No. _____

In the Supreme Court of the United States

TED VELLEFF, PETITIONER,

v.

SHERIFF OF COOK COUNTY AND COOK COUNTY, ILLINOIS, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

KENNETH N. FLAXMAN
Counsel of Record
JOEL A. FLAXMAN
200 S Michigan Avenue
Suite 201
Chicago, IL 60604
knf@kenlaw.com
(312) 427-3200

Attorneys for Petitioner

QUESTIONS PRESENTED

The Seventh Circuit stands alone in its narrow interpretation of the protections afforded to property by the Due Process Clause of the Fourteenth Amendment.

The Sheriff of Cook County enforces its policy to destroy government–issued identification belonging to prisoners transferred to the penitentiary. While the Sheriff retains such property during pretrial detention, and the Department of Corrections stands ready to store it during imprisonment, the Sheriff declines to transfer the property to the penitentiary. Instead, unless the prisoner can engage an agent to retrieve the property, the Sheriff destroys it—without any stated reason or legitimate governmental purpose.

Every other circuit would recognize such a policy as a deprivation of property contrary to the Due Process Clause of the Fourteenth Amendment. The Seventh Circuit upheld the policy in this case in accordance with its longstanding precedent.

A petition presenting a related question is before the Court in *Carter v. Cook County Sheriff*, No. 25-401.

The questions presented are:

1. Whether the Due Process Clause of the Fourteenth Amendment forbids the government from depriving individuals of personal property by applying a policy that serves no legitimate governmental purpose.

2. Whether a plaintiff may seek relief under 42 U.S.C. § 1983 for such a deprivation without first exhausting state post-deprivation remedies, when the deprivation results from an official and deliberate policy rather than a random or unauthorized act.

PARTIES TO THE PROCEEDINGS

Petitioner is Ted Veleff.

Respondents are the Sheriff of Cook County and Cook County, Illinois.

RELATED PROCEEDINGS

United States District Court (N.D. Ill.):

Elizarri et al. v. Sheriff of Cook County, et al.,
17-cv-8120 (August 21, 2023)
(ruling on motion for summary judgment)

United States Court of Appeals (7th Cir.):

Velleff v. Sheriff of Cook County Sheriff, et al.,
(No. 23-2785, 7th Cir. July 9, 2025)
(affirming district court)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions, Statutes and Rules

Other Sources

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Ted Velleff respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-7a) is not officially reported and appears at 2025 WL 1898374 (7th Cir. 2025). The opinion of the district court (App. 7a-36a) is not reported and is available at 2023 WL 5348749 (N.D. Ill. Aug. 21, 2023).

JURISDICTION

The judgment of the court of appeals was entered on July 9, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Pertinent constitutional, statutory, and regulatory provisions are reproduced in the appendix.

STATEMENT

This case arises from the Seventh Circuit's longstanding outlier view of how the Due Process Clause of the Fourteenth Amendment applies to personal property.

The case concerns a policy of the Sheriff of Cook County that results in the destruction of government-issued identification cards belonging to prisoners who are transferred from the county jail to the state penitentiary.

When a person is arrested in Illinois, law enforcement officers inventory the arrestee's property, including official identification such as driver's licenses or state identification cards. This property is sent to the Sheriff, who stores it while the arrestee remains in custody at the county jail.

Upon conviction and sentence to imprisonment in the penitentiary, Illinois law requires the Sheriff to transfer the prisoner, along with specified types of property such as government–issued identification cards, to the penitentiary. It also requires the penitentiary to store that property for the duration of the prisoner's confinement.

The Sheriff, however, declines to transfer identification cards to the penitentiary. Unless the prisoner can engage an agent to retrieve and store the property, the Sheriff destroys it. The policy leaves individuals who after released from custody after serving their time without the identification necessary to obtain housing, employment, or government benefits, and serves no legitimate governmental purpose.

In conflict with each circuit to have considered the issue, the Seventh Circuit holds that exhaustion of state remedies is required before a district court may hear and decide an action under 42 U.S.C. § 1983 seeking

damages for the destruction of personal property. Similarly, unlike the rule followed in 9 other circuits, the Seventh Circuit refuses to consider a claim under the Due Process Clause arising from the arbitrary denial of a state-created property right. All that the court of appeals requires before the government may lawfully destroy personal property in its care is to provide notice that property will be destroyed and an opportunity to reclaim the property.

The Seventh Circuit's approach is an outlier among the courts of appeals for three reasons.

First, due process requires notice and an opportunity to be heard. Rather than a hearing, the Sheriff's policy provides an opportunity to reclaim property before it is destroyed. The Seventh Circuit stands alone in concluding that such a policy provides due process.

Second, every other circuit to consider the question has held that a deprivation of property carried out under an established governmental policy can be challenged under 42 U.S.C. § 1983 without regard to the availability of post-deprivation state remedies. Those courts correctly recognize that *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Hudson v. Palmer*, 468 U.S. 517 (1984), apply only to random or unauthorized acts, not to deliberate governmental policies such as the one at issue here.

Third, only two other circuits share the Seventh Circuit's view that a state-created property interest cannot form the basis of a substantive due-process claim. The Court should reject this unreasoned distinction and adopt the majority view.

The facts of this case illustrate the operation of the Sheriff's policy.

1. Petitioner was arrested and detained at the Cook County Jail, where the Sheriff safely stored his government-issued identification card. (App. 2a–3a.) Petitioner later left the Jail to serve a sentence in the Illinois Department of Corrections (IDOC). (App. 3a.)

2. Government-issued identification cards are among the personal property that the Illinois Administrative Code requires the Cook County Jail to send with a newly sentenced prisoner to the IDOC. 20 Ill. Admin. Code § 701.60(d)(4) (reproduced *infra* at App. 26a). The IDOC then stores those cards until the prisoner is "separated from the Department by death, discharge, or unauthorized absence." 20 Ill. Admin. Code § 535.140 (reproduced *infra* at App. 25a–26a).

3. The Sheriff, however, does not send government-issued identification cards to the IDOC. (App. 2a.) "[I]f the Sheriff were to send government-issued identification cards to IDOC along with their owners, IDOC would accept them." (*Id.*) Instead, the Sheriff gives each prisoner a form stating that the property will be destroyed unless the prisoner arranges for an agent to retrieve it. (App. 2a–3a.) Petitioner was unable to arrange for such an agent, and the Sheriff accordingly applied its "designate-or-destroy" policy to destroy petitioner's identification card.

4. After his release from the penitentiary, petitioner was permitted to join as a plaintiff in an action pending in the district court under 42 U.S.C. § 1983 challenging the Sheriff's policy of destroying government-issued identification cards rather than sending them with prisoners transferred to the IDOC. (D. Ct. Dkt. No. 139.)

5. The district court granted summary judgment to respondents. (App. 8a-36a.) The court acknowledged the importance of government–issued identification to

prisoners upon release.[1] The court also found that the penitentiary "would have accepted the ID cards if the Cook County Jail had sent them." (App. 34a.) Viewing the case as a request for "free shipping" of identification cards (App. 35a), the district court relied on circuit precedent to hold that the Due Process Clause requires only "adequate notice about what would happen to their property, and … adequate chance to retrieve it." (App. 35a.)

6. The Seventh Circuit affirmed, relying on its prior decisions in *Lee v. City of Chicago*, 330 F.3d 445 (7th Cir. 2003), and *Kelley-Lomax v. City of Chicago*, 49 F.4th 1124 (7th Cir. 2022), to conclude that the Sheriff's policy did not implicate a "fundamental right." (App. 6a.) The court of appeals held that petitioner had failed to show either "an independent constitutional violation" or "the inadequacy of state law remedies" as required by circuit precedent. (App. 7a.)

The decision below rests on the Seventh Circuit's longstanding view that the destruction of property pursuant to an established governmental policy does not implicate the Due Process Clause so long as officials provide notice of the intended destruction and an opportunity to reclaim the property. That ruling squarely

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[1] The district court explained (App. 9a-10a):

> Detainees and prisoners need to get back on their feet after they leave incarceration. They need jobs, apartments, and so on. They often need to drive, too. They need identification to do many of the things that they need to do to reintegrate into society. (Try entering a federal courthouse without an ID, and see what happens.)
>
> Detainees and prisoners might not have a compelling need for government-issued ID cards while they are incarcerated. But once they rejoin free society, things change. It is that much harder for former detainees and prisoners to reintegrate into the community if they cannot show who they are.

presents the questions whether such a policy can escape review under § 1983 and whether the Fourteenth Amendment protects the right to possess property.[2]

REASONS FOR GRANTING THE PETITION

The judgment below rests on four fundamental errors.

First, the court of appeals disregarded this Court's recognition that the Framers intended to implement Locke's view that ownership of property is a cornerstone of ordered liberty and a necessary condition of a free and independent citizenry.

Second, even if the right to own property is not part of our system of "ordered liberty," the Seventh Circuit erred in its outlier view that state-created property rights are beyond the substantive protection of the Due Process Clause.

Third, the court compounded these errors by requiring exhaustion of state remedies for a deprivation carried out under an established governmental policy—an approach inconsistent with *Parratt v. Taylor*, 451 U.S. 527 (1981), *Hudson v. Palmer*, 468 U.S. 517 (1984), and the decisions of every other circuit.

Fourth, the court replaced the "notice and an opportunity to be heard" elements of traditional due process with "notice and an opportunity to reclaim" before the property is destroyed.

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[2] The question of whether the challenged policy abridges rights secured by the Fourth Amendment is before the Court in *Carter v. Cook County Sheriff*, No. 25-401.

A. The right to own personal property is a cornerstone of ordered liberty.

This Court has long recognized that the right to own and enjoy personal property is a fundamental component of individual liberty.

In *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972), the Court declared that "[t]he right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account." *Id.* at 552. That tenet traces to John Locke's insight that "the great and chief end" of entering political society is "the preservation of their property." *Second Treatise of Government* § 124 (1689). Sir William Blackstone, "whose influence on the founding generation was the most profound,"[3] described "the free use, enjoyment, and disposal" of personal property as an "absolute right." 1 W. BLACKSTONE, *Commentaries* 134 (1765). James Madison likewise wrote that property includes "every thing to which a man may attach a value and have a right."[4]

The Framers embedded those principles in the Constitution they drafted. The Fourth Amendment secures "persons, houses, papers, and effects" against unreasonable government intrusion, thereby protecting the

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[3] *Kahler v. Kansas*, 589 U.S. 271, 302 (2020) (Breyer, J., dissenting) (quoting Blackstone and noting his influence on the Founding generation).

[4] Leonard W. Levy, *Property as a Human Right*, 5 CONSTITUTIONAL COMMENTARY 169, 177 n.34 (1988) (quoting James Madison, *National Gazette (Philadelphia)*, March 29, 1792, *reprinted in* 14 THE PAPERS OF JAMES MADISON 266 (C. Hobson, R. Rutland & W. Rachal eds. 1986)).

possession of tangible property.[5] The Fifth Amendment extends that protection by forbidding the deprivation of "life, liberty, or property, without due process of law."[6] Through the Fourteenth Amendment, the Nation reaffirmed that guarantee against state action, ensuring that no government may arbitrarily strip a person of property that the law recognizes as his own. The Court confirmed that understanding in *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226 (1897), holding that the Due Process Clause of the Fourteenth Amendment requires the same just compensation guaranteed by the Fifth Amendment when a state or local government takes private property for public use.

The rule the Seventh Circuit applied in this case cannot be squared with this constitutional history.

B. The Due Process Clause protects against deliberate deprivations of property based on an irrational policy.

The rule the Seventh Circuit applied in this case cannot be squared with the right to own property enshrined in the Constitution.

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[5] Recent scholarship confirms that "effects" was included in the Fourth Amendment "because of the risk of mishandling or damage generally associated with interferences with personal property," as well as the "harms to privacy and dignity that could be incurred by their inspection." Maureen E. Brady, *The Lost "Effects" of the Fourth Amendment: Giving Personal Property Due Protection*, 125 YALE L.J. 946, 987 (2016).

[6] Professor Ely observed that "the Fifth Amendment explicitly incorporated into the Constitution the Lockean conception that protection of property is a chief aim of government." James W. Ely, Jr., *The Guardian of Every Other Right: A Constitutional History of Property Rights* 38 (3d ed 2008).

The court of appeals applied in this case its established rule that a state official, who is responsible for storing property inventoried incident to an arrest, may lawfully destroy that property by giving notice that the property must be reclaimed by a specific date lest it be destroyed.[7] This "notice of right to reclaim" is not the same as the hearing "required at some time before a person is finally deprived of his property." *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

Substituting a "notice of right to reclaim" for a hearing is also inconsistent with the generally accepted view that the officer holding detainee property is a "gratuitous" or "involuntary" bailee under "a legal duty to keep the item safe." *Carpenter v. United States*, 585 U.S. 296, 399 (2018) (Gorsuch, J., dissenting). This duty was well known to the framers,[8] applied throughout the nineteenth century,[9] and is recognized in many states today.[10]

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[7] *Conyers v. City of Chicago*, 10 F.4th 704, 712-15 (7th Cir. 2021) (notice on a website that inventoried property would be destroyed if not claimed within 30 days "is not enough to support a due-process violation").

[8] 2 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 452 (1766).

[9] *See, e.g., Adams v. Gardiner*, 52 Ky. 197, 1852 WL 391 (1852) at *1; *Tinker v. Morrill*, 39 Vt. 477, 1866 WL 3047 at *2 (1866); *Kendall v. Morse*, 43 N.H. 553, 1862 WL 1462 *3 (1862); *Hartleib v. McLane*, 44 Pa. 510, 514, 1863 WL 4838 *4 (1863); *Moore v. Westervelt*, 27 N.Y. 234, 239 (1863); *Walker v. Commonwealth*, 59 Va. 13, 43 (1867).

[10] *See, e.g., Reeves v. State*, 599 P.2d 727, 736–37 (Alaska 1979); *People v. Ortiz*, 147 Cal.App.2d 248, 249, 305 P.2d 145, 147 (1956); *Herring v. State*, 43 Md.App. 211, 404 A.2d 1087, 1091–92 (1979); *Heffley v. State*, 83 Nev. 100, 103, 423 P.2d 666, 668 (1967); *State v. Wallen*, 185 Neb. 44, 47, 173 N.W.2d 372, 374 (1970); *People v Robinson*, 36 A.D.2d 375, 378, 320 N.Y.S.2d 665, 669 (1971); *State v.*

The "notice of intent to destroy" approved by the court below does not further any "important governmental or general public interest." *Fuentes v. Shevin*, 407 U.S. 67, 91 (1972). On the contrary, the notice of intent to destroy and the subsequent destruction of the government–issued identification is "so arbitrary and irrational that it runs afoul of the Due Process Clause." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005).

Rather than afford personal property the respect envisioned by the Framers, the Seventh Circuit has long required a plaintiff to show either an independent constitutional violation or the inadequacy of state remedies before challenging a deprivation of property under 42 U.S.C. § 1983. That rule, first articulated in *Kauth v. Hartford Insurance Co. of Illinois*, 852 F.2d 951 (7th Cir. 1988), and later expanded in *Lee v. City of Chicago*, 330 F.3d 456 (7th Cir. 2003), effectively insulates deliberate government policies from constitutional scrutiny.

The Court of Appeals held in *Kauth* that a substantive due process claim requires proof of "a violation of some other substantive constitutional right [other than a deprivation of a state created property right] or that the available state remedies are inadequate." *Kauth*, 330 F.3d at 958. The court derived that rule from a brief and cryptic reference to this Court's then recent decisions in *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Hudson v. Palmer*, 468 U.S. 517 (1984).[11]

Ingram, 914 N.W.2d 794, 818-19 (Iowa 2018); *State v. Phifer*, 39 N.C. App. 278, 286, 250 S.E.2d 309, 314 (1979); *State v. Peck*, 449 P.3d 235, 239, 194 Wash.2d 148, 155–56 (2019).

[11] "Given the Supreme Court's recent decisions in *Parratt* and *Hudson*, however, we believe that in cases where the plaintiff complains that he has been unreasonably deprived of a state-created property interest, without alleging a violation of some other substantive constitutional right or that the available

The Seventh Circuit extended *Kauth* in *Lee v. City of Chicago*, 330 F.3d 456 (7th Cir. 2003), a case that involved the seizure of an automobile for investigation after the driver was struck by stray gunfire. *Id.* at 458. The City of Chicago conditioned return of the vehicle on payment of towing and storage fees, threatening to destroy it if payment was not made. The motorist paid the fees, retrieved the car, and then brought suit under 42 U.S.C. § 1983, alleging that the City's policy deprived him of property without due process of law. *Id.* at 459. In affirming the denial of relief, the Seventh Circuit expanded *Kauth* beyond state-created interests to any property deprivation, holding that a plaintiff must show "either the inadequacy of state law remedies or an independent constitutional violation." *Id.* at 467. This is the rule the Seventh Circuit applied in this case. (App. 7a.)

The Seventh Circuit rejected a request to revisit its rule in *Kelley-Lomax v. City of Chicago*, 49 F.4th 1124 (7th Cir. 2024). There, while the court of appeals agreed "that property is a fundamental right," *id.* at 1125, the court characterized the plaintiff's claim as an unwarranted demand "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."[12] *Id.* Treating that characterization as dispositive, the court again required

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state remedies are inadequate, the plaintiff has not stated a substantive due process claim." *Kauth v. Hartford Ins. Co. of Illinois*, 852 F.2d 951, 958 (7th Cir. 1988).

[12] *Kelley-Lomax* arose from a decision of the Sheriff of Cook County to refuse to accept all arrestee property, requiring the arresting authority (there, the City of Chicago) to store and retain it. Chicago claimed that limitations on storage space required it to adopt the "sell or destroy" policy unsuccessfully challenged in that case. 49 F.4th at 1126.

proof either of an independent constitutional violation or of the inadequacy of state remedies.

By reaffirming *Lee* in *Kelley–Lomax*, the Seventh Circuit reaffirmed its commitment to a restrictive view of due process. The decision below simply applies that same rule, holding that the Sheriff's destruction of government-issued identification is immune from federal review so long as a theoretical state remedy exists.

C. The Seventh Circuit's reliance on *Parratt* and *Hudson* is misplaced.

The Seventh Circuit's rule rests on a fundamental misreading of *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Hudson v. Palmer*, 468 U.S. 517 (1984). Those cases concern random and unauthorized deprivations of property—instances in which the State cannot practicably provide a pre-deprivation hearing because the challenged conduct is unpredictable or contrary to established policy. Extending *Parratt* and *Hudson* to cover an official policy of destruction, as the Seventh Circuit has done, transforms a narrow procedural exception into a blanket immunity from constitutional scrutiny.

This Court made plain in *Zinermon v. Burch*, 494 U.S. 113 (1994) that *Parratt* has no application when the plaintiff complains of "arbitrary, wrongful government actions," i.e., raises a substantive due process claim. *Id.* at 125. Eights circuit hold that that *Parratt* and *Hudson* apply only to random and unauthorized acts of government employees, rather than to deprivations required by an established governmental policies or practices.[13]

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[13] The circuits that have squarely considered this issue recognize that *Parratt* and *Hudson* apply only to random and unauthorized acts of government employees, rather than to deprivations carried out pursuant to established governmental policies or practices. As the Second Circuit noted in *McClary v. O'Hare*, 786 F.2d 83 (2d Cir. 1986), application of *Parratt* "where the deprivation would be

Those courts correctly understand that when the government itself creates the procedure that causes the deprivation, the State cannot invoke the *Parratt-Hudson* rule to avoid providing pre-deprivation process. The Seventh Circuit's contrary approach extends *Parratt* and *Hudson* beyond their rationale and leaves no federal forum for deliberate, officially authorized violations of property rights.

This case presents that issue in its clearest form. The Sheriff's "designate-or-destroy" policy is formal, deliberate, and uniformly applied; it does not involve the unpredictable misconduct of a rogue employee. By extending *Parratt* and *Hudson* to such a policy, the Seventh Circuit converted an exception meant for random errors into a rule insulating official decisions from constitutional review. The Court's intervention is warranted to restore the uniform understanding that the Due Process Clause requires a pre-deprivation

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unjustified regardless of what procedures preceded it, seems hard to fathom." *Id.* at 86 n.3. *See, e.g.*, *Zilich v. Lucht*, 981 F.2d 694, 695–96 (3d Cir. 1992) (*Parratt* "is limited to the procedural due process context); *Dean ex rel. Harkness v. McKinney*, 976 F.3d 407, 420–21 (4th Cir. 2020) ("the *Parratt-Hudson* doctrine does not bar the plaintiff's substantive due process claim"); *Cozzo v. Tangipahoa Parish Council—President Gov't*, 279 F.3d 273, 290 (5th Cir. 2002) ("violations of substantive due process rights do not fall within the doctrine's limitations"); *Wilson v. Beebe*, 770 F.2d 578, 580 (6th Cir. 1985) (en banc) (*Parratt* applies "where the claimed deprivation is one of procedural due process'); *Mann v. City of Tucson, Dep't of Police*, 782 F.2d 790, 792–93 (9th Cir. 1986) ("*Parratt* rationale does not apply to a denial of substantive due process"); *Bledsoe v. Carreno*, 53 F.4th 589, 603 (10th Cir. 2022). *Contra Ali v. Ramsdell*, 423 F.3d 810, 814 (8th Cir. 2005) (*Parratt* applies to substantive and procedural due process claims).

opportunity to be heard when the State itself adopts and enforces the procedure that causes the loss.

D. The Court should reaffirm that established governmental policies are not shielded from § 1983 review by the *Parratt-Hudson* doctrine.

If the Court rejects petitioner's argument that the Sheriff's policy deprived petitioner of personal property without due process, the Court should resolve the conflict between the circuits and adopt the majority rule that the Due Process Clause safeguards state-created property interests against arbitrary and purposeless government action.

The state-created property interest in this case is the duty of the Illinois Department of Corrections to store prisoner property "until the committed person … has been separated from the Department by death, discharge, or unauthorized absence." 20 ILL. ADMIN CODE § 535.140 (App. 39a.) The deprivation of property resulting from violating this rule would be actionable in eight circuits, which hold that the Due Process Clause safeguards state-created property interests against arbitrary and purposeless government action.[14] Assuming

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[14] *See, e.g.*, *Winston v. City of Syracuse*, 887 F.3d 553, 566-67 (2d Cir. 2018) (continued water service); *United Artists Theatre Circuit, Inc. v. Township of Warrington*, 316 F.3d 392, 399 (3d Cir. 2003) (land use dispute); *Scott v. Greenville County*, 716 F.2d 1409, 1418 (4th Cir. 1983) ("cognizable property interest, rooted in state law"); *Wigginton v. Jones*, 964 F.3d 329, 336 n.6 (5th Cir. 2020) (substantive due process rights can be derived from state law, rejecting Justice Powell's concurring opinion in *Ewing*); *Cooperrider v. Woods*, 127 F.4th 1019, 1040–41 (6th Cir. 2025) (deprivation of alcohol license); *Minnesota Deer Farmers Assoc. v. Strommen*, 146 F.4th 664, 670-71 (8th Cir. 2025) (regulation prohibiting white-tailed deer farming); *North Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 484 (9th Cir. 2008) (delay in processing land use permit request); *Seegmiller v. Laverkin City*, 528 F.3d 762, 767 (10th Cir.

arguendo that the right to possess personal property is not itself secured by the Constitution, that right nonetheless qualifies for substantive protection under the prevailing view of the courts of appeals.

The First and Seventh circuits would reach a different result because these circuits hold that substantive due process protects only those rights arising directly from the Federal Constitution.[15]

This Court has repeatedly assumed that state-created property interests receive substantive protection when government action is arbitrary or wholly without justification. *See, e.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998); *Collins v. City of Harker Heights*, 503 U.S. 115, 126 (1992). *Cf. Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) ("a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State"). The circuits following this approach correctly recognize that the text of the Due Process Clause and its history protect individuals from

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2008) (governmental action that does not abridge a "fundamental right or liberty interest" is actionable under Due Process class if it "shocks the judicial conscience"); *DiMassimo v. City of Clearwater*, 805 F.2d 1536, 1541 (11th Cir. 1986) (municipal water service).

[15] The First Circuit adopted the contrary rule in *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 880 n. 13 (1st Cir. 2010) on a misreading of *Washington v. Glucksberg*, 521 U.S. 702 (1977). There, the Court stated that the Due Process clause "specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.* at 703. The First Circuit cites *Glucksberg* for the incorrect tule that "substantive due process *protects only* those interests that implicate one of 'those fundamental rights and liberties …'"–Neither in *Glucksberg* nor any other case has this Court held that substantive due process "protects only … fundamental rights and liberties."

the irrational destruction of legally recognized property interests, whatever their source.

The Seventh Circuit's rule is irreconcilable with that understanding. By categorically excluding state-created property interests from substantive due-process protection, the court below permits government officials to destroy lawfully possessed property for no reason at all, so long as notice of destruction is provided. That approach strips the Due Process Clause of its core function—to prevent arbitrary exercises of governmental power—and creates a right without a remedy for those whose property is deliberately destroyed by application of an official policy. The Court should make clear that the Fourteenth Amendment protects property from arbitrary deprivation, whether the property right originates in the Constitution or in state law.

E. The destruction of government-issued identification cards is irrational.

Petitioners argued in the district court (App. 20a-21a) and in the court of appeals (App. 13a-15a) that the Sheriff's policy of destroying government-issued identification cards was arbitrary and unreasonable. The court of appeals found that "if the Sheriff were to send government-issued identification cards to IDOC along with their owners, IDOC would accept them." (App. 2a.)

Despite this undisputed finding, the Sheriff has never sought to justify its policy. That is, the Sheriff has never offered any "legitimate government objective," *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005), for its policy of refusing to send government-issued identification cards to the penitentiary. The Sheriff's policy is the paradigmatic example of an "exercise of power without any reasonable justification in the service of a legitimate governmental objective" condemned by the Due Process clause. *County of Sacramento v.*

Lewis, 523 U.S. 833, 846 (1998). The Court should protect "the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), and reverse the judgment below.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

KENNETH N. FLAXMAN
Counsel of Record
JOEL A. FLAXMAN
200 S Michigan Avenue
Chicago, IL 60604
knf@kenlaw.com
(312) 427-3200

Attorneys for Petitioner

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