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

Anthony Murdock,	)	
	)	
Plaintiff,	)	Case No. 20 C 1440
	)	
v.	)	Judge Gary Feinerman
	)	
City of Chicago,	)	
	)	
Defendant.	)	

REPLY IN FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISMISS

In Plaintiff's Complaint, Plaintiff Anthony Murdock tells a story of being pulled over, arrested on a warrant, held at a police station for less than a day and released on bond. What Plaintiff does not do in his Complaint is state how this event violated his rights. Defendant filed a motion to dismiss on the grounds that stating which Constitutional right was allegedly violated is a crucial part of a civil rights lawsuit brought under Section 1983. While conceding that a Plaintiff need not plead legal theories, Defendant argued that deciding which Constitutional right is at issue in a case is not a requirement to plead a legal theory, but is instead "the threshold inquiry in a § 1983 suit," and must be resolved before the case can be litigated. *Manuel v. City of Joliet, Ill.*, 137 S.Ct. 911, 920 (2017). Nothing that Plaintiff filed in his response to Defendant's motion disputes this; all of the cases cited in Plaintiff's footnote one simply hold that a plaintiff need not plead legal theories (or invoke Section 1983), a holding that Defendant does not dispute.

Defendant recognizes that the well-worn prohibition on requiring a plaintiff to plead legal theories is seemingly in conflict with the Supreme Court's repeated proclamation that in a Section 1983 suit, the Constitutional right at issue is the "threshold inquiry." *See Albright v.*

Oliver, 510 U.S. 266, 271 (1994); *McDonough v. Smith*, 139 S.Ct. 2139, 2161 (2019) (dissent of Thomas, J.). But given the Court's repeated admonishment, over more than two decades, that identifying which right is at issue is critical to a Section 1983 case, the specific nature of a Section 1983 case should govern over the more general proposition that Plaintiff cites. Justice Thomas's dissent in *McDonough* illustrates why this issue is important: "without identify[ing] the specific constitutional right at issue, we cannot adhere to the contours of that right when applying, selecting among, or adjusting common-law approaches." *McDonough*, 139 S.Ct. at 2161 (quoting *Manuel*, 137 S.Ct. at 920) (internal quotation marks omitted; brackets in original). The right at issue determines what the elements of the claim are, and Defendants are entitled to be on notice of this at the earliest point of the litigation: the complaint. A Fourth Amendment claim has different elements than a Fourteenth Amendment due process claim, which both have different elements than an Eighth Amendment claim. Defendants need to know which of these Plaintiff is claiming was violated to be able to defend the case effectively.

Plaintiff's Response contains six pages of facts; it is over twice as long as Plaintiff's Complaint. Had Plaintiff's Complaint contained the facts that Plaintiff's Response contained, Defendant would have had no grounds for a motion. Yet Plaintiff's Response is *still* not clear about which of Plaintiff's rights were violated.

Plaintiff cites *Manuel* for the proposition that all pretrial detentions are now governed by the Fourth Amendment. *See* Pl's Resp. [ECF No. 19] at 5. He then cites four other cases from the Seventh Circuit and the Northern District of Illinois that support this position. Defendant agrees with this position. But Plaintiff then confuses the issues, stating in the final paragraph of his Response that "Refusing to release an arrestee who is ready, willing, and able to pay a bond is a violation of the Fourth Amendment *and the Due Process Clause*." *See* Pl's Resp. at 7. Plaintiff's

invocation of the Due Process clause is unsupported by any of his cited cases, and is explicitly foreclosed by *Lewis v. City of Chicago*, 914 F.3d 472 (7th Cir. 2019), which held that the Fourth Amendment and *not* the Due Process clause governed pretrial seizures. The Court should follow the holdings of all of the cases cited by Plaintiff, and hold that the Fourth Amendment alone governs Plaintiff's claim as it currently stands.

While it is true that the Federal Rules of Civil Procedure allow a Plaintiff to plead additional facts to defeat a motion to dismiss, and while Defendant recognizes that Plaintiff may have added enough facts to so defeat the motion, the Court should not simply dismiss Defendant's motion outright. Instead, the Court should enter an order answering Section 1983's "threshold inquiry": that Plaintiff's injuries arose under the Fourth Amendment and the Fourth Amendment alone. Such a holding should govern the case, unless Plaintiff later amends his pleading to change his allegations regarding which of his rights were violated. Defendant's motion to dismiss, to that extent, should be granted.

Respectfully submitted,

Dated: July 23, 2020

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