No. 18-1605

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REX ALLEN FREDERICKSON, Plaintiff-Appellee, v. TIZOC LANDEROS, Detective, Defendant-Appellant.	Appeal from the U.S. District Court Northern District of Illinois Eastern Division Case No. 11-cv-03484 District Judge Thomas M. Durkin

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Appeal from the U.S. District Court,
For the Northern District of Illinois, Eastern Division
Case No. 11-cv-03484
The Honorable Judge Thomas M. Durkin

BRIEF AND REQUIRED SHORT APPENDIX OF DEFENDANT-APPELLANT

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ORAL AGRUMENT REQUESTED

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Appellate Court No: 18-1605

Short Caption: Frederickson v. Landeros

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JURISDICTIONAL STATEMENT

Plaintiff Rex Frederickson filed a Third Amended Complaint (hereinafter "the Complaint") containing five counts against City of Joliet Detective Tizoc Landeros and other defendants. Only one of the claims against Landeros is at issue in this appeal. Counts I through IV were federal claims under 42 U.S.C. §1983 and §1985. The district court had original jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 because the claims brought against defendant Landeros present federal questions and arise under the Fourteenth Amendment to the United States Constitution. (Doc. 244.)

On January 5, 2017, Landeros filed a motion for summary judgment which argued that he had qualified immunity from Counts I-IV in the Complaint. (Doc. 208.) On March 7, 2018, the district court entered its Memorandum Opinion and Order granting Landeros summary judgment on all counts, except Count III. (Doc. 263.) Count III alleged that Landeros violated plaintiff's rights under the Equal Protection Clause. The district court held that plaintiff stated an Equal Protection claim, which was clearly established, and denied Landeros' motion for summary judgment based on qualified immunity on that count. *Id*.

The district court's denial of Landeros' motion for summary judgment based on qualified immunity is considered a final order pursuant to 28 U.S.C. § 1291. "[A] decision 'final' within the meaning of § 1291 does not necessarily mean the last order possible to be made in a case." *Gillespie v. United States Steel Corp*., 379 U.S. 148, 152 (1964). "[A] decision of a district court is appealable if it falls within 'that small class which finally determines claims of right separable from, and collateral to, rights asserted in the action….'" *Mitchell v. Forsyth,* 472 U.S. 511, 524 (1985). A decision denying qualified immunity falls within this class of orders. Qualified

immunity "is an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell*, 472 U.S. at 526. "An appealable interlocutory decision must satisfy two additional criteria: it must 'conclusively determine the disputed question,' and that question must involve a 'clai[m] of right separable from, and collateral to, rights asserted in the action.' The denial of a defendant's motion for dismissal or summary judgment on the ground of qualified immunity easily meets these requirements." *Mitchell*, 472 U.S. at 527.

Based on this principle, the denial of Landeros' motion for summary judgment based on qualified immunity is considered a final order under 28 U.S.C. § 1291, and therefore is appealable, conferring on this Court jurisdiction over the instant matter. The exception to this rule is where the defendant's entitlement to qualified immunity depends on the determination of a disputed fact material to the immunity decision. *Johnson v. Jones*, 515 U.S. 304, 319 (1995). However, the question before the Court in this interlocutory appeal is strictly a legal one that this Court can decide even accepting as true the disputed facts on which the district court denied summary judgment. Where the appealing defendant accepts the plaintiff's version of the disputed facts for purposes of qualified immunity, the court of appeals is presented a legal question on which an interlocutory appeal can proceed. *Behrens v. Pelletier*, 516 U.S. 299, 312-13 (1996). Landeros filed his Notice of Appeal on March 16, 2018, within thirty days of the district court's March 7, 2018 order denying him qualified immunity. Under Federal Rule of Appellate Procedure 4(a)(i), this appeal is timely.

STATEMENT OF THE ISSUE

Should Detective Landeros be denied qualified immunity on plaintiff's class of one Equal Protection claim merely because the trial court found evidence that he harbored animus toward plaintiff?

STATEMENT OF THE CASE

In a nutshell, this case involves plaintiff, a homeless sex offender who lived in Joliet, Illinois who claims his Equal Protection rights were violated when he registered in another village, Bolingbrook, Illinois, and Detective Tizoc Landeros of the Joliet Police Department, failed to transfer plaintiff's LEADS file to Bolingbrook.

The Illinois Sex Offender Registration Act ("SORA") requires sex offenders to personally register with the relevant law enforcement agency for the jurisdiction in which they reside. 730 ILCS 150/3. Registration requires the offender to provide certain information, including residential and work addresses. Sex offenders with a fixed address are required to register only once a year, while homeless sex offenders must register weekly and report each place they have stayed during the prior seven days. 730 ILCS 150/6.

Law enforcement agencies record SORA registration information in the Law Enforcement Agency Data System ("LEADS"), which is a statewide information database. (Doc. 208 at 6 n.3.) The jurisdiction where a sex offender is registered is said to have "ownership" of the offender's LEADS file. (Doc. 217 ¶ 19.) Only the jurisdiction that has "ownership" of a LEADS file can update the file. (*See* Doc. 209-1 at 21 (77:20-22); Doc. 196 at 23 (82:20–83:2), at 23-24 (85:10–86:2).

SORA contemplates that sex offenders can have both "residences" and "temporary domiciles," and must register in both jurisdictions. "[T]he 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." 730 ILCS 150/3 (emphasis added). Any offender who plans to be away from his registered residence for more than three days must report that absence to the law enforcement agency where he resides within three days. The sex offender must also report to the relevant law enforcement agency in the location he is visiting within three days.

Since the statute requires registration in more than one jurisdiction when a sex offender has a "temporary domicile" in addition to a "residence," but a LEADS file is only ever "owned" by one jurisdiction, it is unclear how a "temporary domicile" should be recorded in LEADS. An offender who plans to permanently move his residence must report this to both his old and new jurisdictions of residence within three days of the move. Law enforcement agencies responsible for recording SORA information are also responsible under SORA to verify that information "at least once per year." 730 ILCS 150/8-5. The statute provides assistance to law enforcement agencies to "locate and apprehend" offenders "who fail to respond to address-verification attempts or who otherwise abscond from registration." *Id.*

Joliet's Registration of Sex Offenders

Joliet had ownership, or jurisdiction, over the LEADS file of each sex offender who registered there. (Doc. 209-1, p. 75, 76). The actual registration occurred when a sex offender presented a registration form to the law enforcement agency with jurisdiction. The form information would then be placed in LEADS. According to Landeros, who was in charge of the Joliet Police Department's sex offender registration program, a police officer did not have probable cause to arrest a sex offender who was shown as non-compliant in LEADS until it was verified with the agency having jurisdiction that the sex offender actually did not register. (Doc.

209-1, p. 81). Landeros would go over the registration form with the sex offenders who registered, and discuss each area of the form with them, including the back page, which contained warnings and directions to the sex offender about their registration requirements. (Doc 209-1, p. 85-87). The registration form contained a change of address box for a person registering to indicate a new address (E.g. Doc. 209-10), and notified a sex offender that "you must register your employment or school information within three days of obtaining employment or attending a school. All changes to employment or school status must be registered within three days of the change." (E.g. Doc. 209-10). The registration form also states that within three days of changing an address a sex offender must report his new address in person with the law enforcement agency with whom he last registered. If the sex offender were to temporarily reside somewhere else for three or more days, he would also need to report that to the law enforcement in the area where he was temporarily residing. (E.g. Doc. 209-10).

The registration form states that any person required to register under SORA who "lacks a fixed residence must notify the agency with jurisdiction of the last known address within three days of ceasing to have a fixed residence and if the offender leaves the last jurisdiction of residence, the offender must within three days after leaving, register in person with the new agency of jurisdiction and must report weekly in person with the agency having jurisdiction." (E.g. Doc. 209-10). Landeros interpreted SORA to require any sex offender, including a homeless sex offender, who changed his location to come back to Joliet to register the new location. If somebody were to fail to notify Landeros that he had changed his address and moved to a new jurisdiction, and Landeros could not find that person he would seek a warrant for that person's arrest. (Doc. 209-1, p. 88-89).

Landeros interpreted the process for a sex offender's moving as requiring him to "register out" of the agency having jurisdiction, and provide a new location where he would be going. (Doc 209-1, p. 90). An accurate and up-to-date location was important so that if the police were to look for somebody they could know where to find him. (Doc 209-1, p. 94). If someone told Landeros that he was moving in the future, Landeros would advise that person to come back when he had already moved or was close to doing so. Landeros wanted the information in the form to be completely current, because the purpose of registering sex offenders was to know their whereabouts at all times. (Doc 209-1, p. 97-98). When a person came in to change his address and move to a different jurisdiction, i.e. to "register out," Landeros would put that information on their form, and after three days check with LEADS or the new jurisdiction to make sure that the sex offender actually registered there.

A sex offender registering on a weekly basis would come into the station at a designated time on a designated day of the week, and complete and sign the registration form containing information the sex offender provided. Landeros would give the offender a copy and provide a copy to the LEADS coordinator. (Doc. 209-1, p. 105). If a sex offender had new information to provide Landeros at registration, he would either write in the new information or type a new form and have the sex offender sign it. (Doc 209-1, p. 107).

Plaintiff's Registration as a Sex Offender in Joliet

Plaintiff began registering as a sex offender in Joliet in 2004. (Doc. 246 ¶ 1.) In June 2006, Detective Landeros became the Joliet Police Department's sex offender registration officer. He also handled a caseload of investigative files involving sex crimes. (Doc. 209-1, p. 32-33). Working as Joliet's sex offender registration officer was a demanding job, as more sex offenders reside in Joliet than in any other municipality in Will County. It required a significant amount of

work in visiting residences to verify information, managing mounds of paperwork, taking registrations and tracking sex offenders. (Doc 209-1, p. 44). When Landeros began as Joliet's SORA administrator, Joliet registered about 150 sex offenders per year. The number kept climbing so that at times he was registering up to 240 sex offenders per year. The job required up to 100 contacts or registrations with sex offenders every month. (Doc. 209-1, p. 45). In addition to handling sex offender registrations, Landeros also assisted other detectives in their caseloads. He considered the position of being Joliet's sex offender registration officer very challenging. SORA only outlined registration requirements, and Landeros considered many of the situations fluid. (Doc. 209-1, p. 133). He often consulted with the Illinois State Police for guidance. (Doc 209-1, p. 54-55).

Plaintiff and Det. Landeros

Plaintiff was a convicted sex offender, which required him to register for life. Landeros believed that plaintiff, as well as many other sex offenders, "didn't always go along with the program." Plaintiff would often question the constitutionality of having to register. Landeros would refer registrants with disagreements about how he administered SORA to the Illinois State Police Offender Registration Unit, whose phone number was on the back of every registration form. Landeros would also suggest they consult with an attorney to ask if his interpretation of SORA was correct.

At various times, plaintiff would ask Landeros to change information on his registration form regarding his employment. The registration form showed plaintiff's employment at Greg's Body Shop, or sometimes Greg's Auto Body, at 2221 Oakleaf, Joliet. Plaintiff would deny he was an employee of Greg's Body Shop, and insist that he worked as an independent contractor

for Greg Buccarelli, the owner of Greg's Body Shop. Landeros generally though the change requested was not necessary.

On May 15, 2008, Landeros and Joliet Detective Avila arrested plaintiff at Greg's Body Shop. (Doc. 209-1, p. 185, 192). After interviewing the manager at Greg's Body Shop, along with two employees of a hotel where plaintiff reported that he was living (Doc. 209-1, p. 187), Landeros and Avila discovered that while plaintiff claimed to be living at the Fenton Motel, he had not stayed there seventy of the days in which he was supposedly living there. (Doc. 209-1, p. 190-91). They also determined that "90% of the time, discussing with Omar [Greg's Body Shop manager], and plaintiff himself," plaintiff was actually living at Greg's Body Shop, and working there as well. (Doc 209-1, p. 191) Landeros and Avila considered plaintiff in violation of SORA by reporting that he was living at the Fenton Motel when seventy days of the registry from the Fenton Motel showed he was not living there. Also, Greg's Body Shop was within 500 feet of a school, so plaintiff's living there was a violation of SORA. (Doc., 209-1, p. 187-192). After the trial, however, plaintiff was acquitted. (Doc. 115, ¶24).

On November 13, 2010, Landeros saw plaintiff driving a truck in Joliet. Landeros knew that plaintiff had a suspended driver's license, but could not arrest him at that time because he was involved in another task. (Doc. 209-1, p. 197); (Doc. 209-11); (Doc 209-1, p. 193). Landeros later created a police report and obtained a warrant for plaintiff's arrest for driving on a suspended license. (Doc. 209-1, p. 194-195); (Doc 209-11). Plaintiff was arrested on the warrant on November 23, 2010, and was later convicted of driving on a suspended license after pleading guilty. (Doc 209-1, p. 197)

Sex Offender Registration in Bolingbrook

In Bolingbrook, the patrol officers are responsible for registering sex offenders. Detectives then are responsible only for verifying their residency. (Doc. 209-5, p. 18) Bolingbrook Detective Sean Talbot's responsibility was to check on sex offenders, which was to verify that they were actually staying where they claimed they were staying. (Doc. 209-5, p. 19). Bolingbrook's policy was that when a sex offender came to Bolingbrook to change his jurisdiction, Bolingbrook would generally make him go back to his original jurisdiction to "register out" before taking the new registration. (Doc. 209-5, p. 28). Bolingbrook expected that if a person were moving he would first notify law enforcement in the jurisdiction he was leaving. (Doc. 209-5, p. 95). If a sex offender registered out of his jurisdiction and did not show up at the new jurisdiction, it was the original jurisdiction's responsibility to put them in violation. (Doc 209-5, p. 54). However, Bolingbrook would also generally transfer a sex offender's LEADS file to another jurisdiction where he moved without requiring him to first register out of Bolingbrook.

The state requires police departments to perform an annual check to verify that sex offenders live where they claim to be living. (Doc 209-5, p. 20-21). Bolingbrook follows the state policy that requires a sex offender when leaving one jurisdiction to notify that jurisdiction that he is moving and disclose where he is moving to. The sex offender then needs to notify the department where he is moving and have his LEADS file put in moving status. (Doc. 209-5, p. 26).

February 2011

Plaintiff registered as homeless in Joliet on January 26, 2011 (Doc 209-10), and he lived homeless in Joliet between January 26, 2011 and February 2, 2011. (Doc 209-18, p. 47-48). He

registered in Joliet again on February 2, 2011, this time with an officer other than Landeros. Nowhere on his registration form did plaintiff indicate he was moving out of Joliet, or that he was not working for Greg Buccarrelli. (Doc 209-13). Plaintiff stated that as a homeless person, he could register anywhere in the State of Illinois. He believed that he was homeless everywhere, in "9 billion places (Doc 209-18, p. 85)," and that if he was physically present in Bolingbrook, he was homeless in Bolingbrook (Doc. 209-3/4 p. 69, 97), and therefore had no obligation to "to report to any fixed location under any statute or law." (Doc 209-12).

Plaintiff contends that between February 2, 2011 and February 9, 2011 he was homeless in both Joliet and Bolingbrook. Plaintiff went to Bolingbrook to register on February 9, 2011, where he met with Nicole Wlodarski, a records division employee, who then called Bolingbrook Officer Nick Schmidt to the police station to take plaintiff's registration. (Doc 209-6, p. 69). Plaintiff told Schmidt that he was on his way to Brookfield, but might stay in Bolingbrook since he might be able to get a job there. (Doc. 209-5, p. 38-39) Schmidt accepted plaintiff's registration form (Doc. 209-5, p. 40), which listed his "resident address" as "Homeless." Plaintiff did not check a box on the form for "change of address." (Doc. 209-14). Plaintiff listed his Employer as "Contractor," and after "Employee Address" he listed: "homeless – mail 2221 Oakleaf, Joliet." (Doc. 209-3/4, p. 73; Doc. 209-14). Plaintiff's registration was given to Wlodarski (Doc 209-6, p. 65), who then called Joliet because she could not put plaintiff's registration into LEADS because Joliet owned the file. (Doc 209-6, p. 66). Over the next few days, Wlordorski had three or four conversations with Joliet and was told that Joliet would not transfer ownership of plaintiff's file because they were going to investigate. (Doc. 209-6, p. 68, 96). Wlodarski passed on that information to Talbot. (Exh. D p. 97).

Landeros received the report about plaintiff's registration in Bolingbrook. He was suspicious because plaintiff still listed his contact information in Joliet and had never "registered out" of Joliet. (Doc. 209-1/2, p. 340-41). Landeros wanted to investigate before transferring ownership of plaintiff's LEADS file (Doc 209-1/2, p. 342), as he was concerned about plaintiff going back and forth between Joliet and Bolingbrook to register. (Doc. 209-2, p. 347). On February 11, 2011, Landeros put out an Intelligence Bulletin to all Joliet police officers, which stated:

> "Rex is a registered Sexual Predator and is currently registered as Homeless with the Bolingbrook PD. Rex is believed to be living at Greg's Body Shop on Oak Leaf. Rex is claiming he is homeless in Bolingbrook however gave his mailing address of 2221 Oak Leaf (Greg's Body Shop) If Rex is seen in the Joliet area an F.I. Card should be filled out and forwarded to Det. Landeros. Rex is also suspended and has been seen driving Greg's Body Shop vehicles. If he is stopped a copy of tickets form O should be placed in Det. Landeros' Mail Box."

The following day Landeros was forwarded an email from Joliet patrol officer Michael Georgantis which reported, "One of our homeless guys (George Babcock) confirmed this he's been living there [Greg's Body Shop] for a couple of years now."

Landeros communicated only with Talbot at Bolingbrook. (Doc. 209-2, p. 208-09). Talbot remembers that when he spoke to Landeros after February 9, 2011, Landeros said that he believed plaintiff was trying to "pull the wool over their eyes, and that he was not going to be homeless in Bolingbrook." Landeros said that he believed plaintiff was still living in Joliet at Greg's Body Shop. (Doc. 209-5, p. 65-66). Landeros never gave Talbot any instructions on what Bolingbrook should do when plaintiff came in to register. Talbot did not believe that Landeros ever instructed Bolingbrook not to accept Plaintiff's registration. (Doc 209-5, p. 67); (Doc 209-2, p. 229)

On February 16, 2011, plaintiff registered as homeless in Joliet. (Doc. 209-4, p. 84; Doc 209-17). That same day plaintiff went to Bolingbrook and tried to register as homeless there. His registration was refused. (Doc. 209-4 p. 83). On February 23, 2011, plaintiff again tried to register in Bolingbrook. The Bolingbrook officer who met with Plaintiff asked for proof of homelessness, to which plaintiff answered, "I'm standing here." (Doc. 209-4, p. 120).

Plaintiff's March 2011 Arrest

On March 2, 2011, Plaintiff came to the Joliet police station. Landeros was not there, so plaintiff met with Detective Avila and said he was there to turn himself in. (Doc. 209-9, p. 66). Avila called Landeros and told him that plaintiff was at the station. Landeros told Avila to register plaintiff. (Doc. 209-2, p. 261). Avila then told plaintiff he was not being arrested and that he should register. Plaintiff refused to register and left the station. (Doc. 209-9, p. 67).

On March 3, 2011, plaintiff was arrested for not reporting on March 2, 2011. (Doc. 209-3, p. 263-64). He was charged with failing to register under SORA. (Doc 209-2, p. 263-64). Plaintiff contended at his criminal trial that he was prevented from registering. (Doc. 209-9, p. 3-4). Plaintiff was convicted of failure to register. (Doc. 209-4, p. 159; Doc. 209-18, p. 105), and his conviction was affirmed on appeal.

This Lawsuit

Plaintiff filed the lawsuit that is the subject of this appeal after his conviction. His Third Amended Complaint brought five counts, against Landeros, Joliet Detective James Scarpetta, other unidentified members of the Joliet Police Department, and members of the Bolingbrook Police Department, whom plaintiff alleged assisted Landeros in preventing the transfer of plaintiff's LEADS file. Counts I-IV were brought pursuant to 42 U.S.C. § 1983. Count I alleged that defendants violated plaintiff's right to substantive due process; Count II alleged that

defendants violated his rights to procedural due process; Count III alleged that defendants violated his rights under the Equal Protection Clause, bringing a class-of-one claim against them; and Count IV alleged that defendants engaged in a conspiracy to deprive plaintiff of his constitutional rights. Count V brought a common law civil conspiracy claim.

The Joliet defendants filed a motion for summary judgment, and on March 7, 2018, the district court issued its ruling granting summary judgment for Landeros on all counts, except Count III. The court denied summary judgment on Count III because it held that a reasonable jury could find that plaintiff made a viable class-of-one claim against Landeros. It also found that Landeros was not entitled to qualified immunity, as a reasonable jury could find that his actions toward plaintiff were motivated by personal animus. Landeros filed a timely appeal of this ruling.

SUMMARY OF ARGUMENT

The district court erred in denying Landeros qualified immunity from plaintiff's class of one equal protection claim. Plaintiff's claim fails both prongs of the two-part qualified immunity analysis. The class of one theory of equal protection liability is in flux, but at a minimum it requires that the plaintiff was treated irrationally by a government actor for personal reasons. As a matter of law, Landeros did not exhibit irrational treatment of plaintiff. The district court required Landeros to find authority that clearly established that his interpretation of SORA was correct, instead of focusing on law that clearly established his interpretation was incorrect, which qualified immunity requires. The district court dismissed the importance of a significantly similar comparator to demonstrate irrational conduct, and substituted its own interpretation of the complex SORA requirements as demonstration that Landeros' interpretation was irrational.

Moreover, the district court erred in finding that Landeros violated a clearly established right. No case, statute or other guidance clearly established that Landeros' application of SORA to plaintiff's situation violated his Equal Protection of rights.

STANDARD OF REVIEW

Before the Court is an interlocutory appeal of the district court's denial of summary judgment based on qualified immunity. Summary judgment is proper "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court considers "such appeals to the extent that the defendant public official presents an abstract issue of law....such as whether the right at issue is clearly established or whether the district court correctly decided a question of law." *Allin v. City of Springfield*, 845 F.3d 858, 862 (7th Cir. 2017). The Court reviews the district court's denial of qualified immunity *de novo*. *Leaf v. Schelnutt*, 400 F. 3d 1070, 1077 (7th Cir. 2005).

ARGUMENT

DEFENDANT LANDEROS IS ENTITLED TO QUALIFIED IMMUNITY ON PLAINTIFF'S CLASS OF ONE EQUAL PROTECTION CLAIM, IN THAT THE IRRATIONAL CONDUCT ELEMENT DOES NOT EXIST, AND LANDEROS' ACTIONS DID NOT VIOLATE CLEARLY ESTABLISHED LAW.

The Supreme Court has held that police officers and other government officials have immunity from liability as long as their conduct does not violate a clearly established right at the time of the officer's or official's actions. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Determining whether a government official has qualified immunity is a two step process. *Saucier v. Katz*, 533 U.S. 194, 200-01 (2001). First, a court must decide whether the facts, taken in the light most favorable to the plaintiff, show that the officer's conduct violated a constitutional right. Second, the court must decide whether the right was clearly established at the time of the officer's alleged misconduct. *Id.*

A violation of a clearly established right requires that it "must be sufficiently clear such that a reasonable official would understand that what he is doing violates that right." *Bakalis v. Golembeski*, 35 F.3d 318, 323 (7th Cir. 1994). Therefore, public officials are entitled to qualified immunity unless "it has been authoritatively decided that certain conduct is forbidden." *Alliance to End Repression v. City of Chicago*, 820 F.2d 873, 875 (7th Cir. 1987). "This exacting standard 'gives government officials breathing room to make reasonable but mistaken judgments' by 'protect[ing] all but the plainly incompetent or those who knowingly violate the law.'" *City & Cty. of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 1774 (2015).

Courts must look to the particularized circumstances, not the general situation, when considering qualified immunity defenses. *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). If the particular facts fall within the hazy border between proper and improper, then qualified immunity should be applied. *Saucier*, 533 U.S. at 206.

In line with its broad interpretation of qualified immunity, the Supreme Court in recent years has reversed a number of lower courts which held that it did not apply. *See e.g. City and Cty. of San Francisco, Cal. v. Sheehan*, 135 S. Ct. 1765; *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014); *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011). The Court did so because qualified immunity is important to "society as a whole," and because as "an immunity from suit," it "is effectively lost if a case is erroneously permitted to go to trial.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The Court has emphasized that "clearly established law" should not be defined "at a high level of generality." *Ashcroft*, 563 U.S. at 742. Instead, it must be "particularized" to the facts of the case. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Otherwise, "[p]laintiffs would be able to convert the rule of qualified immunity…into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Id.* at 639.

Plaintiff's class of one claim against Landeros flunks both prongs of the qualified immunity test. The facts as set out in the summary judgment materials, even taken in the light most favorable to plaintiff, cannot establish a class of one Equal Protection claim against Landeros. A class of one claim requires, as its most crucial element, irrational conduct by the government actor toward a person, motivated solely by personal animus. Since the claim's invention, courts have struggled with how to prevent this nebulous Equal Protection theory from morphing into a cause of action for every grievance with the government, large or petty. *Olech v. Village of Willowbrook*, 160 F.3d 386, 388 (7th Cir. 1998), aff. 528 U.S. 562 (2000); *McDonald v. Village of Winnetka*, 371 F.3d 992, 1002 (7th Cir. 2004). The class of one claim requires objective proof, in one form or another, of irrational conduct, either through the differential treatment of a similarly situated comparator, or through the lack of any conceivable rational basis for the challenged conduct, even if based on personal animus. In the first branch of the qualified immunity test, plaintiff's claim is missing the essential element of the claim, manifestly irrational action by Landeros. Plaintiff's claim fails the second prong, a clearly established right, by an even greater margin.

A. Plaintiff's Claim Fails the First Prong of the Qualified Immunity Test

The exact elements of the class of one Equal Protection claim remain unclear, even after the many efforts taken by this Court to reach a consensus on the theory. Nevertheless, there is no dispute that wholly irrational government action is the hallmark of the claim. Even as views shift on what the claim requires, a similarly situated comparator being treated differently from how the plaintiff was treated remains the most reliable measure of what it means to be irrational. *Miller v. City of Monona*, 784 F.3d 1113, 1120 (7th Cir. 2015); *Fares Pawn, LLC., v. Indiana Dept. of Financial Institutions*, 755 F.3d 839, 847 (7th Cir. 2014). The comparators must be

significantly similar for the differential treatment to reliably reflect the irrationality of the complained of conduct. *Billington v. Village of Arlington Heights, Illinois*, 498 Fed. Appx. 572, 575 (7th Cir. 2012),[1] *Reget v. City of LaCrosse*, 595 F.3d 691, 695 (7th Cir. 2010).

The district court here gave short shrift to the comparator analysis. There was absolutely no evidence presented that plaintiff was treated any differently from any other registering sex offender. Under SORA, the municipality where the sex offender resides has jurisdiction over that sex offender. 730 ILCS 15012(D). Included in that jurisdiction is the municipality's control over the sex offender's LEADS[2] file, the online database operated by the Illinois State Police. Joliet's practice was to require a sex offender who was moving out of Joliet to register out of Joliet before it would give up its jurisdiction over that person's LEADS file.

Plaintiff's complaint of mistreatment was that when he tried to register in Bolingbrook without registering out of Joliet, Landeros would not transfer his LEADS file. There were no other situations identified in the district court where Joliet transferred a sex offender's LEADS file before he registered out of Joliet – hence, no comparators. The district court, however, in its decision denying qualified immunity, ruled that the comparator requirement was satisfied by two factors: evidence that neither Landeros nor Detective Avilla, who handled sex offender registration before Landeros took over, could remember a situation like plaintiff's, in which they had refused to transfer a LEADS file to another municipality. The district court also compared Joliet's practice to Bolingbrook's, which did not always require a sex offender to register out before relinquishing its jurisdiction over the sex offender's LEADS registration file.

Neither of those factors, however, sufficiently replaces the crucial function a true comparator serves in the class of one analysis. A comparator is supposed to reflect on the

[1] Cited pursuant to Fed. R. App. P. 32.1 and Seventh Circuit Rule 32.1
[2] Law Enforcement Agencies Data System.

rationality of Landeros' decision. But that Landeros had never run across the situation before, or did not follow the same practices as Bolingbrook, sheds no light on rationality. The district court looked for a comparator situation, but neither comparator the district court looked at shed any light on whether Landeros' refusal to immediately transfer plaintiff's LEADS file was irrational.

It is true that the absence of a true comparator does not necessarily doom plaintiff's class of one claim. *Miller v. City of Monona*, at 1120. But in the absence of differential treatment of a true comparator, one significantly similarly situated to the plaintiff, the irrationality analysis requires a finding that there could be no conceivable objective rational basis for the challenged action. *E.g. Geinosky v. City of Chicago*, 675 F.3d 743, 748 (7th Cir. 2012). The defendant's conduct must be irrational, determined by an irrefutable standard. *Enquist v. Oregon Dept. of Agriculture*, 553 U.S. 591, 602 (2008) ("What seems to have been significant in *Olech* and the cases on which it relied was the existence of a clear standard against which departures, even for a single plaintiff, could be readily assessed.")

The district court erred on the rationality element. Without a true comparator, the district court merely looked at Joliet's method of requiring a sex offender to register out, and finding no clear "register out" requirement in the complex, labyrinthine SORA statute, decided Landeros acted irrationally. The district court was concerned that Landeros testified at his deposition that he did not know whether plaintiff had truly moved to Bolingbrook, or was "scamming" someone. That testimony sheds no light on rationality. Landeros could not have known whether plaintiff had truly moved, but he did know that plaintiff did not register out of Joliet before moving his registration to Bolingbrook. The register-out procedure that Landeros enforced regarding plaintiff was not predicated on knowledge that the sex offender actually moved out of the jurisdiction, it was a standard Joliet practice.

It is also relevant to the irrationality component that Landeros did not arrest plaintiff for failure to register, or ask that a warrant be issued for plaintiff's arrest, or do anything else adverse to plaintiff, except investigate whether he really moved out of Joliet, before transferring plaintiff's LEADS file. The district court faults Landeros because SORA gives a sex offender three days to notify the jurisdiction he is moving from that he has moved to a new jurisdiction, so that when plaintiff appeared in Bolingbrook to register on February 9, 2011, he was not in violation of SORA. The statute still allowed him three days to register out of Joliet. But SORA also imposed no requirement that Landeros immediately transfer plaintiff's LEADS file to Bolingbrook. Landeros' investigation actually proved what he suspected, that plaintiff had not moved out of Joliet, but was living in Joliet at an auto body shop. And plaintiff never did register out of Joliet, even three days after he registered in Bolingbrook. So what then was irrational about Landeros' holding up the transfer of plaintiff's LEADS file?

Joliet wanted a sex offender to register out first before it relinquished its file. Plaintiff never registered out, even within three days of his first appearance in Bolingbrook, and even came back to Joliet a week later to register there, still without registering out. What was irrational about Landeros' actions? As the municipality having jurisdiction under SORA over plaintiff, Joliet, through Landeros, had an interest in assuring it could find plaintiff if it needed to do so. The district court concluded Landeros misinterpreted SORA (an arguable conclusion), because the statute only required the jurisdiction to verify a sex offender's residence once a year. Nevertheless, a constitutional violation cannot be based on misinterpretation of the law. *Hein v. North Carolina*, 135 S.Ct. 530, 540 (2014); *Thayer v. Chiczewski*, 705 F.3d 237, 247 (7th Cir. 2012). And SORA does not prohibit or place any limit on an officer ever verifying a sex offender's location. It only requires it be done at least one time each year. Plaintiff has failed

the first part of the qualified immunity test, because it cannot be concluded that Landeros refusal to immediately transfer plaintiff's LEADS file was wholly, objectively, and irrefutably irrational.

B. Plaintiff's Claim Also Fails the Second Prong of the Qualified Immunity Test

Even if the Court were to find that plaintiff has stated a class of one Equal Protection claim, Landeros has qualified immunity because he did not violate a clearly established right. There is no clearly established law making it illegal for an officer to investigate a homeless sex offender to determine whether he lives where he says he does, and then refuse to transfer a LEADS file pending the results of the investigation. The facts of this case are unusual and unique, and there is no other case where a clearly established right has been found to exist in similar circumstances. SORA is a vague and complex statute, and the district court's questioning whether Landeros was properly interpreting it supports, rather than defeats, qualified immunity. *Thayer v. Chiczewski*, 705 F.3d 237, 249 (7th Cir. 2012). "Qualified immunity will...frequently relieve state actors of the burden of litigation in this area: if discretion is broad and the rules are vague, it will be difficult to show both a violation of a constitutional right and the clearly established nature of that right."). *Del Marcelle v. Brown Cty. Corp.*, 680 F.3d 887, 915 (7th Cir. 2012) (Wood, J., *dissenting*). Any clearly established right that could be found to exist here is at best general; it cannot be credibly argued that a clearly established right particularized to the facts of this case exists.

The district court concluded that the right to "police protection uncorrupted by personal animus is clearly established." Doc. 263, p. 23-24. The district court's conclusion begs the question – it presumes it was clearly established that Landeros deprived plaintiff of police protection. The district court wanted Landeros to produce authority "supporting his contention that he was under an obligation to investigate Frederickson's residence prior to transferring ownership of his LEADS file to Bolingbrook." The question for qualified immunity, however, is

whether it was clear that Landeros was prohibited from investigating whether plaintiff actually moved before transferring his file. The district court again attacked Landeros' interpretation of how to perform Joliet's SORA enforcement, asking for "authority supporting his contention that Frederickson's failure to 'register out' from Joliet was a basis to prevent him from registering in Bolingbrook or threaten him with arrest."[3] Again, for qualified immunity the question should be whether it was clearly established that Landeros could not hold up the transfer of the LEADS file because plaintiff had not yet registered out. There was obvious uncertainty on when and under what circumstances a municipality must immediately transfer a LEADS file, which is exactly what qualified immunity protects. *Werner v. Wall*, 836 F.3d 751, 765-66 (7th Cir. 2016); *Doe v. Arlington Hts.*, 782 F.3d 911, 916 (7th Cir. 2015); *Thayer v. Chiczewski*, 705 F.3d 237 249 (7th Cir. 2012); *Lunini v. Grayeb*, 395 F.3d 761, 772 (7th Cir. 2005).

In *Saiger v. City of Chicago,* 37 F. Supp. 3d 979 (N.D. Ill. 2014) and *Derfas v. City of Chicago*, 42 F. Supp. 3d 888 (N.D. Ill. 2014), both cases decided three years after the time period in which the events at issue in the instant matter took place, police officers who rejected a homeless sex offender's registration were entitled to qualified immunity, despite each court finding the refusals to register the plaintiff unconstitutional. The court in *Derfas* found the complexity the police faced particularly unsettled, because "[h]omeless persons are, by definition, transient and lack a place of permanent accommodation; non-homeless persons have a fixed place of abode. This difference is material in considering a statutory scheme like SORA, which exists to track the whereabouts of convicted sex offenders." *Id* at 897. Far from being clearly established, those courts found questions about implementing SORA unsettled even years after 2011.

[3] The district court obviously confused the facts here, since Landeros did not threaten to arrest plaintiff for not registering out. Landeros only withheld the transfer of plaintiff's LEADS file. Nevertheless, defendant takes the facts as presented for this interlocutory appeal.

Because the law was unsettled in 2011, it is not possible for Detective Landeros to have violated a clearly established right. Courts have not been willing to find the violation of a clearly established right when the law is unsettled. *See, e.g., Thayer v. Chiczewski*, 705 F.3d 237 (7th Cir. 2012) (where the court observed that with the Seventh Circuit's "class-of-one" standard in flux, and given the uncertainty in law and unique factual situation presented, the defendant officers would be protected by qualified immunity); *Bianchi v. McQueen*, 818 F.3d 309 (7th Cir. 2016) (prosecutor and investigators were entitled to qualified immunity on malicious prosecution claim alleging that they fabricated evidence presented to a grand jury to obtain indictments, as the law was unsettled on whether the claim was cognizable as a Fourth Amendment violation).

The law did not provide Landeros with a fair warning that plaintiff had a right to have his LEADS file transferred immediately without question or investigation. No court has ever held such. Because Bolingbrook may have handled such matters differently did not create a clear standard which would have told Landeros he had no legal option but to immediately transfer the file. No reasonable official would know that he would deprive a sex offender of police protection by investigating whether a sex offender actually lived where he said he moved to before relinquishing jurisdiction by transferring his LEADS file. *See Saucier*, 533 U.S. at 202 ("The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.").

The district court also dispensed with the clearly established law prong of the qualified immunity calculus based on evidence Landeros harbored personal animus towards plaintiff. The district court, however, was quite simply wrong about that. The district court believed a fact question for the jury on animus itself precluded qualified immunity, holding that:

> "In the context of class-of-one equal protection claims like Frederickson's, the Seventh Circuit has held that the right to 'police protection uncorrupted by personal animus' is clearly established. *Hanes*, 578 F.3d at 496 (citing *Hilton v. City of Wheeling*, 209 F.3d 1005, 1007 (7th Cir. 2000) ('If the police decided to withdraw all protection from [the plaintiff] out of sheer malice, or because they had been bribed by his neighbors, he would state a claim . . . .'). Thus, qualified immunity is unavailable to a police officer who 'deliberately sought to deprive [a plaintiff] of the equal protection of the laws for reasons of a personal nature unrelated to the duties of the defendant's position.' *Hilton*, 209 F.3d at 1008." *Frederickson v. Landeros*, No. 11 C 3484, 2018 WL 1184730, at *10 (N.D. Ill. Mar. 7, 2018).

The district court held that "Frederickson's Equal Protection Right to 'police protection uncorrupted by personal animus' is clearly established," and because a reasonable jury could find that Landeros displayed animus towards plaintiff, summary judgment was not warranted. *Id.* at 8.

The district court's analysis ignores the legal, objective, question on which qualified immunity turns, finding a fact question on whether police action was accompanied by animus defeats qualified immunity. In *Kurtis B. v. Kopp*, 725 F.3d 681, 682 (7th Cir. 2013), this Court rejected that very conclusion. The Court disagreed with the plaintiff's argument that the legal analysis of whether a class of one claim exists ends with evidence of animus. "Here, the complaint alleges an improper subjective purpose – political favoritism – but it also discloses an objective rational basis for the disparate treatment." Despite plaintiff's claim of animus, there is no clearly established law that plaintiff had an immediate right to have his LEADS file transferred, or that a decision by Landeros to investigate before transferring the file was objectively irrational.

The district court cited *Hilton v. City of Wheeling*, 209 F.3d 1005 (7th Cir. 2000), to support a clearly established right to protection from corrupt police conduct. But *Hilton* addressed a simple police quandary of when to make arrests in the face of constantly quarreling neighbors. Even then, the Court found the defendant officers had quality immunity, so that the too

generalized observation about a clear right to police protection free from corruption is nothing more than dicta.

Hilton gives no guidance for the complexity at issue in this case. The district court never addressed the circumstance here, where there is no clearly established objective standard to show that the police action was corrupt. There are many situations where a police officer may be accused of animus – where the officer has arrested or investigated the plaintiff multiple times, or had some other run-in with the plaintiff that created at least arguable evidence of animus. The officer surely does not lose the benefit of qualified immunity simply because of that history. This is not in line with the Supreme Court's qualified immunity decisions and certainly does not give officers much discretion or breathing room.

CONCLUSION

The district court erred in denying defendant Landeros' motion for summary judgment. Landeros is entitled to qualified immunity, as there was a clear, conceivable and objective rational basis for his actions, and no prior case or other law established plaintiff had a clearly established right to any other response from Landeros.

For all of the foregoing reasons, Defendant Tizoc Landeros respectfully requests that this Court reverse the district court's judgment and grant summary judgment in his favor on Count III.

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)

1. This brief complies with the type volume limitation of FED. R. APP. P. 32(a)(7)(B) because: this brief contains 9,099 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because: this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2007 in 12-point Times New Roman font.

Dated: August 2, 2018

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CERTIFICATE OF SERVICE
Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on **August 2, 2018**, 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.

By: /s/ Thomas G. DiCianni
Attorney for Detective Tizoc Landeros

4827-9375-7551, v. 1

No. 18-1605

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REX ALLEN FREDERICKSON,

Plaintiff-Appellee,

v.

TIZOC LANDEROS, Detective,

Defendant-Appellant.

Appeal from the U.S. District Court
Northern District of Illinois
Eastern Division

Case No. 11-cv-03484

District Judge Thomas M. Durkin

Appeal from the U.S. District Court,
For the Northern District of Illinois, Eastern Division
Case No. 11-cv-03484
The Honorable Judge Thomas M. Durkin

REQUIRED SHORT APPENDIX OF DEFENDANT-APPELLANT

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CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all materials required by Circuit Rule 30(a) and (b) are included in the Appendix.

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Dated: August 1, 2018

APPENDIX

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

REX ALLEN FREDERICKSON,

Plaintiff,

v.

DETECTIVE TIZOC LANDEROS AND DETECTIVE JAMES SCARPETTA,

Defendants.

No. 11 C 3484

Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

Rex Frederickson alleges that he was prevented from registering as a sex offender by Detectives Tizoc Landeros and James Scarpetta of the Joliet Police Department in violation of rights provided by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Defendants have moved for summary judgment. R. 207. For the following reasons, that motion is granted in part and denied in part.

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." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Court considers the entire evidentiary record and must view all of the evidence and draw all reasonable inferences from that evidence in the light most favorable to the nonmovant. *Ball v. Kotter*, 723 F.3d 813, 821 (7th Cir. 2013).

To defeat summary judgment, a nonmovant must produce more than "a mere scintilla of evidence" and come forward with "specific facts showing that there is a genuine issue for trial." *Harris N.A. v. Hershey*, 711 F.3d 794, 798 (7th Cir. 2013). Ultimately, summary judgment is warranted only if a reasonable jury could not return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Background

Frederickson is a convicted sex offender. R. 217 ¶ 38. Sex offenders in Illinois are required to register pursuant to the Sex Offender Registration Act ("SORA"), 730 ILCS 150.[1] Frederickson was also homeless during the time period relevant to this motion. R. 217 ¶ 4.

I. SORA

SORA requires sex offenders to personally register with the relevant law enforcement agency for the jurisdiction in which they reside. 730 ILCS 150/3. Registration requires the offender to provide certain information, including residential and work addresses. *Id.* Offenders with a fixed address are required to register only once a year, while homeless offenders must register weekly and report each place they have stayed during the prior seven days. 730 ILCS 150/6. Any offender who violates "any" provision of SORA is guilty of a felony, and will be

[1] SORA applies to two classes of convicted felons: the general class "sex offenders" and the subset "sexual predators." Frederickson's precise classification under the statute is "sexual predator." Frederickson's particular classification is irrelevant to this motion, so the Court will use the more generic terms "sex offender" or "offender."

"required to serve a minimum period of 7 days confinement in the local county jail." 730 ILCS 150/10.

Law enforcement agencies record SORA registration information in the Law Enforcement Agency Data System ("LEADS"), which is a statewide information database. R. 208 at 6 n.3. The jurisdiction where a sex offender is registered is said to have "ownership" of the offender's LEADS file. R. 217 ¶ 19. Only the jurisdiction that has "ownership" of a LEADS file can update the LEADS file. *See* R. 209-1 at 21 (77:20-22); R. 196 at 23 (82:20–83:2), at 23-24 (85:10–86:2).

SORA contemplates that offenders can have both "residences" and "temporary domiciles," and that offenders must register in both jurisdictions.[2] "[T]he 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." 730 ILCS 150/3 (emphasis added). Any offender who plans to be away from his registered residence for more than three days must report that absence to the law enforcement agency where he resides within three days.[3] The offender must also report to register with the relevant law enforcement agency in the location he is visiting within three days. *See* footnote 2 above. Since the statute requires registration in more than one jurisdiction when an offender has a

[2] "The sex offender . . . shall register . . . with the chief of police in the municipality [or sheriff in the county] in which he or she resides or is temporarily domiciled for a period of time of 3 or more days." 730 ILCS 150/3.

[3] "A sex offender or sexual predator who is temporarily absent from his or her current address of registration for 3 or more days shall notify the law enforcement agency having jurisdiction of his or her current registration, including the itinerary for travel, in the manner provided in Section 6 of this Act for notification to the law enforcement agency having jurisdiction of change of address." 730 ILCS 150/3.

"temporary domicile" in addition to a "residence," but a LEADS file is only ever "owned" by one jurisdiction, it is unclear how a "temporary domicile" should be recorded in LEADS.

An offender who plans to permanently move his residence must report this to both his old and new jurisdictions of residence within three days of the move.[4] However, Bolingbrook's records clerk and Bolingbrook Detective Talbot testified that the requirement to report a move to an offender's old jurisdiction is often not enforced. R. 246 ¶¶ 26, 28. Rather, the new jurisdiction simply calls the old jurisdiction to report that an offender has moved into their jurisdiction and the old jurisdiction transfers ownership of the LEADS file to the new jurisdiction. *Id.*

Law enforcement agencies responsible for recording SORA information are also responsible for verifying that information "at least once per year." 730 ILCS 150/8-5. The statute provides assistance to law enforcement agencies to "locate and apprehend" offenders "who fail to respond to address-verification attempts or who otherwise abscond from registration." *Id.*

II. Frederickson's Case

Frederickson began registering as a sex offender in Joliet in 2004. R. 246 ¶ 1. At that time, Detective Moises Avila was responsible for taking SORA registrations

[4] "[I]f the offender leaves the last jurisdiction of residence, he or she, must within 3 days after leaving register in person with the new agency of jurisdiction. If any other person required to register under this Article changes his or her residence address, place of employment, [etc.] . . . he or she shall report in person, to the law enforcement agency with whom he or she last registered, his or her new address, change in employment, [etc.] . . . within the time period specified in Section 3." 730 ILCS 150/6.

in Joliet. *Id.* ¶ 2. Frederickson never had a conflict with Detective Avila. *Id.* Detective Avila never refused an update Frederickson reported to his SORA information. *Id.* ¶ 3.

In 2006, Detective Landeros took charge of taking SORA registrations for Joliet. R. 217 ¶ 8. Beginning in 2008, Frederickson began asking Landeros to correct the name of his employer in his SORA registration from "Greg's Auto Body" to "Greg's Body Shop," and to have the registration reflect the fact that he was employed as a contractor. R. 246 ¶ 5. Detective Landeros did not make these changes to Frederickson's registration. *See* R. 209-1 at 52-53 (201:12–204:4).

Frederickson testified that sometime in late 2007 or early 2008 he also informed Detective Landeros that he planned to leave Joliet. According to Frederickson, Landeros responded by threatening to arrest him. *See* R. 209-4 at 24 (300:18–302:4).

On May 15, 2008, Landeros arrested Frederickson and charged him with failure to register. R. 246 ¶ 10. On June 1, 2009, Frederickson was acquitted of this charge. *Id.*

On November 23, 2010, when Frederickson entered the police station to register, Detective Landeros arrested Frederickson on a charge of driving on a suspended license, based on Detective Landeros witnessing Frederickson driving a week earlier. R. 246 ¶¶ 11-12. Detective Avila and another Joliet police officer deposed in this case testified that, although they had made more than 100 arrets for driving on a suspended license, they had never made such an arrest when the

person charged was not actually driving a car at the time of the arrest. *See* R. 209-8 at 32-33 (121:21–122:4);R. 216-5 at 18 (216:3-11).

Frederickson testified that on January 26, 2011, he again told Detective Landeros he planned to leave Joliet and move to Bolingbrook. According to Frederickson, Detective Landeros responded by again threatening to arrest Frederickson. R. 209-4 at 23 (297:1–298:19). Frederickson testified that on February 2, 2011, he wrote "all rights reserved" on his Joliet registration because Detective Landeros had told him that he would be arrested if he attempted to register in any other jurisdiction. R. 209-3 at 17 (59:8-24).

On February 8, 2011, Frederickson applied for a job in Bolingbrook. R. 246 ¶ 18. The next day, he attempted to register at the Bolingbrook Police Department. R. 246 ¶ 19. Bolingbrook accepted his registration form. *Id.* ¶ 20.

Upon receipt of Frederickson's registration form, the Bolingbrook records clerk contacted the Joliet Police Department to request release of Frederickson's LEADS file. R. 246 ¶ 21. Although the records clerk does not remember who she spoke with, her notes indicate that she spoke with Detective Landeros. R. 246 ¶ 22. The records clerk testified that the person she spoke to from Joliet told her that "they knew [Frederickson] was still living in Joliet," and his residence was "under investigation." R. 196 at 18-19 (65:19– 66:1), 38 (145:5-9). The records clerk testified further that Joliet refused to transfer Frederickson's LEADS file to Bolingbrook. R. 196 at 18-19 (65:17–66:1). The Bolingbrook records clerk testified that prior to Frederickson's case she had encountered about 20 instances of the LEADS file for

an offender registered in Bolingbrook being owned by a different jurisdiction, and in every instance the jurisdiction transferred the LEADS file upon request. R. 246 ¶ 26. A Bolingbrook detective and another Bolingbrook administrator responsible for LEADS files also testified that they could not recall a single instance of a jurisdiction refusing to transfer a LEADS file. R. 246 ¶ 28.

Detective Landeros also spoke to a Bolingbrook detective about Frederickson during the time period Frederickson was working in Bolingbrook and attempting to register there. R. 246 ¶ 30. Detective Landeros testified that he "advised Bolingbrook that [Frederickson] was a homeless sex offender employed in Joliet, and . . . his LEADS file belonged to the Joliet Police Department." R. 246 ¶ 24. The Bolingbrook detective testified that Detective Landeros told him that Frederickson was not actually residing in Bolingbrook and was trying to "pull the wool over [Bolingbrook's] eyes," and that Detective Landeros was investigating the situation. R. 246 ¶ 31.

Yet, Detective Landeros also testified that he had no reason to believe that Frederickson was not residing in Bolingbrook, *see* R. 209-1 at 55 (210:15-19);[5] R. 209-2 at 5 (228:23–229:5),[6] and that he could not think of a reason to prevent a

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[5] Q: Did you have any reason to believe that Mr. Frederickson wasn't homeless in Bolingbrook?
A: No, I don't.
Q: And you didn't have any reason at the time?
A: No.

[6] Q: You previously testified on the first day of this deposition that you had no reason to believe Mr. Frederickson was not homeless in Bolingbrook, correct?
[Objection made: "I don't believe he's ever said that."]

LEADS file from being placed into moving status, *see* R. 209-2 at 5 (226:24–227:5).[7] He also testified that he registers homeless offenders "regardless" of whether the information they provide is accurate. R. 209-1 at 32 (121:5-14).[8]

After the Bolingbrook detective's conversation with Detective Landeros, an email was circulated among the Bolingbrook Police Department stating that Bolingbrook should "not take [Frederickson's] registration due to the fact he lives in Joliet he is not homeless." R. 246 ¶ 34. The email also claimed that "[Joliet Police Department] has alerted us to the fact that this guy doesn't want to pay their mandatory fee so he is going to try and scam us into doing it." *Id.*

Between February 9 and 16, 2011, Frederickson worked in Bolingbrook on three or four different days and was in the process of moving his belongings from Joliet to Bolingbrook. *Id.* ¶ 36. On February 16, Frederickson was in Joliet picking up some of his tools. *Id.* ¶ 37. He was unsure whether he would be able to get a ride back to Bolingbrook that day, so he registered at the Joliet Police Department that morning. *Id.* ¶ 37. When he was able to get a ride to Bolingbrook that afternoon,

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A: Correct.

[7] Q: Have you ever prevented a LEADS file from being placed into a moving status?
A: No.
Q: And there's no reason that you would do that, correct?
A: Yeah, I can't think of one.

[8] Q: And if the information they provided on where they had been the previous week was accurate you would register them?
A: I would register them regardless, it's just whether they're getting arrested for giving the false information.
Q: Okay. So you would always register them, but if they provided false information you would arrest them?
A: Correct.

Frederickson also reported to the Bolingbrook Police Department to register. *Id.* ¶ 38. Bolingbrook refused to register Frederickson and ordered him to return to Joliet. *Id.* ¶ 40. Despite Bolingbrook's refusal to register him, Frederickson resided in Bolingbrook from February 16 through 23, living in a truck parked there. *Id.* ¶ 43.

Frederickson again attempted to register in Bolingbrook on February 23. *Id.* ¶ 44. Bolingbrook demanded that Frederickson provide the locations he planned to stay, even though its regulations do not require such information. *Id.* ¶¶ 44-45. When Frederickson declined to provide this information, he was refused registration and told to return to Joliet. *Id.* ¶ 46. Frederickson attempted to file a complaint at Bolingbrook Village Hall. *Id.* ¶ 47. The Clerk refused to accept the complaint and Frederickson was escorted out of the building by Bolingbrook police officers. *Id.* ¶ 49. Frederickson is the only person Bolingbrook has ever refused to register. *Id.* ¶ 41.

Since he was unable to register in Bolingbrook, Frederickson quit his job there. *Id.* ¶ 50. He testified that he then attempted to register in Joliet on February 28, March 1, 2, and 3. Defendants contend that Frederickson appeared at the Joliet Police Department on those days but refused to register. *See* R. 217 ¶¶ 99-102. On March 3, Frederickson was arrested for failing to register. *Id.* ¶ 102. He was convicted on this charge and his conviction was affirmed on appeal. *Id.* ¶¶ 104-05.

Analysis

I. Detective Scarpetta

As an initial matter, summary judgment is granted in favor of Detective Scarpetta. Frederickson claims he was prevented from registering as a sex offender in Bolingbrook, which eventually led to his arrest when he returned to Joliet. The only allegations against Detective Scarpetta are that he received a grievance from Frederickson about Detective Landeros's conduct during the relevant time period, and that Detective Scarpetta failed to adequately investigate Frederickson's grievance. Even assuming that Detective Scarpetta failed to properly investigate Frederickson's grievance, the Court cannot see how this failure proximately caused the injury at issue in this case, i.e., that Frederickson was prevented from registering in Bolingbrook.

Frederickson's causation theory might be that if Detective Scarpetta had conducted a proper investigation, Detective Landeros might have been prevented from thwarting Frederickson's attempt to register in Bolingbrook. But there is no evidence that Detective Scarpetta intended to prevent Frederickson from registering in Bolingbrook, or that he conspired with Detective Landeros to do so. His failure to conduct an adequate investigation (to the extent that allegation is true) is insufficient evidence for a reasonable jury to find that Detective Scarpetta had such intent. To the extent an inadequate investigation may have contributed to Landeros's ability to violate Frederickson's constitutional rights, that connection is

too attenuated for a reasonable jury to find that Detective Scarpetta has any liability in this case.

Frederickson also alleges that Detective Scarpetta was the person who refused his registration when he first returned from Bolingbrook to register in Joliet on February 28. To the extent Frederickson claims that this alleged refusal violated his due process and equal protection rights, that claim is foreclosed by Frederickson's criminal conviction for failure to register during that particular time period, and his conviction's affirmance on appeal. A finding that Detective Scarpetta improperly refused Frederickson's registration attempt on February 28 would undermine Frederickson's criminal conviction that he was responsible for his failure to register, and such a claim is not cognizable under the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994). Therefore, the remaining question in this case is whether a reasonable jury could find that Detective Landeros improperly stymied Frederickson's attempt to register in Bolingbrook in violation of the Due Process or Equal Protection Clauses.

II. Detective Landeros

Frederickson alleges that Detective Landeros's conduct violated (1) his substantive due process right to intrastate travel; (2) his procedural due process right to register under SORA; and (3) his right to equal protection of the laws. The Court finds that Detective Landeros is entitled to qualified immunity on Frederickson's substantive and procedural due process claims, so we start there.

A. Due Process (Counts I & II)

"The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Kemp v. Liebel*, 877 F.3d 346, 350 (7th Cir. 2017). In other words, "[a] state official is protected by qualified immunity unless the plaintiff shows: (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Id.*

The Seventh Circuit recently reviewed the standard for determining whether a right is clearly established:

> "To be clearly established at the time of the challenged conduct, the right's contours must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right . . . ." *Gustafson v. Adkins*, 803 F.3d 883, 891 (7th Cir. 2015) (quoting *Rabin v. Flynn*, 725 F.3d 628, 632 (7th Cir. 2013)). "[T]he crucial question [is] whether the official acted reasonably in the particular circumstances that he or she faced." *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2023 (2014).
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> Plaintiffs need not point to an identical case finding the alleged violation unlawful, "but existing precedent must have placed the statutory or constitutional question beyond debate." *Mullenix v. Luna*, 136 S. Ct. 305, 308, (2015) (per curiam) (quoting *al-Kidd*, 563 U.S. at 741). "[W]e look first to controlling Supreme Court precedent and our own circuit decisions on the issue." *Jacobs v. City of Chicago*, 215 F.3d 758, 767 (7th Cir. 2000). If no controlling precedent exists, "we broaden our survey to include all relevant caselaw in order to determine 'whether there was such a clear trend in the caselaw that we can say with fair assurance that the recognition of the right by a controlling precedent was merely a question of time.'" *Id.* (quoting *Cleveland-Perdue v. Brutsche*, 881

> F.2d 427, 431 (7th Cir. 1989)). In the absence of controlling or persuasive authority, plaintiffs can demonstrate clearly established law by proving that the defendant's conduct was "so egregious and unreasonable that . . . no reasonable [official] could have thought he was acting lawfully." *Abbott v. Sangamon County, Illinois*, 705 F.3d 706, 724 (7th Cir. 2013); *see also Jacobs*, 215 F.3d at 767 ("In some rare cases, where the constitutional violation is patently obvious, the plaintiffs may not be required to present the court with any analogous cases . . . .").
>
> Before we can determine if the law was clearly established, "the right allegedly violated must be defined at the appropriate level of specificity." *Wilson v. Layne*, 526 U.S. 603, 615 (1999). "The Supreme Court has 'repeatedly told courts . . . not to define clearly established law at a high level of generality.'" *Volkman v. Ryker*, 736 F.3d 1084, 1090 (7th Cir. 2013) (alteration in original) (quoting *al-Kidd*, 563 U.S. at 742); *see, e.g.*, *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam); *Mullenix*, 136 S. Ct. at 308; *City & County of San Francisco v. Sheehan*, 135 S.Ct. 1765, 1775-76 (2015). Instead, "[t]he dispositive question is 'whether the violative nature of *particular* conduct is clearly established.'" *Mullenix*, 136 S. Ct. at 308 (quoting *al-Kidd*, 563 U.S. at 742). In other words, "the clearly established law must be 'particularized' to the facts of the case." *White*, 137 S. Ct. at 552 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)); *see also Volkman*, 736 F.3d at 1090 ("[T]he Seventh Circuit has long held that 'the test for immunity should be whether the law was clear in relation to the specific facts confronting the public official when he acted.'" (quoting *Colaizzi v. Walker*, 812 F.2d 304, 308 (7th Cir. 1987))).

Kemp, 877 F.3d at 351-52.

1. Substantive Due Process (Count I)

With regard to Frederickson's substantive due process claim, the right to intrastate travel is not clearly established. Although the right to *inter*state travel is

well known, neither the Supreme Court nor the Seventh Circuit have addressed whether *intra*state travel is a fundamental right, *see Mem. Hosp. v. Maricopa Cty.*, 415 U.S. 250, 255-56 (1974); *Schor v. City of Chicago*, 576 F.3d 775, 780 (7th Cir. 2009), and at least one circuit court has held that it is not. *See Wright v. City of Jackson*, 506 F.2d 900, 901-03 (5th Cir. 1975). More recently, some circuits have held that there is such a right. *See Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002) (noting that the right to intrastate travel is "an everyday right, a right we depend on to carry out our daily life activities. It is, at its core, a right of function"); *Spencer v. Casavilla*, 903 F.2d 171, 174 (2d Cir. 1990) ("Though the Supreme Court has dealt only with the right to travel between states, our Court has held that the Constitution also protects the right to travel freely within a single state."). And the Seventh Circuit has cited at least one these cases with implicit approval. *See Doe v. City of Lafayette*, 377 F.3d 757, 771 (7th Cir. 2004) (citing *Johnson*). This authority is sufficiently varied and uncertain that the Court cannot find there was an established right to intrastate travel during the relevant time period. Therefore, the Court finds that Detective Landeros has qualified immunity on Frederickson's substantive due process claim, and the Court grants summary judgment to Detective Landeros on Count I.

2. Procedural Due Process (Count II)

To prevail on a procedural due process claim, a plaintiff must demonstrate a protected liberty or property interest. Frederickson argues that he has a liberty interest in registering under SORA. Detective Landeros does not dispute this, but

argues that Frederickson did not have "a right to register where he wanted to register . . . without having to first 'register out' of Joliet." R. 208 at 12. While SORA does impose a requirement to "register out," as Defendants put it, there is evidence that this requirement is not enforced as long as the offender reports for registration in his new jurisdiction. The testimony in the case shows that law enforcement agencies in an offender's old jurisdiction always comply with a request from the law enforcement agency in the new jurisdiction to transfer the LEADS file even when the offender failed to "register out." Moreover, SORA provides a three-day grace period to "register out," and there is genuine question of fact as to whether the three days were up when Detective Landeros convinced Bolingbrook to block Frederickson's registration. There is also a genuine question of fact as to whether Frederickson attempted to "register out," as he testified that he told Detective Landeros he planned to move out of Joliet, to which Detective Landeros responded with a threat of arrest.

Courts in this district have held that preventing a homeless offender from registering under SORA constitutes a procedural due process violation. *See Derfus v. City of Chicago*, 42 F. Supp. 3d 888 (N.D. Ill. 2014); *Saiger v. City of Chicago*, 37 F. Supp. 3d 979 (N.D. Ill. 2014); *Johnson v. City of Chicago*, 2016 WL 5720388 (N.D. Ill. Sept. 30, 2016). However, those cases were decided after the events in this case occurred, and those courts held that the liberty interest in registering under SORA was not clearly established during the relevant time period. Frederickson concedes

as much. *See* R. 215 at 37 ("[T]he right of a Homeless Offender to register under SORA was [not] 'clearly established' as of February 2011[.]").

Frederickson also argues that "Defendants' conduct, motivated by ill will, in placing Frederickson in legal jeopardy by refusing to allow him to register without any rational purpose in doing so" is "patently violative" of Frederickson's rights, such that qualified immunity is not appropriate. R. 215 at 37. But procedural due process is not concerned with the defendant's motivation.[9] And neither is qualified immunity. *See Harlow v. Fitzgerald*, 457 U.S. 800, 817-18 (1982) ("[W]e conclude today that bare allegations of malice should not suffice to subject government officials either to the costs of trial or to the burdens of broad-reaching discovery. We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."); *Armstrong v. Daily*, 786 F.3d 529, 538 (7th Cir. 2015) ("*Harlow* purged qualified immunity doctrine of its subjective components, meaning that the defendants' actual state of mind or knowledge of the

[9] In analyzing a procedural due process claim, the Court must determine (1) whether the plaintiff was deprived of a constitutionally protected liberty or property interest, and (2) how much process was due. *Leavell v. Ill. Dep't of Nat. Res.*, 600 F.3d 798, 804 (7th Cir. 2010). Next, to determine how much process is due, the Court "must balance three factors: '[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'" *Schepers v. Comm'r, Ind. Dep't of Corr.*, 691 F.3d 909, 915 (7th Cir. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). The defendant's motive is not relevant to any of these elements.

law is irrelevant to whether the asserted conduct would have been legally reasonable."). To the extent motive is a part of the equation in this case, it must be relevant to whether the evidence is sufficient for a reasonable jury to find that Detective Landeros committed a constitutional violation. As is discussed further below, motive or "personal animus" is relevant to the elements of Frederickson's equal protection claim. But it is not relevant to the elements of Frederickson's due process claims, and is not relevant to whether the due process rights at issue in those claims were clearly established or the alleged conduct was "patently violative" of the plaintiff's constitutional rights.

Therefore, the Court holds that Detective Landeros is entitled to qualified immunity on Frederickson's procedural due process claim, and grants summary judgment to Detective Landeros on Count II.

B. Equal Protection (Count III)

As discussed, the Court holds that the rights at issue in Frederickson's due process claims were not "clearly established" during the relevant time period. This holding is dispositive of those claims without the need for a determination on the merits of whether Detective Landeros violated Frederickson's due process rights. As is discussed below, however, the Courts holds that Frederickson's equal protection right to "police protection uncorrupted by personal animus" is clearly established. *See Hanes v. Zurick*, 578 F.3d 491, 496 (7th Cir. 2009). Thus, it is necessary to first address whether a reasonable jury could find that Detective Landeros violated that right.

1. Merits

Frederickson claims that Detective Landeros violated his equal protection rights by thwarting his attempt to register in Bolingbrook. The Equal Protection Clause of the Fourteenth Amendment provides that, "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court has said that this "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). To prevail on an equal protection claim, plaintiffs usually show that they are members of a "suspect class" or that they were denied a "fundamental right." *Srail v. Village of Lisle*, 588 F.3d 940, 943 (7th Cir. 2009). In the absence of either scenario, however, a plaintiff can show that the defendant discriminated against the plaintiff in particular—a so called "class-of-one" claim—which require the plaintiff to show that "the plaintiff has been intentionally treated differently from others similarly situated and there is no rational basis for the difference in treatment." *Id.* To make such a showing, the "plaintiff must negate any reasonably conceivable state of facts that could provide a rational basis." *Jackson v. Village of Western Springs*, 612 Fed. App'x. 842, 847 (7th Cir. 2015). Whether the plaintiff has succeeded in proving that no "reasonably conceivable state of facts" exists is a question for the jury. *See Knaus v. Town of Ledgeview*, 561 Fed. App'x 510, 514 (7th Cir. 2014); *RJB Props., Inc. v. Bd. of Educ. of City of Chi.*, 468 F.3d 1005, 1010 (7th Cir. 2006).

Detective Landeros contends that his actions were reasonable because it was his:

> obligation . . . to keep track of [Frederickson's] whereabouts. If [Frederickson] could register in Bolingbrook one week, Downers Grove the next, and Peoria the following week, all because he lacks a fixed residence, without ever notifying the agency charged with jurisdiction over him as to his whereabouts, the purpose of the statute would be defeated.

R. 208 at 18. On the basis of this logic, Detective Landeros appears to argue both that (1) he had a duty to prevent Frederickson from registering in Bolingbrook because he believed Frederickson continued to reside in Joliet, *see* R. 235 at 7 ("Landeros only delayed the immediate transfer of jurisdiction over plaintiff's LEADS file because of suspicions over the legitimacy of plaintiff's move to Bolingbrook."); and (2) Frederickson's failure to "register out" of Joliet before moving to Bolingbrook was the real reason he wasn't able to register in Bolingbrook, *see* R. 235 at 14 ("[P]laintiff had the keys to any registration problem he faced . . . . In light of plaintiff's own failure to register out of Joliet within three days of registration in Bolingbrook, Landeros'[s] follow-up investigation certainly was rational."). Neither argument is sufficient to support summary judgment in Detective Landeros's favor.

First, Detective Landeros cites no authority supporting his contention that he was under an obligation to investigate Frederickson's residence prior to transferring ownership of his LEADS file to Bolingbrook. Although law enforcement agencies are tasked with verifying the information reported by offenders, the statute requires

only that this verification occur "at least once a year." Nothing in the statute required Detective Landeros to verify the particular report Frederickson made to Bolingbrook. Further, Detective Landeros's argument that he was required to investigate contradicts his own testimony that he had no reason to question Frederickson's report of residence in Bolingbrook. Additionally, an offender has a three-day grace period to report new addresses. There is a genuine question of fact as to whether Frederickson was in violation of this requirement, such that an investigation would be warranted. In general, there is a question of fact regarding whether Frederickson was attempting to evade the registration requirements. Rather than indicating evasion, the evidence tends to show that Frederickson was continually providing information to both Joliet and Bolingbrook about where he was residing and working.

Nevertheless, rather than simply recording Frederickson's reports, Detective Landeros took it upon himself to confirm Frederickson's residence. This quest then led Landeros to refuse to transfer Frederickson's LEADS file and to convince Bolingbrook to refuse Frederickson's registration. Based on this evidence, a reasonable jury could find that there is no rational explanation for Detective Landeros to refuse to transfer ownership of Frederickson's LEADS file and otherwise advise Bolingbrook not to register him, such that Landeros violated Frederickson's equal protection rights.

Second, Detective Landeros cites no authority supporting his contention that Frederickson's failure to "register out" from Joliet was a basis to prevent him from

registering in Bolingbrook or threaten him with arrest. Although SORA requires an offender to report a change in residence to his prior registering law enforcement agency, Bolingbrook officials testified that this requirement is regularly unenforced as long as the offender presents himself for registration in the new jurisdiction. Even Detective Landeros testified that he normally does not refuse a request to transfer LEADS files or to register offenders who report. In any case, Frederickson testified that he told Detective Landeros that he planned to move out of Joliet and that Detective Landeros responded by threatening to arrest him. Whether or not Detective Landeros threatened to arrest Frederickson, it is clear that Detective Landeros decided not to believe Frederickson's assertion of his intent to move. Having rejected Frederickson's attempt to report his move, Detective Landeros cannot now claim that his efforts to prevent Frederickson's registration in Bolingbrook were justified by Frederickson's failure to withdraw from Joliet. A jury could reasonably find that Frederickson acted reasonably by leaving Joliet to attempt to register in Bolingbrook and avoid Detective Landeros's irrational application of SORA.

Additionally, SORA's requirement to report a move is largely implicated here only because Frederickson is homeless. Joliet and Bolingbrook are only about 15 miles apart. A person with a permanent residence in that area, who also owned a car, easily could leave a job in Joliet and take a job in Bolingbrook without the need to change residences, and register such a change under SORA. But since Frederickson is homeless, his "residence" essentially travels with him, such that

any change in his personal circumstances triggers greater SORA reporting requirements than for an offender with a permanent residence. And more pertinent to the facts of this case, a change in residence also triggers the need to transfer ownership of a LEADS file, whereas a change in employer does not. Given the evidence that law enforcement agencies normally do not enforce the "register out" requirement, a reasonable jury could find that Detective Landeros should have been cognizant of this circumstance and should have been satisfied with Frederickson's attempt to register in Bolingbrook despite his failure to "register out" of Joliet.

Detective Landeros also argues that Frederickson's equal protection claim must fail because Frederickson has failed to allege a similarly situated "comparator" who was treated differently than Frederickson—i.e., a homeless offender who failed to register out of Joliet whose LEADS file was nevertheless transferred to the new law enforcement agency having jurisdiction. "Normally, a class-of-one plaintiff will show an absence of rational basis by identifying some comparator—that is, some similarly situated person who was treated differently." *Miller v. City of Monona*, 784 F.3d 1113, 1120 (7th Cir. 2015). But, "[i]f animus is readily obvious, it seems redundant to require that the plaintiff show disparate treatment in a near exact, one-to-one comparison to another individual." *Swanson v. City of Chetek*, 719 F.3d 780, 784 (7th Cir. 2013) (reversing a grant of summary judgment to defendants on a class-of-one equal protection claim for lack of comparator evidence); *see also Geinsoky v. City of Chicago*, 675 F.3d 743, 748 (7th Cir. 2012) ("But in this case, requiring [the plaintiff] to name a similarly situated

person who did not receive twenty-four bogus parking tickets in 2007 and 2008 would not help distinguish between ordinary wrongful acts and deliberately discriminatory denials of equal protection. Such a requirement would be so simple to satisfy here that there is no purpose in punishing its omission with dismissal. Here, the pattern and nature of defendants' alleged conduct do the work of demonstrating the officers' improper discriminatory purpose."). As discussed, Frederickson has shown that a request for transfer of a LEADS file is not normally rejected; that the requirement to first register out of an old jurisdiction before registering in a new jurisdiction is not enforced; and Detective Landeros testified that he had no reason to question Frederickson's report of residence in Bolingbrook. This is strong enough evidence of irrational conduct such that comparator evidence is not required to deny summary judgment on Frederickson's equal protection claim.

There is an open question as to whether a class-of-one plaintiff must also prove that the defendants acted with personal animus or malice in treating the plaintiff differently. *See Del Marcelle v. Brown County Corp.*, 680 F.3d 887 (7th Cir. 2012). The Court need not take a side on that dispute, however, because in this case Frederickson must prove that Landeros acted out of personal animus against him; otherwise, Landeros's conduct is protected by qualified immunity.

2. Qualified Immunity

In the context of class-of-one equal protection claims like Frederickson's, the Seventh Circuit has held that the right to "police protection uncorrupted by

personal animus" is clearly established. *Hanes*, 578 F.3d at 496 (citing *Hilton v. City of Wheeling*, 209 F.3d 1005, 1007 (7th Cir. 2000) ("If the police decided to withdraw all protection from [the plaintiff] out of sheer malice, or because they had been bribed by his neighbors, he would state a claim . . . .")). Thus, qualified immunity is unavailable to a police officer who "deliberately sought to deprive [a plaintiff] of the equal protection of the laws for reasons of a personal nature unrelated to the duties of the defendant's position." *Hilton*, 209 F.3d at 1008.

Here, the evidence is sufficient for a reasonable jury to find that Detective Landeros was motivated by personal animus towards Frederickson when he stymied his attempt to register in Bolingbrook. There is evidence that Detective Landeros had a history of conflict with Frederickson. Detective Landeros also testified that he had no reason to believe that Frederickson was not residing in Bolingbrook when he sought to register there, leading to the inference that Detective Landeros's motivations were personal. Furthermore, there is evidence that Detective Landeros's actions were extraordinary. No homeless offenders in Joliet or Bolingbrook have ever been denied transfer of their LEADS file. Additionally, unlike in Frederickson's case, the requirement that an offender report to his former residential jurisdiction that he has moved is generally waived once the new jurisdiction requests transfer of the LEADS file. Because this evidence is sufficient for a reasonable jury to find that Landeros acted with personal animus towards Frederickson, summary judgment based on qualified immunity is not appropriate at this time. *See Gonzalez v. City of Elgin*, 578 F.3d 526, 540 (7th Cir.

2009) ("When the qualified immunity inquiry cannot be disentangled from disputed facts, the issue cannot be resolved without a trial.").

In sum, Detective Landeros's contention that his decisions to prevent the transfer of Frederickson's LEADS file and to tell Bolingbrook not to register Frederickson, were justified because Frederickson failed to register out of Joliet, rings hollow. The evidence here is sufficient for a reasonable jury to conclude that Detective Landeros took the actions he did out of personal animus towards Frederickson that developed over time out of his frustration with his experiences taking Frederickson's registrations. Therefore, Landeros's motion for summary judgment on Frederickson's equal protection claim is denied.[10]

Conclusion

For the foregoing reasons, Defendants' motion for summary judgment is granted in part and denied in part. It is granted as to the claims against Scarpetta, and Counts I, II, IV, and V against Landeros. It is denied as to Count III against Landeros. A status hearing is set for March 21, 2018, at which time the parties should be prepared to set a trial date.

ENTERED:

Thomas M Durkin

Honorable Thomas M. Durkin
United States District Judge

Dated: March 7, 2018

[10] Since Detective Landeros is the only remaining defendant, and the Court has denied his motion for summary judgment on the claims underlying the conspiracy counts, Frederickson's conspiracy claims are superfluous and are dismissed.