

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2025

Argued: January 15, 2026 Decided: September 4, 2026

Docket No. 25-776-cv

RICARDO JIMENEZ
Plaintiff-Appellant,

v.

CITY OF NEW YORK, WENDELL STRADFORD, CHRISTOPHER HORN, BRONX COUNTY
DISTRICT ATTORNEY'S OFFICE, KAREN SERRANO-PAGLIA, AS ADMINISTRATOR OF THE
ESTATE OF MICHAEL SERRANO
Defendants-Appellees,

MICHAEL SERRANO,
Defendant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Before: CALABRESI, LEE, and NATHAN, *Circuit Judges.*

On appeal from an order and judgment of the United States District Court
for the Southern District of New York (Buchwald, J.):

In 2007, Plaintiff-Appellant Ricardo Jimenez was convicted of second-
degree murder for the 1989 killing of Sean Worrell and was sentenced to twenty-

two years to life imprisonment. In 2022, the U.S. District Court for the Southern District of New York (Oetken, J.) vacated Jimenez's conviction, finding that it was caused by materially prejudicial *Brady* violations by the prosecuting attorney. In 2023, Jimenez filed this lawsuit in the U.S. District Court for the Southern District of New York, seeking damages for his wrongful conviction and incarceration. He brings malicious prosecution, fair trial, and failure to intervene claims under 42 U.S.C. § 1983 against the police officers allegedly responsible for his wrongful conviction. This includes the detectives involved in the original 1989 investigation and the detective responsible for a subsequent investigation beginning around 2000. He brings a *Monell* claim against the City of New York and the Bronx County District Attorney's Office, alleging that his conviction was caused by a *de facto* municipal policy of failing to discipline prosecuting attorneys for ethical violations. He asserts New York state law malicious prosecution claims against all defendants. And he brings a New York state law negligence claim against the City of New York for its hiring, training, supervision, and retention of the defendant officers.

In March 2025, the district court (Buchwald, J.) dismissed all of Jimenez's claims with prejudice under Fed. R. Civ. P. 12(b)(6). The court found that the Bronx County District Attorney's Office was an improper defendant. The court found that the state and federal malicious prosecution claims against all officers failed for several reasons, including that Jimenez did not plead facts sufficient to rebut the presumption of probable cause that attaches to a grand jury indictment. As to the fair trial claims against the officers responsible for the original investigation in 1989, the court found that Jimenez failed to plead the required "forwarding" element and failed plausibly to allege fabrication of evidence. As to the fair trial claims against the officer responsible for the renewed investigation in 2006, the court found that Jimenez failed plausibly to allege fabrication of evidence. The court found that the failure to intervene claims against all officers and the negligence claim against the City of New York failed due to the absence of any underlying predicate wrongdoing. And the court found that the *Monell* claim against the City of New York failed because any *Brady* violation was not sufficiently flagrant or intentional to give rise to *Monell* liability.

We agree with the district court on several points. The Bronx County District Attorney's Office was an improper defendant. The complaint does not

allege particularized facts sufficient to overcome the presumption of probable cause that flows from a grand jury indictment; as a result, the malicious prosecution claims were rightly dismissed. As to the officers involved in the original 1989 investigation, the complaint does not adequately plead that they forwarded any fabricated evidence to the prosecution; therefore, the fair trial claims against those officers were rightly dismissed. Finally, the failure to intervene claims fail because, as to the original investigating officers, the complaint does not adequately plead an underlying constitutional tort and, as to the officer involved in the renewed investigation, the claim has been forfeited on appeal.

As to the remaining issues, we disagree with the court below. We find that Jimenez plausibly alleges that the detective responsible for the renewed investigation intentionally fabricated inculpatory evidence and forwarded it to prosecutors; therefore, we hold that the fair trial claim against that officer is adequately pled. Consequently, we find that the district court erred in dismissing the negligent hiring and supervision claim against the City of New York for lack of predicate wrongdoing. As to the *Monell* claim against the City of New York, we find that the district court erred by failing to credit the complaint's plausible allegation that the *Brady* violations were intentional and, moreover, erred in holding that a *Brady* violation must be intentional to give rise to *Monell* liability.

AFFIRMED in part, VACATED in part, and REMANDED for further proceedings consistent with this opinion.

JOSHUA D. KELNER, Kelner & Kelner, Esqs., *for Plaintiff-Appellant.*

ALEX FUMELLI, Senior Counsel, New York City Law Department (RICHARD DEARING, REBECCA VISGAITIS, and TAHIRIH M. SADRIEH, *of counsel on the brief*), *for Defendants-Appellees.*

CALABRESI, *Circuit Judge*:

I. BACKGROUND

A. Factual Background

The following facts are drawn from the operative complaint, including the evidentiary materials attached as exhibits to or incorporated by reference in the complaint. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152–54 (2d Cir. 2002). For purposes of this opinion, we are required to assume the truth of all plausible factual allegations in the complaint and to draw all reasonable inferences from these allegations in favor of Plaintiff-Appellant Ricardo Jimenez. *See id.*

1. The Movie Theater Killing and the Initial Investigation.

Shortly after midnight on July 3, 1989, a man named Sean Worrell was murdered at a screening of *Batman* in a movie theater in the Bronx, New York. The precipitating event was an argument that broke out in the concession line before the film. On one side of the argument was Worrell and several associates. On the other side was a man whose identity remains unknown. The argument ended when the unknown man exited the building, yelling, and Worrell and his associates took their seats in the theater. Soon after, as the film's opening credits rolled, the unknown man entered the theater. He was now armed. He found

Worrell and his associates, at least some of whom were also armed, and engaged in a shootout with them. Worrell was shot and killed. In the ensuing confusion, the killer fled.

The New York Police Department (NYPD) began an investigation, led by two detectives: Defendants-Appellees Michael Serrano and Christopher Horn. Detectives Serrano and Horn interviewed numerous eyewitnesses about what they had seen. The witnesses who observed the original argument in the concession line gave a consistent description of the unknown man. They reported that he was tall and thin, Black, wore gold jewelry, spoke with a Jamaican accent, and had blonde streaks dyed into the sides of his hair.

One of these eyewitnesses was Esco Blaylock, a fifteen-year-old boy who was working at the theater on the night of the incident. Blaylock told Detectives Serrano and Horn that he witnessed both the confrontation in the concession line and the subsequent shooting; that he personally recognized the shooter, having known him by name for two years; and that the shooter's name was Leon. Over a series of interviews, Blaylock provided extensive information about "Leon," including his address, criminal history, that he was known to be violent, and that he dated a girl named Sharon Ramroop.

On July 10, 1989, Detective Serrano located and interviewed Ramroop. According to Detective Serrano's report, Ramroop stated that she did know someone named "Leon," a "flashy dresser" of "Jamaican and Indian Extraction," but did not indicate that she had ever dated him. App'x at 116.

On July 11, 1989, the investigative event through which Detectives Serrano and Horn first equated "Leon" with Ricardo Jimenez occurred. An official account of this event is set forth in two contemporaneous reports written by Detective Serrano. The first one reads:

SUBJECT: CONFRONTATION OF ESCO BLAYLOCK AND SHARON RAMROOP

On July 11, 1989, in an effort to further identify "Leon", Esco and Sharon were confronted in this office. Esco and Sharon exchanged information relative to the description originally furnished by the various witnesses. It now appears that Esco Blaylock knows this perpetrator as Leon, and Sharon Ramroop knew the perpetrator as Ricky.

Id. at 117. And the second report reads:

Subject: IDENTIFICATION OF "LEON"

On July 11, 1989, at approximately 2030 hrs., Esco Blaylock and Sharon Ramroop were taken to CATCH. by the undersigned in the company of Det. Horn.

Both, Esco and Sharon viewed photos. Sharon Ramroop identified a photo as that of Manuel Jimenez, indicating that his brother was Ricky, the person being sought. A search of the files produced a photograph of Ricardo Jimenez

Mr. Esco Blaylock identified the photo of Ricardo Jimenez as the shooter in this case, and the person known to him as “Leon.” Sharon Ramroop stated that she knew this individual as “Ricky”

Id. at 123.

In sum, then, the official story is as follows: the detectives “confronted” Blaylock and Ramroop in the precinct and had them “exchange[] information”; it emerged from this “exchange” that the man known to Blaylock as “Leon” was known to Ramroop as “Ricky”; the officers showed Blaylock and Ramroop photographs; Ramroop, shown a photograph of Manuel Jimenez, indicated that he was “Ricky’s” brother; the officers located a photograph of Ricardo Jimenez and showed it to Blaylock; Blaylock identified Ricardo Jimenez as “Leon,” the shooter; the officers showed the photograph to Ramroop; Ramroop identified him as “Ricky.”

The complaint asserts that this identification of Jimenez not only was false—Jimenez was not named Leon and was not the shooter—but was the result of intentional “coercion, suggestion, [and] inducement” by the detectives. *Id.* at 45. In particular, the complaint attacks the official story in three ways.

First, the complaint presents evidence that Ramroop’s involvement was a fabrication. In March 2012, the attorney in charge at the Office of the Appellate Defender (OAD) obtained two handwritten, signed statements from Ramroop.

Beneath a photograph of Ricardo Jimenez taken in 1989, she wrote: “I do not know, and have never known, the person in this photograph. I never identified any picture of an individual known as Leon or Ricky, or any other person.” *Id.* at 121. And on a copy of Detective Serrano’s second report from the July 11, 1989, encounter (describing the identifications of Manuel and Ricardo Jimenez), she wrote: “I, Sharon Ramroop, have no recollection of making this statement or identifying a photograph of any person.” *Id.* at 123.

Then, in October 2012, a private investigator hired by OAD interviewed Blaylock and, according to an affidavit signed by the investigator, asked him “if [Ramroop] was present when [Blaylock] was brought to the precinct to make a photo identification in 1989.” *Id.* at 126. Blaylock stated that she was “not present.” *Id.* This, if true, not only suggests that the official story of the July 11 identification was a fabrication—it also raises the question of how it happened that Detectives Serrano and Horn picked out the photograph of Ricardo Jimenez to show to Blaylock.

Second, the complaint asserts that the official story, even if true, implies misconduct. For one, the reports give no detail as to how the officers “confronted” Blaylock and Ramroop—both of whom were teenagers

unaccompanied by their parents—and had them “exchange[] information.” *Id.* at 80, 117. Additionally, the second report implies that Blaylock’s identification of Ricardo Jimenez as “Leon” stemmed from a procedure in which Blaylock was shown only a single photograph, not a full array. *Id.* at 80, 123. “The practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned.” *Stovall v. Denno*, 388 U.S. 293, 302 (1967) (citing sources); *see also Mysholowsky v. New York*, 535 F.2d 194, 197 (2d Cir. 1976); *United States v. Thai*, 29 F.3d 785, 811 (2d Cir. 1994); *Brisco v. Ercole*, 565 F.3d 80, 88 (2d Cir. 2009).

Finally, the complaint asserts that Detectives Serrano and Horn should have known, and in fact did know, that Jimenez was not the shooter. He was not named Leon, did not have streaks dyed into the sides of his hair, and did not generally match the description of the perpetrator given by all eyewitnesses.

Nevertheless, on July 12, 1989—the day after the identification—Jimenez was arrested and detained in connection with the killing.

But soon after, Blaylock declined to appear for a lineup and stopped cooperating. Rather than asking any of the other eyewitnesses to come into the precinct to identify Jimenez, the officers released him from custody. According to

the complaint, they did so because they knew that the “other witnesses, who had identified an entirely different person, would not identify [Jimenez] as the shooter.” *Id.* at 80–81.

Indeed, on July 17, Detective Serrano interviewed an eyewitness named Lisa Salter, who was working at the theater during the incident and observed the argument in the concession line. *Id.* at 109. When Detective Serrano showed Salter a photograph of Jimenez, she indicated that she personally knew him and “had seen [him] on other occasions” but “he was not one [of] the males [who] had the argument at the concession stand.” *Id.*

After Jimenez’s release, the case lay dormant for approximately a decade, during which Detectives Serrano and Horn retired from police work.

2. The Revived Investigation.

Sometime around 1999, Defendant-Appellee Wendell Stradford, a detective in a special NYPD unit dedicated to investigating cold case homicides, assumed responsibility for the Worrell murder investigation. Soon after, the Bronx County District Attorney’s Office assigned Assistant District Attorney Lisa Mattaway to the case.

Over the following years, Detective Stradford and ADA Mattaway, according to the complaint, used a combination of witness inducement, suppression of evidence, and other investigative and prosecutorial misconduct to build a case falsely inculcating Jimenez for the murder of Worrell. That case, which ultimately resulted in Jimenez's conviction at trial in 2007, relied on the testimony of three cooperating witnesses—Andrew O'Brien, Esco Blaylock, and Kevin Morrissey—to tie Jimenez to the homicide.

a. Andrew O'Brien

At the start of the renewed investigation, Detective Stradford established contact with a man named Andrew O'Brien, who was serving a thirty-year sentence in federal prison stemming from a 1997 RICO conviction. The details of how Detective Stradford secured O'Brien's cooperation are complicated, unclear, and in dispute.

What is undisputed is that Detective Stradford, together with FBI Special Agent Diego R. Redondo, first met with O'Brien in person on January 16, 2001, in federal custody. According to Agent Redondo's notes from the meeting, O'Brien informed the officers that he was present with Worrell at the movie theater on the night of the incident; that it was O'Brien, not Worrell, who instigated the

argument with the perpetrator in the concession line; and that O'Brien witnessed the shooting. *See id.* at 310–12. According to Agent Redondo's notes, O'Brien described the shooter as "male, slim build, taller than O'BRIEN, squarish hair cut." *Id.* at 312. The notes state that the officers showed O'Brien "a photographic array," from which he identified a photograph of Ricardo Jimenez "as the individual with whom he had the confrontation, and who subsequently shot WORRELL." *Id.*

Following this identification, O'Brien would go on to become a key witness against Jimenez. But the complaint asserts that this identification was false and that Detective Stradford, knowing it to be false, used inducement and other improper methods to obtain it. To support this allegation, the complaint points to a series of inconsistencies, irregularities, and omissions in the official story of how O'Brien became a cooperating witness.

We begin with the official story. At Jimenez's trial, Detective Stradford testified that his trail to O'Brien began in 1999 when he received a "very sketchy" tip from a fellow NYPD officer, Detective Pfeiffer, about "a person who had some information on a homicide that occurred in the Bronx." *See id.* at 652–54, 667–69. He testified that he "[went] through records to locate [this homicide]"

and “contacted the F.B.I. and had them arrange for [him] to meet this individual.” *Id.* at 652–53. He testified that he also contacted the Drug Enforcement Agency “to have them produce some files for [him] that might have been related to the homicide in question” and, upon receiving the files, “contacted the F.B.I. again and made arrangements to meet the individual and have myself and this [FBI] agent go visit him to talk to him about it.” *Id.* He testified, crucially, that it was not until he met with that individual—O’Brien—in January 2001 that he confirmed “that the case that [he] had gotten from the precinct [i.e. the Worrell homicide] was, in fact, the homicide that [O’Brien] was talking about.” *Id.* at 654. Indeed, he testified that he did not even “know there was a case” before meeting with O’Brien and that it was only “[a] couple of days” after their meeting that he “[knew] there was a case.” *Id.* at 709.

O’Brien, meanwhile, testified at trial that “the first time [he] told anyone in law enforcement about what happened” was around 1996, when “[he] was being questioned by federal agents and they asked [him] . . . of certain things that he knew about.” *Id.* at 551–52. He testified that the next time he spoke with law enforcement about the shooting was sometime around 1998, when he spoke with Detective Pfeiffer, followed by Detective Stradford “the same year or the year

after.” *Id.* at 552–53. When asked about his reasons for cooperating, he testified that, one, he felt guilty because he was the person who started the argument in the concession line, and two, under the terms of a cooperation agreement attached to his RICO conviction, “if I kept it to myself they could rip up my agreement and everything else.” *Id.* at 554–55.

The complaint tells a different story.

We begin with the complaint’s allegations about O’Brien himself.

As an initial matter, the complaint incorporates evidence that O’Brien, before becoming a witness, may himself have been a suspect. Attached to the complaint is a March 1996 note from NYPD “Sgt. Larkin,” stating that a Brooklyn detective “has information” that “Andy O’Brien” was the “perp[]” responsible for the 1989 Worrell homicide. *Id.* at 307.

More importantly, the complaint incorporates evidence that O’Brien, at the time when Detective Stradford established contact with him, had been actively soliciting opportunities to serve as a cooperating witness. In 1998, in exchange for his cooperation in a different case, Assistant United States Attorney David Novak—O’Brien’s sponsor in the Witness Security Program and the prosecutor on his RICO case—had filed a Rule 35 motion to reduce his sentence. The

sentencing court granted the motion, reducing his prison term by several years.

But O'Brien, remaining unsatisfied, began writing letters to AUSA Novak and to the sentencing judge begging for an additional reduction. In one letter to the judge, he referred to himself as a "desperate man." *Id.* at 83.

This desperation, the complaint asserts, was O'Brien's true motivation, contrary to his trial testimony, for testifying against Jimenez. That is, "[he] agreed to implicate and testify against JIMENEZ with the explicit and/or implicit understanding that, in return for doing so, [Detective Stradford and ADA Mattaway] would work to obtain a sentence reduction for him in connection with his federal sentence." *Id.* at 18. And, as it turns out, he did end up receiving such a reduction. *See infra* § I.A.4.

The complaint also incorporates evidence that O'Brien did not, as he testified at trial, first inform law enforcement about his alleged knowledge of the Worrell homicide sometime around 1996. To the contrary, the complaint attaches a 32-page memorandum documenting a four-day proffer session that O'Brien underwent with the FBI in 1997 pursuant to the cooperation agreement attached to his RICO plea. *Id.* at 128–59. The memorandum describes that, at one point in the interview, O'Brien was shown photographs of various individuals and was

asked if he knew anything about them. *Id.* at 146–49. When shown a photograph of Worrell, he correctly identified him (though under the name “Morrell”) and stated that “this individual was killed in the Bronx, White Stone Movie Theatre.” *Id.* at 148. He did not provide further information about the killing nor indicate that he had any special knowledge of it, let alone that he was there.

Finally, in addition to these allegations about O’Brien himself, the complaint also alleges that Detective Stradford fabricated key details regarding the investigative trail that led him to O’Brien.

For one, the complaint alleges that the paperwork Detective Stradford received from the DEA about O’Brien, contrary to Detective Stradford’s trial testimony, “did not even *suggest* that O’Brien had knowledge of the movie theater shooting.” *Id.* at 90.

Moreover, the complaint incorporates an internal FBI memorandum from Agent Redondo, dated January 3, 2001, requesting that arrangements be made for the January 16, 2001, in-custody interview with O’Brien. The memorandum states that the FBI and NYPD had been investigating the Worrell homicide; that “it was determined that O’BRIEN possessed first hand [sic] knowledge of the homicide”; and that “[s]pecifically, [O’Brien] witnessed the murder being

committed by RICARDO JIM[E]NEZ.” *Id.* at 308. The memorandum also states that AUSA Novak had already been contacted to secure O’Brien’s cooperation. This, of course, contradicts Detective Stradford’s trial testimony that it was not until *after* the January 16 meeting with O’Brien that Detective Stradford confirmed the connection between O’Brien and the Worrell homicide (or even that “there was a case”). And crucially, it also contradicts the official account of O’Brien’s original identification of Jimenez, set forth in Agent Redondo’s notes from the January 16 meeting. That account—which states that O’Brien described to the officers the physical profile of the shooter and then selected Jimenez’s image from an array—implies that O’Brien, before the meeting, did not know Jimenez personally or by name and had not already identified a photograph of him. But if that is so, then there is no apparent way that the officers could have known as of January 3 that O’Brien saw Jimenez killing Worrell and would testify to that effect. The implication, according to the complaint, is that the January 16 identification was the result of suggestion and inducement.

b. Esco Blaylock

According to Detective Stradford’s trial testimony, the next steps in his investigation, after the January 2001 meeting with O’Brien, were to obtain the

records from the 1989 NYPD investigation; to locate the witnesses mentioned therein; and to arrange to interview them. From the record, it is unclear whether, as part of this effort, Detective Stradford contacted Lisa Salter, the eyewitness who knew Jimenez personally and who told Detective Serrano that Jimenez was not one of the individuals involved in the argument in the concession line. *See supra* § I.A.1. In 2012, Salter wrote and signed an affidavit stating that “had [she] been asked to testify about what [she] saw at the theater on July 3, 1989, [she] would have been willing to do so.” App’x at 326.

For unexplained reasons, the case lay dormant for five years after Detective Stradford’s initial meeting with O’Brien. It was not until April 2006 that Detective Stradford found a second witness willing to inculcate Jimenez: Esco Blaylock.

It is unclear how or why Blaylock, who ceased cooperating nearly two decades prior, agreed at this point to resume his previously “withdrawn” testimony.¹ In 2012, an OAD investigator interviewed Blaylock, and according to the investigator’s affidavit, Blaylock stated that “he was forced ‘by law’ to cooperate [with the 2006 investigation] because he was a TSA employee at the

¹ Jimenez asserts that Blaylock recanted his earlier testimony. The Government says that he simply stopped cooperating.

time and it was ‘Homeland Security rules.’” *Id.* at 125–26. Along similar lines, the 2007 trial transcript contains testimony indicating that, around the time Detective Stradford initiated contact with Blaylock, Blaylock had been arrested for driving while intoxicated and eventually lost his job in airport security. The complaint also asserts that Blaylock, at the last minute, tried to avoid testifying at Jimenez’s trial and had to be personally retrieved by Detective Stradford before his appearance. From these facts, the complaint draws the inference that Blaylock may have cooperated under some form of compulsion.

The complaint also incorporates evidence that Detective Stradford may have used an unduly suggestive identification procedure to induce Blaylock’s renewed identification of Jimenez. According to the OAD investigator’s affidavit, Blaylock, in 2012, summarized the identification procedure which Detective Stradford applied to him as follows: first, Blaylock was shown several different photographic arrays, each of which contained an image of Jimenez; then, he was given an opportunity to review each of the arrays several times; and only then, after he had noted the recurrence of Jimenez’s image (and apparently only Jimenez’s image) across the different arrays, was he asked to identify whether any of the individuals in the arrays looked familiar. *Id.* at 125–26.

According to the affidavit, “[Blaylock] compared the process to the [children’s image identification] game ‘Where’s Waldo?’.” *Id.* at 126. The increased danger of misidentification stemming from such procedures—that is, when a witness is shown “the pictures of several persons among which the photograph of a single such individual recurs”—has long been well established. *See Simmons v. United States*, 390 U.S. 377, 383 (1968).

On August 31, 2006, with Blaylock’s cooperation secured, Jimenez was arrested for the Worrell murder. A few days later, on September 2, a grand jury, having heard evidence presented by ADA Mattaway, issued an indictment.

From the limited portion of the grand jury transcript on file in this proceeding, it is unknown whether O’Brien testified. *See Sealed App’x* at 1–31. Detective Stradford, whose brief testimony did not mention O’Brien, spoke only about his interaction with Blaylock. He testified that he met with Blaylock in April 2006 and performed an identification procedure, and that Blaylock identified Jimenez in “[p]osition number [two.]” *Id.* at 4.

Blaylock testified at greater length, detailing his reminiscences from the night of the killing. He testified that he witnessed “Leon” arguing in the concession line and subsequently shooting Worrell in the theater, and that at the

time he had known Leon by name, but not personally, for eight or nine months. He testified that he met with Detective Stradford in April 2006 and “went through a photo array,” from which he “recognized the guy that I know as Leon, the guy that shot the other guy.” *Id.* at 23.

Neither Detective Stradford nor Blaylock provided any testimony about the allegedly irregular nature of the photographic identification procedure — i.e., that Blaylock was given an opportunity to note the recurrence of Jimenez’s image across several different arrays before being asked to make an identification.

c. Kevin Morrissey

Shortly after Jimenez was arrested and placed in pretrial detention, a man with whom he was incarcerated, Kevin Morrissey, reached out to the Bronx County District Attorney’s Office seeking to establish contact with the attorney responsible for Jimenez’s prosecution. Morrissey claimed that Jimenez confessed to him in jail that he (Jimenez) was guilty of the Worrell killing and offered to testify against Jimenez to that effect.

But Jimenez, the complaint asserts, never made any such confession. Morrissey, it turns out, was patently unreliable. He had a history of delusion and mental illness, including schizophrenia. He had multiple charges against him.

And he was a serial jailhouse informant who had worked with, or tried to work with, prosecutors' offices in numerous cases. Once, he had attempted to provide false testimony against the crime boss John Gotti. Another time, he had written a letter to a judge indicating that a foreign man living inside his body was responsible for the crimes of which he had been accused.

Despite these reliability issues, ADA Mattaway decided to use him as a witness at trial.

3. Preparation for Trial.

As trial approached, ADA Mattaway met with O'Brien at least once, and Detective Stradford met with him multiple times.

On June 4, 2007, ADA Mattaway spoke by phone with AUSA Novak, O'Brien's sponsor in the Witness Security Program. After the phone call, ADA Mattaway emailed AUSA Novak stating that she "would like Andrew O'Brien to testify for me here in Bronx Supreme [C]ourt." App'x at 48–49. She requested copies of "any cooperation agreements he has made in exchange for his testimony with the Federal government and any information regarding favorable treatment he may have received in exchange for his cooperation, including his placement in the witness protection program." *Id.* She wrote: "I am aware that he

has written numerous letters to the judge in his case requesting leniency and if any of those letters mention the possibility he may testify here in Bronx Supreme [C]ourt for me, I imagine I will need copies of those letters too.” *Id.*

On June 8, 2007, AUSA Novak sent ADA Mattaway the requested documents, including, *inter alia*: (1) the FBI memorandum from O’Brien’s 1997 proffer session; (2) O’Brien’s letters to his sentencing judge seeking a sentence reduction; (3) the Rule 35 motion that AUSA Novak had filed on O’Brien’s behalf and the resulting order reducing his sentence; and (4) transcripts of O’Brien’s cooperating testimony in past cases. AUSA Novak flagged that he was providing these documents “for [ADA Mattaway’s] determination as to whether they are discoverable in [the] prosecution of Ricardo Jimenez.” *Id.* at 160–61.

ADA Mattaway, however, did not disclose any of these documents, nor her communications with AUSA Novak, to Jimenez’s counsel. Nor did she disclose the fact that O’Brien had already received a sentence reduction under his cooperation agreement and was campaigning for another, nor the fact that at his 1997 proffer session he had not indicated any special knowledge of the Worrell homicide. Her pretrial witness disclosure statement regarding O’Brien omitted

any indication that she intended to assist him in seeking a sentence reduction.

Instead, it stated only as follows:

[C]urrently jailed in Federal Custody for Murder (unrelated) and serving 30 years. Has asked for a letter to be prepared by the undersigned that he can have put in his file stating that he testified for the Bronx County District Attorney's Office.

Id. at 162.

In addition to withholding these documents and facts about O'Brien, ADA Mattaway also withheld impeachment evidence relevant to Morrissey, including aspects of his criminal history, past instances of cooperation, and mental illness. She also, the complaint alleges, delayed production of portions of detective files and other pertinent materials in order to impede or prevent their effective use by defense counsel.

According to the complaint, ADA Mattaway's decision to suppress these facts and materials was not an isolated occurrence but rather the consequence of the practices, policies, and longstanding culture of the Bronx County District Attorney's Office, where prosecutors were permitted and even encouraged to violate ethical norms and legal rules in pursuit of convictions with no fear of disciplinary consequences. According to the complaint, whereas the office closely tracked conviction rates, it did virtually nothing to track, enforce, or punish

ethical misconduct, despite repeated appellate reversals for prosecutorial misbehavior.

To support these assertions, the complaint incorporates an appendix of cases in which appellate courts have found ethical violations by Bronx County prosecutors. It also incorporates a law article reviewing empirical and testimonial evidence derived from discovery materials produced by the City of New York in past litigation; this evidence suggests an absence of disciplinary policies or practices to address persistent ethical violations by Bronx County prosecutors from the 1970s through the 2000s. *See* Joel B. Rudin, *The Supreme Court Assumes Errant Prosecutors Will Be Disciplined by Their Offices or the Bar: Three Case Studies that Prove that Assumption Wrong*, 80 Fordham L. Rev. 537, 544–58 (2011).

4. Trial.

Trial began in Bronx County Supreme Court in June 2007 and lasted several weeks. In the absence of physical evidence, the prosecution relied entirely on the testimony of Morrissey, O’Brien, and Blaylock to tie Jimenez to the killing. Detectives Serrano and Stradford, among other police officers, testified about

their investigations. Detective Serrano testified that he did not recall the specifics of his investigation and did not recall making an arrest.

Throughout the trial, ADA Mattaway elicited testimony—such as Detective Stradford’s testimony, *see supra* § I.A.2.a—contrary to documents that she had not shown to the defense. And in her summation, she implied that O’Brien was a reformed gang member, stating that “he’s doing time for his own problems.” App’x at 100. She did not indicate that he had testified for the very purpose of diminishing that “time.”

After five days of deliberation, the jury found Jimenez guilty of second-degree murder. The court sentenced him to twenty-two years to life in prison. At sentencing, he continued to maintain his innocence, stating, “I didn’t do it. I was never there at the movie theater when that happened.” *Id.* at 91.

After trial, ADA Mattaway wrote a letter to AUSA Novak indicating that O’Brien’s testimony had been “crucial to the People’s case” and urging AUSA Novak to “give Mr. O’Brien whatever consideration you can in your position” because he “came through for me when I needed him and then some.” *Id.* at 90. In turn, AUSA Novak filed a Rule 35 motion based on O’Brien’s cooperation. The

sentencing court granted the motion, removing an additional five years from O'Brien's prison term.

5. Post-Trial Proceedings.

a. State Appeals

On direct appeal to the First Department of the Appellate Division, Jimenez asserted various constitutional and non-constitutional claims, all of which were rejected. *See People v. Jimenez*, 896 N.Y.S.2d 69 (1st Dep't 2010). Jimenez sought leave to appeal to the New York Court of Appeals, which was denied. *People v. Jimenez*, 15 N.Y.3d 752 (2010).

In 2011, Jimenez initiated a collateral proceeding, moving to vacate his conviction under N. Y. Crim. Proc. § 440.10, arguing, *inter alia*, that ADA Mattaway withheld exculpatory evidence in violation of disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). The Bronx County Supreme Court denied the motion without holding a hearing. On appeal, the First Department partially affirmed and partially reversed, finding that Jimenez made a "sufficient showing to warrant a hearing" on only one narrow issue: whether "the prosecutor knew that O'Brien had been given a specific quid pro quo for his testimony." *People v. Jimenez*, 37 N.Y.S.3d 225, 235 (1st Dep't 2016). The matter

was remanded to determine whether ADA Mattaway violated her *Brady* obligations “by not disclosing the terms of an agreement to assist in a sentence reduction for People’s witness Andrew O’Brien, if such an agreement existed.” *Id.* at 236.

On remand, the Bronx Supreme Court held a hearing on this issue at which Detective Stradford, ADA Mattaway, and O’Brien gave testimony. In June 2018, the court denied the motion once more, concluding that “there was no *quid pro quo* agreement between the Bronx prosecutor’s office and Mr. O’Brien and/or the federal prosecutor.” App’x at 201–02. Jimenez sought leave to appeal to the Appellate Division, which was denied, *People v. Jimenez*, 2018 N.Y. Slip Op. 87587(U) (1st Dep’t 2018), and to the New York Court of Appeals, which was denied as well, *People v. Jimenez*, 2019 N.Y. Slip Op. 66214(U) (1st Dep’t 2019).

b. Habeas Proceeding.

During the pendency of his CPL § 440.10 proceeding, Jimenez filed a federal habeas petition in the U.S. District Court for the Southern District of New York. Initially, the court stayed the matter pending conclusion of his state court proceeding.

Finally, in July 2022, the court (Oetken, J.) granted the petition for habeas relief, vacating Jimenez's conviction. *Jimenez v. Graham*, No. 11-CV-6468, 2022 WL 2789217 (S.D.N.Y. July 15, 2022).

The basis of the court's decision was that ADA Mattaway suppressed exculpatory impeachment evidence relevant to O'Brien, including: (1) the FBI memorandum of his 1997 proffer session; and (2) materials evidencing his campaign to reduce his federal sentence, including (a) his 1997 cooperation agreement, (b) the 1998 court order granting his first sentence reduction, (c) his letters seeking a further reduction, and (d) relevant correspondences between ADA Mattaway and AUSA Novak.

The court found that suppression of this evidence, considered cumulatively, was materially prejudicial, and that the state courts' determination that there was no *Brady* violation amounted to an unreasonable application of federal law, rendering Jimenez eligible for habeas relief under the standard set forth at 28 U.S.C. § 2254(d).

In deeming the suppression of exculpatory impeachment evidence materially prejudicial, the court emphasized that "it cannot be stressed enough that the case against Jimenez was weak." App'x at 1245. The court noted that

Blaylock’s original identification stemmed from a “highly suggestive” single-photo identification procedure, *id.* at 1246 n.11; that O’Brien testified falsely at Jimenez’s trial about his history of cooperation against Jimenez and that he likely cooperated against Jimenez for the purpose of receiving an undisclosed sentence reduction, which he did end up obtaining, *id.* at 1248; that Morrissey was mentally unwell and “tended to lie for his own benefit,” *id.*; that Detective Stradford’s story about how he initiated contact with O’Brien was not credible, *id.* at 1244, 1248; and that, on the whole, the prosecution’s “entire case rest[ed] on two highly suspect eyewitness identifications and a jailhouse snitch—common factors in wrongful convictions.” *Id.* at 1249.

The court vacated Jimenez’s conviction and ordered that he be “released unless the State provides him with a new trial within 120 days.” *Id.* at 1250. Instead of appealing or re-trying the case, the Bronx County District Attorney’s Office moved to dismiss the indictment. On April 10, 2023, the charges against Jimenez for the 1989 Worrell murder were finally dismissed.

B. Procedural History

Jimenez filed this civil action in July 2023 in the U.S. District Court for the Southern District of New York, seeking compensation for harms suffered due to

his wrongful conviction. In January 2024, he filed the Second Amended Complaint (SAC).

The SAC asserts state and federal claims against both individual and municipal defendants. Against Detectives Serrano, Horn, and Stradford, the SAC asserts federal claims under 42 U.S.C. § 1983 for malicious prosecution, denial of fair trial rights, and failure to intervene. Against municipal defendants the City of New York and the Bronx County District Attorney's Office, the SAC asserts claims under 42 U.S.C. § 1983 and *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), alleging that Jimenez's wrongful conviction was caused by a *de facto* municipal policy of failing to discipline prosecutors in the Bronx County District Attorney's Office for ethical violations. The SAC also asserts New York State common law claims against all defendants for malicious prosecution and against the City of New York for negligent hiring, training, supervision, and retention of the defendant officers.

On March 1, 2024, Defendants moved to dismiss the SAC under Rule 12(b)(6) for failure to state a claim. On November 1, 2024, the court, rather than resolving the motion on the pleadings alone, requested the minutes from the sealed grand jury proceeding in which Jimenez was indicted. The parties

provided the court with partial excerpts of the sealed transcript of the grand jury proceeding.

On March 27, 2025, the district court (Buchwald, J.) issued an order and opinion granting the motion to dismiss in full, dismissing with prejudice all of Jimenez's claims.

First, the court addressed the claims against Detectives Serrano and Horn. The court ruled that the malicious prosecution and fair trial claims against these officers failed for two reasons: "first, Jimenez is unable to link the issues he perceives in Dets. Serrano and Horn's 1989 investigation to the legal proceeding brought against him nearly two decades later"; and "second, there are no particularized facts to support Jimenez's claims, which, as pled, are, in essence, mere recitations of the elements of the causes of action." App'x at 1383. The court ruled that the failure to intervene claim against these officers also failed for two reasons: first, Jimenez lacked standing to bring the claim because Blaylock and Ramroop, not Jimenez, were the ones whose rights the officers allegedly violated; and second, "there [was] no underlying constitutional violation" against which intervention was warranted. *Id.* at 1393.

Next, the court addressed the claims against Detective Stradford. The court ruled that the malicious prosecution claim failed because Jimenez did not establish that Detective Stradford lied to the grand jury and therefore could not overcome the presumption of probable cause. The court ruled that the fair trial claim failed because Jimenez did not allege particular facts to support plausible findings that Detective Stradford induced Blaylock or O'Brien to provide false testimony, that he knew their testimonies were untrue, that he suppressed evidence, or that he otherwise engaged in investigative misconduct. And the court deemed Jimenez's failure to intervene claim against Detective Stradford both meritless and abandoned.

The court then addressed the municipal liability claims. First, the court found that the Bronx County District Attorney's Office was an improper defendant and dismissed the claim against it. Turning to the claim against the City of New York, the court stated, as a matter of law, that the "presence of a Brady violation, without a further showing of intent, is an insufficient 'constitutional tort' for Monell purposes." *Id.* at 1404.

In light of the state court ruling denying Jimenez's CPL § 440.10 motion, the court reasoned that "reasonable jurists disagreed about whether there was a

Brady violation, and that lack of consensus clearly demonstrates that any Brady violation was not so glaringly intentional or flagrant as would be required to satisfy the civil Brady standard.” *Id.* at 1406. On that basis, the court dismissed Jimenez’s *Monell* claim against the City of New York.

In so ruling, the court declined to credit the complaint’s allegation that ADA Mattaway’s non-disclosures were intentional, noting that the state court judges “found that any non-disclosure [by ADA Mattaway] was not willful or intentional.” *Id.*

Finally, the court dismissed the negligence claim against the City of New York, reasoning that “since we have not, after close consideration, found any constitutional violations by any individual defendant, we conclude that Jimenez lacks the basic, necessary predicate to sustain his negligent hiring claim.” *Id.* at 1407.

On April 1, 2025, Jimenez timely appealed the district court’s ruling.

II. DISCUSSION

A. Standard of Review.

“We review the grant of a motion to dismiss de novo.” *Fink v. Time Warner Cable*, 714 F.3d 739, 740–41 (2d Cir. 2013) (per curiam). “To survive a motion to

dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation modified). While no deference is owed to “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” we must accept particularized factual allegations as true and draw all reasonable inferences in the plaintiff’s favor. *Id.*

Where, as here, a complaint incorporates by reference evidentiary materials outside its own four corners, the reviewing court may consider such materials without converting a motion to dismiss into a motion for summary judgment. *Chambers*, 282 F.3d at 152. Any foray into such materials must be strictly limited by the rule that our task at this procedural stage “is not in any way to evaluate the truth as to what really happened, but merely to determine whether the plaintiff’s factual allegations are sufficient to allow the case to proceed.” *See Doe v. Columbia Univ.*, 831 F.3d 46, 59 (2d Cir. 2016).

B. Malicious Prosecution.

Jimenez challenges the district court’s dismissal of his malicious prosecution claims against Detectives Serrano, Horn, and Stradford under New York and federal law.

“To prevail on a malicious prosecution claim under New York law and federal law, a plaintiff must show: ‘(1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, (2) the termination of the proceeding in favor of the accused, (3) the absence of probable cause for the criminal proceeding and (4) actual malice.’” *Kee v. City of New York*, 12 F.4th 150, 161–62 (2d Cir. 2021) (quoting *Smith-Hunter v. Harvey*, 95 N.Y.2d 191, 195 (2000)). To prevail on a malicious prosecution claim under federal law, “a plaintiff also must demonstrate a ‘[] post-arraignment liberty restraint’” sufficient to trigger Fourth Amendment protections. *Id.* at 162 (citation modified) (quoting *Rohman v. N.Y.C. Transit Auth.*, 215 F.3d 208, 215 (2d Cir. 2000)).

As the basis for his malicious prosecution claims against Detectives Serrano and Horn, Jimenez alleges that these officers used a suggestive procedure and other improper means to induce Esco Blaylock to identify Jimenez as the shooter; that they knew from their interviews with eyewitnesses that the identification was false; and that the reports documenting the identification, at least as related to Ramroop’s involvement, were fabricated. As the basis for his malicious prosecution claims against Detective Stradford, Jimenez alleges that Stradford used suggestive procedures and other improper methods to induce

O'Brien and Blaylock to identify Jimenez as the shooter; that he knew the identifications were false yet shared them with ADA Mattaway and helped to arrange O'Brien's and Blaylock's cooperation; that he aided in the suppression of evidence, including of O'Brien's history of cooperation; that he testified falsely at trial about O'Brien; and that his grand jury testimony concealed the irregularity of the identification procedure to which he subjected Blaylock.

The court below concluded that these claims failed as a matter of law. As to Detectives Serrano and Horn, the court found that the complaint did not plausibly allege (i) that these officers initiated the prosecution, (ii) that the prosecution lacked probable cause, or (iii) that they acted with malice. As to Detective Stradford, the court found that the complaint did not plausibly allege (1) that the prosecution lacked probable cause or (ii) that he acted with malice.

Because we agree that Jimenez does not adequately allege the absence of probable cause, we conclude that the court did not err in dismissing these claims. The existence of probable cause to prosecute is a complete defense to a claim of malicious prosecution. *Savino v. City of New York*, 331 F.3d 63, 72 (2d Cir. 2003); *Colon v. City of New York*, 60 N.Y.2d 78, 82 (1983). And "indictment by a grand jury creates a presumption of probable cause that may only be rebutted by

evidence that the indictment was procured by ‘fraud, perjury, the suppression of evidence or other police conduct undertaken in bad faith.’” *Savino*, 331 F.3d at 72 (quoting *Colon*, 60 N.Y.2d at 83). Significantly, “[t]he burden of rebutting the presumption of probable cause requires the plaintiff to establish what occurred in the grand jury, and to further establish that those circumstances warrant a finding of misconduct sufficient to erode the ‘premise that the Grand Jury acts judicially.’” *Rothstein v. Carriere*, 373 F.3d 275, 284 (2d Cir. 2004) (quoting *Colon*, 60 N.Y.2d at 82).

In his attempt to meet this burden, Jimenez points to myriad instances of alleged misconduct that occurred throughout the investigation and prosecution, including the wrongdoings of Detectives Serrano and Horn in 1989 and the inducement of O’Brien’s cooperation in 2000. While many of these allegations are plausible, the proper legal analysis demands a narrower aperture. The inquiry is not whether, as a general matter, wrongdoing took place. Rather, the inquiry is whether the grand-jury indictment was “procured by fraud, perjury, the suppression of evidence or other police conduct undertaken in bad faith.” *Savino*, 331 F.3d at 72 (citation modified). That inquiry necessitates a restricted focus on “what occurred *in the grand jury*.” *Rothstein*, 373 F.3d at 284 (emphasis added); see

also Batista-Reyes, ---F.4th---, No. 23-461, 2026 WL 2386336, at *13–14 (2d Cir. Aug. 17, 2026).

The complaint does not assert, and the grand jury transcript does not indicate, that O’Brien testified at the grand jury, nor that Detective Stradford testified about O’Brien’s identification of Jimenez. Likewise, the complaint does not assert, and the transcript does not indicate, that Detectives Serrano or Horn testified at the grand jury, nor that Detective Stradford or Esco Blaylock testified in any way about Blaylock’s 1989 identification of Jimenez as “Leon,” the shooter. As such, any malfeasance entailed in those identifications, even if plausible, has no bearing on how the grand jury indictment was procured.

More narrowly, the grand-jury indictment appears to have been procured through Blaylock’s testimony about his experience witnessing “Leon” kill Worrell and through Blaylock’s and Detective Stradford’s testimonies about Blaylock, in April 2006, identifying Ricardo Jimenez as “Leon.” The question, then, is whether Jimenez plausibly establishes that *those* testimonies were fraudulent, perjurious, or otherwise given in bad faith.

Jimenez’s strongest argument to that effect rests on the OAD investigator’s 2012 affidavit describing his interview with Blaylock, in which Blaylock allegedly

told the investigator that Detective Stradford first showed several arrays of photographs, each of which contained an image of Jimenez, and only then, after Blaylock had noted the recurrence of Jimenez's image across the arrays, invited an identification. This practice has long been condemned by courts as unduly suggestive and likely to beget misidentification. *See Simmons*, 390 U.S. at 383. And neither Blaylock nor Detective Stradford said anything in their grand jury testimonies to inform the grand jury about this irregularity. Indeed, Detective Stradford's testimony—that he conducted an identification procedure with Blaylock, who identified Jimenez in “[p]osition number [two],” Sealed App'x at 4—implied, if anything, the opposite: that Jimenez's image occurred only once (in position number two).

In a different case also involving an improperly suggestive identification procedure that was not disclosed to the grand jury, we concluded on summary judgment that the presumption of probable cause was overcome. *See Dufort v. City of New York*, 874 F.3d 338, 353 (2d Cir. 2017). In that case, “the only direct evidence presented to the grand jury linking [the plaintiff] directly to the attack was [an] eyewitness identification ... so defective that a reasonable officer could not use it to find probable cause.” *Id.* And because the improper nature of that

identification was not acknowledged in the grand jury presentation, we found that the plaintiff was entitled to a jury determination of whether the defendants' conduct "rose to the requisite level of bad faith to rebut the presumption of probable cause ordinarily created by a grand jury indictment." *Id.*

Whether *Dufort* compels a similar outcome here is a close question. But ultimately, even if we construe Jimenez's complaint liberally and credit the (hearsay) allegations contained in the OAD investigator's affidavit, we nonetheless find that the alleged irregularity of the identification procedure at issue here is not as manifest as it was in *Dufort*. There, the eyewitness observed the perpetrator of the crime only from behind and did not see his face; she observed only that he was wearing a red shirt. *Id.* at 344. The investigating officers, who were aware of this fact, brought her into the precinct for a lineup and dressed the plaintiff—and no other suspect—in a red shirt. *Id.* In turn, the witness identified the plaintiff as the perpetrator based solely on the color of his shirt. *Id.* at 344–45. We deemed that lineup "so defective that a reasonable officer could not use it to find probable cause." *Id.* at 353.

Here, by contrast, Blaylock testified not only that he saw the perpetrator's face but, critically, that he recognized the perpetrator and knew him by name

(“Leon”). This is crucial. When a witness personally knows a perpetrator, the witness’s identification of that perpetrator is considered “confirmatory.” *See People v. Rodriguez*, 79 N.Y.2d 445, 449 (1992). Because of the added index of reliability conferred by personal recognition, confirmatory identifications are generally excepted from our prohibitions against suggestive procedures. *See id.* (citing *People v. Gissendanner*, 48 N.Y.2d 543, 552 (1979)).

Jimenez argues that Blaylock’s identification should not be considered confirmatory because Blaylock testified that he knew a man named “Leon,” not Ricardo Jimenez. Appellant’s Brief at 48. While we credit the complaint’s plausible allegation that Jimenez was not in fact named “Leon,” we find this argument unpersuasive. Blaylock’s and Detective Stradford’s grand-jury testimony indicated that Blaylock identified a photograph of Ricardo Jimenez as the person known to him as “Leon.” Whether that identification was accurate—that is, whether there was probable cause to believe that (1) Blaylock accurately selected a photograph of the person whom he knew as “Leon,” and (2) the person in that photograph was indeed Ricardo Jimenez—was a question of fact appropriate for resolution by the grand jury, not any court. The plausible fact that the grand jury’s resolution of that question proved ultimately wrong does

not “erode the ‘premise that the Grand Jury act[ed] judicially.’” *Rothstein*, 373 F.3d at 284 (quoting *Colon*, 60 N.Y.2d at 82).

Ultimately, then, we are not persuaded that Jimenez has satisfied his burden of proving that the indictment was procured in bad faith. The grand jury was told that Blaylock witnessed “Leon” commit the murder and that, in April 2006, he identified a photograph of Ricardo Jimenez as “Leon.” If Blaylock had not claimed longstanding personal knowledge of “Leon” prior to the incident, then *Dufort* would likely govern. But as it stands, while Jimenez has plausibly alleged various forms of questionable and even unlawful police activity, he has not plausibly alleged that the indictment was procured through bad-faith police misconduct. On this basis—and without reaching the district court’s alternative grounds for its ruling on these claims—we conclude that the court below did not err in dismissing Jimenez’s state and federal malicious prosecution claims.

C. Fair Trial.

Jimenez argues that the court below erred in dismissing his Section 1983 fair trial claims against Detectives Serrano, Stradford, and Horn.

“The Due Process Clause guarantees a criminal defendant’s ‘right to a fair trial.’” *Frost v. N.Y.C. Police Dep’t*, 980 F.3d 231, 244 (2d Cir. 2020) (quoting

Ramchair v. Conway, 601 F.3d 66, 73 (2d Cir. 2010)). “This right is violated ‘[w]hen a police officer creates false information likely to influence a jury’s decision and forwards that information to prosecutors.’” *Id.* (quoting *Ricciuti v. N.Y.C. Transit Auth.*, 124 F.3d 123, 130 (2d Cir. 1997)). “Such violations are redressable in an action for damages under 42 U.S.C. § 1983.” *Id.* (citation modified). To plead a Section 1983 fair trial claim based on fabrication of evidence, a plaintiff must plausibly allege that “an (1) investigating official (2) fabricated information (3) that was likely to influence a jury’s verdict, (4) forwarded that information to prosecutors, and (5) the plaintiff suffered a deprivation of life, liberty, or property as a result.” *Garnett v. Undercover Officer C0039*, 838 F.3d 265, 279 (2d Cir. 2016) (citation modified). “[A]ny information fabricated by an officer can serve as the basis of a claim for a denial of the right to a fair trial.” *Id.* (emphasis original). Unlike malicious prosecution claims, Section 1983 fair trial claims can stand even where the defendant had probable cause to arrest and prosecute the plaintiff. *Id.* at 277–78 (citing *Ricciuti*, 124 F.3d at 130).

1. Detective Stradford

Jimenez’s fair trial claim against Detective Stradford rests on the same allegations as his malicious prosecution claim. Finding no “well-pled facts to

support these serious allegations,” the district court dismissed the claim. App’x at 1398.

We find otherwise. While at the 12(b)(6) stage a plaintiff bears no specific evidentiary burden and bears only the burden of plausibility, Jimenez’s complaint goes considerably further; it incorporates extensive evidence plausibly indicating investigative wrongdoing in Detective Stradford’s engagement with both O’Brien and Blaylock.

As to O’Brien, the January 2001 FBI memorandum suggests that Detective Stradford, contrary to his trial testimony, had already determined before his initial meeting with O’Brien that O’Brien would identify Jimenez as the man who killed Worrell, and had already arranged with AUSA Novak for O’Brien to testify to that effect. This—together with the plausible, evidence-backed allegations (1) that O’Brien may have, at one point, been a suspect in the murder, (2) that O’Brien was actively soliciting law enforcement agents and his sentencing court for a sentence reduction, (3) that Detective Stradford and ADA Mattaway never disclosed O’Brien’s campaign for a sentence reduction to Jimenez’s counsel, and most importantly, (4) that Jimenez did not even resemble the shooter—is sufficient to render plausible the allegation that Detective

Stradford intentionally induced O'Brien to give false testimony. To require detailed allegations as to *exactly* how Detective Stradford did this (e.g. during his initial closed-door meeting with O'Brien) would be to demand from Jimenez an impossible level of factual particularity in the current, pre-discovery phase of litigation.

As to Blaylock, the court dismissed as conclusory the allegation that Detective Stradford induced Blaylock to testify falsely. In doing so, the court characterized as inadmissible hearsay—and therefore refused to consider—the OAD investigator's affidavit describing Blaylock's alleged 2012 statements about the 2006 identification procedure. The court also stated that Blaylock never recanted his original testimony from 1989.

Whether Blaylock recanted his 1989 identification of Jimenez during the decade-long dormancy of the investigation strikes us as irrelevant. So, too, does the admissibility at trial of the OAD investigator's affidavit. Given the 12(b)(6) posture, we are required to assume as true the plausible allegation, supported by the affidavit, hearsay or otherwise, that Detective Stradford showed Blaylock "multiple photo arrays—three or four—and that the picture of the person [Blaylock] ultimately identified was included in each array." App'x at 126.

Such a procedure—one in which an officer “show[s] [a witness] the pictures of several persons among which the photograph of a single such individual recurs or is in some way emphasized”—has long been understood to create an increased danger of misidentification. *See Simmons*, 390 U.S. at 383. This—together with the surrounding context of alleged investigative misconduct, the allegation that Jimenez did not resemble the shooter, and the impeachment evidence concerning Blaylock, *see supra* § I.A.2.b—is sufficient to support a plausible inference that Detective Stradford intentionally induced Blaylock’s false testimony.

Given these inferences that Detective Stradford plausibly induced both Blaylock and O’Brien to testify falsely at trial—and the fact that their testimonies were not only likely to influence the jury but in fact did so—there is little question that the complaint’s allegations against Detective Stradford satisfy the elements of a Section 1983 fair trial claim.

2. *Detectives Serrano and Horn*

The factual basis of Jimenez’s fair trial claim against Detectives Serrano and Horn is similar to that of his malicious prosecution claims against these defendants. *See supra* § II.B.

The district court dismissed the fair trial claims against Detectives Serrano and Horn for three reasons. First, the court found that Jimenez did not plausibly substantiate his conclusory assertion that Blaylock's original identification was false or the product of any misconduct. Second, the court determined that Jimenez did not point to any "false evidence" of the sort typically required in fair trial claims. App'x at 1340. And third, the court found, as with the malicious prosecution claims against these defendants, that the fair trial claims lacked an adequate "throughline" connecting the alleged wrongdoing in 1989 to the eventual prosecution. *Id.* at 1389.

On the first and second issues, we disagree. At this procedural stage, we are required to credit the plausible allegation that Ramroop was not present at the 1989 investigation and, therefore, that the official story about her role in the identification of Ricardo Jimenez was a lie. We are also required to credit the plausible allegation that Detectives Serrano and Horn subjected Blaylock to a single-photo identification procedure in which Blaylock identified Jimenez as "Leon," the shooter, even though Jimenez bore no resemblance to the shooter and was not named Leon. Assuming these facts to be true, it is plausible to infer

that Detectives Serrano and Horn first selected Ricardo Jimenez as the killer and thereafter induced Blaylock to identify him falsely as such.

Nor do we agree with the district court that Blaylock's allegedly false identification was not the type of "manufactured evidence" that properly gives rise to a fair trial claim. *See id.* at 1390 ("'Manufactured' evidence is typically planted evidence, forced testimony, or falsified police reports."). To the contrary, the complaint does allege that Detective Serrano falsified the report describing Blaylock's identification of Jimenez, in particular as related to Ramroop's involvement. Moreover, our precedents do not support the district court's narrow interpretation of the "fabricated information" element. False testimony intentionally secured through improper means is precisely the type of evidence that, when it results in a deprivation of liberty, gives rise to fair trial liability. *See, e.g., Frost*, 980 F.3d at 251.

But on the third issue considered by the district court—that is, whether the attenuation separating Detectives Serrano and Horn's alleged wrongdoing in 1989 from Jimenez's later prosecution and conviction exceeds the permissible limits of liability—we agree that Jimenez's fair trial claims against Detectives Serrano and Horn are not plausibly meritorious.

As an analytic matter, this attenuation problem entails two distinct but related inquiries: first, whether we can infer a sufficient causal nexus between the alleged wrongdoing and the alleged harm to support liability; and second, whether the “forwarding” element has been adequately pled.

On the causation question, we are inclined to find the complaint adequate. The court below found no “causal link” connecting Detective Serrano and Horn’s alleged misconduct to Jimenez’s later prosecution. App’x at 1385. But assuming the complaint’s plausible allegations to be true, it is reasonable to infer that if not for Detective Serrano and Horn’s original inducement of Blaylock’s false identification in 1989, Jimenez would never have been associated with the Worrell homicide in the first place and, in turn, would not have become the object of the revived investigation. Therefore, Detectives Serrano and Horn’s alleged actions were plausibly a cause-in-fact of Jimenez’s prosecution.

Proximate causation is a more difficult question. As a general matter, “the chain of [proximate] causation between a police officer’s unlawful [conduct] and a subsequent conviction and incarceration is broken by the intervening exercise of independent judgment.” *Townes v. City of New York*, 176 F.3d 138, 147 (2d Cir. 1999). Thus, even if Detectives Serrano and Horn’s alleged actions were a cause-

in-fact of Jimenez's prosecution, the detectives cannot be held liable if Detective Stradford and ADA Mattaway exercised sufficiently independent judgment as intervening decision-makers. *See Zahrey v. Coffey*, 221 F.3d 342, 351 n.7 (2d Cir. 2000). Still, if intervening decision-makers are "misled" by the original fabrication of evidence, their judgment is deemed not-independent. *See Bermudez v. City of New York*, 790 F.3d 368, 374–76 (2d Cir. 2015). This is so even where intervening actors engage in some wrongdoing themselves. *See id.*

If Detective Stradford and ADA Mattaway knew that Detective Serrano's 1989 reports were false and the product of Detectives Serrano and Horn's bad faith conduct, yet nonetheless used the reports, the chain of causation would be broken. But the operative complaint supports no such inference. There is no allegation or evidence that Detective Stradford and ADA Mattaway knew that Blaylock's original identification was coerced or that Ramroop's involvement was falsified. Thus, while the evidentiary burden on this issue would be greater at a future stage of proceedings, it would likely be inappropriate to hold as a matter of law, given the facts plausibly set forth in the complaint and the fact-intensive nature of the probable cause inquiry, that intervening actors were not misled by the actions of Detectives Serrano and Horn. As such—and despite the

passage of nearly two decades between the alleged wrongdoings and the alleged harms—we do not find that Jimenez’s fair trial claims fail on the basis of absent causation.

By contrast, we do find that Jimenez fails to plead that Detectives Serrano and Horn “forwarded” information, fabricated or otherwise, to prosecutors. It is undisputed that Detectives Serrano and Horn’s investigation terminated in 1989 and that both detectives retired well before Detective Stradford initiated the renewed investigation. And apart from Detective Serrano’s testimony at Jimenez’s 2007 trial—which was largely that he could not remember the specifics of the 1989 investigation or arrest—the complaint makes no allegation that these officers were in any substantive way involved in the renewed investigation and prosecution. For those reasons, this element is not adequately pled.

To be sure, this is not to say that the forwarding element of a fair trial claim hinges entirely on the presence of direct communication between a defendant officer and prosecutors. Such a holding would insulate evidence-fabricating officers from liability whenever it is the defendant officer’s colleague, not the defendant officer, who sends faulty evidence to prosecuting attorneys. Recognizing that police officers generally work in concert, we have consistently

extended liability to defendant officers who—*together*—“conspir[e] to fabricate and forward to prosecutors a known false confession almost certain to influence a jury’s verdict.” *Ricciuti*, 124 F.3d at 130; *see also Cook v. City of New York*, 243 F. Supp. 3d 332, 353 (E.D.N.Y. 2017) (“A defendant does not have to forward fabricated evidence directly to a prosecutor in order to be held liable for fabricating evidence; the officer can be held liable even if the allegedly fabricated evidence is forwarded to another police officer.” (citing cases)). Likewise, we have held that the forwarding element can sometimes be “reasonably inferred from the prosecution itself.” *Carruthers v. Colton*, 153 F.4th 169, 191 (2d Cir. 2025).

But here, any such inference would be speculative. While Detectives Serrano and Horn may have played a causal role in the eventual prosecution, that causal role was not through the *forwarding* of any fabricated evidence to prosecutors. Instead, their causal role, if any, entailed investigative activities too far attenuated from any actual prosecution to support fair trial liability. And on that basis, we find that the fair trial claims against these officers were correctly dismissed.

D. Municipal Liability.

Jimenez brings Section 1983 claims under *Monell* against the City of New York and the Bronx County District Attorney's Office. The basis of these claims is twofold. First, he alleges that ADA Mattaway violated his constitutional due process rights by suppressing exculpatory evidence in manifest violation of *Brady* obligations, and by then eliciting testimony and making arguments on summation contrary to the withheld evidence. Second, he alleges that these wrongful actions were caused by the culture, practices, and policies of the Bronx County District Attorney's Office, where prosecutors were, throughout the relevant period, systematically led to seek convictions with no fear of disciplinary consequences for ethical violations.

Under Section 1983, municipalities cannot be held vicariously liable for the acts of employees; they are liable only for their own illegal acts. *Monell*, 436 U.S. at 691. As such, plaintiffs who sue local governments under Section 1983 must prove that their injury resulted from "action pursuant to official municipal policy." *Id.* In other words, to prevail on a Section 1983 claim against a municipality based on the unconstitutional acts of municipal employees, "a plaintiff is required to plead and prove three elements: (1) an official policy or

custom that (2) causes the plaintiff to be subjected to (3) a denial of a constitutional right.” *Batista v. Rodriguez*, 702 F.2d 393, 397 (2d Cir. 1983).

The district court dismissed Jimenez’s *Monell* claim against the Bronx County District Attorney’s Office because “that office is not a suitable entity.” App’x at 1403. This ruling was sound. The allowance of municipal liability under *Monell* is “limited to local government units which are not considered part of the State for Eleventh Amendment purposes.” *Monell*, 436 U.S. at 690 n.54 (1978). “When prosecuting a criminal matter, a district attorney in New York State, acting in a quasi-judicial capacity, represents the State not the county.” *Ying Jing Gan v. City of New York*, 996 F.2d 522, 536 (2d Cir. 1993) (citation omitted).

Turning to the claim against the City of New York, the district court held as a matter of law that “[w]hen bringing a § 1983 Brady claim, a plaintiff must not only show that police or prosecutors withheld material evidence, but that such evidence was willfully or intentionally withheld.” App’x at 1404–05. In view of the divergence between the habeas court that vacated Jimenez’s conviction on the basis of materially prejudicial *Brady* violations and the state courts that found no *Brady* violations, the court concluded that “reasonable jurists disagreed about whether there was a Brady violation, and that lack of

consensus clearly demonstrates that any Brady violation was not so glaringly intentional or flagrant as would be required to satisfy the civil Brady standard.” *Id.* at 1406. The court further noted that whereas the habeas court made no finding “that any non-disclosure attributable to ADA Mattaway was willful or malevolent,” the state courts “found that any non-disclosure was not willful or intentional.” *Id.* On these grounds, the court dismissed Jimenez’s claim against the City of New York.

In other words, the court dismissed Jimenez’s claim on the finding that he failed to plead an underlying constitutional violation adequate to support *Monell* liability. This ruling stemmed from the court’s view that “the presence of a *Brady* violation, without a further showing of intent, is an insufficient ‘constitutional tort’ for *Monell* purposes.” *Id.* at 1404.

In support of that view, the court cited two of our cases: *Fappiano* and *Bellamy*. But neither of those cases in fact so held. In *Fappiano*, we took care to clarify that we have “never” addressed whether “anything less than an intentional Brady violation establishes a § 1983 due process claim for damages” and we expressly “decline[d] to do so.” *Fappiano v. City of New York*, 640 Fed. App’x 115, 118 (2d Cir. 2016) (summary order). And in *Bellamy*, we again made

clear that we have never “conclud[ed] . . . that a civil *Brady* claim requires a showing that the non-disclosure was intentional.” *Bellamy v. City of New York*, 914 F.3d 727, 751 n.23 (2019). In treating the *mens rea* requirement applicable to civil *Brady* claims as a settled issue, the court misread our precedents.

For two major reasons, however, this appeal does not provide us with the occasion to clarify that unresolved issue.

First, Jimenez does not plead a Section 1983 due process claim against ADA Mattaway based on alleged *Brady* violations, intentional or otherwise.

Rather, he pleads a *Monell* claim against the City of New York, alleging persistent and systematic supervisory failures amounting to municipal policy or custom.

An extensive body of case law governs the *mens rea* requirements applicable to such claims.²

² In *City of Canton*, the Supreme Court held that a city’s failure to train employees can sometimes amount to a “policy or custom” giving rise to *Monell* liability, but only if the need for training was so obvious that the municipality could be found “deliberately indifferent.” *City of Canton v. Harris*, 489 U.S. 378, 387 (1989); see also *Reynolds v. Giuliani*, 506 F.3d 183, 192 (2d Cir. 2007) (noting that “deliberate indifference” standard applies not only to failure to train but also to failure to supervise and failure to discipline). While this “deliberate indifference” requirement pertains to the “policy or custom” element of *Monell* liability—not the “constitutional violation” element—the very existence of such claims implies that some constitutional violations giving rise to *Monell* liability could be averted with better training, i.e., that constitutional violations cognizable under *Monell* can stem from the ignorance or incompetence of untrained employees, not outright intentionality. See *Connick v. Thompson*, 563 U.S. 51, 71 (2011) (“To prove deliberate indifference, [plaintiff] needed to show that [district attorney] was on notice that, absent additional specified training, it was ‘highly predictable’ that the prosecutors in his office would be confounded by those gray areas and make incorrect *Brady* decisions as a result.”).

Second, the complaint does, in fact, plausibly allege that ADA Mattaway's non-disclosures were intentional. After describing ADA Mattaway's pretrial witness disclosure statement regarding O'Brien—which disclosed only that a "letter" prepared by Mattaway would be "put in his file"—the complaint alleged that ADA Mattaway "knew exactly what was going to happen after trial: Mattaway was going to write a letter to AUSA Novak about O'Brien's cooperation, which would serve as a potential basis for a further sentence reduction motion." App'x at 88.

Likewise, ADA Mattaway's emails with AUSA Novak also support a plausible inference that she was aware of her disclosure obligations and yet disregarded them. In her June 4, 2007, email, she stated, "I am aware that [O'Brien] has written numerous letters to the judge in his case requesting leniency and if any of those letters mention the possibility he may testify here in Bronx Supreme court for me, I imagine I will need copies of those letters too." *Id.* at 84. In his response several days later, AUSA Novak flagged that he was providing certain documents to ADA Mattaway "for your determination as to whether they are discoverable in your prosecution of Ricardo Jimenez." *Id.* at 84, 160–61. ADA Mattaway, in turn, not only failed to disclose these documents but,

further, elicited testimony and gave summation argument contrary to them at trial. Her excuse for failing to heed AUSA Novak's message about disclosure—that she had “just returned from a vacation” and “neglected to look at and disclose of the documents,” *id.* at 303—may ultimately be believed, but it cannot overcome a plausible allegation of intentionality at this procedural stage. Accordingly, we do not need to decide the question left open in *Fappiano* and *Bellamy* in order to send this case to the next stage.

Defendants, however, argue in the alternative that Jimenez fails on each of the other two requirements of a *Monell* claim. They assert the absence of (1) a relevant policy or custom that (2) caused the denial of this constitutional right. They argue, first, that Jimenez fails to allege that the City of New York was on notice of a prior pattern of *Brady* violations in the Bronx County District Attorney's Office that are sufficiently similar to the ones alleged here. This, they contend, is required to infer “deliberate indifference” that amounts to a “policy or custom” under the framework of the Supreme Court decision in *Connick v. Thompson*, 563 U.S. 51, 63 (2011). And second, they contend that Jimenez fails plausibly to allege causation.

As to the first issue, the degree to which the logic and holding of *Connick* should govern this action is not clear. In *Connick*, the Supreme Court addressed the conditions under which a district attorney's *failure to train* prosecuting attorneys about their *Brady* obligations will amount to a municipal "policy or custom" giving rise to *Monell* liability. *See supra* note 4; *Connick*, 563 U.S. at 62. The Court held that for a district attorney to be considered "on notice that the office's *Brady* training was inadequate with respect to the sort of *Brady* violation at issue" and therefore deemed "deliberately indifferent" as to the violation, the plaintiff bears the burden of establishing not merely a generalized need for better training but rather a "prior pattern of similar violations." *Connick*, 563 U.S. at 59, 72. The Court based this holding on considerations specific to failure to train claims. *See id.* at 61–65.

Jimenez, though, pursues not a failure to train claim but rather a failure to discipline claim. While such a claim indisputably requires "deliberate indifference," *see City of Canton*, 489 U.S. at 387; *Reynolds*, 506 F.3d at 192, it is unclear whether it also requires, as Defendants here assume, notice of a prior pattern of similar *Brady* violations.

It would, however, be imprudent for us to address these two defenses in the first instance. The court below, finding that Jimenez failed to allege a constitutional violation sufficient to support *Monell* liability, addressed neither the “policy or custom” element nor the causation element of Jimenez’s claim against the City of New York. We therefore remand this matter to the district court to make an initial determination, in light of the law as set forth in this opinion, of whether Jimenez adequately pled his *Monell* claim against the City of New York.

E. Remaining Claims.

In closing, we turn to the remaining claims.

Jimenez brings Section 1983 failure to intervene claims against Detectives Serrano, Horn, and Stradford, alleging that each defendant “failed to intervene to prevent, end, or report the unconstitutional conduct to which plaintiff was subjected.” App’x at 95. The district court dismissed these claims for multiple independently sufficient reasons. Without reaching each of those reasons, we agree that these claims were correctly dismissed. As to Detectives Serrano and Horn, we find no underlying predicate constitutional tort (malicious prosecution

or fair trial) against which intervention would have been warranted. And as to Detective Stradford, Jimenez has forfeited his claim on appeal.

Jimenez also brings a common law claim against the City of New York, alleging negligence in the hiring and retention of the defendant officers. The court dismissed this claim on the merits, explaining that “since we have not, after close consideration, found any constitutional violations by any individual defendant, we conclude that Jimenez lacks the basic, necessary predicate to sustain his negligent hiring claim.” *Id.* at 1407. Because we conclude that Jimenez does state plausible constitutional tort claims, we remand this issue to the district court to address the adequacy of Jimenez’s negligence claim in light of our findings and the governing law.

III. CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED in part and VACATED in part. We AFFIRM the dismissal of Jimenez’s *Monell* claim against the Bronx County District Attorney’s Office, his state and federal malicious prosecution claims against all defendants, his fair trial claim against Detectives Serrano and Horn, and his failure to intervene claims against all individual defendants. We VACATE the dismissal of Jimenez’s fair trial claim

against Detective Stradford, his *Monell* claim against the City of New York, and his negligence claim against the City of New York. We REMAND this matter for further proceedings consistent with this opinion.