

**Preston BENNETT, Plaintiff-Petitioner,**

**v.**

**Thomas DART, Sheriff of Cook County, and Cook County, Illinois, Defendants-Respondents.**

**No. 22-8016**

United States Court of Appeals,  
Seventh Circuit.

Submitted October 20, 2022

Decided November 14, 2022

**Background:** County jail detainee brought putative class action against county and county sheriff, asserting claims under Americans with Disabilities Act (ADA) and Rehabilitation Act, based on allegations that county jail's facilities for detainees needing canes, crutches, or walkers lacked grab bars and other fixtures needed for showers and bathrooms. The United States District Court for the Northern District of Illinois, John Robert Blakey, J., 2020 WL 1812376, granted detainee's motion to certify. Approximately two and one-half years later, the United States District Court for the Northern District of Illinois, John Robert Blakey, J., 2022 WL 4386588, granted defendants' motion to decertify the class. Detainee petitioned for interlocutory appeal.

**Holdings:** The Court of Appeals held that certification of class of county jail detainees needing canes, crutches, or walkers was warranted.

Petition granted; reversed and remanded.

## 1. Federal Civil Procedure ⇨186.10

Certification of class of county jail detainees needing canes, crutches, or walkers was warranted for purpose of resolving issue of whether county's alleged failure to comply with Uniform Federal Accessibility

Standards (UFAS) by not constructing county jails with accessible toilets, grab bars near toilets, and mounted seats in showers violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act, notwithstanding that class members would need to proceed in individual suits to seek damages if the class prevailed on the liability issue; the liability issue as to whether the UFAS applied could be determined class-wide. Rehabilitation Act of 1973 § 504, 29 U.S.C.A. § 794; Americans with Disabilities Act of 1990 § 201, 42 U.S.C.A. § 12131; Fed. R. Civ. P. 23(c)(4), 23(f); 28 C.F.R. § 42.522(b)(1).

## 2. Federal Civil Procedure ⇨161.1

A class certified under provision of federal rule of civil procedure governing class certification, indicating that an action may be brought or maintained as a class action with respect to particular issues, resolves only certain issues or one issue, not the whole case. Fed. R. Civ. P. 23(c)(4).

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Petition for leave to appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 18-cv-04268 — **John Robert Blakey, Judge.**

Patrick W. Morrissey, Attorney, Thomas G. Morrissey, Ltd, Chicago, IL, for Plaintiff-Petitioner.

Monica Burkoth, Attorney, Johnson & Bell, Ltd., Chicago, IL, for Defendants-Respondents.

Before EASTERBROOK, ROVNER,  
and WOOD, Circuit Judges.

PER CURIAM.

Preston Bennett contends that Division 10 of Cook County Jail does not satisfy the Americans with Disabilities Act, 42 U.S.C.

§§ 12131–34, and the Rehabilitation Act, 29 U.S.C. § 794, because it lacks the grab bars and other fixtures that disabled inmates may need in order to use showers and toilets safely. When seeking certification of a class action, Bennett tried to simplify the case by relying on a regulation providing that “as of March 7, 1988 . . . construction[ ] or alteration of buildings” must comply with the Uniform Federal Accessibility Standards (UFAS or the Standards). 28 C.F.R. § 42.522(b)(1). The Standards require accessible toilets to have grab bars nearby, UFAS § 4.17.6, and accessible showers to have mounted seats, UFAS § 4.21.3. Division 10 was constructed in 1992 and so, Bennett insists, must comply with these standards.

The district court declined to certify the requested class, ruling that to do so would entail a premature adjudication of the merits, which the judge equated to one-way intervention. We reversed, 953 F.3d 467 (7th Cir. 2020), holding that class certification would not entail resolution of the merits. Because a class may lose as well as win, all certification could do would be to tee up the merits for decision. We remarked: “Bennett . . . proposes a class that will win if the Standards apply (and were violated, to detainees’ detriment) and otherwise will lose. That’s how class actions should proceed.” 953 F.3d at 469.

[1] On remand the district court certified a class. Although the class as certified presents what appears to be a straightforward question about whether Division 10 complies with the Standards, the case languished in the district court. Then, in September 2022, more than two and a half years after our decision, the judge decertified the class. 2022 WL 4386588, 2022 U.S. Dist. LEXIS 171473 (N.D. Ill. Sept. 22, 2022). The judge’s principal reason is that some class members, although using aids such as wheelchairs, may not be disabled

within the meaning of the federal statutes—either because they are malingering or because they can get around without assistance for short distances. Differences among class members would make the case too complex, the judge stated. Plaintiffs have requested a second interlocutory review under Fed. R. Civ. P. 23(f). Once again we grant the petition and reverse.

[2] The district judge did not mention Fed. R. Civ. P. 23(c)(4), which provides: “When appropriate, an action may be brought or maintained as a class action with respect to particular issues.” Our decision in 2020 identified such an issue, one relevant to every detainee in Division 10. A class certified under Rule 23(c)(4) resolves the *issue*, not the whole case. Class members would receive the benefit of a declaratory judgment (if the class prevails) on the issue but would need to proceed in individual suits to seek damages; by contrast, if the class loses, every detainee would be bound through the doctrine of issue preclusion. We do not see—and the district judge did not explain—why application of the Standards cannot be determined class-wide, while leaving to the future any particular inmate’s claim to other relief.

This case is more than four years old. It should be resolved with dispatch on remand. The petition for leave to appeal is granted, and the class-decertification order is reversed.



**Rachael DANKER; Jesse Johnson;  
Samantha Johnson, Plaintiffs -  
Appellants**

**Stephanie Nelson, Plaintiff**