

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

JOSHUA VASQUEZ, and  
MIGUEL CARDONA,

Plaintiffs,

v.

ANITA ALVAREZ, in her official capacity  
as the State's Attorney of Cook County, and  
the CITY OF CHICAGO, a municipal  
corporation,

Defendants.

No. 16 C 8854

Judge Amy J. St. Eve  
Magistrate Judge Sheila Finnegan

**DEFENDANT CITY OF CHICAGO'S MOTION TO DISMISS**

Defendant City of Chicago (the "City"), by and through its counsel, Stephen R. Patton, Corporation Counsel for the City of Chicago, hereby moves this Honorable Court to dismiss Plaintiffs' Complaint ("Complaint") pursuant to Federal Rule of Civil Procedure 12(b)(6). In support hereof, the City states as follows:

1. Plaintiffs Joshua Vasquez and Miguel Cardona (collectively "Plaintiffs") are individuals who have been convicted of crimes that meet the definition of a child sex offender provided in 720 ILCS 5/11-9.3(d)(1).

2. As child sex offenders, Plaintiffs are subject to the residency restrictions contained in 720 ILCS 5/11-9.3(b-10), which makes it "unlawful for a child sex offender to knowingly reside within 500 feet of a playground, child care institution, day care center, part day child care facility, day care home, group day care home, or a facility providing programs or services exclusively directed toward persons under 18 years of age."

3. Upon completing their 2016 sex offender registration with the City of Chicago

Police Department each Plaintiff was given a form by the City stating that his address is in violation of the statute due to a home daycare having opened within 500 feet of the residence. These forms notified each Plaintiff he had 30 days to move and that failure to relocate to a compliant address by the provided date could lead to arrest and prosecution under the statute.

4. Plaintiffs have brought suit against the City and Anita Alvarez in her official capacity as State's Attorney of Cook County. Plaintiffs' claims against the City are brought pursuant to 42 U.S.C. § 1983, claiming that the City's procedures for enforcing 720 ILCS 5/11-9.3(b-10) violate their rights under the Ex Post Facto Clause of the United States Constitution, the Fourteenth Amendment guarantee of procedural due process, and the Fifth Amendment Takings Clause.

5. The City moves to dismiss Plaintiffs' claims pursuant to Rule 12(b)(6) for failure to state a claim. A Rule 12(b)(6) motion tests the legal sufficiency of a complaint. Fed. R. Civ. P. 12(b)(6); *Gibson v. City of Chi.*, 910 F.2d 1510, 1520 (7th Cir. 1990). When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all well-pled allegations, construing all such allegations in the light most favorable to the plaintiff, and drawing all reasonable inferences in favor of the plaintiff. *Gibson*, 910 F.2d at 1520-21.

6. Plaintiffs' claims against the City fail because Plaintiffs' allegations fail to state a claim for municipal liability under § 1983. Plaintiffs' claims are premised solely on allegations that the City has a policy of enforcing state law, which is an insufficient ground for municipal liability under § 1983.

7. Plaintiff's Ex Post Facto and Takings Clause claims also fail because Plaintiffs' allegations fail to state a claim as pled against the City.

8. Plaintiffs' claim under the Fourteenth Amendment right to procedural due process also fails to state a claim because the United States Supreme Court foreclosed a nearly identical argument in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003).

9. This motion incorporates all of the arguments and grounds discussed in the City's supporting Memorandum of Law as if they were set forth fully in this Motion.

WHEREFORE, the City respectfully requests that this Court dismiss Plaintiffs' Complaint in its entirety as it applies to the City pursuant to Rule 12(b)(6) and grant such further relief this Court deems appropriate.

Date: September 29, 2016

Respectfully submitted,

STEPHEN R. PATTON,  
Corporation Counsel for the City of Chicago

By: /s/ Andrew S. Mine  
Senior Counsel

Andrew S. Mine  
City of Chicago, Department of Law  
Constitutional and Commercial  
Litigation Division  
30 North LaSalle Street, Suite 1230  
Chicago, Illinois 60602  
(312) 744-7220