

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

JOSE TINAJERO, )  
Plaintiff, ) Case No. 24-cv-1598  
v. ) Honorable Judge Kness  
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. ) JURY TRIAL DEMANDED

**DEFENDANT OFFICERS' ANSWER AND DEFENSES TO PLAINTIFF'S AMENDED  
COMPLAINT, AFFIRMATIVE DEFENSES AND JURY DEMAND**

Defendants Hector Vergara, Randy Troche, Edward Mingeay, Geri Lynn Yanow as special representative for Ernest Halvorsen, deceased, and Joseph Mohan, deceased, and Kevin Rogers as special representative for Francis Cappitelli, deceased (collectively herein referred to as "Answering Defendants") by and through their attorneys, THE SOTOS LAW FIRM, P.C., and for their answer to Plaintiff Jose Tinajero's Amended Complaint state:

**INTRODUCTION**

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:** Answering Defendants admit that Plaintiff purports to bring this lawsuit pursuant to 42 U.S.C. § 1983 and admit that jurisdiction is proper but deny

**any allegations of wrongdoing or other misconduct as alleged herein.**

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: Answering Defendants deny the allegations in this paragraph as they pertain to them and lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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

**ANSWER: Answering Defendants deny the allegations in this paragraph as they pertain to them and lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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: Answering Defendants deny the allegations in this paragraph as they pertain to them and lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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: Answering Defendants, upon information and belief, admit that Plaintiff's conviction was vacated on January 31, 2024, but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

6. Plaintiff brings this lawsuit to secure a remedy for the grievous harms he suffered from his wrongful imprisonment.

**ANSWER: Answering Defendants deny the allegations in this paragraph as they pertain to them and lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

## **I. Parties**

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

**ANSWER:** **Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

8. Defendants Reynaldo Guevara, Hector Vergara, Joseph Mohan, Randy Troche, and Edward Mingey were, at all relevant times, acting under color of their offices as Chicago police officers. Plaintiff sues these defendants in their individual capacity only.

**ANSWER:** **Answering Defendants admit that at all times relevant to Defendants Vergara's, Mohan's, Troche's, and Mingey's involvement in the Garcia murder investigation and Plaintiff's arrest and subsequent prosecution, that they were acting under color of law in the scope of their employment as Chicago police officers, and that Plaintiff purports to sue them in their individual capacity.**

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:** **Answering Defendants admit that Geri Lynn Yanow, the Special Representative for Ernest Halvorsen, deceased, is named as a Defendant in her capacity as Special Representative of Ernest Halvorsen, deceased, to defend this action on behalf of Ernest Halvorsen. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph.**

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 on behalf of Joseph Mohan.

**ANSWER:** **Answering Defendants admit that Geri Lynn Yanow, the Special Representative for Joseph Mohan, deceased, is named as a Defendant in her capacity as Special Representative of Joseph Mohan, deceased, to defend this action on behalf of Joseph Mohan. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph.**

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:** **Answering Defendants admit that Kevin Rogers, the Special Representative for Joseph Mohan, deceased, is named as a Defendant in his capacity as Special Representative of Francis Cappitelli, deceased, to defend this action on behalf of Francis Cappitelli. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph.**

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

**ANSWER:** **Answering Defendants admit that at all times relevant to Halvorsen's, Mohan's and Cappitelli's involvement in the Garcia murder investigation and Plaintiff's arrest and subsequent prosecution, that they were acting under color of law in the scope of their employment as Chicago police officers.**

13. Plaintiff refers to Reynaldo Guevara, Hector Vergara, Randy Troche, Edward Mingey, Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli as the "individual officer defendants."

**ANSWER:** **Answering Defendants admit the allegations in this paragraph but deny any allegations of wrongdoing or other misconduct as alleged herein.**

14. Defendant City of Chicago is an Illinois municipal corporation and was at all relevant time [sic] 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:** **Answering Defendants admit that Defendant City of Chicago is an Illinois municipal corporation that at all times relevant to Defendants Vergara's, Troche's, Mingey's, Halvorsen's, Mohan's and Cappitelli's involvement in the Garcia murder investigation and Plaintiff's subsequent arrest and prosecution, was the employer of Defendants Vergara, Troche, Mingey, Halvorsen, Mohan and Cappitelli. Answering Defendants further admit that Plaintiff purports to bring federal and state law claims against Defendant City of Chicago and sues the City as potential indemnitor of the Individual Officer Defendants. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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

**ANSWER: Answering Defendants admit, that at all relevant times to the Garcia murder investigation, Defendant Jake Rubenstein was an Assistant Cook County State's Attorney and that Plaintiff purports to sue Defendant Rubenstein in his individual capacity.**

16. Defendant Cook County is a governmental entity within the State of Illinois and was at all relevant times the employer of Rubenstein. Plaintiff asserts a state law claim against defendant Cook County, sues the County as the potential indemnitor of Rubenstein, and does not assert any federal claim against the County.

**ANSWER: Answering Defendants admit Defendant Cook County is a governmental entity within the State of Illinois, and that Plaintiff does not assert any federal claims against Cook County, but purports to bring a state law claim against Defendant Cook County and is suing Cook County as the potential indemnitor of Defendant Rubenstein. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

## **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: Answering Defendants admit that Daniel Garcia was beaten on October 12, 1998, in a Chicago alley near Whipple Street and Armitage Avenue and that Daniel Garcia later died on December 10, 1998, from his injuries sustained in such beating.**

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

**ANSWER: Upon information and belief, Answering Defendants deny the allegations in this paragraph.**

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

**ANSWER: Answering Defendants admit Defendants Guevara and Halvorsen were involved in the investigation of the murder of Daniel Garcia.**

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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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:** **Answering Defendants deny the allegations in this paragraph, including each subparagraph, as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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:** **Answering Defendants deny the allegations in this paragraph, including each subparagraph, as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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

**ANSWER:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

26. Plaintiff was charged with murder because of the wrongful acts of the individual officer defendants and Rubinstein.

**ANSWER:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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

**ANSWER:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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:** **Upon information and belief, Answering Defendants admit that a jury found Plaintiff guilty of first-degree murder and robbery on July 16, 2001, and that Plaintiff was subsequently sentenced on September 27, 2001, to concurrent sentences of 30 years for murder and 10 years for robbery.**

29. Martinez and Kelly were also convicted of murder.

**ANSWER:** **Upon information and belief, Answering Defendants admit Plaintiff's criminal co-defendants John Martinez and Thomas Kelly were also convicted of murder.**

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

**ANSWER:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

### **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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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:** **Answering Defendants admit that on January 31, 2024, Plaintiff's conviction was vacated, and that the State's Attorney subsequently dismissed the case via *nolle prosequi*.**

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

had been vacated on January 17, 2023.

**ANSWER:** **Answering Defendants admit, on information and belief, that on January 17, 2023, John Martinez's conviction was vacated. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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

**ANSWER:** **Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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

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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

##### **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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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: Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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: Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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: Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

## **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: Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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: Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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: Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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: Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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: Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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: Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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: Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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: Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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

**ANSWER: Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.**

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: Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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: Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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

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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

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 Boutu to be falsely convicted of murder by coercing two jailhouse informants to falsely testify that Boutu 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 Negron to be falsely convicted of murder by coercing a witness to falsely identify Almodovar and Negron;
- 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 kid- napping by coercing them to give false confessions.

**ANSWER:** **Answering Defendants deny the allegations in this paragraph, including each subparagraph, as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

## **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:** **Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the**

**truth or falsity of the remaining allegations in this paragraph.**

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: Answering Defendants deny the allegations in this paragraph as they pertain to them but lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph.**

56. Plaintiff hereby demands trial by jury.

**ANSWER: Answering Defendants admit Plaintiff has demanded a trial by jury.**

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

Answering Defendants were government officials, namely police officers, who perform discretionary functions. At all times material to the events alleged in Plaintiff's complaint, a reasonable police officer objectively viewing the facts and circumstances that confronted the Answering Defendants, could have believed their actions to be lawful, in light of clearly established law and the information that the Answering Defendants possessed. Answering Defendants are therefore entitled to qualified immunity as to Plaintiff's federal claims.

**Second Affirmative Defense**

Defendants are absolutely immune from civil liability for their testimony given in judicial proceedings in Plaintiff's underlying criminal case. *Briscoe v. LaHue*, 460 U.S. 325, 330–31, 103 S.Ct. 1108, 1113 (1983); *Jurgensen v. Haslinger*, 295 Ill.App.3d 139, 141–42; 692 N.E.2d 347, 349–50 (3rd Dist. 1998).

**Third Affirmative Defense**

Plaintiff's claims are barred by the doctrines of res judicata, collateral estoppel, judicial

estoppel, and waiver.

#### **Fourth Affirmative Defense**

Plaintiff's failure to intervene claim has no basis in the Constitution as “[f]ailure to intervene’ sounds like vicarious liability,” which would of course be untenable, as “[t]he Supreme Court has held many times that § 1983 supports only direct, and not vicarious, liability.” *Mwangangi v. Nielsen*, 48 F.4th 816, 834 (7th Cir. 2022) (Easterbrook, J., concurring)

#### **Fifth Affirmative Defense**

Plaintiff fails to state a claim upon which relief can be granted as to his failure to intervene claim. Specifically, Plaintiff fails to plead any facts that evidence any of the Answering Defendants knew about any alleged misconduct and had a *realistic opportunity* to intervene. *Abdullahi v. City of Madison*, 423 F.3d 763, 774 (7th Cir. 2005).

#### **Sixth Affirmative Defense**

As to Plaintiff's state law claims, Answering Defendants are not liable for any of the claims alleged because a public employee is not liable for his or her acts or omissions in the execution or enforcement of any law, unless such acts or omissions constitute willful and wanton conduct, and none of their acts or omissions in the execution or enforcement of any law constituted willful and wanton conduct. 745 ILCS 10/2-202.

#### **Seventh Affirmative Defense**

As to Plaintiff's state law claims, Answering Defendants are not liable for any claims alleged because their decisions regarding the investigation and/or the arrest of Plaintiff were decisions that involved the determination of policy and the exercise of discretion for which they are immune from liability. 745 ILCS 10/2-201.

#### **Eighth Affirmative Defense**

As to Plaintiff's state law claims, Answering Defendants are not liable for any claims alleged because a public employee is 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. 745 ILCS 10/2-208.

**Ninth Affirmative Defense**

As to Plaintiff's state law claims, Answering Defendants are not liable for any state law claims because a public employee, as such and acting within the scope of his/her employment, is not liable for an injury caused by the act or omission of another person. 745 ILCS 10/2-204.

**Tenth Affirmative Defense**

As to the state law claims, punitive damages cannot be awarded for this claim under Illinois law. *Knierim v. Izzo*, 22 Ill. 2d 73 (1961).

**Eleventh Affirmative Defense**

Plaintiff has a duty to mitigate his damages, and any damages awarded to Plaintiff are required to be reduced by any amount by which the damages could have been lessened by Plaintiff's failure to take reasonable action to minimize those damages.

**Twelfth Affirmative Defense**

Any recovery or award of damages against deceased persons, Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli, and is limited by Illinois law. 735 ILCS 5/13-209(b)(2).

**Thirteenth Affirmative Defense**

To the extent Plaintiff is trying to bring a claim for false arrest, Plaintiff's claim would be barred by the statute of limitations.

**JURY DEMAND**

Answering Defendants request a trial by jury.

Dated: June 18, 2024

Respectfully submitted,

/s/ Allison L. Romelfanger  
ALLISON L. ROMELFANGER, Attorney No. 6310033  
*Special Assistant Corporation Counsel for Defendants*  
*Troche, Vergara, Minge, and Special Representatives*  
*Yanow and Rogers*

James G. Sotos  
Josh M. Engquist  
Laura M. Ranum  
Kyle T. Christie  
Maurice C. Hunt  
Allison L. Romelfanger  
Jeffrey C. Grossich  
THE SOTOS LAW FIRM, P.C.  
141 W. Jackson Blvd, Suite 1240A  
Chicago, IL 60604  
P: (630) 735-3300  
[aromelfanger@jsotolaw.com](mailto:aromelfanger@jsotolaw.com)

**CERTIFICATE OF SERVICE**

I, hereby certify under penalty of perjury pursuant to 28 U.S.C.A. § 1746 that the foregoing is true and correct, that on June 18, 2024, I electronically filed the forgoing **Defendant Officers' Answer and Defenses to Plaintiff's Amended Complaint, Affirmative Defenses, and Jury Demand** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants listed in the below service list.

**Attorneys for Plaintiff Tinajero:**

Kenneth N Flaxman ([knf@kenlaw.com](mailto:knf@kenlaw.com))

Joel A. Flaxman ([jaf@kenlaw.com](mailto:jaf@kenlaw.com))

Kenneth N. Flaxman, P.C.

200 S. Michigan Avenue, Suite 201

Chicago, IL 60604-6107

P: (312) 427-3200

**Attorneys for the City of Chicago**

Eileen E. Rosen ([erosen@rfclaw.com](mailto:erosen@rfclaw.com))

Andrew J. Grill ([agrill@rfclaw.com](mailto:agrill@rfclaw.com))

Austin G. Rahe ([arahe@rfclaw.com](mailto:arahe@rfclaw.com))

Catherine M. Barber ([cbarber@rfclaw.com](mailto:cbarber@rfclaw.com))

Jessica Zehner ([jzehner@rfclaw.com](mailto:jzehner@rfclaw.com))

Lauren M. Ferrise ([lferrise@rfclaw.com](mailto:lferrise@rfclaw.com))

Theresa B. Carney ([tcarney@rfclaw.com](mailto:tcarney@rfclaw.com))

Erica Fatima ([efatima@rfclaw.com](mailto:efatima@rfclaw.com))

Rock, Fusco & Connnelly

333 West Wacker Drive, 19th Floor

Chicago, IL 60606

P: (312) 494-1000

**Attorneys for Reynaldo Guevara**

Steven B. Borkan ([Sborkan@borkanscahill.com](mailto:Sborkan@borkanscahill.com))

Timothy P. Scahill ([tscahill@borkanscahill.com](mailto:tscahill@borkanscahill.com))

Graham P. Miller ([gmiller@borkanscahill.com](mailto:gmiller@borkanscahill.com))

Emily E. Schnidt ([eschnidt@borkanscahill.com](mailto:eschnidt@borkanscahill.com))

Molly Boekeloo ([mboekeloo@borkanscahill.com](mailto:mboekeloo@borkanscahill.com))

Whitney Hutchinson ([whutchinson@borkanscahill.com](mailto:whutchinson@borkanscahill.com))

Mischa Itchhaporia ([mitchhaporia@borkanscahill.com](mailto:mitchhaporia@borkanscahill.com))

Kathryn E. Boyle ([kboyle@borkanscahill.com](mailto:kboyle@borkanscahill.com))

Krystal Gonzalez ([kgonzalez@borkanscahill.com](mailto:kgonzalez@borkanscahill.com))

Christine E. Murray ([Cmurray@borkanscahill.com](mailto:Cmurray@borkanscahill.com))

Amanda C. Guertler ([aguertler@borkanscahill.com](mailto:aguertler@borkanscahill.com))

Borkan & Scahill

20 S. Clark Street, Suite 1700

Chicago, IL 60603

P: (312)-580-1030

**Attorneys for Cook County**

Kelli Huntsman ([kelli.huntsman@cookcountyl.gov](mailto:kelli.huntsman@cookcountyl.gov))

Joseph Hodal ([joseph.hodal@cookcountysao.org](mailto:joseph.hodal@cookcountysao.org))

Cook County State's Attorney's Office

Civil Actions Bureau-Affirmative & Complex Litigation

500 Richard J. Daley Center

50 W. Washington, Room 500

Chicago, IL 60602

P: (312)-603-3151

**Attorneys for Jake Rubenstein:**

Kenneth M. Battle ([kbattle@mokblaw.com](mailto:kbattle@mokblaw.com))

Michele J. Braun ([mbraun@mokblaw.com](mailto:mbraun@mokblaw.com))

O'Connor & Battle, LLP

111 W. Jackson Blvd, Suite 1700

Chicago, IL 60604

P: (312) 786-4600

*/s/ Allison L. Romelfanger*

ALLISON L. ROMELFANGER, Attorney No. 6310033