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Malachy Schrobilgen

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Guns for Freedom: An Unlawful Police Tactic in Chicago

Malachy Schrobligen

A map of Chicago is a map of segregation. Poverty, education performance, health outcomes, and even life expectancy largely track along the racial lines of the city's neighborhoods. Many of these trends also track with past redlining practices, which provide the historical backbone of the city's modern racial geography.¹ Over-policing of Black and Latino communities both follows and contributes to this racial geography—and with it, some of the more odious police practices such as police brutality, coerced confessions, and executions of no-knock warrants.

One practice that has garnered less attention in the media is the widespread use of “guns for freedom” pursued by both the Chicago Police Department (“CPD”) and the Cook County Sheriff's Office (“CCSO”) to recover firearms in Chicago's predominantly Black and Latino west and southside neighborhoods. These exchanges often involve officers arresting or detaining individuals and only releasing them if they can recover guns for the officers.

It is no secret that Chicago has a problem with guns and gun violence.² Recent mayors and CPD superintendents have prioritized the recovery of illegally-owned guns. In 2021 alone, CPD reported recovering over 12,000 guns.³ While CPD claims that these guns were recovered through a combination of tour-of-duty police operations, targeted investigations, and community gun buy-back events hosted by the Department, more recent investigations have found that such tallies don't seem to add up.⁴ In fact, CPD could not account for the origin of about 500 recovered guns between 2019 and 2021.⁵

In its 2017 published report on its investigation into CPD's patterns and practices of unconstitutional conduct, the Department of Justice (“DOJ”) found that many CPD officers frequently engaged in “guns for freedom” trans-

¹ Jacqueline Serrato et al., *Mapping Chicago's Racial Segregation*, SOUTH SIDE WEEKLY (Mar. 10, 2022), <https://southsideweekly.com/mapping-chicagos-racial-segregation/>.

² David Brown, *As Chicago Ends Deadliest Year in Quarter Century, Top Cop Promises Action to Address Gun Violence*, NBC CHICAGO (Dec. 30, 2021), <https://www.nbcchicago.com/news/local/as-chicago-ends-deadliest-year-in-quarter-of-a-century-top-cop-promises-action-to-address-gun-violence/2718333/>.

³ Sam Charles et al., *A Close Look at the Chicago Police Department's Gun Recoveries*, WGN INVESTIGATES (Feb. 2, 2022), <https://wgnv.com/news/wgn-investigates/a-closer-look-at-the-chicago-police-departments-gun-recoveries/>.

⁴ *Id.*

⁵ *Id.*

actions with community members, and that such transactions largely took place on Chicago's south and west sides.⁶ One example highlighted in the report involved a man who was coerced into producing a gun to gain his own release and the release of a friend.⁷ This transaction was not documented in the officers' reports, which did not mention any arrests but rather stated that the man "directed them to the location of multiple firearms being hidden in the 5th and 12th districts."⁸ The report also did not mention that the man had bought and procured the firearm with his own money on behalf of the officers.⁹

As the DOJ observed, "[i]n addition to the likely illegality of this conduct, its impact on community trust cannot be overstated. The fear and anger created by these practices was obvious when we talked with individuals who reported these experiences."¹⁰ Most importantly, these practices actively put Black and Latinx community members in harm's way, both in a physical and legal sense.

IMPLICATIONS OF "GUNS FOR FREEDOM" DEALS

"Guns for freedom" deals are problematic for a number of reasons. For one, they delegitimize the role of law enforcement and erode community trust in public officials. People cannot trust law enforcement to uphold the rule of law when officers subvert the law to achieve their own objectives. In addition, these deals render the arrested individual vulnerable to physical and legal harm upon agreeing to deliver guns. Officers do not escort the individual to find the guns and therefore there is no protection for the individual trying to locate guns that are often purchased from black market sources.

In addition, the nature of the request made by officers renders the arrested individual to legal harm in that they oftentimes require that person to commit a felony. Legally purchasing and obtaining a firearm in Illinois is highly regulated and can take some time.¹¹ Thus, the time-sensitive nature of these deals often incentivizes individuals to seek out illegal sources to procure the firearms necessary to free themselves or their loved ones. In communities where these

⁶ U.S. Dep't of Justice, *Investigation of Chicago Police Department*, 148–50 (Jan. 13, 2017).

⁷ *Id.*

⁸ *Id.* at 149.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Moe Ahmad, *Waiting Period to Buy a Gun in Illinois*, Ahmad Law Firm (Mar. 16, 2020) (application process for an FOID card can take up to 60 days; waiting period before obtaining a "long gun" is 24–72 hours; waiting period to obtain a handgun is 24 hours).

deals are most rampant, there is a higher likelihood that the arrested individual has a felony in their background—thereby making possession of a firearm an additional chargeable felony.¹² As mentioned before, these deals often involve conscripting additional family or friends to locate and obtain guns while the arrested individual remains in custody.¹³

As one Chicago civil rights attorney, Brian Orozco, notes, there are instances where arrested individuals find these deals to be useful, as the successful delivery of firearms helps avoid jail time and additional charges.¹⁴ But problems arise due to the secretive nature of these deals. Thus, arrested individuals are vulnerable to officers going back on their word. Mr. Orozco is also concerned that officers are incentivized not to document the procurement of such guns, as they can be planted on unsuspecting detainees in order to enhance charges in later cases.¹⁵ Again, such a widespread policy that operates off the books for a department the size of CPD or CCSO creates multiple legal pitfalls for arrestees and ultimately erodes community trust in law enforcement. Even if the stated purpose of the policy, if recognized at all, is to increase public safety by removing guns from communities, that purpose is ultimately undermined by risking the physical and legal well-being of large swathes of Chicago's Black and Latino communities.

LEGAL DETERRENTS

In Illinois, an agreement between a police officer and a civilian that involves a promise of freedom or reduced charges in exchange for information or cooperation in aid of an investigation is an enforceable contract.¹⁶ The officer's promise of leniency or dropped charges provides a valid offer, and the individual's delivery of the bargained-for information or cooperative conduct constitutes consideration paid by the individual. Thus, upon receipt of the individual's bargained-for consideration, the police officer is bound to hold up the Department's end of the bargain. Failure to do so can result in the dismiss-

¹² 720 Ill. Comp. Stat. Ann. § 5/24-1.1(a) ("It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction.").

¹³ See *Hicks v. Cook County Sheriff's Office*, 2020 WL 1322844, *14.

¹⁴ Interview with Brian Orozco, Associate Attorney, C. Norris Law Group, LLC (Mar. 14, 2022) [hereinafter "Orozco interview"].

¹⁵ *Id.*

¹⁶ *People v. Marion*, 2015 IL App (1st) 131011, ¶¶ 38–39 N.E.3d 773, 775, as modified on denial of reh'g (May 12, 2015).

sal of criminal charges that are later brought against the individual.¹⁷ While the risk of having the criminal charges dismissed provides some deterrent by requiring bargaining officers to stay true to their word, this does not create a true disincentive to pursuing these deals in the first place. Again, the agreement is a legal, enforceable contract. Officers only violate the rights of the individual in custody if the contract is formed and they breach the contract.

Conversely, there is an open question as to whether civil liability for such actions may be imposed under federal civil rights law. As both the DOJ and the City of Chicago Office of Inspector General have cautioned, “guns for freedom” deals are likely illegal and could open the city up to massive civil liability. Section 1983 provides the primary civil vehicle for vindicating the violation of an individual’s constitutional rights by police officers.¹⁸ While the statute itself provides no substantive rights, the violation of an individual’s cognizable rights under the Constitution can be challenged under a Section 1983 claim for damages.¹⁹ Typical claims against police arise under the Fourth Amendment for false arrest, unlawful pretrial detention, or excessive force.²⁰ But it is unclear how an individual who is detained and coerced into collecting guns for the police in exchange for freedom might vindicate such a flagrant abuse of police power.

One possible theory that has already found some traction claims these deals violate the Fourth Amendment as illegal seizures.²¹ Take for example the plaintiff in *Hicks* wherein police officers pulled over the plaintiff after an al-

¹⁷ *Id.* at ¶ 45.

¹⁸ 42 U.S.C. § 1983 (“[e]very person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress”); see also *Monroe v. Pape*, 365 U.S. 167 (1961).

¹⁹ See *Albright v. Oliver*, 510 U.S. 266 (1994) (“Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.”) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)).

²⁰ See generally Committee on Pattern Civil Jury Instructions of the Seventh Circuit, “Federal Civil Jury Instructions of the Seventh Circuit,” at 143–55 (rev. 2017).

²¹ See, e.g., *Hicks*, 2020 WL 1322844 at *14 (denying summary judgment to arresting officers on plaintiff’s illegal seizure claim premised on being held in custody while girlfriend tried to find guns to exchange for his freedom); *Stokes v. City of Chicago*, 2017 WL 2224882, *2–5 (finding that plaintiff stated a claim for municipal liability for implicit policy, custom, or practice that rewards officers in proportion to the number of guns confiscated and the licenses the arrest of individuals on false charges unless they can obtain and turn over a gun).

leged traffic violation.²² What began as a routine traffic stop evolved into a deal that extended over days as the arresting officers bargained for the plaintiff's release with the plaintiff's partner in exchange for her delivery of guns.²³ The court found that the officers had committed an illegal seizure in extending the stop beyond the "tasks tied to the traffic infraction," which "reasonably should have been [. . .] completed" well before the officers began offering the plaintiff's freedom in exchange for guns.²⁴

Another possible theory is a cause of action under the Thirteenth Amendment. The purpose of the Thirteenth Amendment was to abolish slavery as it existed at the time of the Civil War, but it has never been interpreted to be limited to that precise purpose.²⁵ It was also intended to extend to "cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results."²⁶ This guarantee against involuntary servitude is "self-executing without any ancillary legislation."²⁷ Section one of the Thirteenth Amendment states:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.²⁸

As the Supreme Court in *Kozminski* recognized, while "the general spirit of the phrase 'involuntary servitude' is easily comprehended, the exact range of conditions it prohibits is harder to define."²⁹ Threats of psychological coercion or duress were found not to be sufficient to establish a violation of the prohibition on involuntary servitude.³⁰ In interpreting the phrase in the context of criminal sanctions for subjecting individuals to involuntary servitude, the Court held that the Thirteenth Amendment prohibits conditions of involun-

²² *Hicks*, 2020 WL 1322844, *1–7.

²³ *Id.*

²⁴ *Id.* at *12 (citing *Rodriguez v. United States*, 575 U.S. 348, 357 (2015)).

²⁵ *Butler v. Perry*, 240 U.S. 328, 332 (1916); see also *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 441 (1968) (holding that Congressional authority to enforce the Thirteenth Amendment through appropriate legislation included the power to eliminate racial barriers to the acquisition of real property as "badges and incidents of slavery").

²⁶ *Id.*

²⁷ Civil Rights Cases, 109 U.S. 3, 20 (1883).

²⁸ U.S. Const., amend. XIII, § 1.

²⁹ *United States v. Kozminski*, 487 U.S. 931, 942 (1988).

³⁰ *Id.* at 948.

tary servitude enforced through the use or threatened use of physical or legal coercion.³¹

It would appear that “guns for freedom” deals fit within this framework. First, these scenarios are inherently coercive. As Mr. Orozco notes, a police officer and an arrested individual do not come to the bargaining table on equal footing.³² The officer has the ability to deny the bargain ever even occurred, and can renege on the deal after the arrested individual obtains the sought-after guns. Further, the labor that the arrested individual performs in exchange for his freedom is inherently dangerous. The individual almost certainly would not voluntarily undertake such labor on behalf of the police unless he was conscripted to do so. What’s more, arrested individuals often ask family members or partners to help them find the guns, thus ensaring completely innocent third parties in the net of involuntary servitude and placing them in harm’s way. Another issue that informs this analysis, although perhaps not an element of a claim under the Thirteenth Amendment, is the racial dynamic of many of these deals in Chicago. Mr. Orozco states that in his experience investigating these deals, the vast majority affect Black and Latino individuals on the west and south sides of the city.³³ The existence of this practice is well-known in Chicago’s Black and Latinx communities, and almost unheard of in Chicago’s white communities.³⁴

The viability of a Section 1983 cause of action may provide an emerging civil deterrent for “guns for freedom” deals. Claims that target these deals as violative of individuals’ Fourth and Thirteenth Amendment rights would help vindicate the coercive experiences that arrested individuals and their families endure. These claims would also shed light on a widespread policy used by the police. As Mr. Orozco noted, transparency is essential when dealing with a practice that is so ubiquitous and has such potential for abuse.³⁵ How many guns have been recovered through renege deals with arrested individuals who were still subjected to criminal sanction? What kind of financial or professional incentives do officers enjoy for bringing in guns off the street, even if through “guns for freedom” deals? How many people have been physically harmed try-

³¹ *Id.* at 944. (citing *United States v. Reynolds*, 235 U.S. 133, 146 (1914); *Pollock v. Williams*, 322 U.S. 4, 64 (1944); *Taylor v. Georgia*, 315 U.S. 25, 62 (1942); *Bailey v. Alabama*, 219 U.S. 219 (1911)).

³² Orozco interview, *supra* note 14.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

ing to obtain guns to exchange for a loved one's freedom? This is all information that the public is entitled to know.

CONCLUSION

"Guns for freedom" deals pose a very real risk to relations between Black and Latino communities and public officials, as well as the legitimacy of law enforcement and the rule of law in Chicago. While proponents of such deals may claim that they end up getting guns off the street, this overlooks the inherent risk to public safety that such deals create by subjecting individuals to police abuse, coercion, and the threat of legal sanction. Moreover, the shadowy nature of these deals does not ensure that recovered guns stay off the streets forever, and actually creates loopholes for officers to redeploy those guns in an illegal manner to frame innocent people. Certain elements of criminal procedure provide some deterrent force to discourage officers from pursuing these deals. However, more must be done through civil actions that name these coercive deals for what they really are: the conscription of ordinary citizens into involuntary servitude to circumvent constitutional protections against police overreach.