

APPENDIX A  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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No. 21-2891

Jevarreo Kelley-Lomax,

*Plaintiff-Appellant,*

v.

City of Chicago, Illinois,

*Defendant-Appellee*

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Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division  
No. 20-CV-4638 — **John Z. Lee**, *Judge*.

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ARGUED SEPT 12, 2022 — DECIDED SEPT 28, 2022

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Before EASTERBROOK, KIRSCH, AND  
JACKSON-AKIWUMI, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. A person arrested in Chicago can take some property into jail but must surrender other property, including cell phones. Chicago offers the detainee 30 days to reclaim the property in person (if released before then) or by proxy—the detainee may designate a friend or relative to pick it up. Property remaining in the City’s hands after 30 days is sold or thrown away. *Conyers v. Chicago*, 10 F.4th 704 (7th Cir. 2021), cert. denied, 142 S. Ct. 1669 (2022), rejects several constitutional challenges to the City’s policy.

Jevarreo Kelley-Lomax wants us to take another look at the subject. After he was arrested, he remained in custody for more than 30 days and did not find anyone willing to retrieve his property. The City disposed of a cell

phone and a wallet, including a debit card and library card, that the police had seized. Deeming the suit controlled by *Conyers*, the district court dismissed the complaint for failure to state a claim on which relief may be granted.

*Conyers* held, among other things, that the Fourth Amendment (applied to state actors by the Fourteenth) does not regulate disposition of the seized property. 10 F.4th at 709–10. Disposition, we concluded, is governed by the Due Process Clause. The Fourth Amendment is satisfied if the seizure is reasonable when it occurs—as seizure of an arrestee’s property is, see *Lee v. Chicago*, 330 F.3d 456 (7th Cir. 2003). Kelley-Lomax wants us to overrule this portion of *Conyers*, but we do not see any deficiency in that opinion’s reasoning.

*Conyers* rejected a due process challenge to the City’s policy, holding that the City provides detainees with notice and an opportunity to reclaim their property. Kelley-Lomax tries a different tack: substantive due process. He maintains that the City must serve as unpaid custodian of his goods for as long as it takes for him (or his designee) to retrieve the items.

Put in that way, the argument lacks any prospect of success. Substantive due process depends on the existence of a fundamental right, which means a right with deep roots in our history and traditions. See, e.g., *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Timbs v. Indiana*, 139 S. Ct. 682, 686–87 (2019); *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228, 2246–48 (2022). Kelley-Lomax does not contend that our historical tradition recognizes a right to have the government serve as unpaid custodian of property for extended periods. Instead he characterizes the fundamental right as property itself.

We do not doubt that property is a fundamental right; the Takings Clause shows as much. But, as we explained in *Conyers*, property can be abandoned. After that occurs the former owner lacks rights. 10 F.4th at 712. Chicago draws the abandonment line at 30 days. That choice cannot be attacked by pointing to the fundamental status of “property” in the abstract. Instead the plaintiff must address the actual policy at stake: the government’s unwillingness to serve as unpaid bailee for indefinite periods. And on that score Kelley-Lomax does not even try to show that such a role for government has historical provenance.

*Conyers* remarked that 30 days is a short time for a detainee to take the steps necessary to retrieve property. 10 F.4th at 715. Perhaps it is too short. The Due Process Clause requires notice and an adequate opportunity to protect one’s interests. But in this case, just as in *Conyers*, the plaintiff has made an all-or-none argument. Instead of contending that the Constitution requires 60 or 90 days, Kelley-Lomax contends that a detainee is entitled to wait a lifetime before claiming the property. Perhaps that strategy is driven by the fact that during the whole six months he remained in custody, Kelley-Lomax did not try to retrieve the phone or wallet. The choice between 30 days and a longer time did not matter to Kelley-Lomax. But it may matter to other detainees, and *Conyers* leaves timing open.

*Conyers* also does not tackle the question whether Chicago must sell the seized items for the detainees’ accounts rather than throwing them in the trash. Units of government often take custody of unclaimed property, returning it once the owner has been identified (provided that the time for escheat has not arrived). We held in *Cerajeski v. Zoeller*, 735 F.3d 577 (7th Cir. 2013), and *Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019), that, when

the property is financial (securities or money on deposit), the government must return it with interest once the owner steps forward. *Cf. Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980); *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003). The government may charge custodial fees but must surrender the balance.

That approach works well with monetary instruments. Physical items seized from arrested persons make claims on limited space, and for many detainees the costs of arranging a sale in order to free up space would exceed the value of the items in inventory. But cell phones and jewelry often have substantial market value. When the governmental interest is limited to rationing available storage, perhaps the option of sale for detainees' accounts must be considered. *See also United States v. Miller*, 588 F.3d 418 (7th Cir. 2009) (seized firearms that have not been forfeited may be sold for owner's account but must not be destroyed if they have value net of expenses for custody and sale). Conyers did not make an argument along these lines, and neither did Kelley-Lomax. We mention the possibility not to resolve it, but to show that neither *Conyers* nor this decision has resolved it implicitly.

AFFIRMED

APPENDIX B  
UNITED STATES DISTRICT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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No. 20-cv-4638

Jevarreo Kelley-Lomax, individually and for a class,  
*Plaintiff,*

v.

City of Chicago,

*Defendant*

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**ORDER**  
August 19, 2021

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**John Z. Lee**, United States District Judge

Plaintiff Jevarreo Kelley-Lomax, individually and on behalf of a class, brings claims under 42 U.S.C. § 1983 against the City of Chicago (“the City”), alleging that the City violated his rights under the Fourth, Fifth, and Fourteenth Amendments by destroying his personal property seized incident to arrest after it was not retrieved within thirty days. The City moves to dismiss the amended complaint with prejudice for failure to state a claim [14]. Because the Seventh Circuit’s decision in *Conyers v. City of Chicago*, --- F.4th ----, No. 20-1934, 2021 WL 3645869 (7th Cir. Aug. 18, 2021), forecloses Kelley-Lomax’s claims, the City’s motion is granted. Civil case terminated.

### STATEMENT

Kelley-Lomax alleges that he was arrested by Chicago police officers on April 18, 2019. Am. Compl. ¶ 12, ECF No. 6. In accordance with its policy for arrestees, the City required Kelley-Lomax to surrender any personal belongings that were neither evidence nor contraband, which, for him, included a cellphone, charger, earbuds, and two earrings. *Id.* ¶ 4.

An arrestee who is released from custody after arrest may retrieve his property by going in person to the Chicago Police Department (“CPD”) Evidence and Recovered Property Section (“ERPS”). *Id.* ¶ 6. But an arrestee who remains in custody may retrieve his property only by designating a person to whom the property may be released. *Id.* ¶ 7. The designee must then go in person to the ERPS to retrieve the property. *Id.* ¶ 8. Under Chicago Municipal Code Section 2-84-160, any property not retrieved within thirty days is considered abandoned and may be destroyed, confiscated, or sold at public auction. *Id.* ¶ 9.

Kelley-Lomax remained in custody for nearly six months and was unable to secure a designee to retrieve his personal property from the City. *Id.* ¶¶ 13, 15. He alleges, on information and belief, that the City has destroyed, confiscated, or sold his belongings at public auction pursuant to Section 2-84-160. *Id.* ¶ 16. Based on that alleged deprivation of property, Kelley-Lomax claims that the City violated his rights under the Fourth Amendment’s prohibition against unreasonable seizures, the Fifth Amendment’s Takings Clause, and the Fourteenth Amendment’s Due Process Clause. *See id.* ¶ 17; Pl.’s Resp. Opp’n Mot. Dismiss at 3–4, 11–13, ECF No. 24.

The City has moved to dismiss Kelley-Lomax's amended complaint with prejudice for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *See* Def.'s Mot. Dismiss, ECF No. 14. In so doing, the City relied largely on the district court's decision in *Conyers v. City of Chicago*, which the Seventh Circuit just recently affirmed, albeit on somewhat different grounds. No. 12 C 6144, 2020 WL 2528534 (N.D. Ill. May 18, 2020), *aff'd*, 2021 WL 3645869 (7th Cir. Aug. 18, 2021).

Like Kelley-Lomax, the plaintiff in *Conyers* claimed that the City's destruction of his wallet, debit card, library card, and two cell phones pursuant to Section 2-84-160, after the belongings were not retrieved within thirty days, violated the same constitutional provisions. 2021 WL 3645869 at \*1–2. The district court granted summary judgment in favor of the City, the Seventh Circuit affirmed.

In so doing, the Seventh Circuit held that Conyer's Fourth Amendment claim failed under *Lee v. City of Chicago*, 330 F.3d 456 (7th Cir. 2003), which holds that the continuation of a lawful seizure does not implicate Fourth Amendment protections. 2021 WL 3645869 at \*4. His Fifth Amendment claim failed because, even assuming that the City "took" the plaintiff's belongings for a valid public use without just compensation, it "was entitled to treat this property as abandoned—that is, intentionally relinquished"—when the plaintiff failed to retrieve it within thirty days, which, in the court's view, was a reasonable amount of time. 2021 WL 3645869 at \*5. Lastly, the court rejected Conyer's Fourteenth Amendment due process claim because he had received adequate notice through the CPD's website and an

opportunity to be heard before the City treated his property as abandoned. *Id.* at \*6–8.

The same rationales foreclose Kelley-Lomax’s constitutional claims here. As in *Conyers*, the City’s alleged destruction, confiscation, or sale of Kelley-Lomax’s personal belongings after thirty days pursuant to Chicago Municipal Code Section 2-84-160 did not constitute a seizure under the Fourth Amendment or a taking under the Fifth Amendment. *See id.* at \*4–5. And Kelley-Lomax does not allege that he received inadequate notice, which would require him to show that the CPD’s website did not tell him how to recover his property, that he could not access the website while he was in custody, or that the website was inactive during that time. *See id.* at \*6. To the contrary, his allegation that he “was unable to designee to retrieve his personal property” implies that he knew how to recover his property, but simply could not do so. *See Am. Compl.* ¶ 15.

Kelley-Lomax also raises a substantive due process claim as well, which the Seventh Circuit did not address in *Conyers*. But it is well established that “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 [a] deferential rational-basis review.” *Lee*, 330 F.3d at 467 (cleaned up). For the reasons discussed above, Kelley-Lomax has not alleged either precondition. *Cf. id.* (indicating that the adequacy-of-state-law-remedies inquiry boils down to a procedural due process analysis in citing *Gable v. City of Chicago*, 296 F.3d 531, 540 (7th Cir. 2002)); *Gable*, 296 F.3d at 540 (observing that state-law postdeprivation remedies are adequate when the



plaintiff can bring a common law tort suit). And even if he could, the City's alleged disposition of his belongings was rational. *Cf. Conyers*, 2021 WL 3645869, at \*5 ("Nothing compels the City to hold property forever.")

Thus, because Kelley-Lomax's allegations, when taken as true, do not establish a violation of his rights under the Fourth, Fifth, or Fourteenth Amendments, the City's motion to dismiss his amended complaint with prejudice is granted.

IT IS SO ORDERED.

ENTERED: 8/19/21

John Z. Lee  
United States District Judge

APPENDIX C  
UNITED STATES DISTRICT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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No. 20-cv-4638

Jevarreo Kelley-Lomax,

*Plaintiff,*

v.

City of Chicago,

*Defendant*

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**ORDER**

October 1, 2021

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**John Z. Lee**, United States District Judge

Plaintiff has filed a motion for reconsideration of the Court's order dismissing his amended complaint with prejudice based on the Seventh Circuit's recent decision in *Conyers v. City of Chicago*, 10 F.4th 704 (7th Cir. 2021). Plaintiff argues that neither *Conyers* nor this Court's dismissal order "considered whether state law established a property right for pre-trial detainees to the continued possession of their personal property while in custody." Pl.'s Mot. Reconsider at 1, ECF No. 28. But Plaintiff fails to explain how any such property right under Illinois law overcomes the defects that led the Court to dismiss the constitutional claims raised in his amended complaint. Nor could he. For starters, Plaintiff's Fourth Amendment claim has nothing to do with state law property interests. And, while Plaintiff's

Takings Clause, Procedural Due Process, and Substantive Due Process claims do require an underlying property interest, that is merely the starting point of the analyses, not the end point, as the Court explained in its order. *Cf.* 9/28/21 Mem. Op. and Order, *Wilson v. City of Evanston*, No. 14 C 8347 (N.D. Ill.) (Lee, J.), ECF No. 181 (explaining the same thing in a similar case involving Plaintiff's counsel). To the extent Plaintiff believes that a mere "error of state law" makes out a constitutional claim, he is mistaken. *See Ind. Land Co., LLC v. City of Greenwood*, 378 F.3d 705, 711 (7th Cir. 2004). Accordingly, Plaintiff's motion for reconsideration [28] is denied. This case remains terminated.

APPENDIX D

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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No. 21-2891

Jevarreo Kelley-Lomax,

*Plaintiff-Appellant,*

v.

City of Chicago, Illinois,

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Appeal from the United States District Court for the  
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FINAL JUDGMENT, SEPTEMBER 28, 2022

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Before EASTERBROOK, KIRSCH, AND JACKSON-AKI-  
WUMI, *Circuit Judges*.

The judgment of the District Court is AFFIRMED,  
with costs, in accordance with the decision of this court  
entered on this date.