No. 17-1061

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSHUA VASQUEZ and MIGUEL CARDONA,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO, a municipal corporation, and KIMBERLY M. FOXX, in her official capacity as the State's Attorney of Cook County,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division, No. 16 C 8854
The Honorable Amy J. St. Eve, Judge Presiding

BRIEF OF DEFENDANT-APPELLEE CITY OF CHICAGO

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JURISDICTIONAL STATEMENT

The jurisdictional statement of plaintiffs-appellants Joshua Vasquez and Miguel Cardona (collectively, "plaintiffs") is not complete and correct. Defendant-appellee City of Chicago therefore submits this jurisdictional statement, as required by 7th Cir. R. 28(b).

Plaintiffs brought suit under 42 U.S.C. § 1983, challenging the constitutionality and enforcement of a state criminal statute, 720 ILCS 5/11-9.3(b-10), for allegedly violating the U.S. Constitution's Ex Post Facto, Fifth Amendment's Takings, and Fourteenth Amendment's Due Process Clauses. R. 1. The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

The district court granted the motions to dismiss brought by the City and co-defendant-appellee Kimberly M. Foxx, the State's Attorney of Cook County (hereafter, "State's Attorney"), on December 9, 2016, dismissing all four counts of the complaint against both defendants. A1-A19.[1] The court entered final judgment dismissing the case on December 19, 2016, A20, and plaintiffs filed their notice of appeal on January 9, 2017, R. 48.

This appeal is from a final judgment disposing of all parties' claims, and this court has jurisdiction over the appeal under 28 U.S.C. § 1291.

ISSUES PRESENTED

1. Whether this court may affirm the dismissal of plaintiffs' complaint

[1] We cite the Brief of Plaintiffs-Appellants Joshua Vasquez and Miguel Cardona as "Pls. Br. __" and cite pages of that brief's appendix as "A__."

against the City because there is no basis for municipal liability under Monell where the criminal statute plaintiffs challenge is not the City's policy, and the City's policies do not cause the alleged violations of plaintiffs' constitutional rights.

2. Whether the district court properly dismissed plaintiffs' ex post facto claim on the merits because the criminal statute does not impose retroactive punishment.

3. Whether this court may affirm the district court's dismissal of plaintiffs' takings claim against the City where the claim is not ripe because plaintiffs have not sought compensation in state court, or, alternatively, where the claim fails on the merits because plaintiffs lack a constitutionally protected property interest in continuing to reside in prohibited locations.

4. Whether the district court properly dismissed plaintiffs' procedural due process claim against the City because they have no entitlement to a hearing to challenge the application of a criminal statute, the enactment of which supplied all the process that was due, and when they seek to prove facts not relevant under the statute and will receive all required due process in any criminal proceedings if brought.

STATEMENT OF THE CASE

Plaintiffs allege that they are convicted child sex offenders, as defined in 720 ILCS 5/11-9.3(d)(1). R. 1 ¶¶ 22, 35. Vasquez is required to register as a sex offender for life with the State of Illinois, and Cardona will have to register as a sex offender through 2017. R. 1 ¶¶ 22, 35. Vasquez currently resides in an apartment

that he rents with his wife and nine-year-old daughter. R. 1 ¶ 24. The lease's one-year term ended on August 19, 2017. R. 1 ¶ 24. In 2010, Cardona purchased the home where he currently resides with his mother. R. 1 ¶ 38. He alleges that he has lived at the address for approximately 25 years. R. 1 ¶ 38.

As child sex offenders, plaintiffs are subject to the prohibitions of 720 ILCS 5/11-9.3. A21. One section of that statute, enacted in 2000 and amended in 2006 and 2008, R. 1 ¶¶ 14-16, makes it a criminal offense for child sex offenders "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," 720 ILCS 5/11-9.3(b-10); A21. The statute contains exceptions allowing the child sex offender to reside at property within 500 feet of protected facilities if he purchased the property before the effective dates of the statute or a relevant amendment – July 7, 2000, June 26, 2006, and August 14, 2008 – depending on the type of facility at issue. Id.; R. 1 ¶ 17. Because Vasquez rents his residence and Cardona purchased his home in 2010, R. 1 ¶¶ 24, 38, these exceptions do not apply to plaintiffs. The statute contains no exception allowing the offender to reside at property that was not located within 500 feet of a protected facility when the child sex offender moved in but became a prohibited location when a protected facility later opened up within 500 feet. R. 1 ¶¶ 17-19. The date that the child sex offender was convicted of his qualifying child sex offense is irrelevant under the statute. R. 1 ¶ 17. Whether the child sex offender is required to register with the State also is irrelevant under the statute. R. 1 ¶ 20. A violation of the statute is a class four

felony. 720 ILCS 5/11-9.3(f).

Plaintiffs claim to challenge the City's procedures for enforcing 720 ILCS 5/11-9.3(b-10) – specifically, they allege that Chicago police officers notified plaintiffs that they are residing at prohibited locations and gave plaintiffs dates by which to vacate their residences or else face arrest and felony charges. R. 1 ¶¶ 2-3; R. 33-1 (notices). They allege that Chicago police officers in the past have made arrests and brought charges for violations of the statute. R. 1 ¶ 12.

Plaintiffs allege that when Vasquez rented his current residence, Chicago police confirmed that it was not in a prohibited location. R. 1 ¶ 26. Plaintiffs allege that on August 25, 2016, when Vasquez went to Chicago police headquarters to complete his annual sex offender registration, a Chicago police officer handed him a notice stating that his address violated the statute because a home daycare had opened approximately 480 feet away. R. 1 ¶¶ 27-28; R. 33-1 at 2. The notice stated that to be compliant with the statute, Vasquez would have 30 days, until September 24, 2016, to move and that if he did not, he could be arrested and prosecuted. R. 1 ¶ 28; R. 33-1 at 2.

Plaintiffs allege that on August 17, 2016, Cardona went to Chicago police headquarters to complete his annual sex offender registration requirements, and a Chicago police officer handed him a notice stating that his address violated the statute because a home daycare was located approximately 475 feet away. R. 1 ¶¶ 40-41; R. 33-1 at 1. The notice stated that to be compliant with the statute, he had 30 days, until September 16, 2016, to move or else he could be arrested and prosecuted. R. 1 ¶ 41; R. 33-1 at 1.

Plaintiffs filed a four-count complaint challenging the constitutionality of the statute and the City's enforcement procedures. R. 1. Count I alleged that the application of the statute violates the Ex Post Facto Clause of the U.S. Constitution. R. 1 ¶ 81. Count II alleged that the application of the statute to plaintiffs, without notice or hearing to determine whether either poses a threat to the community, violates the Fourteenth Amendment's procedural due process guarantee. R. 1 ¶ 83. Count III alleges a violation of the Fifth Amendment's Takings Clause because plaintiffs allegedly are deprived "of the use and enjoyment of their property without just compensation." R. 1 ¶ 85. Count IV, directed solely against the State's Attorney, alleges that the statute violates the Fourteenth Amendment's substantive due process guarantee because it is not rationally related to a legitimate state interest. R. 1 at 19.

The district court entered a temporary restraining order prohibiting defendants from requiring plaintiffs to move from their residences and from bringing criminal charges against plaintiffs or arresting them for violating the statute. R. 10-11, 14, 22. That order remains in effect pending this appeal. R. 46.

The City and State's Attorney each moved to dismiss the complaint. R. 23-24, 26. The City's motion explained that the three counts directed against the City should be dismissed because the City cannot be liable under 42 U.S.C. § 1983 for a policy of enforcing state law, and the constitutional injuries alleged were caused by state law. R. 24 at 4-8. The City's enforcement policies do not cause any independent constitutional violation. R. 24 at 7. The City further explained that the ex post facto claim does not challenge the City's enforcement, but challenges the

state statute itself as retroactive punishment. R. 24 at 9-10. The takings claim either is not ripe under Williamson County Regulatory Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985), or else is a facial challenge that cannot be directed against the City, which did not enact the statute. R. 24 at 11-12. And plaintiffs have no procedural due process right to a pre-enforcement hearing before a criminal statute is applied to them where what they seek to prove – their current dangerousness – is irrelevant to the statute's applicability. R. 24 at 8-9.

Plaintiffs' response claimed that they challenge City enforcement policies that are not mandated by the statute – in particular, the City's notice form instructing individuals to move within 30 days or be subject to arrest – and plaintiffs argued that the City can be liable because the statute itself does not require this notice. R. 33 at 5-6, 13-14; see also R. 33-1 (notices). They did not address the City's argument about their ex post facto claim except in a footnote claiming that the City could be subjected to liability for the policy of enforcing state law "for the reasons discussed in §I" of their response. R. 33 at 16 n.2. They claimed that ripeness was no bar to their takings claim because no adequate state remedies exist to challenge the requirement to vacate their homes. R. 33 at 16-17. They also claimed that their procedural due process rights require a hearing to decide their current dangerousness before the statute can be applied to them. R. 33 at 14-16.

The City's reply explained that the City's notices merely alert child sex offenders that their conduct violates the statute and warn that failure to comply

with the statue is a felony that can lead to arrest and prosecution. R. 39 at 4. These notices are within the ample enforcement discretion afforded police and are not themselves causing the alleged violations of plaintiffs' constitutional rights. R. 39 at 3-7. The reply also explained that plaintiffs could not meet the exhaustion requirement of Williamson County where they failed to allege that an inverse commendation proceeding was unavailable in state court. R. 39 at 9-10. The reply further explained that due process does not require a hearing to establish a fact that is not material under the statute's terms. R. 39 at 7-8.

The district court granted both the City's and the State's Attorney's motions to dismiss. A1-A19. Regarding the City's motion, the court first stated that because the court had concluded that plaintiffs' claims fail on the merits, it would not consider the City's argument that plaintiffs could not support municipal liability under the requirements of Monell v. Department of Social Services, 436 U.S. 658 (1978). A6 n.4. The court rejected plaintiffs' ex post facto claim because the statute is not retroactive where it creates a prospective legal obligation based on an individual's past history. A9-A11. The court rejected plaintiffs' takings claim after applying the three factors required to assess whether a statute works a regulatory taking under Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978). A14-A18. And the court rejected plaintiffs' due process claim because due process does not require a hearing to prove facts that are irrelevant under the statute, so plaintiffs have no right to a hearing to prove they are not dangerous where the statute applies to all child sex offenders, regardless how dangerous they might be. A8-A9. The court also rejected the State's Attorney's arguments urging

Younger abstention and agreed with the State's Attorney that plaintiffs' substantive due process claim failed. A6-A8, A11-A14. The court then entered final judgment granting defendants' motions and dismissing the case. A20.

Plaintiffs appeal. R. 48.

SUMMARY OF ARGUMENT

The district court properly dismissed plaintiffs' complaint against the City. All three claims directed against the City fail because the state criminal statute is not the City's policy, and the City cannot be liable merely for enforcing state law. Moreover, the policies the City does have do not themselves proximately cause the constitutional injuries about which plaintiffs complain. Although the district court did not address our Monell argument, this court can affirm the judgment for the City on this alternate ground.

Alternatively, the district court correctly dismissed plaintiffs' claims against the City for failure to state a claim. Plaintiffs' ex post facto claim fails because they challenge a criminal law that is not retroactive. The offense requires conduct committed after the effective date of the statute, and thus plaintiffs may avoid criminal penalties by altering their behavior. Plaintiffs' takings claim should be dismissed because it is not ripe where they have not sought compensation in state court. In addition, the claim fails on the merits because neither plaintiff has a state-created property interest in continuing to reside in a location prohibited by state law. Finally, plaintiffs' procedural due process claim fails because the enactment of the criminal statute itself supplied all the process that was due.

Plaintiffs are not entitled to additional notice or a hearing before a criminal statute may be applied. Nor are plaintiffs entitled to a hearing to prove facts that are irrelevant to a statute's applicability. Procedural due process does not require the City to provide notice or a hearing before it can send out notices warning of a criminal statute's consequences. And if plaintiffs are prosecuted for violation of the statute, they will receive all constitutionally-required process in the criminal proceedings.

ARGUMENT

There is no basis for municipal liability against the City. Plaintiffs challenge a criminal statute as violating their constitutional rights. But the State's criminal laws are not the City's policy, and the City can be liable under Monell only for its own policies. The enforcement policies the City does have regarding sending notices to violators warning of the statute's applicability and potential criminal consequences do not themselves cause the alleged ex post facto, takings, and procedural due process violations. Accordingly, all three counts directed against the City can be dismissed on Monell grounds. Although the district court did not rely on the City's Monell arguments in dismissing the complaint, this court may affirm the judgment on any ground with support in the record. E.g., EEOC v. North Knox School Corp., 154 F.3d 744, 746 (7th Cir. 1998). Alternatively, the district court properly dismissed plaintiffs' ex post facto, takings, and procedural due process claims on their merits. Below, we discuss these issues in turn.

A complaint should be dismissed if it fails to state a claim on which relief can

be granted. E.g., Barnes v. Briley, 420 F.3d 673, 677 (7th Cir. 2005). Courts must accept as true all well-pleaded facts and all reasonable inferences that can be drawn from them. E.g., id. While the factual allegations are taken as true, legal conclusions are not. E.g., Stachowski v. Town of Cicero, 425 F.3d 1075, 1078 (7th Cir. 2005). To survive dismissal, a complaint must assert sufficient facts to demonstrate that a claim is "'plausible on its face,'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This court reviews a Rule 12(b)(6) dismissal de novo. E.g., Arlin-Golf, LLC v. Village of Arlington Heights, 631 F.3d 818, 821 (7th Cir. 2011); Palka v. Shelton, 623 F.3d 447, 451 (7th Cir. 2010). Under these standards, the district court's judgment should be affirmed.

I. THIS COURT MAY AFFIRM THE JUDGMENT FOR THE CITY BECAUSE PLAINTIFFS CANNOT SUPPORT MUNICIPAL LIABILTY UNDER MONELL'S REQUIREMENTS.

Local governments cannot be liable in a section 1983 action for the conduct of their employees based on respondeat superior. E.g., Monell, 436 U.S. at 691, 694. Instead, for municipal liability, the plaintiff must show that a deficient municipal policy caused constitutional injury. E.g., City of Canton v. Harris, 489 U.S. 378, 385 (1989); Monell, 436 U.S. at 691, 694. A plaintiff can do so by showing that the alleged constitutional deprivation was caused by: (1) "an express policy" of the municipality; (2) "a widespread practice that is so permanent and well-settled that it constitutes a custom or practice"; or (3) "a person with final policymaking authority." E.g., Estate of Sims ex rel. Sims v. County of Bureau, 506 F.3d 509, 515 (7th Cir. 2007). This is required to distinguish the acts of the municipality from the

acts of municipal employees because "[m]isbehaving employees are responsible for their own conduct; units of local government are responsible only for their policies rather than misconduct by their workers." Waters v. City of Chicago, 580 F.3d 575, 581 (7th Cir. 2009) (quotation marks omitted). A plaintiff's failure to allege facts that, if true, would satisfy the municipal policy requirement is a sufficient ground upon which to dismiss a complaint. E.g., Surplus Store & Exchange, Inc. v. City of Delphi, 928 F.2d 788, 790 (7th Cir. 1991). In this case, plaintiffs do not claim a municipal policymaker caused their alleged constitutional injuries, and plaintiffs do not satisfy either of the other two avenues to municipal liability. First, the express policy they challenge is a state statute, not a City ordinance, and even the City's enforcement of that state policy does not make it municipal policy. Second, the policies plaintiffs attribute to the City are not themselves the cause of plaintiffs' alleged constitutional harms. We examine each point in turn.

A. The Express Policy Is The State's, And The City Cannot Be Liable For Enforcing State Law.

The express policy that plaintiffs challenge is a criminal statute – 720 ILCS 5/11-9.3(b-10). They allege that the application of that statute, making it a felony for a child sex offender to reside within 500 feet of certain protected child-related facilities, violates the Ex Post Facto, Takings, and Due Process Clauses. R. 1 ¶¶ 1, 81, 83, 85.

It is long settled that municipalities cannot be liable in a section 1983 action where the proximate cause of the alleged injury is state law, rather than municipal conduct. E.g., Snyder v. King, 745 F.3d 242, 247 (7th Cir. 2014); Surplus Store, 928

F.2d at 791-92. "When the municipality is acting under compulsion of state or federal law, it is the policy contained in that state or federal law, rather than anything devised or adopted by the municipality, that is responsible for the injury." Bethesda Lutheran Homes & Services, Inc. v. Leean, 154 F.3d 716, 718 (7th Cir. 1998). As this court has explained, "[i]t is difficult to imagine a municipal policy more innocuous and constitutionally permissible, and whose causal connection to the alleged violation is more attenuated, than the 'policy' of enforcing state law." Surplus Store, 928 F.2d at 791; accord Snyder, 745 F.3d at 247 ("To say that [a] . . . direct causal link exists when the only local government 'policy' at issue is general compliance with the dictates of state law is a bridge too far; under those circumstances, the state law is the proximate cause of the plaintiff's injury."). The City need not ignore state law to avoid being accused of "adopting" the law as its own policy – such a claim "would render meaningless the entire body of precedent from the Supreme Court and this court that requires culpability on the part of a municipality and/or its policymakers before the municipality can be held liable under § 1983." Surplus Store, 928 F.2d at 791 n.4. It would also render municipalities "nothing more than convenient receptacles of liability for violations caused entirely by state actors." Id. Thus, the choice to enforce state law is not alone sufficient to give rise to municipal liability. E.g., id. at 791-92; see also Bethesda Lutheran Homes, 154 F.3d at 718-19; Quinones v. City of Evanston, 58 F.3d 275, 278 (7th Cir. 1995).

Under these principles, the City cannot be liable for injuries, if any, proximately caused by the statute itself. All three counts directed against the City

fail for this reason. If there is any violation of plaintiffs' rights under the Ex Post Facto Clause, it is because the statute itself creates a felony imposing retroactive punishment, not because the Chicago Police Department ("CPD") might enforce that law by making arrests leading to prosecutions for that crime. Likewise, if there is a violation of plaintiffs' rights under the Takings Clause, it is because the statute itself deprives plaintiffs of their property interest in continuing to reside in the locations they currently live, which are within 500 feet of protected facilities, not because CPD officers could make an arrest for that conduct. And finally, if there is a violation of plaintiffs' right to procedural due process because they are not provided a pre-deprivation hearing before an arrest for violating this criminal statute, it is because the statute itself lacks pre-deprivation process.

In short, the criminal statute itself is not an express municipal policy for which the City can be held liable. Although plaintiffs do not address the City's Monell arguments in their opening brief, Pls. Br. 3 n.3, in the district court, plaintiffs attempted to evade this well-settled law by claiming that they indeed challenged City policies – the manner in which the City exercises discretion in how the statute is enforced. R. 33 at 12-14. But as we now explain, the City's enforcement practices do not cause independent constitutional injury for which the City can be liable.

B. The City's Enforcement Policies Do Not Cause Plaintiffs Any Constitutional Injury.

Plaintiffs' challenge to the manner in which the City enforces the statute fails because the City's practices do not themselves cause any constitutional injury.

Plaintiffs allege that CPD issued notices informing plaintiffs that they are residing at prohibited locations and giving dates by which to vacate their residences or else face arrest and felony charges. R. 1 ¶¶ 2-3, 28, 41; R. 33-1 (notices). Specifically, they allege that on August 25, 2016, when Vasquez went to Chicago police headquarters to complete his annual sex offender registration, a Chicago police officer handed him a notice stating that his address violated the statute because a home daycare had opened approximately 480 feet away and further stating that Vasquez would have 30 days, or until September 24, 2016, to move, or he could be arrested and prosecuted. R. 1 ¶¶ 27-28; R. 33-1 at 2. Plaintiffs similarly allege that on August 17, 2016, Cardona went to Chicago police headquarters to complete his annual sex offender registration requirements, and a Chicago police officer handed him a notice stating that his address violated the statute because a home daycare was located approximately 475 feet away. R. 1 ¶¶ 40-41; R. 33-1 at 1. The notice stated that if he failed to move within 30 days, by September 16, 2016, he could be arrested and prosecuted. R. 1 ¶ 41; R. 33-1 at 1.

As we have explained, it is the criminal statute, not these notices warning plaintiffs about the statute's requirements and consequences, that causes the alleged violations of plaintiffs' ex post facto, takings, and due process rights. Where "[i]t is the statutory directive, not the follow-through, which causes the harm of which the plaintiff complains," the municipality cannot be liable. Snyder, 745 F.3d at 249. That is because, again, "[i]t is only when the execution of the government's policy or custom . . . inflicts the injury that the municipality may be held liable under § 1983." City of Canton, 489 U.S. at 385 (emphasis added;

quotation marks omitted; alteration in original). Here, the notices that CPD provides merely correctly informed plaintiffs of the requirements under the state statute, and it was plaintiffs' choice after receiving the notices whether to comply and move or stay and risk arrest. Notices providing correct information are not themselves unconstitutional, nor do they harm plaintiffs. In short, the City's policy of sending these notices is no basis for municipal liability, and plaintiffs' complaint is devoid of any other City policy that allegedly causes them constitutional harm.

For their contrary argument, plaintiffs mistakenly rely on the principle that where a municipality adopts a policy that goes beyond what state law requires, the municipality can be accountable for that policy. R. 33 at 12-14. That principle does not aid plaintiffs. As we explain, the City's policy of providing child sex offenders with notice that they are living at a prohibited address is not the cause of plaintiffs' alleged injuries. Plaintiffs' claim that municipalities may be liable for "enforc[ing] an unconstitutional state statute" merely by "exercis[ing] discretion" beyond the statute's terms, R. 33 at 11, misses a crucial distinction. It is not enough to identify a municipal policy that goes beyond what the statute requires. Instead, plaintiffs must identify a policy with a "direct causal link" to the alleged constitutional injuries. E.g., City of Canton, 489 U.S. at 385. A municipal policy unmoored from any constitutional violation is not a means to hold a municipality liable, either for that policy itself or the State's express policy underlying it.

So, for example, plaintiffs argue that the statute itself does not require the City to warn plaintiffs that they are in violation of the statute or that they could be arrested after a 30-day grace period for violating the statute. R. 33 at 13. Although

it is true this criminal statute does not require any warnings before it is enforced, as we have explained, it is not these warnings that work the constitutional injuries plaintiffs alleged – it is, instead, the statute that criminalizes residing within 500 feet of protected facilities. As plaintiffs acknowledge, R. 33 at 13, that crime is committed at the moment the child sex offender knows he is residing in a prohibited location.

Plaintiffs further argue that the statute does not require the City to "force individuals to move if their residence becomes non-compliant during their registration period." R. 33 at 13. But the City does not have any such policy. Contrary to plaintiffs' characterization that the City "exercises discretion about how and whether to require people to move," R. 33 at 13, plaintiffs cite nothing supporting that the City actually forces anyone to move. They rely on the notices' language, claiming that it commands child sex offenders that they "'are required to move,'" R. 33 at 6 (quoting R. 33-1), as though this were the City's edict. But the fuller context makes clear that the notices instead warn that "to be in compliance with this statute you are required to move." R. 33-1 at 1-2. Thus, the notices merely inform child sex offenders regarding the obligations the criminal statute itself imposes and warn of potential consequences for not moving, including that police might arrest violators. Id. But there is a crucial difference between a policy of giving a warning about the consequences of breaking the law and a policy of showing up at peoples' houses with moving trucks or personnel to perform an eviction. The City merely does the former, although it is under no constitutional obligation to provide any warning whatsoever before it arrests criminal wrongdoers,

who are subject to arrest the moment a crime is committed.[2]

Moreover, plainly, it is not unconstitutional to give lawbreakers an opportunity to comply with the law before making an arrest. It follows that promising a 30-day grace period in which the offender may come into compliance with a criminal statute before the City will enforce that statute by making arrests is not a policy causing constitutional injury for which the City can be liable. Rather, again, it is the underlying statute that causes the injury. In addition, the grace period is well within the ample law enforcement discretion the Constitution affords the City. E.g., Town of Castle Rock v. Gonzales, 545 U.S. 748, 761 (2005).[3]

These principles explain why plaintiffs reliance on McKusick v. City of

[2] Plaintiffs also cite a statement by counsel for the City, claiming it concedes that the City "require[s] people to move," R. 33 at 13 (citing R. 33-2 at 7), but as the cited transcript shows, the statement concerned only whether police later follow up to make arrests of those who do not move. This is different from forcing people to move. Additionally, plaintiffs cite language in the notices informing violators "'that the requirement to move to a lawful address within 30 days of receiving this notice supersedes and takes precedence over any conflicting registration date contained in any Illinois [S]ex [O]ffender Registration Act ["SORA"] Registration Form or other document.'" R. 33 at 6 (quoting R. 33-1). This merely notifies child sex offenders that registering their addresses pursuant to other state laws (e.g., SORA) does not exempt them from the statute's prohibitions on residing within 500 feet of protected facilities. It does not change the origin of the requirement to move or face arrest, which is still the criminal statute itself, not the City's notice, nor, as we explain below, any grace period the City offers before making arrests.

[3] For this reason, plaintiffs' reliance on the fact that CPD may exercise discretion about whether to make arrests for violations, R. 33 at 13 (citing R. 33-2 at 7), does not aid them. Exercising discretion about whether to make arrests is still enforcing the State's policy, which derives from the statute. It is not an independent municipal policy that causes a constitutional violation. To be sure, if the law were enforced invidiously, for example, based on race, that municipal policy would violate the Constitution, e.g., United States v. Armstrong, 517 U.S. 456, 464-65 (1996); Tuffendsam v. Dearborn County Board of Health, 385 F.3d 1124, 1127-28 (7th Cir. 2004), but plaintiffs have never alleged invidious selective enforcement.

Melbourne, 96 F.3d 478 (11th Cir. 1996), and Garner v. Memphis Police Department, 8 F.3d 358 (6th Cir. 1993), cert. denied, 510 U.S. 117 (1994), R. 33 at 11-12, is misplaced. In McKusick, a state-court injunction prohibited certain named individuals and those acting "'in concert'" with them from performing certain actions within a buffer zone around an abortion clinic. 96 F.3d at 480-81 (quoting injunction). The plaintiff sought to enjoin the city from enforcing the injunction against her and others who were not acting in concert with the named individuals. Id. The court agreed that the city's choice to enforce the injunction against everyone in the buffer zone, not just those subject to the injunction's terms, was an actionable policy under section 1983 because it was a municipal policy choice that went beyond what state law required. Id. at 483-84. But significantly, the plaintiff there did not merely identify a municipal policy. The policy she identified – of "going beyond the terms of the injunction itself" – was actually the policy that threatened to "lea[d] to the arrest" of those, like the plaintiff, who otherwise would not be subject to arrest, and therefore this policy was actionable as the cause of the alleged violation of the plaintiff's constitutional rights. Id. at 484. If the municipality instead simply had the policy of enforcing the injunction by its terms, the municipality would not cause the plaintiff any injury because she would not be at risk of arrest. Accordingly, this result is merely a straightforward application of the Monell principles we have explained – the municipal policy must itself cause the alleged injury before a section 1983 claim is available.

Likewise, in Garner, it was the municipal policy itself, not state law, that was unconstitutional and that caused the injury. The municipality "had a policy

authorizing use of deadly force when necessary to apprehend a fleeing burglary suspect." 8 F.3d at 364. In contrast, state law authorized officers to "use all the necessary means to effect the arrest," without requiring deadly force. Id. (quotation marks omitted). It was the municipality's choice to read "all the necessary means" to include the use of deadly force against burglary suspects, and the court (and the Supreme Court) previously had held this unconstitutional in violation of the Fourth Amendment. Id. at 361-62. Again, there was more than a municipal policy standing alone; there was a policy that "caused the injury complained of, the death of plaintiff's son." Id. at 364. If the municipality had not had a policy of using deadly force against fleeing burglary suspects, the death would not have occurred. The plaintiff therefore had "satisfied all of the Monell requirements" because "there is a sufficient link between defendants' deadly force policy and [the shooting of the plaintiff's son] to establish that the policy was the moving force of the constitutional violation." Id. at 365 (quotation marks omitted). As the court explained, Monell requires that "a plaintiff . . . identify the policy, connect the policy to the city itself and show that the particular injury was incurred because of the execution of that policy." Id. at 364 (quotation marks omitted; emphasis added). Here, plaintiffs cannot meet that burden. Even in the absence of a policy by the City of sending notices informing child sex offenders regarding the statute and its consequences for noncompliance, the alleged constitutional harms still would occur because they flow from the statute's creation of a felony prohibiting knowingly residing in prohibited locations, not from the notices themselves, as we have explained.[4]

[4] Bethesda Lutheran, which plaintiffs also relied on below, R. 33 at 11-12, is in

Plaintiffs' other Monell arguments raised below are equally unavailing. First, they claimed that the City sought dismissal on the ground "it is not a proper Defendant," and they responded to that supposed argument by stating that they needed to name the City as defendant for purposes of injunctive relief. R. 33 at 8; see also Pls. Br. 3 n.3 (reprising this characterization of our argument). But this was not our reason for seeking dismissal. Rather, we urged that the City cannot be held liable in a section 1983 action unless the City's municipal policy causes the constitutional harm, regardless whether the City is properly named as defendant. The case on which plaintiffs relied, R. 33 at 8, says the same thing – naming the correct defendant does not save a suit from dismissal where the plaintiff cannot "allege municipal liability under *Monell*," including where "the complaint alleges no municipal policy at all," CSWS LLC v. Village of Bedford Park, No. 08 C 0747, 2008 WL 4148530, at *2 (N.D. Ill. Aug. 29, 2008), or as the later decision in the same case holds, where the only policy is enforcing state law, CSWC LLC v. Village of Bedford Park, 08 C 0747, 2008 WL 4951241, at *2-*3 (N.D. Ill. Nov. 17, 2008). For the reasons we have explained, the municipal policies alleged here likewise do not satisfy Monell. Moreover, the requirement to demonstrate that a municipal policy caused the injury does not depend on the type of relief requested. As this court has observed, "[t]he Supreme Court has squarely held that *Monell*'s . . . requirement[s]

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accord. It held that where the alleged injury would occur unless local officials decide to disobey state law, then it is the law itself that is the source of the injury, not a municipal policy that can subject the municipality to liability. 154 F.3d at 719. In other words, again, the injury must flow from the municipal action, not state law. Here, unless CPD chooses to ignore the criminal statute by not making arrests, the injuries will occur.

appl[y] in Section 1983 cases irrespective of whether the relief sought is monetary or prospective." Snyder, 745 F.3d at 250 (citing Los Angeles County v. Humphries, 562 U.S. 29, 37-39 (2010)). Thus, injunctive and declaratory relief are no more available against municipalities than damages are where the complaint fails to adequately plead municipal liability. Id.

Second, plaintiffs below relied on Owen v. City of Independence, 445 U.S. 622 (1980), claiming it holds that "municipalities are strictly liable when their policies cause constitutional violations, even when the actions of municipal employees are in good faith and are taken without reason to believe they are unlawful." R. 33 at 9; see also R. 33 at 10 (similar). But Owen addressed the reach of qualified immunity, not the requirements for municipal liability, and plaintiffs plainly misunderstand the difference between liability for a violation and immunity from paying damages for that violation. Qualified immunity offers protection against the latter; it does not negate the existence of the violation. E.g., Garner, 8 F.3d at 365 ("This court upheld Officer Hymon's dismissal from the case not because he committed no constitutional violation, but because he was protected by the doctrine of qualified immunity."). As plaintiffs' quoted statement itself makes clear, regardless whether a municipal officer is entitled to qualified immunity, it is still necessary to establish first that the municipal policy "cause[d the] constitutional violatio[n]," R. 33 at 9, before there is a basis for municipal liability. In Owen, municipal liability was not at issue – "[T]he stigma attached to [petitioner] in connection with his discharge was caused by the official conduct of the City's lawmakers, or by those whose acts may fairly be said to represent official policy," and this in turn caused the

constitutional violation. 445 U.S. at 633 (quotation marks omitted; alterations in original). The issue for the Court, instead, was whether the plaintiff should be denied relief due to the city's entitlement to qualified immunity because when the city took the actions giving rise to liability, the Court had not yet decided the cases establishing that these actions violated the Constitution. Id. at 634-35. The Court held that qualified immunity from damages liability is available only for individuals, not municipalities. Id. at 650, 657. But the Court made plain that this holding did not eliminate the requirement of showing that the "injury [was] inflicted by the execution of a government's policy or custom" before liability is available. Id. at 657 (quotation marks omitted). Here, plaintiffs cannot make that showing for the reasons we have explained.

In sum, this court may affirm the judgment dismissing the complaint against the City because there is no basis for municipal liability under Monell. In the alternative, as we now explain, the district court correctly dismissed each of the three claims directed against the City on the merits.

II. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' CLAIMS AGAINST THE CITY ON THEIR MERITS.

The district court correctly dismissed plaintiffs' claims for failure to state a claim because each suffers from significant flaws. Below, we address solely the three claims directed against the City – the ex post facto, takings, and procedural due process claims. To avoid overlap with the State's Attorney's brief, we focus on a few key points for each claim and adopt all additional arguments raised in the State's Attorney's brief in support of affirming the judgment.

A. The District Court Correctly Dismissed Plaintiffs' Ex Post Facto Claim.

The Ex Post Facto Clause prohibits retroactive punishment. U.S. Const. art. I, § 9, cl. 3. To show an ex post facto violation, the law must be both retroactive and penal. United States v. Leach, 639 F.3d 769, 773 (7th Cir. 2011). Where a criminal "law targets only the conduct undertaken . . . after its enactment," it is not retroactive, and therefore "does not violate the Ex Post Facto Clause." Id. On the other hand, a law is retroactive where it applies to conduct committed before the law's enactment. Id.; United States v. Dixon, 551 F.3d 578, 584-85 (7th Cir. 2008), rev'd on other grounds by Carr v. United States, 560 U.S. 438 (2010). Said differently, "[i]f all the acts required for punishment are committed before the criminal statute punishing the acts takes effect, there is nothing the actor can do to avoid violating the statute," which implicates the Ex Post Facto Clause. Dixon, 551 F.3d at 584. In contrast, "as long as at least one of the acts took place later, the clause does not apply." Id. at 585.

In this case, the district court correctly dismissed plaintiffs' ex post facto claim because the law is not retroactive. A9-A11. That is because at least some of the conduct necessary to commit the felony must be committed after the law's effective date. The statute criminalizes "knowingly resid[ing] within 500 feet" of various protected facilities if convicted of certain child sex offenses. 720 ILCS 5/11-9.3(b-10); A21. But the conduct constituting the offense – knowingly residing – must occur after the statute's effective date.[5] Therefore, it is possible for a child sex

[5] Indeed, the statute expressly does not apply to knowingly residing at property

offender convicted before the effective date of the statute to avoid violating the statute by not residing within 500 feet of protected facilities. In other words, "the defendant cannot be punished without a judicial determination that he committed an act after the statute under which he is being prosecuted was passed, and by not committing that act . . . he would have avoided violating the new law." Dixon, 551 F.3d at 585. Accordingly, the statute is not retroactive, and there is no ex post facto violation.

To be sure, one element of the felony – plaintiffs' convictions as child sex offenders – occurred before the effective date of the statute. But this does not make the law retroactive because plaintiffs can avoid committing the offense as long as they do not commit the prohibited conduct after the statute's effective date. The felony at issue here is akin to "[l]aws increasing punishment for repeating an offense." Dixon, 551 F.3d at 585. Such laws pose no ex post facto problem "because even if the law was passed after the defendant committed his first offense and increases the punishment for a repeat offense, the defendant can avoid the increased punishment by not repeating . . . the offense." Id. Therefore, that one element of the crime is a conviction occurring before the law's creation does not make criminalizing the conduct of knowingly residing with 500 feet of protected facilities an ex post facto violation. Rather, the law merely creates a "new, prospective legal obligatio[n] based on the person's prior history." Leach, 639 F.3d

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purchased before the effective dates of the statute or its amendments – July 7, 2000, June 26, 2006, and August 14, 2008 – depending on the type of facility at issue. 720 ILCS 5/11-9.3(b-10); A21; R. 1 ¶ 17. In this case, neither plaintiff owned his residence before the latest amendment took effect in 2008. R. 1 ¶¶ 24, 38.

at 773. It does not criminalize conduct that occurred before the law was enacted.

Plaintiffs' arguments to the contrary miss the mark. They claim that the "law applies retroactively and does not contain a grandfather clause for residences established before a daycare is opened." Pls. Br. 15. This misunderstands the meaning of retroactive. As we have explained, a law is retroactive if it punishes conduct committed before the law's effective date. It is irrelevant for ex post facto purposes whether the residence or the daycare is established first where both events occur after the law's effective date. Either way, the law does not criminalize conduct that had already been committed before the law took effect. Although child sex offenders subject to the law's terms may be required to move when new daycares open to avoid violating the law, or may face other negative consequences, id., these negative repercussions do not make the law an ex post facto violation.

Plaintiffs next take issue with the district court's reliance on Leach, claiming that the case holds that an alternative way to show an ex post facto violation is demonstrating solely that having to comply with a law is burdensome enough to amount to punishment. Pls. Br. 17-19. Then, they spend six pages in an effort to demonstrate that the burdens and consequences flowing from restricting where they may reside constitute punishment. Id. at 19-25. This is seriously misguided. There is no need to prove that the statute at issue in this case is penal when, by its terms, it creates a felony. 720 ILCS 5/11-9.3(f). But a penal statute alone is not enough, and Leach nowhere obviates the need to demonstrate both that the law is penal and that it is retroactive. To the contrary, Leach makes plain that "[t]o violate the Ex Post Facto Clause, . . . a law must be both retrospective *and* penal."

639 F.3d at 773.

Plaintiffs' confusion appears to stem from an earlier passage in which this court explained that there is more than one kind of ex post facto challenge – the kind challenging criminal laws that are retroactive or the kind challenging a civil regulatory scheme, such as the registration requirements in the federal Sex Offender Registration and Notification Act ("SORNA"), on the ground that it increases punishment for an earlier crime. Leach, 639 F.3d at 772-73. It was not clear which challenge the plaintiff in Leach was bringing, so the court considered both. Id. As the court observed, in addition to creating civil registration requirements – 42 U.S.C. § 16913 – SORNA created a felony – 18 U.S.C. § 2250(a) – for failing to comply with those registration requirements. Leach, 639 F.3d at 772. The felony was "certainly a penal statute, and so the only question is whether it is retrospective." Id. at 773. The court held that it was not because a sex offender would not commit the crime unless, after the effective date of the statute, he traveled in interstate commerce and failed to register. Id. That is the same kind of statute as in this case – plaintiffs will not commit the crime of knowingly residing within 500 feet of protected facilities until after the statute's effective date, and because the offense is not based on conduct already committed, they can change their behavior to avoid violating the law.

In Leach, this court went on to consider whether SORNA's civil registration requirements imposed by 42 U.S.C. § 16913 "effectively increase[d] the punishment for his 1990 conviction," and held that the fact that the registration requirements were burdensome and arose based on a conviction preceding the statute's enactment

"does not make them retrospective"; rather, they are "merely . . . new, prospective legal obligations based on the person's prior history." 639 F.3d at 773. The court also held these were civil regulatory requirements, not penal requirements. Id.

Leach, accordingly, does not authorize plaintiffs to prove solely that complying with the statute is burdensome enough to constitute punishment. Plaintiffs are not challenging a "civil regulatory scheme such as SORNA['s]" registration requirements, contrary to their assertion. Pls. Br. 18 (quotation marks omitted). They are challenging a criminal statute, and for that challenge, "the only question is whether it is retrospective," Leach, 639 F.3d at 773, meaning plaintiffs must show the statute punishes conduct occurring before its effective date, which they cannot do. The alternative method to demonstrate an ex post facto violation – showing that affirmative civil regulatory requirements increase punishment for a crime committed before the statute – is not at issue.[6]

In short, the district court correctly dismissed plaintiffs' ex post facto claim for failure to state a claim.

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[6] Plaintiffs' reliance on Does #1-5 v. Snyder, 834 F.3d 696 (6th Cir. 2016), Pls. Br. 17, does not require a contrary conclusion. That case examined a challenge to registration requirements in a Michigan law, and held that these regulations "impos[e] punishment" in violation of ex post facto rights. 834 F.3d at 705-06. But it was "undisputed on appeal that [the law's] amendments apply . . . retroactively," id. at 698, and so the holding that the "retroactive application" of the law was punishment, id. at 706, does not support plaintiffs' belief that merely demonstrating punishment is enough for a challenge to a criminal law to show an ex post facto violation, even where the law is not retroactive. But to the extent that Does #1-5 can be read to eliminate the requirement to demonstrate retroactivity when challenging a criminal law, that is out of step with this court's holdings in Leach and Dixon, among others, and should not be followed here.

B. The District Court Correctly Dismissed Plaintiffs' Takings Claim.

Plaintiffs' takings claim against the City also was properly dismissed. The Takings Clause prohibits government from taking private property for public use without just compensation. U.S. Const. amend. V; Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 536 (2005); Sorrentino v. Godinez, 777 F.3d 410, 413 (7th Cir. 2015). Plaintiffs allege that applying the statute to them would take their property in violation of the clause. R. 1 ¶¶ 72-79, 84-85. They allege that Cardona has a property interest in the home he owns, R. 1 ¶ 74, and Vasquez has a property interest in his lease of the apartment where he resides, R. 1 ¶ 77, which recently expired on August 19, 2017, R. 1 ¶ 24. They seek to enjoin the statute's enforcement and request other appropriate relief. R. 1 at 18-19. But this claim is not ripe where plaintiffs have not sought compensation in state court, and regardless, the claim fails on its merits because plaintiffs' lack a protected property interest taken by the City.

Turning first to ripeness, the compensation required by the Takings Clause need not occur at the same time as the taking, and for this reason, so long as the "State provides an adequate procedure for seeking just compensation," no claim is available until after the property owner seeks and is denied compensation. Williamson County, 473 U.S. at 194-95; accord Sorrentino, 777 F.3d at 413; Peters v. Village of Clifton, 498 F.3d 727, 731-32 (7th Cir. 2007). When the property owner attempts to bring an as-applied takings claim in federal court before pursuing state procedures, the court should dismiss that suit as unripe. Williamson County, 473

U.S. at 194-95; Sorrentino, 777 F.3d at 413-14; Peters, 498 F.3d at 732-34. The ripeness requirement applies whether the basis of the claim sounds in lack of due process or lack of just compensation – "A person contending that state or local regulation of the use of land has gone overboard must repair to state court." Hager v. City of West Peoria, 84 F.3d 865, 869 (7th Cir. 1996) (quotation marks omitted).

Although property owners need not avail themselves of state court proceedings if they are futile, this court has recognized that under Illinois common law, plaintiffs may file suit in state court to seek compensation for takings. E.g., Sorrentino, 777 F.3d at 413; Peters, 498 F.3d at 732-34. Two types of claims are available – (1) if property is physically taken, Illinois circuit courts may order the government to institute eminent domain proceedings, and (2) if the property is damaged in some manner, such as restrictions placed on accessing the property, then damages claims are available. Sorrentino, 777 F.3d at 413; see also id. (damages suits against the State are available in Illinois Court of Claims); Village of West Dundee v. First United Church of West Dundee, 74 N.E.3d 144, 152 (Ill. App. Ct. 2017) (inverse condemnation claim requires only "allegation that the owner was temporarily deprived of the use of the subject property without the formal exercise of eminent domain proceedings"); Sorrells v. City of Macomb, 44 N.E.3d 453, 460 (Ill. App. Ct. 2015) (damages for municipality's interference with property rights available in action at law to recover compensation under the Illinois Constitution). Either way, "*some* Illinois forum is available," Sorrentino, 777 F.3d at 413, meaning a federal takings claim is not available until after those remedies are pursued, id. at 413-14. Here, plaintiffs do not claim a physical taking, but instead challenge a

regulation restricting their ability to reside at their property. But as we explain, claims for damages due to restrictions on accessing property may be brought in Illinois court. Therefore, until plaintiffs try and fail to obtain compensation in state court, their takings claim is not ripe.

The district court rejected our ripeness argument, relying on Callahan v. City of Chicago, 813 F.3d 658 (7th Cir. 2016), and dismissed instead for failure to state a claim. A15. According to the court, in Callahan, the City conceded that Illinois law provides compensation for physical, but not regulatory, takings, rendering state-law remedies unavailable to plaintiffs here. A15. Although Callahan describes Illinois law this way, 813 F.3d at 660, respectfully, the City's concession was not so broad. Instead, the City explained that the City would be entitled to assert state-law immunity against a claim seeking damages premised on the enactment of a City ordinance, which was the claim the plaintiff in Callahan would have brought. Callahan v. City of Chicago, No. 15-1318, 7th Cir. Dkt. R. 38 at 1 (citing, e.g., 745 ILCS 10/2-103). But plaintiffs here do not challenge enactment of a local ordinance, and thus this immunity would not apply. As we explained above, and in Callahan, id., compensation for regulatory takings is available in Illinois in general. Indeed, inverse condemnation claims under the Illinois Constitution are available for the taking of property of "every kind and character, whether real, personal, tangible, or intangible." City of Chicago v. ProLogis, 923 N.E.2d 285, 289 (Ill. 2010) (quotation marks omitted). For example, Sorrells, which this court cited in Callahan, 813 F.3d at 660, makes plain that under Illinois law, there is a "remedy for a governmental disturbance of a property right [in] an action at law for damages to recover

compensation under the Illinois Constitution," even without a physical invasion of property. 44 N.E.3d at 460. And in Village of West Dundee, the court allowed an inverse condemnation claim to proceed challenging municipal action denying a demolition permit. 74 N.E.3d at 152-53. Thus, plaintiffs here must attempt to seek compensation in state court before their federal as-applied takings claim will be ripe. This court can dismiss on this basis.

To be sure, plaintiffs also seek equitable relief. But because the "federal courts' role is not to enjoin localities from exercising their eminent domain powers, but to ensure that property owners are justly compensated" when takings occur, "ordinarily, compensation, not an injunction, is the appropriate remedy for a taking that satisfies the public use requirement." Peters, 498 F.3d at 731 (quotation marks omitted). There is an exception where the plaintiff brings a facial challenge to a state law alleging that "the relevant regulation d[oes] not substantially advance a legitimate state interest regardless of how it was applied." E.g., Sorrentino, 777 F.3d at 414. It is unclear whether plaintiffs mean to bring a facial challenge. Plaintiffs state that they challenge "[t]he application" of the statute, R. 1 ¶¶ 75, 78, but they also seek a declaration that the statute is facially unconstitutional, R. 1 ¶ 85(b), and bring a substantive due process claim, R. 1 at 19, suggesting plaintiffs' takings claim could be meant as a facial challenge. Regardless, the City cannot be liable on such challenge, because it would challenge the effect of the enactment itself, and the statute is a state criminal statute, not a City ordinance. Thus, the City is not responsible. Either way, this court may dismiss the claim as brought against the City.

Plaintiffs' takings claim also fails on the merits. The first inquiry in any takings claim is whether the plaintiff has a constitutionally protected property interest, which must derive from a source in state or local law. E.g., Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1000-01 (1984). Moreover, this requires "a legitimate claim of entitlement," not merely a "unilateral expectation" or "an abstract need or desire." Board of Regents v. Roth, 408 U.S. 564, 577 (1972); accord Bell v. City of Country Club Hills, 841 F.3d 713, 717 (7th Cir. 2016).[7] "[W]hether a particular state-created interest rises to the level of a legitimate claim of entitlement is a question of federal law." Dibble v. Quinn, 793 F.3d 803, 808 (7th Cir. 2015) (quotation marks omitted); accord Bell, 841 F.3d at 717. Only if the plaintiff has a constitutionally protected property interest is it necessary to address the other takings elements, including whether property was taken, public use, and just compensation. E.g., Monsanto, 467 U.S. at 1000-01.

Vasquez rents the apartment where he resides, and his lease has now expired. R. 1 ¶ 24. This means he has enjoyed the full year's term of his lease without interruption. Under Illinois state law, Vasquez can no longer reside in this location knowing it is within 500 feet of a protected facility. No state or local law grants a right to renew a lease even where the renewal would not violate state law. The cases on which plaintiffs rely to support a property interest in leased property,

[7] Roth concerned the meaning of property for purposes of the Due Process Clause. Property for takings purposes "is defined much more narrowly." Pittman v. Chicago Board of Education, 64 F.3d 1098, 1104 (7th Cir. 1995).

Pls. Br. 28 n.9, do not describe any such right to renew.[8] Likewise, there is no authority supporting a state-created right to renew a lease and reside in a location prohibited by state law. If Vasquez expected that he would be able to renew and reside in a location where state law now prohibits him from residing, that was no more than his own unilateral expectation. With no legitimate claim of entitlement, Vasquez's takings claim fails because he lacks a constitutionally protected property interest.

As for Cardona, he claims a property interest in the home he owns. R. 1 ¶¶ 38, 74. But neither the City nor the statute takes away that property. He may continue to own it. He may rent it out. He may sell it. The statute does not even reduce the property's market value because the prohibition on residing at the property applies only to child sex offenders like Cardona, not to anyone else who might purchase it. To be sure, the statute does prevent Cardona from personally residing at the property. But this is no taking. Under well-settled law, government regulation curtailing one type of use, where that use is merely one "strand" in an otherwise "full bundle," is not a taking. E.g., Andrus v. Allard, 444 U.S. 51, 65-66 (1979) (inability to sell property was not taking where property could be used in other ways) (quotation marks omitted).

Moreover, Cardona, like Vasquez, lacks a state-created interest in continuing to reside where prohibited by state law. He purchased the property after the statute took effect, and thus he was on notice that any purchase he made was

[8] And in any event, Ward v. Downtown Development Authority, 786 F.2d 1526 (11th Cir. 1986), concerned tenancies created by Florida law. Id. at 1528-29.

subject to the statute's terms. He cannot claim he was guaranteed an entitlement under state law to continue residing at property he bought after state law warned him that conditions could change in the future preventing him from residing there. This is akin to a zoning restriction. It is well settled that property owners occupy and use their land subject to the ability of state and local governments' "broad power" to regulate how property owners use their property without paying compensation. E.g., Yee v. City of Escondido, 503 U.S. 519, 528-29 (1992) (discussing landlord-tenant laws); see also id. at 538-39 (acknowledging "substantial authority upholding a State's broad power to impose appropriate restrictions upon an owner's *use* of his property") (quotation marks omitted). Cardona bought subject to a use restriction that in the future he could be prohibited from residing at the property. Thus, Cardona was never promised he could continue residing at his present location. With no constitutionally protected property interest, his takings claim accordingly fails.

This court may also uphold the dismissal of the takings claim because the district court correctly held that no regulatory taking has occurred under the factors outlined in Penn Central. A14-A18. Again, to avoid repetition, we rely on the State's Attorney's brief for analysis why the district court correctly applied those factors to conclude the statute does not work regulatory taking. We simply add that, as we have explained, the City's conduct in sending out notices warning child sex offenders that they are residing in prohibited locations and offering a grace period before making arrests for the crime of residing in prohibited locations is not itself the proximate cause of the plaintiffs' inability to reside where they are

currently living. Thus, regardless whether plaintiffs have protected property interests in residing where they now do, the City's conduct does not take that property interest away. For this reason, plaintiffs cannot state a claim for municipal liability under Monell's requirements.

In short, the district court correctly dismissed plaintiffs' takings claim.

C. The District Court Correctly Dismissed Plaintiffs' Procedural Due Process Claim.

Finally, the district court also correctly dismissed plaintiffs' procedural due process claim. Plaintiffs allege that the statute implicates certain of their liberty interests and fundamental rights, R. 1 ¶¶ 46-49, and they claim they are entitled to notice and a hearing to determine whether a child sex offender subject to the statute is "a threat to the community" before the statute may be applied, R. 1 ¶¶ 50-51, 83. But plaintiffs cannot state a claim against the City for denial of procedural due process.

To begin, regardless whether plaintiffs have identified liberty or property interests implicated by the statute, which we do not address here, they are not entitled to pre-deprivation notice and a hearing before this criminal statute can be applied to them. It is settled that a validly enacted statute can abrogate liberty interests without procedural due process concern. E.g., Connecticut Department of Public Safety v. Doe, 538 U.S. 1, 8 (2003); id. at 8 (Scalia, J., concurring). "General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex

society, by their power, immediate or remote, over those who make the rule." Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441, 445 (1915). Although, to be sure, the classification created by the enactment can be challenged – e.g., in a substantive due process, equal protection, or other such challenge, see Connecticut Department of Public Safety, 538 U.S. at 7-8 – the process of enacting the statute itself already provides "all the process that is 'due,'" id. at 8 (Scalia, J., concurring). "Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and comply." Dixon, 551 F.3d at 586 (quotation marks omitted).

This is true of all classifications, but where the classification in the enactment is based on the fact of a past conviction, the offender, in addition, already "had a procedurally safeguarded opportunity to contest" that past conviction and is not entitled to another hearing. Connecticut Department of Public Safety, 538 U.S. at 7. Moreover, where, as here, the statute creates a felony, those prosecuted will receive all the procedure the Constitution requires after arrest during their criminal prosecutions. No more advance notice is required before a criminal statute may be applied – "it is not a defense to a criminal prosecution that the defendant had never heard of the statute under which he is prosecuted." Dixon, 551 F.3d at 584. Nor are additional hearings required "to establish a fact that is not material under the . . . statute." Connecticut Department of Public Safety, 538 U.S. at 7; accord, e.g., Doe v. Miller, 405 F.3d 700, 709 (8th Cir. 2005) (no procedural due process "requirement that the State provide a process to establish an exemption from [a] legislative classification"); see also Connecticut Department of Public Safety, 538

U.S. at 9 (Scalia, J., concurring) (explaining sex offenders have "no more right to additional 'process' enabling [them] to establish that [they are] not dangerous than . . . a 15-year-old has a right to 'process' . . . to establish that he is a safe driver" and should get a driver's license). Thus, the enactment and application of the criminal statute to those affected by it provides all the requisite due process, and there is no entitlement to additional notice or hearing to contest facts that are irrelevant to the statute's application.

To be sure, due process requires enough notice regarding the applicability of a criminal statute to be able to provide "a reasonable opportunity to avoid the consequences of noncompliance." Dixon, 551 F.3d at 586 (quotation marks omitted). So, for example, "the minimum grace period required to be given a person who faces criminal punishment for failing to register as a convicted sex offender . . . must be greater than zero." Id. But here, the City does provide this notice to those whose addresses are in prohibited locations. Plaintiffs allege that they both received such notices from the City informing them their addresses are noncompliant and explaining they could be arrested and prosecuted after a 30-day grace period. R. 1 ¶¶ 28, 41; R. 33-1 (notices). Plaintiffs do not allege that the contents of this notice violates the minimum requirements of procedural due process – for example, because 30 days is too short, or some other reason. Instead, they claim entitlement to yet additional "notice," R. 1 ¶ 51, and a "pre-enforcement hearing" before the City "appl[ies] the residency restrictions" in the statute, R. 1 ¶ 50 – presumably by providing them with these very notices that they are in violation of the statute or else arresting them for committing the offense. This makes no sense. Due process

does not require notice and a hearing before sending out a notice, and as we explain, criminal laws require no hearing before they may be enforced.

Plaintiffs' arguments on appeal do not warrant a contrary conclusion. They attempt to distinguish Connecticut Department of Public Safety on the ground that the rights implicated by the statute at issue in that case are different from the rights implicated by the statute in this case. Pls. Br. 33. Plaintiffs claim that Connecticut Department of Public Safety "concerned only a requirement that a person be listed on a searchable registry," whereas the statute here "interferes with core rights, including parental consortium and property rights." Id. They argue that "people should be entitled to a hearing before being deprived of those rights" because they are "fundamental." Id. But the Court's holding did not turn on how important the right is or even whether there had been a deprivation. Indeed, the Court did not even reach the question whether the law worked a deprivation of a liberty interest "because even assuming, *arguendo*, that respondent has been deprived of a liberty interest, due process does not entitle him to a hearing to establish a fact that is not material under the [relevant] statute." 538 U.S. at 7. Mathews v. Eldridge, 424 U.S. 319 (1976), on which plaintiffs also rely, Pls. Br. 31-33, says nothing to the contrary. As Mathews makes plain, what process is due turns on the circumstances. 424 U.S. at 333-34. But as Connecticut Department of Public Safety holds, that process does not include a hearing to prove irrelevant facts. And as we have explained, criminal statutes do not require notice and a hearing before people must obey them, and those prosecuted already are entitled to a full panoply of procedural protections before they can be convicted.

Accordingly, this court should affirm the district court's dismissal of plaintiffs' procedural due process claim.

CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(g)(1), I certify that the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i). This brief contains 11,255 words, beginning with the words "Jurisdictional Statement" and ending with the words "Respectfully submitted," as recorded by the word count of the Microsoft Word word-processing system used to prepare the brief.

s/ Kerrie Maloney Laytin
KERRIE MALONEY LAYTIN, Attorney

CERTIFICATE OF SERVICE

I certify that on August 21, 2017, I electronically filed the attached Brief of Defendant-Appellee City of Chicago with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Kerrie Maloney Laytin
KERRIE MALONEY LAYTIN, Attorney