No. 25-1910

In the United States Court of Appeals for the Seventh Circuit

JEROME DAVIS, VERONICA WALKER-DAVIS, DIAMONIQUE BYRD, ALLIE NELSON, AND LEWRANCE GANT,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Illinois, Case No. 1:19-cv-03691
(Hon. Lindsay C. Jenkins)

BRIEF OF APPELLANTS & SHORT APPENDIX

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-1910

Short Caption: Jerome Davis, et al. v. City of Chicago

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

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

N/A

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

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(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Diana K. Simpson Date: July 7, 2025

Attorney's Printed Name: Diana K. Simpson

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

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Attorney's Signature: /s/ Kirby Thomas West Date: July 7, 2025

Attorney's Printed Name: Kirby Thomas West

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N/A

Attorney's Signature: /s/ Samuel B. Gedge Date: July 7, 2025

Attorney's Printed Name: Samuel B. Gedge

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

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Attorney's Signature: /s/ Robert Pavich Date: July 7, 2025

Attorney's Printed Name: Robert Pavich

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

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STATEMENT OF JURISDICTION

Defendant-Appellee City of Chicago removed this case to federal court from the Circuit Court of Cook County, Illinois, in accordance with 28 U.S.C. § 1441. Doc. 1.[1] The district court had subject-matter jurisdiction over the plaintiffs-appellants' federal constitutional causes of action under 28 U.S.C. § 1331 because they arise under the following laws of the United States: 42 U.S.C. § 1983 and the Fourth, Eighth, and Fourteenth Amendments to the U.S. Constitution. The district court had supplemental jurisdiction over the plaintiffs' state-law causes of action under 28 U.S.C. § 1367. Those state-law causes of action are based on the Illinois Constitution's Article VI, Section 9 and Chapter 735 Illinois Compiled Statutes 5/2-209, as well as the Illinois Constitution's Article I, Sections 2, 6, and 11.

The jurisdiction of this Court is based on 28 U.S.C. § 1291. The district court entered final judgment on March 27, 2025, which disposed of all parties' claims. App. 48. That final judgment followed: (a) entry of an order on August 21, 2020, granting in part Chicago's motion to dismiss the plaintiffs' claims (App. 1-31); and (b) entry of an order on March 27, 2025, granting Chicago's motion for summary judgment as to all of the plaintiffs' remaining claims (App. 32-47).

The plaintiffs filed an unopposed motion for an extension of time to file their notice of appeal on April 14, 2025. Doc. 200. The district court granted that motion on April 15, 2025, and extended the notice-of-appeal deadline by thirty days, to May 28, 2025. Doc. 201. The plaintiffs timely filed their notice of appeal on May 27, 2025. Doc. 206.

[1] "Doc." signifies documents on the district-court docket, and page citations are to the PDF page number in the automatically generated header at the top of the filed document.

STATEMENT OF THE ISSUES

Under the City of Chicago's impoundment program, the City seizes and holds vehicles that it believes have been used in connection with one of a slate of crimes, from possessing drugs to disrupting a funeral procession. Two features of the program give rise to this appeal. First, the City holds the cars throughout the pendency of the enforcement proceedings, as leverage to coerce the owners to pre-pay *in personam* penalties they do not yet owe (and might never owe). Second (at the time relevant here), those penalties were imposed on the vehicle's owner of record whether or not the owner was "legally responsible for the underlying offense." App. 34-35.

The district court entered judgment for the City. The issues presented on appeal are:

I. Whether the City's holding vehicles to coerce the owners to pre-pay penalties they don't yet owe (A) violated the plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment, and (B) plausibly violated their rights under the Fourth Amendment.

II. Whether the City's imposing penalties on vehicle owners with no regard to whether they were "legally responsible for the underlying offense" (A) plausibly violated the plaintiffs' rights under U.S. Constitution's Excessive Fines Clause, and (B) violated their rights under the Illinois Constitution's Proportionate Penalties Clause.

III. Whether the district court erred in dismissing two plaintiffs' claims on res judicata grounds and, for two other plaintiffs, in dismissing several counts as time-barred.

INTRODUCTION

Few of us would expect a fender-bender to lead to police officers' impounding our car for unowed fines. Jerome Davis and Veronica Walker-Davis know better. Following a minor accident in 2018, the couple dropped off their sedan at a body shop for repairs. While there, the car was taken out for a joyride by a shop employee. The man had a revoked license, which city police discovered when they pulled him over. The consequence? The City of Chicago brought an administrative enforcement action—but not against the joyrider. Against the Davises: the City sought a judgment against them for $1,000 in *in personam* penalties. For good measure, the City seized their car as well. Unless the couple pre-paid the as-yet-unowed fine (plus a slate of fees), the car would (and did) remain in impound for the duration of their enforcement proceeding.

Welcome to the topsy-turvy world of Chicago's vehicle-impoundment program. Under it, police impound vehicles to which the City is not yet entitled to strong-arm the owners into pre-paying penalties to which the City is not yet entitled either. Adding insult to injury, the penalties were imposed (at all times relevant here) based not on culpability, but on car title. For any one of dozens of offenses—from possessing weed to possessing fireworks—the City automatically imposed hundreds or thousands of dollars in fines on the "owner of record" of whatever vehicle happened to be involved. By design, the system was blind to whether the people targeted were "legally responsible for the underlying offense" in any way. The entirely predictable result? The system ensnared people like the Davises in a seize-first-judge-later enforcement regime indifferent to guilt or innocence, culpability or blamelessness. Nor was the Davises' experience unique. Co-plaintiff Allie Nelson was targeted after her granddaughter defied her and let a ne'er-do-well boyfriend drive her car. (Nelson was recovering from cancer treatment in Texas at the time.)

Septuagenarian Lewrance Gant was targeted after lending his car to an elderly friend who, despite all of Gant's precautions, turned out to have a suspended license. Spencer Byrd was targeted after trying to help a grammar-school acquaintance with a car breakdown; a mechanic, Byrd gave the man a lift, unaware that he had a small amount of drugs on him. Each of these Chicagoans was targeted for thousands of dollars in penalties. And each saw his or her vehicle seized and held for one end alone: as a pain point to coerce them into pre-paying the penalties before judgment.

Below, the district court upheld Chicago's regime as consistent with the Due Process Clause, the Fourth Amendment, and state and federal protections against excessive fines. On all these fronts, the court erred. Its judgment should be reversed.

STATEMENT OF THE CASE

A. Factual background

1.a. When police in the City of Chicago think someone's committed a crime, they often arrest the suspect, and prosecutors may end up charging him criminally. So far so good. But when the suspect happens to have been caught in a motor vehicle, Chicago's "impound" program may kick in as well. For a long list of offenses, police are authorized to seize and impound a vehicle if it was used in connection with the crime. App. 49-53 (Chicago Mun. Code § 2-14-132).[2] Simultaneously, the owner of record is targeted for an *in personam* penalty. The qualifying offenses and the penalty amounts have varied over the years, but at the time relevant to this case, more than two dozen different crimes might trigger the City's impound penalties. The City would impose a $1,000 penalty if a vehicle was driven by someone with a revoked or suspended license. App. 55

[2] Code provisions cited in the separate appendix and those at Docs. 185-2, 185-3, and 185-4 are those that existed at the time this lawsuit was filed in April 2019. Citations to the code directly, rather than the record, refer to the current code.

(Chicago Mun. Code § 9-80-240). It would impose up to a $3,000 penalty if a driver or passenger possessed drugs. App. 54 (Chicago Mun. Code. § 7-24-225). Five hundred dollars if the car was used to dump waste into Lake Michigan. Chicago Mun. Code §§ 11-4-1410, -1460(f)(1). Between $500 and $750 for a car that interfered with a funeral procession. Doc. 185-3, at 25 (Chicago Mun. Code § 9-32-040(a)). Five hundred dollars if an occupant possessed illegal fireworks. Chicago Mun. Code § 15-20-270. And so on. Depending on the offense, the penalty can range from $500 to $3,000, which becomes a debt owed to Chicago following entry of a judgment by an administrative judge and an appeal to state court, if taken. *See* Doc. 185-2, at 9-10 (Chicago Mun. Code § 2-14-103); App. 34.

b. Three aspects of the penalty process are central to this case.

First, the City's ordinances (at all times relevant to this appeal) required imposition of *in personam* penalties on vehicle owners with no regard to whether the owner had any involvement in the offense giving rise to the penalty. By law, the owner was held liable whether or not they participated in the underlying offense. Whether or not they knew about the underlying offense. Whether or not they were negligent. Whether or not they were wholly blameless. The penalties would be imposed even if their car was used against their wishes (as in the case of three of the plaintiffs here). At all stages of the proceeding—from the preliminary administrative hearing to the final merits hearing—the car owner could not "avoid liability" for the penalties "by showing that he or she was not legally responsible for the underlying offense, such as by showing he or she did not

participate in the offense or did not know or have reason to know that illegal conduct was likely to occur." App. 34-35; *see also* Doc. 173-6, at 13 (42:7-43:6).[3]

Second, vehicles seized under the impound program are held for one reason alone: as a pain point to coerce owners to pre-pay their *in personam* penalties *before* a judgment is entered against them. (This continues to be the regime today.) The City's administrative-penalty proceedings drag on for months. Doc. 173-6, at 6, 10 (16:23-17:11, 32:1-3). And only following an adverse final judgment does the vehicle owner become liable for the penalties. *See* App. 50 (Chicago Mun. Code § 2-14-132(b)(3)(A)). During the pendency of the proceedings, however, the owner cannot retrieve her car unless she pre-pays that as-yet-unowed debt to the City. Doc. 173-4, at 15 (52:25-53:3); *see also* App. 49-50 (Chicago Mun. Code § 2-14-132(a)(1)).

Third—and this remains true today as well—the seized vehicles are in no sense "collateral" against the owner's potential future penalty-debt. If, following a full hearing, a car's owner is ultimately found liable and pays the *in personam* penalties (plus storage fees, towing costs, and a slate of other unrelated debts they may owe), they can recover their car. App. 51 (Chicago Mun. Code § 2-14-132(c)(1)(A)). If they don't pay up within ten days after the judgment, the City can

[3] Before 2020 (that is, during the period relevant here), the City's ordinances provided three narrow affirmative defenses to liability: a vehicle owner could prove that (1) their car had been stolen at the time of violation and the theft reported to police within 24 hours; (2) their car had been sold to someone else before the violation occurred; or (3) their car was operating as a "common carrier," and the person in control of it didn't know about the alleged violation. App. 52 (Chicago Mun. Code § 2-14-132(h)); *see also* Doc. 173-6, at 11-13 (35:24-42:25). In 2020, Chicago amended its ordinance to add two new defenses. Doc. 173-17, at 5-6. Now, vehicle owners can avoid liability by proving that either (1) a court dismissed the criminal violation on which the impoundment was based following a judicial finding of facts or laws or (2) they were not present for the offense, were not legally responsible for the offense, did not participate in the offense, and did not know or have reason to know that illegal conduct was likely to occur. Because the plaintiffs in this case seek backward-looking relief based on alleged constitutional violations that took place pre-2020, the City's (imperfect) amendments do not affect the relief currently sought here.

then dispose of their car, typically by selling or scrapping it. App. 51 (Chicago Mun. Code § 2-14-132(d)); *see also* Doc. 185-3, at 137-38 (Chicago Mun. Code § 9-92-100). Yet any proceeds the City may pocket from those car sales do not reduce or eliminate the owner's penalty-debt. Even with their car sold off, the owner remains subject to collections for the full amount. Doc. 173-4, at 15 (51:22-52:5); *see also id.* at 8-9 (22:21-26:2) (detailing collection practices).

Chicago's impound program is big business. Between May 2017 and November 2020, the City impounded 54,476 vehicles. Doc. 173-10, at 4. It "disposed of"—sold, scrapped, or used—nearly half of those, 24,427 vehicles. *Id.* at 6. And between April 2017 and June 2021, it imposed more than $60 million in *in personam* impound penalties and generated more than $4 million in revenue by disposing of impounded vehicles. Doc. 173-12, at 4, 8.

2. The experiences of each of the plaintiffs here exemplify the injustices wrought.

a. In 2018, Jerome Davis and Veronica Walker-Davis took their car to a Chicago body shop for repair following an accident. Doc. 29 ¶ 99. While the car was there, a shop employee drove it without their knowledge or consent. Police pulled him over. They discovered he had a revoked license. And they impounded the Davises' car. *Id.* ¶¶ 9, 100-01. The Davises learned of the impound only after calling the body shop for an update on the repairs; they received no notice from the City. *Id.* ¶¶ 101-04.

The City held a hearing for the Davises nearly six weeks later. There, the administrative judge ruled against them. Under the impound ordinance, the couple's innocence was not a defense, so the judge held them liable for an *in personam* penalty of $1,000, along with $1,325 in vehicle-storage fees and a $150 towing fee. *Id.* ¶¶ 103, 105; *see also* Doc. 34-1, at 39. After the Davises sought review in circuit court, the City agreed to give them back their car in exchange for $1,170. Doc. 29

¶ 109. When they went to pay to pick up their car, however, they discovered that the City had already disposed of it. They never got it back. *Id.* ¶¶ 113-14.

b. Lewrance Gant is a retired limousine driver who has lived in the Chicago area for the last sixty years. Doc. 173-15 ¶ 2. Approximately twice per month, he used to lend his car to his longtime friend, Donald Salter, so that Salter could go to the grocery store, the laundromat, or medical appointments. *Id.* ¶¶ 5-6. When Lewrance Gant started allowing Salter to borrow the car, he asked to see Salter's license to make sure that it was valid. *Id.* Satisfied, he then added Salter to his insurance. *Id.* Each time Salter borrowed the car, he asked for permission and explained why he needed to use it that day. *Id.* ¶ 7.

In March 2019, Gant allowed Salter to use the car to drive to the laundromat. *Id.* ¶ 8. While driving, Salter was pulled over by Chicago police for allegedly failing to completely stop at an intersection. Doc. 173-3, at 26 (95:10-18). The police determined that Salter's license had recently been suspended for unpaid tickets; they also claimed to see a bag of marijuana in the backseat. *Id.* at 26 (95:5-18). Police did not arrest him or charge him with a crime, but they did impound the car. *Id.* at 26 (95:2-96:5). Neither Salter nor Gant knew that Salter's license had been suspended. Doc. 187-5, at 10 (31:4-13); Doc. 173-15 ¶ 9. In the nearly 30 years the two have been friends, moreover, Lewrance Gant has never known Donald Salter to use drugs or consort with those who do. Doc. 173-15 ¶ 10.

At a preliminary hearing, the City determined there was probable cause to impound Gant's car and told him it he would need to pay $3,210 to retrieve it during the pendency of the penalty proceedings. Doc. 173-6, at 24 (88:4-21). Of that figure, $2,000 was an *in personam* administrative penalty for Salter's alleged drugs and $1,000 was an *in personam* administrative penalty for Salter's

having driven on a suspended license. *Id.* at 161-62. Gant couldn't afford to pay, so his car stayed in the impound lot. Doc. 173-15 ¶ 14. The City dropped the allegation about drugs but continued to pursue the impound penalty against Gant regarding his friend's suspended license. Doc 173-6, at 25–26 (93:3-94:4). Both Gant and Salter again testified at the hearing that they did not know the license had been suspended, but that did not provide a defense. *Id.* at 28-29 (105:22-106:16). Gant was held liable for $4,750 in penalties and fees, which he would have had to pay in full to retrieve his car—worth around $4,000 at the time of its seizure. Doc. 173-15 ¶ 4, Doc 173-6, at 167. Still he couldn't afford to pay, and the City sold his car for scrap. Doc. 173-3, at 32 (118:6-22), 36 (134:7-136:12).

This was not Lewrance Gant's only brush with Chicago's impound program. While this case was pending below, the City determined, astonishingly, that Gant's *second* car was subject to impoundment as well. City police had entered inaccurate information into a report, designating his car impounded based on an alleged crime that neither he nor the car had anything to do with. Doc. 173 ¶ 73. For the first five months of 2023, the car remained exposed to physical seizure, and Gant was exposed to the threat of another $3,000 in penalties. *Id.* ¶ 76. The City reversed course only after Gant raised the issue with the district court below and requested bodycam footage of the relevant vehicle stop. *Id.* ¶ 75.

c. Allie Nelson is a retired law-enforcement officer who was born and raised in Chicago and has lived in the area for most of her adult life. Doc. 173-16 ¶ 2. In 2017, her granddaughter was living with her, and Nelson allowed her to drive Nelson's car. Nelson conditioned her permission on several requirements: her granddaughter could drive the vehicle to work and to school, but

only if no one else was allowed to drive it—including the granddaughter's then-boyfriend, Jharad Tillis. *Id.* ¶ 3.

In October 2017, Nelson travelled to Houston, Texas, to recover from cancer treatment. Before she left, she reminded her granddaughter that no one else, and specifically Jharad Tillis, had permission to drive the car. *Id.* ¶ 4.

Nevertheless, Nelson's granddaughter did in fact ask Tillis to drive the car, and Chicago police pulled the couple over, claiming that the windshield was cracked. Doc. 173-2, at 16-17 (54:23-56:2, 58:20-59:5). The officers searched the car and Tillis and alleged that they discovered marijuana in a backpack and an illegal handgun on his person. *Id.* at 14-15 (48:20-50:6). They arrested him and released Nelson's granddaughter, though they refused to allow the granddaughter to drive away or remove her purse from the car. *Id.* at 15 (52:11-15); Doc. 173-8, at 15 (52:24-53:16), 32 (118:23-120:24). Though initially charged, Jharad Tillis was never convicted of any offense arising from the stop. Doc. 173-18, at 17 (59:18-60:19).

As for the car, Allie Nelson does not recall receiving any notice from the City that it was impounded, though the City did impound it and entered a default judgment against her for $3,335. Doc. 173-16 ¶¶ 11-12; Doc. 173-6, at 268-69. When she learned of the judgment, she moved to set it aside, which an administrative judge granted after finding that the default order had been mailed to the wrong address. Doc. 173-6, at 29-30 (108:7-109:17, 111:18-112:17). As of that hearing, Nelson would have had to pay the City $4,700 to retrieve her vehicle, *id.* at 30 (112:25-113:7), a sum she could not afford, Doc. 173-16 ¶ 13. The City then held a full hearing. There, Nelson testified that she had not been present when the car was impounded, that she was not responsible for the alleged crimes of Jharad Tillis, and that she had not authorized him to drive her car. Doc. 173-6, at 32-33

(120:16-20, 124:14-25); Doc. 173-2, at 18 (64:8-65:20). Since innocence was no defense, however, she was found liable and ordered to pay $5,935 to retrieve her vehicle—$2,000 for *in personam* penalties and $3,925 in towing and storage fees. Doc. 173-6, at 33 (125:1-13), 30 (115:3-10), 220-21. She couldn't afford to pay, so she never recovered her car. For its part, Chicago valued the car at $2,650. City police sold it at auction for $97.50. Doc. 173-2, at 27 (99:22-100:16), 21 (76:1-20).

d. A carpenter by trade, Spencer Byrd was also a trained mechanic who worked on people's cars in his spare time. Doc. 173-14 ¶¶ 2-3. In June 2016, he received a phone call from an unknown number by a man named Timothy Mars, an acquaintance from grammar school but not a friend. Mars said his car had broken down and asked if Byrd could fix it. *Id.* ¶ 5. Byrd agreed to try and drove to where the car was broken down, but he was unable to repair it. *Id.* ¶ 6. Mars then asked Byrd for a ride, and Byrd agreed. *Id.* While driving, however, the two were pulled over by Chicago police due to a broken turn signal. During the stop, officers alleged they found narcotics in Mars's pocket. Doc. 173-5, at 19 (66:5-67:23); Doc. 173-14 ¶ 8. They arrested both men, and took them to the police station; as for Byrd's car, they impounded it. Doc. 173-5, at 20 (72:2-9); Doc. 173-14 ¶¶ 8, 10. Police released Byrd a few hours later, never charging him with a crime, but they wouldn't let him access his car or the tools that were in the trunk of his car. Doc. 173-14 ¶ 10. At no point did Byrd have any idea that Timothy Mars had drugs on him. *Id.* ¶ 9.

Byrd sought to get his car back. In November 2016, a state-court judge granted his financial-hardship motion in a separate forfeiture case and ordered the police to release the car. But the City refused unless he paid more than $6,000, which he could not afford. Doc. 173-14 ¶ 12. The City then held a preliminary hearing, where an administrative judge determined that there was probable cause to impound the car. Doc. 173-6, at 17 (58:23-59:7), 21 (77:4-21), 33 (125:5-13). Retrieving his

vehicle that day would have cost Byrd $6,445. *Id.* at 17 (60:14-17). The City held a full hearing two months later, at which Byrd testified that he gave Timothy Mars a ride due to Mars's car trouble and that he did not know that Mars allegedly had drugs in his pocket. *Id.* at 18 (62:25-63:2), 20 (73:2-16). As his innocence was no defense, he was found liable and ordered to pay $8,790 to retrieve his vehicle. *Id.* at 21 (77:4-8), 18 (63:7-9), 103. Within months, that amount spiraled to $17,790. *Id.* at 23 (82:5-12), 157. His car was estimated to be worth approximately $1,600 when it was impounded. Doc. 173-5, at 25 (92:1-4). It remains in one of the City's impound lots, Byrd's work tools still inside it. *Id.* at 27 (100:23-24).[4]

B. Procedural history

1. The plaintiffs filed this action in the Circuit Court of Cook County, Illinois, in April 2019, and their operative complaint (as relevant here) challenged two features of Chicago's impound program.

First, they challenged Chicago's policy of refusing to release impounded vehicles until an owner pre-pays the full amount of fines and fees that might ultimately become due at final judgment. This policy violates both the Fourteenth Amendment's Due Process Clause and the Fourth Amendment's guarantee against unreasonable seizures. Doc. 29 ¶¶ 199, 206-10, 223-30.

Second, they asserted that the impound program unconstitutionally imposed *in personam* penalties on them without regard to their culpability, if any. This aspect of the program violates

[4] During this litigation, the City sent Byrd a letter waiving its towing and storage fees, but it continued to demand he pay the $2,000 in penalties for Timothy Mars's alleged crime. Doc. 173-5, at 28 (102:19-104:8); Doc. 173-14 ¶¶ 16-17. Byrd could not afford that sum and did not pay it. He died shortly before the district court entered final judgment below (Doc. 204), and his daughter Diamonique Byrd has been substituted under Federal Rule of Civil Procedure 25. Doc. 205.

both the and the Excessive Fines Clause of the federal Eighth Amendment and the Proportionate Penalties Clause of the Illinois Constitution. *Id.* ¶¶ 162-67, 169-74.

As relevant here, the plaintiffs seek backward-looking relief in the form of nominal damages, disgorgement and restitution, and (in the case of Spencer Byrd's estate) an order requiring the release of his car and tools.[5]

2. Chicago removed the case and moved to dismiss the operative complaint. Doc. 29, at 3 n.1. The district court granted the motion in part and denied it in part.

Procedurally, the court first held that the claims of Jerome Davis and Veronica Walker-Davis were barred by res judicata. App. 6-9. The court thus dismissed their claims entirely. The court also held that Spencer Byrd's federal counts were untimely, as were any damages that he and Allie Nelson sought for state-law violations. App. 9-13.

On the substance, the court (as relevant here) dismissed Allie Nelson's and Lewrance Gant's Fourth Amendment count. They asserted that Chicago's retaining their vehicles to coerce the pre-payment of fines amounted to an unreasonable seizure. Following this Court's precedent, however, the district court maintained that "'the seizure in Plaintiffs' case and all others under the Ordinances is complete when the officer or agent seizes and impounds the vehicle'" and that the Fourth Amendment is not implicated by any "subsequent retention of the vehicle." App. 18-20.

The court also dismissed Gant and Nelson's excessive-fines count under the federal Eighth Amendment. That theory, the court concluded, is foreclosed by this Court's decision in *Towers v.*

[5] The operative complaint pleaded additional counts and sought additional relief and class certification. Those counts and relief and the district court's denial of class certification are not presented in this appeal.

City of Chicago, 173 F.3d 619 (1999), which rejected an excessive-fines challenge to an earlier version of Chicago's impound ordinance. App. 14-17.

At the same time, the court denied the City's motion (as relevant here) as to Gant, Nelson, and Byrd's state-law theory under Illinois's Proportionate Penalties Clause. App. 17-18. It likewise denied the City's motion as to Gant and Nelson's due-process challenge to Chicago's requirement that vehicle owners pre-pay their potential fines before retrieving their cars. App. 22-27.

3. Following discovery, Chicago and the remaining plaintiffs cross-moved for summary judgment on the outstanding counts. The district court granted the City's motion and denied the plaintiffs'. App. 32.

In rejecting the plaintiffs' theory under Illinois's Proportionate Penalties Clause, the court acknowledged that the Clause "provid[es] a limitation on penalties beyond those afforded by the eighth amendment." App. 38 (citation omitted). The court nonetheless relied almost entirely on Eighth Amendment precedent and ruled for the City.

On the plaintiffs' due-process count, the court likewise ruled for the City. The crux of the plaintiffs' theory is that Chicago cannot require vehicle owners to pre-pay *in personam* penalties as a condition of recovering their vehicles. The district court, however, homed in on a different issue entirely: the existence of administrative hearings. App. 43-45. Because Chicago provides for preliminary and final administrative hearings, the court saw no constitutional hazard in the City's using prolonged vehicle seizures to coerce pre-payment of unowed debts. *Id.*

SUMMARY OF ARGUMENT

The City of Chicago's impound program is shot through with injustices, but two key ones are presented in this appeal. First: the City's policy of holding vehicles to coerce the pre-payment of as-yet-unowed debts. Second: its policy of imposing *in personam* penalties without regard to

whether the *personam* targeted for the penalty was in any way "legally responsible for the underlying offense." The district court erred in its handling of the plaintiffs' challenges to both these features. It likewise erred in its resolution of several of Chicago's procedural defenses. The judgment below should be reversed.

I. In our system of ordered liberty, one starting-gate principle is this: the government can't punish you for wrongdoing before adjudicating you responsible for it. Yet in Chicago, city police seize and hold people's cars to achieve precisely that lawless result: as leverage to arm-twist the owners into pre-paying penalties they don't yet owe. This program violates two constitutional guarantees: that the government shall not deprive people of their property without due process of law and that the government shall not effect unreasonable seizures of property.

A. First: due process. Through almost every corner of our Nation's justice system, the penalty (if any) comes *after* judgment, not before. By the thousands, however, the City of Chicago seizes and holds vehicles for the express goal of coercing the owners to pre-pay penalties they don't yet owe—and may never come to owe. There are hard due-process cases out there; this isn't one of them. Seize-first-judge-later is the opposite of due process of law, and the district court presented no persuasive rebuttal to that proposition in entering summary judgment for the City.

B. Seize-first-judge-later violates the Fourth Amendment as well: holding people's cars as ransom for as-yet-unowed penalties is precisely the sort of unreasonable seizure of property against which the Fourth Amendment guards. Following the City's lead, the district court rejected this theory on one ground alone: under this Court's precedent, it reasoned, the Fourth Amendment is implicated only by the initial seizure, not by "the City's subsequent retention of the vehicle." That account of this Court's precedent is correct, but since this Court cemented that

improvident precedent in 2003, two separate circuits have issued thoughtful decisions criticizing and departing from that precedent. *Asinor v. District of Columbia*, 111 F.4th 1249, 1260 n.3 (D.C. Cir. 2024); *Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017). Given those persuasive critiques, the panel should exercise its power under Rule 40(e) to overrule this Court's existing precedent and remand for the plaintiffs' Fourth Amendment count to proceed.

II. By design, Chicago's impound program also imposed thousands of dollars in *in personam* penalties without regard to whether the people targeted were in any way "legally responsible for the underlying offense" giving rise to the penalties.

A. This aspect of Chicago's regime facially violated the plaintiffs' rights under the Eighth Amendment's Excessive Fines Clause. The Clause's "touchstone" is that a fine's amount "must bear some relationship to the gravity of the offense that it is designed to punish." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). In turn, "a punishment imposed for no offense at all is, as a matter of mathematics, disproportionate." *Leslie v. Doyle*, 125 F.3d 1132, 1135 (7th Cir. 1997). In its structure, however, Chicago's regime was blind to culpability, and in every one of their applications, the penalty ordinances suffered this unconstitutional defect. For its part, the district court believed the plaintiffs' excessive-fines count foreclosed by this Court's decision in *Towers v. City of Chicago*, 173 F.3d 619 (1999). Yet *Towers* can only be read as an as-applied decision; the panel did not consider any facial challenge to Chicago's penalty scheme—much less the one raised here. Contrary to the district court's reasoning, therefore, the Court's decision in *Towers* does not dictate the outcome of the plaintiffs' facial challenge. And for at least two of the plaintiffs, *Towers* does not dictate the outcome of their as-applied challenge either.

B. In a similar vein to the federal Eighth Amendment, Article I, Section 11 of the Illinois Constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." This clause provides protections beyond those secured by the Eighth Amendment. Yet the decision below relied almost entirely on Eighth Amendment precedent—*Towers* again. In this, the court erred. Both on its face and as applied, Chicago's penalty ordinances violated Illinois's Proportionate Penalties Clause, and the entry of summary judgment for the City should be reversed.

III. Lastly, the district court's rulings suffered from several procedural errors.

A. The court held that the claims of plaintiffs Jerome Davis and Veronica Walker-Davis were barred by res judicata because the two entered into an agreed order "voluntar[ily] withdraw[ing]" a state-court complaint challenging their administrative penalty. That voluntary dismissal was not made with prejudice, however, meaning it had no claim-preclusive effect on their right to bring this action.

B. The court also held that the state-law relief sought by plaintiffs Spencer Byrd and Allie Nelson was time-barred by the one-year period set by the Illinois Tort Immunity Act. But the requested relief is based on alleged violations of the Illinois state constitution, and the Tort Immunity Act does not bar actions for constitutional violations. Likewise misplaced was the district court's conclusion that Byrd's Section 1983 counts were time-barred. Basing this ruling purely on the pleadings (an irregular maneuver this Court has cautioned against), the court held that Byrd's federal counts had expired even though the complaint did not allege the triggering date for the limitations clock and even though discovery would later confirm that the triggering date for many or all of his federal counts fell comfortably within the two-year limitations window.

STANDARD OF REVIEW

The district court dismissed Lewrance Gant's and Allie Nelson's federal excessive-fines count and Fourth Amendment count for failure to state a claim. That decision is reviewed de novo, as are the court's res judicata ruling as to Jerome Davis and Veronica Walker-Davis and the court's statute-of-limitations rulings as to Allie Nelson and Spencer Byrd. *Bilek v. Fed. Ins. Co.*, 8 F.4th 581, 586 (7th Cir. 2021).

The district court entered summary judgment against Lewrance Gant, Allie Nelson, and Spencer Byrd on their proportionate-penalties count and against Gant and Nelson on their due-process count. That decision is likewise reviewed de novo. *Kemp v. Liebel*, 877 F.3d 346, 350 (7th Cir. 2017).

ARGUMENT

I. Chicago's policy of conditioning the return of seized cars on the owners' pre-paying as-yet-unowed debts violates both the Due Process Clause and the Fourth Amendment.

Under Chicago's impound program—when the plaintiffs were targeted and still today—vehicle seizures serve one purpose: as leverage to pressure owners to pre-pay *in personam* penalties they don't yet owe. If an impound passes a screening for probable cause (typically days after seizure, if ever), the City will continue to keep the vehicle for the full length of the enforcement proceeding. During that period, the owner can recover it only by pre-paying in full all future penalties she might ultimately be adjudged to owe. Whether viewed through the lens of the Fourteenth Amendment or the Fourth, this regime is unlawful.

A. Due process prohibits Chicago from depriving people of their cars to leverage pre-payment of unowed penalties.

A feature of Chicago's impound program is the City's seizing and holding cars to coerce the owners to pay *in personam* penalties to which the City is not yet entitled (and might never be). This regime straightforwardly violates the Fourteenth Amendment's due-process protections, and the district court's contrary reasoning contravenes Supreme Court precedent.

1. Chicago's holding cars to which it is not yet entitled to coerce pre-payment of penalties to which it is not yet entitled violates due process.

Under our system of ordered liberty, no government may "deprive any person of . . . property, without due process of law." U.S. Const. amend. XIV. Fundamental to this promise is that people who are to be deprived of their property "are entitled to be heard." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (quoting *Baldwin v. Hale*, 68 U.S. 223, 233 (1863)). And "[i]f the right to notice and a hearing is to serve its full purpose, . . . it is clear that it must be granted at a time when the deprivation can still be prevented." *Id.* at 81. For "no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred." *Fuentes*, 407 U.S. at 82. And these principles have special urgency when it is the government exercising its formidable, punitive sovereign power. Across almost every facet of our justice system, the penalty (if any) comes *after* judgment, not before. *See, e.g.*, *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.").

Chicago's impound program violates these principles at a bedrock level. Seizing and holding cars pre-judgment is designed precisely to coerce the owners to pre-pay punitive monetary sanctions that they do not yet owe and may never owe. As the City conceded, moreover, the point is to "serve [a] deterrent purpose"—that is, to punish. Doc. 176, at 24; *accord Bajakajian*, 524 U.S.

at 329 ("Deterrence . . . has traditionally been viewed as a goal of punishment . . . ."). In the district court's view, that feature was a saving grace. App. 44-45. In truth, however, it's a cardinal due-process sin. Chicago has no legitimate interest in punishing people before they have been adjudged deserving of punishment. To impound a car to which it is not yet entitled as leverage to coerce payment of penalties to which it is not yet entitled is the essence of depriving people of property without due process of law. For "[w]hatever the due process clause may mean in more complicated scenarios, surely it means the government cannot summarily seize property because a fine *might* be imposed at some point in the future by a neutral judicial officer." *Harrell v. City of New York*, 138 F. Supp. 3d 479, 494-95 (S.D.N.Y. 2015); *see also id.* at 492 (holding that city violated Due Process Clause and Fourth Amendment by "seiz[ing] vehicles in order to assert control over them as a means of ensuring payment of an as-yet-unimposed penalty").

2. The district court's contrary reasoning lacked merit.

The district court presented three reasons for rejecting the plaintiffs' due-process theory. Each is without merit.

a. The court posited that the Supreme Court's admonition that hearings must be "granted at a time when the deprivation can still be prevented" is a due-process peculiarity unique to seizures of property on behalf of private creditors. App. 42 (quoting *Fuentes*, 407 U.S. at 81). That is wrong. Yes, the Court in *Fuentes* held that it violated due process for states to seize property *sans* hearing in a case involving seizures on behalf of private creditors. Far from carving out a rule unique to that context, however, the Court made clear that its reasoning rested on "no new principle of constitutional law." *Fuentes*, 407 U.S. at 82; *see also id.* at 81 ("If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the

deprivation can still be prevented."). And in the decades since, the Supreme Court has cited *Fuentes*'s principles in due-process cases concerning governments' acting in more traditional law-enforcement settings. *E.g.*, *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993) (citing, *inter alia*, *Fuentes* in due-process challenge to civil-forfeiture regime); *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004). If anything, seizing property pre-hearing in the exercise of the sovereign's power to punish presents *more* urgent due-process concerns, not less. *James Daniel Good Real Prop.*, 510 U.S. at 55-56.

b. The district court likened Chicago's program to an *in rem* forfeiture regime. Under current Supreme Court precedent, civil forfeitures enjoy a historical exception to the general rule requiring "governments to conduct a trial before taking property." *Culley v. Marshall*, 601 U.S. 377, 397 (2024) (Gorsuch, J., joined by Thomas, J., concurring); *see also id.* at 398 ("These historical traditions suggest that postdeprivation civil forfeiture processes in the discrete arenas of admiralty, customs, and revenue law may satisfy the Constitution."). But whatever historical idiosyncrasies might (or might not) justify seize-first-judge-later for civil forfeitures, one thing is clear: the general rule is the opposite. "Under the Due Process Clause of the Fourteenth Amendment as interpreted by this Court," the Supreme Court recently reiterated, "States ordinarily may not seize real property before providing notice and a hearing." *Id.* at 384 (majority opinion); *see also United States v. $8,850*, 461 U.S. 555, 562 n.12 (1983) ("The general rule, of course, is that absent an 'extraordinary situation' a party cannot invoke the power of the state to seize a person's property without a *prior* judicial determination that the seizure is justified." (citing, among other precedents, *Fuentes*)).

The district court saw no material difference between the tradition of *in rem* forfeitures and Chicago's program here. App. 43 n.6. And it is certainly true that both forms of government action are punitive. *Cf. Towers v. City of Chicago*, 173 F.3d 619, 626 (7th Cir. 1999). Yet certainly for purposes of due process, the differences between the two schemes are obvious. Chicago's seizure and impoundment of cars is not in service of "preventing continued illicit use of the property" (the main stated basis for forfeiture regimes). *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974). As described above, its purpose is to hold the vehicles as a pain-point to leverage people to pay *in personam* penalties (bluntly, fines) that they don't yet owe and may never owe. Whatever might be said of the old-world pedigree of *in rem* forfeitures and the "guilty property" fiction, *see generally Austin v. United States*, 509 U.S. 602, 611-12, 616 (1993), holding cars for ransom is something else entirely.

c. Lastly, the district court made use of the *Mathews v. Eldridge*, 424 U.S. 319 (1976), factors and blessed Chicago's system on that ground. As an initial matter, *Mathews* should not be read to trump "[t]he general rule . . . that absent an 'extraordinary situation' a party cannot invoke the power of the state to seize a person's property without a *prior* judicial determination that the seizure is justified." *$8,850*, 461 U.S. at 562 n.12; *see also Culley*, 601 U.S. at 393 (Gorsuch, J., concurring) ("[The *Mathews*] test does not control—and we do not afford any particular solicitude to 'governmental interests'—in cases like this one where the government seeks to deprive an individual of her private property."). But regardless, the same result obtains under *Mathews* as well.

First, as the district court acknowledged, ordinary people have a "substantial" interest in their cars. App. 44. Indeed, that is *why* Chicago has set up its system as it has: because stripping people of their vehicles for even a few months is uniquely disruptive and coercive. *Cf. Washington*

v. Marion Cnty. Prosecutor, 916 F.3d 676, 679 (7th Cir. 2019) ("Many Americans depend on cars for food, school, work, medical treatment, church, relationships, arts, sports, recreation, and anything farther away than the ends of their driveways."); *see also City of Chicago v. Fulton*, 592 U.S. 154, 164 (2021) (Sotomayor, J., concurring) (observing that an owner who lacks "reliable transportation to and from work, finds it all but impossible to repay her debt and recover her vehicle"); *Brewster v. City of Los Angeles*, 672 F. Supp. 3d 872, 1011 (C.D. Cal. 2023) (describing impoundment policy's requirement that owners pay all outstanding debt to retrieve their impounded vehicles as a "debt trap for the poor" and a "[Sisyphean] challenge for cash-strapped middle and low income families" (citations omitted)). Americans have a strong interest, too, in keeping thousands of dollars of their own money, rather than paying it over to Chicago for a debt they don't yet owe. As the district court appears to have agreed, this first *Mathews* factor "favors Plaintiffs." App. 44.

Second, the risk of erroneous deprivation is more than a risk: it's a certainty. Until Chicago's claim to an *in personam* penalty is reduced to a judgment, it has no right to the money. A core element of our legal tradition is that "a general creditor (one without a judgment) ha[s] no cognizable interest, either at law or in equity, in the property of his debtor" and thus "c[an] not interfere with the debtor's use of that property." *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 319-20 (1999). Even if a vehicle owner ultimately is adjudged liable for the penalty, therefore, stripping her of that money *beforehand* deprives her of her rights. So, too, does stripping her of *other* property (her car) as a means to coerce that pre-payment.

As well, there is a real risk that, having pre-paid the penalty, vehicle owners later will prevail. The district court found comfort in the fact that the City "implements probable cause hearings, which can be requested within fifteen days of impoundment, and will be held within two

business days of the request." App. 44; *but see* Doc. 29 ¶¶ 101-04 (alleging that the Davises received no notice and were denied a probable-cause hearing). Yet by that point, the vehicle has already been seized. *See Fuentes*, 407 U.S. at 82 ("[N]o later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred."). Worse, several of the affirmative defenses that are theoretically available to property owners are highly fact-intensive. *See* p. 6 n.3, *supra*.

Third, the City's countervailing interests are nil. As discussed, Chicago's interest in coercing pre-payment for punitive purposes is fundamentally illegitimate. So, too, is its claim that holding the vehicles hostage "helps [it] secure the likelihood of payment." Doc. 176, at 20. Again, the City has no legitimate interest in taking people's property to coerce them to pay debts they don't yet owe. Even were the vehicles outright *collateral* for a debt, the City's program still would be at odds with our legal tradition. *Grupo Mexicano de Desarrollo S.A.*, 527 U.S. at 320 ("[U]ntil the creditor has established his title, he has no right to interfere, and it would lead to an unnecessary, and, perhaps, a fruitless and oppressive interruption of the exercise of the debtor's rights." (quoting *Wiggins v. Armstrong*, 2 Johns. Ch. 144, 145-46 (N.Y. 1816) (Kent, J.)); *see generally* 11A Charles Alan Wright et al., *Federal Practice & Procedure* § 2934 at 22-23 (3d ed. 2013) ("[I]t remains clear that the ability of the state and federal governments to provide for the prejudgment seizure of property without prior notice and an opportunity to be heard is severely limited."). And the program in Chicago is exponentially more corrosive. For the cars are *not* collateral: for people who are ultimately adjudged liable for penalties and who cannot pay, the value of their car counts nothing toward their debt. Doc. 185-3, at 137-38 (Chicago Mun. Code § 9-92-100(e)). Under any due-process

framework, it is fundamentally unconstitutional for Chicago to hold cars to which it is not yet entitled as a tool to coerce pre-payment of penalties to which it is not yet entitled.

B. The plaintiffs stated a claim that Chicago's holding their cars to leverage pre-payment of unowed penalties violates the Fourth Amendment.

1. Along similar lines, the plaintiffs also challenged Chicago's car-ransom regime under the Fourth Amendment. The Fourth Amendment protects against "unreasonable . . . seizures." And whatever the legitimacy may be of the City's towing a car at the moment of seizure, holding onto it to coerce the owner to pre-pay an as-yet-unowed penalty is, in a word, unreasonable.

Below, the City moved to dismiss the plaintiffs' Fourth Amendment claim on one ground alone. Doc. 34-1, at 36. In granting the City's motion, the district court, too, relied on that one ground alone. Whether or not Chicago's hold-for-ransom program is unreasonable is beside the point, the court reasoned. For under circuit precedent, the Fourth Amendment is implicated only by the initial seizure, not by "the City's subsequent retention of the vehicle." App. 18.

The district court's understanding of this Court's precedent was correct, and that precedent should be overruled either by the Court sitting en banc or by the panel under Circuit Rule 40(e). Since 2003, this Court has held that the Fourth Amendment's seizure clause is "limited to an individual's interest in *retaining* his property" and is implicated only at the moment of seizure. *Lee v. City of Chicago*, 330 F.3d 456, 466 (7th Cir. 2003); *see also id.* at 474 (Wood, J., concurring) (voicing concern that the majority "rule[d] broadly that the Fourth Amendment has nothing to say about a seizure beyond the instant when that seizure occurs"). Future panels have found themselves bound by that precedent, including, in 2016, in a challenge to aspects of Chicago's impound program. *Bell v. City of Chicago*, 835 F.3d 736, 741 (7th Cir. 2016) ("Plaintiffs cannot explain how their challenge to the post-seizure procedure process implicates the Fourth Amendment, as the

seizure in Plaintiffs' case and all others under the Ordinances is complete when the officer or agent seizes and impounds the vehicle."); *see also Conyers v. City of Chicago*, 10 F.4th 704, 710 (7th Cir. 2021) (again adhering to *Lee*'s rejection of "the idea that the Fourth Amendment applies to a continuing seizure").

As both the Ninth and the D.C. Circuits have since explained, however, this Court's reasoning is unsound. *Asinor v. District of Columbia*, 111 F.4th 1249, 1260 n.3 (D.C. Cir. 2024) (rejecting this Court's reasoning in *Lee*); *Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017) (same); *see also Asinor*, 111 F.4th at 1261 (Henderson, J., concurring) ("I write separately to explain why I believe we correctly part ways with many of our sister circuits."). Along every metric, those circuits' opinions address and rebuff the analysis that continues to control in this Circuit.

Foremost: text. Writing in 2003, this Court in *Lee* posited that "at the time of the amendment's drafting, the word 'seizure' was defined as a temporally limited act." 330 F.3d at 462. Last year, the D.C. Circuit refuted that understanding with a thorough canvassing of both text and history. *Asinor*, 111 F.4th at 1253 (D.C. Cir. 2024) (citing Samuel Johnson's 1773 dictionary and concluding that "the word 'seizure' encompassed both the act of taking possession and continuing possession over time"); *see also id.* ("History . . . indicates that the government's continued possession of the plaintiffs' property must be reasonable."); *id.* at 1254 ("William Blackstone . . . directly addressed this question.").

Precedent, too, subverts this Court's analysis. In *Lee*, this Court analogized to its then-governing precedent concerning seizures of persons, which "rejected the idea that a Fourth Amendment seizure can continue beyond the point of arrest . . . ." 330 F.3d at 463. On that basis, the Court saw fit to "reach[] an analogous conclusion" as to seizures of property. *Id.* at 464. In

2017, however, the Supreme Court removed this Court's keystone precedent: reversing a judgment of this Court, it rejected this Court's view that "[o]nce a person is detained pursuant to legal process . . . 'the Fourth Amendment falls out of the picture and the detainee's claim that the detention is improper becomes [one of] due process.'" *Manuel v. City of Joliet*, 580 U.S. 357, 363 (2017). In the years since, both the D.C. Circuit and the Ninth have readily concluded that the "[t]he same logic" applies to property; both "persons" and "effects," after all, are protected by the Fourth Amendment's plain terms. *Asinor*, 111 F.4th at 1256; *Brewster*, 859 F.3d at 1197. For its part, however, this Court has read *Manuel* differently. *Conyers*, 10 F.4th at 710. And (in a silent break with its reasoning-by-analogy of 2003), the Court now discounts the virtue of Fourth Amendment consistency across persons and property. *See id.* ("*Manuel* dealt with pretrial confinement, not the retention of property."). *But see Asinor*, 111 F.4th at 1264 n.4 (Henderson, J., concurring) ("To me, *Manuel* suggests as a corollary that Fourth Amendment protections for property endure over time, too.").

And more. Since at least the 1980s, the Supreme Court in fact *has* applied the Fourth Amendment beyond just the initial seizure of property. In *United States v. Place*, for example, the Court addressed an investigative detention of property based on less than probable cause, followed by a ninety-minute detention. 462 U.S. 696 (1983). Though the initial seizure was valid, the Court held, it later "became unreasonable because its length unduly intruded upon constitutionally protected interests." *United States v. Jacobsen*, 466 U.S. 109, 124 n.25 (1984) (discussing *Place*, 462 U.S. at 707-08). In 1984, the Court extended *Place* to hold that "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable

seizures.'" *Id.* at 124. Applying those precedents faithfully, the Ninth and D.C. Circuits have concluded that "[t]he Fourth Amendment doesn't become irrelevant once an initial seizure has run its course." *Brewster*, 859 F.3d at 1197; *see also Asinor*, 111 F.4th at 1255 ("These principles govern this case."). Yet this Court, again, has stayed a different course: it has either read those precedents unnaturally (for *Place*) or said nothing at all (for *Jacobsen*). *Compare Lee*, 330 F.3d at 464 (cabining *Place* to "the narrow confines of its holding" and reasoning that "[it] has no application after probable cause to seize has been established"), *with Brewster*, 859 F.3d at 1197 ("We are unpersuaded by the Seventh Circuit's conclusion that *Place* 'deal[t] only with the transformation of a momentary, investigative detention into a seizure' and 'has no application after probable cause to seize has been established.'"), *and Asinor*, 111 F.4th at 1263 (Henderson, J., concurring) ("I respectfully submit that our two sister circuits have failed to recognize that *Jacobsen* broadened *Place*."). Given the thoughtful debate and the now-entrenched split—developments both postdating this Court's key 2003 precedent—*Lee* and its successor opinions are powerful candidates for reconsideration. *United States v. Reyes-Hernandez*, 624 F.3d 405, 412 (7th Cir. 2010) (discussing standard for overturning circuit precedent).

2. At times, it is true, members of this Court have observed that the Court "is rarely inclined to grant *en banc* review for purposes of switching from one side of a circuit split to another." *Chavira-Cervantes v. Holder*, 435 F. App'x 527, 530 (7th Cir. 2011) (Hamilton, J., concurring). It is true, too, that on the Fourth Amendment question presented here, the circuit split will endure whether this Court adheres to its current precedent or repudiates it. *Asinor*, 111 F.4th at 1261-62 (Henderson, J., concurring) ("Five circuits—the First, Second, Sixth, Seventh and Eleventh—have held in precedential opinions that the Fourth Amendment does not support a claim

for the government's retention of legally seized property."). Even so, we'd respectfully submit that positioning the Court on the correct side is worthy of the panel's attention. Even if "it is rarely appropriate to overrule circuit precedent just to move from one side of a conflict to another," still, "[p]recedents are not sacrosanct." *Reyes-Hernandez*, 624 F.3d at 412-13 (citations omitted). And here, every other circuit with which this Court is presently aligned has deployed reasoning that is "problematic" or "rather limited" or both. *Lee*, 330 F.3d at 461-62 (discussing the Second and Sixth Circuits' opinions). The First Circuit, for instance, acknowledged that this Court and the Second and Sixth Circuits "reached th[eir] conclusion[s] in different ways"—then joined ranks summarily because "[t]he plaintiffs make no effort to address these authorities." *Denault v. Ahern*, 857 F.3d 76, 83 (2017). The Eleventh Circuit's analysis was similarly meager. *Case v. Eslinger*, 555 F.3d 1317, 1330 (2009). And the reasoning in this Court's decisions in *Lee* and *Conyers*—if length-ier—offers no persuasive rebuttal to the criticisms lodged by the Ninth and D.C. Circuits and in Judge Henderson's separate writing.

"This ongoing debate and current circuit split," we'd submit, "are compelling reasons" for the Court to revisit its precedent. *Reyes-Hernandez*, 624 F.3d at 414. For our part, we find the Ninth and D.C. Circuits' opinions persuasive. If the panel agrees, Rule 40(e) is built for cases like this one: *Lee*, *Bell*, and *Conyers* should be overruled, the district court's dismissal of the Fourth Amendment count vacated, and the matter remanded for further proceedings. *Cf. United States v. Dingwall*, 6 F.4th 744, 762 (7th Cir. 2021) (Kirsch, J., concurring in the judgment) ("If we are convinced that a lower court applied the incorrect legal standard, we should reverse, announce the proper standard, and remand for the lower court to apply it."). Or, if the panel disagrees and thinks it is the Ninth and D.C. Circuits that have erred, we'd respectfully suggest that marshalling this

Court's first meaningful rejoinder to those circuits' opinions would well serve the nationwide resolution of this important issue.

II. Chicago's impound program contravened state and federal protections against excessive fines because, in its design, it penalized people with no regard for culpability.

By design, the City's *in personam* impound penalties were imposed on the plaintiffs without regard to whether they were "legally responsible for the underlying offense" in any way. *See* App. 41. (The City has since amended its ordinance, imperfectly, to provide for at least some innocence-based affirmative defenses. *See* p. 6 n.3, *supra*.) This regime plausibly violated the plaintiffs' rights under the Eighth Amendment's Excessive Fines Clause, a count the district court dismissed on the pleadings. And it decidedly violated their rights under Illinois's Proportionate Penalties Clause, a count the district court rejected at summary judgment. On both counts, the district court's rulings should be reversed.

A. The complaint plausibly alleged that Chicago's *in personam* penalties violated the federal Excessive Fines Clause.

1.a. The Eighth Amendment prohibits "excessive fines," and the plaintiffs pleaded a facial excessive-fines challenge below. *Cf. City of Los Angeles v. Patel*, 576 U.S. 409, 415 (2015) (remarking that "the Court has never held that [facial] claims cannot be brought under any otherwise enforceable provision of the Constitution"); Doc. 29 ¶¶ 168-74 & p. 38. As designed, they asserted, Chicago's ordinances imposed *in personam* penalties on them with no regard to whether they bore any legal responsibility or culpability for the asserted wrongs being penalized. *Id.* ¶¶ 62-68. And as the district court would later acknowledge, these allegations were well-founded: under the penalty scheme enforced against the plaintiffs, the ordinance was blind to whether the person targeted for the penalties was or was not "legally responsible for the underlying offense." App. 34. To give just

one example, take the Davises. They had their Lexus towed to a body shop for repairs. Doc. 29 ¶ 99. While the car was supposed to be there, police caught a shop employee driving it with a revoked license and impounded it. *Id.* ¶ 100. (For a time, the body shop lied to the Davises about the status of their car, concealing from them the fact that it had been seized. *Id.* ¶¶ 101-02.) Yet it was the Davises who were hit with an *in personam* $1,000 penalty, as the "owner[s] of record of [a] motor vehicle that [wa]s operated by a person with a suspended or revoked driver's license." App. 55 (Chicago Mun. Code § 9-80-240(a)); *see also* Doc. 29 ¶ 105; Doc. 34-1, at 39.

On its face, such a regime plausibly violates the Eighth Amendment's Excessive Fines Clause. The Clause's "touchstone" rule is this: a fine's amount "must bear some relationship to the gravity of the offense that it is designed to punish." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *see also id.* at 337 ("If the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional."). Logically, "a punishment imposed for no offense at all is, as a matter of mathematics, disproportionate." *Leslie v. Doyle*, 125 F.3d 1132, 1135 (7th Cir. 1997). In its structure, however, Chicago's penalty ordinances suffered precisely that design flaw. For vehicles associated with any one of 25 offenses, the ordinances imposed *in personam* penalties, not on the offender, but on whoever was the vehicle's "owner of record."[6] Whether the owner committed the underlying offense? Irrelevant to the penalty's application to them.

[6] *See, e.g.*, App. 54 (Chicago. Mun. Code § 7-24-225(a)) ("The owner of record of any motor vehicle that contains any controlled substance or cannabis, . . . shall be liable to the city for an administrative penalty of $2,000 . . . ."); App. 55 (Chicago Mun. Code § 9-80-240(a)) ("The owner of record of any motor vehicle that is operated by a person with a suspended or revoked driver's license shall be liable to the City for an administrative penalty of $1,000 . . . ."). The district court held that the plaintiffs have standing to challenge only the particular penalty ordinances to which they were subjected (§ 9-80-240 for the Davises (*see* Doc. 34-1, at 39) and Gant (*see* Doc. 173-6, at 161), and § 7-24-225 for Nelson (*see* Doc. 173-6, at 220) and Byrd (*see* Doc. 173-6, at 157)). App. 14. We have not challenged that standing conclusion on appeal.

Whether they were willfully blind? Irrelevant. Whether they were reckless? Irrelevant. Negligent? Irrelevant. Whether they should have prevented the underlying offense? Irrelevant. Whether they *could* have prevented the underlying offense? Irrelevant. Whether they were "legally responsible for the underlying offense" in any way at all? Irrelevant. App. 34; *see also* Doc. 187 ¶ 24.

In every one of their applications, in short, the City's penalty ordinances "operate[d] on a fundamentally mistaken premise." *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 966 (1984). Under the Excessive Fines Clause, fines "must bear some relationship to the gravity of the offense that [they are] designed to punish." *Bajakajian*, 524 U.S. at 334. Yet in their design, Chicago's penalty ordinances did no such thing; in their every application, they were blind to whether the person being penalized was "legally responsible for the underlying offense." App. 34. And, at risk of stating the obvious, someone who is not legally responsible for an offense cannot constitutionally be fined for it. *Cf. Leslie*, 125 F.3d at 1135; *State v. Timbs*, 134 N.E.3d 12, 37-38 (Ind. 2019) ("[I]f a claimant is entirely innocent of the property's misuse, that fact alone may render a use-based *in rem* fine excessive."); *accord Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972) (identifying as "the basic concept of our system" that "legal burdens should bear some relationship to individual responsibility or wrongdoing"). Because that's precisely how Chicago's ordinances were structured when they were enforced against the plaintiffs, the plaintiffs stated a plausible claim that they contravened the Excessive Fines Clause.

That the City's penalties might at times have hit upon vehicle owners who happened *also* to bear blame for the underlying offense does not change the analysis. No matter how flawed, most facially invalid statutes will at times blunder into people who could be punished under a differently formulated rule of law. But if in doing so a statute "operates on a fundamentally mistaken

premise," the prospect that it may at times strike a stopped-clock right answer "is little more than fortuitous" and does not immunize it from facial challenge. *Sec'y of State of Md.*, 467 U.S. at 966. (As an extreme hypothetical, take a law criminalizing burglaries by Hispanics but not by people of other ethnicities: obviously invalid on its face, even though a differently written statute could just as obviously punish burglars who happen to be Hispanic.) These principles apply straightforwardly here. Chicago's penalty ordinances were triggered not by culpability but by car title. That cannot be squared with the "touchstone" of the Supreme Court's excessive-fines standard. *Bajakajian*, 524 U.S. at 334. "[M]easured against the relevant constitutional doctrine, and independent of the constitutionality of particular applications," Chicago's penalty regime thus "contain[ed] a constitutional infirmity that invalidate[d] [it] in its entirety." *Ezell v. City of Chicago*, 651 F.3d 684, 698 (7th Cir. 2011) (quoting Marc E. Isserles, *Overcoming Overbreadth: Facial Challenges and the Valid Rule Requirement*, 48 Am. U. L. Rev. 359, 387 (1998)).

b. The district court dismissed the plaintiffs' excessive-fines count on the pleadings, believing it foreclosed by this Court's decision in *Towers v. City of Chicago*, 173 F.3d 619 (1999). App. 14-17. In this, the court erred. The Court in *Towers* rejected, not a facial challenge to Chicago's penalty ordinance, but an as-applied one. The Court explicitly undertook its excessive-fines analysis "based on the facts of [the] particular case." *Towers*, 173 F.3d at 625. *Cf. Ezell*, 651 F.3d at 697 ("In a facial constitutional challenge, individual application facts do not matter."). And it concluded that the plaintiffs before it could not "be considered completely lacking in culpability." *Towers*, 173 F.3d at 625. For our part, we harbor some doubts about the soundness of that as-applied analysis. But whatever its merits (and of course it's precedent), this Court nowhere considered or resolved the separate question presented here: whether Chicago's ordinances suffered an

antecedent facial defect because they were blind to whether any particular defendant was "lacking in culpability" in the first place. *Id.* The plaintiffs in *Towers* appear not to have developed that facial challenge. This Court had no occasion to entertain it. The district court thus erred in reading that decision to wholly foreclose the plaintiffs' excessive-fines count here. *Cf. Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.*, 929 F.3d 865, 871-72 (7th Cir. 2019) ("[U]nexamined assumptions of prior cases do not control the disposition of a contested issue." (citation omitted)). The district court's dismissal of this count should be reversed and the matter remanded to proceed to the merits.

2. The plaintiffs' complaint sought as-applied relief as well. On this front, two points bear mention.

First, as the district court observed, the facts of Sandra Towers's impound were similar enough to those of Lewrance Gant's, Spencer Byrd's, and Allie Nelson's to make an as-applied ruling in their favor incompatible with the as-applied loss in *Towers*. App. 15-17. For them, we simply preserve for further review our argument that *Towers* was wrongly decided and should be overturned, either by this Court sitting en banc or by the Supreme Court.

Second, as to the remaining plaintiffs—the Davises—the district court did not entertain their Eighth Amendment count (or any other), believing their claims barred by res judicata. App. 6-9. As detailed below (at pp. 38-40), that conclusion was error. Were this Court to agree and remand, moreover, their as-applied excessive-fines claim would not be barred by *Towers*. The couple's Lexus had been left at a body shop for repairs when it was driven, seized, and impounded. Doc. 29 ¶¶ 99-106. And even taking *Towers* reasoning at its word—that an owner who does not immediately report their car stolen "must have given some degree of consent to the use of their

cars by others"—there's no world in which dropping your car off at a repair shop betrays any culpability at all. Who amongst us hasn't? With or without *Towers* on the books, the Davises' as-applied count states a plausible claim for relief.

B. Chicago's impound program violated Illinois's Proportionate Penalties Clause.

1. Separate from the federal Excessive Fines Clause, the Illinois Constitution provides still greater protections against overreaching penalties. Under the Proportionate Penalties Clause of Article I, Section 11, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." While sharing a similar aim to the Eighth Amendment's, the Proportionate Penalties Clause is deliberately more protective; it "provides 'a limitation on penalties beyond those afforded by the eighth amendment.'" *People v. Clark*, 216 N.E.3d 855, 871 (Ill. 2023). Much of what is said above about the federal Excessive Fines Clause thus applies with added force here.

The Proportionate Penalties Clause "focus[es] on the objective of rehabilitation," which requires that penalties be determined by "look[ing] at the person" being punished. *People v. Clemons*, 968 N.E.2d 1046, 1057 (Ill. 2012). A "cardinal consideration" thus is the individual's "culpability and potential for rehabilitation." *People v. Rodriguez*, No. 1-19-0983-U, 2021 WL 614513, at *9 (Ill. App. Ct. Feb. 10, 2021); *accord People v. Miller*, 781 N.E.2d 300, 308-09 (Ill. 2002) (invalidating sentence under the Proportionate Penalties Clause where the defendant lacked "personal culpability" because he did not "actively participate[]" in planning the crime). Yet, again, Chicago's penalty ordinances are blind to whether the person being penalized was "legally responsible for the underlying offense." App. 34. That defect is squarely at odds with Illinois's constitutional protections. *See Souerbry v. Fisher*, 62 Ill. 135, 137 (1871) (holding that $500 punishment

based on "acts which [the defendant] never committed" violates "every principle of law"). And it renders the scheme invalid.

2. For its part, the district court declined to entertain the plaintiffs' facial theory; in its view, the law was valid as applied to Gant, Byrd, and Nelson, and so must needs be valid facially as well. That was wrong twice over.

First, in holding the penalty ordinances valid as applied, the court focused entirely on facts particular to each plaintiff that had no bearing on whether and how the ordinances operated against them. The court faulted Byrd, for instance, for "allow[ing] [Timothy] Mars into his car without inquiring whether Mars was carrying contraband." App. 41. The court faulted Gant for letting Donald Salter use his car despite knowing that Salter had driven liveries without a proper license (years earlier) and had unpaid tickets. App. 41; *see also* Doc. 196 ¶ 38. And the court faulted Nelson for letting her granddaughter use her car while she was out of town, recovering from cancer treatment, "even though she assumed that her instructions not to let [the granddaughter's boyfriend] drive it would be ignored." App. 41. *But see* p. 37 n.7, *infra* (addressing inaccuracies in this characterization of the record). None of those facts, however, bore on the antecedent defect in the ordinances' design: that in their every application, the ordinances operated to impose penalties whether or not the vehicle owners were "legally responsible for the underlying offense" in any way. App. 34. Donald Salter could have had a pristine driving record and no history of unpaid tickets; Lewrance Gant's penalty would have been imposed just the same. Spencer Byrd could have frisked Timothy Mars before picking him up off the side of the road; his penalty would have been imposed just the same. Allie Nelson could have had no reason to suspect her granddaughter even *had* a boyfriend. Same outcome. Same penalty. The district court's reliance on those facts to reject

the plaintiffs' as-applied challenge, therefore, cast no doubt on the gravamen of their facial theory: that regardless of any particular vehicle owner's circumstances, the ordinances were blind to whether they bore any legal responsibility for the underlying offense.

Second, the court's as-applied analysis was unsound on its own terms. The Proportionate Penalties Clause "focus[es] on the objective of rehabilitation" and "looks at the person" being punished. *Clemons*, 968 N.E.2d at 1057. And by any measure, the penalties imposed on the plaintiffs here are "so wholly disproportionate to the offense as to shock the moral sense of the community." *Miller*, 781 N.E.2d at 307. Two thousand dollars imposed on a car mechanic for helping out a stranded grammar-school acquaintance. Two thousand dollars imposed on a cancer patient whose granddaughter defied her and let a boyfriend drive her car.[7] One thousand dollars on an elderly retiree for letting another old man drive his car to the laundromat without re-determining whether the driver's license he'd previously checked had since been suspended. (Not for nothing, but suspending Donald Salter's license for unpaid tickets would now be unlawful in Illinois. S.B. 1786, 101st Gen. Assemb. (Ill. 2020); H.B. 3653, 101st Gen. Assemb. (Ill. 2021).) Maybe—as the district court assumed—this Court's *Towers* decision is such that people in these circumstances can't make out an as-applied excessive-fines count under federal law. App. 41-42. But there is every

[7] Contrary to the district court's suggestion, Allie Nelson did not testify that she "assumed" that her granddaughter would disobey her. App. 41. Rather, she testified that she gave her granddaughter specific instructions regarding the boyfriend precisely because she assumed that, left to their own devices, teenage girls have let their beaus drive their cars since the invention of the automobile. Doc. 177-27, at 43 (42:6-8) ("You know, you get the boy, keep the boy. You know, I ain't gonna say remember in your teenage days, but yeah."), 44 (43:1-44:10) ("Q. So Miss Wise was gonna let Mr. Tillis drive the car even if you said don't do that, don't let him do that? A. No, I can't answer that question. Q. But -- A. Even though it happened, I can't answer that question cause I didn't know. Q. But you assumed it would happen? A. Yeah. All girls, I assume that with all teenagers."); *see generally Bellino v. Peters*, 530 F.3d 543, 548 (7th Cir. 2008) (remarking that, at summary judgment, any "ambiguities in the record" are construed in the non-movant's favor).

reason to believe the Illinois courts would hold that saddling Gant, Nelson, and Byrd with thousands of dollars in *in personam* penalties contravenes the Proportionate Penalties Clause. *Cf. Souerbry*, 62 Ill. at 137 (admonishing that "punish[ing] the innocent is opposed to every principle of law").

III. Several of the district court's procedural rulings were error.

A. The Davises' claims were not claim-precluded.

Following an adverse decision in Chicago's administrative court, Jerome Davis and Veronica Walker-Davis filed a complaint seeking review in state court. While that case was pending, they then entered into a settlement with the City, in which they agreed to "voluntarily withdraw" their complaint. Doc. 34-1, at 44. On that basis, the district court here later dismissed the couple's claims at the pleadings stage, as barred by res judicata. App. 6-9.

That conclusion was incorrect. Applying Illinois law (as it had to under 28 U.S.C. § 1738), the district court concluded that agreed orders can have the same claim-preclusive effect as contested ones. App. 7. But whether that premise was right or wrong (this Court would likely say *right*, though the state courts are somewhat divided[8]), the district court erred in its application. Under this Court's understanding of Illinois law, an agreed dismissal *with prejudice* will amount to a "final adjudication on the merits" and enjoy claim-preclusive effect. *Torres v. Rebarchak*, 814 F.2d 1219, 1223 (7th Cir. 1987); *see also Retired Chi. Police Ass'n v. City of Chicago*, 7 F.3d 584, 593 (7th Cir. 1993) ("[D]ismissal with prejudice entered pursuant to a settlement agreement constitutes a final judgment on the merits sufficient for application of *res judicata*" (quoting *Gillilan v. Trs. for Cent. States Pension Fund*, 539 N.E.2d 303, 310 (Ill. App. Ct. 1989))). (So, too, not surprisingly, will a

[8] *H.A.L. NY Holdings, LLC v. Guinan*, 958 F.3d 627, 634 (7th Cir. 2020).

judgment entered under the Illinois analogue to Rule 68. *H.A.L. NY Holdings, LLC v. Guinan*, 958 F.3d 627, 634 (7th Cir. 2020).). Yet the Davises' dismissal was conspicuously *not* "with prejudice"; their instrument was silent on that question. And for voluntary dismissals—which the Davises' assuredly was, Doc. 34-1, at 44 ¶ 2 ("Plaintiffs(s) agree(s) to voluntarily withdraw the complaint in this matter.")—Illinois courts adhere to the "unremarkable proposition" that the "voluntary dismissal of an action is typically without prejudice to the bringing of a second action." *Hudson v. City of Chicago*, 889 N.E.2d 210, 216 n.2 (Ill. 2008) (emphasis omitted); *cf.* Fed. R. Civ. P. 41(a)(2). That should have been the end of the matter. Whatever might be said of an agreed dismissal with prejudice, one without prejudice does not, well, prejudice (read: have claim-preclusive effect against) a later action.

For its part, the district court construed the dismissal instrument's silence as signaling a dismissal "with" prejudice, not "without." App. 9. Yet in deriving what it viewed as that "well-settled" rule, App. 9, the court mistakenly relied on precedent governing *involuntary* dismissals, not voluntary ones. For involuntary dismissals, it's true, as the district court noted, that "where a dismissal order does not specify that it is 'without prejudice,' or that plaintiff was granted leave to file an amended complaint, the dismissal order is a final adjudication on the merits." App. 9 (quoting *Richter v. Prairie Farms Dairy, Inc.*, 53 N.E.3d 1, 9 (Ill. 2016)); *see also* Ill. Sup. Ct. R. 273. As noted above, however, the baseline rule is otherwise for voluntary dismissals.

Below the City's position was even further afield: it posited that even without-prejudice dismissals somehow have preclusive effect under Illinois law. *See* Doc. 43, at 3. But the City cited no state-law authority for that (obviously wrong) proposition. And the one federal decision it cited, *4901 Corp. v. Town of Cicero*, 220 F.3d 522 (7th Cir. 2000), nowhere suggested that an agreed

dismissal without prejudice would have claim-preclusive effect. *Accord Bonnstetter v. City of Chicago*, 811 F.3d 969, 975 (7th Cir. 2016) (citing *4901 Corp.* as standing for the proposition that a "dismissal with prejudice constitutes a final judgment on the merits"). Simply, the district court's ground for dismissing the Davises was error and should be reversed.[9]

B. None of Spencer Byrd's or Allie Nelson's claims were time-barred.

The district court also erred in dismissing as time-barred portions of Spencer Byrd's and Allie Nelson's state-law relief and Byrd's federal counts. App. 9-13.

1. The district court held correctly that the one-year statute of limitations in the Illinois Tort Immunity Act does not bar Byrd's and Nelson's state-law requests for equitable relief. App. 12-13. The court erred, however, in holding that the limitations period applied "to the extent that Byrd and Nelson seek damages from the City" on their state-law counts. App. 13. All of their state-law counts were brought for violations of the Illinois Constitution, and "the Tort Immunity Act applies only to tort actions and does not bar actions for constitutional violations." *People ex rel. Birkett v. City of Chicago*, 758 N.E.2d 25, 30 (Ill. App. Ct. 2001). When an Illinois municipality acts "deliberately and according to law" in a way that a plaintiff alleges violates the state constitution,

[9] Several of the counts the Davises would have pursued on the merits were resolved by the district court as to other plaintiffs on grounds that might be equally applicable to the Davises. That likely includes the due-process and Fourth Amendment counts addressed above (pp. 18-29, *supra*). Depending on how the Court resolves the excessive-fines counts presented by the other plaintiffs, however (pp. 30-38, *supra*), it is possible that an affirmance on those counts as to those plaintiffs would not necessarily foreclose those counts as to the Davises. In addition, the Davises pleaded a due-process count concerning inadequate notice (Doc. 29 ¶¶ 104, 192, 212), which is not presented in this appeal on behalf of the other plaintiffs. Were this Court to affirm the judgment entered against the other plaintiffs on the merits, therefore, the claim-preclusion dismissal against the Davises still should be reversed and their case remanded for further proceedings. To the extent it is applicable to the Davises' facts and theories, of course, a published decision on the merits as to the other plaintiffs' claims would be binding circuit precedent as to the Davises' claims on remand.

the Act does not apply. *Streeter v. Winnebago County*, 357 N.E.2d 1371, 1373 (Ill. App. Ct. 1976); *see also Am. Islamic Ctr. v. City of Des Plaines*, 32 F. Supp. 3d 910, 916 (N.D. Ill. 2014).

In any case, the only damages pleaded in the complaint were nominal. Doc. 29, at p. 40. The remainder of the relief, including requests that Byrd's and Nelson's vehicles be released and payments be refunded, is equitable and not covered by the Tort Immunity Act's limitations period. *See Raintree Homes, Inc. v. Vill. of Long Grove*, 807 N.E.2d 439, 444-46 (Ill. 2004) (holding Act inapplicable where the plaintiff sought "nothing more than a declaration that the [challenged] ordinance is unlawful and a return of the impact fees collected pursuant to the ordinance").

2. The district court dismissed Byrd's federal counts as time-barred as well. "Dismissing a complaint as untimely at the pleading stage is an unusual step," this Court has noted, "since a complaint need not anticipate and overcome affirmative defenses, such as the statute of limitations." *Sidney Hillman Health Ctr. of Rochester v. Abbott Laboratories, Inc.*, 782 F.3d 922, 928 (2015) (citation omitted); *see also id.* ("[W]e have cautioned that this 'irregular' approach is appropriate 'only where the allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense.'"). Yet the district court thought the state of play clear from the face of the complaint. Byrd's car was seized in June 2016. Doc. 29 ¶ 116. The court reasoned that his federal counts "accrued when the City refused to release his car in November or December of 2016." App. 11; *see also* Doc. 29 ¶ 122. This action was not filed until April 2019. So the court concluded that the counts were barred by the governing two-year limitations period. App. 11-12.

Here, too, the court erred; contrary to the court's view, the complaint did not "set[] out all of the elements of" the City's limitations defense (App. 9)—and later discovery would prove the defense improvident. Where there are continuing violations of a plaintiff's constitutional

rights, "the statute of limitations does not start to run *any earlier* than the last day of the ongoing injury." *Devbrow v. Kalu*, 705 F.3d 765, 770 (7th Cir. 2013). Byrd's due-process count was premised on the City's holding his vehicle to coerce pre-payment of penalties he did not yet owe. *See* pp. 19-25, *supra*. For that count, the limitations period would have started running, at the earliest, when the penalty ultimately was adjudicated. Likewise (or later) for Byrd's Fourth Amendment count. Yet that final date was nowhere pleaded in the complaint. And the facts developed later in the case would confirm that the enforcement proceeding remained pending until at least October 2017. Doc. 95-1, at 9 (circuit-court order affirming agency decision); *see also* Doc. 185-2, at 9 (Chicago Mun. Code § 2-14-103(b) (stating that fines and costs are not debts due to the city until after the exhaustion of judicial review).[10]

The district court couched the violations as a "continuing injury," not a "continuing violation." App. 10-11. Yet Byrd's due-process and Fourth Amendment rights were violated anew every day his car was held to coerce payment of an as-yet-unowed debt. *Cf. Heard v. Sheahan*, 253 F.3d 316, 318 (7th Cir. 2001) (holding that a prisoner's Eighth Amendment claim for the denial of medical care extended "for as long as the defendants had the power to do something about his condition, which is to say until he left the jail"). And elsewhere (rightly or wrongly), Chicago has argued full-throatedly that excessive-fines claims are unripe before the fine is "imposed." Def. City of Chicago's Mem. Supp. Mot to Dismiss at 23, *Mogan v. City of Chicago*, No. 21-cv-1846 (N.D. Ill. July 2, 2021) (Doc. 28). In short, this case spotlights the hazards of venturing into limitations defenses at the pleadings stage. The district court's ruling should be reversed.

[10] In mid-2022, the City moved to dismiss Byrd's claims on res judicata, invoking the circuit-court judgment in his case. The district court denied that motion as untimely. Doc. 125, at 2 ("Three years after this lawsuit was filed, the City is raising this defense to bar Mr. Byrd's claims.").

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Dated: July 7, 2025

Respectfully submitted,

/s/ Diana K. Simpson

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Cir. R. 32(c) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this brief contains 13,855 words.

I hereby certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Cir. R. 32(b) 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 in 12-point Equity A font.

Dated: July 7, 2025

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SHORT APPENDIX

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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 30

Under Circuit Rule 30(d), I certify that all material required by Circuit Rule 30(a) and (b) is in the appendices filed with this brief.

Dated: July 7, 2025

/s/ Diana K. Simpson
Diana K. Simpson
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UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.3.3
Eastern Division

Jerome Davis, et al.

Plaintiff,

v.

Case No.: 1:19−cv−03691
Honorable Mary M. Rowland

The City of Chicago, Illinois

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, August 21, 2020:

MINUTE entry before the Honorable Mary M. Rowland: Defendant's Motion to dismiss [33] is granted in part and denied in part. Order to follow. The City shall file an answer by 9/14/20. The parties shall confer and file a joint initial status report on or before 9/22/20, using the template on Judge Rowland's website in her "Initial Status Conference" standing order. The Court will then set a status hearing or enter an order in response. Mailed notice. (dm,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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

JEROME DAVIS,
VERONICA WALKER-DAVIS,
SPENCER BYRD,
ALLIE NELSON, AND
LEWRANCE GANT,

Plaintiffs,

v.

CITY OF CHICAGO,

Defendant.

Case No. 19-cv-3691

Judge Mary M. Rowland

MEMORANDUM OPINION AND ORDER

Plaintiffs bring this putative class action challenging the City of Chicago's impound program as it relates to car owners who have their cars impounded and are fined for offenses committed by other people. The City moves pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) to dismiss Plaintiffs' complaint with prejudice. For the reasons explained below, the Court grants in part and denies in part the City's motion to dismiss [33].

I. Background

In the First Amended Complaint ("FAC" or "the complaint"), Plaintiffs Jerome Davis, Veronica Walker-Davis, Spencer Byrd, Allie Nelson, and Lewrance Gant (together, "Plaintiffs") bring this civil rights action alleging that Defendant City of Chicago ("the City") impounds tens of thousands of cars each year, holding the cars until owners pay a variety of fees and fines. (Dkt. 29, FAC ¶2). Plaintiffs claim they

were "innocent owners" who were wrongfully subjected to fines, towing and storage fees, and the seizure of their cars. (*Id.* ¶¶2-3). They allege that the offenses that led to their cars being impounded were committed by other people and without their knowledge. (*Id.* ¶ 2). The complaint challenges a system that (a) provides insufficient notice to Plaintiffs that their car has been impounded or disposed of, (b) requires their physical presence at multiple hearings after their car has been seized, (c) allows only three limited defenses, and (d) imposes fees and fines that accrue before a final judgment is entered. (*Id.* ¶¶ 37, 39, 51, 70, 188). In addition, interest accrues on the amount the City deems it is owed by the car owner. (*Id.* ¶ 88).

Despite trying to navigate this system, none of the Plaintiffs in this case has retrieved their car. (*Id.* ¶¶ 98, 114, 123, 139, 147). Even after the loss of their cars, the Plaintiffs all owed or owe thousands of dollars in fines and fees to the City. (*Id.* ¶¶ 11, 15, 18, 21, 87, 90, 123, 147).

The relevant ordinances in this case are Chi. Mun. Code § 9-80-240, § 7-24-225, and § 2-14-132.[1] Section 9-80-240 states in part: "The owner of record of any motor vehicle that is operated by a person with a suspended or revoked driver's license shall be liable to the city for an administrative penalty of $1,000 plus any applicable towing and storage fees. Any such vehicle shall be subject to seizure and impoundment pursuant to this section." Section 7-24-225 provides in part:

> Any motor vehicle that contains any controlled substance, as defined in the Illinois Controlled Substances Act, or that is used in connection with the purchase or attempt to purchase, or sale or attempt to sell, any such controlled substance shall be subject to seizure and impoundment

[1] The Court takes judicial notice of City ordinances. *See Weller v. Paramedic Servs. of Ill., Inc.*, 297 F. Supp. 3d 836, 847 (N.D. Ill. 2018).

> pursuant to this section… The owner of record of any motor vehicle that is seized and impounded pursuant to this section shall be liable to the City for an administrative penalty of $2,000.00, plus towing and storage fees.

And § 2-14-132 addresses impoundment procedures, including that "[w]ithin ten days after a vehicle is seized and impounded the department…shall notify by certified mail the owner of record…of the owner's right to request a hearing before the department of administrative hearings to challenge whether a violation of this Code for which seizure and impoundment applies has occurred"; "[t]he notice shall state the penalties that may be imposed if no hearing is requested, including that a vehicle not released by payment of the penalty and fees and remaining in the city pound may be sold or disposed of by the city"; and the owner must request "a preliminary hearing in person and in writing at the department of administrative hearings, within 15 days after the vehicle is seized and impounded." § 2-14-132.

Plaintiffs seek to represent a class of all individuals who own vehicles that have been or will be impounded by the City of Chicago pursuant to Chicago Municipal Code Section 2-14-132. (FAC ¶7). The FAC contains seven counts: violation of the Proportionate Penalties Clause of the Illinois Constitution (Count I), violation of the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution (Count II), violation of the due process clauses of the Illinois Constitution and U.S. Constitution (Counts III, IV), search and seizure under the Illinois Constitution and U.S. Constitution (Counts V, VI), and an individual claim by Byrd for return of his property (Count VII).

II. Standard

A motion to dismiss tests the sufficiency of a complaint, not the merits of the case. *Gibson v. City of Chicago,* 910 F.2d 1510, 1520 (7th Cir. 1990). "To survive a motion to dismiss under Rule 12(b)(6), the complaint must provide enough factual information to state a claim to relief that is plausible on its face and raise a right to relief above the speculative level." *Haywood v. Massage Envy Franchising, LLC*, 887 F.3d 329, 333 (7th Cir. 2018) (quotations and citation omitted). *See also* Fed. R. Civ. P. 8(a)(2) (requiring a complaint to contain a "short and plain statement of the claim showing that the pleader is entitled to relief."). A court deciding a Rule 12(b)(6) motion accepts plaintiff's well-pleaded factual allegations as true and draws all permissible inferences in plaintiff's favor. *Fortres Grand Corp. v. Warner Bros. Entm't Inc.,* 763 F.3d 696, 700 (7th Cir. 2014). A plaintiff need not plead "detailed factual allegations", but "still must provide more than mere labels and conclusions or a formulaic recitation of the elements of a cause of action for her complaint to be considered adequate under Federal Rule of Civil Procedure 8." *Bell v. City of Chi.*, 835 F.3d 736, 738 (7th Cir. 2016) (citation and internal quotation marks omitted).

Dismissal for failure to state a claim is proper "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558, 127 S. Ct. 1955, 1966 (2007). Deciding the plausibility of the claim is "'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *McCauley v. City of Chi.*, 671

F.3d 611, 616 (7th Cir. 2011) (quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 679, 129 S. Ct. 1937, 1950 (2009)).

"A motion to dismiss under Rule 12(b)(1) tests the jurisdictional sufficiency of the complaint, accepting as true all well-pleaded factual allegations and drawing reasonable inferences in favor of the plaintiffs." *Bultasa Buddhist Temple of Chi. v. Nielsen*, 878 F.3d 570, 573 (7th Cir. 2017). *See also Silha v. ACT, Inc.*, 807 F.3d 169, 174 (7th Cir. 2015) (*Twombly-Iqbal* standard applies to facial challenge to subject matter jurisdiction under Rule 12(b)(1)).

III. Analysis

In its motion, the City argues that (1) the Davises' claims are barred in their entirety by res judicata; (2) Byrd's claims are time-barred; (3) Nelson's state law claims are time-barred; (4) Plaintiffs lack standing to challenge administrative penalties other than those particular penalties that were assessed against them; (5) it was not unconstitutionally excessive to charge these penalties to Plaintiffs; (6) Plaintiffs fail to state a due process claim; and (7) Plaintiffs fail to state an unreasonable seizure claim.

A. Res Judicata Bars the Davises' Claims

On July 19, 2018, the Davises filed a complaint for administrative review of the impound decision in the Circuit Court of Cook County. (FAC ¶109; *see also* Cook County Case No. 2018-M1-450249). On January 7, 2019, that case was dismissed pursuant to an "Agreed Order of Settlement" (Agreed Settlement Order). (*Id.*; Dkt. 34-1, Exh. C). Under the Agreed Settlement Order, the Davises agreed to voluntarily

withdraw their complaint and the City agreed to accept $1170 in full settlement and satisfaction of the fines entered in the case. (*Id*.)

Res judicata bars the Davises' claims here. In Illinois, res judicata applies if "(1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there was an identity of cause of action; and (3) there was an identity of parties or their privies." *Rein v. David A. Noyes & Co*., 172 Ill. 2d 325, 335, 665 N.E.2d 1199, 1204 (1996). Plaintiffs argue that there was no final judgment in the state court and so res judicata does not apply. They contend that "agreed orders do not constitute a final judgment on the merits under Illinois law" because they do not reflect a "court's judgment on the merits." (Dkt. 39 at 14).

Under Illinois law, however, "a settlement agreement that a state court adopts and incorporates…is the equivalent of a consent decree" and "operates to the same extent for res judicata purposes as a judgment entered after contest and is conclusive with respect to the matters which were settled by the judgment or decree." *4901 Corp. v. Town of Cicero*, 220 F.3d 522, 529 (7th Cir. 2000) (citing Illinois law). In *4901 Corp*., the Seventh Circuit held that the state court order dismissing the case and incorporating the parties' settlement agreement had preclusive effect on the subsequently filed federal lawsuit. *Id*. at 525, 529-32.

Plaintiffs acknowledge *4901 Corp*., but contend that *Ward v. Decatur Mem'l Hosp*., 2019 IL 123937 (2019) controls. In *Ward*, the court dismissed plaintiff's complaint several times without prejudice always allowing plaintiff leave to file amended complaints. *Id*. ¶¶ 11-22. Five years after plaintiff filed the third amended complaint

and shortly before trial, the trial court granted plaintiff's motion to voluntarily dismiss the action without prejudice. *Id.* ¶ 28. A few months later, plaintiff filed a new lawsuit which was assigned to a new judge. The complaint was almost identical to the fourth amended complaint plaintiff sought to file in the original action (which the first judge denied). On summary judgment in the second case, the trial court agreed with defendant that res judicata barred plaintiff's claims. On appeal to the Illinois Supreme Court, the Court reversed the trial court's judgment, explaining that "[a]n order that dismisses the counts of a complaint, but grants the plaintiff leave to amend" is not a final order. *Id.* ¶ 48 (internal citation and quotations omitted). Thus the dismissal of the complaint "without prejudice and with permission to refile" an amended complaint, meant that "[t]he dismissal orders neither terminated the litigation nor firmly established the parties' rights" and so the "dismissal orders were not final and had no res judicata effect." *Id.* ¶ 49.

Ward therefore is inapposite. Here, the Davises entered into a settlement captured in an agreed order and the court dismissed the case based on that agreed order. Therefore, *4901 Corp.* controls. Indeed this year, the Seventh Circuit in *H.A.L. NY Holdings, LLC v. Guinan*, 958 F.3d 627, 634 (7th Cir. 2020) confirmed that the "weight of Illinois authority … allow[s] claim preclusion by consent judgment". In so holding, *H.A.L.* declined to certify the question to the Illinois Supreme Court.[2]

[2] *See also Bee-Zee Body Shop, Inc. v. Bee-Zee Serv.*, 2019 IL App (1st) 182677-U, ¶ 22 (noting a split in Illinois appellate courts but concluding that "[d]eclaring a trial court's order dismissing an action with prejudice based on the parties' settlement agreement not to be a final adjudication on the merits would not only contravene well-established equitable doctrines and public policy, but would also undermine the certainty and finality associated

Finally, the Court does not agree with Plaintiffs' contention that the Agreed Settlement Order was not a dismissal "with prejudice." Although that order did not specify, it is well-settled that "where a dismissal order does not specify that it is 'without prejudice,' or that plaintiff was granted leave to file an amended complaint, the dismissal order is a final adjudication on the merits." *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 25, 402 Ill. Dec. 870, 878, 53 N.E.3d 1, 9 (2016).

Davises' claims are dismissed with prejudice.

B. Statutes of Limitations

1. Byrd's federal claims

The City next argues that all of Byrd's claims are time-barred. "[S]tatute of limitations provides an affirmative defense, and a plaintiff is not required to plead facts in the complaint to anticipate and defeat affirmative defenses. But when a plaintiff's complaint nonetheless sets out all of the elements of an affirmative defense, dismissal under Rule 12(b)(6) is appropriate." *Indep. Tr. Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 935 (7th Cir. 2012). The parties do not dispute that the two-year statute of limitations applies to Byrd's claims under 42 U.S.C. § 1983.

Plaintiffs respond that Byrd alleges continuing violations of his constitutional rights so the statute of limitations cannot start or expire while cars remain in the impound lot. "[W]hen the violation of the plaintiff's constitutional rights is a continuing one, the statute of limitations does not start to run *any earlier* than the last day of the ongoing injury." *Devbrow v. Kalu*, 705 F.3d 765, 770 (7th Cir. 2013).

with settlement agreements and expose parties to the possibility of continued future litigation or double recovery.").

The continuing violation doctrine is comprised of three categories: "(1) ongoing discrete violations; (2) acts that add up to one violation only when repeated; and (3) lingering injury from a completed violation." *United States v. Midwest Generation, LLC*, 720 F.3d 644, 646 (7th Cir. 2013). "[T]he first situation [is] a continuing violation, the second a cumulative violation, and the third a continuing-injury situation." *Id*. The third category does not toll the statute of limitations because it involves a situation where the "ongoing injury…lingers once the unconstitutional act is complete." *Haywood v. Champaign Cty.*, 596 F. App'x 512, 513 (7th Cir. 2015).

As alleged in the complaint, on June 21, 2016, Chicago police pulled Byrd over for a broken turn signal. (FAC ¶116). The officers searched both Byrd and his passenger, an automotive client, and found a bag of heroin in his passenger's pocket. (*Id*. ¶117). Police released Byrd without any criminal charge but the CPD seized and impounded his car. (*Id*. ¶¶118-19). On July 31, 2016, Byrd asked the Cook County State's Attorney to release his car, but they responded that the car was subject to a forfeiture proceeding. (*Id*. ¶120). In November of that year, Byrd filed a financial hardship motion with the Cook County Circuit Court, and the Court ordered the CPD to release the car. (*Id*. ¶¶120-21). Despite the court order, the City refused to release the car prior to Byrd paying the fines and fees that had accumulated for five months under Chicago's municipal code. (*Id*. ¶122). Around October 2018, Byrd spoke with an impound supervisor, who told Byrd the car was still impounded and it would not be released until all the fines and fees were paid. Byrd now owes more than $17,000.00. (*Id*. ¶123).

The original complaint in this case was filed on April 29, 2019. (*see* Dkt. 1). The City argues that Byrd's claims accrued at the latest by November 2016 (and so should have been filed by November 2018) when the City refused to release the car despite the state court order. At that point, the City argues, Byrd knew that his vehicle had been impounded and that the City would not return it until he paid the penalty and fees. (Dkt. 34-1 at 14-15). Plaintiffs contend that Byrd as an innocent owner is being forced to pay fines and fees for someone else's actions—"a harm that accumulates daily." (Dkt. 39 at 16). As frustrating as it is for Mr. Byrd, this "harm accumulat[ing] daily" does not constitute a "continuing violation" as the doctrine has been defined by the Seventh Circuit. Byrd's claim accrued when the City refused to release his car in November or December of 2016. (FAC ¶122).

The City's refusal to release the car without Byrd's payment is the allegedly unconstitutional act underlying Byrd's federal claims for excessive fines, due process violations, and unreasonable search and seizure. The subsequent accumulation of additional fees were a consequence of the City's discrete act. *See Savory v. Lyons*, 469 F.3d 667, 673 (7th Cir. 2006) (prisoner's continued lack of access to the evidence was the "natural consequence of the discrete act that occurred when [defendant] first denied access to the evidence."); *see also Olson v. City of Chi.*, 553 F. App'x 641, 643 (7th Cir. 2014) ("statute of limitations is measured based on the timing of the injury, not the length of its lingering effects"); *Walker v. Jumper*, 758 F. App'x 521, 524 (7th Cir. 2019) (continuing violation doctrine did not apply where plaintiff's claim was "based on a discrete incident that occurred at a specific time.").

Plaintiffs rely on *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017) to argue a continuing violation exists here. In *Manuel*, the Supreme Court held that the Fourth Amendment governs an individual's claim of unlawful pretrial detention even beyond the start of legal process. However, the Court remanded the issue of timeliness. *Id.* at 920. On remand, the Seventh Circuit concluded that because "[t]he wrong of detention without probable cause continues for the duration of the detention", "the claim accrues when the detention ends." *Manuel v. City of Joliet*, 903 F.3d 667, 670 (7th Cir. 2018). *Manuel* did not address an alleged continuing violation like that at issue here. Still the Seventh Circuit's explanation that "we speak of a continuing *wrong*, not of continuing *harm*; once the wrong ends, the claim accrues even if that wrong has caused a lingering injury" (*id.* at 669 (emphasis in original)), shows that Byrd's contention about accumulating harm is a continuing harm, not a continuing wrong. Byrd's federal claims are dismissed as untimely.

2. Byrd's and Nelson's state law claims

The City argues that Byrd's and Nelson's state law claims are barred by the one-year statute of limitations in the Illinois Tort Immunity Act, 745 ILCS 10/8-101. However the Tort Immunity Act states that "[n]othing in this Act affects the right to obtain relief other than damages against a local public entity or public employee." 745 ILCS 10/2-101. It is well-settled that "the Tort Immunity Act only applies to actions seeking damages, not equitable relief." *Elue v. City of Ch*i., 2017 U.S. Dist. LEXIS 94519, at *23 (N.D. Ill. June 20, 2017). It is clear from the complaint that Plaintiffs seek declaratory and injunctive relief. (FAC ¶¶5, 158, 160). Damages are

only part of the relief sought by Plaintiffs and are requested "in the alternative" to injunctive relief. (FAC at p. 40). Therefore, the Tort Immunity Act does not bar Byrd's and Nelson's state law claims. However, because both Byrd's and Nelson's claim accrued more than one year before the filing of this lawsuit, to the extent that Byrd and Nelson seek damages from the City, those claims for damages are time-barred.

C. Proportionate Penalties and Excessive Fines (Counts I and II)

1. Standing

The City argues that Plaintiffs lack standing to challenge administrative penalties as unconstitutionally excessive other than the penalties arising from the two provisions that applied to them, Chi. Mun. Code § 9-80-240 and § 7-24-225. The first requirement of "the irreducible constitutional minimum of standing" is that the "plaintiff must have suffered an injury in fact -- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted). The injury "must affect the plaintiff in a personal and individual way." *Id*. at n.1.

Plaintiffs respond that any penalty is unconstitutionally excessive when imposed on an innocent owner. (Dkt. 39 at 18). This argument does not address the City's argument that the Plaintiffs in this case lack standing to challenge penalties other than the ones levied against them. Nor do Plaintiffs cite any authority to support their argument that they can challenge *any* penalty, even ones that were not imposed on them. This argument is undeveloped and therefore waived. *See Alioto v. Town of*

Lisbon, 651 F.3d 715, 721 (7th Cir. 2011) (discussing waiver rule where a party fails to develop arguments on a discrete issue or fails to respond to alleged deficiencies raised in a motion to dismiss).

In any event, the Court agrees with the City that Plaintiffs can challenge the penalties assessed against them because that is the injury they suffered in this case, but not *any* penalty.

2. Eighth Amendment Excessive Fines Claim

The Eighth Amendment of the U.S. Constitution states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. Plaintiffs allege that the "[a]dministrative penalties imposed by the City under its impound scheme…are a fine within the meaning of the Excessive Fines Clause" and "[t]he City's demand that innocent owners pay administrative penalties for legal offenses committed by another violates the Excessive Fines Clause." (FAC ¶¶ 170, 174). "The Supreme Court of the United States has adopted a 'gross disproportionality' test to determine whether a fine is 'excessive' for purposes of the Excessive Fines Clause." *Towers v. City of Chi.*, 173 F.3d 619, 624 (7th Cir. 1999).

The City responds that *Towers* establishes that the administrative penalties at issue in this case are not unconstitutionally excessive. *Towers* involved an Eighth Amendment challenge to the same ordinance here, Chi. Mun. Code § 7-24-225. The second ordinance in this case, § 9-80-240, was not at issue in *Towers* but the City argues that the *Towers* analysis applies equally to that ordinance as well. In addition,

the City points out, based on the allegations in the complaint, that Plaintiffs' Eighth Amendment and state law constitutional claims challenge only the administrative penalty levied on Plaintiffs, not the towing or storage fees. (Dkt. 34-1 at 16). Plaintiffs do not dispute this. (Dkt. 39).

In *Towers*, the Seventh Circuit affirmed the district court's dismissal of the complaint alleging violations of plaintiffs' Eighth and Fourth Amendment rights and of their substantive and procedural due process rights. 173 F.3d 619. Plaintiffs contend that *Towers'* Eighth Amendment holding is distinguishable for three reasons: (1) the Court did not sanction "truly innocent property owners like Plaintiffs"; (2) a fourth factor should be considered that was not considered in *Towers* to determine if the fine is "grossly disproportional"; and (3) the fines in this case should be considered in light of "evolving standards of decency." (Dkt. 39 at 19-20). First, there is no meaningful distinction between the plaintiffs in *Towers* compared to this case. In *Towers*, plaintiff Towers had not given the individual who was driving her car permission to use her car or to transport a controlled substance, she did not know that a controlled substance was in her car, and she was not present when the car was seized. 173 F.3d at 621. Towers co-plaintiff, Sturdivant was not present at the time of the seizure and did not know that a gun was in his car. *Id*. at 622. Here, Gant lent his car to a friend and Gant did not know that his friend's license had been suspended or that he had drugs with him. (FAC ¶ 143). Similarly, Nelson was in Texas when her granddaughter's boyfriend drove Nelson's car with drugs on him without her knowing

and against her wishes. (*Id.* ¶ 17). Plaintiffs have alleged their innocence, but they are not any more innocent than the plaintiffs in *Towers*.

Next, the *Towers* Court *did* consider all the factors to determine whether the fine was grossly disproportional including the holding of *United States v. Bajakajian*, 524 U.S. 321 (1998). Even if Plaintiffs are correct that the *Towers* Court did not specifically mention whether the law was "principally meant to reach people like [plaintiffs]", *Towers* addressed in detail the plaintiffs' roles and rejected "the notion that the plaintiffs must be considered completely lacking in culpability" as it related to the City ordinance. 173 F.3d at 625. The Court therefore held that "although the gravity of the plaintiffs' offense is not high compared to that of persons who themselves place illegal items in their vehicles, the plaintiffs may still be held responsible for allowing their vehicles to be misused." *Id.*

Finally, Plaintiffs stress that the Eighth Amendment requires considering "evolving standards of decency." (Dkt. 39 at 20). *See Trop v. Dulles*, 356 U.S. 86, 101 (1958) ("The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."). In their Eighth Amendment claim, Plaintiffs challenge only the administrative fine. In the case of Nelson and Gant, that amount was $2,000 and $3,000 respectively. Plaintiffs' citation to non-binding authority, however, does not allow this Court to ignore the binding precedent contained in *Towers'* holding that plaintiffs failed to state an excessive fines claim, particularly where the factual allegations underlying the Eighth

Amendment claim in *Towers* and in this case are so similar. Plaintiffs have failed to state a claim for violation of the Eighth Amendment.

3. Illinois Proportionate Penalties Claim

Plaintiffs allege that the City's requirement that "innocent owners pay administrative penalties for legal offenses committed by another violates the [Illinois] Proportionate Penalties Clause." (FAC ¶167). As Plaintiffs point out, the *Towers* plaintiffs did not bring a claim under this clause. The Illinois Proportionate Penalties Clause, in Article 1, Section 11 of the Illinois Constitution, provides, "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." IL. Const. art. I, § 11. Plaintiffs argue that the Proportionate Penalties Clause provides broader protection than the Eighth Amendment. (Dkt. 39 at 23).[3]

The Illinois Supreme Court has interpreted the Proportionate Penalties Clause as "provid[ing] a limitation on penalties beyond those afforded by the eighth amendment." *People v. Clemons*, 2012 IL 107821, ¶ 39, 360 Ill. Dec. 293, 303-04 (2012). Although the Illinois Supreme Court recently acknowledged that "it has not spoken consistently on the relationship between our proportionate penalties clause and the eighth amendment" (*People v. Coty*, 2020 IL 123972, ¶ 45 (2020)), the City has not cited authority showing that *Clemons* has been overruled. Therefore, accepting Plaintiffs' factual allegations as true and drawing reasonable inferences in

[3] The City contends that the Proportionate Penalties Clause applies only to criminal process, but the City still "assumes (without conceding) for purposes of this motion only that the Illinois Proportionate Penalties Clause applies to the civil administrative penalties at issue here." (Dkt. 34-1, n.6). The City has thus preserved this challenge to Count I.

their favor, the Court finds that Plaintiffs have stated a claim under the Proportionate Penalties Clause of the Illinois Constitution.

D. Search and Seizure (Counts V and VI)

Plaintiffs allege that "[t]he City's policy and practice of impounding cars even when someone is present who can safely drive the car away, in addition to the City's refusal to release cars before all fines and all fees are paid, effect unconstitutional seizures in violation of Fourth Amendment to the United States Constitution." (FAC ¶ 230). The City argues Plaintiff's Fourth Amendment claim fails because the Seventh Circuit has held that the Fourth Amendment governs only the impoundment, not the City's subsequent retention of the vehicle post-impoundment.

In *Bell,* 835 F.3d 736, the Seventh Circuit affirmed the dismissal of plaintiffs' Fourth Amendment claim challenging the impoundment of their cars. Plaintiffs argued that Chicago ordinances §§ 2-14-101 (Seized/unclaimed property), 2-14-132 (Impoundment), and 2-14-135 (Impoundment—Towing and storage fee hearing) allowed for warrantless seizures of vehicles and failed to provide a neutral judicial officer to determine probable cause in the post-seizure procedure, and were therefore facially invalid under the Fourth Amendment. *Id.* at 739, 741. The Seventh Circuit reaffirmed its prior holding that "the seizure in Plaintiffs' case and all others under the Ordinances is complete when the officer or agent seizes and impounds the vehicle" and thus the Fourth Amendment "cannot be invoked by the dispossessed owner to

regain his property." *Id.* at 741 (citing *Lee v. City of Chi.*, 330 F.3d 456 (7th Cir. 2003)).[4]

Plaintiffs argue that *Lee* has been overruled by the Supreme Court's decision in *Manuel v. City of Joliet*. (Dkt. 39 at 35-36). A court in this district recently rejected essentially the same argument: "But *Manuel* involved the seizure and detention of a person. The Court did not suggest that the concept of an unreasonable seizure of property lacks temporal bounds, as Santiago contends; the Court did not mention the word 'property' once in its decision." *Santiago v. City of Chi.,* 2020 U.S. Dist. LEXIS 47335, at *29 (N.D. Ill. Mar. 18, 2020). Therefore the Santiago plaintiff could not "invoke the Fourth Amendment to challenge the City's procedures for disposing of vehicles after they have been towed and impounded." *Id.* at *30. *Lewis v. City of Chi.*, 914 F.3d 472, 474 (7th Cir. 2019) and *Williams v. Dart,* 967 F.3d 625 (7th Cir. 2020) (Dkt. 52), cited by Plaintiffs, also involved detention of people, not retention of property.[5]

Plaintiffs argue, as they did before (Dkts. 15, 17) that Illinois courts should have the first opportunity to rule on the question of the application of Illinois' search and seizure clause during the time the property is seized. (Dkt. 39 at 40). This Court already declined to sever and remand the Illinois claims. (Dkt. 23). However, Illinois

[4] Although Plaintiffs generally refer to raising both as-applied and facial challenges in their constitutional claims (FAC pp. 38-39), because of the settled Seventh Circuit law, Plaintiffs' Fourth Amendment claims would fail under either theory.

[5] To the extent that Plaintiffs allege that "someone is present who can safely drive the car away" (FAC ¶¶219, 227), that does not bolster Plaintiffs' claim that the officer lacked probable cause to seize the car in the first instance.

courts have analyzed unreasonable seizure claims "essentially identical[ly] with regard to both [federal and state] constitutional provisions." *Jackson v. City of Chi.*, 2012 IL App (1st) 111044, ¶ 45, 975 N.E.2d 153, 167 (2012). Plaintiffs do not offer a reason to depart from that rule. Thus because Plaintiffs fail to state a Fourth Amendment claim, they also fail to state a claim under the search and seizure clause of the Illinois constitution. Plaintiffs' search and seizure claims are dismissed.

E. Due Process (Counts III and IV)

Plaintiffs allege that the City violates their due process rights under both the U.S. and Illinois constitutions by (1) forcing innocent owners to pay fines and fees for violations they did not commit; (2) holding Plaintiffs' cars and demanding payment of fines and fees before any final judgment has been entered; and (3) providing inadequate notice and hearing procedures. (*see* FAC pp. 30-35).[6] The City interprets the first challenge as a substantive due process challenge and the second two as procedural due process challenges. The Court agrees with this interpretation, and Plaintiffs do not object this characterization.[7]

[6] The Court agrees with the City that although Plaintiffs' complaint generally references bringing facial and as applied challenges, nothing in the ordinances apply on their face to innocent owners only, so the Court interprets the due process claims as as-applied challenges. (FAC pp. 38-39). *See Miller v. Downey*, 915 F.3d 460, 464 (7th Cir. 2019) ("principles of 'judicial restraint' counsel in favor of resolving 'as-applied challenges before facial ones in an effort to decide constitutional attacks on the narrowest possible grounds and to avoid reaching unnecessary constitutional issues'") (citation omitted).

[7] Plaintiffs also do not dispute that the analysis under the federal and state due process clauses is the same. *See People v. One 1998 GMC*, 2011 IL 110236, ¶ 21, 960 N.E.2d 1071, 1079 (2011). The Court's analysis applies to both Counts III and IV.

1. Substantive Due Process

Plaintiffs allege that "Chicago's impound system violates due process by requiring innocent Illinoisans to pay fines and fees for the actions of others." (FAC ¶178). The scope of substantive due process is limited. *GEFT Outdoors, LLC v. City of Westfield*, 922 F.3d 357, 368 (7th Cir. 2019) (substantive due process "bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them…The scope of a substantive due process claim is limited.") (citations and quotations omitted). "When a substantive-due-process challenge involves only the deprivation of a property interest, a plaintiff must show either the inadequacy of state law remedies or an independent constitutional violation before the court will even engage in this deferential rational basis review." *Lee*, 330 F.3d at 467 (citations and quotations omitted).

As the City asserts, a similar substantive due process claim was dismissed in *Towers*. *See Towers*, 173 F.3d at 627 ("We do not believe that the substantive component of federal due process prevents a state from imposing the civil penalty of $ 500 on the owner of a vehicle when the owner allows the vehicle to be used by another for illegal activity."). In addition, Plaintiffs have not alleged that state law remedies are inadequate. *See Miles v. Vill. of Dolton*, 2016 U.S. Dist. LEXIS 37983, at *15 (N.D. Ill. Mar. 23, 2016) (substantive due process claim dismissed in part because plaintiff failed to allege inadequacy of state law remedies). The fact that Plaintiffs' procedural due process claim survives in part does not save Plaintiffs' substantive due process claim. *See Adams v. City of Chi. Heights*, 2011 U.S. Dist.

LEXIS 16833, at *16 (N.D. Ill. Feb. 18, 2011) ("procedural due process claim cannot serve as the 'independent constitutional violation' underlying a substantive due process claim") (collecting cases).

Plaintiffs' substantive due process claim is dismissed.

2. Procedural Due Process: Holding cars before final judgment

Plaintiffs allege that the City impounds and refuses to release their cars until Plaintiffs pay fines and fees, all before any final judgment has been entered. (FAC ¶¶179, 199). "To plead a procedural due process claim, [plaintiff] must allege a cognizable property interest, a deprivation of that interest, and a denial of due process." *Palka v. Shelton*, 623 F.3d 447, 452 (7th Cir. 2010). The Supreme Court in *Mathews v. Eldridge* set forth three factors for courts to consider in analyzing plaintiff's claim for a violation of procedural due process: (1) "the private interest that will be affected by the official action;" (2) "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 (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 335 (1976).[8] Deciding whether pre-deprivation process is required involves weighing "the importance of, and harm to, the private interest, the likelihood of interim error, and the governmental interest in a delay." *City of L.A. v. David*, 538 U.S. 715, 717, 123 S. Ct. 1895, 1897 (2003). *See also Miller v. Chicago*, 774 F.2d 188, 191 (7th Cir. 1985) ("pre-

[8] The City does not directly address the *Mathews* factors.

deprivation notice and hearing represent the norm and the state must [present] important reasons to justify a departure therefrom.").

The City does not dispute that Plaintiffs have a cognizable property interest. Drawing reasonable inferences from the complaint, Plaintiffs allege that they have a property interest in both the use of their cars and the money they are required to pay before any final judgment. (FAC ¶¶179, 186-86, 189-90, 199, 206-07, 209-10). *See e.g. Santiago*, 2020 U.S. Dist. LEXIS 47335, at *14 (property interest in vehicle); *Roehl v. City of Naperville*, 857 F. Supp. 2d 707, 712 (N.D. Ill. 2012) ("The law is clear that individuals have a property interest in their own money.").

The Court finds that the private interest here is substantial. *See Santiago*, 2020 U.S. Dist. LEXIS 47335, at *18 (private interest "substantial because vehicles can be necessary for day-to-day life and provide the primary means of transportation for many people, particularly the elderly and the disabled.") (citing *David*, 538 U.S. at 717-18); *see also Washington v. Marion Cty. Prosecutor*, 916 F.3d 676, 679 (7th Cir. 2019) ("Obviously, vehicle forfeitures are economically painful. Many Americans depend on cars for food, school, work, medical treatment, church, relationships, arts, sports, recreation, and anything farther away than the ends of their driveways. Cars extend us. Cars manifest liberty."). And considering "the length or finality of the deprivation" (*Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434 (1982)), the complaint alleges that the first chance a car owner has to get her car back is after the preliminary hearing, which can take more than two weeks to occur. (FAC ¶¶69-71).

And in this case, the deprivation has been final—the City disposed of Nelson's car (FAC ¶18) and Gant's and Byrd's cars remain in the impound lot. (*Id.* ¶¶15, 21).

As to the second *Mathews* factor, there is some risk of an erroneous deprivation in towing and impounding a car. Unlike the determination that a car is illegally parked (*Sutton v. Milwaukee*, 672 F.2d 644, 646 (7th Cir. 1982)), a police officer's determination that a car contains drugs or that the driver is driving on a suspended license is not as "cut and dried."[9] The City has not addressed the value (or cost) to additional or substitute procedural safeguards. This element can be developed at later stages of the litigation, but at this stage, the second *Mathews* factor weighs in Plaintiffs' favor.

Finally, as to the City's interest, the Court finds that this factor weighs in favor of Plaintiffs. The City's purported interest in ensuring that it will collect "the monies that it *may be* owed" (Dkt. 34-1 at 28, emphasis added) does not outweigh Plaintiffs' interest in the use of their vehicles and in retaining access to their money. *See Simpson v. Brown Cty.*, 860 F.3d 1001, 1009 (7th Cir. 2017) (finding plaintiff stated a claim for a violation of procedural due process in part because problem was not "so serious and so urgent as to justify summary action by the County, without an opportunity for [plaintiff] to be heard."). Moreover, as Plaintiffs allege, any judgment

[9] Indeed, in this case, although the details will presumably be developed in discovery, the complaint alleges, and the City does not dispute, that the City dropped criminal charges and moving violations against Gant's friend who drove his car (FAC ¶ 21) and criminal charges against Mr. Tillis, who drove Nelson's car, were also dropped. (*Id.* ¶ 134).

entered against individuals attaches to them personally, indefinitely, and with interest, independent of whether they have their vehicles. (FAC ¶¶ 87-90).[10]

The City relies on *Miller v. Chicago*, 774 F.2d 188, to argue that the Seventh Circuit has upheld requiring a car owner to pay storage fees as a condition of releasing the car even though it was stolen by a third party. Several factors distinguish *Miller* from this case. *Miller* involved recovered stolen cars and was decided on summary judgment. The Court held that the deprivation of the car was not of "prime significance" because the impounding was temporary—only a few days. *Id.* at 192. The Court further reasoned that the thief caused the deprivation, not the City, and in fact the City was responsible for *ending* the deprivation. *Id.* at 194. In addition, the determination of whether the car was reported stolen was "cut and dried", and the City had an interest in removing the vehicles to a safe place because stolen vehicles pose "special dangers to the public." *Id.* at 192-93. Finally, *Miller* found it "noteworthy that the defendants provide owners of the stolen vehicles with an opportunity to obtain release of the vehicle by making a deposit of $ 25, an amount less than the towing and storage charges." *Id.* at 197. Here, Plaintiffs must pay the penalty assessed for the ordinance violation committed by someone else, plus the

[10] The City's argument that "[r]elease of the vehicle pending a hearing has nothing to do with whether the vehicle was used in violation of the law" (Dkt. 34-1 at 26) undermines the position that the City has an interest in holding the vehicle that outweighs the Plaintiffs' interest in having access to the vehicle pending the administrative hearing process.

accumulated amount of towing and storage fees, plus interest, before their vehicle will be released.[11]

The City's reliance on *United States v. Von Neumann,* 474 U.S. 242 (1986) is also not persuasive. Plaintiffs here argue that the harm to the private interest is great because they are denied access to their cars and are required to pay a fine because someone else committed an offense. The offense in *Von Neumann* (failure to declare a car to U.S. customs officials) was committed by defendant himself. *See also Smith v. City of Chi.*, 524 F.3d 834, 837 (7th Cir. 2008) (distinguishing *Von Neumann* because it "involved proceedings for remission or mitigation under U.S. customs laws, not forfeiture under state law", "the customs laws allowed procedures for Von Neumann to obtain a speedy release of his automobile prior to the actual forfeiture hearing," and he could file a motion for return of the property).

The Court finds that, at this pleading stage, the "the importance of, and harm to, the private interest" is substantial; there is some "likelihood of interim error", and "the governmental interest in a delay" is minimal. *See David*, 538 U.S. at 717. Accordingly, accepting Plaintiffs' factual allegations as true, and keeping in mind that due process "is not a technical conception with a fixed content unrelated to time, place and circumstances" and "is flexible and calls for such procedural protections as

[11] Further, *Towers* does not foreclose this due process claim because the *Towers* plaintiffs did not bring a pre-deprivation due process claim. In addition, both plaintiffs in *Towers* were able to recover their cars. *Towers*, 173 F.3d at 622. *See Bell*, 835 F.3d at 737 (in case involving challenge to impoundment ordinance, although Fourth Amendment challenge failed, explaining that plaintiffs were not without a remedy because "the Due Process Clause of the Fourteenth Amendment can be used to challenge post-seizure procedures and the City's continued retention of [plaintiff's] vehicle.").

the particular situation demands" (*Mathews*, 424 U.S. at 334 (internal citations and quotations omitted)), the Court concludes that Plaintiffs have stated a procedural due process claim based on lack of pre-deprivation process.

3. Procedural Due Process: Hearing Procedures

Plaintiffs challenge the sufficiency of the hearing procedures themselves. (FAC ¶¶ 180, 200). The City argues that it is not unconstitutional to require in-person attendance at hearings. Plaintiffs fail to cite any authority for the proposition that procedural due process is violated by requiring in-person attendance and multiple appearances at administrative hearings. Plaintiffs' due process claims based on the hearing procedures are dismissed.

4. Procedural Due Process: Notice

Plaintiffs allege that the City fails to provide adequate notice to car owners that (1) their cars have been impounded, (2) fees are immediately accruing, and (3) their cars will be disposed of. "The purpose of notice under the Due Process Clause is to allow an interested party to challenge the deprivation of a protected liberty interest before it occurs." *Matamoros v. Grams*, 706 F.3d 783, 790 (7th Cir. 2013).

The City has several arguments for why the notice claim should be dismissed: (1) Plaintiffs allege only that the Davises did not receive a letter notifying them of the impoundment; (2) if notice was not sent, it was a "random and unauthorized" departure from the City's policy; (3) Plaintiffs did not allege they were injured by the lack of notice of accruing fees; and (4) the ordinance itself provides constitutionally sufficient notice of the accrual of the fees.

The Court initially addresses the City's argument that Plaintiffs' lack of notice claims fail to state a claim under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). (Dkt. 34-1 at 33). The City argues that Nelson and Gant fail to allege that the unconstitutional conduct was caused by any City policy or practice. The Court does not agree. The complaint challenges the City's "policy and practice of providing constitutionally inadequate notice to car owners whose vehicles have been impounded and to car owners whose vehicles will be disposed of." (FAC ¶4). Plaintiffs allege that the City regularly ignores its notice obligation and "fails to notify vehicle owners within ten days of the impound", and the "City maintains a persistent and widespread practice of providing insufficient notice to vehicle owners whose cars have been impounded." (*Id.* ¶¶36, 37). The Court can infer the same challenge to the City's policy and practice of providing insufficient notice that an individual's car is being disposed of. (*See id.* ¶¶80-81, 180). This is enough at this stage. *See White v. City of Chi.,* 829 F.3d 837, 844 (7th Cir. 2016) (courts do not apply a "heightened pleading standard" to civil rights cases alleging municipal liability); *Santiago*, 2020 U.S. Dist. LEXIS 47335, at *27 (plaintiff "plausibly alleged the existence of a municipal policy that caused a constitutional deprivation.").[12]

[12] The cases the City cites in its reply brief are distinguishable. In *Carmona v. City of Chi.*, 2018 U.S. Dist. LEXIS 49117, at *9 (N.D. Ill. Mar. 26, 2018), the court held that the Monell claim was based on a vague and broadly alleged custom that did not "suggest a failure to discipline [officers] beyond [plaintiff's] particular case." Plaintiffs here allege that the City's policy and practice directly impacted Nelson and Gant plus many other individuals in Chicago. And Plaintiffs' allegations about the City's policy and practice are more specific and detailed than the conclusory reference in *Cherry v. Cook Cty. Sheriff's Office*, 2016 U.S. Dist. LEXIS 165369, at *5 (N.D. Ill. Nov. 30, 2016), to defendants' actions being "under color of law, pursuant to policies, customs, practices, rules, regulations, ordinances, statutes, and/or usages of the State of Illinois or a political subdivision thereof."

Next, the City's argument that only the Davises did not receive notice of the impoundment is not convincing. The complaint shows that Nelson learned her car had been impounded from her granddaughter (FAC ¶ 130) and Byrd only learned about the impoundment when he went to the Chicago Police Department (*Id.* ¶119). The complaint does not specify whether Gant received notice from the City. The Court can therefore reasonably infer that most or all of the Plaintiffs did not receive notice from the City of the impoundment. Even so, "[a] plaintiff who has received actual notice may nonetheless challenge the procedural sufficiency of the notice." *Santiago*, 2020 U.S. Dist. LEXIS 47335, at *15 (citing *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 13-15, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978)).

Second, as to the City's argument that the alleged lack of notice of impoundment or disposal was "random and unauthorized", such situations "are relatively rare." *Simpson,* 860 F.3d at 1007. *See id.* at 1008 ("[plaintiff's] third amended complaint, construed in the light most favorable to him, does not allege 'random and unauthorized' actions by County officials."). Here, the complaint alleges that inadequate notice of impoundment and disposal are common practices. Therefore the City's argument about the availability of an adequate post-deprivation remedy is not availing because "[w]ithout the shield of a 'random and unauthorized' defense, the County's actions must be evaluated pursuant to the standard *Mathews v. Eldridge* factors." *Simpson,* 860 F.3d at 1008. Plaintiffs' procedural due process challenges based on inadequate notice that their cars will be impounded or that their cars will be disposed of survive.

The Court agrees with the City, however, that Plaintiffs cannot claim lack of notice of towing and storage fees when the City ordinances specify those fees. *See Cochran v. Ill. State Toll Highway Auth.*, 828 F.3d 597, 600 (7th Cir. 2016) (statute or regulation is adequate notice in and of itself as long as it is clear). But this is different from Plaintiffs' allegation of inadequate notice about their vehicles being impounded or destroyed. In *Cochran,* 828 F.3d 597, plaintiff alleged that he did "receive[] notice of toll violations and that the notice conveyed his right to a hearing." Still he contended that the toll signage should have provided notice of how the "toll system worked such that he could have avoided a fine in the first place." Here, Plaintiffs are not claiming that they were unaware of what the ordinances prohibited or the consequences. Plaintiffs claim that they did not receive adequate notice that their vehicles were being impounded or destroyed—notice *required* by the City's ordinance. MCC § 2-14-132(b)(1).

Accordingly, Plaintiffs' procedural due process challenges to the hearing procedures and to the notice of fees are dismissed. Plaintiffs' procedural due process challenges based on lack of pre-deprivation process and inadequate notice that their cars will be impounded or disposed survive. Plaintiffs' substantive due process claims are dismissed.

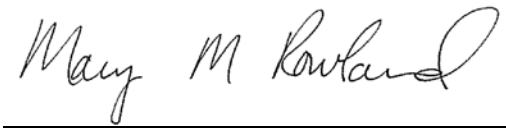
IV. Conclusion

For the stated reasons, the City of Chicago's motion to dismiss [33] is granted in part and denied in part. Counts II, V, and VI are dismissed. Counts III and IV are dismissed to the extent that they allege a violation of Plaintiffs' substantive due

process rights or a violation of Plaintiffs' procedural due process rights as it relates to the hearing procedures or notice of fees. Because Byrd's state law claims survive, his claim in Count VII survives. Therefore, the remaining claims are Counts I, III, IV, and VII, as set forth in this opinion.

E N T E R:

Dated: August 21, 2020



MARY M. ROWLAND
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.8 (rev. 1.8.3)
Eastern Division

Jerome Davis, et al.

Plaintiff,

v.

Case No.: 1:19−cv−03691
Honorable Lindsay C. Jenkins

The City of Chicago, Illinois

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, March 27, 2025:

MINUTE entry before the Honorable Lindsay C. Jenkins: Defendant City of Chicago's motion for summary judgment [175] is granted. Plaintiffs' motion for partial summary judgment [171] is denied. See attached Order for further details. The Clerk shall enter Rule 58 judgment in favor Defendant City of Chicago and against Plaintiffs. Civil case terminated. Mailed notice. (jlj,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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

Spencer Byrd, Allie Nelson, and Lewrance Gant, *Plaintiffs*, v. The City of Chicago, *Defendant*.	No. 19 CV 3691 Judge Lindsay C. Jenkins

ORDER

Municipal Code of Chicago § 2-14-132 authorizes the City of Chicago to impound cars used in the commission of certain municipal violations, including driving without a valid license and drug offenses. Spencer Byrd, Allie Nelson, and Lewrance Gant, the only remaining Plaintiffs, each had their cars impounded under the Ordinance between 2016 and 2019. Through this lawsuit, they allege that the City's then-existing impoundment scheme violates state and federal law.

After some claims were dismissed in 2020, the parties proceeded with discovery and in 2024, the Court denied Plaintiffs' motion for class certification. [Dkts. 54, 160.] Count One alleges that the Ordinance violates the Proportionate Penalties Clause of the Illinois Constitution; Counts Three and Four allege that the Ordinance violates procedural due process under the United States and Illinois Constitutions. [Dkt. 29.][1] For the reasons that follow, the City's motion for summary judgment is granted in full and Plaintiffs' motion is denied.

Statement of Undisputed Material Facts

The Court "present[s] the facts ... in the light most favorable" to the nonmovant. *Emad v. Dodge Cnty.*, 71 F.4th 649, 650 (7th Cir. 2023). The Court only relays facts that are material. That is, "facts that might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Under Ordinance § 2-14-132, the City of Chicago is authorized to impound cars used in connection with certain enumerated offenses including possessing narcotics, driving with a suspended or revoked license, driving while intoxicated, possessing unlawful firearms, and drag racing. [Dkt. 196, ¶ 9.] When a car is impounded under the Ordinance, the City assesses a towing fee, daily storage fees, and administrative

[1] Citations to docket filings generally refer to the electronic pagination provided by CM/ECF, which may not be consistent with page numbers in the underlying documents.

penalties (which the parties also refer to as fines) against the registered owner. [Dkt. 187, ¶ 8]. The amount of the penalty assessed against the owner depends on the nature of the underlying offense. *See* § 2-14-132(a)(1). The fines and fees for towing or storage attach to owners *in personam*. [Dkt. 187, ¶ 9.]

Within ten days of impoundment, the City is required to mail a notice of impoundment to the car's owners and lienholders. [Dkt. 196, ¶ 15.] The City uses Law Enforcement Agencies Data System (LEADS) to access Illinois Secretary of State records concerning driver's license and car registration information to determine the name and address of a car's owner. [*Id.*, ¶ 14.] After a car is impounded, its owner has fifteen days to request an initial probable cause hearing before the Department of Administrative Hearings; if requested, the hearing would occur within two business days of the request. [*Id.*, ¶ 21.] At these initial hearings, the City bears the burden to establish probable cause to believe that the car was used in a violation subjecting it to impoundment. § 2-14-132(a)(1). If the City meets its burden, it continues to hold the car until the owner pays the applicable fines and fees, or until the owner prevails at a full merits hearing on the validity of the impoundment. [§ 2-14-132(a)(1), (b)(3)(B); Dkt. 196, ¶ 21.] If the City does not meet its threshold burden, the car is returned "without penalty or other fees." [§ 2-14-132(a)(3); Dkt. 196, ¶ 21.]

Owners who do not seek an initial probable cause hearing or who do not prevail at the probable cause hearing can challenge the impoundment at a full merits hearing before the Department of Administrative Hearings. [*Id.*, ¶ 24; § 2-14-132(b)(3).] At a merits hearing, the City must establish by a preponderance of the evidence that the car was used in the violation subjecting it to impoundment [*Id.*] If the City meets this burden, the owner is fined in an amount that corresponds to the underlying violation and is assessed fees for towing and storage. [*Id.;* § 2-14-132(b)(3)(A).] If the City fails to meet this burden, the car is returned to its owner and any fines or fees the owner already paid are refunded. [Dkt. 196, ¶ 27; § 2-14-132(b)(3)(B).] The outcome of the administrative hearing is appealable to the Circuit Court of Cook County. [Dkt. 196, ¶¶ 26–27.] Once a final judgment of liability is entered against the car's owner, he or she has at least forty-five days to pay outstanding fines and fees to reclaim the car. [*Id.*, ¶ 27; § 2-14-132(d).] If the owner does not do so, the car is subject to disposal.

At the time of the impoundments at issue in this case, the Ordinance did not permit owners to avoid liability at a full merits hearing by showing that a court had dismissed the underlying criminal violation. [Dkt. 187 at ¶ 24.] Nor could owners avoid liability at a full merits hearing by showing that he or she was not legally responsible for the underlying offense, such as by showing he or she did not

participate in the offense or did not know or have reason to know that illegal conduct was likely to occur. [*Id.*][2]

Cars held by the City at an impound lot may also be subject to forfeiture proceedings by the State of Illinois. State and City forfeiture proceedings occur independent of one another although they often happen concurrently. [Dkt. 196, ¶¶ 31–32.] A favorable outcome after an administrative hearing under the Ordinance does not automatically result in a car's release if state forfeiture proceedings are ongoing. [*Id.*] In connection with state forfeiture proceedings, an owner who establishes to a judge that he or she will suffer a hardship if the car is not released while forfeiture proceedings are ongoing and who alleges that the hardship was not due to the owner's "culpable negligence" can seek the car's release. [*Id.*, ¶ 33 (quoting 720 ILCS 5/36-1.5(e)).] Absent this showing, the car will not be released during state forfeiture proceedings. [*Id.*]

Spencer Byrd

In June 2016, Spencer Byrd's Cadillac was impounded following a traffic stop where CPD officers discovered that Byrd's passenger, Timothy Mars, possessed suspected heroin. [Dkt. 196, ¶ 65.] Mars had requested Byrd's assistance with mechanical work Mars needed on his car. [*Id.*, ¶ 66.] Byrd tried to help, but when he could not make the repair, Byrd agreed to give Mars a ride even though the two did not know each other well. [*Id.*, ¶ 68.] Byrd was pulled over by CPD officers for a malfunctioning turn signal. [*Id.*, ¶ 69.] During the stop, officers noticed Mars repeatedly reaching into his pants pocket and found suspected heroin on Mars during a pat down. [*Id.*, ¶ 70.] Mars was arrested and CPD drove Byrd to a police station where they later released him. Officers told Byrd that his car had been impounded and provided paperwork explaining how to initiate the administrative hearing process. [*Id.*, ¶ 71.] The City also sent Byrd an impound notice to his home address, and there is no dispute that Byrd received the notice. [*Id.*, ¶ 72.] The State also initiated forfeiture proceedings against the Cadillac. [*Id.*, ¶ 73.] Byrd filed a hardship request with the court and that request was granted. [*Id.*]

Six months after impoundment, Byrd sought an administrative hearing. The request for a hearing was granted even though the request was made more than fifteen days after impoundment. [*Id.*, ¶ 74.] At the December 2016 hearing, the administrative hearing officer found probable cause to support the impoundment. [*Id.*] Byrd's full merits hearing occurred the following February, and Byrd was found liable for the drugs in the car. He was assessed a $2,000 penalty. [*Id.*, ¶ 75.] Byrd appealed the findings to the Circuit Court of Cook County, and the court affirmed the

[2] It is undisputed that the current ordinance allows owners to avoid liability where, for example, the underlying criminal violation was dismissed or where the owner was not legally responsible for the offense, did not participate in the offense, and did not know or have reason to know that the illegal conduct was likely to occur. [Dkt. 187, ¶ 25; § 2-14-132(h)(4), (h)(5).]

$2,000 fine against Byrd but reduced the towing and storage fees from $15,790 to $0. [*Id.*, ¶ 76.] Byrd's Cadillac remains in a City impound lot. [*Id.*, ¶ 77.]

Allie Nelson

In October 2017, Allie Nelson's Chrysler 300 was impounded after more than thirty grams of suspected cannabis were found in the car during a traffic stop. [*Id.*, ¶ 50.] The Chrysler was Nelson's secondary car that she permitted her teenage granddaughter and other family members to drive [*Id.*, ¶ 51.] Nelson instructed her granddaughter not to let her boyfriend, Jharad Tillis, drive the car. [*Id.*, ¶ 54.] At the time of the impoundment, Nelson was in Texas recuperating from medical treatments, and she had given her granddaughter instructions not to allow anyone else to drive the car. [*Id.*, ¶ 56.]

Nelson's car was stopped by CPD for a cracked windshield. [*Id.*, ¶ 57.] Tillis was driving and Nelson's granddaughter was in the passenger seat. [*Id.*] Officers discovered Tillis in possession of cannabis, he was arrested, and the car was impounded. [*Id.*] Six days after the stop, the City mailed a notice of impoundment to the LEADS address associated with Nelson's name. Nelson denies ever receiving this notice. [*Id.*, ¶¶ 59–60.]

In November, a default judgment was entered against Nelson. [*Id.*, ¶ 61.] Nelson moved to set that judgment aside, explaining that she never received the notice. [*Id.*] Even though more than twenty-one days had passed, the administrative officer granted the request and Nelson's full merits hearing was held in February 2018, where Nelson was found liable for the drugs in the car. [*Id.*, ¶ 62.] Nelson was assessed both a $2,000 penalty and $3,925 in fees. [*Id.*]

Nelson's car was also subject to State forfeiture proceedings. [*Id.*, ¶ 63.] Nelson made a hardship request to a court to have her car released, but the request was denied. [*Id.*] The City eventually transferred Nelson's car to the Illinois State Police, who sold it at auction. [*Id.*, ¶ 64.][3]

Lewrance Gant

Lewrance Gant's Crown Victoria was impounded in March 2019. [*Id.*, ¶ 35.] Gant owned another car but loaned the Crown Victoria to Donald Salter about twice a month. [*Id.*, ¶ 36.] Salter had worked for Gant's business, South Side Livery, and

[3] Nelson asserts that the City disposed of her car, arguing that the City did so "by transferring it to [] the Illinois State Police." [Dkt. 196, ¶ 64.] But the record evidence Nelson cites fails to dispute the fact that the City played no role in the disposal decision. [Dkt. 173-2 at 12, 21.] The cited testimony establishes that whether to dispose of a forfeited car at the conclusion of City forfeiture proceedings when the car is also subject to State proceedings is a decision made only by Illinois State Police, not the City. Because Nelson has failed to dispute this fact, it is deemed admitted.

Gant knew Salter drove without the necessary chauffer's license. [*Id.*, ¶ 37.] Weeks before the car was impounded, Gant asked to see Salter's driver's license, which Gant took a picture of, and which listed a March 4, 2019, expiration date. [*Id*, ¶ 39.] Though it is disputed whether Gant knew that Salter's license had been suspended, it is undisputed that Salter had outstanding tickets, that Gant knew Salter was on a "payment plan for tickets", and that Gant did not verify whether Salter had renewed his license on or after March 4. [*Id.*, ¶ 38.] On March 30, Salter was pulled over by CPD while driving the Crown Victoria. [*Id.*, ¶ 40.] Officers learned that Salter's license was suspended and they observed suspected cannabis in the back seat, so the car was impounded. Both "driving with a suspended or revoked license" and "unlawful drugs in vehicle" were listed as the reasons for impoundment. [*Id.*] Gant learned of the impoundment about an hour later when he received a call from Salter. [*Id.*, ¶ 41.] Gant went to the police station to meet Salter, and an officer explained that Gant's car had been impounded. [*Id.*, ¶ 42.] At the impound lot later that day, Gant learned that he needed to go to the administration hearing facility if he wished to have his car released. [*Id.*] The City mailed Gant an impound notification letter using LEADS. The letter described the process for challenging impoundment and said that an adverse judgment could result in the car's disposal. [*Id.*, ¶ 43.]

Gant requested an initial probable cause hearing, which was held on April 1, 2019. [*Id.*, ¶ 45.] The hearing officer found that the impoundment was supported by probable cause. [*Id.*] At the full merits hearing the following month, the City dismissed the "unlawful drugs" charge as a basis for the impoundment due to missing lab results, but Gant was found liable for the suspended license violation and was assessed a $1,000 penalty and $3,750 in fees. [*Id.*, ¶¶ 46–47.] Gant did not seek further review of the administrative decision, and he did not pay the penalty or fees. [*Id.*, ¶ 48.]

Legal Standard

Summary judgment is proper where "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 Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When reviewing cross-motions for summary judgment, all facts and reasonable inferences are construed in favor of the party "against whom the motion under review was made." *Frazier-Hill v. Chicago Transit Auth.*, 75 F.4th 797, 801 (7th Cir. 2023). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also Birch|Rea Partners, Inc. v. Regent Bank*, 27 F.4th 1245, 1249 (7th Cir. 2022). The Court "may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts; these are jobs for a factfinder." *Johnson v. Rimmer*, 936 F.3d 695, 705 (7th Cir. 2019) (internal quotation omitted). But defeating summary judgment requires evidence, not mere speculation. *See Weaver v. Champion Petfoods USA Inc.*, 3 F.4th 927, 934 (7th Cir. 2021).

Proportionate Penalties Clause

The Proportionate Penalties Clause of the Illinois Constitution provides that all "penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. The parties first dispute whether the Ordinance falls within the scope of the Proportionate Penalties Clause. The City argues that the Clause regulates only criminal sanctions and because the Illinois Supreme Court has described the Ordinance as "presumptively civil", *see Linztzeris v. City of Chicago*, 216 N.E.3d 151, 164 (Ill. 2023), the Clause has no application to this case. [Dkt. 176 at 8.] For their part, Plaintiffs argue that fines are a penalty and, by its terms, the Clause applies to all penalties. [Dkt. 184 at 6 ("The most 'natural and obvious meaning' of 'all penalties' is that it includes every penalty, not just a subset of them." (cleaned up)).]

The Eighth Amendment's Excessive Fines Clause applies to civil and criminal penalties. *Grashoff v. Adams*, 65 F.4th 910, 916 (7th Cir. 2023) (an excessive fines inquiry "does not depend on whether the sanction arises in the civil or criminal context; 'civil sanctions can constitute punishment, and therefore are subject to the limitations of the Excessive Fines Clause, if they serve, at least in part, retributive or deterrent purposes.'") (quoting *Towers v. City of Chicago*, 173 F.3d 619, 624 (7th Cir. 1999)). Because the Illinois Supreme Court has interpreted the Proportionate Penalties Clause as "provid[ing] a limitation on penalties beyond those afforded by the eighth amendment," *see People v. Clemons*, 968 N.E.2d 1046, 1056–57 (Ill. 2012), the Court assumes for purposes of summary judgment that the Clause applies to civil penalties.

Plaintiffs raise a facial challenge to the Ordinance, but the Court decides the as-applied challenge first because if the as-applied challenge fails then the facial challenge necessarily fails. *Hegwood v. City of Eau Claire*, 676 F.3d 600, 603 (7th Cir. 2012) ("principles of 'judicial restraint' counsel in favor of resolving 'as-applied challenges before facial ones in an effort to decide constitutional attacks on the narrowest possible grounds and to avoid reaching unnecessary constitutional issues'" (citation omitted)). [Dkt. 54 at 19, n.6.]

A statute violates the Proportionate Penalties Clause if, as relevant here, the "punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community." *People v. Hilliard*, 234 N.E.3d 668, 674 (Ill. 2023) (cleaned up). Nothing specifies exactly what satisfies this standard because, as "society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community." *Id.* (quoting *People v. Miller*, 781 N.E.2d 300, 308 (Ill. 2002)). Like the Excessive Fines Clause, the relevant inquiry under the Proportionate Penalties Clause is whether a particular penalty was intended to punish. "Only governmental action that inflicts 'punishment' may be restricted by … the proportionate penalties clause." *People v. Avila-Briones*, 49 N.E.3d 428, 440 (Ill. App. Ct. 2015) (citing *People ex rel. Birkett v. Konetski*, 909

N.E.2d 783, 799 (Ill. 2009) ("Thus, the critical determination is whether imposition of the [sex offender] registration requirement is a direct action to inflict punishment.")

Plaintiffs argue that the Ordinance as applied violated the Proportionate Penalties Clause because the version in effect at the time of the impoundments punished them without regard for innocence or culpability for the underlying violation. [Dkt. 172 at 11–13; Dkt. 184 at 10–12.] They maintain that because "culpability is a cardinal consideration in the proportionality analysis," punishment without accounting for personal culpability was "necessarily disproportionate." [Dkt. 184 at 12.] The City responds that even under a theory of innocence, Plaintiffs still "bear some culpability for the misuse of their vehicles," because they at least enabled others to use their cars in a manner that violated the law. [Dkt. 195 at 10.] In support, the City relies on *Towers*, where the Seventh Circuit analyzed some of the same municipal ordinances at issue here and concluded that even owners who did not commit an underlying violation and had no reason to know of it still could be fined for the misuse of their cars. [*Id.* at 10–11; citing *Towers*, 173 F.3d at 620–26.] This, the City says, means that assessing fines against owners is not cruel, degrading, or wholly disproportionate.

In *Towers*, the Seventh Circuit evaluated an Excessive Fines Clause challenge to the City's ordinances allowing for impoundment and imposition of fines against car owners. *Towers*, 173 F.3d at 620. The car owners argued that $500 fines imposed on them were excessive because they "did not know about the illegal items that were found in their cars, they are innocent of any wrongdoing and, therefore, the fines imposed are excessive and grossly disproportional to the offense." *Id.* at 625. First, *Towers* concluded that the $500 fines were punitive and not solely remedial for Eighth Amendment purposes.

Next, the Court applied *United States v. Bajakajian*, 524 U.S. 321 (1998) to evaluate whether the penalty was "grossly disproportional to the gravity of [the] ... offense." 173 F.3d at 625. *Bajakajian* explained that the "touchstone of the constitutional inquiry ... is the principle of proportionality: The amount of the [fine] must bear some relationship to the gravity of the offense that it is designed to punish." 524 U.S. at 334, 337 (forfeiture of $357,144 was grossly disproportional to the gravity of Bajakajian's offense).[4]

Applying *Bajakajian*, *Towers* examined the gravity of the plaintiffs' conduct, noting that each had "unwittingly allowed his car to be used as a receptacle for another's illegal item," with no indication that the plaintiffs were involved in

[4] The *Bajakajian* factors "come from a case about criminal forfeiture—that is, a punishment tied to a conviction for a crime." *Grashoff*, 65 F.4th at 917. Like the Excessive Fines Clause, most claims under the Proportionate Penalties Clause arise in the criminal context, but "the same basic framework applies." *Id.*

anything illegal. 173 F.3d at 625. But the Court explained that even unwitting owners can still be held responsible for allowing their cars to be misused. It explained:

> We cannot accept, however, the notion that the plaintiffs must be considered completely lacking in culpability. The district court concluded, reasonably, that, because the plaintiffs did not report their cars stolen, they must have given some degree of consent to the use of their cars by others, either before or after that use. The district court further concluded, persuasively, that, when an owner consents to release control of his or her vehicle to another person, expressly or otherwise, the owner also accepts the risks inherent to that loss of control.

Id. (cleaned up). The harm caused by the plaintiffs' acts is "certainly a real and a legitimate subject of the City's concern," and by facilitating illegal activity, the Court said, the "plaintiffs have contributed, however unwittingly," to the spread of crime in the community. *Id.*

Finally, the Court concluded that $500 was "not so disproportionate to the gravity of the conduct" under the Excessive Fines Clause because "in fixing the amount, [the City] was entitled to take into consideration that the ordinances must perform a deterrent function—to induce vehicle owners to ask borrowers hard questions about the uses to which the vehicle would be put or to refrain from lending the vehicle whenever the owner has a misgiving about the items that might find a temporary home in that vehicle." *Id.* at 625–26. As such, the fine was large enough to function as a deterrent, but not so large as to be grossly out of proportion with the need for deterrence. *Id.*

More recently, the Illinois Supreme Court incorporated aspects of *Towers*' analysis when it considered whether § 2-14-132's imposition of fines on car owners was a valid exercise of the City of Chicago's home rule power. *Linztzeris*, 216 N.E.3d at 162. That analysis underscored that imposing an impoundment penalty serves "as a legitimate deterrence tool related to its interest in the safety and welfare of its residents." *Id.* at 162–63.

Plaintiffs argue that *Towers*' analysis is not controlling because (1) it did not involve a challenge under the Proportionate Penalties Clause, which necessarily requires consideration of rehabilitative objectives; and (2) the penalties at issue here, $2,000 for Byrd and Nelson and $1,000 for Gant, are substantially higher than the $500 fines in *Towers*. [Dkt. 172 at 16–17.]

It is true, of course, that *Towers* did not directly raise a Proportionate Penalty Clause challenge. Though the Illinois Supreme Court has interpreted the Clause as sweeping broader than the Eighth Amendment, the Seventh Circuit's analysis of whether the same statutory scheme under nearly identical facts is grossly

disproportionate to the underlying activity undoubtedly informs the proportionality analysis under the Illinois constitution. In this regard, Plaintiffs argue that "the conduct that the court determined in *Towers* that the City was permitted to deter is wholly absent here," because the factual record reveals that Byrd, Nelson and Gant all engaged in "due diligence." [Dkt. 172 at 17–18.]

Plaintiffs understandably disagree with *Towers*' excessive fines analysis, *see* dkt. 184 at 8 n.1, and with its application to the facts of this case. They are free to direct their arguments on this score to the Seventh Circuit. But this does not permit the Court to disregard *Towers* and its conclusion that the impoundment penalties serve a "legitimate deterrence" purpose, even if the car's owner "unwittingly" allowed his or her car to be used. 173 F.3d at 625 ("The City certainly has a right to sanction a vehicle owner who does not ensure that others with access to the vehicle do not place illegal items in it.") (citing *Bennis v. Michigan*, 516 U.S. 442, 447–48 (1996)). Here, it is not disputed that Byrd, Nelson and Gant each gave others access to their cars at one point or another, and that the underlying violations followed. [Dkt. 196, ¶¶ 35–36, 51, 56, 68.]

Nor does the Court agree with the characterization that "rehabilitative considerations" are lacking in *Towers*. As discussed, *Towers* explained the City's interest in inducing owners to inquire of borrowers before handing over their keys serves a legitimate deterrent function. 173 F.3d at 626–27. And as the City argues, this serves the purpose of "inducing owners to exercise greater care in entrusting their property to others." [Dkt. 186 at 19; *Towers*, 173 F.3d at 623.] Indeed, both Gant and Byrd testified that they take greater precautions when loaning out their cars. [Dkt. 196, ¶¶ 49,78.]

Second, Plaintiffs argue that *Towers* "comes out quite differently" because unlike the plaintiffs in *Towers*, the Plaintiffs here are "facing not hundreds, but thousands of dollars in penalties." [Dkt. 172 at 17.] "But the fact that over 13 years, the penalty under [the Ordinance] has increased from $500 to $2,000 does not, standing alone, pose any constitutional issues." *See Sloper v. City of Chicago, Dep't of Admin. Hearings*, 23 N.E.3d 1208, 1215 (Ill. App. Ct. 2014). Surely, fines can increase between 1999 and 2016 without automatically triggering proportionality concerns.

Finally, the City argues that Plaintiffs' as-applied challenge fails because the undisputed facts establish that each Plaintiff either had reason to know their cars likely would be misused or failed to take precautions against that misuse. Specifically, (a) Gant allowed Salter to drive his Crown Victoria, even though Gant knew Salter often drove liveries without proper licensure and had many unpaid tickets (dkt. 196, ¶¶ 37–38); (b) Nelson permitted her granddaughter to use the Chrysler even though she assumed that her instructions not to let Tillis drive it would be ignored (*id.*, ¶ 54); and (c) Byrd allowed Mars into his car without inquiring whether Mars was carrying contraband. (*id.*, ¶¶ 67–68). [Dkt. 176 at 10–12.] According to the City, this means that Plaintiffs were not "innocent."

Plaintiffs do not dispute these facts. [Dkt. 184 at 12–14.] Instead, they argue that these circumstances are post hoc justifications developed through discovery and that regardless, the Ordinance in effect at the time of the impoundments did not allow owners to avoid liability by presenting an "innocence" defense. § 2-14-132(h)(4), (5). [Dkt. 184 at 11–14.] But as Plaintiffs themselves point out, culpability is a central consideration in the proportionality analysis, s*ee id.* at 11–12, so the Court agrees they factor into whether the fines are wholly disproportionate.

Towers held that even unwitting owners whose culpability "is not high" but who provided some degree of consent to the use their cars by others may still be held responsible for misuse of their property under the Excessive Fines Clause. *Towers*, 173 F.3d at 625–26. This was because the $500 fine imposed was not grossly disproportionate to the gravity of the activity that the City sought to deter. Bearing that holding in mind, the amounts assessed here—$1,000 for Gant and $2,000 each for Byrd and Nelson—while punitive and certainly not small sums, are not "cruel, degrading, or so wholly disproportionate" to the seriousness of the conduct sought to be deterred. They do not "shock the moral sense of the community." *Hilliard*, 234 N.E.3d at 673–74. The Court grants summary judgment for the City on Count One.

Procedural Due Process (Prepayment of the Fine)

Plaintiffs next challenge the payment requirements as a condition for releasing their cars. Specifically, they argue that the City's requirement that an owner pay the outstanding fines and fees before final judgment is rendered violates procedural due process. [Dkt. 172 at 18–19.][5]

The parties disagree on what procedural due process framework applies to this claim. Plaintiffs argue that *Fuentes v. Shevin*, 407 U.S. 67 (1972) applies, but the Court does not agree. *Fuentes* involved challenges to writs of replevin, which allowed the state to seize property without a hearing on behalf of third-party nonstate actors. *Id.* at 80. In those circumstances, the Supreme Court explained that notice and a hearing "must be granted at a time when the deprivation can still be prevented." *Id.* at 81. The factual circumstances here, however, are distinct enough to fall beyond *Fuentes*. Rather than seizure on behalf of private creditors, Plaintiffs' cars were impounded and subject to forfeiture proceedings by the City, and in the case of Nelson and Byrd, also by the State of Illinois. [Dkt. 196, ¶¶ 40, 63–64, 73–76.]

Culley v. Marshall involved plaintiffs whose cars had been used in connection with drug offenses who alleged that state officials violated their due process rights by retaining their cars during the forfeiture process without holding preliminary hearings. 601 U.S. 377, 381 (2024). Under Alabama law, cars used to commit or

[5] The City frames this claim as one of substantive due process, but the Court does not agree. Plaintiffs' "dispute is not (primarily) with that hearing process, but that the City's coercive imposition of a financial penalty occurs *before* that process results in final judgment." [Dkt. 184 at 18 (emphasis in original).]

facilitate drug crimes could be subject to civil forfeiture, "so long as the State then 'promptly' initiated a forfeiture case." *Id.* "[B]efore the forfeiture hearing, the car's owner could recover it by posting bond at double the car's value." *Id.* Alabama allowed an innocent owner affirmative defense at forfeiture hearings, where an owner could prevail and recover the car by establishing that the owner "lacked knowledge of the car's connection to the drug crime." *Id.* The Supreme Court concluded that "historical practice in civil forfeiture proceedings" and prior precedent established that in "civil forfeiture cases involving personal property such as cars, the Due Process Clause requires a timely forfeiture hearing but does not require a preliminary hearing." *Id.* at 392.[6]

Culley held that due process is satisfied with a timely, meaningful hearing. The process here easily satisfies that requirement because it contemplates both a probable cause hearing and a final merits hearing. [Dkt. 196, ¶¶ 21, 24.] A car's owner has fifteen days to request a probable cause hearing, and the hearing will occur within two business days of the request. [*Id.*, ¶ 21.] Both Byrd and Gant requested preliminary hearings and received them quickly. [*Id.*, ¶¶ 43–45, 74.] Although the final merits hearings took a bit longer, Plaintiffs do not seriously challenge the *timeliness* of the hearings they received.[7] The procedures satisfy *Culley*.

Even if, as Plaintiffs argue, *Culley* did not control, *Mathews v. Eldridge*, 424 U.S. 319 (1976), and its three-prong framework also support granting summary judgment to the City. Under *Mathews*, a procedural due process claim requires the Court to consider: (1) "the private interest that will be affected by the official action;" (2) "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 (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335. The Court addressed *Mathews* at the pleadings stage and concluded that Plaintiffs stated a claim for procedural due process based on lack of pre-deprivation process. [Dkt. 54 at 23, 26.] With the benefit of fact discovery, the parties have refined their *Mathews'* arguments, which the Court addresses below.

[6] As Plaintiffs note, the asset forfeiture at issue in *Culley* attached *in rem* to the property itself, as opposed to this case where the fines and fees levied by the City attached *in personam* to the Plaintiffs. Still, the Seventh Circuit has explained that any distinction between *in rem* forfeitures and *in personam* fines is one of form, not substance. Both proceedings result in an economic penalty to the owner because property was used improperly; and both serve the same governmental purpose of deterring unlawful conduct. *Towers*, 173 F.3d at 626–27.

[7] Neither party raises *timeliness* arguments like those at issue in *United States v. $8,850*, 461 U.S. 555, 556 (1983) or *United States v. Von Neumann*, 474 U.S. 242, 251 (1986), which addressed whether the delay deprived individuals of due process. Because the parties did not squarely raise issues of delay, the Court does not use the framework applied in those cases, as first articulated in *Barker v. Wingo*, 407 U.S. 514 (1972).

First, in general, the private interest in one's car is substantial. [Dkt. 54 at 22.] Undoubtedly, "vehicle forfeitures are economically painful. Many Americans depend on cars for food, school, work, medical treatment, church, relationships, arts, sports, recreation, and anything farther away than the ends of their driveways." *Washington v. Marion Cnty. Prosecutor*, 916 F.3d 676, 679 (7th Cir. 2019). But the claim at issue here is not about permanent deprivation. Rather, Plaintiffs' claim relates to "the City's coercive imposition of a financial penalty [] *before"* final judgment. [Dkt. 184 at 18 (emphasis in original).]

Here, the length of prehearing deprivation varied for each Plaintiff. Gant and Byrd received probable cause hearings within two to twelve days of seeking them. [Dkt. 196 ¶¶ 45, 74.] Similarly, the length of time between impoundment and final merits hearing differed for each Plaintiff and ranged from about four to eight months. [*Id.*, ¶¶ 35, 46–47, 50, 61–63, 65, 74–75.] Although Plaintiffs have a strong private interest in their cars, even for a short period, in context, none of the deprivations was extraordinarily long. This factor favors Plaintiffs.

Second, the risk of erroneous deprivation and other procedural safeguards favor the City. To guard against the risk of an erroneous deprivation pending a final merits hearing, the City implements probable cause hearings, which can be requested within fifteen days of impoundment, and will be held within two business days of the request. [Dkt. 196, ¶ 21.] As explained, the City bears the burden of showing probable cause to believe the car was used in violation of the code. [*Id.*, ¶¶ 21, 24.] These procedural protections reduce the risk of erroneous deprivation by ensuring a probable cause hearing occurs soon after impoundment and that the deprivation continues only where there is probable cause. Of course, there remains some risk of an erroneous deprivation, *see* dkt. 54 at 23, and the procedures hardly guarantee perfect protections, but they certainly reduce the risk of erroneous deprivations. *See also People v. One 1998 GMC*, 960 N.E.2d 1071, 1093 (Ill. 2011) (noting that even under a *Mathews* analysis, the risk of erroneous deprivation was minimal in cases where a car was seized "simultaneously with" a driving under the influence or revoked license offense for which the police must have probable cause).

As to the final factor, at the dismissal stage, the Court concluded that the City's interest in ensuring prompt collection of monies owed did not outweigh Plaintiffs' interest in the use of their cars and in retaining access to their money, particularly since any judgment ultimately attached to individuals, independent of whether they have their cars. [Dkt. 54 at 23-24 (noting that the City had not addressed *Mathews*).] Now, the City focuses its argument on the City's interest in deterring serious offenses that present a risk to public health and safety, which *Towers* acknowledged as a legitimate government interest in the excessive fines context. [Dkt. 176 at 24; Dkt. 195 at 23-24; 173 F.3d at 625–26.]

Plaintiffs respond that demanding prepayment of a penalty that is not yet final has no constitutionally sound justification and is not "directly necessary" to securing

a governmental interest. [Dkt. 172 at 20–21.] And they reiterate that depriving car owners of their cars creates a negative feedback loop. [Dkt. 184 at 19 (citing *City of Chicago v. Fulton*, 592 U.S. 154, 164 (2021) (Sotomayor, J., concurring) (observing that an owner who lacks "reliable transportation to and from work, finds it all but impossible to repay her [bankruptcy] debt and recover her vehicle")).]

Ultimately, the third factor tips in favor of the City. As discussed at length above, *Towers* recognized the City's meaningful deterrent interest under the relevant ordinances, even for unwitting owners. As the City argues, Plaintiffs' proposal for releasing a car before fines are paid would negate much of the deterrent effect, rendering impoundment a "toothless sanction." [Dkt. 176 at 24.]

Lastly, the Supreme Court issued *Culley* in 2023, noting that requiring an additional preliminary hearing "would interfere with the government's important law-enforcement activities in the period after the seizure and before the forfeiture hearing." 601 U.S. at 388. As such, the Court cannot say that Plaintiffs' alternative approach—releasing cars without prepayment of fines or only requiring prepayment of fees but not fines—reduces the fiscal and administrative burden on the City. Under either analysis, summary judgment for the City on the procedural due process claim for prepayment of fines is granted.

Procedural Due Process (Notice)

Plaintiffs also bring a due process claim premised on insufficient notice that their cars were impounded or would be disposed of. The Ordinance requires that, "[w]ithin ten days after a vehicle is seized and impounded the Department of Streets and Sanitation or other appropriate department shall notify by certified mail the owner of record." § 2-14-132(b)(1)(A). The notice "shall state the penalties that may be imposed if no hearing is requested, including that a vehicle not released by payment of the penalty and fees and remaining in the City pound may be sold or disposed of by the City in accordance with applicable law." *Id.*

It is undisputed that Gant and Byrd both received notice of the impoundment of their cars and the potential for disposal. [Dkt. 196, ¶¶ 43, 71–72.] Only Nelson's notice claims remain, but no genuine dispute of material fact exists as to her.

Due process does not require actual notice. Rather, it "requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Johnson v. Purdue*, 126 F.4th 562, 566 (7th Cir. 2025) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)); *Krecioch v. United States*, 221 F.3d 976, 981 (7th Cir. 2000) (finding that "absent exceptional circumstances, written notice of forfeiture by certified mail to the claimant's residence satisfies due

process even if the claimant does not receive actual notice as a result.") Even plaintiffs who receive actual notice "may nonetheless challenge the procedural sufficiency of the notice." *Santiago v. City of Chicago*, 446 F. Supp. 3d 348, 357 (N.D. Ill. 2020); *see also Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 13–15 (1978) (finding notice insufficient where customers of a utility company received notices that their services would be terminated but without information about how to object).

It is undisputed that the City sent a notice of impoundment to Nelson at the address on file with the Illinois Secretary of State. [Dkt. 196, ¶ 59.] Regardless of whether the notice the City sent to Nelson included all of the required information about impoundment *and* disposal, Nelson's due process claim concerns only whether she *received* that notice. [Dkt. 184 23–25.] But as discussed, actual notice is not required. *Purdue*, 126 F.4th at 566. Because due process only required that the City provide notice in a way reasonably calculated to apprise her, and because there is no dispute that the City did so, Nelson has not come forward with sufficient evidence to defeat summary judgment on notice of impoundment, even accepting her testimony that she did not receive the notice mailed to her.

Separately and finally, the parties dispute whether Nelson received notice regarding the potential for disposal of her car. Even assuming, as Nelson argues, that she never received the notice, and even if the notice did not include information about disposal of the car as she maintains, there is no dispute that Nelson participated in the process challenging the disposal. [Dkt. 196, ¶¶ 61–62.] Still, even if she paid the fine and fees after the liability finding in favor of the City, this would not have secured the return of her property: it is undisputed that Nelson's car was also subject to state forfeiture proceedings. [*Id.*, ¶¶ 62–63.]

In an attempt to regain possession from the state, Nelson submitted a hardship request, but that request was denied by a judge. [*Id.*] Thus, any dispute about whether Nelson received proper notice of disposal from the City is ultimately immaterial because her car was disposed of by the State of Illinois, not the City, a fact Nelson has not disputed. [*Id.*] Summary judgment is therefore appropriate in favor of the City.

Conclusion

For the reasons stated above, the City of Chicago's motion for summary judgment is granted in full. Plaintiffs' motion for summary judgment is denied in full.

Enter: 19 CV 3691
Date: March 27, 2025

Lindsay C. Jenkins
United States District Judge

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

Davis et al,

Plaintiff(s),

v.

The City of Chicago, Illinois,

Defendant(s).

Case No. 19 C 3691
Judge Lindsay C. Jenkins

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

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

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

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

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

☐ in favor of defendant(s)
and against plaintiff(s)

.

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

☒ other: Judgment is entered in favor of Defendant The City of Chicago, Illinois and against Plaintiffs Davis et al. Civil case closed.

This action was *(check one)*:

☐ tried by a jury with Judge Lindsay C. Jenkins presiding, and the jury has rendered a verdict.
☐ tried by Judge Lindsay C. Jenkins without a jury and the above decision was reached.
☒ decided by Judge Lindsay C. Jenkins.

Date: 3/27/2025

Thomas G. Bruton, Clerk of Court

Jackie Deanes, Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2025, 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.

Dated: July 7, 2025

/s/ Diana K. Simpson
Diana K. Simpson
Counsel for Appellants