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

MADELINE MENDOZA, *Plaintiff*, -vs- REYNALDO GUEVARA, *et al.*, *Defendants*.	)	No. 23-cv-2441 *(Judge Durkin)*

MARILYN MULERO, *Plaintiff*, -vs- REYNALDO GUEVARA, *et al.*, *Defendants*.	)	No. 23-cv-4795 *(Judge Durkin)*

PLAINTIFFS' CONSOLIDATED RESPONSE TO DEFENDANTS' JOINT PARTIAL MOTION TO DISMISS[1]

Plaintiffs Madeline Mendoza and Marilyn Mulero show below that the Court should deny Defendants' joint partial motion to dismiss.[2] (ECF No. 52, No. 23-cv-2441, Mendoza Motion; ECF No. 45, No. 23-cv-4795, Mulero Motion.)

I. INTRODUCTION

Plaintiffs Madeline Mendoza and Marilyn Mulero were framed for murder by disgraced Chicago police detectives Reynaldo Guevara and Ernest Halvorsen, resulting in more than 45 years of combined imprisonment for crimes they did not commit.

[1] Plaintiffs believe that a consolidated response to Defendants' motion is the most efficient use of the Court's resources and accordingly submit this joint response.

[2] Defendants filed the identical Partial Motion to Dismiss in both cases, resulting in two distinct ECF entries for the same motion. Plaintiffs refer to Defendants' motion as "MTD."

Defendants now seek to dismiss Plaintiffs' fabrication of evidence claims brought under the Due Process Clause of the Fourteenth Amendment. Defendants argue that when a police officer fabricates evidence that causes an innocent defendant to plead guilty, that guilty plea insulates the officer from liability – even when the wrongful conviction and guilty plea are later vacated. Defendants' arguments are entirely without merit. Notably, Defendants properly concede that their theory has repeatedly been rejected in this district.[3] As Judge Valderrama recently concluded, Defendants' theory would "reward egregious deliberate misconduct from state actors by making conviction following trial the only pathway to vindicate constitutional violations." *In re Watts Coordinated Pretrial Proceedings*, No. 19-CV-1717, 2022 WL 9468253, at *5 (N.D. Ill. Oct. 14, 2022).

This Court should reach the same conclusion and deny Defendants' motion.

II. FACTUAL BACKGROUND

The facts, viewed in the light most favorable to Plaintiffs, *Squires-Cannon v. Forest Preserve District of Cook County*, 897 F.3d 797, 802 (7th Cir. 2018), including facts "consistent with the allegations of the complaint," *Reynolds v. CB Sports Bar, Inc.*, 623 F.3d 1146-47 (7th Cir. 2010), are as follows:

A. Defendants fabricate evidence against Plaintiffs and frame them for two murders

On May 12, 1992, Jacqueline Montanez shot and killed Jimmy Cruz and Hector Reyes in Humboldt Park on the West Side of Chicago. (ECF No. 26, No. 23-cv-2441, Mendoza Amended Complaint, ¶ 13; ECF No. 1, No. 23-cv-4795, Mulero Complaint, ¶¶ 22, 33.)[4] Plaintiffs Marilyn Mulero and Madeline Mendoza were with Montanez when she committed the murders. (Mendoza Amended Complaint, ¶ 14; Mulero Complaint, ¶ 32.) Neither Plaintiff had knowledge of any plan to

[3] The cases are collected below at 10-11.

[4] Plaintiffs hereinafter refer to their respective complaints by name, rather than ECF and case number.

kill Cruz or Reyes and neither in any way aided, abetted, facilitated, or participated in the homicides. (Mendoza Amended Complaint, ¶ 15; Mulero Complaint, ¶ 34.)

Detectives Reynaldo Guevara and Ernest Halvorsen were assigned to investigate the murders. (Mendoza Amended Complaint, ¶ 26; Mulero Complaint, ¶¶ 35, 120-132.) These Defendants conspired, confederated, and agreed to fabricate a false story that Plaintiffs had participated in the murders.[5] (Mendoza Amended Complaint, ¶ 17.)

Guevara and Halvorsen concocted a false story that Montanez shot Reyes, then gave the gun to Mulero, who shot Cruz after Montanez signaled Mulero to shoot. (Mendoza Amended Complaint, ¶ 18; Mulero Complaint, ¶ 2.) Defendants Guevara and Halvorsen engaged in the following acts as part of their scheme to frame Mendoza and Mulero:

a. Detectives Guevara and Halvorsen drove Mulero into an area known to be controlled by the Latin King gang and threatened to have Mulero murdered by that gang if she refused to implicate herself and Mendoza in the murders. (Mulero Complaint, ¶¶ 44-45.)

b. Without advising Mulero of her *Miranda* rights and after refusing her the opportunity to speak with an attorney, Detectives Guevara and Halvorsen engaged in a variety of coercive interrogation tactics to elicit a false confession from Mulero, including threatening her with execution and barring her from ever seeing her children. These improper tactics caused Mulero to make a false confession that falsely implicated herself and Mendoza in the murders. (Mulero Complaint, ¶¶ 41-59; Mendoza Amended Complaint ¶ 19(c).)

c. Defendants Guevara and Halvorsen caused Yvette Rodriguez (a purported witness) to provide a false statement that she had heard Mendoza, Mulero, and Montanez bragging

[5] The Court has appointed Geri Lynn Yanow as special representative for Ernest Halvorsen, deceased. For convenience, Plaintiffs refers to "Defendant Halvorsen" in this memorandum even though Yanow is the proper party.

about the shootings. (Mendoza Amended Complaint, ¶ 19(c); Mulero Complaint, ¶¶ 61-68.) These Defendants secured the false statement from Rodriguez by threatening her with an enhanced penalty on her pending drug case and by threatening to plant evidence to frame Rodriguez on a new drug case if she refused to implicate Mendoza and Mulero. (Mulero Complaint, ¶¶ 62-63.)

d. Defendants concocted statements by purported witness Rhonda Riley that implicated Mulero, even though Riley had not made such statements. (Mulero Complaint, ¶¶ 69-71.)

e. Defendants manipulated police lineups to ensure that Riley falsely identified Mulero. (Mulero Complaint, ¶¶ 73-75.)

f. Defendants caused Jackie Serrano (a purported witness and girlfriend of one of the victims) to provide false statements that she had witnessed Plaintiffs participate in the murders. (Mendoza Amended Complaint, ¶ 19(d); Mulero Complaint, ¶¶ 78-87.)

g. Defendants caused Marilyn Serrano (Jackie Serrano's aunt) to provide false statements that she had witnessed Plaintiffs participate in the murders. (Mulero Complaint, ¶¶ 78-87.)

h. Defendants caused Joan Roberts (a jailhouse informant) to provide a false statement that Mendoza and Mulero had admitted to participating in the murders. (Mendoza Amended Complaint, ¶ 19(e); Mulero Complaint, ¶¶ 88-98.)

i. Defendants Guevara and Halvorsen also prepared police reports containing the false story, attested to the false story in the official police reports, and communicated as truthful their fabrications to prosecutors. (Mendoza Amended Complaint, ¶ 20).

Defendants Gawrys and Riccio either participated in these acts or knew of them and failed to intervene to prevent the violation of Plaintiffs' rights. (Mendoza Amended Complaint, ¶ 21; Mulero Complaint, ¶ 18). Defendant Biebel (named in Mulero's complaint) directed and consented to the misconduct. (Mulero Complaint, ¶ 19.)

Detectives Guevara, Halvorsen, and their co-conspirators caused Mendoza and Mulero to be indicted and charged with first degree murder. (Mendoza Amended Complaint, ¶ 23; Mulero Complaint, ¶ 99.) Plaintiffs knew that it would be impossible to prove that the individual officers had concocted the evidence against them. (Mendoza Amended Complaint, ¶ 24; Mulero Complaint, ¶¶ 53, 101.)

Accordingly, even though Plaintiffs were innocent, they each pleaded guilty to murder. (Mendoza Amended Complaint, ¶¶ 24-25; Mulero Complaint, ¶ 101.) Mendoza was sentenced to 35 years and Mulero was sentenced to death. (Mendoza Amended Complaint, ¶ 25; Mulero Complaint, ¶ 103.) The Illinois Supreme Court later vacated Mulero's death sentence and she was re-sentenced to life in prison. (Mulero Complaint, ¶¶ 111-13.) Mulero served five years on death row. (*Id.* at ¶ 112.)

B. Plaintiffs are exonerated

1. Mendoza

In 1997, before evidence of the misconduct of Detective Guevara came to light, Mendoza unsuccessfully challenged her conviction, arguing that her plea was involuntary, and that trial counsel had failed to adequately investigate the false evidence against her. Mendoza challenged her conviction again in 2022 after learning that lawyers for other wrongfully convicted individuals had uncovered evidence of repeated misconduct by Guevara.[6]

On January 3, 2023, the Circuit Court of Cook County vacated Mendoza's convictions and granted the State's request to *nolle prosequi* the case. (Mendoza Amended Complaint, ¶ 29.) The Circuit Court of Cook County granted Plaintiff Mendoza a certificate of innocence on July 11, 2023, attached as Exhibit 1.[7]

---

[6] Ten murder convictions engineered by Guevara and subsequently vacated are set out in paragraph 48 of the Mendoza's Amended Complaint.

[7] "[J]udicial notice of public court documents is appropriate when ruling on a Rule 12(b)(6) motion to dismiss." *Collins v. Village of Palatine*, 875 F.3d 839, 842 (7th Cir. 2017).

Plaintiff Mendoza was imprisoned from the time of her arrest until she completed her sentence in 2009, for a total of 17 ½ years. (Mendoza Amended Complaint, ¶ 26.) She then served three years on mandatory supervised release, as required by 730 ILCS 5/5-8-1(d) (formerly Ill. Rev. Stat. ch. 38, § 1005-8-1).

2. Mulero

In 1994, Mulero unsuccessfully sought to withdraw her guilty plea. (Mulero Complaint, ¶ 108). Around that same time, Jackie Montanez confessed to committing the murders and having done so alone. (*Id.* at ¶ 109.) Montanez proceeded to confess multiple additional times, each time admitting that she committed the murders without any involvement by Plaintiffs. (*Id.* at ¶¶ 114-15.)

It was not until 2020, when significant evidence of Defendants' misconduct came to light, that Governor Pritzker commuted Mulero's sentence and she was released from prison, having served 27 years and 11 months in prison. (*Id.* at ¶ 116-117). On August 9, 2022, Mulero's conviction was vacated by agreement with the Cook County State's Attorney's Office and all charges against her were dismissed. (*Id.,* ¶ 6.)

III. ARGUMENT

Plaintiffs bring these lawsuits against the City of Chicago and several present or former Chicago police officers. Each Plaintiff sues the four officers directly involved in framing them: Guevara, Halvorsen, Gawrys, and Riccio. Plaintiff Mulero also sues Robert Biebel, a supervising officer. (Mulero Complaint, ¶ 19.)

Plaintiffs bring claims against these officers for, *inter alia,* fabricating evidence that caused them to be unreasonably seized and deprived of liberty in violation of the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment.[8] Plaintiffs also bring *Monell* claims against the City of

[8] The other claims include state law malicious prosecution claims brought by both Plaintiffs, a *Brady* claim and a claim for Intentional Infliction of Emotional Distress brought by Mulero, and a federal malicious prosecution claim brought by Mendoza. This latter claim became viable in this Circuit after the Supreme Court's holding in *Thompson v. Clark*, 596 U.S. 36 (2022), which rejected the Seventh Circuit's rule that there is no "constitutional

Chicago, alleging that the City's policies and practices, including its failure to discipline Halverson and Guevara, were a cause of the misconduct in this case.

Defendants challenge only a portion of Plaintiffs' fabrication of evidence claim and do not challenge any other claims. The core of the motion to dismiss is the meritless theory that a guilty plea, caused by fabricated evidence and subsequently vacated, provides immunity for the police officers who framed innocent persons. This Court, like every other court in this district that has rejected this theory, should deny the motion to dismiss.

A. Plaintiffs' guilty pleas do not foreclose Fourteenth Amendment due process claims

Despite their innocence, Plaintiffs pleaded guilty because they knew that it would be impossible to prove that the officers had concocted the evidence against them. (Mendoza Amended Complaint, ¶¶ 24-25; Mulero Complaint, ¶ 101.) The Seventh Circuit has "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." *Whitlock v. Brueggemann,* 682 F.3d 567, 579 (7th Cir. 2012). "How 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." *White v. City of Chicago*, 17-cv-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018) (citing *Whitlock,* 682 F.3d, at 582.)

---

claim founded on malicious prosecution." *Newsome v. McCabe*, 256 F.3d 747, 751 (7th Cir. 2001). *Thompson* explicitly recognized a "Fourth Amendment claim under § 1983 for malicious prosecution." *Thompson*, 596 U.S. at 39, 41, 42, 43, 44, 48, 49.

After it decided *Thompson,* the Supreme Court vacated the Seventh Circuit's holding in *Smith v. City of Chicago*, 3 F.4th 332, 335 (7th Cir. 2021), which continued to follow the rule of *Newsome*. *Smith v. Chicago,* 142 S. Ct. 1665 (2022). On remand, the Seventh Circuit acknowledged that "*Thompson* dictates a result opposite to our 2021 opinion." *Smith v. City of Chicago*, No. 19-2725, 2022 WL 2752603, at *1 (7th Cir. July 14, 2022), *amended on denial of reh'g*, 2022 WL 19572962 (7th Cir. Aug. 4, 2022). The district court in *Wilson v. Estate of Burge*, No. 21-CV-03487, — F. Supp. 3d —, 2023 WL 2750946 (N.D. Ill. Mar. 31, 2023) accurately applied the current state of the law in the Seventh Circuit when it refused to dismiss a federal malicious prosecution claim. *Id.* at *75.

Defendants' argument for dismissal rests on an interpretation of Seventh Circuit precedent that no district court has accepted. The crux of this argument is a misreading of the Seventh Circuit's holding in *Patrick v. Chicago*, 974 F.3d 824 (7th Cir. 2020). (MTD at 5-7.)

In *Patrick,* the plaintiff was convicted of a double murder because his coerced confession and a falsified lineup report were used against him *during his criminal trial. Patrick,* 974 F.3d at 835-36. A civil suit followed, resulting in a verdict for the plaintiff. *Id.* at 830-31. On appeal, the Seventh Circuit held that the district court committed harmless error by providing an incomplete jury instruction that failed to explain that plaintiff had the burden to prove that the fabricated evidence was used against him at his criminal trial and was material. *Id.* at 835. In other words, a fabrication of evidence claim based on a conviction following trial requires proof that the fabricated evidence was used at trial. Otherwise, the fabricated evidence could not be said to have caused the guilty verdict. *Patrick* states a rule that applies when there is a trial, but nowhere does *Patrick* state that use of fabricated evidence at trial is *always* required to make out a Fourteenth Amendment due process violation. As the Seventh Circuit held in *Armstrong v. Daily,* 786 F.3d 529 (7th Cir. 2015), a case that arose from the destruction of exculpatory evidence, a trial is not required for police misconduct to violate the Due Process Clause. *Id.* at 551-55.

Defendants make much of the fact that the Seventh Circuit in *Patrick*, "pointed out that its pattern instruction on a fabricated evidence claim provides that a plaintiff must prove, as elements of the claim, that the fabricated evidence was introduced at trial and was material." (MTD at 7.) But Defendants ignore that the relevant pattern instruction, § 7.14, provides *two* paths to showing that fabricated evidence was used to deprive a plaintiff of his liberty: plaintiff must prove either that the fabricated evidence was "introduced against plaintiff at his criminal trial" or "in his criminal case." SEVENTH CIRCUIT'S PATTERN JURY INSTRUCTION § 7.14 (2017).

It is unsurprising that the *Patrick* court only referenced the "trial" prong of this instruction because the issue under review was a jury instruction in a case where there had been a trial. The other cases that Defendants cite are similarly inapposite because they involved plaintiffs convicted after a trial, rather than a guilty plea. *Moran v. Calumet City*, 54 F.4th 483 (7th Cir. 2022); *Fields v. Wharrie*, 740 F.3d 1107 (7th Cir. 2014); *Avery v. City of Milwaukee*, 847 F.3d 433 (7th Cir. 2017).

Here, however, neither Mendoza nor Mulero went to trial, but the fabricated evidence was presented to the grand jury, it caused Plaintiffs to plead guilty, it was presented to the trial judge before the state trial court accepted the pleas, and it was considered again by the court when imposing sentence.

Defendants attempt to manufacture a favorable holding by quoting snippets from *Patrick*, such as: "[i]f fabricated evidence is later *used at trial to obtain a conviction*, the accused may have suffered a violation of his due process right to a fair trial[,]" and arguing that this language "affirmed the scope of a fabricated evidence as being confined to evidence introduced at trial." (MTD at p. 6). But Defendants are overreading *Patrick*. Again, *Patrick* referred to evidence being "used at trial" because the underlying criminal case went to trial. When read in its full context, the *Patrick* court carefully defined a fabrication of evidence claim without reference to use of the evidence at trial:

> The essence of a due process evidence-fabrication claim is that the accused was convicted and imprisoned based on knowingly falsified evidence, violating his right to a fair trial and thus depriving him of liberty without due process.

Patrick, 974 F.3d at 835.

Other decisions from the Seventh Circuit (including those cited by Defendants) likewise define the due process right without regard to whether the fabricated evidence was used at trial. In *Avery v. City of Milwaukee*, 847 F.3d 433, 439 (7th Cir. 2017), the Court wrote that "convictions premised on deliberately fabricated evidence will *always* violate the defendant's right to due process." *Id.* at 439

(emphasis added). The Court repeated this formulation in *Lewis v. City of Chicago,* 914 F.3d 472, 479 (7th Cir. 2019). This rule does not have a carve-out for convictions that follow a guilty plea.

Defendants concede that numerous decisions in this district have rejected their meritless theory, citing *In re Watts Coordinated Pretrial Proceedings*, No. 19-CV-1717, 2022 WL 9468253 (N.D. Ill. Oct. 14, 2022). (MTD at 8.) In that case, Judge Valderrama considered and rejected each argument Defendants raise here, concluding:

> A fair reading of Seventh Circuit fabricated evidence jurisprudence, from *Whitlock* to *Patrick*, reveals that the due process violation occurs once the material fabricated evidence is introduced "in some way"—or more precisely, "in his criminal case"—that result in the criminal defendant's conviction and ultimately deprives him of his liberty. [*Avery v. City of Milwaukee*, 847 F.3d 433, 439 (7th Cir. 2017).] One such way, but not the only way, is through a conviction following a trial. *Another way is when the fabricated evidence is used to coerce the defendant to plead guilty.* Any reading to the contrary would reward egregious deliberate misconduct from state actors by making conviction following trial the only pathway to vindicate constitutional violations. The Court can discern no cogent basis for such a distinction.

In re Watts Coordinated Pretrial Proceedings, No. 19-CV-1717, 2022 WL 9468253, at *5 (N.D. Ill. Oct. 14, 2022) (emphasis added).

Judge Valderrama further noted that his conclusion was consistent with rulings by several other judges in this district – decisions which Defendants are also unable to distinguish. *Baker v. Chicago,* 483 F.Supp. 3d 543, 553 (N.D. Ill. 2020) (denying motion to dismiss Fourteenth Amendment claim against defendant and others because "fabricated evidence compelled [plaintiffs] to plead guilty to charges stemming from their … arrests") (Wood, J.); *Carter v. Chicago*, No. 17 C 7241, 2018 WL 1726421, at *5 (N.D. Ill. Apr. 10, 2018) (holding that "it reasonably can be said that the fabricated evidence caused plaintiff to be deprived of his liberty" because plaintiff alleged that he would not have pled guilty absent the fabricated evidence) (Gettleman, J.); *White v. Chicago*, No. 17-CV-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018) (Coleman, J.) (guilty plea based on evidence allegedly fabricated by defendants was not voluntary and did not invalidate a Fourteenth Amendment claim); *Powell v. Chicago*, No. 17-CV-5156, 2018 WL 1211576, at *7-*8 (N.D. Ill. Mar. 8, 2018 (refusing to

dismiss Fourteenth Amendment due process claim where plaintiff alleged that he pled guilty because defendants fabricated evidence against him) (Blakey, J.); *Saunders v. Chicago,* No. 12-cv-09158, 2014 WL 3535723, at *5 (N.D. Ill. July 11, 2014) (concluding that defendants' misconduct was the source of plaintiff's injuries, because the misconduct caused plaintiff to plead guilty, and therefore gives rise to her constitutional claims) (Dow, J.)

In the face of these well-reasoned and persuasive decisions from this district, Defendants rely on three easily distinguishable district court cases from other circuits. (MTD at 5.) Each case was prosecuted pro se and involved a guilty plea that had not been vacated.[9] That a plaintiff cannot pursue a civil case that would call into question the viability of an extant guilty plea and conviction is compelled by *Heck v. Humphrey*, 512 U.S. 477 (1994), and is irrelevant to Plaintiffs' claims.

The Court should follow the uniform decisions in this district rejecting Defendants' theory.

B. Mendoza's guilty plea did not break the causal chain[10]

Defendants also argue that Mendoza's vacated plea of guilty broke the causal chain between Defendants' wrongful acts and Mendoza's imprisonment. (MTD at 9-14.) This argument is without merit.

First, the argument fails on basic principles of tort law, as shown by the recent decision of the Seventh Circuit in a criminal case, *United States v. Thompson*, No. 22-2254, — F.4th —, 2024 WL 79948,

---

[9] *Perkins v. N.Y.C.*, No. 17-CV-423, 2019 WL 4736950 (E.D.N.Y. Sept. 27, 2019) is a pro se case where the plaintiff alleged that the arresting officers had "falsif[ied] evidence in police reports." *Id.* at *6. The plaintiff pleaded guilty and sought damages for his post-conviction incarceration. *Id.* at *7. *Brown v. Elmwood Park Police Dep't*, Civil Action No. 19-9565, 2019 WL 2142768 (D.N.J. May 16, 2019) was a pro se action dismissed at screening under 28 U.S.C. § 1915A. *Id.* at *1. The district court rejected the prisoner's federal malicious prosecution claim because the criminal prosecution ended in a guilty plea which, unlike the convictions in this case, had never been vacated. *Id.* at *2. *Barmapov v. Barry*, No. 09-CV-3390, 2011 WL 32371 (E.D.N.Y. Jan. 5, 2011) is another pro se case where the claim for money damages was *Heck* barred. There, the plaintiff argued that he could "assert a claim under § 1983 for violation of his rights to a fair trial even though he had pled guilty before a trial took place." *Id.* at *5. Again, unlike the plaintiffs here, the plaintiff in *Barmapov* had never succeeded in setting aside his conviction.

[10] This argument applies solely to Mendoza as Defendants did not raise a causation argument as to Mulero's Complaint..

at *9 (7th Cir. Jan. 8, 2024). There, the Court held that the act claimed to be a superseding cause, a settlement with the FDIC, was foreseeable because "the agreement was not some outside, unpredictable force pulling responsibility away from Thompson. The reduced settlement was a natural consequence of his actions." *Id.* at *9. Here too, Mendoza's plea agreement was not an outside, unpredictable force. It was the natural consequence of Defendants' egregious misconduct.

Second, Illinois law governs the preclusive effect of state court judgments in federal court, 28 U.S.C. § 1738, and "a vacated judgment has no collateral estoppel or res judicata effect under Illinois law." *Pontarelli Limousine, Inc. v. Chicago*, 929 F.2d 339, 340 (7th Cir. 1991). The Seventh Circuit characterized an argument like the one Defendants raise here as "absurd," explaining that there was "precious little upon which preclusion could be based" after a criminal defendant received a full innocence-based pardon. *Evans v. Katalinic*, 445 F.3d 953, 956 (7th Cir. 2006).

Under Illinois law, even an extant guilty plea does not have the preclusive effect urged by Defendants. On the contrary, a plea of guilty does not bar a defendant from receiving post-conviction relief on grounds of innocence. *People v. Reed*, 2020 IL 124940, ¶ 37. The Illinois Supreme Court acknowledged in *Reed* that plea agreements are "not structured to 'weed out the innocent' or guarantee the factual validity of the conviction." *Id.* ¶ 33 (quoting *Schmidt v. State*, 909 N.W.2d 778, 788 (Iowa 2018).) That is because a defendant must "engage in a cost-benefit assessment where, after evaluating the State's evidence of guilt compared to the evidence available for his defense, a defendant may choose to plead guilty in hopes of a more lenient punishment than that imposed upon a defendant who disputes the overwhelming evidence of guilt at trial." *Id.* As the Illinois Supreme Court held, "it is well accepted that the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt." *Id.* ¶ 33.

Defendants raised their "causation" argument before Judge Valderrama who rejected it in *In re Watts Coordinated Pretrial Proc.*, No. 19-CV-1717, 2022 WL 9468253, at *9-*10 (N.D. Ill. Oct. 14,

2022). The United States Supreme Court rejected a similar argument in *Manuel v. Joliet*, 137 S. Ct. 911 (2017) when it held that a grand jury indictment does not break the chain of causation between a police officers' fabrication of evidence before the indictment to pretrial detention after the indictment. *Id.* at 920 n.9. As in *Manuel*, "the proceeding is tainted," *id.*, and plaintiff's now vacated plea of guilty did not break the chain of causation from Defendants' misconduct.

The Court should reject Defendants' reliance on the "due process rights a trial would have afforded" if Mendoza had chosen to "take her chance at trial." (MTD at 11.) Defendants do not explain how those due process rights would have removed the taint from the fabrications that caused Mendoza's conviction. The *sine qua non* of Mendoza's claim is that she could not receive a fair trial because of the fabrications. As a district court judge explained in rejecting the same argument, "[t]he defendants' position that they should be *absolved* of liability for stacking the deck against the plaintiff because their efforts to corner him into a guilty plea *succeeded* is nonsense." *Sanford v. City of Detroit*, No. 17-13062, 2018 WL 6331342, at *9 (E.D. Mich. Dec. 4, 2018).

Each of the cases cited by Defendants to support their causation argument is readily distinguishable because each one arose in a federal habeas proceeding where a prisoner sought to challenge a guilty plea. *Tollett v. Henderson*, 411 U.S. 258 (1973); *McMann v. Richardson*, 397 U.S. 759 (1970); *Brady v. United States*, 397 U.S. 742, 750 (1970); *Parker v. North Carolina*, 397 U.S. 790 (1970); *Hurlow v. United States*, 726 F.3d 958 (7th Cir. 2013). The rule of these cases is that a federal habeas petitioner who pleaded guilty cannot attack the conviction based on constitutional deprivations unrelated to the plea. This rule has no application here because Mendoza is not seeking release from custody nor is she challenging her plea. Mendoza's conviction and guilty plea have been vacated and she is not in custody on the vacated conviction.

Mendoza pleaded guilty after "taking stock of the lack of exculpatory evidence in [her] possession (complete or not) and inculpatory evidence in the government's possession (false or not)."

Saunders v. Chicago, No. 12-CV-09158, 2014 WL 3535723, at *5 (N.D. Ill. July 11, 2014). As in *Saunders,* Defendants' misconduct was the source of Mendoza's injuries because the misconduct caused Mendoza to plead guilty and therefore gives rise to her constitutional claims. *Id.*

Defendants fault Mendoza for failing to allege that her plea "lacked knowing or voluntariness," (MTD at 10), but this argument misreads Mendoza's complaint. Mendoza does not concede that her guilty plea was knowing and voluntary. (*Id.* at 2.) On the contrary, Mendoza's vacated plea was invalid and neither knowing nor voluntary because it was tainted by Defendants' fabrications.

Mendoza alleges that she pleaded guilty, even though she was innocent, because the Defendant officers framed her. (Mendoza Amended Complaint, ¶¶ 18-25.) These allegations, which are of course taken as true on Defendants' Rule 12(b)(6) motion, show that Mendoza's plea was induced by "misrepresentation," *Brady v. United States,* 397 U.S. 742, 748 (1970), and that Mendoza was "deceived into making the plea, and the deception prevent[ed] [her] act from being a true act of volition." *Lassiter v. Turner,* 423 F.2d 987, 900 (4th Cir. 1970); *see also Ferrara v. United States,* 456 F.3d 278, 290 (1st Cir. 2006); *White v. Chicago*, No. 17-CV-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018).

The determinative question is whether "the fabricated evidence was used to compel a guilty plea." *In re Watts Coordinated Pretrial Proceeding*, No. 19-CV-1717, 2022 WL 9468253, at *10 (N.D. Ill. Oct. 14, 2022). As in *In re Watts*, Mendoza's allegations are sufficient on that question. Mendoza presents a straightforward claim that Defendants' fabrication of evidence caused her to plead guilty, and Defendants are unable to cite any case that bars such a claim based on Mendoza's foreseeable act of pleading guilty.

IV. CONCLUSION

For the reasons stated above, this Court should deny Defendants' partial motion to dismiss.

Respectfully submitted,

/s/ Carter Grant
Steven A. Hart
Brian Eldridge
Carter Grant
John Marrese
Hart McLaughlin & Eldridge, LLC
One South Dearborn St, Ste 1400
Chicago, Illinois 60603
(312) 955-0545
shart@hmelegal.com
beldridge@hmelegal.com
cgrant@hmelegal.com
jmarrese@hmelegal.com

Antonio M. Romanucci
Bryce Hensley
Romanucci & Blandin, LLC
321 N. Clark Street, Ste 900
Chicago, Illinois 60654
(312) 458-1000
aromanucci@rblaw.net
bhensley@rblaw.net

Attorneys for Plaintiff Mulero

/s/ Joel A. Flaxman
Joel A. Flaxman
Kenneth N. Flaxman
200 S Michigan Ave Ste 201
Chicago, IL 60604-2430
(312) 427-3200
jaf@kenlaw.com
knf@kenlaw.com

Attorneys for Plaintiff Mendoza