 10, 2017

Attorney's Printed Name: Patrick W. Morrissey

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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Attorney's Printed Name: Thomas G. Morrissey

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I. Jurisdictional Statement

Plaintiffs Michael Beley and Douglas Montgomery invoked the jurisdiction of the district court under 28 U.S.C. §1343 to assert claims arising under 42 U.S.C. §1983 against the City of Chicago. Plaintiffs invoked the district court's supplemental jurisdiction under 28 U.S.C. §1367 to assert state law claims against defendant for violating the Illinois Sex Offender Registration Act, ("SORA"), 730 ILCS 150/1 *et seq*.

Judgment was entered in favor of defendant City of Chicago and against plaintiffs on February 28, 2017. Short Appendix 1.

Plaintiffs did not file any post-judgment motion and filed their notice of appeal on March 1, 2017. ECF No. 184.[1]

Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1291.

II. Issues Presented for Review

1. Does a sex offender, who at the time of registration lacks a residence, have a constitutionally protected interest to register pursuant to SORA?

2. Did the district court apply the correct standard when it decided plaintiffs did not present sufficient evidence at summary judgement that the City of Chicago enforced a policy or widespread equivalent practice to deny registration to those who lacked a residence at the time of registration in contravention of SORA?

[1] We cite the district court record as "ECF No. __." We cite transcripts in the record by document number, exhibit number, and internal page and line number, as "ECF No.__ , Ex. __ at__:__."

III. Statement of the Case

A. Procedural History

On December 6, 2012, plaintiffs Michael Beley and Douglas Montgomery, homeless sex offenders residing in the City of Chicago, filed suit against the City on behalf of themselves and a putative class of other homeless sex offenders. ECF No. 1. Plaintiffs alleged that defendant's sex offender registration procedures, as applied to homeless sex offenders, violated: (1) procedural due process; (2) equal protection; (3) freedom of intimate association; and (4) the Illinois Sex Offender Registration Act. ECF No. 18.

On June 27, 2013, the district court issued a memorandum opinion and order granting defendant's motion to dismiss plaintiffs' amended complaint. ECF No. 45. Pursuant to leave of court, plaintiffs filed a second amended complaint on July 25, 2013. ECF No. 46. The City once again moved to dismiss plaintiffs' complaint on August 29, 2013. ECF No. 51.

On February 17, 2015, the district court issued a memorandum opinion and order granting the City's motion to dismiss in part. ECF No. 112. The district court permitted plaintiffs to move forward with two claims: (1) that the City violated procedural due process, and (2) that the City violated the Illinois Sex Offender Registration Act. *Id.*

On December 7, 2015, the court certified the following class in accordance with Rule 23(b)(3) of the Federal Rules of Civil Procedure:

> All persons who attempted to register under the Illinois Sex Offender Registration Act with the City of Chicago from December 6, 2010 to the date of entry of judgment and who were not permitted to register because they were homeless.

Short Appendix 40. On February 17, 2016, the court modified the class definition as: "All persons who attempted to register under the Illinois Sex Offender Registration Act with the City of Chicago from December 6, 2010 to October 21, 2013, and who were not permitted to register because they lacked a residence at the time of registration. ECF No. 137; ECF No. 138, 2/17/16 Tr. 7-8.

The City filed a petition for permission to appeal pursuant to Rule 23(f) of the Federal Rules of Civil Procedure. ECF No. 139. This Court denied the City's petition on March 1, 2016. ECF No. 140.

The parties then moved for summary judgment. On February 28, 2017, the court granted the City's motion for summary judgment and denied plaintiffs' motion for summary judgment on the due process claim. ECF No. 181.

B. The Decision of the District Court

Summary judgment was entered in favor of the City of Chicago on February 28, 2017. Short Appendix 1. The district judge believed plaintiffs were unable to satisfy their burden under *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694 (1978). The court based this ruling on "one dispositive issue: whether Plaintiffs present sufficient evidence of a 'policy' or 'custom' on the part of Defendant to support municipal liability." Short Appendix 13-14. After considering the record, the court reasoned "the evidence does not present a triable issue

of fact regarding whether there was a policy or widespread practice of denying SORA registration to sex offenders who lacked a fixed address at the time of registration." Short Appendix 24.

C. Statement of the Facts

a. The Illinois Sex Offender Registration Act

In Illinois, individuals convicted of certain sexual crimes must comply with reporting requirements under the Illinois Sex Offender Registration Act ("SORA"), 730 ILCS 150/1 *et seq*. SORA's registration requirements "aid law enforcement agencies by allowing them to monitor the movements of the perpetrators by allowing ready access to crucial information." *People v. Molnar*, 857 N.E.2d 209, 212 (Ill. 2006) (internal quotation marks and citations omitted). The statute provides, in relevant part:

> Sec. 3 Duty to register.
>
> (a) A sex offender, as defined in Section 2 of this Act, or a sexual predator shall . . . register in person and provide accurate information as required by the Department of the State Police. Such information shall include a current photograph, current address . . . The sex offender or sexual predator shall register:
>
> (1) with the chief of police in the municipality in which he or she resides or is temporarily domiciled for a period of time of 3 or more days, unless the municipality is the City of Chicago, in which case he or she shall register at a fixed location designated by the Superintendent of the Chicago Police Department;
>
> ***
>
> For purposes of this Article, the place of residence or temporary domicile is defined as any and all places where the sex offender resides

> for an aggregate period of time of 3 or more days during any calendar year. Any person required to register under this Article who lacks a fixed address or temporary domicile must notify, in person, the agency of jurisdiction of his or her last known address within 3 day after ceasing to have a fixed residence.
>
> ***
>
> Any person who lacks a fixed residence must report weekly, in person . . . with the chief of police in the municipality in which he or she is located. The agency of jurisdiction will document each weekly registration to include all the locations where the person has stayed during the past 7 days.
>
> ***
>
> (4) Any person unable to comply with the registration requirements of this Article because he or she is confined, institutionalized, or imprisoned in Illinois on or after January 1, 1996, shall register in person within 3 days of discharge, parole or release.
>
> (5) The person shall provide positive identification and documentation that substantiates proof of residence at the registering address.

730 ILCS 150/3. SORA defines "fixed residence" as "any and all places that a sex offender resides for an aggregate period of time of 5 or more days in a calendar year." 730 ILCS 150/2(I). SORA does not use the term "homeless."

In Chicago, the CPD's Criminal Registration Section (the "CRS") is responsible for registering sex offenders at CPD Headquarters. ECF No. 166-3, Tr. Hearing 1/25/13 in *Johnson v. City*, No. 12 C 8594, Ex. 3 at 165.

Sergeant Phillip P. Jones was the commanding officer of the CRS from December of 2005 until his retirement in May of 2013. ECF No. 166-3, Jones Dep in *Johnson v. City Chicago*, Ex. 11 at 8:2-8; ECF No 166-4, Jones Dep in *Beley v. City of Chicago*, Ex. 16 at 6:1-2, 9:1-3. A handful of CPD members are assigned

to the CRS; for example, in November of 2013 about seven officers were detailed to register sex offenders. ECF No. 166-2, Karadjias Dep, Ex. 7 at 7:19-8:15.

A sex offender who fails to register as required commits a felony and is subject to mandatory incarceration and a mandatory fine, among other penalties. 730 ILCS 150/10(a).

b. Class Representative Michael Beley

Class representative Michael Beley, a resident of Chicago, was convicted of a sexual crime requiring him to register as a child sex offender under SORA. Short Appendix 7. At his deposition, Beley testified to the following: on November 19, 2012, Beley was released from the Taylorville Correctional Center and spent the night "on the streets" of Chicago. ECF No. 161-2, Beley Dep, Ex. 2 at 38:3-39:4. On the morning of November 20, 2012, Beley reported to CPD headquarters to complete his sex offender registration. *Id.* at 39:5-7. Upon arrival, Beley was informed by Officer Christopher Meaders that he required "an ID with a fixed address" and $100 in order to register. *Id.* at 39:8-20. Beley did not possess an identification card with a fixed address. *Id.* at 40:1-4. The only paperwork in Beley's possession was his release papers that explained his obligation to register that he described as "almost like a rap sheet" which Beley believed had a photograph. *Id.* at 40:5-20. One form, titled "Illinois Sex Offender Registration Act Notification Form," (the "Notification Form"), identifies Beley was to be released from the Taylorville Correctional Center on November 19, 2012 and that Beley did not have any "Resident Address." ECF No. 166-2 at 81-82, Ex. 4. As a result, Beley

was not registered. ECF No. 161-2, Beley Dep, Ex. 2 at 40:21-41:6. In the CRS Criminal Registration Log, Officer Meaders notated Beley's "Reason For Being Turned Away" as "PROOF OF ADD." ECF No. 166-2 at 83, Criminal Registration Log Nov. 20, 2012, Ex. 5.

Beley attempted to register again on November 23, 2012. ECF No. 172, Defendant's Response to Local Rule 56 Statement ¶ 5; ECF No. 166-2, City Response to Admissions, Ex. 1 ¶¶ 9-11. Once again, Beley was denied. *Id.* The parties agree, however, that the CPD officers directed Beley to potential shelter options. *Id.* The Criminal Registration Log for that day notes the "Reasons For Being Turned Away" as "NO ID/REF SHELT." *Id.* The parties also agree that during this time, Beley was staying "in the streets." *Id.*

On December 6, 2012, Beley secured a spot at a homeless shelter at 200 South Sacramento Boulevard.[2] ECF No. 161-2, Beley Dep, Ex. 2 at 51:6-22, 52:15-18. On December 7, 2012, Beley obtained a state identification card with the shelter address. ECF No. 161-2, Beley Dep, Ex. 2 at 55:17-56:19. Beley successfully registered at CPD headquarters on December 11, 2012. ECF No. 166-2, City Response to Admissions, Ex. 1 ¶ 19.

[2] 200 South Sacramento Boulevard is a 65 bed emergency shelter in the City operated by the Franciscan Outreach Association. Overnight guests must leave the property by 6:30 a.m. the following day with all personal property. ECF No. 166-2 at 86-90, Ex. 6, Decl. Cynthia Northington dated Jan. 4, 2013 and Dec. 18, 2013.

In granting summary judgment, the district court acknowledged Beley's two registration experiences is evidence "from which a reasonable fact finder might deduce unconstitutional behavior." Short Appendix 18.

c. Class Representative Douglas Montgomery

Class representative Douglas Montgomery, also a resident of Chicago, has also been convicted of a sexual crime requiring him to register under SORA. Short Appendix 8. Montgomery was released from the Hill Correctional Facility on January 21, 2011. ECF No. 161-3, Montgomery Dep, Ex. 9 at 39:5-12. At the time of his release, Montgomery signed a form titled "Illinois Sex Offender Registration Act Notification Form" acknowledging his duty to register within three days of his discharge. ECF No. 161-2, Montgomery Dep, Ex. 9 at 131:5-21; ECF No. 166-3, Ex. 8. The Notification Form included fill-in boxes for biological information, including Montgomery's resident address upon release. ECF No. 166-3, Ex. 8. Montgomery's Notification Form specifically listed his intended resident address as "HOMELESS" in the City of Chicago. *Id.*

On January 27, 2011, Montgomery went to CPD headquarters to register.[3] ECF No. 161-2, Montgomery Dep, Ex. 9 at 72:6-73:19. Montgomery testified at his deposition that, upon arrival, he gave Officer Eddie Chapman his Notification Form listing his resident address as "HOMELESS." *Id.* at 72:20-76:9, 131:5-21. Montgomery further testified that Officer Chapman asked him where he was liv-

[3] As recognized by the district judge, Montgomery was hospitalized between January 22, 2011 and January 27, 2011, for reasons not relevant at summary judgment. Short Appendix 9.

ing, and Montgomery replied, "I am homeless, I [have] been homeless for a long time." *Id.* at 74:13-15. Montgomery testified that the official informed him that CPD was "not registering homeless people right now" and that Montgomery needed a "fixed address" and an identification card, as well as the $100 registration fee. *Id.* at 74:15-19, 76:12-21. In the Criminal Registration Log, Officer Chapman notated Montgomery's "Reason For Being Turned Away" as "NEEDS ADDRESS." ECF No. 161-3, Jan. 27, 2011 Criminal Registration Log, Ex. 10; ECF No. 163, Response to City's Local Rule 56 Statement ¶ 18. On July 13, 2011, Montgomery was arrested and charged with a SORA violation. ECF No. 163, Response to City's Local Rule 56 Statement ¶ 20.

In custody, Montgomery gave a statement, without counsel, that he attempted to register in January of 2011 but was informed by a Chicago police officer that sex offenders would not be registered without an address. ECF No. 166-2, City Response to Admissions, Ex. 1 ¶ 54. Montgomery was found not guilty of a SORA violation on April 9, 2014 and released from the Cook County Jail. ECF No. 172, Defendant's Response to Plaintiffs' Local Rule 56 Statement ¶ 12.

In granting summary judgment, the district court also acknowledged Montgomery's registration experience is evidence "from which a reasonable fact finder might deduce unconstitutional behavior." Short Appendix 18.

d. Declarations From Four Other Sex Offenders

At summary judgment, plaintiffs introduced four declarations from sex offenders: Henry Hartage, Adarryll Kelly, James McDonald, and Charles Mowder.

ECF No. 166-2, Ex. 6. During 2010 to 2013, the Chicago Police Department refused to register them because, on the day they arrived at CPD Headquarters to register, the four sex offenders were "homeless," lacking a fixed residence. ECF No. 166-2, Ex. 6, Hartage Decl. ¶ 2; Kelly Decl. ¶¶ 3, 10-13; McDonald Decl. ¶ 3; Mowder Decl. ¶ 2. Three of those four sex offenders further declare that Chicago police officers told them that they may not register as homeless and/or that they were required to secure an address before registering. *Id.* Kelly Decl. ¶ 3; McDonald Decl. ¶ 3; Mowder Decl. ¶ 2. The district judge reviewed these declarations when considering plaintiffs' class certification motion and concluded they "tell essentially the same story" as plaintiffs Beley and Montgomery. Short Appendix 29.

e. Criminal Registration Logs

The CPD maintains Criminal Registration Logs (the "Logs") documenting registration activity, including sex offenders turned away. ECF No. 166-3, Jacobson Dep, Ex. 12 at 60:16-61:3; ECF No. 166-2, Karadjias Dep, Ex. 7 at 34:16-23. Detective Solomis Karadjias testified the number of sex offenders registered as "homeless," or lacking a fixed address, was "pretty level" until September of 2013. ECF No. 166-2, Karadjias Dep, Ex. 7 at 86:20-87:14. A review of ten months of Logs corroborates Detective Karadjias' deposition testimony.

The Logs show few people were registered as lacking a residence at the time of registration while the CPD routinely turned away sex offenders for failure

to provide proof of address and for lack of identification. ECF No. 166, Criminal Registration Logs, Ex. 17-26. For ten months of the class period, the Logs show:

Month/Year	**Registered as lacking a residence (or weekly)**	**Minimum number turned away for failure to provide proof of address**	**Minimum number turned away for lack of identification**
January 2011	James Manegold	45	25
April 2011	James Manegold Ginn Torres	30	33
July 2011	James Manegold Ginn Torres	32	40
October 2011	James Manegold Ginn Torres Claude Canning	41	43
January 2012	James Manegold Ginn Torres	23	29
April 2012	James Manegold	35	25
August 2012	James Manegold Ginn Torres Paul Herbert	46	20
October 2012	James Manegold Paul Herbert	37	48
January 2013	James Manegold Paul Herbert	8	42
April 2013	James Manegold Vincent McArthur	9	34

ECF No. 166, Criminal Registration Logs, Ex. 17-26; ECF No. 166, Plaintiffs' Local Rule 56 Statement ¶¶ 23-32.

Similar records were reviewed by Illinois Appellate Court in *People v. Wlecke*, 6 N.E.3d 745, 748, 754-55 (Ill. App. Ct. 2014) to overturn a sex offender's conviction for failing to register because the offender went to the CPD to register, but was turned away for lacking a valid proof of residence. The court found

it was the CPD's "common practice . . . to turn away sex offenders attempting to register for lack of proof of address." *Id.* at 755 n.2. According to the June 14 to 18, 2010 Criminal Registration Logs, which the court had reviewed, 117 persons reported to register that time but 19 were turned away for failure to proof of address. *Id.*

f. City Records Document Other Sex Offenders Denied Registration

At summary judgment, the parties agree the Logs document the following sex offenders were turned away: Dwight Barkley on October 24, 2012 and the "Reason for Being Turned Away" field reflects "NEEDS ID SHELTER," ECF No. 166-6, Logs, Ex. 24 at 17; John Trotter on October 31, 2012 and the "Reason for Being Turned Away" field reflects "HOMELESS/REF TO SHL," *id.* at 22; Arthur Jones on August 15, 2012 and the "Reason for Being Turned Away" field reflects "HOMELESS SHLTR NO PROOF ADD," *id.,* Ex. 23 at 11; and Davin Tangrio on May 13, 2011 and the "Reason for Being Turned Away" field reflects "HOMLESS – NEEDS ID." *Id.,* Ex. 32; ECF No. 172, Defendant's Response to Plaintiffs' Local Rule 56 Statement ¶ 44.

Plaintiffs also presented evidence eight sex offenders were turned away from registration only to be registered after obtaining state issued identification and an address of 200 South Sacramento.

The Logs show Albert Bingham was turned away on April 18, 2011 and under the "Reason for Being Turned Away" field reflects "ID HAS WRONG

ADDRESS NO PROOF ADD." ECF No. 166-6, Ex. 30 at 1. The following day, Bingham was issued an Illinois state identification card with an address of 200 South Sacramento. *Id.* at 8. The City registered Bingham on April 19, 2011 with the address of 200 South Sacramento as his "Resident Address." *Id.* at 2-3.

Johnathan Collantes was turned away from the City's registration office on April 2, 2012 and under the "Reason for Being Turned Away" field reflects "PROOF OF ADD." *Id.* at 9. Collantes was issued an Illinois state identification card on April 4, 2012 with an address of 200 South Sacramento. *Id.* at 12. The following day, the City registered Collantes using the 200 South Sacramento address. *Id.* at 10-11.

Timothy Downs was turned away from the City's registration office on January 28, 2013 and under the "Reason for Being Turned Away" field reflects "NEEDS PROOF ADD." *Id.* at 13. On January 31, 2013, Downs was issued an Illinois identification card with 200 South Sacramento as his address. *Id.* at 17. The same day the City registered Downs using the 200 South Sacramento address. *Id.* at 14-15.

Eric Flowers was turned away from the registration office on March 27, 2012 and under the "Reasons for Being Turned Away" field reflects "BAD ADD." *Id.* at 18. On April 2, 2012, Flowers was issued an Illinois identification card with an address of 200 South Sacramento. *Id.* at 21. The City registered Flowers on April 2, 2012 using the 200 South Sacramento address. *Id.* at 19-20.

Keith Frierson was turned away from the registration office on June 29, 2012 and under the "Reason for Being Turned Away" field reflects "NEED ID." *Id.* at 25. Frierson was issued an Illinois identification card on July 2, 2012 with an address of 200 South Sacramento. *Id.* at 28. The following day Frierson was registered by the City using the 200 South Sacramento address. *Id.* at 26-27.

Jemiah Gholson was turned away from the registration office on January 7, 2013 and under the "Reason for Being Turned Away" field reflects "NEEDS ID." *Id.* at 29. Gholson was issued an Illinois identification card on January 8, 2013 with an address of 200 South Sacramento. *Id.* at 33. The same day Gholson was registered by the City using the 200 South Sacramento address. *Id.* at 30-31.

Sean Messer was turned away from the registration office on May 15, 2012 and under the "Reason for Being Turned Away" field reflects "NEEDS ID/HOMELESS." *Id.* at 34. Messer was issued an Illinois identification card on May 16, 2012 with an address of 200 South Sacramento. *Id.* at 38. The same day Messer was registered by the City with the 200 South Sacramento address. *Id.* at 35-36.

Eric Williams was turned away from the registration office on September 14, 2012 and under the "Reason for Being Turned Away" field reflects "NO PROOF ADD." *Id.* at 39. Williams was issued an Illinois identification card on September 25, 2012 with an address of 200 South Sacramento. *Id.* at 45. The City registered Williams the same day using the address of 200 South Sacramento. *Id.* at 40-41.

g. Internal Uncertainty About Registration Requirements

Chicago police officers assigned to the CRS were unable to explain at depositions what a sex offender, seeking to register as homeless, must do to register. Officer Patricia Cipun, for example, was unable to explain whether a sex offender would be registered if he was released from the Illinois Department of Corrections on November 19, 2012 and was homeless. ECF No. 166-4, Cipun Dep, Ex. 14 at 8:9-16, 140:10-143:19. Officer Christopher Meaders was also unable to testify at his deposition whether a sex offender without an address would be registered. ECF No. 166-4, Meaders Dep, Ex. 15 at 5:3-9, 6:5-10, 145:13-146:7. As proof the standard was amorphous, the City acknowledged in response to plaintiffs' request to admit that in December 2012, if an individual was seeking to register with CRS and claimed that he/she lacked a resident address, that the CRS registering official would have assessed whether in fact that individual did not have a resident address pursuant to a totality of the circumstances approach, where no single factor was determinative. ECF No. 166-2, City Response to Admissions, Ex. 1 ¶ 2.

Sergeant Phillip P. Jones, the former commanding officer of the CRS, testified at his deposition in *Johnson v. City of Chicago*, No. 12 C 8594, about the registration requirements in Chicago.[4] Sergeant Jones testified that "every"

[4] In *Johnson v. City of Chicago*, No. 12 C 8594, 2016 WL 5720388 (N.D. Ill. 2016), plaintiffs challenged the City's practice to deny registration to sex offenders unable to pay the $100 registration fee. The $100 SORA registration fee, according to the statute, applies to all sex offenders in Illinois, including the homeless. The district court over-

registering sex offender "needs a proof of address." ECF No. 166-3, Jones Dep, Ex. 11 at 243. Sergeant Jones elaborated on this requirement during a preliminary injunction hearing in *Johnson*: "[t]he threshold question for every individual who registers, everyone registers, is they must have a government-issued ID in order to prove they reside in Chicago." ECF No. 166-2, 1/25/13 Tr., Ex. 3 at 122:3-7. Sergeant Jones also testified he was responsible for setting some of the policies and procedures for the CRS. *Id.* at 79:13-16.

h. The June 2014 Memorandum Establishes Policy to Register Sex Offenders

On June 16, 2014, Sergeant Maria Jacobson, the successor to Sergeant Jones at the CRS, issued a memorandum to all officers detailed to CRS "[t]o have a policy on the acceptable documents for the criminal registrants when they register." ECF No. 166-3, Jacobson Dep, Ex. 12 at 19:15-20:13; ECF No. 166-3, Memorandum Dated June 16, 2014, Ex. 13. This memorandum allows the CPD to establish proof of identification, an element of SORA, by a review of a photograph on file with a law enforcement database including the CPD's CLEAR system, the Illinois Department of Corrections, the Illinois State Police, or a file maintained in the CPD's registration office.[5] ECF No. 166-2, Karadjias Dep, Ex. 7 at 75:24-78:2, 90:16-22.

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ruled defendant's objection to the use of this evidence at summary judgment. Short Appendix 4.

[5] Prior to the June 2014 memorandum, Detective Karadjias testified that a sex offender was unable to establish proof of identification by the CPD's review of a photograph

The Logs show that after the issuance of this memorandum the number of sex offenders registered as "homeless," or lacking a residence at the time of registration, skyrocketed while the number of sex offenders turned away for failure to provide proof of an address and for lack of identification decreased:

Dates	**Minimum number registered as lacking a residence (or weekly)**	**Minimum number turned away for failure to provide proof of address**	**Minimum number turned away for lack of identification**
December 8, to December 12, 2014	124	9	0
January 12, to January 16, 2015	126	8	0
February 1, to February 5, 2016	243	0	0

ECF No. 166, Criminal Registration Logs, Ex. 27-29 ECF No. 166, Plaintiffs' Local Rule 56 Statement ¶¶ 33-35.

IV. Summary of Argument

Plaintiffs allege that the City of Chicago through the Chicago Police Department, in contravention of SORA and in violation of their procedural due process rights, had a policy or widespread equivalent practice of refusing to register "homeless" sex offenders despite its obligations to do so under the statute. When using the word "homeless" plaintiffs mean sex offenders who lack a residence (a physical structure, whether a house or apartment, or temporary accommodations,

maintained in a law enforcement database. ECF No. 166-2, Karadjias Dep, Ex 7 at 90:16-91:5.

such as a room in a shelter) at the time of registration. Rather than register the homeless, plaintiffs contend that the City manipulated the registration process to compel them to locate an address and produce a state identification card with that address to register.

Despite the above identified evidence, the court concluded, "when viewed in the light most favorable to Plaintiffs, the evidence does not present a triable issue of fact regarding whether there was a policy or widespread practice of denying SORA registration to sex offenders who lacked a fixed residence at the time of registration." Short Appendix 24.

Plaintiffs, however, presented sufficient evidence to survive the City's summary judgment motion. Plaintiffs' due process claims cannot be fairly resolved without a trial.

V. Argument

A. Standard of Review

The Court reviews *de novo* the district court's order granting summary judgment and will "resolve all factual disputes in the nonmovant's favor." *Burton v. Downey*, 805 F.3d 776, 783 (7th Cir. 2015).

B. Plaintiffs Alleged a Claim of Denial of Due Process

The Fourteenth Amendment prohibits those who act under color of state law from depriving any person of liberty without due process of law.[6] The district

[6] Section 1 of the Fourteenth Amendment concludes as follows:

court agreed that a homeless sex offender's interest in being able to register is a protected liberty interest. *Beley v. City of Chicago*, 2015 WL 684519, at *2-3 (N.D. Ill. 2015). This Court has not addressed the question, but several district court rulings are in accord. *Saiger v. City of Chicago*, 37 F. Supp.2d 979, 985 (N.D. Ill. 2014); *Derfus v. City of Chicago*, 42 F. Supp.2d 888, 898 (N.D. Ill. 2014); *Johnson v. City of Chicago*, No. 12 C 8594, 2013 WL 3811545, at *9 (N.D. Ill. July 22, 2013).

Plaintiffs contend that they were deprived of liberty without due process of law because of a policy or widespread equivalent practice within the police department of the City to manipulate the registration process to force homeless sex offenders into violations of SORA. Instead of permitting such persons to comply with SORA and register every seven days, the City's police officers instructed those persons to use a homeless shelter as a permanent address, knowing all sex offenders could not all be accommodated at the shelter.

To determine what process is due, the Supreme Court teaches the following factors must be considered: (1) the private interest affected by the government's action; (2) the risk of erroneous deprivation of the interest through the procedures used, and the probable value of any alternative procedural safeguards; and (3) the government's interest, including the function involved and additional administra-

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No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction of the equal protection of the laws.

tive or financial burdens that alternate procedural requirements would require. *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976); *Schepers v. Indiana Department of Corrections*, 691 F.3d 909, 915 (7th Cir. 2012).

First, as discussed above, homeless sex offenders have a significant interest in avoiding liability and incarceration due to an inability to register. *Beley*, 2015 WL 684519, at *2-3.

Second, the existing procedures for challenging the deprivation here are nonexistent. Neither SORA nor the City offers any opportunity to challenge a refusal to register a sex offender. Here, Beley and Montgomery were each told registration was contingent on presenting identification with an address. From a due process standpoint, this is problematic. *See Wilkinson v. Austin*, 545 U.S. 209, 226 (2005) (noting that "a fair opportunity for rebuttal" is "among the most important procedural mechanisms for purposes of avoiding erroneous deprivations").

Third, the City certainly has an interest in ensuring timely and cost-effective registration of sex offender. To that end, the City has a Department of Administrative Hearings that provides administrative hearings for various municipal issues. ECF No. 166-6, City of Chicago Rules, Ex. 31. There is no evidence this agency or some other administrative arm of the City is unable to efficiently provide a hearing to sex offenders denied registration.

The mental state of the sex offender who cannot register is irrelevant to culpability. The Illinois Supreme Court has upheld SORA as a strict liability statute that imposes "a felony penalty . . . [absent] *mens rea*, or mental state." *People*

v. Molnar, 857 N.E.2d 209, 222 (2006). Thus, the plaintiffs and plaintiff class could not defend the criminal prosecution by asserting that he or she had been misinformed by the Chicago police department about registration obligations; the only way in which a person like plaintiff Montgomery could defend the criminal prosecution was to argue that the prosecution's evidence failed to establish guilt beyond a reasonable doubt.[7]

C. Plaintiffs Present Sufficient Evidence Demonstrating Institutional Liability

To hold the City liable under § 1983, plaintiffs must demonstrate that the City's "official policy, widespread custom, or action by an official with policy-making authority was the 'moving force' behind [the] constitutional injury." *Daniel v. Cook County*, 833 F.3d 728, 734 (7th Cir. 2016) (internal citations omitted). As the Court explained in *Daniel*, "[a]n unconstitutional policy can include both implicit policies as well as a gap in expressed policies." *Id.*

In *Glisson v. Indiana Department of Corrections*, 849 F.3d 372, 379 (7th Cir. 2017), the Court plainly stated "[t]he critical question under *Monell*, reaffirmed in *Los Angeles Cnty. v. Humphries*, 562 U.S. 29, 121 S.Ct. 447, 178 L.Ed.2d 460 (2010), is whether a municipal (or corporate) policy or custom gave rise to the harm (that is, caused it), or if instead the harm resulted from the acts of

[7] The conduct alleged by plaintiffs fits neatly into the rubric of "outrageous government conduct," which, while not grounds in this circuit for reversing a criminal conviction, *United States v. Smith*, 792 F.3d 760, 767 (7th Cir. 2015), may nonetheless amount to a denial of due process when, as here, the challenged conduct results in more than 3 years of incarceration before a not guilty finding on the criminal case.

the entity's agents." A plaintiff "can meet this burden by offering competent evidence tending to show a general pattern of repeated behavior (*i.e.*, something greater than a mere isolated event)" but "[h]e need not present evidence that these systemic failings affected other specific inmates." *Daniel*, 833 F.3d at 734-35.

This Court has not adopted any bright-line rules defining a widespread practice. S*ee, e.g.*, *Chatham v. Davis*, 839 F.3d 679, 685 (7th Cir. 2016) (explaining that *Monell* claims "normally require evidence that the identified practice or custom caused multiple injuries"); *Daniel*, 833 F.3d at 734 (explaining that a *Monell* plaintiff "must show more than the deficiencies specific to his own experience" and allowing the claim to proceed based on a Justice Department report documenting multiple instances of inadequate medical care in the jail); *Dixon v. Cook County*, 819 F.3d 343, 348-49 (7th Cir. 2016) (same); *Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005) (explaining that a *Monell* claim ordinarily "requires more evidence than a single incident to establish liability"); *Palmer v. Marion County*, 327 F.3d 588, 596 (7th Cir. 2003) (same); *Gable v. City of Chicago*, 296 F.3d 531, 538 (7th Cir. 2002) (same); *Estate of Novack et rel. Turbin v. County of Wood*, 226 F.3d 525, 531 (7th Cir. 2000) (A *Monell* plaintiff must show that "the policy itself is unconstitutional" or produce evidence of "a series of constitutional violations from with [institutional] deliberate indifference can be inferred.").

In this case, sufficient evidence was presented that sex offenders lacking a fixed address at the time of registration were denied registration to create an inference of institutional liability. Rather than register homeless every seven days, the

City steered them primarily to 200 South Sacramento, an emergency overnight shelter, because of the policy or widespread practice within the Chicago police department towards homeless sex offenders. This is precisely what happened to Beley and Montgomery.

In addition to Beley and Montgomery, plaintiffs introduced declarations from four other sex offenders, Henry Hartage, Adarryll Kelly, James McDonald, and Charles Mowder, who reported being told by Chicago police officers that they may not register as homeless and/or that they were required to secure an address before registering. The district judge considered these declarations at the class certification stage and found they "essentially tell the same story," Short Appendix 29, as Beley and Montgomery.

The City's internal requirements for homeless sex offender registration during the class period were admittedly uncertain. Police officers assigned to the CRS during the class period were unable to explain the requirements for an offender to register as homeless. Sergeant Jones, a policy maker at the registration office, testified twice that every registering sex offender needs a proof of address. And while the district judge found this testimony "is, at best, inconclusive," Short Appendix 23, the "weight to be afforded to his testimony is a matter for a jury to decide." *Rasho v. Elyea*, 850 F.3d 318, 325 (7th Cir. 2017) citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("Credibility determinations, the weighing of the evidence, and drawing of legitimate inferences from the facts are jury functions, not those of a judge[.]").

The Criminal Registration Logs show that during the class period the City routinely turned away sex offenders for failure to provide proof of address and/or lack of identification. Similar Logs were reviewed by the district judge at class certification to arrive at the conclusion the "Logs corroborate the declaration testimony that Chicago police officers told sex offenders that they may not register as homeless and/or that they were required to secure an address before registering." Short Appendix 31. These Logs support a reasonable inference of institutional liability.

As explained above, these Logs and the CPD's registration paperwork also document sex offenders were denied registration only to be registered after obtaining an address of 200 South Sacramento and a state identification card. This occurred with Albert Bingham, Johnathan Collantes, Timothy Downs, Eric Flowers, Kieth Frierson, Jemiah Gholson, Sean Messer, and Eric Williams. Some Log entries document offenders were turned away for being homeless. This was the case for Dwight Barkley, John Trotter, Arthur Jones, and Davin Tangrio.

Finally, the June 2014 memorandum by Sergeant Jacobson "to have a policy on the acceptable documents for criminal registrants when they register" is plain evidence of a gap in policy sufficient to support institutional liability. Prior to this memorandum, the City did not verify an offender's identification by review of a photograph stored in a law enforcement database. This gap in policy is directly traceable to harm caused to plaintiffs. Indeed the City documented Belely was turned away on November 23, 2012 because "NO ID/REF SHELT" and the par-

ties agree he was sleeping on the streets prior to this registration attempt. ECF No. 172, Defendant's Response to Plaintiffs' Local Rule 56 Statement ¶ 5. Thus, it is reasonable to infer that offenders identified in the Logs as being denied registration for no identification were similarly denied registration for an improper purpose.

It goes without saying this policy or widespread practice caused a constitutional deprivation to plaintiffs and the plaintiff class: Beley roamed the streets unregistered for nearly one month following his release from prison in violation of SORA and Montgomery was incarcerated for more than three years because, as explained by a police officer in the registration office, the City was "not registering homeless people right now."

D. The District Court's Review of the Evidence

The district court made an illogical finding that, at most, plaintiffs identified ten separate registration attempts "from which a reasonable fact finder might deduce unconstitutional behavior." Short Appendix 18. This ruling was crafted in disregard of facts favorable to plaintiffs and should be reversed when "constructing the record in the light most favorable to the non-movant and drawing all reasonable inferences" in plaintiffs' favor. *Simpson v. Beaver Dam Community Hospitals, Inc*. 780 F.3d 784, 789 (7th Cir. 2015).

After a "rigorous analysis," *Blow v. Bijora*, No. 16-1484, 2017 WL 1731494, at *9 (7th Cir. 2017), the district court certified this case under Rule

23(b)(3) of the Federal Rules of Civil Procedure.[8] Short Appendix 26. This "rigorous analysis" considered much of the same evidence presented by plaintiffs at summary judgment.

For example, at class certification the court considered the Criminal Registration Logs and the associated "Reason for Being Turned Away" field to infer "that there are many more potential plaintiffs" denied registration for an improper purpose. Short Appendix 31. The court inferred that individuals turned away because "NEED ID," "NEED UPDATED ID," or "PROOF OF ADD" could be members of the plaintiff class. Short Appendix 31.

The court based this common sense assumption on Montgomery's testimony that "homeless persons, almost by definition, will lack identification reflecting a current address because they have no address." Short Appendix 31. When arriving at this inference, the court carefully rejected the City's argument against using the Logs:

> In response to the Criminal Registration Logs, Defendant argues that many of the "lack of identification" and "proof of address" entries are false positives. Not all offenders who lacked identification or proof of address were homeless, and the Chicago Police Department turned away some, perhaps many, of these sex offenders for legitimate reasons under SORA that do not bear on any purported policy of refusing to register homeless sex offenders.
>
> This argument is well taken, but it does not defeat class certification. The numerosity threshold is satisfied even if only a small percentage of sex offenders turned away for "lack of identification" and "proof of address" in fact qualify under the class definition.

[8]By the time the City filed its brief in opposition to class certification, fact discovery was closed. ECF No. 119; ECF No. 122.

Short Appendix 32.

However, at summary judgment, the court took a new tack and held the entries in the Criminal Registration Logs documenting denial of registration "for failure to provide proof of address and for lack of identification, is irrelevant" because "that is precisely what SORA demands." Short Appendix 22. The court's new position, that SORA requires a homeless person to provide a fixed address or a state identification card, is a nonstarter. Short Appendix 22-23. Detective Karadjias unequivocally testified that SORA's "positive proof of identification" can be satisfied by the City's review of a photograph maintained in a law enforcement database, ECF No. 166-2, Karadjias Dep, Ex. 7 at 75:24-78:2, 90:16-22, and there is no dispute the City did not have a similar policy in effect during the class period. *Id.* at 90:16-91:15.

And for the reasons previously advanced, the district court erred when construing the testimony of Sergeant Jones as "inconclusive" because of his subsequent testimony to the effect the City does not require homeless sex offenders to present proof of an address to register. Short Appendix 23-24. At summary judgment, the facts must be viewed in the light most favorably to plaintiffs.

VI. Conclusion

For the reasons stated above, the Court should reverse and remand this case for a trial on whether plaintiffs were unlawfully denied registration by the City of Chicago.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, attorney for plaintiffs-appellants, certifies that the foregoing brief complies with the type-volume limitations of Rule 32(a) of the Federal Rules of Appellate Procedure. The brief contains 6,838 words, as counted by the word-counting application of Microsoft Word 2010.

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INDEX TO SHORT APPENDIX

Circuit Rule 30 Statement

The undersigned hereby certifies that all of the materials required by parts (a) and (b) of Circuit Rule 30 are contained in the following appendix.

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attorney for plaintiffs-appellants

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

Michael Beley, et al,

Plaintiff(s),

v.

City of Chicago,

Defendant(s).

Case No. 12 CV 9714
Judge John Robert Blakey

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) City of Chicago
and against plaintiff(s) Michael Beley, et al

.

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge John Robert Blakey on a motion.

Date: 2/28/2017

Thomas G. Bruton, Clerk of Court

G. Lewis , Deputy Clerk

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

MICHAEL BELEY AND DOUGLAS MONTGOMERY, *individually and for a class*,	Case No. 12-cv-9714
Plaintiffs,	
v.	Judge John Robert Blakey
CITY OF CHICAGO,	
Defendant.	

MEMORANDUM OPINION AND ORDER

On December 6, 2012, Plaintiffs Michael Beley and Douglas Montgomery, homeless sex offenders residing in the City of Chicago, filed suit against the city on behalf of themselves and a putative class of other homeless sex offenders. Plaintiffs alleged that Defendant's sex offender registration procedures, as applied to homeless offenders, violated: (1) procedural due process (Count I); (2) equal protection (Count II); (3) freedom of intimate association (Count III); and (4) the Illinois Sex Offender Registration Act (Count IV). On February 17, 2015, the Court dismissed Counts II and III with prejudice. Mem. Op. and Order [112]. On December 7, 2015, the Court certified the following class:

> All persons who attempted to register under the Illinois Sex Offender Registration Act with the City of Chicago from December 6, 2010 to the date of entry of judgment and who were not permitted to register because they were homeless.

Mem. Op. and Order [126] 15. The Court designated Plaintiffs Michael Beley and Douglas Montgomery as the class representatives. *Id.*

On September 20, 2016, Defendant moved for summary judgment on Plaintiffs' two remaining claims. Def.'s Mot. Summ. J. [159]. On October 20, 2016, Plaintiffs cross-moved for partial summary judgment on Count I on the issue of liability. Pls.' Mot. Summ. J. [164]. For the reasons stated below, Defendant's motion [159] is granted; Plaintiffs' motion [164] is denied.

I. Background

A. The Illinois Sexual Offender Registration Act

In Illinois, individuals convicted of certain sexual crimes must comply with rigorous reporting requirements under the Illinois Sexual Offender Registration Act ("SORA"), 730 ILCS 150/1 *et seq*. Sex offenders must provide law enforcement comprehensive biographical information, including, *inter alia*:

> current address, current place of employment . . . telephone number, including cellular telephone number, the employer's telephone number, school attended, all e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information . . . a copy of the terms and conditions of parole or release signed by the sex offender and given to the sex offender by his or her supervising officer or aftercare specialist, the county of conviction, license plate numbers for every vehicle registered in the name of the sex offender, the age of the sex offender at the time of the commission of the offense, the age of the victim at the time of the

> commission of the offense, and any distinguishing marks located on the body of the sex offender.

730 ILCS 150/3(a).

Registration is made in person with the municipality in which the offender "resides or is temporarily domiciled for a period of time of 3 or more days." *Id.* at 150/3(a)(1). At the time of registration, the offender must provide "positive identification" and "documentation that substantiates proof of residence at the registering address." *Id.* at 150/3(c)(5). To register, an offender must also provide a current photograph, and may be required to provide fingerprint, blood, saliva, or tissue specimens. *Id.* at 150/8.

Following an offender's initial registration, SORA further imposes extensive update requirements. If an offender is temporarily absent from his registered address for three or more days, for example, he must notify law enforcement and provide his travel itinerary. *Id.* Similarly, an offender must report, in person, within three days of beginning school, establishing a new residence, or obtaining or changing employment. *Id.* at 150/3(b), (d). If an offender starts attending an institution of higher education, he must not only register with the police department in the jurisdiction where the school is located, but also the school's public safety or security director. *Id.* at 150/3(a)(i)-(ii).

Aside from these specific reporting events, an offender must reregister at least annually, and the registering law enforcement agency may require him to appear, upon request, up to four more times per year. *Id.* at 150/6. Additionally, the offender is required to pay a $100 initial registration fee and a $100 annual

renewal fee (although the registering agency may waive the registration fee if it determines that the person is indigent and unable to pay). *Id.* at 150/3(c)(6).

Penalties for violating SORA are severe. Failure to register constitutes a Class 3 felony punishable by two to five years imprisonment. 730 ILCS at 150/10; 730 ILCS 5-4.5-40. Subsequent failures constitute Class 2 felonies punishable by three to seven years imprisonment. 730 ILCS 150/10; 730 ILCS 5-4.5-35. Moreover, in addition to any other penalty required by law, SORA mandates a minimum period of seven days' confinement in the local county jail and minimum fine of $500. 730 ILCS 150/10. Finally, a SORA violation will extend an offender's mandatory registration period by ten years. *Id.* at 150/7.

B. Registration Within the City of Chicago[1, 2]

All sex offender registrations for Chicago residents occur with the Criminal Registration Section ("CRS") at the Chicago Police Department ("CPD") headquarters. DSOF [161] ¶ 6; PSOF [166] ¶ 1. When an offender arrives at CPD

[1] Case facts are taken from the parties' Local Rule 56.1 statements and accompanying exhibits. "DSOF" refers to Defendant's statement of undisputed facts [161], with Plaintiffs' responses [163] cited as "R. DSOF." "PSOF" refers to Plaintiffs' Local Rule 56.1 Statement of Facts [166], with Defendant's responses [172] cited as "R. PSOF."

[2] Defendant, citing Federal Rule of Civil Procedure 32(a)(8), objects to multiple Plaintiffs' exhibits on the grounds that they memorialize in-court and deposition testimony elicited in separate cases brought against the City of Chicago. R. PSOF [172] 2. Defendant argues that the issues raised in those cases were dissimilar from the issues raised here. *Id.*; *see* Fed. R. Civ. P. 32(a)(8) (requiring "the same subject matter between the same parties"). In a "proper case," however, "depositions from one case may be used at the summary judgment stage of another, even if Rule 32(a)(8)'s requirements are not met." *Alexander v. Casino Queen, Inc.*, 739 F.3d 972, 978 (7th Cir. 2014). Under *Alexander*, "two conditions must be met for a case to be proper." *Id.* First, the deposition "must satisfy Rule 56's requirements for an affidavit or declaration—i.e., the testimony is based on personal knowledge and sets out facts that would be admissible at trial, and the deponent is competent to testify on these matters." *Id.* (citing Fed. R. Civ. P. 56(c)(4)). Second, the depositions from the other case "must be part of 'the record' in the present case." *Id.* (citing Fed. R. Civ. P. 56(c)(1)(A)). Both requirements are met here. Defendant's objection, therefore, is overruled; the Court will consider Plaintiffs' contested exhibits.

headquarters, a registering official—typically a CPD officer—determines whether the offender satisfies SORA's myriad requirements, including those related to positive identification, proof of residence, and registration fees. PSOF [166] ¶ 18. If an offender satisfies SORA's prerequisites, he is registered; if not, he is turned away. CRS maintains a daily "Criminal Registration Log" that documents each registration attempt. In cases where an offender is denied registration, the registering official memorializes the reason for denial on the Criminal Registration Log in a box labeled, "Reason For Being Turned Away." *See, e.g.* PSOF [166] Ex. 2.

C. SORA and Homelessness

The word "homeless" does not appear in SORA's statutory text. Notwithstanding SORA's demand for an offender's "current address" (and supporting documentation thereof), however, the statute *does* allow registration of offenders without a "fixed residence." 730 ILCS 150/3(a). "Fixed residence" is defined as any place that a sex offender resides for an aggregate period of time of five or more days in a calendar year. *Id.* at 150/2(I). Offenders without a "fixed residence" must report to their registering agency in person on a weekly basis. 730 ILCS 150/3(a). The registering agency must document each weekly registration, including each location where the person stayed during the past seven days. *Id.*

Plaintiffs allege that, despite this statutory exception, Defendant improperly engaged in a policy or widespread practice of refusing to permit homeless offenders to register every seven days. Second Am. Compl. [46]. The evidence offered by Plaintiffs is detailed below.

1. Class Representative Michael Beley

Class representative Michael Beley, a resident of Chicago, was convicted of a sexual crime requiring him to register as a child sex offender under SORA. DSOF [161] ¶ 1. At his deposition, Beley testified to the following: on November 19, 2012, Beley was released from Taylorville Correctional Center and spent the night "on the streets" of Chicago. DSOF [161] ¶ 11; PSOF [166] ¶ 3. On the morning of November 20, 2012, Beley reported to CPD headquarters to complete his sex offender registration. DSOF [161] Ex. 6; PSOF [166] ¶ 3. Upon arrival, Beley was informed by Officer Christopher Meaders that he required "an ID with a fixed address" in order to register. DSOF [161] Ex. 2 at 39:14-15; PSOF [166] Ex. 5. Beley did not possess an identification card with a fixed address. DSOF [161] Ex. 2 at 39:21-40:20. As a result, Beley was not registered. *Id.* at 40:21-41:6. In the CRS Criminal Registration Log, Officer Meaders notated Plaintiff's "Reason For Being Turned Away" as "PROOF OF ADD." DSOF [161] Ex. 6.

Beley attempted to register again on November 23, 2012. PSOF [166] ¶ 5. Once again, Beley was denied, although Beley did not testify to the specific reason for his rejection. *Id.*; DSOF [161] Ex. 2. The parties agree, however, that CPD officers directed Beley to potential shelter options. PSOF [166] ¶ 5. The Criminal Registration Log for that day notes the "Reason For Being Turned Away" as "NO ID/REF SHELT." PSOF [166] Ex. 2.

Between November 23, 2012 and November 28, 2012, Beley obtained a state identification card displaying his son's Chicago address. DSOF [161] ¶ 12. On

November 28, 2012, Beley attempted to register for a third time. *Id.* Officer Meaders denied Beley's registration because his son's address fell within 500 feet of a school, park, or playground. *Id.*; *see* 720 ILCS 5/11-9.3 (prohibiting child sex offenders from knowingly residing within 500 feet of a school building, public park, playground, child care institution, or day care center). Officer Meaders wrote "ZONE" in the Criminal Registration Log. DSOF [161] Ex. 7.

Throughout this time, Beley remained homeless. DSOF [161] ¶ 13. Sometime during the week of December 3, 2012, Beley was classified as "non-compliant" on the Illinois State Police sex offender website. PSOF [166] Ex. 1 ¶ 18.

On December 6, 2012, Beley secured a spot at a homeless shelter at 200 South Sacramento Boulevard. DSOF [161] ¶ 13. On December 7, 2012, Beley obtained a state identification card with the shelter address. *Id.* Beley successfully registered at CPD headquarters on December 11, 2012. PSOF [166] Ex. 1 ¶ 19.

Between December 2012 and December 2013, Beley resided on a nightly basis at the shelter at 200 South Sacramento Boulevard. *See* DSOF [161] ¶¶ 13-14. Beley left the shelter in January 2014 after it was declared off limits to child sex offenders. *Id.* ¶ 15. Since his eviction, however, Beley has successfully registered at CPD headquarters on a weekly basis as an offender without a fixed residence. *Id.*; DSOF [161] Ex. 2 at 73:3-74:3.

2. Class Representative Douglas Montgomery

Class representative Douglas Montgomery, also a resident of Chicago, has also been convicted of a sexual crime requiring him to register under SORA. DSOF

[161] ¶ 2. Montgomery was last released from confinement on January 21, 2011. *Id.* ¶ 16. At the time of his release, Montgomery signed a SORA Notification Form acknowledging his duty to register within three days of his discharge. PSOF [166] Ex. 4. The Notification Form included fill-in boxes for biographical information, including Montgomery's resident address upon release. *Id.* Montgomery's Notification Form specifically listed his intended resident address as "HOMELESS" in the City of Chicago. *Id.*

On January 27, 2011, Montgomery went to CPD headquarters to register as a sex offender.[3] PSOF [166] ¶ 10. Montgomery testified at his deposition that, upon arrival, he gave Officer Eric Chapman his Notification Form listing his resident address as "HOMELESS." DSOF [161] Ex. 9 at 73:15-23, 75:14-15. Montgomery further testified that Officer Chapman asked Montgomery where he was living, and Montgomery replied, "I am homeless, I [have] been homeless for a long time." *Id.* at 74:13-15. Montgomery testified that the official informed him that CPD was "not registering homeless people right now" and that Montgomery needed a "fixed address" and an identification card, as well as the $100 registration fee. *Id.* at 74:15-19, 76:12-21. Montgomery departed CPD headquarters and did not return. DSOF [161] ¶ 20. In the Criminal Registration Log, Officer Chapman notated Montgomery's "Reason For Being Turned Away" as "NEEDS ADDRESS." DSOF

[3] Between January 22, 2011 and January 27, 2011, Montgomery was hospitalized for reasons not relevant to the pending motions. PSOF [164] Ex. 9.

[161] Ex. 10.[4] In July 2011, Montgomery was arrested and charged with a SORA violation. DSOF [161] ¶ 20.

3. Members of Certified Class

In addition to the depositions of the class representatives, the record before the Court contains affidavits from five other members of the certified class: Adarryll Kelly, Charles Mowder, James McDonald, Kenneth Williams, and Henry Hartage. PSOF [166] Ex. 6 at 7-10; Pls.' Mot. Certify Class [117] Ex. 4. Kelly states that in November 2010 and on October 29, 2013, he went to CPD headquarters to register as homeless, but was told by a registering official that homeless registration was not permitted. PSOF [166] Ex. 6 at 8. Kelly further states, however, that he *did* successfully register as homeless at CPD headquarters on October 22, 2013. *Id.* Mowder alleges that he was denied homeless registration "in an around 2010." *Id.* at 9. McDonald claims that he was denied homeless registration in March 2012. *Id.* at 10. Williams *did* successfully register as homeless on November 1 and November 8, 2013, but was allegedly denied homeless registration on November 15, 2013. Pls.' Mot. Certify Class [117] Ex. 4. Hartage states that he was instructed by a CRS representative in September 2012 that he would be compliant with SORA if he stayed at the 200 South Sacramento shelter. *Id.* at 7.

[4] Montgomery's actual name does not appear on the January 27, 2011 Criminal Registration Log; rather, Montgomery was recorded under the name "Douglas McArthur." DSOF [161] Ex. 10. The parties do not dispute, however, that the entry applies to Montgomery. *See* DSOF [161] ¶ 18; PSOF [164] ¶ 10.

4. Other Purported Evidence

Plaintiffs also point to other specific entries in the Criminal Registration Logs as further instances of CRS refusing to permit homeless offenders to register without a fixed residence:

Name of Offender	Date of Attempted Registration	"Reason For Being Turned Away"
Albert Bingham	April 18, 2011	ID HAS WRONG ADDRESS NO PROOF ADD
Davin Tangrio	May 13, 2011	HOMLESS [sic] – NEEDS ID
Jemiah Gholson	January 7, 2012	NEEDS ID
Johnathan Collantes	April 2, 2012	PROOF OF ADD
Eric Flowers	March 27, 2012	BAD ADD
Sean Messer	May 15, 2012	NEEDS ID/HOMELESS
Keith Frierson	June 29, 2012	NEEDS ID
Arthur Jones	August 15, 2012	HOMELESS SHLTR NO PROOF ADD
Eric Williams	September 14, 2012	NO PROOF ADD
Dwight Barkley	October 24, 2012	NEEDS ID SHELTER
John Trotter	October 31, 2012	HOMELESS/REF TO SHL
Timothy Downs	January 28, 2013	NEEDS PROOF ADD

PSOF [166] ¶¶ 36-44. Plaintiffs highlight that, shortly after their denial, eight of these offenders[5] obtained identification cards reflecting an address of 200 South Sacramento. *Id.* Almost immediately thereafter, they successfully registered at CPD headquarters. *Id.* Defendant does not dispute these Criminal Registration Log entries, but denies that they prove denial of homeless registration. R. PSOF [172] ¶ 42.

In addition to these specific instances, Plaintiffs cite general statistics derived from Criminal Registration Logs over time. Plaintiffs claim that, overall, the logs show that "few people were registered as lacking a fixed residence at the

[5] Bingham, Collantes, Downs, Flowers, Frierson, Gholson, Messer, and Williams.

time of registration," while CRS "routinely turned away sex offenders for failure to provide proof of address and for lack of identification." Pls.' Mot. Summ. J. [164] 5. Plaintiffs also allege that the overall number of sex offenders who registered without a fixed residence dramatically increased after June 2014, when CRS stopped requiring government issued identification to establish positive identification. *Id.* at 6; *see* 730 150/3(c)(5). According to Plaintiffs, 378 offenders were registered as homeless as of February 13, 2017. Pls.' Mot. Supp. Summ. J. Briefing [176].

Finally, at all times relevant to the present litigation, Sergeant Philip Jones served as Commanding Officer of CRS. PSOF [166] Ex. 11 at 7:22-8:5. During a deposition in a separate case, Jones testified that "every" registering sex offender "needs a proof of address." PSOF [166] Ex. 11 at 241:6-7. Jones also testified that a "threshold question for every individual who registered," was that they "must have a government-issued ID in order to prove they reside in Chicago." PSOF [166] Ex. 3 at 122:3-6. In the present litigation, however, Jones testified that this policy does not apply to individuals lacking a fixed address. *See, e.g.* PSOF [166] Ex. 16 at 18:11-18.

II. Legal Standard

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Spurling v. C & M Fine Pack, Inc.*, 739 F.3d 1055, 1060 (7th Cir. 2014). A genuine dispute as to any material fact exists if "the evidence is such that

a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party seeking summary judgment has the burden of establishing that there is no genuine dispute as to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A court "is not required to grant summary judgment as a matter of law for either side when faced with cross-motions for summary judgment." *Crespo v. Unum Life Ins. Co. of Am.*, 294 F. Supp. 2d 980, 991 (N.D. Ill. 2003) (citing *Market St. Assocs. Ltd. P'ship v. Frey,* 941 F.2d 588, 590 (7th Cir. 1991)). Rather, the court must "evaluate each motion on its merits, resolving factual uncertainties and drawing all reasonable inferences against the movant." *Id.*

III. Analysis

Two causes of action from Plaintiffs' Second Amended Complaint [46] are still before the Court: (1) violations of Plaintiffs' procedural due process rights under 42 U.S.C. § 1983 (Count I); and (2) violations of SORA (Count IV). Defendant moves for summary judgment on both counts. Def.'s Mot. Summ. J. [159]. In response, Plaintiffs "acquiesce in judgment on their state law claim." Pls.' Mot. Summ. J. [164]. As a result, Defendant's Motion for Summary Judgment [159] is granted as it relates to Count IV, leaving Count I as Plaintiffs' sole remaining claim.

Plaintiffs not only contest Defendant's motion as it relates to Count I, but contend that they are entitled to summary judgment as to liability. *Id.* The parties levy multiple arguments in support of their respective motions. The Court's ruling, however, turns upon one dispositive issue: whether Plaintiffs present sufficient

evidence of a "policy" or "custom" on the part of Defendant to support municipal liability.

Under the Supreme Court's ruling in *Monell v. New York City Dep't of Social Services,* 436 U.S. 658, 690-91 (1978), although a local governmental unit is subject to suit under 42 U.S.C. § 1983, *respondeat superior* will not suffice to impose liability. *McTigue v. City of Chicago*, 60 F.3d 381, 382 (7th Cir. 1995). The municipality's *policy*, not employees, must be the source of the discrimination. *Id.*; *Auriemma v. Rice,* 957 F.2d 397, 399 (7th Cir. 1992) ("Municipalities are answerable only for their own decisions and policies; they are not vicariously liable for the constitutional torts of their agents."). In other words, "a municipality can be liable under Section 1983 only for acts taken pursuant to its official policy, statement, ordinance, regulation or decision, or pursuant to a municipal custom." *Mootye v. Dotson*, 73 F. App'x 161, 171 (7th Cir. 2003); *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 675 (7th Cir. 2012) ("Municipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives by municipal policymakers.") (quotations omitted).

An official policy or custom may be established by means of: (1) an express policy; (2) a widespread practice which, although unwritten, is so entrenched and well-known as to carry the force of policy; or (3) the actions of an individual who possesses the authority to make final policy decisions on behalf of the municipality or corporation. *Rice*, 675 F.3d at 675; *Thomas v. Cook Cty. Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2010). Here, the parties do not argue a constitutional deprivation

by a person with final decision-making authority. Instead, they focus upon the "express policy" and "widespread practice" prongs of *Monell's* municipal liability test. *See* Pls.' Mem. Supp. Mot. Summ. J. [165] 1 ("Plaintiffs challenge the Chicago Police Department's *express policy* to deny registration . . . to persons lacking a fixed residence or a *widespread practice* that produced an equivalent result.") (emphasis added). Therefore, to survive summary judgment, Plaintiffs must demonstrate a genuine issue of material fact that the City of Chicago had a policy or custom of denying SORA registration to sex offenders merely because they lacked a fixed residence at the time of registration.

The express policy theory applies, as the name suggests, "where a policy explicitly violates a constitutional right when enforced." *Calhoun v. Ramsey*, 408 F.3d 375, 379 (7th Cir. 2005). The *Calhoun* court provided the following example:

> [I]f [a county jail] had a policy that directed the sheriff's personnel to throw away all prescription medications brought in by detainees or prisoners without even reading the label and without making alternative provisions for the affected individuals, the County would be liable assuming that such a policy would, on its face, violate the Eighth Amendment (or the Due Process clause, for pre-trial detainees).

Id. Under this type of claim, "one application of the offensive policy resulting in a constitutional violation is sufficient to establish municipal liability." *Id.* at 379-80.

In contrast, widespread practices "are not tethered to a particular written policy." *Id.* at 380. In these situations, "the claim requires more evidence than a single incident to establish liability." *Id.* Under this prong, the Seventh Circuit has declined to adopt "any bright-line rules" defining a "widespread custom or practice."

Thomas, 604 F.3d at 303. There is "no clear consensus as to how frequently such conduct must occur to impose *Monell* liability, except that it must be more than one instance, or even three." *Id.*; *Jones v. City of Chicago*, 787 F.2d 200, 204 (7th Cir. 1986) ("[T]he isolated act of an employee generally is not sufficient to impose municipal liability."); *Palka v. City of Chicago*, 662 F.3d 428, 435 (7th Cir. 2011) ("[T]wo alleged instances of discrimination do not constitute a widespread pattern or practice."); *Estate of Moreland v. Dieter,* 395 F.3d 747, 760 (7th Cir. 2005) ("[Three] incidents do not amount to a widespread practice that is permanent and well settled so as to constitute an unconstitutional custom or policy about which the sheriff was deliberately indifferent."). The Seventh Circuit has also found four instances to be inadequate. *See, e.g. Grieveson v. Anderson,* 538 F.3d 763, 773 (7th Cir. 2008); *Jenkins v. Bartlett*, 487 F.3d 482, 493 (7th Cir. 2007).

Beyond these low numerical thresholds, however, the precise boundaries of "widespread customs" remain flexible. This lack of precision is understandable. Unless the number of supposed unconstitutional acts is so exceedingly small that an absence of custom is facially apparent, mere quantity, standing alone, tells very little. Municipal activity does not occur in a vacuum. Thus, in addition to the sheer volume of improper conduct at issue, other probative factors must be considered, including, *inter alia*, the period of time alleged, number of municipal actors involved, and opportunities for the alleged custom to manifest itself. These variables, unique to each case, impact the relative import of the number of constitutional violations alleged. The number of alleged incidents, for example,

carries different meaning depending on whether the incidents occur over the course of days, weeks, or years. *See Palmer v. Marion Cty.*, 327 F.3d 588, 596 (7th Cir. 2003) (noting that plaintiff's alleged incidents occurred "in a period of one year"). Significance may be further impacted by frequency, *i.e.*, the *rate* of alleged unconstitutional behavior relative to lawful activity. *See Gable v. City of Chicago,* 296 F.3d 531, 538 (7th Cir. 2002) (comparing number of alleged improper incidents with total number of incidents). In short, the Court must evaluate each distinct case by examining the totality of the circumstances.

Furthermore, in conducting this analysis, the Court must not lose the forest for the trees. Ultimately, the challenge is to "distinguish between systemic problems showing official deliberate indifference and occasional lapses that are inevitable in well-run institutions." *Thompson v. Taylor*, No. 13-cv-6946, 2016 WL 5080484, at *7 (N.D. Ill. Sept. 20, 2016). The gravamen "is not *individual* misconduct by police officers (that is covered elsewhere under § 1983), but 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) (first emphasis added). In other words, *Monell* claims must focus "on institutional behavior." *Id.* As a result, "misbehavior by one or a group of officials is only relevant where it can be tied to the policy, customs, or practices of the institution as a whole." *Id.* In effect, Plaintiffs must show that the unlawful practice "was so pervasive that acquiescence on the part of policymakers was apparent and amounted to a policy decision." *Daniel v. Cook Cty.*, 833 F.3d 728, 734 (7th Cir. 2016). That is, Plaintiffs must

present facts "showing that policymakers knew of the conduct or that the conduct was so widespread that they should have known." *Billings v. Madison Metro. Sch. Dist.*, 259 F.3d 807, 818 (7th Cir. 2001).

Here, even when viewed in the light most favorable to Plaintiffs, the evidence before the Court fails to raise a genuine issue of fact with respect to whether CRS personnel acted pursuant to an official policy or practice regarding the registration of homeless sex offenders. At most, Plaintiffs present evidence of the following instances from which a reasonable fact finder might deduce unconstitutional behavior:

Name of Offender	Date of Attempted Registration
Charles Mowder	2010
Adarryll Kelly	November 2010
Douglas Montgomery	January 27, 2011
James McDonald	March 2012
Henry Hartage	September 2012
Michael Beley	November 20, 2012
Michael Beley	November 23, 2012
John Trotter	October 2012
Adarryll Kelly	October 29, 2013
Kenneth Williams	November 2013

Adarryll Kelly's November 2010 denial, however, falls outside the scope of the certified class. *See* Mem. Op. and Order [126] 15 (certifying class from December 6, 2010 onward). Similarly, Plaintiffs fail to provide specificity regarding *when* Charles Mowder was allegedly denied homeless registration in 2010. Consequently, the Court cannot conclude that his registration attempt falls within the certified time period.

Regardless, Plaintiffs' proffered instances remain spread across three complete calendar years. Only two instances occurred in 2010; one in 2011; five in 2012; and two in 2013. These numbers pale in comparison to the total number of registrations regularly handled by CRS. In January 2011 alone, CRS completed 389 sex offender registrations; and it completed 478 in January 2012. PSOF [166] Ex. 17, 21. It is safe to infer, therefore, that CRS easily compiles thousands of registrations every year. When multiplied over Plaintiffs' three year timespan, the ostensible number of total registrations equals more than 10,000, a figure 1,000 times greater than Plaintiffs' number of alleged violations. This places Plaintiffs' claim of a "widespread" custom or practice in harsh perspective. *See Gable,* 296 F.3d at 538.

These figures, of course, consider *all* Chicago sex offenders seeking registration, not merely those without a fixed residence. Viewing Plaintiffs' evidence from that perspective, however, only further undermines their case, because Plaintiffs' purported violations are interspersed with an equal number of occasions where homeless offenders *were* registered without a fixed residence. Indeed, many of these instances involve the *same* offender who, according to Plaintiffs, was rejected on other occasions as a result of a widespread practice.

For example, Adarryll Kelly claims that CRS informed him on October 29, 2013 that homeless registration was not permitted. PSOF [166] Ex. 6 at 8. Kelly admits, however, that he *did* successfully register as homeless just one week earlier, on October 22, 2013. *Id.* Similarly, Kenneth Williams claims he was denied

homeless registration on November 15, 2013, but acknowledges that he successfully registered as homeless on both November 1 and November 8, 2013. Pls.' Mot. Certify Class [117] Ex. 4. Plaintiffs rely heavily on the experiences of Michael Beley in November 2012, but admit that Beley has successfully registered as an offender without a fixed residence since January 2014. DSOF [161] ¶¶ 15.

Plaintiffs also point to Douglas Montgomery's experience in January 2011. That same month, however, CRS permitted weekly registration by James Manegold, another homeless sex offender, four times. PSOF [166] Ex. 17. Likewise, James McDonald was allegedly denied registration in March 2012, but James Manegold *did* register as homeless on April 11, 2012. PSOF [166] ¶ 22; PSOF [166] Ex. 22 at 7. Henry Hartage was allegedly referred to the shelter at 200 South Sacramento in November 2012. *Three* offenders—Ginn Torres, James Manegold, and Paul Herbert—successfully completed homeless registration on August 6, 28, and 29, 2012 respectively. PSOF [166] Ex. 23. John Trotter was allegedly denied homeless registration in October 2012. That same month, CRS registered James Manegold as homeless five times and registered Paul Herbert as homeless four times. PSOF [166] Ex. 24.

The remainder of Plaintiffs' proffered evidence is equally unavailing. Plaintiffs point, for example, to the attempted registrations of Albert Bingham, Johnathan Collantes, Timothy Downs, Eric Flowers, Keith Frierson, Jemiah Gholson, and Eric Williams. Plaintiffs, however, merely proffer: (1) a Criminal Registration Log documenting the initial failed registration attempt; (2) an

identification card issued shortly thereafter reflecting an address of 200 South Sacramento; and (3) a subsequent SORA registration form reflecting 200 South Sacramento as the offender's resident address. As an example, the CRS Criminal Registration Log indicates that Albert Bingham was turned away on April 18, 2011 for "ID HAS WRONG ADDRESS NO PROOF ADD." PSOF [166] Ex. 30 at 1. On April 19, 2011, Bingham was issued a state identification card reflecting an address of 200 South Sacramento. *Id.* at 8. Later that day, CRS registered Bingham, listing his resident address as 200 South Sacramento. *Id.* at 2-3.

Such evidence, without more (and there is no more here), does not support a reasonable inference that Defendant denied registration to Bingham because he lacked a fixed residence. Indeed, Plaintiffs submit no evidence that Bingham, in fact, lacked a fixed residence on April 18, 2011. If anything, the evidence indicates the opposite: that Bingham *did* have a fixed residence—at least as that term is defined under SORA—at 200 South Sacramento. That being the case, Bingham was required to comply with SORA's proof of residence requirement. *See* 730 ILCS 150/3(c)(5) (requiring "documentation that substantiates proof of residence at the registering address"). Lacking such documentation, Bingham was properly denied registration on *that* basis, not on the purported basis of homelessness.

Plaintiffs' forms of proof for Collantes, Downs, Flowers, Frierson, Gholson, Messer, and Williams mirror Bingham, the sole exception being the precise language employed in the "Reason Being Turned Away" portion of the Criminal Registration log. The log entries for Collantes, Frierson, and Gholson for example,

list "NEEDS ID" as the "Reason For Being Turned Away"; Downs' log entry states "NEEDS PROOF ADD"; Flowers' entry states "BAD ADD"; Williams' entry states "NO PROOF ADD." PSOF [166] Ex. 30. These semantics aside, Plaintiffs' proof issues remain the same. Such evidence does not establish that each offender lacked a fixed residence at the time of their failed registration attempt, or that such offender was denied registration on that basis.

Plaintiffs' reliance on the attempted registrations of Arthur Jones, Sean Messer, Dwight Barkley, and Davin Tangrio is similarly flawed. The Criminal Registration Log for these individuals simply lists the "Reason For Being Turned Away" as "HOMELESS SHLTR NO PROOF ADD," "NEEDS ID/HOMELESS," "NEEDS ID SHELTER," and "HOMLESS [sic] – NEEDS ID," respectively. *Id*. Once again, it would be unreasonable to infer, from these entries alone, that these offenders were denied registration because they, in fact, lacked a fixed residence. "NEEDS ID" or "NO PROOF ADD" is not the same as "NEEDS ADDRESS." To the contrary, the reasonable inference is that these individuals were properly denied registration due to their failure to provide proof of residence or positive identification. *See* 730 ILCS 150/3(c)(5) (requiring "positive identification" and "documentation that substantiates proof of residence at the registering address").

Plaintiffs' general statistical theories fare no better. The basic fact that, over time, CRS "routinely turned away sex offenders for failure to provide proof of address and for lack of identification," is irrelevant; that is precisely what SORA demands. *See* Pls.' Mot. Summ. J. [164] 5. Plaintiffs do not facially challenge the

constitutionality of SORA's positive identification or proof of residence requirement generally. *See* 730 150/3(c)(5). Rather, Plaintiffs' due process claim is supported only where CRS denied registration for failure to provide proof of an address that does not exist. Plaintiffs' statistics do not speak to that relevant scenario.

The increase in homeless registration after June 2014, when CRS altered its positive identification requirements, is also unsurprising. Any reduction in an offender's administrative burden will likely result in greater registration success, particularly for homeless offenders who are most in need of institutional resources. The decision to not require government issued identification, however, does not constitute a prior deliberate choice to deny registration due to an offender's lack of a fixed residence. *See Derfus v. City of Chicago*, No. 13 C 7298, 2015 WL 1592558, at *4 (N.D. Ill. Apr. 6, 2015) ("The fact that the City registered more offenders as not having a fixed residence or temporary domicile in two random time periods" in 2014, than "in two random time periods" in prior years, does "not suggest that the City had a policy of refusing to register offenders with that status.").[6]

Finally, the testimony of Sergeant Jones is, at best, inconclusive. In a separate civil case, Jones testified that "every" registering sex offender "needs a proof of address" and that a "threshold question for every individual who registered," was that they "must have a government-issued ID in order to prove

[6] In supplemental briefing, Plaintiffs also assert that the 378 offenders registered as homeless as of February 13, 2017 proves that homeless registration "was feasible during the class period." Pls.' Mot. Supp. Summ. J. Briefing [176] 2. Mere feasibility, however, is beside the point. To survive summary judgment, Plaintiffs must demonstrate a genuine issue of material fact that, during the class period, the City of Chicago had a policy or custom of denying SORA registration to sex offenders because they lacked a fixed residence at the time of registration. Without more, the sheer number of homeless offenders registered on a random date does nothing help satisfy this burden.

they reside in Chicago." PSOF [166] Ex. 3 at 122:3-6; Ex. 11 at 241:6-7. That case, however, focused on SORA's $100 fee requirement and CPD's fee waiver procedures, not the registration process for individuals without any fixed residence. The Court declines, therefore, to take Sergeant Jones' testimony out of context. Indeed, during his deposition in the *present* litigation, Jones repeatedly stated that the general proof of residence policy does not apply to individuals lacking a fixed address. PSOF [166] Ex. 16 at 14:20-23 ("We have a practice to register any person who's required to register that comes in to register irrespective of whether they claim to have a fixed address or not."), 18:11-18 ("We don't ask them to show us proof of address that they say they don't have."), 45:4-5, 97:17-19.

In sum, when viewed in the light most favorable to Plaintiffs, the evidence does not present a triable issue of fact regarding whether there was a policy or widespread practice of denying SORA registration to sex offenders who lacked a fixed address at the time of registration. This determination is consistent with at least one similar case in this district. *See Derfus*, 2015 WL 1592558, at *4 (finding no evidence of *Monell* policy and granting summary judgment on analogous facts). At most, Plaintiffs have shown "occasional lapses of judgment" or "individual misconduct by police officers," not "systemic problems" or "institutional behavior." *Rossi v. City of Chicago*, 790 F.3d 729, 737 (7th Cir. 2015); *Thompson v. Taylor*, No. 13-cv-6946, 2016 WL 5080484, at *7 (N.D. Ill. Sept. 20, 2016). This is not enough. As a result, under *Monell*, Plaintiffs cannot establish municipal liability on their

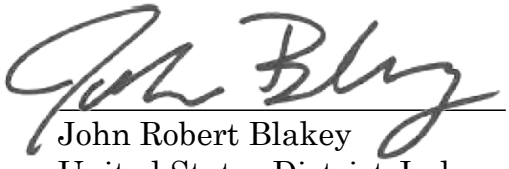
sole remaining claim against Defendant. Given this ruling, the Court need not address the various supplemental arguments raised by the parties.

IV. Conclusion

Defendant's Motion for Summary Judgment [159] is granted. Plaintiffs' motion for partial summary judgment on the issue of liability as to Count I [164] is denied. The Clerk is directed to enter Rule 58 judgment in favor of Defendant and against Plaintiffs. Civil case terminated.

IT IS SO ORDERED

Dated: February 28, 2017 Entered:



John Robert Blakey
United States District Judge

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

MICHAEL BELEY and DOUGLAS MONTGOMERY, Plaintiffs, v. CITY OF CHICAGO, Defendant.	Case No. 12 C 9714 Judge John Robert Blakey

MEMORANDUM OPINION AND ORDER

Plaintiffs Michael Beley and Douglas Montgomery filed this putative class action against Defendant City of Chicago, challenging the Chicago Police Department's purported policy of refusing to register homeless sex offenders. Plaintiffs argue that the Department's policy contravenes the Illinois Sex Offender Registration Act ("SORA"), 750 ILCS 150, and violates their due process rights under the Fourteenth Amendment. Currently before this Court is Plaintiffs' motion for class certification [117]. The motion is granted.

I. Legal Standard

To obtain class certification under Federal Rule of Civil Procedure 23, Plaintiffs must satisfy the four Rule 23(a) requirements—numerosity, commonality, typicality and adequacy of representation—and one subsection of Rule 23(b). *Arreola v. Godinez*, 546 F.3d 788, 794 (7th Cir. 2008). Here, Plaintiffs move to certify a class under Rule 23(b)(3), so they must show: (1) that issues common to the

class members predominate over questions affecting only individual members, and (2) that a class action is superior to other available adjudication methods. *Messner v. Northshore University HealthSystem*, 669 F.3d 802, 811 (7th Cir. 2012). Plaintiffs bear the burden of proving each Rule 23 requirement by a preponderance of the evidence. *Id.* Failure to satisfy any requirement precludes class certification. *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 513 (7th Cir. 2006).

This Court has broad discretion in determining whether Plaintiffs have satisfied Rule 23. *Messner*, 669 F.3d at 811. In exercising its discretion, this Court does not presume that all well-pleaded allegations are true and can look "beneath the surface" of the Second Amended Complaint [46] to conduct the inquiries required by Rule 23. *Davis v. Hutchins*, 321 F.3d 641, 649 (7th Cir. 2003); *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 677 (7th Cir. 2001). Although a determination on the propriety of class certification should not turn on the likelihood of success on the merits, this Court must make the factual and legal inquiries necessary to ensure that the class certification requirements are satisfied, even if that necessitates some overlap with the merits of the case. *Messner*, 669 F.3d at 823-24; *American Honda Motor Co., Inc. v. Allen*, 600 F.3d 813, 815 (7th Cir. 2010).

II. Facts

Plaintiffs Michael Beley and Douglas Montgomery are convicted sex offenders who reside in the City of Chicago and are required to register under SORA. Second Amended Complaint ("SAC") ¶¶ 5-6, 16-17. Among other obligations under the

statute, Plaintiffs must register in person with the appropriate law enforcement agency where they live (here, the Chicago Police Department); pay an initial $100 registration fee; and provide a photograph and current address. 730 ILCS 150/3(a), 150/3(c)(6). Sex offenders lacking a "fixed residence," meaning a place where they reside for at least five days in a calendar year, must report weekly in person to their local law enforcement agency. 730 ILCS 150/2(I), 150/3(a). Failure to register carries legal consequences, including serving at least seven days in jail and paying a $500 mandatory minimum fine. 730 ILCS 150/10(a).

Plaintiffs allege that Defendant through the Chicago Police Department, in contravention of SORA and in violation of their procedural due process rights, has a policy of refusing to register "homeless" sex offenders despite its obligations to do so under the statute. SAC ¶¶ 3, 8, 15, 21. When using the word "homeless," Plaintiffs mean sex offenders who lack a residence (a physical structure, whether a house or apartment, or temporary accommodations, such as a room in a shelter) at the time of registration. Plaintiffs also brought equal protection and freedom of association claims against Defendant, SAC ¶¶ 29-30, but this Court dismissed those claims on February 17, 2015. *Beley v. City of Chicago*, No. 12-9714, 2015 WL 684519 (N.D. Ill. Feb. 17, 2015) (Dkt. 112).

Plaintiffs describe their two experiences as representative examples of Defendant executing its purported policy of refusing to register homeless sex offenders. On November 20, 2012, Beley, who was then homeless, sought to register with the Chicago Police Department. SAC ¶¶ 6-7. The Department, however,

refused to register Beley because he lacked identification with a "fixed address." SAC ¶ 8; Beley Dep. [122-1] at 39. As a result, from November 22 to December 11, 2012, Beley was in violation of SORA, and that violation was posted on the state police website. *Id.* ¶ 9. On December 11, 2012, the Chicago Police Department allowed Beley to register with a temporary address at a homeless shelter. *Id.* ¶¶ 10-13.

Montgomery raises similar allegations, that is, while homeless and living on Wacker Drive, Montgomery sought to register with the Chicago Police Department, but the Department turned him away, telling Montgomery that he was not going to be registered as a homeless person. SAC ¶¶ 19-21; Montgomery Dep. [122-1] at 10-12. Unable to register, around July 13, 2011, Montgomery was charged with having violated SORA (after first being arrested for ordinance violations) but was later acquitted. SAC ¶ 23; Supplemental Authority [97] ¶ 4.

Attached to Plaintiffs' class certification motion [117] are declarations from five more sex offenders who tell essentially the same story. During 2010 to 2013, the Chicago Police Department refused to register them—sometimes more than once—because, on the day they arrived at the Chicago Police Department Headquarters to register, the five sex offenders were "homeless," lacking a fixed residence. Hartage Decl. ¶ 2; Kelly Decl. ¶¶ 3, 10; McDonald Decl. ¶ 3; Mowder Decl. ¶ 2; Williams Decl. ¶ 6. Three of those five sex offenders further declare that Chicago police officers told them that they may not register as homeless and/or that

they were required to secure an address before registering. Kelly Decl. ¶ 2; McDonald Decl. ¶ 3; Mowder Decl. ¶ 4.

III. Analysis

Plaintiffs move to certify the following class:

> All persons who attempted to register under the Illinois Sex Offender Registration Act with the City of Chicago from December 6, 2010 to the date of entry of judgment and who were not permitted to register because they were homeless.

Plaintiffs argue that the proposed class satisfies the requirements of Rule 23(a) and Rule 23(b)(3). This Court considers each category of requirements in turn.

A. Rule 23(a)

1. Numerosity

To satisfy numerosity, Plaintiffs must show that the class is so large as to make joinder impractical. Fed. R. Civ. P. 23(a)(1). A class of 40 or more is generally sufficient to establish numerosity, though Courts in this District have certified classes with as few as 18 members. *Elizarri v. Sheriff of Cook County*, No. 07-2427, 2011 WL 247288, at *3 (N.D. Ill. Jan. 24, 2011); *McCabe v. Crawford & Co.*, 210 F.R.D. 631, 643 (N.D. Ill. 2002). This Court may rely on common sense assumptions and reasonable inferences when ascertaining the size of the class. *Phipps v. Sheriff of Cook County*, 249 F.R.D. 298, 300 (N.D. Ill. 2008). However, "mere speculation" or "conclusory allegations" cannot establish numerosity. *Arreola*, 546 F.3d at 797 (internal quotations omitted).

Here, Plaintiffs, counting themselves, have identified seven prospective members of the proposed class by name, and estimate from the Chicago Police

Department's Criminal Registration Logs (which contain a "Reason for Being Turned Away" field) that there are many more potential plaintiffs. For example, from a 11-day sliver of the class period (November 20, 2012, December 17 to 21, 2012 and April 22 to 26, 2013), the Logs show that the Chicago Police Department turned away at least 21 persons for lack of identification ("NEED ID" or "NEED UPDATED ID"). *See* Criminal Registration Logs [117]. As Montgomery's testimony confirms, homeless persons, almost by definition, will lack identification reflecting a current address because they have no address. *See* Montgomery Dep. [122-1] at 11. During that same period, the Department turned away another four persons, including Beley, for failure to provide proof of address ("PROOF OF ADD"). *See* Criminal Registration Logs [117].

The Logs corroborate the declaration testimony that Chicago police officers told sex offenders that they may not register as homeless and/or that they were required to secure an address before registering. Kelly Decl. ¶ 2; McDonald Decl. ¶ 3; Mowder Decl. ¶ 4. Moreover, Sergeant Phillip Jones, who was deposed in another case, testified that "every" registering sex offender "needs a proof of address." Jones Dep. [123] at 243.

Further proof that the Criminal Registration Logs satisfy the numerosity requirement comes from the Illinois Appellate Court. In *People v. Wlecke*, 6 N.E.3d 745, 748, 754-55 (Ill. App. Ct. 2014), the Court overturned on direct appeal a sex offender's conviction for failing to register because the offender went to the Chicago Police Department to register, but the Department incorrectly turned him away for

lacking valid proof of residence. The Court found that it was the Chicago Police Department's "*common practice* … to turn away sex offenders attempting to register for lack of proof of address." *Id.* at 755 n.2 (emphasis added). According to the June 14 to 18, 2010 Criminal Registration Logs, which the Court had reviewed, 117 persons reported to register during that time but 19 were turned away for failure to provide proof of address. *Id.*

In response to the Criminal Registration Logs, Defendant argues that many of the "lack of identification" and "proof of address" entries are false positives. Not all offenders who lacked identification or proof of address were homeless, and the Chicago Police Department turned away some, perhaps many, of these sex offenders for legitimate reasons under SORA that do not bear on any purported policy of refusing to register homeless sex offenders.

This argument is well taken, but it does not defeat class certification. The numerosity threshold is satisfied even if only a small percentage of sex offenders turned away for "lack of identification" and "proof of address" in fact qualify under the class definition. The sampling of Criminal Registration Logs in this case and in *Wlecke* reveal 44 offenders denied for these two reasons over 16 days, or almost 3 per day. Projected out over the entire class period, which dates back to December 6, 2010, and even recognizing that some offenders were turned away by the Chicago Police Department more than once, it is reasonable for this Court to infer that there is a potential pool of plaintiffs in the hundreds, if not more. In light of the declaration testimony that Chicago police officers said they did not register

homeless sex offenders, it is reasonable for this Court to infer from the record that a significant, even if small, percentage of sex offenders seeking to register will fit the class definition. The Chicago Police Department turned these sex offenders away because they lacked a residence. With seven prospective class members already identified, that is more than sufficient to satisfy the numerosity requirement.

Without citing *Mullins v. Direct Digital, LLC*, 795 F.3d 654 (7th Cir. 2015), Defendant further argues that the false positives show that the proposed class is not ascertainable because it would be burdensome for the parties to identify class members by determining the reason for each and every one of the aforementioned denials. This argument, which incorrectly heightens the ascertainability requirement under Rule 23 and finds its genesis in *Carrera v. Bayer Corp.*, 727 F.3d 300 (3d Cir. 2013), was rejected by the Seventh Circuit's recent decision in *Mullins*. *Mullins* teaches that the concerns underlying Defendant's argument (that is, creating a reliable and administratively feasible way to determine whether a particular person is a class member) may be valid, but they should be addressed through tailored case management and not by denying class certification at the outset. *Mullins*, 795 F.3d at 657-58, 663-65, 672. For all of these reasons, the numerosity requirement is satisfied.

2. Commonality

To meet the commonality requirement, Plaintiffs must show that there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Even a single common question of law or fact will do. *Wal-Mart Stores, Inc. v. Dukes*, 131

S. Ct. 2541, 2556 (2011). While the Rule is phrased in terms of questions, what matters for class certification is the capacity of a classwide proceeding to generate "common *answers* apt to drive the resolution of the litigation." *Wal-Mart Stores*, 131 S. Ct. at 2551 (emphasis in original and internal quotations omitted); *accord Chicago Teachers Union, Local No. 1 v. Board of Education of City of Chicago*, 797 F.3d 426, 436-38 (7th Cir. 2015). The "critical point" is "the need for *conduct* common to members of the class." *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014) (emphasis in original and internal quotations omitted). Where the defendant's allegedly injurious conduct differs from plaintiff to plaintiff, no common answers are likely to be found. *Id.*

Here, a class action likely will generate common answers to at least three questions of fact and law, which are common to the proposed class and which will drive the resolution of this case:

1. Does the Chicago Police Department have a policy of refusing to register homeless sex offenders?

2. Does that policy violate the sex offenders' due process rights under the Fourteenth Amendment?

3. Does that policy violate SORA?

With respect to the second question in particular, as shown by this Court's analysis of Plaintiffs' due process claim at the motion to dismiss stage, *see Beley*, 2015 WL 684519, at *2-4, a classwide proceeding will generate a common answer to whether, for example, Defendant has adequate procedures in place to protect Plaintiffs and the class from the deprivation of their liberty interest. Foreshadowing the present

commonality analysis, in fact, this Court drew from the analysis of two similar cases in this District. The cases were filed by other sex offenders, yet also challenged the same purported Chicago Police Department policy. *Beley*, 2015 WL 684519, at *4, citing *Derfus v. City of Chicago*, 42 F. Supp. 3d 888 (N.D. Ill. 2014), and *Saiger v. City of Chicago*, 37 F. Supp. 3d 979 (N.D. Ill. 2014). *Derfus* and *Saiger* are objective proof of the existence of common answers.

Defendant responds that this Court will have to examine the unique facts of each interaction between the Chicago Police Department and the homeless sex offenders turned away, such as which police officer was on duty and each offender's living situation. That is not the case. *Chicago Teachers Union* instructs that a City-wide policy is appropriate for class challenge even when some decisions in the chain of acts challenged are exercised by employees at the bottom with discretion. *Chicago Teachers Union*, 797 F.3d at 436-38. In those instances, the exercise of discretion by employees at the bottom are influenced by the City-wide policy. *Id.*

Here, Plaintiffs allege that Chicago police officers uniformly targeted one component of the sex offender's living situation—whether he had a residence at the time of registration. Even assuming that the interactions between individual Chicago police officers and homeless sex offenders varied, the Chicago Police Department's purported policy nonetheless shaped those interactions, resulting in the denial of registration. For these reasons, Courts in this District certify classes challenging an alleged discriminatory policy, *see, e.g.*, *Phipps*, 249 F.R.D. at 301 (collecting cases), and this is yet another case.

3. Typicality

The commonality and typicality requirements of Rule 23(a) tend to merge. *Spano v. The Boeing Co.,* 633 F.3d 574, 586 (7th Cir. 2011). In analyzing the typicality requirement, there must be enough congruence between the named representatives' claim and that of the unnamed class members to warrant allowing the named representatives to litigate on behalf of the group. *Id.* Generally, a claim is typical if it "arises from the same event or practice or course of conduct that gives rise to the claims of the other class members," and it is based on the same legal theory. *Oshana*, 472 F.3d at 514 (internal quotations omitted). Although there may be factual distinctions between the claims of the named representatives and those of other class members, the former's claims must share the "same essential characteristics as the claims of the class at large." *Muro v. Target Corp.,* 580 F.3d 485, 492 (7th Cir. 2009) (internal quotations omitted).

Here, Plaintiffs argue, and this Court agrees, that their claims are based on the same course of conduct that affected all members of the proposed class: the Chicago Police Department's purported policy of refusing to register homeless sex offenders. In this respect, Beley and Montgomery's allegations align with the declarations from the five other cited sex offenders. Each was denied the opportunity to register because he lacked a residence, such as a shelter, but could register when he secured a residence. SAC ¶¶ 6-8, 10, 13, 19-21; Hartage Decl. ¶ 2; Kelly Decl. ¶¶ 3-4, 10; McDonald Decl. ¶¶ 3-4; Mowder Decl. ¶¶ 2-3, 6; Williams Decl. ¶ 6.

Citing another SORA case, *Johnson v. City of Chicago*, No. 12-8594, 2013 WL 3811545 (N.D. Ill. July 22, 2013), Defendant responds that individual issues surrounding each offender's criminal, residential and registration histories prevent a finding of typicality. But variation on the margin does not defeat the essential characteristic of each offender's claim, *see Muro,* 580 F.3d at 492, and this Court finds nothing in *Johnson* to defeat Plaintiff's class certification motion. Unlike in *Johnson*, 2013 WL 3811545, at *11-14, where the sex offenders conceded that the Chicago Police Department did not have a uniform policy for deciding when to waive the $100 registration fee, here, Plaintiffs maintain that there was a singular Chicago Police Department policy. The typicality requirement is satisfied.

4. Adequacy of Representation

To satisfy the adequacy of representation requirement, Plaintiffs must show that they will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). In assessing adequacy, this Court must determine whether Plaintiffs have: (1) antagonistic or conflicting claims with other members of the class; (2) a sufficient interest in the outcome of the case to ensure vigorous advocacy; and (3) counsel who is competent, qualified, experienced and able to vigorously conduct the litigation. *Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 613 (N.D. Ill. 2009). Defendants do not challenge this element, and this Court finds from its own independent review of the record that Plaintiffs have satisfied their adequacy of representation burden. This Court, in particular, sees no reason to doubt the adequacy of Plaintiff's counsel in this case. *See, e.g.*, *Streeter*, 256 F.R.D. at 614

(finding the same counsel to be fit to serve as class counsel); *Jackson v. Sheriff of Cook County*, No. 06-493, 2006 WL 3718041, at *5 (N.D. Ill. Dec. 14, 2006) (same).

B. Rule 23(b)(3)

1. Predominance

The predominance requirement of Rule 23(b)(3) tests whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997). The predominance requirement, although similar to questions of commonality and typicality, is more demanding than either of those Rule 23(a)(2) requirements. *Id.* at 623-24. When a proposed class challenges a uniform policy, as here, the validity of that policy tends to be the predominant issue in the litigation. *Streeter*, 256 F.R.D. at 614; *Herkert v. MRC Receivables Corp.*, 254 F.R.D. 344, 352 (N.D. Ill. 2008). If individual issues predominate, however, a class action is not a superior method for adjudication, and certification should be denied. *Szabo*, 249 F.3d at 675.

Here, Defendant argues that individual issues regarding each sex offender's attempts to register preclude a finding of predominance. This Court disagrees for the reasons stated above. In short, Plaintiffs' claims turn on the uniform manner in which the Chicago Policy Department purportedly refused to register homeless sex offenders regardless of their individual circumstances, and that issue predominates over any individual issues. Likewise, in *Streeter*, 256 F.R.D. at 614, the Court collected cases finding the predominance requirement satisfied when the proposed class challenged a uniform policy. Similar to here, the uniform policy in *Streeter*

was the Sheriff of Cook County's group strip search policy for male detainees returning to Division 5 of the Cook County Jail after court proceedings. *Id.* at 611, 614. The Chicago Police Department's purported registration policy thus predominates in this litigation.

Defendant also argues that damages will be individualized. Defendant does not substantiate that claim, and it is premature for this Court to forecast the nature of class damages. In any event, if damages turn out to be individualized, it may be appropriate for this Court under Rule 23(c)(4) to address liability on a classwide basis and damages on an individual basis. *See Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 800-01 (7th Cir. 2013) (recommending this approach as opposed to denying class certification). This bifurcated approach is "very common." *Otero v. Dart*, 306 F.R.D. 197, 207 (N.D. Ill. 2014) (internal quotations omitted); *see also Messner*, 669 F.3d at 815 (collecting cases). Individualized damages thus are not a bar to class certification at this point in the proceedings.

2. Superiority

The second requirement under Rule 23(b)(3), superiority, requires Plaintiffs to show that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). A class action is superior when, as here, "the judicial economy from consolidation of separate claims outweighs any concern with possible inaccuracies from their being lumped together in a single proceeding for decision by a single judge or jury." *Mejdrech v. Met-Coil Systems Corp.*, 319 F.3d 910, 911 (7th Cir. 2003).

Here, the efficiency in the class action mechanism derives from having to answer the common questions of fact and law just once. This is a real (and not just hypothetical) savings in the context of the factual and legal issues brought in this case, as at least two other SORA cases already have been filed in this District and already have engendered overlapping factual and legal analysis. *See Saiger v. City of Chicago*, No. 13-5590 (N.D. Ill.); *Derfus v. City of Chicago*, No. 13-7298 (N.D. Ill.). With regard to superiority, Defendant simply repeats its argument that the claims here are fact intensive. That argument already has been considered and rejected. The superiority requirement is satisfied.

IV. Conclusion

Plaintiffs' class certification motion [117] is granted. This Court certifies the following class:

> All persons who attempted to register under the Illinois Sex Offender Registration Act with the City of Chicago from December 6, 2010 to the date of entry of judgment and who were not permitted to register because they were homeless.

This Court designates Plaintiffs Michael Beley and Douglas Montgomery as the class representative. This Court appoints Thomas G. Morrissey and Patrick W. Morrissey of Thomas G. Morrissey Ltd. and Kenneth N. Flaxman and Joel A. Flaxman of Kenneth N. Flaxman P.C. as class counsel.

This case is set for a status hearing on December 10, 2015 at 9:45 a.m. in Courtroom 1725. In light of this Court's ruling, the parties are directed to meet and confer regarding any current settlement possibilities prior to the December 10, 2015 status hearing.

Dated: December 7, 2015

Entered:

United States District Judge

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CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on May 10, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Patrick Morrissey

☐

CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:	address:
_____	_____
_____	_____
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s/_____