Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

	)	
	)	Master Docket Case No. 19-cv-1717
	)	
In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	)	Judge Franklin U. Valderrama
	)	
	)	Magistrate Judge Sheila M. Finnegan
	)	
	)	

DEFENDANTS' REPLY IN SUPPORT OF THEIR JOINT MOTION TO DISMISS CERTAIN CLAIMS IN LOEVY & LOEVY PLAINTIFFS' COMPLAINTS

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Defendant, City of Chicago (the "City"), Philip Cline, Terry Hillard, Dana Starks, Debra Kirby, and Karen Rowan ("Supervisory Officials"), Edward Griffin, John Griffin, and Jerrold Bosak, and Brian Bolton, Miguel Cabrales, Darryl Edwards, Robert Gonzalez, Alvin Jones, Manuel Leano, Douglas Nichols, Jr., Calvin Ridgell Jr., Elsworth J. Smith, Jr., Kenneth Young, David Soltis, John Rodriguez, Lamonica Lewis, Rebecca Bogard, Frankie Lane, Katherine Moses-Hughes, Nobel Williams, C. Ivy, Michael Spaargaren, Gerome Summers, Jr., Matthew Cadman, Kallatt Mohammed, and Ronald Watts ("Defendant Officers") (collectively "defendants"), through their respective undersigned counsel, submit this reply in support of their joint motion to dismiss the Fourteenth Amendment claims in Count I and the Fourteenth Amendment pre-trial detention without probable cause and federal malicious prosecution claims in Count II, as well as any derivative claims based on those deficient claims, in the complaints of plaintiffs represented by Loevy & Loevy.[1]

INTRODUCTION

Supreme Court and Seventh Circuit precedent sets forth the specific federal constitutional rights to which a criminal defendant is entitled. In the context of pre-trial proceedings, a pre-trial detention is constitutional and valid if it is supported by probable cause. In the context of guilty plea proceedings, a guilty plea is constitutional and valid if the plea is voluntary and knowing. And in the context of trial proceedings, a criminal defendant has the right to a fair trial. As recent binding case law makes abundantly plain, these distinct rights (if they are violated) also have distinct remedies that arise under distinct constitutional amendments. The entirety of plaintiff's response asks the Court to sweep aside

[1] On December 1, 2020, this Court approved a procedure by which defendants in the Coordinated Pretrial Proceedings would file two representative motions to dismiss, one pertaining to the version of the complaints filed by plaintiffs represented by Loevy & Loevy, and a second pertaining to the version of the complaints filed by plaintiffs represented by Kenneth and Joel Flaxman. (Dkt. #163). Defendants' reply in support of their joint representative motion to dismiss certain of the Flaxman plaintiffs' claims (Dkt. #192) was filed on March 16, 2021. That reply addresses most of the Loevy plaintiffs' arguments with respect to their unlawful pre-trial detention claims and fabricated evidence-based due process claims. With the goal of avoiding duplicative argument, this reply, at times, refers to the Flaxman reply and incorporates arguments from that reply here.

the precedent that crystalizes these distinctions and allow him, in derogation of that precedent, to bring what are, at their heart, due process malicious prosecution claims.

DISCUSSION

I. THERE IS NO SUCH THING AS A FOURTEENTH AMENDMENT CLAIM FOR "POST-LEGAL PROCESS, PRE-TRIAL DETENTION WITHOUT PROBABLE CAUSE," OR "MALICIOUS PROSECUTION".

Plaintiff concedes that his Fourteenth Amendment claims for malicious prosecution and pre-trial detention without probable cause fail under circuit and Supreme Court precedent. (Dkt. #178, 8, 10.) Nevertheless, he asks the Court to decline to dismiss the claims because he hopes, fingers crossed, that the law in this area will "evolve" during the course of these proceedings. This is not a basis to allow claims that are not cognizable under current precedent to proceed. *Cf.*, *Savory v. Cannon*, 947 F.3d 409, 421 (7th Cir. 2020), *cert. denied,* 141 S. Ct. 251, 208 L. Ed. 2d 24 (2020) ("The Supreme Court may eventually [overrule its existing precedent], but it has not yet done so and we are bound by [that precedent]."); *id.* at 422 ("this court may not on its own initiative overturn decisions of the Supreme Court"). Specifically, plaintiff contends that *McDonough v. Smith*, 139 S. Ct. 2149 (2019) and *Savory* may suggest that his claims here are viable. (Dkt. #178, 8-11, n. 6.) Plaintiff misreads that law, and recent Seventh Circuit opinions say as much.

As discussed more fully in the Flaxman reply (Dkt. #192, 2-4), since *Manuel v. City of Joliet*, 137 S. Ct. 911, 919 (2017), ("*Manuel I*"),[2] the Seventh Circuit has repeatedly held fast to its precedent, first established in *Lewis v. City of Chicago*, that the Fourth Amendment is the exclusive vehicle for a claim that a plaintiff's pre-trial detention was not supported by probable cause, and repeatedly affirmed its deep-rooted precedent holding that there is no such thing as a Fourteenth Amendment claim for

[2] *Id.* ("If the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment.")

malicious prosecution. 914 F.3d 472, 476–79 (7th Cir. 2019).[3]

According to plaintiff, *Lewis* should not stand in the way of his claims here because it was decided before *McDonough* and in the context of an acquitted plaintiff. (Dkt. #178, 10-11.) The Seventh Circuit, however, has repeatedly reaffirmed the principles in *Lewis* since *McDonough* was issued (and has done so twice just this year), both in the context of acquitted plaintiffs[4] and in the context of plaintiffs whose convictions have been vacated.[5] (*See* Flaxman Reply, Dkt. #192, at 3-4).

Furthermore, just weeks ago, the Seventh Circuit rejected plaintiff's very argument that *McDonough* and/or *Savory* suggest an imminent change in circuit precedent that does not recognize

[3] *Id.* at 478 ("It's now clear that a §1983 claim for unlawful pretrial detention rests *exclusively* on the Fourth Amendment.") (emphasis original); *see also id.* at 479 ("[malicious prosecution] is the 'wrong characterization' . . . Instead, the constitutional right in question is the 'right not to be held in custody without probable cause,' the violation of which gives rise to a 'plain-vanilla Fourth Amendment' claim under§ 1983 because the essential constitutional wrong is the 'absence of probable cause that would justify the detention.'" (internal citations omitted)).

[4] *Kuri v. City of Chicago*, 19-2967, 2021 WL 926288, at *2 (7th Cir. Mar. 11, 2021) ("We have since held that [*Manuel I*] abrogated any due-process objection to pretrial detention that has been approved by a judge. If the detention is not supported by probable cause, however, the Fourth Amendment provides a remedy. [citing *Lewis* and *Manuel I*] We decline Kuri's invitation to revisit those precedents. This means that the verdict cannot rest on the Due Process Clause."); *Young v. City of Chicago*, 987 F.3d 641, 646 (7th Cir. 2021) ("[*Manuel I*] did not say that the right [to be free from pre-trial detention without probable cause] 'could lie' in the Fourth Amendment. It said that the right lies there. We will continue to heed that instruction."); *id.* ("'[T]here is no such thing as a constitutional right not to be prosecuted without probable cause.'" (quoting *Manuel v. City of Joliet*, 903 F.3d 667, 670 (7th Cir. 2018) ("*Manuel II*") (alteration in original); *Williams v. Dart*, 967 F.3d 625, 632–33 (7th Cir. 2020), *reh'g denied* (Aug. 21, 2020) ("Wrongful pretrial custody is what plaintiffs complain of here. If plaintiffs' custody was wrongful, it was the Fourth Amendment that made it so, whether for want of probable cause, as in *Manuel*, or for want of a neutral decision-maker, as in *Gerstein*, where the Court decided some four decades ago that a claim challenging pretrial detention fell within the scope of the Fourth Amendment." (internal quotation marks omitted)).

[5] *Patrick v. City of Chicago*, 974 F.3d 824, 834 (7th Cir. 2020) ("We have recently clarified the contours of constitutional claims based on allegations of evidence fabrication. A claim for false arrest or pretrial detention based on fabricated evidence sounds in the Fourth Amendment right to be free from seizure without probable cause."); *Camm v. Faith*, 937 F.3d 1096, 1100 (7th Cir. 2019) ("Though the parties and the district judge referred to this as a claim for malicious prosecution, we've since explained that 'malicious prosecution' is the wrong label. It's a Fourth Amendment claim for wrongful arrest and detention."); *id.* at 1105 ("the Fourth Amendment, not the Due Process Clause, governs a claim for wrongful pretrial detention.") (internal quotation marks omitted)); *Anderson v. City of Rockford*, 932 F.3d 494, 512 (7th Cir. 2019) ("[t]here is no such thing as a constitutional right not to be prosecuted without probable cause"); *id.* ("Fourth Amendment, not the Due Process Clause, governs a claim for wrongful pre-trial detention"); *cf. Baldwin v. Raemisch*, 788 Fed. Appx. 390, 393 (7th Cir. 2019) (December 19, 2019: "Baldwin next contends that the district court erred by construing his 'malicious prosecution' claim as one arising under state law instead of the Fourteenth Amendment. There is no such claim under the Due Process Clause, however.")

Fourteenth Amendment claims for pre-trial detention without probable cause or malicious prosecution. *Young v. City of Chicago*, 425 F. Supp. 3d 1026, 1033, 1034 (N.D. Ill. 2019), *aff'd,* 987 F.3d 641 (7th Cir. 2021) (rejecting plaintiff's argument "that *Lewis* should not bar his due process claim based on fabricated evidence because [] *Lewis* is inconsistent with *McDonough v. Smith*" and finding that his pre-trial detention secured through the use of allegedly fabricated evidence could only be remedied under the Fourth Amendment).

Finally, plaintiff contends that "[a]t a minimum, *McDonough* should be read as recognizing that a constitutional claim for malicious prosecution exists, even if the exact contours of that claim have not yet definitively been decided." (Dkt. 178, 9-10.) But the court did *not* recognize such a claim in *McDonough* and in, *Albright v. Oliver*, it expressly declined to do so. 510 U.S. 266, 268, 114 S. Ct. 807, 810, 127 L. Ed. 2d 114 (1994) ("Petitioner asks us to recognize a substantive right under the Due Process Clause of the Fourteenth Amendment to be free from criminal prosecution except upon probable cause. We decline to do so.")[6]

Thus, at *most*, *McDonough* can only be read as holding that the delayed accrual under *Heck* applies to a pre-trial detention without probable cause claim where success on the claim would necessarily imply the invalidity of an ongoing criminal proceeding. This holding of course is relevant only to an accrual analysis, an issue not before this Court. And in an unpublished opinion, the Seventh Circuit indicated in *dicta* that the only impact *McDonough* (or *Savory*) would have would be in this context. *Sanders v. St. Joseph County, Indiana*, 806 F. App'x 481, 484 (7th Cir. 2020) ("If, however, a conclusion that Sanders's

[6] Defendants also note that, with respect to the claim before it, the court did not define the claim nor did it determine that it was correctly articulated. *McDonough*, 139 S. Ct. at 2155. It assumed without deciding that the Second Circuit's articulation of the claim (as a due process claim arising under the Fourteenth Amendment) and its contours were sound because it had not granted certiorari to resolve those separate questions. *Id.* ("Though McDonough's complaint does not ground his fabricated-evidence claim in a particular constitutional provision, the Second Circuit treated his claim as arising under the Due Process Clause * * * We assume without deciding that the Second Circuit's articulations of the right at issue and its contours are sound, having not granted certiorari to resolve those separate questions.")

[pre-trial] confinement was unconstitutional would imply the invalidity of an ongoing criminal proceeding or a prior criminal conviction, then *Heck* would continue to bar Sanders's claim after his release and until either those proceedings terminated in his favor or the conviction was vacated." (citing *McDonough*, 139 S. Ct. 2149 and *Savory*, 947 F.3d 409, 414)).[7]

The Supreme Court has instructed the courts on how to apply its precedent when the reasoning in one case seems to call another into question: a court is to apply the case which is most directly on point and applicable to the case before it. *Rodriguez de Quijas v. Shearson/American Express, Inc.,*490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."); *see also United States v. Leija-Sanchez,* 602 F.3d 797, 799 (7th Cir. 2010) ("Whether or not [recent Supreme Court] decisions are in tension with prior decision], we must apply [prior decision] until the Justices themselves overrule it."). The cases most directly on point are *Manuel I* and *Albright* and the Seventh Circuit, both before and after *McDonough* and *Savory*, has consistently and repeatedly applied this precedent in conclusively holding that a claim for pre-trial detention without probable cause arises *exclusively* under the Fourth Amendment. (Dkt. #173, 4-6; Dkt. #192, 2-4.) This also means that there *continues* to be no such thing as a section 1983 claim for malicious prosecution under the Fourteenth Amendment.

Young and *Kuri* (acquitted plaintiffs) and *Anderson* and *Camm* (convicted plaintiffs) were all decided after *McDonough* and they are dispositive. Accordingly, plaintiff's Fourteenth Amendment claims for pre-trial detention without probable cause and malicious prosecution in Count II fail as a matter of law and should be dismissed with prejudice.

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[7] Plaintiff contends that *Savory* left open the question of whether the Seventh Circuit should reconsider its precedent that there is no such claim as a federal malicious claim based on McDonough and that it has not rejected such a claim since *McDonough*. (Dkt. #192, n. 6.). Plaintiff is wrong. *Anderson* (932 F.3d 494, 512) and *Camm* (937 F.3d 1096, 1100, 1105) both rejected this claim (brought by convicted plaintiffs) and did so after *McDonough* was issued. (See also *supra* n. 4, n. 5.)

II. UNDER CONTROLLING LAW, PLAINTIFF'S DUE PROCESS CLAIMS IN COUNT I SHOULD BE DISMISSED.

As defendants established in their motion and the Flaxman reply, our circuit's precedent requires that a plaintiff allege fabricated evidence was admitted at trial and material to his conviction in order to state a fabricated evidence-based due process claim. (Dkt. #170, 8-14; Dkt. #192, 4-15.) Plaintiff cannot do so here.

As defendants also established in their motion, plaintiff's *Brady*-based due process claims in Count I should also be dismissed because (i) there is no duty to disclose impeachment evidence prior to a guilty plea; (ii) plaintiff knew about the allegedly fabricated evidence in his cases; (iii) he and the Ida B. Wells community had knowledge of the allegations that form the allegedly withheld "pattern" of misconduct before his arrests and, in any event, in the exercise of reasonable diligence, he and his attorneys had ready access to witnesses from his community as well as any and all civilian complaints; (iv) plaintiff's prosecutors had access to any and all civilian complaints and it was *their* duty to disclose the complaints to him; and (v) police officers have no duty to disclose their own supposed misconduct whether the misconduct occurred in plaintiff's or other unrelated cases. (Dkt. #170, 14-18.)

A. Plaintiff Cannot Allege the Requisite Elements of a Due Process Fabrication Claim.

A fabricated evidence-based due process claim is viable only if the allegedly fabricated evidence was used at trial and material to the plaintiff's conviction at trial. (Dkt. #170, 8-11.) Because plaintiff pleaded guilty in each of his cases, the allegedly fabricated evidence could never have been used at trial and therefore cannot support a due process claim. The majority of the arguments raised by the Loevy plaintiffs on this issue were also raised by the Flaxman plaintiffs and are addressed in the Flaxman reply; defendants thus incorporate them in this reply. (See Dkt. 192, 4-15.) Only the few additional arguments the Loevy plaintiffs raised are addressed here.

Plaintiff relies heavily on the opinions of other judges issued in these coordinated proceedings, which were decided without the benefit of the recent case law discussed in the Flaxman reply. (Dkt.

#178, 13-14.) Plaintiff disregards that recent precedent and focuses on language parsed from *Whitlock v. Brueggemann*, 682 F.3d 567, 580 (7th Cir. 2012) often quoted in our circuit before *Manuel I* and *Lewis* were decided. (Dkt. #178, 12-14.) While *Whitlock* states that "We have consistently held that a police officer who manufactures false evidence against a criminal defendant violates due process if that evidence is later used to deprive the defendant of her liberty *in some way*," *id.* at 582 (emphasis added), this language cannot be read in isolation; it must be read in the context of the additional language "[defendant] is correct that the alleged constitutional violation here was not complete *until trial*," *id.* (emphasis added); *see also Manuel I*, 137 S. Ct. 911, 919 ("[Legal process] cannot extinguish the detainee's Fourth Amendment claim [for pre-trial detention secured through fabricated probable cause]—or somehow, as the Seventh Circuit has held, convert that claim into one founded on the Due Process Clause.")[8]; *Lewis*, 914 F.3d 472, 478 ("It's now clear that a §1983 claim for unlawful pretrial detention rests *exclusively* on the Fourth Amendment."); *Fields v. Wharrie,* 740 F.3d 1107, 1114 (7th Cir. 2014) ("*Fields II*") ("[T]he cases we've just cited involved not merely the fabrication, but the introduction of the fabricated evidence at the criminal defendant's trial. For if the evidence hadn't been used against the defendant, he would not have been harmed by it, and without a harm there is, as we noted earlier, no tort."). Read in the proper context, *Whitlock* and *Fields II* make clear that to establish a due process claim based on the use of fabricated evidence, a plaintiff must allege that the evidence was used at trial and material to his conviction. (See Dkt. #192, 8-10.) The Seventh Circuit's subsequent rulings in *Avery v.*

[8] *Id.* at 920, n. 8 ("Nothing in the nature of the legal proceeding establishing probable cause makes a difference for purposes of the Fourth Amendment: Whatever its precise form, if the proceeding is tainted—as here, by fabricated evidence—and the result is that probable cause is lacking, then the ensuing pretrial detention violates the confined person's Fourth Amendment rights, for all the reasons we have stated. By contrast (and contrary to the dissent's suggestion, see *post,* at 927, n. 3), ***once a trial has occurred****, the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment. Gerstein* and *Albright,* as already suggested, both reflected and recognized that constitutional division of labor. In their words, the Framers "drafted the Fourth Amendment" to address "the matter of *pretrial* deprivations of liberty," and the Amendment thus provides "standards and procedures" for "the detention of suspects *pending trial*.") (first emphasis added) (internal citations omitted).

City of Milwaukee, 847 F.3d 433 (7th Cir. 2017) and *Patrick v. City of Chicago*, 974 F.3d 824, 834 (7th Cir. 2020) (en banc), as well as *Young*, *supra* n. 4, and *Kuri, supra* n. 4, confirm that principle of law.

Plaintiff contends that:

> The relevant question is not whether the evidence was used at trial, but whether it was used to deprive a plaintiff of his liberty in some way. Put differently, "[h]ow the fabricated evidence came into play is not as critical to establish the constitutional violation as the fact that the fabricated evidence was a direct cause of a Defendants' conviction."

(Dkt. #178, 13), quoting *White v. City of Chicago*, 17-CV-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018). The court in *White*, however, relied on *Bianchi v. McQueen*, 818 F.3d 309, 319 (7th Cir. 2016), a case decided before *Manuel I* and *Lewis* and that is now abrogated by that precedent. (Dkt. #192, 7-8.)[9, 10]

Plaintiff also additionally contends that *Avery* merely stands for the proposition that a conviction

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[9] The court in *White* also relied on *Hurt v. Wise* to erroneously conclude that the plaintiff's pre-trial deprivation gave rise to a Fourteenth Amendment claim. *White*, 2018 WL 1702950, at *2. Shortly after *Manuel II* (*supra*, n. 4) was decided, *Hurt* was overruled. *Lewis*, 914 F.3d 472, 479 ("*Hurt* is hard to square with *Manuel I*. The Supreme Court held that the initiation of formal legal process following an arrest does not convert a Fourth Amendment unreasonable-seizure claim "into one founded on the Due Process Clause." The injury of wrongful pretrial detention may be remedied under §1983 as a violation of the Fourth Amendment, not the Due Process Clause. To the extent *Hurt* holds otherwise, it is overruled."); *see also id.* ("[I]n *Manuel II*—decided nine months after *Hurt*—we explained that all §1983 claims for wrongful pretrial detention—whether based on fabricated evidence or some other defect—sound in the Fourth Amendment . . . In other words, the Fourth Amendment, not the Due Process Clause, is the source of the right in a §1983 claim for unlawful pretrial detention, whether before or after the initiation of formal legal process. We overrule precedent only in limited circumstances; a clear intracircuit conflict is one of them. *Manuel II* and *Hurt* cannot be reconciled.").

[10] Plaintiff's extensive reliance on Judge Wood's opinion in *Baker v. City of Chicago,* 16-CV-08940, 2020 WL 5110377 (N.D. Ill. Aug. 31, 2020) also provides little guidance to this Court. As noted, the *Baker* decision did not have the benefit of subsequent Seventh Circuit case law like *Patrick, Young, or Kuri*. Moreover, Judge Wood's opinion in that case conflicts with her opinion in *Green v. Florez*, in which she dismissed a fabricated evidence-based due process claim because the plaintiff had failed to allege that the fabricated evidence was admitted at his trial, 15-CV-07928, 2018 WL 6018605, at *3 (N.D. Ill. Nov. 16, 2018) ("Construed as a Due Process claim based on his post-trial deprivation of liberty, Green has not adequately pleaded a claim in Count I. As explained above, although fabrication of evidence may not always give rise to a due process claim actionable under §1983, such a claim may exist where the defendant has been convicted based on fabricated evidence. *See Petty v. City of Chi.*, 754 F.3d 416, 422–44 (7th Cir. 2014). Thus, to plead a Due Process claim adequately, Green must allege facts sufficient to plausibly suggest that Defendants fabricated evidence ***and*** that the evidence fabrication precluded him from receiving the trial process due to him. He has not done so here. As currently pleaded, the Complaint contains no allegations indicating that any allegedly fabricated evidence was actually used *at trial* or otherwise played any role in his conviction *at trial*, resulting in his post-trial detention. (first emphasis original)).

at trial is just one way that the use of fabricated evidence can be the basis for a due process claim and argues that a guilty plea does not foreclose a due process claim. (Dkt. #178, 14.) To support his contention, plaintiff must parse the language from the *Avery* decision (just as he did from *Whitlock*), suggesting it states "*convictions* premised on deliberatively fabricated evidence * * * will always violate the defendant's right to due process." (*Id.* 12 (emphasis original)). But the full quote is:

> Falsified evidence will *never* help *a jury* perform its essential truth-seeking function. That is why convictions premised on deliberately falsified evidence will always violate the defendant's right to due process.

Avery, 847 F.3d 433, 440 (first emphasis original). Context matters. At a trial, *a jury* (or judge) is acting as fact-finder and weighing the evidence presented to determine innocence or guilt. In the context of a guilty plea, the only "facts" a court must find is that the plea is voluntary, knowing and intelligent. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973) ("[A defendant who has plead guilty] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann*.") Thus, the conviction is not "premised" on the allegedly fabricated evidence, it is premised on *the plea*. (Dkt. #192, 10-15.)

Finally, plaintiff additionally argues that the issue of whether allegedly fabricated evidence was the "proximate cause" of plaintiff's convictions is a finding of fact that should be left to the jury. (Dkt. #178, 18.) Plaintiff is confusing the causation standard for his state law malicious prosecution claim with Supreme Court precedent that holds, as a matter of law that a guilty plea breaks the causal connection between a conviction and any unconstitutional conduct that preceded the plea. *Tollett*, 411 U.S. at 267 ("We thus reaffirm the principle recognized in the *Brady* trilogy: a guilty plea represents a break in the chain of events which has preceded it in the criminal process."); see also, Dkt. #192, 10-15.

The only constitutional remedy available to plaintiff based on Defendant Officers' alleged fabrication of evidence (if proven) would be claims for post-legal process, pre-trial detention without probable cause under the Fourth Amendment and the Fourth Amendment alone. Plaintiff, unlike the plaintiff in *Avery* (or those in *Patrick*, *Whitlock* and *Fields II*), did not go to trial. He therefore cannot (and never will be able to) allege that the purported fabricated evidence was *admitted against him at trial*, an allegation critical to stating a fabrication of evidence claim under the due process clause, dooming that claim.

The vacation of guilty plea under state law does nothing more than lift the *Heck* bar to a section 1983 claim for damages. But plaintiff must still establish that his guilty pleas were unconstitutional to state any due process claim. That is, he must establish that defendants' conduct caused his pleas to not be "voluntarily and intelligently entered." *Tollet*, 411 U.S. at 267. The only conceivable way he could do that is if had alleged that the officers suppressed exculpatory evidence. As discussed in defendants' joint motion and below, plaintiff's allegations fail to state claims under *Brady*.

B. **Plaintiff Has Not Alleged Viable *Brady*-Based Due Process Claims.**

As defendants conclusively established in their joint motion (Dkt. #170, 14-21), plaintiff's attempted *Brady*-based due process claims fail because plaintiff admits he knew the alleged information he asserts was withheld: that the Defendant Officers (i) planted drugs on him at the time of his arrests; and (ii) falsified police reports in connection with the arrests. (Dkt. #170-1, ¶¶38-39, 54-55, 58-59.) Plaintiff also admits he and other residents at Ida B. Wells knew about the officers' alleged pattern of misconduct, and, given that knowledge, "he could have used it to impeach the officers' accounts of his arrests, which would have changed the outcome of the criminal proceedings instituted against him" if he had chosen to go to trial and challenge the State's evidence. (*Id.* at ¶84.) Instead, as he admits, plaintiff assessed his risks and took the sure bet—a guilty plea. Plaintiff's admissions alone defeat his *Brady* claims.

Beyond his admissions, plaintiff has failed to refute or distinguish Supreme Court precedent that holds there is no constitutional duty to disclose impeachment evidence prior to a guilty plea. *United States v. Ruiz*, 536 U.S. 622, 633 (2002). He also failed to refute or distinguish circuit precedent that holds police officers have no *Brady* duty to disclose their own misconduct, including any alleged fabrication of evidence. *Saunders-El v. Rohde*, 778 F.3d 556, 562 (7th Cir. 2015). And he has failed to dispute that citizen complaints were available to him and his prosecutors and therefore Defendant Officers had no duty to disclose them. *Harris v. Kuba*, 486 F.3d 1010, 1015 (7th Cir. 2007).

1. Defendants Had No Duty to Disclose Impeachment Evidence Prior To Plaintiff's Guilty Pleas.

Plaintiff concedes that *Ruiz* holds that there is no constitutional duty to disclose impeachment evidence prior to a guilty plea. (Dkt. 178, 20.) In that case, the Supreme Court expressly stated: "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." *Ruiz*, 536 U.S. 622, 633. *Ruiz* is dispositive and plaintiff concedes as much. (Dkt. #178, 20-21.)

To avoid *Ruiz*, plaintiff claims that this dispositive precedent doesn't apply because he has also alleged the suppression of exculpatory evidence and *Ruiz* left open the possibility of a *Brady* claim in the guilty plea context if the government suppressed exculpatory, rather than impeachment, evidence. (*Id.*, 21.) Assuming *arguendo* that *Ruiz* did leave open that possibility, plaintiff's own allegations establish that the only evidence he claims was suppressed was the officers' failure to disclose their alleged fabrication of evidence and an alleged pattern of misconduct. (Dkt. #170-1, ¶¶42-45, 62-64, 84, 106; *see also* Dkt. #178, 21 ("Defendants failed to disclose that they framed Mr. Thomas, that they did not catch him possessing or selling drugs, and that they made up the crimes entirely").) As discussed below and in defendants' joint motion, our circuit does not allow allegations of failure to disclose misconduct, including the fabrication evidence, to support a *Brady* claim. (Dkt. #170, 18-21.) That is, under circuit precedent, there is no *Brady* duty to disclose the fabrication of evidence in the context of a trial, much

less in the context of a guilty plea. (*Id.*) And given the nature of his allegations, plaintiff would have already known about the misconduct he alleged—that is, that the officers planted drugs on him and fabricated police reports falsely reporting they had found the drugs on him.

Likewise, any alleged pattern of fabricating evidence in *other* unrelated cases is beyond the reach of *Brady*. That alleged evidence from other cases had nothing to do with plaintiff's guilt or innocence. It was impeachment (and likely inadmissible propensity) evidence whose sole purpose would have been to impeach the officers' credibility and create an inference that the officers had a propensity to fabricate evidence and acted in conformity with that propensity in plaintiff's cases. In plaintiff's own words:

> [E]ach of the Defendant Officers concealed from Mr. Thomas evidence that Watts and his teammates were in fact engaged in a wide-ranging pattern of misconduct. Had this information been disclosed to Mr. Thomas, ***he would have used it to impeach the officers' accounts of his arrest, which would have changed the outcome of the criminal proceedings instituted against him***.
>
> City officials withheld information they had about the Defendant Officers' pattern of misdeeds, information that citizens like ***Mr. Thomas could have used to impeach the corrupt officers and defend against the bogus criminal charges placed upon him***.

(Dkt. #170-1, ¶¶84, 106.)

Citing *Fields v. City of Chicago*, 981 F.3d 534 (7th Cir. 2020), plaintiff argues there is no need for the Court to make a factual determination at the pleadings stage as to whether the alleged *Brady* material was impeachment or exculpatory. (Dkt. #178, 21). Defendants do not ask this Court to make any factual determination. Plaintiff's pleadings (quoted above) expressly admit the alleged *Brady* material was for impeachment purposes. And as set forth in defendants' motion and this reply, the "evidence" plaintiff alleges to be *Brady* material plausibly can only be impeachment as a matter of law. None of it goes to plaintiff's guilt or innocence. Beyond offering conclusory statements, plaintiff does not explain how any of the allegedly suppressed evidence could be exculpatory in nature. Thus, plaintiff's due process claims predicated on any failure to disclose the alleged fabrication of evidence or alleged pattern of misconduct

prior to plaintiff's guilty pleas must be dismissed.

2. **Plaintiff Alleges that He Knew About the Alleged Misconduct in His Cases and Other Cases.**

Plaintiff says he knew the officers planted drugs on him. (Dkt. #170-1, ¶¶36, 38, 51-56). He also says that long before his arrests, he and the Ida B. Wells community had knowledge of the allegations that form the allegedly withheld "pattern" of misconduct. (*Id.*, ¶¶4, 6, 29-32, 38-39, 50-52.) And he even says that he witnessed trumped-up arrests of others, and other residents witnessed his trumped-up arrests. (*Id.*, ¶¶4, 6, 29-32, 38-39, 50-52.) Thus, by his own admission, plaintiff knew of the information he claims was withheld, and had access to ample witnesses from his own community who he could have called to present evidence of the purported fabrication in his case, as well as the purported pattern of fabrication in other cases (assuming the trial court would even deem such "evidence" admissible), *if* he had chosen to go trial. *Gauger v. Hendle*, 349 F.3d 354, 360 (7th Cir. 2003), overruled in part on other grounds, *Wallace v. City of Chicago*, 440 F.3d 421 (7th Cir. 2006) (that which is known, by definition, cannot be suppressed); *Harris,* 486 F.3d at 1015) ("Harris' own alibi was not concealed from him and is therefore not properly a claim under *Brady*."); *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1029 (7th Cir. 2006) (there is no *Brady* obligation to inform accused that her own confession was coerced). In the exercise of reasonable diligence, he and his attorneys would have had access to these other "witnesses," as well as any and all civilian complaints they saw fit to request and investigate. This alone dooms plaintiff's *Brady* claim because he cannot demonstrate that he was unaware of the evidence he alleges was suppressed.

Plaintiff concedes in his response that he knew the officers allegedly fabricated evidence against him and that he was "generally aware" of the "pattern" evidence he claims was suppressed. (Dkt. #178, 22.) However, he insists that under *Avery* his *Brady* claims are nonetheless viable. (*Id.*) Plaintiff misses the point *Avery* made: there is a material difference between disclosing *evidence of* fabrication and disclosing the fact of the fabrication itself. Plaintiff Avery alleged that the defendants fabricated witness

statements from three jail house informants who had been incarcerated with him while he was in prison for an unrelated drug conviction. *Avery*, 847 F.3d 433, 435-36. The informants claimed that Avery had confessed to an unsolved murder. *Id.* at 436. The three statements were introduced at Avery's criminal trial through the officers' police reports, and two of the informants testified at the criminal trial. *Id.* at 437. Unbeknownst to Avery at the time of his criminal trial, the jail house informants were pressured to give their statements and/or testimony in that they were interviewed (over the phone and in person) multiple times by different officers over an extended period of time, in one case over several years. *Id.* 436-37. One of the informants was also promised favorable treatment in his own criminal case in exchange for testifying against Avery (*id.* at 436) and another had recanted before Avery's trial but was told he "had to" testify (*id.*at 437).

The Seventh Circuit held that Avery could bring a *Brady*-based due process for the officers' failure to disclose *the circumstances* that led to the informants' statements, including any promises of benefits in exchange for testimony because that evidence would have supported the plaintiff's claim that the informants' statements were fabricated. The court recognized, however, that Avery could not base a *Brady* claim on the officers' failure to inform him that the informants' statements that he confessed were false because by their very nature, Avery already knew the statements were false. *Id.* (recognizing the distinction in what could constitute a *Brady* claim, stating "Avery knew that the informants' statements were false, but he did *not* know about the pressure tactics and inducements the detectives used to obtain them." (emphasis original)).[11]

[11] To illustrate this distinction (admitting the fact of a fabrication as opposed to disclosing evidence of the fabrication) *Avery* distinguishes *Gauger*, *Sornberger* and *Harris*, cases which, like *Saunders-El*, are actually apposite here. *Id.* at 443–44 ("We've applied the *Gauger* rule to preclude *Brady* claims against officers who failed to disclose the coercive circumstances surrounding the statements of prosecution witnesses when the criminal defendant already knew of those circumstances. *Petty*, 754 F.3d at 423–24; *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1029 (7th Cir. 2006). We've also applied it in a case involving officers who falsely reported a relationship between the criminal defendant and a third party. *Harris v. Kuba*, 486 F.3d 1010, 1016–17 (7th Cir. 2007). * * * In *Gauger*, *Petty*, and *Sornberger*, the criminal defendants were already aware of the impeaching facts—namely, that the testimony

Plaintiff here has not alleged that Defendant Officers suppressed any exculpatory or impeachment facts outside of his knowledge. Like the plaintiff in *Saunders-El* (see discussion in Dkt. #178, 26), plaintiff here has merely alleged that the officers failed to admit what he would have known–that they planted evidence on him–and that is not a proper *Brady* claim. *See also Wrice v. Burge*, 187 F. Supp. 3d 939, 951–52 (N.D. Ill. 2015) ("To be clear, I am not endorsing [plaintiff]'s argument that the officers who interrogated [witness] had a *Brady* obligation to disclose that they fabricated evidence. [Plaintiff] has stated a plausible entitlement under *Brady* to evidence relating to how the police interrogated [witness]. That is quite different from saying that [plaintiff] had a right under *Brady* to have the Officer Defendants admit before trial that they fabricated [witness]'s statement." (citations omitted)).

Plaintiff tries to sidestep his own allegations by claiming that, although he "did not detail all of the evidence that was withheld from him," under Rule 8 of the Federal Rules of Civil Procedure, he wasn't required to do so. (Dkt. #178, 23.) But the issue with plaintiff's allegations is not that he didn't detail *all* of the evidence that was suppressed; it's that the only evidence he alleged was suppressed was information he already knew. Specifically, plaintiff asserts that, in connection with both of his arrests, he was not committing any drug crimes when he was arrested, the arresting officers found no drugs on him, defendant Watts planted drugs on him, and Defendant Officers fabricated police reports. (Dkt. #170-1, ¶¶36-39, 50-55, 58.) There is no other "misconduct" described. While the Court can certainly draw inferences from facts, it cannot draw inferences from nothing. *Akbar v. Calumet City*, 632 Fed. Appx. 868, 872 (7th Cir. 2015) ("inference must be based on more than speculation or conjecture"). Applying that principle here, plaintiff cannot premise his *Brady* claims on the naked and conclusory

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in question was coerced. In *Harris* the criminal defendant was just complaining that the officer didn't admit to falsifying his report. Here, in contrast, Avery knew that the informants' statements were false, but he did *not* know about the pressure tactics and inducements the detectives used to obtain them. And he did not know that Kimbrough had in fact recanted his statement just before trial but was told that he 'had to' testify. In other words, he did not have the evidence that could help him *prove* that the informants' statements were false.")

allegation that some unidentified piece of exculpatory evidence (beyond the failure to disclose the alleged fabrication of evidence) was withheld. He must offer the Court *some* facts to support that legal conclusion and make his claims plausible. Labels and conclusions simply don't cut it, and the Court can and should reject them and dismiss these claims. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555, 570 (2007).[12]

3. Prosecutors Were Aware of Or Had Access to Civilian Complaints.

Plaintiff admits that as to the allegations of misconduct in other criminal cases, he knew, and "that it was generally known in his community, that Watts ran a corrupt group of police officers." (Dkt. #178, 24.) He claims, however, that the Court should allow his *Brady* claims to proceed anyway because he did not have a "full accounting of Defendants' misconduct," which he says the civilian complaints would have given him. (*Id.*) This argument requires the Court to disregard that prosecutors are aware of and have access to citizen complaints. It also requires the Court to disregard the precedent that imposes the duty to learn of the complaints and disclose them, if they determine the complaints are subject to *Brady*, on prosecutors. *See Kyles v. Whitley*, 514 U.S. 419, 437 (1995) ("the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police"); *Youngblood v. West Virginia*, 547 U.S. 867, 869-70 (2006) (police officers discharge their *Brady* obligation by disclosing exculpatory information to prosecutors that is *not otherwise already known to them*). Thus, even assuming, for purposes of argument only, that the content of these

[12] Although plaintiff attempts to bolster his deficient allegations by now claiming that the officers failed to disclose the "true origin" of the drugs he claims they planted, this is nothing more than semantics. *See Walker v. White*, 16 CV 7024, 2017 WL 2653078, at *4 (N.D. Ill. June 20, 2017) (dismissing *Brady* claim: "The Seventh Circuit [] does not permit recasting evidence-fabrication claims as *Brady*-based due process claims. [] Although Walker attempts to articulate his *Brady* claim as alleging that the officers withheld evidence as to the drugs' origin, he merely repeats his fabrication of evidence claim. Moreover, because Walker knew the drugs were not his and were planted, he knew enough to pursue evidence of the true source of the drugs, and nothing in the complaint suggests that such an avenue of investigation was closed off to Walker. His due process claim is not properly brought under *Brady*, and therefore the portion of Walker's due process claim based on alleged *Brady*-violations is dismissed for failure to state a claim. (citations omitted)).

citizen complaints constituted *Brady* material, it was the prosecutors' duty to turn them over. *Beaman v. Freesmeyer*, 776 F.3d 500, 512 (7th Cir. 2015) (the duty to disclose *Brady* material to the defense in a criminal case belongs to the prosecutor). And as noted above, this entire argument is irreconcilable with plaintiff's allegations that Defendant Officers' misconduct was widely known in the Ida B. Wells community.

Plaintiff asks this Court to reject defendants' argument because he did not allege that his prosecutors had access to the complaints. This is a problem of plaintiff's own making. Plaintiff has invited the argument he asks this Court to reject as he is the one who claims there was a pattern of these officers' misconduct. Plaintiff did not (and could not) allege that his prosecutors did not have access to the complaints. To further misdirect, plaintiff then points to his allegation that the officers "hid their alleged misconduct" in his cases from his prosecutors, implying that the allegation is sufficient to save his claims. But that the officers "hid" their alleged fabrication of evidence in his cases from his prosecutors has nothing to do with those prosecutors' access to complaints or their duty to turn them over to plaintiff if, in their judgment, they were subject to *Brady*.

Likewise, that the officers "hid" their alleged fabrications in plaintiff's cases does not relieve him of his duty to exercise reasonable diligence to obtain those complaints from his prosecutors. At any time during his criminal proceedings, plaintiff could have requested any citizen complaints filed against his arresting officers from his prosecutors. After all, he alleges the officers' propensity to commit misconduct was widely known by him and others in the community. And nowhere, not even in his response, does plaintiff claim he even tried to obtain those complaints. *U.S. v. O'Hara,* 301 F.3d 563, 569 (7th Cir. 2002) (evidence is only suppressed if plaintiff could not have discovered the evidence through the exercise of reasonable diligence).[13] Thus, not only was the purported pattern known to

[13] Plaintiff cites a civil case involving a discovery dispute in an attempt to excuse his failure to exercise reasonable diligence, claiming that the City of Chicago "has had issues with making complete productions." (Dkt. #178, n.

plaintiff, evidence of the "pattern" was discoverable in the exercise of even the most minimal diligence.[14]

4. Under *Saunders-El*, *Avery* and Other Circuit Precedent, Defendants Had No *Brady* Duty to Disclose Alleged Misconduct.

As defendants also established in their joint motion, allegations that police officers failed to disclose they fabricated evidence cannot form the basis of a *Brady*-based due process claim. (Dkt. #170, 18-21.) Neither case Plaintiff cites, *Manning v. Miller*, 355 F.3d 1028 (7th Cir. 2004) or *Engel v. Buchan*, 710 F.3d 698 (7th Cir. 2013), holds otherwise.

The specific allegations addressed in *Manning*, a *Bivens* action, were that FBI agents failed to disclose (1) the circumstances of photo array lineup with an eyewitness which would have impeached the identification (*Manning v. Buchan*, 357 F. Supp. 2d 1036, 1043 (N.D. Ill. 2004)); (2) that they had made payments to and allowed a paid informant conjugal visits as well as assisted in the informant's criminal case (*id.* at 1040, 1042); (3) that in the informant's initial statement, he stated the plaintiff did not confess to the crimes charged (*Manning v. Dye*, 2004 WL 2496456, at *2 (N.D. Ill. Nov. 5, 2004)); and (4) portions of tape recordings that would have established that the plaintiff did not confess (*Manning v. Miller*, 355 F.3d at 1033). Thus, the allegations in *Manning* established the suppression of impeachment evidence and exculpatory evidence that could have been used to *prove* the fabrication, rather than merely that the agents remained silent or lied about their fabrications.

And *Engel* also involved allegations of benefits to a key witness that were not disclosed before trial. Specifically, the Seventh Circuit allowed the plaintiff's *Brady* claim to proceed because he alleged that defendants suppressed the fact that they paid a key witness in exchange for his testimony at the plaintiff's criminal case. 710 F.3d 698, 710 ("The suppressed exculpatory evidence included, but was

12) In that case, hundreds of documents relating to civilian complaints were produced while others were not based on an assertion of privilege. *Turner v. City of Chicago*, 15 CV 06741, 2017 WL 552876, (N.D. Ill. Feb. 10, 2017). Neither the case nor the argument has any relevance to this issue.

[14] Moreover, as set forth above, plaintiff's admitted knowledge of these allegations coupled with his guilty plea meant that the prosecutors' duty to disclose this impeachment evidence was never triggered in the first place.

not limited to, previously-undisclosed evidence that the key witness against Plaintiff had received monetary payments in exchange for his testimony" (internal quotation marks omitted)). The court did not find, as plaintiff implies, that the *Brady* claim could proceed because the defendants had failed to disclose their fabrication of evidence. Indeed, the opinion opens with "the Missouri Supreme Court vacated the [plaintiff's] conviction based on the State's failure to disclose exculpatory evidence—specifically, that a police investigator had paid a key witness to testify—thus violating Engel's due-process rights under *Brady*." *Id.* at 699.[15] Thus, *Engel* is consistent with *Avery, supra* ("Avery knew that the informants' statements were false, but he did *not* know about the pressure tactics and inducements the detectives used to obtain them." (emphasis original)).

Plaintiff next argues that *Gauger* and *Saunders-El* do not bind the Court because their pronouncements that police do not have a *Brady* duty to tell the truth about their misconduct were merely *dicta*. This is a mischaracterization of both cases. In rejecting the plaintiff's proposed extension of *Brady* in *Gauger*, the Seventh Circuit stated in its analysis: "Gauger wants to make every false statement by a prosecution witness the basis for a civil rights suit, on the theory that by failing to correct the statement the prosecution deprived the defendant of *Brady* material, that is, the correction itself." *Gauger,* 349 F.3d 354, 360; *see also id.* ("We find the proposed extension of *Brady* difficult even to understand. It implies that the state has a duty not merely to disclose but also to create truthful exculpatory evidence."). In *Saunders-El*, the Seventh Circuit, in explaining why it was rejecting the plaintiff's attempt to base a *Brady* claim on allegations of fabrication, stated: "Saunders–El seeks to charge the officers with a *Brady* violation for keeping quiet about their wrongdoing, not for failing to disclose any existing piece of *evidence* to the prosecution. But our case law makes clear that *Brady* does not require the creation of

[15] Notably, the court remarked that simply "to allege 'defendants withheld exculpatory evidence,' [as Plaintiff Thomas does here] is basically to state the definition of a *Brady* claim" and such allegation would not be sufficient to plausibly state a claim. *Id.* at 709 ("We have interpreted the plausibility standard to mean that the plaintiff must give enough details about the subject-matter of the case to present a story that holds together." (internal quotation marks omitted)).

exculpatory evidence, nor does it compel police officers to accurately disclose the circumstances of their investigations to the prosecution." 778 F.3d 556, 562 (emphasis original). Again, in both cases, these principles of law were critical to the analysis and rejection of the *Brady* claims asserted there. The discussion of what Seventh Circuit "case law makes clear" cannot fairly be characterized as mere *dicta*.

Saunders-El was the first Seventh Circuit opinion to expressly hold that a due process fabrication claim exists. 778 F.3d at 560 ("district court[s] [have] erred in holding, *categorically,* that a claim of evidence fabrication cannot form the basis of a due process claim under §1983 and must instead be brought as a state law malicious prosecution claim"). But in doing so, the court made sure that the holdings in *Gauger, Sornberger*[16] and *Harris* were not compromised. *Saunders-El* expressly found that, consistent with those cases, there is no duty to disclose misconduct, thereby creating evidence for a defendant. *Id.* at 562. In short, *Saunders-El* made clear that its recognition of a due process fabrication claim was distinct from an improper extension of the *Brady* duty that would include disclosure of an alleged fabrication of evidence.[17]

Contrary to plaintiff's argument, his allegations simply are not the equivalent of those in *Manning* or *Engel* or *Avery*.[18] But they are like those rejected in *Gauger*, *Sornberger*, *Harris* (see *supra*, n. 11, n. 16) and *Saunders-El* (see Dkt. #170, 20-21). And like the attempted *Brady* claims in those latter cases,

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[16] In *Sornberger*, one of the plaintiffs alleged that the defendants failed to disclose that they had coerced her into confessing. 434 F.3d 1006, 1029. The Seventh Circuit rejected her *Brady* claim, finding that she "knew herself what occurred during the interrogation, and the police were under no *Brady* obligation to tell her again that they coerced her into confessing." *Id.* Like the *Sornberger* plaintiff, plaintiff here knew that the drugs were planted on him, and also like the *Sornberger* plaintiff, this plaintiff was therefore "not deprived of evidence held by the police or prosecutor that would have helped [him] question the officers' version of the events in court. [He] therefore has not stated a valid *Brady* claim." *Id.*

[17] And *Avery* did the same two years later when it articulated the nature and contours of a due process claim based on the use of fabricated evidence at trial. See *supra* n. 11.

[18] Defendants' note that *Avery* correctly and repeatedly describes the evidence it discusses and finds to be subject to *Brady* as "material impeachment" and "impeachment" evidence. *See generally*, 847 F.3d 433. Such evidence falls squarely within *Ruiz*, which knocks out any duty to disclose impeachment evidence in the context of a guilty plea. 536 U.S. 622, 633. Thus, even if plaintiff could shoehorn his facts into *Avery*'s holding, his claims still fail under *Ruiz*.

plaintiff's *Brady* claims here must also be dismissed.

CONCLUSION

For the foregoing reasons, (i) Count I of the FAC; (ii) the Fourteenth Amendment and federal malicious prosecution claims in Count II; and (iii) any derivative claims based on those deficient claims, should be dismissed with prejudice because they fail to state a claim upon which relief may be granted.

Dated: December 18, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Amy A. Hijjawi, an attorney, hereby certify that, on the date stamped on the margin above, I caused to be filed with the Clerk of the Court's CM/ECF system a copy of this motion, which simultaneously served copies on all counsel of record via electronic notification.

/s/ Amy A. Hijjawi