

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

Jose Tinajero,	)	
	)	
Plaintiff,	)	24 C 1598
	)	Judge John F. Kness
v.	)	Hon. Magistrate Judge Fuentes
	)	
City of Chicago, Reynaldo Guevara,	)	
Geri Lynn Yanow, as special	)	
Representative for Ernest Halvorsen,	)	
deceased, Hector	)	
Vergara, Geri Lynn Yanow, as special	)	
Representative for Joseph Mohan, deceased,	)	
Randy Troche, Kevin Rogers as special	)	
Representative for Francis Cappitelli,	)	
Deceased, Edward Mingey, Jacob	)	
Rubenstein and Cook County,	)	
	)	
Defendants.	)	

**DEFENDANT COOK COUNTY’S ANSWER, AFFIRMATIVE DEFENSES, AND  
JURY DEMAND TO PLAINTIFF’S AMENDED COMPLAINT**

NOW COME Defendant Cook County, through their attorney KIMBERLY M. FOXX, State's Attorney of Cook County, by her Assistant State's Attorney Joseph A. Hodal and Kelli Huntsman and answers Plaintiff’s Complaint as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1343 and 1367.

**ANSWER: Defendant County admits that Plaintiff seeks to invoke the jurisdiction of the Court in the manner stated in Paragraph 1.**

2. When he was just 21 years old, plaintiff Jose Tinajero was framed for murder by notorious Chicago police detective Reynaldo Guevara and other officers.

**ANSWER: Defendant County is without knowledge or information sufficient to**

**form a belief as to the truth of the allegations in Paragraph 2.**

3. Plaintiff served twenty-five years of wrongful imprisonment before he was exonerated and released from custody in 2024.

**ANSWER: On information and belief, Defendant County admits that Plaintiff was in custody for twenty-five years and that Plaintiff was released from custody in 2024. Defendant County is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 3.**

4. The Chicago Police Department's official policies and customs of failing to discipline, supervise, and control its officers, as well as its code of silence, caused the misconduct of Guevara and the other officers.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.**

5. Based on the powerful evidence that has come to light about Guevara's repeated wrongdoing and evidence of plaintiff's innocence, the Circuit Court of Cook County vacated plaintiff's conviction on January 31, 2024.

**ANSWER: On information and belief, Defendant County admits that plaintiff's conviction was vacated in the Circuit Court of Cook County. Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5.**

6. Plaintiff brings this lawsuit to secure a remedy for the grievous harms he

suffered from his wrongful imprisonment.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.**

**I. Parties**

7. Plaintiff Jose Tinajero is a resident of the Northern District of Illinois.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7.**

8. Defendants Reynaldo Guevara, Ernest Halvorsen, Hector Vergara, Joseph Mohan, Randy Troche, Francis Cappitelli, and Edward Mingey were, at all relevant times, acting under color of their offices as Chicago police officers.

**ANSWER: Defendant County admits that Defendants Reynaldo Guevara, Ernest Halvorsen, Hector Vergara, Joseph Mohan, Randy Troche, Francis Cappitelli, and Edward Mingey were Chicago Police Officers. Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8.**

9. Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Ernest Halvorsen, as successor in interest, and to defend this action on behalf of Ernest Halvorsen.

**ANSWER: Defendant County admits that Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Ernest Halvorsen, as successor in interest, and to defend this action on behalf of Ernest Halvorsen.**

10. Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Joseph Mohan, as successor in interest, and to defend this action of Joseph Mohan.

**ANSWER: Defendant County admits that Defendants Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Joseph Mohan, as successor in interest, and to defend this action of Joseph Mohan.**

11. Defendant Kevin Rogers is sued in his capacity as Special Representative of Francis Cappitelli, as successor in interest, and to defend this action on behalf of Francis Cappitelli.

**ANSWER: Defendant County admits that Kevin Rogers is sued in his capacity as Special Representative of Francis Cappitelli, as successor in interest, and to defend this action on behalf of Francis Cappitelli.**

12. Ernest Halvorsen, Joseph Mohan, and Franci Cappitelli were, at all relevant times, acting under color of their offices as Chicago police officers.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 12.**

13. Plaintiff refers to Reynaldo Guevara, Hector Vergara, Randy Troche, Edward Mingey, Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli as the “individual officer defendants.” Plaintiff sues these defendants in their individual capacity only.

**ANSWER: Defendant County admits that Plaintiff is suing Reynaldo Guevara, Hector Vergara, Randy Troche, Edward Mingey, Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli as the “individual officer defendants, and admits that Plaintiff**

is suing these defendants in their individual capacity only. County Defendant denies that Plaintiff has successfully stated a claim for relief against any Individual Defendants.

14. Defendant City of Chicago is an Illinois municipal corporation and was at all relevant times the employer of the individual officer defendants. Plaintiff asserts federal and state law claims against defendant City of Chicago and sues the City as the potential indemnitor of the individual officer defendants.

**ANSWER: Defendant County admits that the City of Chicago is an Illinois municipal corporation. Defendant County admits that Plaintiff asserts federal and state law claims against defendant City of Chicago, and that Plaintiff sues the City as the potential indemnitor of the individual officer defendants, but denies that the Plaintiff has successfully stated a claim for relief against the City of Chicago. Defendant County is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 14.**

15. Defendant Jacob Rubinstein was, at all relevant times, an Assistant Cook County State's Attorney. Plaintiff sues Rubinstein in his individual capacity only.

**ANSWER: Defendant County admits that Defendant Jacob Rubinstein was an Assistant Cook County State's Attorney. Defendant County admits that Plaintiff sues Rubinstein in his individual capacity. Defendant County denies that Plaintiff has successfully stated a claim for relief against Defendant Rubinstein.**

16. Defendant Cook County is a governmental entity within the State of Illinois and

was at all relevant times the employer of Rubinstein. Plaintiff asserts a state law claim against defendant Cook County, sues the County as the potential indemnitor of Rubinstein, and does not assert any federal claim against the County.

**ANSWER:** Defendant County admits that Cook County is a governmental entity within the State of Illinois. The remainder of the allegations in Paragraph 13 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant County admits that Defendant County may have a duty to pay a judgment for compensatory damages entered against the Prosecutor Defendant, and Defendant County denies that Defendant County has a duty to pay a judgment for punitive damages entered against the Prosecutor Defendant.

**II. False Arrest and Unreasonable Prosecution of Plaintiff**

17. On October 12, 1998, Daniel Garcia received a fatal beating in a Chicago alley near Whipple Street and Armitage Avenue.

**ANSWER:** Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.

18. Plaintiff did not have any involvement in the beating.

**ANSWER:** Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18.

19. Defendants Guevara and Halvorsen investigated the murder of Daniel Garcia.

**ANSWER:** Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20. Defendants Guevara and Halvorsen conspired, confederated, and agreed to fabricate a false story that plaintiff, John Martinez, and Thomas Kelly had jointly beaten and robbed Garcia.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20.**

21. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff include the following:

- a. They caused Margarita Casiano to make a false statement implicating plaintiff in the murder;
- b. They caused Melloney Parker to sign a false statement implicating plaintiff in the murder;
- c. They caused plaintiff to make a false confession implicating himself in the murder;
- d. They caused Martinez to make a false confession implicating himself and plaintiff in the murder;
- e. They caused Kelly to make a false confession implicating himself and plaintiff in the murder; and
- f. They caused Melloney Parker, Esteban Rodriguez, and Jesus Fuentes to make false eyewitness identifications implicating plaintiff in the murder.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 a-f.**

22. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff also include the following:

- a. They prepared police reports containing the false story;
- b. They attested to the false story through the official police reports; and
- c. They communicated the false story to prosecutors.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 a-c.**

23. Defendants Vergara, Mohan, Troche, Cappitelli, and Mingey either participated in the above-described acts or knew of those acts and failed to intervene to prevent the violation of plaintiff's rights.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23.**

24. Defendant Rubinstein, acting in an investigatory capacity, participated in fabricating the false statements signed by Parker, Martinez, and Kelly.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.**

25. The individual officer defendants and defendant Rubinstein committed the above-described wrongful acts knowing that their acts would cause plaintiff to be held in custody and wrongfully prosecuted.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25.**

26. Plaintiff was charged with murder because of the wrongful acts of the individual



officer defendants and Rubinstein.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26.**

27. The prosecution relied at trial on the false story, including plaintiff's coerced confession.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27.**

28. On September 27, 2001, a jury found plaintiff guilty of first-degree murder and robbery, and the Circuit Court of Cook County sentenced plaintiff to concurrent sentences of 30 years for murder and 10 years for robbery.

**ANSWER: On information and belief, Defendant County admits the allegations in Paragraph 28.**

29. Martinez and Kelly were also convicted of murder.

**ANSWER: On information and belief, Defendant County admits the allegations in Paragraph 29.**

30. Plaintiff was deprived of liberty because of the above-described wrongful acts of the individual officer defendants and defendant Rubinstein.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30.**

**III. Plaintiff's Exoneration**

31. Plaintiff challenged the above-described wrongful conviction after learning that lawyers for other wrongfully convicted individuals had discovered repeated misconduct by Guevara.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31.**

32. On January 31, 2024, the Circuit Court of Cook County vacated plaintiff's convictions and granted the State's request to dismiss the case.

**ANSWER: On information and belief, Defendant County admits the allegations in Paragraph 32.**

33. Kelly's conviction was also vacated on January 31, 2024, and Martinez's conviction had been vacated on January 17, 2023.

**ANSWER: On information and belief, Defendant County admits the allegations in Paragraph 33.**

34. Petitioner was released from prison the day after his exoneration; he had been continuously incarcerated for 25 years.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34.**

**IV. Official Policies and Customs of the Chicago Police Department Were the Moving Force for the Misconduct of the Individual Officer Defendants**

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Heading IV.**

35. At all relevant times, the Chicago Police Department maintained official policies and customs that facilitated, encouraged, and condoned the misconduct of the individual officer defendants.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35.**

**A. Failure to Discipline**

36. At all relevant times, the Chicago Police Department maintained a policy or custom of failing to discipline, supervise, and control its officers. By maintaining this policy or custom, the City caused its officers to believe that they could engage in misconduct with impunity because their actions would never be thoroughly scrutinized.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36.**

37. Before plaintiff's arrest, policymakers for the City of Chicago knew that the Chicago Police Department's policies or customs for disciplining, supervising, and controlling its officers were inadequate and caused police misconduct.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37.**

38. Despite their knowledge of the City's failed policies and customs for disciplining, supervising, and controlling its officers, the policymakers failed to take action to

remedy these problems.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38.**

39. As a direct and proximate result of the Chicago Police Department's inadequate policies or customs for disciplining, supervising, and controlling its officers and the policymakers' failure to address these problems, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39.**

**B. Code of Silence**

40. At all relevant times, the Chicago Police Department maintained a "code of silence" that required police officers to remain silent about police misconduct. An officer who violated the code of silence would be penalized by the Department.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40.**

41. At all relevant times, police officers were trained at the Chicago Police Academy not to break the code of silence. Officers were instructed that "Blue is Blue. You stick together. If something occurs on the street that you don't think is proper, you go with the flow. And after that situation, if you have an issue with that officer or what happened, you can confront them. If you don't feel comfortable working with them anymore, you can go to the watch commander and request a new partner. But you never break the code of silence."

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41.**

42. This “code of silence” facilitated, encouraged, and enabled the individual officer defendants to engage in egregious misconduct for many years, knowing that their fellow officers would cover for them and help conceal their widespread wrongdoing.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42.**

43. In the case of *Obrycka v. City of Chicago et al.*, No. 07-cv-2372 (N.D. Ill.), a federal jury found that, as of February 2007, “the City [of Chicago] had a widespread custom and/or practice of failing to investigate and/or discipline its officers and/or code of silence.”

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43.**

44. In December 2015, Chicago Mayor Rahm Emanuel acknowledged the continued existence of the code of silence within the Chicago Police Department; Emanuel, speaking in his capacity as Mayor, admitted that the code of silence leads to a culture where extreme acts of abuse are tolerated.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44.**

45. In April 2016, the City’s Police Accountability Task Force found that the code of silence “is institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City.”

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45.**

46. In an official government report issued in January 2017, the United States Department of Justice found that “a code of silence exists, and officers and community members know it.”

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46.**

47. On March 29, 2019, then-Chicago Police Superintendent Eddie Johnson publicly acknowledged the code of silence, stating that some Chicago police officers “look the other way” when they observe misconduct by other Chicago police officers.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47.**

48. In October 2020, then-Chicago Police Superintendent David Brown acknowledged in public comments that the “code of silence” continues to exist.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48.**

49. The same code of silence in place during the time period at issue in the *Obrycka* case and recognized by the Mayor, Superintendent Johnson, Superintendent Brown, the Task Force, and the Department of Justice was also in place when plaintiff suffered the wrongful arrest, detention, and prosecution described above.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49.**

50. As a direct and proximate result of the City’s code of silence, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50.**

**C. The City’s Policies and Customs Have Caused Numerous Other Wrongful**

## **Convictions**

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Heading C.**

51. Chicago Police Officers, including the individual officer defendants, acting pursuant to defendant City of Chicago's "code of silence" and defective discipline policy have concocted false stories, fabricated evidence, and caused wrongful convictions in many cases.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51.**

52. In each case, the officers concocted false stories and fabricated evidence because they knew that there would be no consequences for their misconduct because of defendant City of Chicago's "code of silence" and defective discipline policy.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52.**

53. These numerous cases include, but are not limited to, the following:

- a. In August of 1988, defendant Guevara caused Jacques Rivera to be falsely convicted of murder by coercing a witness to falsely identify Rivera;
- b. In September of 1989, defendant Guevara caused Juan Johnson to be falsely convicted of murder by coercing a witness to falsely identify Johnson;
- c. In August of 1990, defendant Guevara caused Jose Maysonet to be falsely convicted of murder by coercing him into falsely confessing;
- d. In January of 1991, defendant Guevara caused Xavier Arcos to be falsely convicted of

murder by coercing a witness to falsely identify Arcos;

- e. In May of 1993, defendants Guevara and Halvorsen caused Armando Serrano and Jose Montanez to be falsely convicted of murder by coercing a witness to falsely testify that Serrano and Montanez admitted to committing the murder;
- f. In May of 1993, defendants Guevara and Halvorsen caused Robert Bouto to be falsely convicted of murder by coercing two jailhouse informants to falsely testify that Bouto admitted to committing the murder;
- g. In June of 1993, defendant Guevara caused Gabriel Iglesias to be falsely convicted of murder by coercing two witnesses to falsely identify Iglesias and by coercing a jailhouse informant to falsely testify that Iglesias admitted to committing the murder;
- h. In September of 1994, defendant Guevara caused Roberto Almodovar and William Negrón to be falsely convicted of murder by coercing a witness to falsely identify Almodovar and Negrón;
- i. In May of 1995, defendants Guevara and Halvorsen caused Thomas Sierra to be falsely convicted of murder by coercing false testimony from two witnesses; and
- j. In April of 1998, defendant Guevara caused Gabriel Solache and Arturo Reyes to be falsely convicted of murder and kidnapping by coercing them to give false confessions.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 a-j.**

**V. Claims**

54. As a result of the foregoing, the individual officer defendants, the City of



Chicago, and defendant Rubinstein caused plaintiff to be deprived of rights secured by the Fourth, Fifth, and Fourteenth Amendments.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54.**

55. As a supplemental state law claim against defendant City of Chicago and defendant Cook County: as a result of the foregoing, plaintiff was subjected to a malicious prosecution under Illinois law.

**ANSWER: Defendant County is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55.**

56. Plaintiff hereby demands trial by jury.

**ANSWER: Defendant County admits that Plaintiff hereby demands trial by jury.**

WHEREFORE, Defendant Cook County respectfully requests that this Court enter judgment in its favor and against Plaintiff, Jose Tinajero, that the action be dismissed with prejudice, and that costs be assessed against Plaintiff.

### **AFFIRMATIVE DEFENSES**

Defendant Cook County, by its Attorney, Kimberly M. Foxx, State's Attorney of Cook County, through her Assistant State's Attorneys Joseph A. Hodal and Kelli Huntsman, while continuing to deny liability to Plaintiff, and states as follows:

#### **FIRST AFFIRMATIVE**

##### ***Absolute Prosecutorial Immunity***

At all relevant times, the Prosecutor Defendant was an Assistant State's Attorney for the Cook County State's Attorney's Office. In this capacity, the Prosecutor Defendant took actions intimately associated with the judicial phase of the criminal process, including but not limited to the preparation for and initiation of judicial proceedings and trial. When the Prosecutor Defendant spoke with the suspect and witnesses, took statements, and ultimately determined whether criminal charges should be approved, he performed acts toward initiating a prosecution and presenting the State's case. Because the conduct complained of on the part of the Defendant is within the scope of his employment as prosecutors, within his role as an advocate of the State and arises out of the evaluation of evidence and taking statements for the purpose of initiation and prosecution of criminal charges, Plaintiff's claims are barred on the basis of absolute prosecutorial immunity, and therefore, any claims against Defendant County should be dismissed with prejudice.

### **SECOND AFFIRMATIVE DEFENSE**

#### ***No Respondeat Superior***

Defendant County was not the employer of the former Prosecutor Defendant. He was an employee of the Cook County State's Attorney, who was a separately elected official pursuant to the Illinois Constitution of 1970, Article VI, Section 19, and is therefore, an official of the State of Illinois and not a Cook County Employee. Consequently, Defendant County has no *respondeat superior* liability for any individual Prosecutor Defendant.

### **THIRD AFFIRMATIVE DEFENSE**

#### ***No Official Capacity Claim against Defendant Cook County***

A governmental entity is liable for damages under § 1983 only if the Plaintiff can show that the alleged constitutional deprivation occurred as a result of an official capacity policy, custom, or practice. *See Monell v. Department of Social Serv.*, 436 U.S. 658, 692 (1978). Unconstitutional policies or customs generally take three forms: (1) an express policy that, when enforced, causes a constitutional deprivation; (2) a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a usage or custom with the force of law; or (3) a constitutional injury was caused by a person with final policy-making authority. *Brokaw v. Mercer County*, 235 F.3d 1000, 1013 (7th Cir. 2000). Plaintiff fails to allege his prosecution or incarceration resulted from any policy, custom or practice of Defendant Cook County; and therefore, Plaintiff fails to state an official capacity claim against the Defendant Cook County.

### **THIRD AFFIRMATIVE DEFENSE**

#### ***Sovereign Immunity***

Plaintiff's claims against Prosecutor Defendant are really claims against a State Official based upon their actions as Assistant State's Attorneys, functions that fall within the scope of their employment and authority as Assistant State's Attorneys. Plaintiff's claims against the Prosecutor Defendant; and therefore, Defendant County, are related to the initiation of charges, against and the criminal prosecution of Plaintiff. The State's Attorney is the constitutional officer vested with exclusive discretion in the initiation and management of a criminal prosecution. The prosecution of Plaintiff's case is, therefore, well within the scope of the State's Attorney's authority. Plaintiff's claims against Defendant are against the State of Illinois, and thus sovereign immunity

shields Defendant for liability in federal court. The Illinois Court of Claims has sole and exclusive jurisdiction over Plaintiff's state law claims against Defendant.

#### **FOURTH AFFIRMATIVE DEFENSE**

##### ***Tort Immunity Act 745 ILCS 10/2-201***

Defendant Prosecutor, and thereby Defendant County, are immune from state law claims under 745 ILCS 10/2-201 of the Illinois Tort Immunity Act which provides as follows: "Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused."

#### **FIFTH AFFIRMATIVE DEFENSE**

##### ***Tort Immunity Act 745 ILCS 10/2-202***

The Acts or omissions that the Prosecutor Defendant allegedly took would have been acts or omissions in his capacity as a public employee in the execution or enforcement of a law and because those acts or omissions did not constitute willful or wanton conduct, Defendant is immune from suit.

#### **SIXTH AFFIRMATIVE DEFENSE**

##### ***Tort Immunity Act 745 ILCS 10/2-204***

Because the Prosecutor Defendant was, at all times relevant to the Plaintiff's complaint, a public employee acting within the scope of his employment, he is immune from suit for any injury caused by the act or omission of another person, thereby making Defendant County immune.

**SEVENTH AFFIRMATIVE DEFENSE**

***Tort Immunity Act 745 ILCS 10/2-205***

Defendant Prosecutor, and the Defendant County, are not liable for any injury caused by his adoption of an enactment, failure to adopt an enactment, or his enforcement or failure to enforce any law.

**EIGHTH AFFIRMATIVE DEFENSE**

***Tort Immunity Act 745 ILCS 10/2-208***

Defendant Prosecutor, and the Defendant County, are not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, unless he acts maliciously and without probable cause.

**NINTH AFFIRMATIVE DEFENSE**

***Tort Immunity Act 745 ILCS 10/2-213***

Prosecutor Defendant and thereby Defendant County are immune from punitive or exemplary damages under 745 ILCS 10/2-213 which provides as follows: “Notwithstanding any other provision of law, a public employee is not liable to pay punitive or exemplary damages in actions brought against the employee based on an injury allegedly arising out of an act or omission occurring within the scope of employment of such an employee serving in a position involving the determination of policy or the exercise of discretion when the injury is the result of an act or omission occurring in the performance of an legislative, quasi-legislative or quasi-judicial function, even though abused.”

**TENTH AFFIRMATIVE DEFENSE**

*Attorney Fees*

Plaintiff is not entitled to attorney fees for his state law claims. *See Kerns v. Engelke*, 76 Ill. 2d 154, 166 (Ill. 1979).

**ELEVENTH AFFIRMATIVE DEFENSE**

*Failure to Mitigate Damages*

To the extent Plaintiff failed to mitigate any claimed injuries or damages, any verdict or judgment obtained by Plaintiff must be reduced by application of the principle that Plaintiff had a duty to mitigate claimed injuries and damages, commensurate with the degree of failure to mitigate attributed to Plaintiff by the jury in the case.

**TWELFTH AFFIRMATIVE DEFENSE**

*Res Judicata and Collateral Estoppel*

Plaintiff's claims in the Complaint are barred by the doctrines of res judicata and collateral estoppel to the extent that they involve issues or claims that were, or could have been, resolved in the underlying criminal or post-conviction proceedings.

**THIRTEENTH AFFIRMATIVE DEFENSE**

*Indemnification*

Any indemnification obligation does not make Defendant County liable to Plaintiff. "But the obligation to pay the judgment does not mean the county itself is liable to the plaintiff. Rather, the county is only a necessary party to the suit so that, as an insurer or backstop for the independent official, it may "veto improvident settlements." *Carver v. Sheriff of LaSalle County*, 324 F.3d 947, 948 (7th Cir. 2003)" *Nat'l Cas. Co. v. McFatridge*, 604 F.3d 335, 2010 U.S. App. LEXIS 8762 (7th Cir. Ill.

2010). Additionally, Defendant Cook County is not obligated or authorized to indemnify *punitive* damages.

**JURY DEMAND**

Defendant Cook County hereby demands a trial by jury pursuant to Federal rule of Civil Procedure 38(b) on all issues so triable.

Dated: June 03, 2024

Respectfully submitted,  
KIMBERLY M. FOXX  
State's Attorney of Cook  
County

By: /s/ Joseph A. Hodal  
Joseph A. Hodal  
Assistant State's Attorney  
500 Richard J. Daley  
Center  
Chicago, IL 60602  
(312) 603-5470  
Joseph.hodal@cookcountysao.org

**CERTIFICATE OF SERVICE**

I, Joseph A. Hodal, hereby certify that on June 03, 2024, I have caused a true and correct copy of **Defendant Cook County's Answers and Affirmative Defenses to Plaintiff's Complaint** be sent via e-filing to all counsel of record in accordance with the rules regarding the electronic filing and service of documents.

/s/ Joseph A. Hodal  
Joseph A. Hodal  
Assistant State's Attorney  
500 Richard J. Daley Center  
Chicago, Illinois 60602  
(312) 603-5470  
Joseph.hodal@cookcountysao.org