No. 17-1449

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MICHAEL BELEY and DOUGLAS MONTGOMERY, individually and for a class,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 12-cv-9714
The Honorable John Robert Blakey, Judge Presiding

BRIEF OF DEFENDANT-APPELLEE

EDWARD N. SISKEL
Corporation Counsel
of the City of Chicago
30 N. LaSalle Street, Suite 800
Chicago, Illinois 60602
(312) 742-4961

BENNA RUTH SOLOMON
Deputy Corporation Counsel
MYRIAM ZRECZNY KASPER
Chief Assistant Corporation Counsel
JONATHON D. BYRER
Assistant Corporation Counsel
Of Counsel

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JURISDICTIONAL STATEMENT

The jurisdictional statement of plaintiffs-appellants Michael Beley and Douglas Montgomery is not complete and correct.[1] Plaintiffs filed suit against the City of Chicago, alleging violations of equal protection, the First Amendment, and procedural due process pursuant to 42 U.S.C. § 1983, and violations of Illinois law. R. 46. The district court had jurisdiction over plaintiffs' equal protection and First Amendment claims under 28 U.S.C. § 1331, and the state-law claim pursuant to 28 U.S.C. § 1367. Plaintiffs' procedural due process claim asserted only that the City had "knowingly disregarded" a "state regulatory scheme." R. 46 at 6 ¶28. This court has described procedural due process claims that concern only the proper application of state law, as matters for state courts and therefore outside the jurisdiction of the federal courts. E.g., Taake v. County of Monroe, 530 F.3d 538, 543 (7th Cir. 2008); Goros v. County of Cook, 489 F.3d 857, 859-61 (7th Cir. 2007). To the extent plaintiffs' procedural due process claim actually arises under state law, the district court had supplemental jurisdiction over that claim pursuant to 28 U.S.C. § 1337.

The district court dismissed plaintiffs' equal protection and First Amendment claims with prejudice on February 17, 2015. R. 112. Plaintiffs "acquiesce[d] in judgment" against them on what they designated their state-law claim on October 20, 2016. R. 165 at 2. The district court granted summary judgment for the City on

[1] We cite plaintiffs' opening brief as "Beley Br. __," and the record as "R. ___." We refer to plaintiffs collectively unless otherwise noted.

plaintiffs' procedural due process claims on February 28, 2017, R. 182, and entered judgment for the City that same day, R. 183. Plaintiffs filed a notice of appeal on March 1, 2017. R. 184. This court has jurisdiction over this appeal from a final judgment pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED

1. Whether the City's alleged failure to comply with a state statute regarding the registration of sex offenders violates the Due Process Clause.

2. Whether the City's enforcement of a state statute constitutes a municipal policy for purposes of Monell.

3. Whether Beley and the other plaintiffs who were never arrested or prosecuted can maintain a procedural due process claim premised on a deprivation of liberty.

4. Whether due process requires additional procedures during the sex offender registration process, where such procedures will not discernibly improve the factual accuracy of registration decisions and will impose a substantial financial burden on municipalities throughout Illinois.

5. Whether adequate post-deprivation remedies were available under state law to remedy an erroneous denial of registration.

STATEMENT OF THE CASE

Illinois enacted the Sex Offender Registration Act ("SORA"), 730 ILCS 150/1, et seq., in 1986. Under that Act, any individual who meets the definition of a sex

offender, see id. 150/2(A), and resides in Chicago for "a period of time of 3 or more days" must register "at a fixed location designated by the Superintendent of the Chicago Police Department," id. 150/3(a)(1). A sex offender must "register in person," and must provide at the time of registration his

> current photograph, 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, extensions of the time period for registering as provided in this Article and, if an extension was granted, the reason why the extension was granted and the date the sex offender was notified of the extension. The information shall also include 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.

Id. 150/3(a). The offender must provide additional information if he is considered a child sex offender as defined in the criminal code. Id. If the offender "lacks a fixed residence," he "must report weekly, in person," and the registering agency must "document each weekly registration to include all the locations where the person has stayed during the past 7 days." Id. At the time of registration, "any person" required to register as a sex offender "shall provide positive identification and documentation that substantiates proof of residence," and must pay a $100 annual processing fee unless indigent. Id. (c)(5) & (6). A child sex offender must also sign a

statement "that he or she understands that according to Illinois law as a child sex offender he or she may not reside within 500 feet of a school, park, or playground." Id. 150/8(a). A registering agency "shall verify the address of sex offenders . . . required to register with their agency at least once per year." Id. 150/8-5(a). Failure to register is a felony, punishable by a minimum jail term of seven days and a minimum fine of $500. Id. 150/10(a). In addition, the Director of State Police, "consistent with administrative rules, shall extend for 10 years the registration period of any sex offender . . . who fails to comply with [SORA]." 730 ILCS 150/7.

In 1995, Beley was convicted of aggravated criminal assault of a victim under the age of 13. R. 163 at 1.[2] He was released from prison on November 19, 2012. Id. at 4. Beley is classified as a "child sex offender," id. at 1, and, on November 20, 2012, he went to Chicago Police Department ("CPD") headquarters to register, id. at 4, bringing with him his prison release papers, R. 172 at 3. Beley was informed that could not register because he lacked identification, R. 163 at 4, and the $100 registration fee, R. 172 at 3-4, and CPD's criminal registration log indicates that Beley was not registered because he lacked proof of his address, id.; R. 163 at 4. Beley attempted to register again on November 23, 2012, but was not permitted to register because he lacked identification, R. 172 at 4, and was referred to a shelter, id; R. 163 at 4-5. Beley then obtained an identification card bearing his son's address, but when he attempted to register with that address on November 28, 2012, he was denied registration because the address was in a location off-limits to

[2] Because the facts surrounding the attempts of Beley and Montgomery to register are undisputed, we cite the parties' statements of undisputed material facts.

child sex offenders under state law. Id. at 4-5; see 720 ILCS 5/11-9.3. Officers referred Beley to several possible places he could stay, and he eventually came to reside at the Franciscan Annex homeless shelter at 200 S. Sacramento Boulevard. Id. at 5. Beley then obtained an Illinois identification card listing 200 S. Sacramento Boulevard as his address, and successfully registered on December 11, 2012. Id. Beley has successfully registered at all required intervals since that day. Id.

In 1991, Montgomery was convicted of aggravated criminal sexual assault. R. 163 at 1-2. Montgomery was released from prison on January 21, 2011. Id. at 5-6. Montgomery was aware of his obligation to register, but the "first thing" he did upon arriving in Chicago after his release was purchase alcohol; he then met with an old friend, with whom he used cocaine and drank alcohol. Id. Montgomery then traveled to Evanston to meet with family, but fell ill before he arrived – Montgomery had a preexisting heart condition that was aggravated by cocaine and alcohol use. Id. He was hospitalized from January 22, 2011, through January 27, 2011. Id. at 6. A social worker contacted CPD to report that Montgomery had been hospitalized, and was advised that, upon his release, Montgomery should bring his hospital paperwork to be registered. Id.

On January 27, 2011, Montgomery went to CPD with his hospital discharge papers and a sex offender notification form he had received upon his release from prison and attempted to register, R. 163 at 6; R. 172 at 7, under the alias "Douglas McArthur," R. 163 at 6. Montgomery had used aliases and false social security

numbers in the past, and had not had an Illinois identification card for several years at the time he attempted to register. R. 163 at 6. The registering officer informed Montgomery that he could not register without identification, and marked in the registration book that Montgomery was denied registration for lack of an address. Id.; R. 172 at 7. Montgomery was "pissed off" that he had been denied registration, so he went drinking. R. 163 at 6. Montgomery never obtained identification and did not attempt to register again. Id. On July 13, 2011, Montgomery was arrested for violating several City ordinances, and was charged with violating SORA. Id. at 7.

Beley and Montgomery then filed this suit, "seek[ing] to impose liability on the City under 42 U.S.C. § 1983 for its policy of refusing to permit homeless persons to register every 7 days under [SORA]." R. 46 at 1. Beley and Montgomery alleged that the City "does not provide notice of [this] policy, nor . . . a meaningful opportunity to be heard when a person is denied registration." Id. at 2. Beley and Montgomery further alleged that they were not allowed to register "because of a [City] policy . . . that persons who did not have a fixed place of abode may not register under SORA." Id. at 2, 4. According to Beley and Montgomery, SORA "creates a property right for persons without a fixed place of abode to . . . register[ ] every 7 days" and the City "knowingly disregards this state regulatory scheme causing plaintiffs and similarly [sic] persons to be deprived [of] procedural due process." Id. at 6. Beley and Montgomery also alleged as a "State Law Claim" that the City "knowingly disregards SORA and leaves homeless persons unable to

comply with the state's regulatory scheme." Id. The district court later certified this suit as a class action, on behalf of "[a]ll 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 lacked a residence at the time of registration." R. 138 at 7.

After the close of discovery, the parties filed cross-motions for summary judgment. R. 159, 164. The City argued (1) that plaintiffs had not been denied a property right to register under SORA because they had failed to comply with SORA's registration requirements, R. 160 at 7-10; (2) that plaintiffs had adequate post-deprivation remedies in state court, id. at 10-11; and (3) that plaintiffs had failed to prove that their injuries were the result of a municipal policy, id. at 11-14. Plaintiffs argued that the evidence showed that CPD's interpretation of SORA was "contrary to Illinois Supreme Court's decision in [People v. Molnar, 857 N.E.2d 209 (Ill. 2006)]," R. 165 at 12, and imposed a requirement of "government identification with a 'fixed address'" that was "not found in SORA," id. at 13. Plaintiffs further argued that the district court's ruling on the City's motion to dismiss had "already determined" that the denial of SORA registration was a denial of liberty, id. at 10, and already resolved the first two factors of the Mathews v. Eldridge, 424 U.S. 319 (1976), procedural due process analysis in plaintiffs' favor, id. at 10-11. Regarding the third Mathews factor, plaintiffs noted that the City's Department of Administrative Hearings ("DOAH") "is open weekdays and on Saturday from 9 a.m. to 3 p.m.," and declared that "[t]here is no reason why the City of Chicago is unable

to extend the curtesy [sic] of a hearing to sex offenders denied registration within the existing structure of" DOAH. Id. at 13-14.

The City noted that plaintiffs' sole complaint was that the City was improperly "implementing the statute," and that municipal enforcement of state law cannot support municipal liability under Monell, R. 170 at 2-4 (citing Surplus Store & Exchange, Inc. v. City of Delphi, 928 F.2d 788 (7th Cir. 1991)). The City also reiterated that plaintiffs had an adequate state remedy for an erroneous denial of registration, namely, an action for mandamus in state court, id. at 7-8, and that plaintiffs could not prove that their injuries were the result of a municipal policy, id. at 8-9. Plaintiffs replied that they were entitled to summary judgment because Beley and Montgomery were "denied registration for [an] improper reason." R. 173 at 11 (heading; bolding and capitalization omitted). Specifically, they complained that Montgomery "was denied registration . . . even though he presented affirmative information to the CPD to satisfy SORA's 'positive identification' requirement," id., and that "Beley had a similar registration experience" when he was not allowed to register until he presented a state identification card with an address, id. at 12-13. Plaintiffs again complained that CPD was misinterpreting SORA's requirement of "positive identification," claiming that positive identification is required only for individuals "lacking a residence at the time of registration," that "positive identification does not necessary [sic] require . . . a valid government issued ID," and that the positive identification requirement could be "satisfied by review of a photograph on file with a law enforcement database," id. at 4-5. "Despite SORA's

clear language, the CPD required all sex offenders seeking registration during the class period to produce a government issued ID with an address." Id. at 5. Only "after years of litigation," plaintiffs argued, did "CPD reform[ ] its registration procedure to comport with SORA." Id. at 7. Plaintiffs further argued that Surplus Store was inapposite because it concerned a policy of "allowing or instructing its police officers to enforce the challenged statutes," while plaintiffs' claim was that the City was not complying with its "obligations . . . under SORA." Id. at 8-9 (quotation marks omitted). Finally, plaintiffs argued that the district court's ruling on the City's motion to dismiss had rejected mandamus as an adequate remedy, that adequate post-deprivation remedies were irrelevant because plaintiffs had "allege[d]" a municipal policy, and that the City had not explained why a pre-deprivation remedy was infeasible or impractical. Id. at 9-10.

The district court denied plaintiffs' motion for summary judgment and granted the City's. R. 182. The court considered "dispositive" the question whether there was "sufficient evidence of a 'policy' or 'custom' . . . to support municipal liability." Id. at 12-13. Noting that plaintiffs had to present facts showing that unconstitutional conduct was so pervasive that the City itself either knew or should have known of that conduct, id. at 16-17, the court concluded that plaintiffs had failed to make such an evidentiary showing, id. at 17-24. In particular, the court noted that the denials of registration about which plaintiffs complained "pale in comparison" to the "thousands of registrations" performed at CPD each year. Id. at 18. In addition, the court observed that the record showed "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." Id.

SUMMARY OF ARGUMENT

Plaintiffs bring a procedural due process claim premised on the notion that the City's manner of registering sex offenders without a fixed residence violates a state law, SORA. That claim fails for several independent reasons. To begin, it is well settled that a challenge to a government's interpretation and administration of state law is not cognizable in procedural due process. Plaintiffs' Monell claim also fails because they cannot show a municipal policy with respect to the City's enforcement of SORA. The City's mere enforcement of Illinois policy as set forth in SORA is not an independent City policy. In any event, the district court correctly recognized that, on this record, no reasonable jury could find that the City had any policy of violating SORA.

In addition, plaintiffs' underlying due process claim fails on the merits, for a number of reasons. To start, Beley and any other members of the class who were never arrested cannot show that they were ever deprived of their liberty, as necessary to bring a claim for procedural due process, because the mere denial of SORA registration without a subsequent arrest or prosecution is not a deprivation of liberty. Regardless, plaintiffs do not claim that any material factual disputes arose during their unsuccessful attempts to register, and due process does not require any additional procedural protections absent an actual dispute of material

fact. Failure to provide an unnecessary hearing does not violate due process. Finally, adequate post-deprivation remedies were available to plaintiffs in state court through an action for mandamus or for a declaratory judgment. The availability of such remedies defeats any procedural due process claim. Summary judgment was proper and can be affirmed on any of these grounds.

ARGUMENT

Plaintiffs purport to bring a procedural due process claim against the City pursuant to Monell.[3] To succeed on such a claim, plaintiffs had to establish (1) that their right to procedural due process was violated; and (2) that this constitutional violation was caused by a policy attributable to the City. This court reviews the grant of summary judgment de novo, and will affirm if no reasonable jury, drawing in plaintiffs' favor all reasonable factual inferences from the record, could conclude that they met their burden of proof. United States ex rel. Yannacopoulos v. General Dynamics, 652 F.3d 818, 823 (7th Cir. 2011).

The judgment can be affirmed on any of several independent grounds. First, plaintiffs' supposed procedural due process claim is nothing more than a complaint that the City has misapplied Illinois law. A violation of state law is not a federal due process violation. Second, SORA's alleged lack of procedural protections is attributable solely to the State. The City's mere enforcement of SORA cannot form the basis for municipal liability under Monell. Third, plaintiffs in any event did not

[3] Plaintiffs do not challenge the district court's disposition of their other claims. This waives any argument regarding those claims, so we do not address them further.

adduce proof of a City policy to misapply SORA to the homeless. Fourth, Beley and the other class members who were never arrested or prosecuted were not deprived of any liberty, and thus cannot assert a due process violation at all. Fifth, due process does not require a hearing to challenge SORA registration decisions because registration involves only the provision of basic biographical information by the registrant and will infrequently, if ever, involve the resolution of any material factual disputes. At the same time, additional fact-finding procedures for registration would impose significant financial burdens on Illinois municipalities, and will significantly delay the registration process. Sixth, and finally, Illinois law provides adequate procedures for sex offenders to address a supposed violation of SORA by the City, through a petition for mandamus or an action for a declaratory judgment. That amply satisfies due process.

I. PLAINTIFFS' CLAIM THAT THE CITY MISAPPLIED ILLINOIS LAW IS NOT A COGNIZABLE DUE PROCESS CLAIM.

A "[m]ere violation of a state statute does not infringe the federal Constitution. And state action, even though illegal under state law, can be no more or less constitutional under the Fourteenth Amendment than if it were sanctioned by the state legislature." Snowden v. Hughes, 321 U.S. 1, 11 (1944) (citations omitted); accord Olim v. Wakinekona, 461 U.S. 238, 250-51 (1983); Osteen v. Henley, 13 F.3d 221, 225 (7th Cir. 1993) ("a violation of state law . . . is not a denial of due process, even if the state law confers a procedural right"). Likewise, a misinterpretation of state law is not cognizable in due process. E.C. Atkins & Co. v.

Dunn, 38 F.2d 403, 405 (7th Cir. 1930) (quoting Thompson v. Kentucky, 209 U.S. 340, 346 (1908)).

As this court explained in Archie v. City of Racine, 847 F.2d 1211 (7th Cir. 1988) (en banc), "to treat a violation of state law as a violation of the Constitution is to make the federal government the enforcer of state law," id. at 1217.

> State rather than federal courts are the appropriate institutions to enforce state rules. Indeed, "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 106 (1984). Pennhurst held that federal courts lack the authority to direct state officials to comply with state law.

Id. This is settled law. E.g., Mid-American Waste Systems, Inc. v. City of Gary, 49 F.3d 286, 290 (7th Cir. 1995) ("[T]he due process clause does not require, or even permit, federal courts to enforce the substantive promises in state laws and regulations."); River Park, Inc. v. City of Highland Park, 23 F.3d 164, 166-67 (7th Cir. 1994) ("Failure to implement state law violates that state law, not the Constitution; the remedy lies in state court."); Stern v. Tarrant County Hospital Dist., 778 F.2d 1052, 1056 (5th Cir. 1985) ("Converting alleged violations of state law into . . . due process claims improperly bootstraps state law into the Constitution," and "doing so . . . would serve no legitimate policy"); Beary Landscaping, Inc. v. Ludwig, 479 F. Supp. 2d 857, 868-69 (N.D. Ill. 2007) (attempt to litigate state law violations via due process is a "fundamentally defective" attempt to adorn a state-law claim with "constitutional 'window dressing' in order to circumvent [a] basic limitation on section 1983 actions"); cf. Gosnell v. City of Troy,

59 F.3d 654, 658 (7th Cir. 1995) ("the due process clause does not require a state to implement its own law correctly," nor does it "insist that a local government be *right*; whether its acts were proper . . . are staples of litigation under state law"). Particularly relevant here, this court recently rejected the notion "that an individual is entitled to process to challenge the legal determinations made by the authority charged under state law with administering a sex offender statute." Murphy v. Rychlowski, No. 16-1662, 2017 WL 3573779 at *4 (7th Cir. Aug. 18, 2017).

These principles foreclose plaintiffs' due process claim, which is plainly nothing more than a dispute about the proper application of Illinois law. Indeed, plaintiffs' theory is that the City implemented a blanket "policy . . . of refusing to register 'homeless' sex offenders," Beley Br. 17; R. 173 at 4; accord id. at 9 ("plaintiffs allege . . . that it was an established procedure of the City to deny homeless sex offenders the opportunity to register" (quotation marks omitted)), by misinterpreting and misapplying the provision of SORA requiring registrants to provide "positive identification" and "documentation that substantiates proof of residence" when registering, see, e.g., R. 173 at 4-5. Plaintiffs have consistently described their claim this way:

- Plaintiffs' response to the City's motion to dismiss repeatedly complained that the City was disregarding SORA, R. 29 at 6-7, 11, 16, by denying them registration "[d]espite the explicit language in [SORA]," id. at 7.

- Plaintiffs' second amended complaint alleged that the same "knowing[ ] disregard[ ]" of SORA underlying plaintiffs' state-law claim also gave rise to a procedural due process claim. R. 46 at 6 ¶28.

- Plaintiffs' response to the City's subsequent motion to dismiss complained that "the City has a policy to disregard state law," R. 55 at 10, and has "knowingly disregard[ed] state law," id. at 11.

- Plaintiff's initial motion for injunctive relief demanded that the City "develop and implement consistent and uniform procedures for registering homeless persons that comport with the state . . . law," R. 62 at 5 (emphasis omitted), arguing that "[t]he City must strictly adhere to state law when presented with a person seeking to register as a sex offender," id. at 7.

- Plaintiffs' renewed motion for injunctive relief complained that "[t]he City does not comply with SORA's requirement[s]." R. 72 at 2.

- On summary judgment, plaintiffs argued that they were challenging the City's "policy to deny registration pursuant to [SORA]," R. 165 at 1; argued that the City's interpretation of SORA conflicted with the Illinois Supreme Court's own interpretation, id. at 12, and imposed a "fixed address" requirement "not found in SORA," id. at 13; complained that the City's interpretation of SORA to require government-issued identification violated the "primary rule of statutory construction," R. 173 at 5; and distinguished Surplus Store, which held that municipal enforcement of state law cannot support municipal liability under Monell, on the ground that plaintiffs' complaint was with the City's *failure* to properly enforce state law, id. at 8-9.

- In their opening brief on appeal, plaintiffs identify the issue before this court as whether plaintiffs offered sufficient proof that the City acted "in contravention of SORA," Beley Br. 1; discuss at some length the development of the City's interpretation of SORA's requirements, id. at 15-17; complain that the City "refus[ed] to register 'homeless' sex offenders despite its obligations to do so under [SORA]," id. at 17; complain that they were not given a fair opportunity to rebut the City's interpretation of SORA to require "identification with an address," id. at 20; argue that the City's current interpretation of SORA's "positive identification" requirement establishes that the City's previous interpretation was incorrect, id. at 27; and even demand a trial "on whether plaintiffs were unlawfully denied registration" under SORA, id. at 28.

Thus, it is clear that plaintiffs' claim here concerns only the proper application of SORA. The district court itself recognized as much, describing plaintiffs' procedural due process claim as a complaint that the City had "refuse[d] to register sex offenders who are homeless despite its obligations to do so under

SORA," R. 112 at 3; "disregard[ed] the registration scheme for homeless offenders created by SORA," id. at 4; and "refus[ed] to permit homeless [sex] offenders to register every seven days" in violation of SORA's "statutory exception" requiring such registration, R. 182 at 5; see also R. 126 at 3 ("Plaintiffs allege that [the City], in contravention of SORA . . . has a policy of refusing to register 'homeless' sex offenders despite its obligations to do so under the statute"). In fact, whether the City "violate[d] SORA" was even one of the "common questions" the district court found when certifying this suit as a class action. Id. at 9. For these reasons, plaintiffs' arguments that they were deprived of their supposed liberty to register, Beley Br. 18-19; and that, under the three-factor balancing test set forth in Mathews v. Eldridge, 424 U.S. 319 (1976), the City's procedures for processing SORA registrations violate due process, Beley Br. 19-20, are irrelevant. Plaintiffs' claim is not cognizable as a due process claim at all, however this court resolves either issue, because alleged state-law violations simply do not violate due process. Summary judgment for the City was therefore proper.

II. THE CITY'S ENFORCEMENT OF ILLINOIS LAW IS NOT A BASIS FOR A MUNICIPAL LIABILITY UNDER MONELL.

Plaintiffs' claim against the City fails for the additional reason that their alleged injuries are the result of Illinois policy set forth in SORA, not any independent City policy. Municipalities may not be held liable under section 1983 unless the constitutional injury was caused by an "official municipal policy." Monell v. Department of Social Services, 436 U.S. 658, 691 (1978). The mere enforcement of state law, however, can never support municipal liability under Monell. To the

contrary, "[w]hen [a] municipality is acting under compulsion of state or federal law, it is the policy contained in that state or federal law, rather than anything devised or adopted by the municipality, that is responsible for the injury." Bethesda Lutheran Homes & Services, Inc. v. Leean, 154 F.3d 716, 718 (7th Cir. 1998); accord Snyder v. King, 745 F.3d 242, 247 (7th Cir. 2014) ("To say that any such direct causal link exists when the only local government 'policy' at issue is general compliance with the dictates of state law is a bridge too far; under those circumstances, the state law is the proximate cause of the plaintiff's injury.") (collecting authority); Quinones v. City of Evanston, 58 F.3d 275, 278 (7th Cir. 1995) (same).

This principle forecloses Monell liability here. Plaintiffs argue here that the City denied them procedural due process by failing to provide a post-deprivation hearing to challenge denials of registration under SORA. Beley Br. 20. But plaintiffs also acknowledge that SORA itself "offers [no] opportunity to challenge a refusal to register a sex offender." Id. In effect, then, plaintiffs argue that SORA itself is unconstitutional, for failing to provide sufficient procedures to guard against misapplication of its provisions, and that the City should be liable under Monell for enforcing an unconstitutional statute. But this court rejected precisely that theory of Monell liability in Surplus Store. In that case, a pawn shop brought a procedural due process claim against the City of Delphi, alleging that one of its police officers had erroneously seized property from the shop and then released that property to a third party "without proper judicial hearing." 928 F.2d at 789. In

doing so, the officer had acted pursuant to three Indiana statutes governing the seizure and disposition of stolen property, "[n]one of [which] provide for a judicial hearing or other proceeding before the subject property is returned to its owner." Id. According to the pawn shop, those statutes were unconstitutional because they failed to provide adequate procedural safeguards, and the City of Delphi therefore could be liable under Monell because it had "a 'policy' of enforcing the statutes" as they were written. Id. at 791. This court rejected that theory of liability, explaining that it challenges neither the enforcement of a municipal policy that is "itself unconstitutional," nor the municipality's improper training of its employees, and observed that "[i]t is difficult to imagine a municipal policy more innocuous and constitutionally permissible, and whose causal connection to the alleged violation is more attenuated, than the 'policy' of enforcing state law. If the language and standards from Monell are not to become a dead letter, such a 'policy' simply cannot be sufficient to ground liability against a municipality." Id. at 792.

Even setting aside that, as a matter of law, a "policy" of enforcing state law cannot ever support municipal liability under Monell, the fact remains that, as the district court correctly ruled, plaintiffs could not possibly prove, by a preponderance of the evidence, the existence of the City policy they allege in this case. R. 182 at 12-24. For example, plaintiffs made much of the testimony that all sex offenders seeking registration must provide proof of address, e.g., R. 172 at 8, but this is a requirement set forth in SORA itself, which unambiguously requires that registrants provide "positive identification" and "documentation that substantiates

proof of residence," 730 ILCS 150/3(c)(5). A requirement of state law is the policy of the State itself, enforcement of which cannot be attributed to the City as a municipal policy.[4] No more helpful to plaintiffs' claim are the registration log entries showing that individuals had been denied registration because they lacked proof of address or identification, R. 172 at 16-38, which, again, only show the City's attempt – correct or not – to enforce SORA's requirement that individuals present "positive identification" and "documentation that substantiates proof of residence," 730 ILCS 150/3(c)(5). Absent proof of an independent City policy that cannot be traced to Illinois law, plaintiffs cannot establish liability under Monell.

In addition, plaintiffs seek to show a City policy regarding registration with evidence of "a widespread practice." Beley Br. 22. This required them to show a municipal practice that, "although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law." McTigue v. City of Chicago, 60 F.3d 381, 382 (7th Cir. 1995) (quotation omitted). But they did not adduce sufficient proof of a widespread practice of misapplying or misinterpreting SORA to homeless sex offenders. To withstand summary judgment, a plaintiff must identify more than a mere scintilla of supporting evidence, Delta Consulting Group, Inc. v. R. Randle Construction, Inc., 554 F.3d 1133, 1137 (7th Cir. 2009), but enough evidence such that a reasonable jury could find that he met his burden of proof by a preponderance of the evidence, Yannacopoulos, 652 F.3d at 823.

[4] Plaintiffs' allegation that the City misinterpreted or misapplied state law poses a different problem, as we explain in Part I.

Plaintiffs did not meet this burden, as the district court held. As supposed proof of a City practice so widespread, permanent, and well-settled that it could be considered a City policy, plaintiffs claim that Beley, Montgomery, and four other individuals were "required to secure an address before registering," Beley Br. 23, that eight others were registered only after they presented identification, id. at 24, and that four individuals "were turned away for being homeless," id. But as the district court explained, these isolated examples of denials of registration must be viewed against the thousands of other registrations CPD performed during the relevant time frame. R. 182 at 18. Moreover, the court observed that the registration logs on which plaintiffs rely for these examples say nothing about whether the individuals at issue were improperly denied registration in violation of SORA, rather than because they simply failed to provide information that SORA in fact requires. Id. at 21. Finally, the court noted that plaintiffs' claim of a widespread practice of denying registration to sex offenders who lacked a fixed residence was undermined by evidence that homeless sex offenders turned away on one occasion were later registered, despite still lacking a fixed residence. Id. at 18. This strongly indicated that the initial denial of registration was a random occurrence and not the result of a widespread, longstanding practice with the weight of official policy.

Plaintiffs assert that, because the City documented Beley's denial of registration with a notation that he lacked identification, a jury could infer that other individuals documented in the log books "as being denied registration for no

identification were similarly denied registration for an improper purpose." Beley Br. 23-24. That so-called inference is bare speculation, which can never defeat summary judgment. E.g., Liu v. T&H Machine, Inc., 191 F.3d 790, 796 (7th Cir. 1999). Plaintiffs also complain that the district court's analysis on summary judgment conflicts with its certification of this case as a class action, noting that they offered "much of the same evidence" at both steps in the proceedings. Beley Br. 25-27; accord id. at 23, 24. But it is well settled that certification of a claim says nothing about its ultimate merits, which are "generally irrelevant to . . . class certification." Messner v. Northshore University HealthSystem, 669 F.3d 802, 823 (7th Cir. 2012); accord Schleicher v. Wendt, 618 F.3d 679, 685 (7th Cir. 2010) (even "a certified class can go down in flames on the merits").

Plaintiffs also cast their Monell claim as involving an actionable "gap in policy," Beley Br. 24, relying on Daniel v. Cook County, 833 F.3d 728 (7th Cir. 2016) (cited at Beley Br. 21). But in Daniel, this court made clear that the notion of a "gap in policy" applies only to "gap[s] in expressed policies." Id. at 734 (emphasis added); accord Calhoun v. Ramsey, 408 F.3d 375, 380 (7th Cir. 2005) (explaining that one "way of complaining about an express policy is to object to omissions in th[at] policy"). Plaintiffs do not argue that the City had an express policy with a problematic "gap" in its coverage. Instead, they argue that the City altogether lacked any policy: they observe that the evidence showed uncertainty among CPD officers regarding how to register homeless sex offenders pursuant to SORA, Beley Br. 15; that "internal requirements for homeless sex offender registration during

the class period were admittedly uncertain," id. at 23; that until 2014 the City lacked a policy regarding acceptable registration documentation, id. at 24; and that the City "did not have a [policy regarding acceptable photo documentation] in effect during the class period," id. at 27. Characterizing the claim as directed to a "gap in policy" does not help plaintiffs.

Moreover, even where plaintiffs challenge a gap in an expressed policy, they still must establish that an unconstitutional widespread practice filled that gap. As this court explained in Calhoun, while "the absence of a policy might reflect a decision to act unconstitutionally," one must be "cautious about drawing that inference" from the mere absence of a policy. 408 F.3d at 380 (citing Board of County Commissioners v. Brown, 520 U.S. 397, 409 (1997); City of Canton v. Harris, 489 U.S. 378, 388 (1989)). For that reason, when a plaintiff "attack[s] gaps in express policies, what is needed is evidence that there is a true municipal policy at issue, not a random event." Id. In other words, such a plaintiff, like any plaintiff seeking to impose liability on a municipality, still must show the existence of a widespread, permanent, and well-settled municipal practice. McTigue, 60 F.3d at 382. This requirement makes sense, because

> [n]o government has, or could have, policies about virtually everything that might happen. The absence of a policy might thus mean only that the government sees no need to address the point at all, or that it believes that case-by-case decisions are best, or that it wants to accumulate some experience before selecting a regular course of action.

Calhoun, 408 F.3d at 380. Here, as we explain, plaintiffs did not meet the burden at summary judgment of demonstrating a municipal policy. Their Monell claim therefore fails.

III. PLAINTIFFS' PROCEDURAL DUE PROCESS CLAIM FAILS ON THE MERITS.

Plaintiffs' procedural due process claim also fails on the merits.[5] As plaintiffs recognize, see Beley Br. 18-20, such a claim requires proof (1) that they were deprived life, liberty, or property; and (2) if such a deprivation occurred, that the procedures attending that deprivation were inadequate, Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 460 (1989). As part of the second element, plaintiffs must demonstrate the inadequacy of available post-deprivation remedies. Marino v. Ameruso, 837 F.2d 45, 47 (7th Cir. 1988); accord, e.g., Leavell v. Illinois Department of Natural Resources, 600 F.3d 798, 804-05 (7th Cir. 2010); Doherty v. City of Chicago, 75 F.3d 318, 323 (7th Cir. 1996) (collecting authority). Plaintiffs' claim fails on all three fronts.

A. Beley And The Other Plaintiffs Who Were Never Arrested Or Prosecuted Suffered No Deprivation Of Liberty.

To demonstrate a deprivation of liberty, a plaintiff must show (1) a constitutionally protected interest; and (2) that he "suffered a loss of that interest

[5] In a footnote, plaintiffs assert, without explanation, that a denial of registration constitutes "outrageous government conduct." Beley Br. 21 n.7. Such cursory arguments are waived on appeal. United States v. Collins, 604 F.3d 481, 487 n.2 (7th Cir. 2010). We therefore do not address this argument further, except to note that outrageous conduct is an aspect of a substantive due process claim, see, e.g., Cairel v. Alderden, 821 F.3d 823, 833 (7th Cir. 2016), and plaintiffs bring no such claim here.

amounting to a deprivation." LaBella Winnetka, Inc. v. Village of Winnetka, 628 F.3d 937, 943-44 (7th Cir. 2010). Although "liberty" is "generally limited to freedom from restraint," Sandin v. Conner, 515 U.S. 472, 484 (1995), it "is not confined to mere freedom from bodily restraint," but "extends to the full range of conduct which the individual is free to pursue," Bolling v. Sharpe, 347 U.S. 497, 499 (1954), from among "those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men," Board of Regents v. Roth, 408 U.S. 564, 572 (1986). Here, plaintiffs assert "a constitutionally protected interest to register pursuant to SORA," Beley Br. 1, claiming that the district court identified the "interest in being able to register" as a protected liberty interest cognizable in due process, id. at 18-19 (citing Beley v. City of Chicago, No. 12 C 9714, 2015 WL 684519 at *2 (N.D. Ill. Feb. 17, 2015)).[6] But registration is a restriction on sex offenders' freedom, not a long-recognized privilege essential to the orderly pursuit of happiness. Nor can the district court's opinion be fairly read to go so far – to the contrary, it stated that the "refus[al] to register homeless sex offenders . . . jeopardizes [plaintiffs'] significant interest in freedom from liability and incarceration." Beley, 2015 WL 684519 at *2.

Although the district court thought a deprivation of liberty arose from the potential "jeopard[y]" to plaintiffs' freedom, Beley, 2015 WL 684519 at *2, the law is clear that an actual "loss" of liberty is required, LaBella, 628 F.3d at 943-44. But

[6] Plaintiffs do not argue that the denial of registration deprived them of life or property. Because arguments not made in an opening brief are waived, e.g., United States v. Magana, 118 F.3d 1173, 1198 n.15 (7th Cir. 1997), we do not address these issues further in this response.

Beley was never arrested for his failure to register. As a result, Beley – as well as any class members who, like Beley, were never arrested or prosecuted for their failure to register – cannot show the deprivation of liberty necessary to make out a due process claim.[7] As to those plaintiffs, summary judgment was appropriate without regard to the adequacy of the City's fact-finding procedures, which we address below.

B. Plaintiffs Have Not Demonstrated That The Procedures Used In Connection With Registration Are Unconstitutional.

Regardless of whether any plaintiff suffered a liberty deprivation, summary judgment was appropriate because they cannot demonstrate that the procedures attendant to that deprivation were constitutionally inadequate. Under Mathews, courts analyze the procedures used in effecting a deprivation by balancing (1) the private interest at issue; (2) the risk of an erroneous deprivation of such interest through the procedures used by the government, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's own interests, including the financial and administrative burdens that additional or substitute procedures would entail. 424 U.S. at 335. As we now explain, there is a

[7] Although a failure to register may result in the extension of the time in which a sex offender must register, 730 ILCS 150/7, only the Director of State Police has the authority to impose such extensions, id. Thus, even if the extension of a registration period constitutes a deprivation of liberty, that deprivation cannot be attributed to the City, and any deficiencies in the procedures by which the Director of State Police extends registrations as a penalty for noncompliance with SORA are properly attributable to the State, for its lack of proper procedures attendant to an extension of registration.

fundamental problem with plaintiffs' challenge to the City's procedures, and the Mathews factors weigh against plaintiffs in any event.

Critically, plaintiffs' challenge to the adequacy of the City's procedures fails because plaintiffs identify no disputed factual questions arising during registration that they believe required additional or different procedures to properly resolve. That is because plaintiffs want hearings not to resolve factual disputes that arose when they attempted to register, but to challenge the City's legal interpretation of SORA's requirements. That is not a proper basis for a hearing. "[I]t has been understood for a long time that the due process clauses do not require hearings to resolve disputes about the meaning and effect of laws [and] regulations." Goros, 489 F.3d at 859-60. Rather, such hearings are necessary only to resolve material factual disputes when they arise in the course of applying the law. Codd v. Velger, 429 U.S. 624, 627 (1977) (per curiam). Thus, absent a "disputed issue of material fact to resolve," procedural due process "does not require a hearing." Wozniak v. Cory, 236 F.3d 888, 890 (7th Cir. 2001); accord Taake, 530 F.3d at 543; Mid-American Waste Systems, 49 F.3d at 290 ("[W]hen there is no factual dispute over a condition with dispositive significance, the state need not supply a fact-finding process.").

Beyond that problem, the Mathews factors do not favor plaintiffs. To begin, although plaintiffs have a significant interest in avoiding arrest and incarceration, Beley Br. 20, the significance of the private interest, standing alone, is not

dispositive under Mathews.[8] To the contrary, the Supreme Court has emphasized that "account must be taken of the *length* and *finality* of the deprivation" at issue. Gilbert v. Homar, 520 U.S. 924, 932 (1997) (quotation marks omitted). Specifically, courts consider whether judicial review is available to challenge and remedy an erroneous deprivation. Logan v. Zimmerman Brush Co., 455 U.S. 422, 434 (1982). Here, there are ample avenues for judicial review of both an erroneous denial of registration and any subsequent resulting arrest. As we note in more detail below, see, infra, Section III-C, an individual erroneously denied registration can immediately seek judicial review in state court by filing a claim for a writ of mandamus or for a declaratory judgment, accompanied with a request for injunctive relief to prevent his arrest and prosecution during the pendency of that action. And on the off chance that an individual wrongly denied registration is arrested before he has the opportunity to challenge his denial of registration, he is constitutionally entitled to a speedy preliminary hearing to determine whether probable cause exists for his arrest, e.g., County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991), at which time he could bring to the court's and prosecutor's attention that he

[8] On this point, we also note that an individual wrongfully denied registration despite his full compliance with SORA's requirements could not be lawfully convicted for failure to register. Illinois law "adhere[s] to the fundamental principle" that no individual may be penalized for an involuntary act, People v. Grant, 377 N.E.2d 4, 8 (Ill. 1978), and a failure to register caused solely by a registration official's refusal to comply with SORA could not be considered voluntary. This is true even though failure to register under SORA is a strict-liability offense, see Beley Br. 20-21 (citing Molnar, 857 N.E.2d at 222), because, under Illinois law, the designation of an offense as one of "strict liability" means only that it "does not require proof of any particular mental state," Bohner v. Ace American Insurance Co., 834 N.E.2d 635, 640 (Ill. App. 2005) (emphasis added). It does not dispense with the requirement of a voluntary act.

attempted to register, but was wrongly denied registration under SORA. Because multiple avenues for judicial review are available to individuals denied registration under SORA, the first Mathews factor weighs against requiring additional procedural safeguards.

On the second factor, procedural due process is concerned not with "assur[ing] perfect, error-free determinations" or "preclud[ing] any possibility of error," Mackey v. Montrym, 443 U.S. 1, 13 (1979), but solely with "ensur[ing] fundamental fairness" of factual determinations, Walters v. National Association of Radiation Survivors, 473 U.S. 305, 320 (1985) (quotation marks omitted). Here, plaintiffs do not claim, nor is there is any reason to believe, that additional procedures are necessary to assure the fundamental fairness of factual determinations made during the registration process. As the Supreme Court has explained, the risk of error is particularly low when a factual determination turns on objective facts personally known or readily ascertainable by the government official making that determination, most especially when "there will rarely be any genuine dispute as to the historical facts" at issue. Mackey, 443 U.S. at 13-14; accord Murphy, 2017 WL 3573779 at *5 (weighing second Mathews factor against plaintiff where the risk of error in determining fact at issue – the existence of a criminal conviction – "is low"). That is precisely the case with SORA registrations, which depend not on a factual analysis of a prospective registrant's background or prior conduct, but on whether the registrant has provided to the officer performing the registration all the information required by SORA (*i.e.*, current photograph,

current address, current place of employment, and telephone number). The registering officer will necessarily have personal knowledge whether a prospective registrant has provided or failed to provide all that information, so it is hard to imagine what genuine factual disputes – again, the only disputes for which due process requires a hearing – might arise regarding that question.[9] The registration experiences of Beley and Montgomery illustrate this very point; there is no material dispute about what documentation and information both men presented when they attempted to register. Absent any evidence that factual disputes commonly arise during the registration process, there is no reason to believe that the City's current procedures are likely to result in erroneous resolutions of those disputes, nor that additional procedures would meaningfully prevent future erroneous factual determinations or better ensure the fundamental fairness of registration decisions.

The third Mathews factor also weighs against plaintiffs. The additional procedures plaintiffs desire – a municipal review process in which to "challenge a refusal to register," Beley Br. 20 – would impose substantial costs. Under SORA, every municipality in Illinois is responsible for registering all sex offenders residing within its borders. See 730 ILCS 150/3(a). Thus, whatever procedures the City is required to provide for sex offenders to obtain review of the erroneous denial of SORA registration, would likewise be required of every other municipality in

[9] Even if some outlier cases might arise – for example, if a prospective registrant provides the registering officer conflicting information about his address or identity – that does not strengthen the analysis for plaintiffs under Mathews, which is concerned solely with "the generality of cases" rather than "rare exceptions." Mackey, 443 U.S. at 14.

Illinois. This would entail significant taxpayer expense, as every municipality would have to enact its own procedures to govern those hearings, hire and train hearing officers, and allocate or obtain municipal facilities for those hearings. Because factual disputes relating to registration are likely to be infrequent, the expense of requiring every Illinois municipality to provide for review of registration decisions would greatly outweigh any minimal increase in accuracy that it could provide.

Compounding that problem, plaintiffs' demand that municipalities be required to provide administrative hearings in which sex offenders may challenge denials of SORA registration, Beley Br. 20, would undermine the compelling interests in requiring registration. As this court has recognized, "registration programs . . . are aimed at protecting the public" from the substantial number of sex offenders who reoffend after release, and "the government has a real and justified interest in ensuring that the public has the ability to access this registry information." Murphy, 2017 WL 3573779 at *5. An offender challenging a denial of registration would necessarily remain unregistered during that entire process, thus delaying the public access to the offender's information while he pursues his challenge. And because decisions of municipal administrative agencies are themselves subject to judicial review – either under the Illinois Administrative Review Law, 735 ILCS 5/3-102, or pursuant to the common-law writ of certiorari when such statutory review is unavailable, Hanrahan v. Williams, 673 N.E.2d 251, 253 (Ill. 1996) – that delay could be significant while a sex offender pursues his

challenge, first at the municipal level, then at the circuit court and appellate court levels on administrative review of that municipal decision. Given the low risk of any factual errors during the registration process, the length of delay plaintiffs' proposed process would entail weighs against mandating such review as a constitutional matter.

Plaintiffs' cursory arguments to the contrary are meritless. They complain that SORA does not provide "any opportunity to challenge a refusal to register a sex offender," Beley Br. 20, but SORA is a state statute, so any of its supposed procedural deficiencies are for plaintiffs to take up with the State, not grounds for a due process claim against the City. Next, plaintiffs insist there is "no evidence" that the City could not "provide a hearing" at DOAH. Id.[10] But plaintiffs, not the City, bear the burden of coming forward with evidence on this score – it is their obligation to show a genuine issue of material fact. In this case, that required plaintiffs to adduce evidence that the City could provide such a hearing at DOAH, that doing so would meaningfully reduce the chance of erroneous registration decisions, and that it would not impose a disproportionate financial burden on the City. As we have explained, the second and third of these points are against plaintiffs. And as for the first, Illinois law deprives DOAH of jurisdiction to resolve disputes over the

[10] Plaintiffs also speculate that some other unidentified "administrative arm of the City" could provide a hearing to determine the proper meaning and application of SORA. Beley Br. 20. Plaintiffs did not raise this argument in the district court, and argued only that DOAH could hear such matters. R. 165 at 13-14. Arguments not raised in response to a motion for summary judgment are waived on appeal. Laborers' International Union of North America v. Caruso, 197 F.3d 1195, 1197 (7th Cir. 1999) (collecting authority). Regardless, the lack of utility of such a hearing and the cost of providing it outweigh any benefit, as we explain above.

application of SORA. DOAH was created pursuant to section 2.1 of the Illinois Municipal Code, see Municipal Code of Chicago, Ill. § 2-14-010, which authorizes the City to create an administrative agency solely for the purpose of adjudicating violations of certain "municipal ordinance[s]," 65 ILCS 5/1-2.1-2. SORA is not a municipal ordinance, so DOAH has no authority to hear disputes over its proper application.

In short, Mathews is inapplicable and, regardless, application of its factors does not show that the City's procedures are constitutionally inadequate.

C. Adequate Post-Deprivation Remedies Are Available.

Finally, plaintiffs' claims also fail because plaintiffs did not show that adequate post-deprivation remedies are unavailable. As we note above, a plaintiff bringing a procedural due process claim must prove the inadequacy of the available post-deprivation procedures. E.g., Leavell, 600 F.3d at 805; Jefferson v. Jefferson County School System, 360 F.3d 583, 588 (7th Cir. 2004); Doherty, 75 F.3d at 323; Marino, 837 F.2d at 47. Specifically, the plaintiff must prove that the available remedies are so inadequate as to be "'meaningless or nonexistent,'" such that they "'in no way can be said to provide the due process relief guaranteed by the fourteenth amendment.'" Michalowicz v. Village of Bedford Park, 528 F.3d 530, 535 (7th Cir. 2008) (quoting Easter House v. Felder, 910 F.2d 1387, 1406 (7th Cir. 1990) (en banc)). And a remedy can be adequate even if it does not redress all aspects of a plaintiff's injuries. E.g., Hamlin v. Vaudenberg, 95 F.3d 580, 585 (7th Cir. 1996)

(prospective remedies adequate despite unavailability of monetary relief for previous injuries).

Plaintiffs cannot show the inadequacy of the remedies available to them here. Any sex offender wrongfully denied registration under SORA could request a writ of mandamus or a seek a declaratory judgment in state court. The Supreme Court has long recognized that the availability of mandamus to challenge the denial of government registration shows that the denial is not "beyond investigation in the courts." Reetz v. Michigan, 188 U.S. 505, 509 (1903). Under Illinois law, mandamus may be "used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved." People ex rel. Alvarez v. Howard, 72 N.E.3d 346, 350 (Ill. 2016). Plaintiffs themselves agree that "SORA sets forward [sic] nondiscretionary rules for the City to register persons," R. 55 at 10, and, in fact, the Illinois Supreme Court has held that "*mandamus* is an appropriate remedy to compel compliance with [SORA's] mandatory terms," People ex rel. Birkett v. Konetski, 909 N.E.2d 783, 792 (Ill. 2009). Konetski involved a judge's determination that registration was unnecessary in a juvenile case, but mandamus is equally appropriate for a refusal to register. After all, the act of registering a sex offender who has provided the necessary information is purely ministerial, and SORA does not grant a registering official any discretion whether to register a sex offender who has provided the required information. Moreover, mandamus requires the plaintiff to show "a clear right to the relief requested, a clear duty of the public official to act, and clear authority in the public official to comply with the writ,"

Alvarez, 72 N.E.3d at 350, and plaintiffs claim not only that SORA "mandates the Chicago Police Department to register" sex offenders, R. 165 at 15, but that the City violated a clear command of Illinois law to register them on the basis of the materials they presented when they attempted to register, see id. at 2-3 (arguing that SORA's requirements are clear and definite). In fact, because "[o]nly issues of law" may be considered on mandamus, People v. Castleberry, 43 N.E.3d 932, 940 (Ill. 2015), mandamus is a particularly appropriate remedy for what is, allegedly, the City's erroneous application of state law.

A sex offender believing he has been improperly denied registration could also file a claim for a declaratory judgment, seeking a binding declaration of his rights under SORA. 735 ILCS 5/2-701. An action for declaratory relief can be used to challenge "unlawful and unilateral action" done "'in a manner in contravention of statute.'" Ores v. Village of Dolton, 152 F. Supp. 3d 1069, 1087 (N.D. Ill. 2015) (quoting Fruhling v. County of Champaign, 420 N.E.2d 1066, 1069 (Ill. App. 1981)).

And along with a claim for either mandamus or declaratory judgment, a sex offender could seek temporary injunctive relief to protect against arrest or other penalty during the pendency of that litigation. Like declaratory relief, a motion for injunctive relief is available to challenge acts of public officials that are "'outside their authority or are unlawful.'" Ores, 152 F. Supp. 3d at 1087 (quoting Sherman v. Board of Fire & Police Commissioners, 445 N.E.2d 1, 6 (Ill. App. 1982)).

Plaintiffs' brief does not address the availability of post-deprivation remedies, and none of the arguments they offered below on the subject has merit. First,

plaintiffs argued that they should prevail on this issue because the district court had already denied the City's motion to dismiss on this point. R. 165 at 11-12 (citing Beley v. City of Chicago, 2015 WL 684519 at *3 (N.D. Ill. Feb. 17, 2015)). The denial of a motion to dismiss does not require the district court to also deny summary judgment, see Civil Liberties For Urban Believers v. City of Chicago, 342 F.3d 752, 767 (7th Cir. 2003), and obviously does not bind this court. Plaintiffs also noted that another district judge addressing a SORA-related procedural due process claim had denied summary judgment because the City did not show in that case that there was an adequate remedy. R. 165 at 12 (citing Johnson v. City of Chicago, 2016 WL 5720388 (N.D. Ill. Sep. 30, 2016)). Johnson is not controlling, and, regardless, erroneously puts the burden regarding the adequacy of available procedures on the defendant. It is the plaintiff who bears the burden on that question. See Leavell, 600 F.3d at 805; Jefferson, 360 F.3d at 588; Doherty, 75 F.3d at 323; Marino, 837 F.2d at 47. Plaintiffs further argued below that discretionary remedies are not adequate, R. 165 at 12, but that is not correct. A remedy is constitutionally inadequate only when it is meaningless or nonexistent. Michalowicz, 528 F.3d at 535. The mere fact that a court may decide, in the exercise of its sound discretion, not to award the relief requested does not mean that relief is unavailable, meaningless, or nonexistent. Indeed, in Reetz, the availability of mandamus was significant to the due process analysis, despite its discretionary nature, because it showed that judicial review was available. 188 U.S. at 509. Plaintiffs also argued in the district court that the City had failed to explain why

pre-deprivation process was not infeasible or impractical, R. 173 at 10, but the specific process plaintiffs think is lacking here – an opportunity for individuals already "denied registration" to challenge that decision at DOAH, Beley Br. 20 – cannot be provided before a denial of registration has occurred.

Finally, plaintiffs claimed that no post-deprivation remedy afforded by Illinois law could ever be adequate because "'one cannot say that a homeless person, who is, almost by definition, impecunious and lacking in access to social and community resources, has a ghost of a chance of being able to file a lawsuit and get a hearing before he is subject to arrest for failure to register.'" R. 94 at 2 (quoting Saiger v. City of Chicago, 37 F. Supp. 3d 979, 984 (N.D. Ill. 2014)). That argument is unfounded. It rests on the idea that a person who lacks a fixed residence can never take advantage of the judicial process. Taken at face value, this argument would seem to render inadequate all process, including the very process plaintiffs seek – a hearing at DOAH. Beyond that, Illinois courts waive court fees for individuals lacking the ability to pay, Ill. Sup. Ct. R. 298, so the lack of pecuniary resources should not be a barrier to filing suit in state court. As for the asserted lack of undefined "social" or "community" resources, plaintiffs managed to obtain counsel for this case, move for a temporary restraining order, and get this suit certified as a constitutional class action, all without these resources. And if the class representatives themselves are illustrative, there would be ample time to obtain review of an erroneous denial of registration before being arrested for failing

to register – Montgomery was not arrested until long after his unsuccessful registration attempt, and Beley was *never* arrested for his failure to register.

In sum, because state law provides adequate remedies to remedy the erroneous denial of SORA registration, plaintiffs' due process claim fails as a matter of law and summary judgment was proper.

CONCLUSION

For all of the foregoing reasons, this court should affirm the judgment of the district court.

Respectfully submitted,

EDWARD N. SISKEL
Corporation Counsel
of the City of Chicago

BY: /s Jonathon D. Byrer
Jonathon D. Byrer
Assistant Corporation Counsel
30 North LaSalle Street, Suite 800
Chicago, Illinois 60602
(312)742-4961

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)

In accordance with Fed. R. App. P. 32(a)(7)(C)(i), I certify that this brief complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B)(i) because it contains 10,401 words, beginning with the words "JURISDICTIONAL STATEMENT" on page 1 and ending with the words "Respectfully submitted" on page 37. In preparing this certificate, I relied on the word count of the word-processing system used to prepare the brief, which was Microsoft Word.

s/ Jonathon D. Byrer
JONATHON D. BYRER, Attorney

CERTIFICATE OF SERVICE

I certify that on September 11, 2017, I electronically filed the attached Brief of Defendant-Appellee 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/ Jonathon D. Byrer
JONATHON D. BYRER, Attorney