Appendix A

United States Court of Appeals for the Eighth Circuit

No. 20-3299

Ifrah Yassin

Plaintiff - Appellant

v.

Heather Weyker, individually and in her official capacity as a St. Paul Police Officer

Defendant - Appellee

The City of St. Paul; John Does 1–2, individually and in their official capacities as St. Paul Police Officers; John Does 3–4, individually and in their official capacities as supervisory members of the St. Paul Police Department

*Defendant*s

Appeal from United States District Court for the District of Minnesota

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Submitted: December 15, 2021
Filed: July 14, 2022

Appendix A

Before LOKEN, SHEPHERD, and STRAS, Circuit Judges.

STRAS, Circuit Judge.

The question in this case is whether a St. Paul police officer acted under color of state law when she allegedly lied to protect a federal witness while serving on a federal task force. *See* 42 U.S.C. § 1983. The district court[1] concluded that she did not, and we affirm.

I.

This is the third chapter in a series of civil-rights lawsuits brought against Heather Weyker for her role in a federal sex-trafficking investigation. In addition to her full-time position as a St. Paul police officer, she was cross-deputized as a federal agent to investigate an interstate sex-trafficking scheme. Many were charged, but none were convicted. *See United States v. Fahra*, 643 F. App'x 480, 488–89, 494 (6th Cir. 2016); *United States v. Adan*, 913 F. Supp. 2d 555, 558–559, 567 (M.D. Tenn. 2012). The attention soon turned to Weyker, who faced lawsuits from at least 21 of the people she came across during the investigation. *See, e.g.*, *Ahmed v. Weyker*, 984 F.3d 564 (8th

[1] The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota.

Cir. 2020); *Farah v. Weyker*, 926 F.3d 492 (8th Cir. 2019).

A.

Ifrah Yassin was one of them. Perhaps the most accidental of participants, she and her friends only became involved because of a dangerous encounter with Muna Abdulkadir, who was a witness in the federal sex-trafficking investigation. A verbal confrontation turned physical, and Abdulkadir eventually "struck Yassin . . . while brandishing a knife." *Ahmed*, 984 F.3d at 566 (quotation marks and brackets omitted). After Yassin called 911, Minneapolis police officer Anthijuan Beeks arrived on the scene. He reviewed available security footage and interviewed the participants while Abdulkadir hid in a friend's apartment nearby.

Meanwhile, Abdulkadir made a call of her own. It was to Weyker, who was actively working on the sex-trafficking investigation in Nashville. Fearing arrest, Abdulkadir falsely claimed that Yassin started the dispute, allegedly because she was angry that her boyfriend was a defendant in the sex-trafficking case.

When Weyker called Officer Beeks, she identified herself as both a St. Paul police officer and a member of a federal task force. She also introduced others in the room, including the lead federal prosecutor and another federal agent. Weyker's message was clear: Abdulkadir was a witness in a federal investigation and the other women involved in the fight had, upon "information and documentation," been out "to

intimidate" her. She then repeated the same story to a supervising officer.

It was true that Abdulkadir was a federal witness, but everything else Weyker said was false. There was no "information" or "documentation." And she knew nothing about Yassin, aside from what Abdulkadir had told her. Yet Yassin and her friends were arrested for witness tampering. *See* Minn. Stat. § 609.498.

Federal charges came the next day. In Weyker's affidavit supporting the criminal complaint against Yassin and her friends, she identified herself as an "FBI Task Force Officer / St Paul MN PD Officer." (Capitalization omitted). Otherwise, the affidavit was riddled with inaccuracies, just like her call to Officer Beeks the day before.

The federal criminal complaint charged Yassin and the other women with witness retaliation. *See* 18 U.S.C. § 1513(b); *see also id.* § 1513(g) (providing that the prosecution may be brought "in the district in which the official proceeding . . . was intended to be affected"). The charges against Yassin's friends were eventually dismissed, but not before they each spent about 25 months in federal custody. Yassin was even less fortunate. She did not regain her freedom until after she was tried and acquitted.

B.

This case is about what happens next for Yassin. She seeks to recover on a wrongful-arrest theory against Weyker, whom she has sued in two different

capacities: as a St. Paul police officer, *see* 42 U.S.C. § 1983, and as a deputized federal agent, *see Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 397 (1971).

There is no dispute that Weyker was clothed with governmental authority when she acted. The question is what type. If the answer is state law, then any claim must arise under 42 U.S.C. § 1983. But if she was acting under color of *federal* law, *Bivens* is the only option. *See Haley v. Walker*, 751 F.2d 284, 285 (8th Cir. 1984) (per curiam) ("Section 1983 creates a remedy to redress a deprivation of a federally protected right by a person acting under color of state law, but is inapplicable to persons acting under color of federal law.").

We are not writing on a blank slate. In *Ahmed v. Weyker*, we concluded that a "*Bivens* remedy [was] off the table" because there were good reasons not to imply "a new cause of action." 984 F.3d at 567, 571. Given that *Ahmed* involved the same facts, there is only one option still on the table: a section 1983 action, but only if Yassin can show that Weyker was acting under color of state law. *Farah*, 926 F.3d at 502.

The parties shifted their focus to the color-of-law question following our first remand in this case. *See id.* After denying a continuance that would have allowed Yassin to conduct further discovery, *see* Fed. R. Civ. P. 56(d), the district court granted Weyker's motion for summary judgment on the ground that her actions arose under color of federal law and no *Bivens* action was available on these facts.

II.

We review the district court's decision to grant summary judgment de novo. *Bharadwaj v. Mid Dakota Clinic*, 954 F.3d 1130, 1134 (8th Cir. 2020). "Summary judgment is appropriate when the evidence, viewed in [the] light most favorable to the nonmoving party, shows no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Id.* (citation omitted).

Every section 1983 action has two key elements: (1) "the violation of a right secured by the Constitution and laws of the United States" (2) by "a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). Only the second element is at issue here.

A.

Mixing the color-of-law inquiry with the summary-judgment standard introduces a complication. Genuine issues of material fact are for juries to resolve. *See Cherne Contracting Corp. v. Marathon Petroleum Co.*, LLC, 578 F.3d 735, 740 (8th Cir. 2009). The answer is different for legal questions, which are typically decided by courts, even at summary judgment. *See Aho v. Erie Min. Co.*, 466 F.2d 539, 541 (8th Cir. 1972); Fed. R. Civ. P. 56(a). So which one is the under-color-of-law determination?

It turns out that the Supreme Court has already answered this question. In *Cuyler v. Sullivan*, for example, it made clear that the under-color-of-law

determination is a "question of law." 446 U.S. 335, 342 & n.6 (1980); *see also Blum v. Yaretsky*, 457 U.S. 991, 997, 1009 n.20 (1982) (describing the question of "whether there is state action" as one of "several issues of law" and equating "state action" with "the 'under color of law' requirement of § 1983"). To the extent there is any room left for debate, the predominant view is that it is legal.[2]

We recognize, of course, that the under-color-of-law determination can turn out to be quite "fact[]bound." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982); *see also Farah*, 926 F.3d at 502 (explaining that this inquiry "potentially requires a fact-intensive analysis"). But as long as the underlying material facts are undisputed, courts can decide the question, even when those undisputed facts point in different directions. *See Aho*, 466 F.2d at 541; *see also*

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[2] *See Goldstein v. Chestnut Ridge Volunteer Fire Co.*, 218 F.3d 337, 344 n.7 (4th Cir. 2000) ("[T]he ultimate resolution of whether an actor was a state actor or functioning under color of law is a question of law for the court."); *Jennings v. Patterson*, 488 F.2d 436, 438 (5th Cir. 1974) ("[S]tate action within the meaning of Section 1983 [is] an issue of law which should never have been submitted to the jury."); *Neuens v. City of Columbus*, 303 F.3d 667, 670 (6th Cir. 2002) ("Whether Bridges was acting under color of law is a legal issue."); *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1322 (9th Cir. 1982) (referring to the question of "whether the actions of the towing company, a private entity, were 'under color of state law' for purposes of 42 U.S.C. § 1983" as a "legal question[]"); *Nieto v. Kapoor*, 268 F.3d 1208, 1215 (10th Cir. 2001) (holding that the question of whether a defendant was a state actor for § 1983 purposes "is a question of law that we review de novo" (italics omitted)); *Almand v. DeKalb Cnty.*, 103 F.3d 1510, 1513–14 (11th Cir. 1997) (same).

Hallgren v. U.S. Dep't of Energy, 331 F.3d 588, 589 (8th Cir. 2003) (noting that "question[s] of law" may be "resolved by summary judgment provided there are no genuine issues of material fact in dispute").

To be sure, juries still have a role to play when material facts are in dispute. Suppose in this case, for example, that the parties disputed whether Weyker had been cross-deputized as a federal agent. *Cf. Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 158 (1970) (giving the jury the task of figuring out whether there was a "meeting of the minds" in a federal civil-rights action); *Ernster v. Luxco, Inc.*, 596 F.3d 1000, 1006–07 (8th Cir. 2010) (explaining this principle in the age-discrimination context). In those circumstances, a jury may well need to resolve the factual dispute first, before the district court can decide the color-of-law question. *Cf. Lee ex rel. Lee v. Borders*, 764 F.3d 966, 970–71 (8th Cir. 2014) (denying the defendant's motion for judgment as a matter of law because, "even in [the defendant's] version of events," he acted under color of state law).

B.

Color of law is rooted in authority. "[I]n a § 1983 action," a defendant must "have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with [state] authority.'" *West*, 487 U.S. at 49 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). The question is whether the conduct is "fairly attributable to the State." *Montano v. Hedgepeth*, 120 F.3d 844, 848 (8th Cir. 1997) (quoting *Lugar*, 457 U.S. at 937). To

determine if it is, the focus is on the "nature and circumstances of the officer's conduct and the relationship of that conduct to the performance of . . . official duties." *Magee v. Trs. of Hamline Univ., Minn.*, 747 F.3d 532, 535 (8th Cir. 2014) (quotation marks and brackets omitted).

State law had nothing to do with "the nature and circumstances" of Weyker's conduct. *Id.* At the time, she was in Nashville working on a federal task force as a Special Deputy United States Marshal. She introduced the other task-force members in the room during the call, including the lead federal prosecutor and a federal agent. And the witness she was trying to protect, Muna Abdulkadir, was only on her radar because she was assigned to a federal investigation.

Weyker also did not stray from the "performance of [her] official duties" when she spoke to Officer Beeks and his supervising officer. *Id.* As someone who was tasked with "investigative work on the [sex-trafficking] task force," she acted within the scope of those duties by trying to keep a federal witness out of trouble. *See id.* ("Factors [in the color-of-law analysis] include: . . . the motivation behind the officer's actions . . . "). The same goes for her statements in the affidavit she prepared the next day. *See id.*

It is true that Weyker occasionally let her local practices creep into her federal activities. One example was introducing herself as a St. Paul police officer. Another was when she used a St. Paul police form to advise Abdulkadir of her *Miranda* rights. And a third was when she filed an incident report with the St.

Paul Police Department, despite preparing an affidavit a short time later to support federal charges against Yassin and her friends.

But these practices do not alter the federal character of what she did. Weyker's work on the federal sex-trafficking investigation led to Yassin's arrest, she acted within the scope of her federal duties while dealing with the situation, and she referenced her federal-task-force role during her conversations with Officer Beeks and his supervisor.[3] *See King v. United States*, 917 F.3d 409, 433 (6th Cir. 2019), *rev'd on other grounds sub nom. Brownback v. King*, 141 S. Ct. 740 (2021) ("As a deputized federal agent, Detective Allen carried federal authority and acted under color of that authority rather than under any state authority he may have had as a Grand Rapids Police detective."). What matters, in other words, is that she "act[ed] or *purport[ed] to act* in the performance of [her federal] duties, even if [s]he overstep[ped] [her] authority and

[3] It also does not make any difference that Weyker worked with Minneapolis police officers. Federal and state officers work together all the time without clouding their distinct sources of authority, and no one here argues that Officer Beeks was acting in concert with Weyker. A joint-action theory, in other words, finds no support in the record. *Compare Wickersham v. City of Columbia*, 481 F.3d 591, 598 (8th Cir. 2007) (holding that a police department's "prearranged role" in carrying out a private company's speech-suppression policy constituted state action), *with Big Cats of Serenity Springs, Inc. v. Rhodes*, 843 F.3d 853, 870–71 (10th Cir. 2016) (holding that federal agents who gave instructions to local sheriffs' deputies were "better seen as acting under color of *federal* law").

misuse[d] power." *Johnson v. Phillips*, 664 F.3d 232, 240 (8th Cir. 2011) (emphasis added).

Our rule today is straightforward. Without any "actual or purported relationship between [Weyker's] conduct and [her] duties as a [St. Paul] police officer," no section 1983 action is available. *Magee*, 747 F.3d at 535.

III.

One loose end remains. Yassin requested a continuance to conduct further discovery. *See* Fed. R. Civ. P. 56(d). In a short order, the district court denied the request. The question for us is whether it abused its discretion. *See Johnson v. Moody*, 903 F.3d 766, 772 (8th Cir. 2018) (stating the standard of review).

A party seeking additional discovery under Federal Rule of Civil Procedure 56(d) has to show: "(1) that [she] [has] set forth in affidavit form the specific facts that [she] hope[s] to elicit from further discovery, (2) that the facts sought exist, and (3) that these sought-after facts are essential to resist the summary judgment motion." *Toben v. Bridgestone Retail Operations, LLC*, 751 F.3d 888, 895 (8th Cir. 2014) (quotation marks omitted). Our review of a decision like this one is highly deferential given the district court's "wide discretion" over discovery matters. *Johnson*, 903 F.3d at 772.

The sought-after discovery fell into two broad categories. In the first were facts to rebut the "purported connection" between the sex-trafficking investigation

and the fight. The problem with this category is that it would have been of marginal relevance, at least the way Yassin had framed it. Even if she could establish that Weyker was lying—and we can assume that she was—it would not have changed the fact that she did so in her capacity as a federal agent, not as a St. Paul police officer.

Other parts of the discovery request were scattershot. Yassin asked to depose several witnesses, including Weyker and Officer Beeks, and review a long list of documents. It is not clear what she expected to learn, at least as far as the under-color-of-law issue is concerned. *See Toben*, 751 F.3d at 895. To the extent she hoped that someone would say that Weyker failed to identify herself as a federal agent, there was little chance of that happening. Officer Beeks had already described her as one in his police report, which would only have been possible if she had raised her federal role during the call. It was no abuse of discretion for the district court to recognize that reopening discovery for a "fishing expedition" would have been counterproductive. *Johnson*, 903 F.3d at 772 (citation omitted).

IV.

We accordingly affirm the judgment of the district court.

Appendix B

United States Court of Appeals for the Eighth Circuit

No. 18-3461

Hawo O. Ahmed

Plaintiff - Appellee

v.

Heather Weyker, in her individual capacity as a St. Paul Police Officer

Defendant - Appellant

No. 18-3471

Hamdi A. Mohamud

Plaintiff - Appellee

v.

Heather Weyker, in her individual capacity as a St. Paul Police Officer

Defendant - Appellant

Appeals from United States District Court for the District of Minnesota

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Submitted: June 18, 2020
Filed: December 23, 2020

Appendix B

Before KELLY, ERICKSON, and STRAS, Circuit Judges.

STRAS, Circuit Judge.

The plaintiffs are trying to hold a rogue law-enforcement officer responsible for landing them in jail through lies and manipulation. But for us, a more fundamental question is at stake: who gets to make the call about whether a federal remedy is available? As we recently held, the decision lies with Congress, not us, so we vacate the district court's ruling. *See Farah v. Weyker*, 926 F.3d 492 (8th Cir. 2019).

I.

This appeal is another chapter in the aftermath of an investigation into an alleged interstate sex-trafficking scheme that was plagued with problems from the start. Of the thirty people who were indicted, *United States v. Adan*, 913 F. Supp. 2d 555, 558–59 (M.D. Tenn. 2012), only nine were ultimately tried, *United States v. Fahra*, 643 F. App'x 480, 483 (6th Cir. 2016), and each was acquitted, *id.* at 484. Since then, numerous civil rights complaints have been filed against St. Paul Police Officer Heather Weyker for her conduct during the investigation.

A.

Two of those complaints were filed by Hawo Ahmed and Hamdi Mohamud. They, along with their friend Ifrah Yassin, were attacked one evening at an

apartment building in Minneapolis. Their attacker was Muna Abdulkadir, a witness for the government in the sex-trafficking case. During the incident, Abdulkadir "smash[ed]" Ahmed's windshield and "struck" Yassin, all while "brandishing [a] knife." Following the attack, Ahmed and Mohamud called 911, and Abdulkadir made a call of her own to Weyker. Worried about the possibility of losing a witness, Weyker sprang into action.

She first contacted Minneapolis Police Officer Anthijuan Beeks, who responded to the 911 call. Weyker told him that she had "information and documentation" that Ahmed, Mohamud, and Yassin "had been actively seeking out Abdulkadir" in an effort "to intimidate" her for agreeing to cooperate in a federal investigation.

Abdulkadir was indeed a federal witness, but everything else Weyker said was "untrue." She had no "'information' or 'documentation.'" Rather, she just wanted to "shield[ ] Abdulkadir from arrest" to "further incentiv[ize] . . . her" continued participation in the investigation. The plan worked. Officer Beeks arrested Ahmed, Mohamud, and Yassin "on suspicion of tampering with a federal witness," *see* 18 U.S.C. § 1513(b), based "on Weyker's intentional misrepresentations."

Weyker did not stop there. The next day, she prepared a criminal complaint and a sworn affidavit. In doing so, she once again "fabricated facts, knowingly relayed false information, and withheld exculpatory facts, all with the intention that [the three women]

would continue [to be] detained for crimes [for] which she knew there [was] no actual probable cause or arguable probable cause."

These actions were not without consequences. Mohamud, a minor at the time, spent just short of 25 months in federal custody, with a "small portion" of it on supervised release. Ahmed gave birth during the more than 25 months she spent in custody. Eventually, the government dismissed the case against Mohamud, and a jury acquitted Ahmed.

After their release, both women sued Weyker in her individual capacity on one overarching false-arrest theory. *See* U.S. Const. amend. IV; *Franks v. Delaware*, 438 U.S. 154, 155–56 (1978); *Small v. McCrystal*, 708 F.3d 997, 1006 (8th Cir. 2013). Due to Weyker's dual status, they pleaded two causes of action against her: one as a St. Paul police officer, *see* 42 U.S.C. § 1983, and another as a deputized federal agent, *see Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 397 (1971).

Weyker asked the district court to dismiss both claims. *See* Fed. R. Civ. P. 12(b)(6). One reason was qualified immunity: the requirement that any right she may have violated had to be clearly established. *See Morgan v. Robinson*, 920 F.3d 521, 523 (8th Cir. 2019) (en banc). The other was based on the limited availability of a cause of action against federal officers. *See Bivens*, 403 U.S. at 397. The district court allowed both claims to move forward, concluding both

that qualified immunity was unavailable and that the plaintiffs had a cause of action against Weyker.[1]

Just last year, we decided a nearly identical case that also involved Weyker. *See Farah*, 926 F.3d 492. Five of the plaintiffs had been charged and detained as suspected participants in the sex-trafficking scheme. *Id.* at 496–97. Some were acquitted following a trial, and the government dropped the charges against the others. *Id.* at 496. All, however, accused Weyker of "exaggerating and inventing facts in reports[;] hiding [exculpatory] evidence"; manipulating witnesses; and "deceiv[ing] prosecutors, the grand jury, and other investigators" along the way. *Id.* at 496–97. Like Ahmed and Mohamud, they sought relief under both *Bivens* and section 1983. *Id.* at 497. We held that, if Weyker was acting as a federal officer at the time, no cause of action was available. *Id.* at 502. We then remanded for consideration of whether

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[1] For this reason, the availability of a *Bivens* action is squarely before us on appeal. Indeed, Weyker has argued all along that the plaintiffs do not have a cause of action against her as a deputized federal officer. *See* Defendant's Memorandum in Support of Motion to Dismiss at 37–47, 0:17-cv-02070-JNE-TNL (D. Minn. Oct. 20, 2017), ECF No. 19; *see also* Plaintiff Mohamud's & Plaintiff Ahmed's Memorandum of Law Opposing Defendant's Motion to Dismiss at 15–16, 0:17-cv-02070-JNE-TNL (D. Minn. Dec. 4, 2017), ECF No. 25. It is also her lead argument on appeal. *See* Consolidated Br. for the Appellant at 13–26; *see also* Consolidated Response Br. for the Appellees at 12–15. To the extent that the dissent has second thoughts about our decision to reach this issue now, *Farah* all but settled that we can. 926 F.3d at 497, 502–03, 503 n.1 (treating the *Bivens* issue in a similar posture as a "threshold question" and declining to decide qualified immunity first).

the plaintiffs could proceed under section 1983. *Id.* at 502–03.

Yassin was the final plaintiff in the case. *See id.* We never decided whether an implied cause of action was available to her because Weyker never "meaningfully briefed" the issue. *Id.* at 503. Today, Weyker asks us to answer the question that we left open in *Farah*.

II.

We now address this "threshold question": whether an implied cause of action is available to Ahmed and Mohamud under the Constitution itself, more commonly known as a "Bivens action." *Hernandez v. Mesa*, 140 S. Ct. 735, 742–43 (2020); *Farah*, 926 F.3d at 497; *see Bivens*, 403 U.S. at 397. Answering it calls for "a two-step inquiry," *Hernandez*, 140 S. Ct. at 743, over which our review is de novo, *Farah*, 926 F.3d at 497. At the motion-to-dismiss stage, we assume that all factual allegations in their complaints are true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A.

"On only three occasions has the Supreme Court [recognized] a cause of action under *Bivens*." *Farah*, 926 F.3d at 497; *see Carlson v. Green*, 446 U.S. 14 (1980); *Davis v. Passman*, 442 U.S. 228 (1979); *Bivens*, 403 U.S. 388. Expanding *Bivens* is, according to the Supreme Court, "now a 'disfavored' judicial activity." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857 (2017) (quoting *Iqbal*, 556 U.S. at 675); *see also Hernandez*,

140 S. Ct. at 743 ("[F]or almost 40 years, we have consistently rebuffed requests to add to the claims allowed under *Bivens*."). The reason is that the separation of powers generally vests the power to create new causes of action in Congress, not us. *See, e.g.*, *Hernandez*, 140 S. Ct. at 742; *Abbasi*, 137 S. Ct. at 1857.

With this presumption against creating new *Bivens* actions in mind, *Neb. Beef, Ltd. v. Greening*, 398 F.3d 1080, 1084 (8th Cir. 2005), our analysis has two steps. Under step one, if a case "present[s] one of the three *Bivens* claims the [Supreme] Court has approved in the past," it "may proceed." *Farah*, 926 F.3d at 498 (internal quotation marks omitted). If it does not, then we go on to the next step. *Id.*

At step two, the question is whether "any special factors counsel hesitation before implying a new cause of action." *Id.* (internal quotation marks and brackets omitted). If there is "reason to pause before applying *Bivens* in a new context or to a new class of defendants[,] we [must] reject the request." *Hernandez*, 140 S. Ct. at 743.

B.

Just as we concluded in *Farah*, "[n]o Supreme Court case exactly mirrors the facts and legal issues presented here." 926 F.3d at 498. Neither *Carlson* nor *Davis* is a match, which leaves *Bivens* as the only possibility. *See Carlson*, 446 U.S. at 1618, 16 n.1 (allowing a cruel-and-unusual-punishment claim to proceed after prison officials fatally mishandled an inmate's serious asthmatic condition); *Davis*, 442 U.S. at 235–

36, 243–44 (recognizing a cause of action for a sex-discrimination claim under the Fifth Amendment).

1.

The claims in *Bivens* arose out of a warrantless search and an illegal arrest. 403 U.S. at 389. Specifically, federal law-enforcement officers had "threatened to arrest [Bivens's] entire family" as they shackled him; "searched [his] apartment from stem to stern"; and after booking and interrogating him, "subjected [him] to a visual strip search." *Id.*; *see Abbasi*, 137 S. Ct. at 1860 (describing the case as "a claim against FBI agents for handcuffing a man in his own home without a warrant"). Under those circumstances, the Supreme Court held that he had "a cause of action [against the officers] under the Fourth Amendment" and that "money damages" were potentially available "for any injuries he ha[d] suffered." *Bivens*, 403 U.S. at 397.

Our task is to determine whether *this* "case is different in a meaningful way from . . . *Bivens*." *See Abbasi*, 137 S. Ct. at 1859. As we explained in *Farah*, relevant differences can include, among other things, "the sorts of actions being challenged, the mechanism of injury, and the kinds of proof those injuries would require." 926 F.3d at 500; *see also Abbasi*, 137 S. Ct. at 1859–60 (providing "examples" of differences without establishing "an exhaustive list"). Even "small" differences can be "meaningful." *Abbasi*, 137 S. Ct. at 1865 (calling this step "eas[y to] satisf[y]"); *see Hernandez*, 140 S. Ct. at 743 ("[O]ur understanding of a

'new context' is broad."). The case before us is meaningfully different from *Bivens* in four ways.

First, "the sorts of actions being challenged" here are different. *Farah*, 926 F.3d at 500. The focus in *Bivens* was on an invasion into a home and the officers' behavior once they got there. 403 U.S. at 389. Here, by contrast, Weyker did not enter a home, even if the actions she allegedly took—like manufacturing evidence and lying—were just as pernicious. *Farah*, 926 F.3d at 499; *see also Franks*, 438 U.S. at 155–56 (holding that fabricating probable cause through material and knowingly false information in a warrant application violates the Fourth Amendment); *Small*, 708 F.3d at 1006 (explaining that an officer violates an individual's Fourth Amendment rights when he persuades someone else that there is probable cause "based solely on information the officer knew to be false" (quotation marks omitted)). Lying and manipulation, however bad they might be, are simply not the same as the physical invasions that were at the heart of *Bivens*. *See Farah*, 926 F.3d at 499; *cf. Canada v. United States,* 950 F.3d 299, 307 (5th Cir. 2020) (holding that the Supreme Court's prior *Bivens* cases were meaningfully different from a situation in which IRS agents had "intentionally manipulated a penalty assessment").

Second, and closely related, Weyker's role in the arrests was different. In contrast to the officers in *Bivens*, she did not arrest anyone herself, nor was she even on the scene when the arrests occurred. *See Abbasi*, 137 S. Ct. at 1859–60 (listing "the generality or

specificity of the official action" as a meaningful potential difference). Rather, she provided allegedly false information to another officer in a different police department, who then arrested the plaintiffs. *See Cantú v. Moody*, 933 F.3d 414, 423 (5th Cir. 2019) (holding that a "claim involv[ing] different conduct by different officers from a different agency" than in *Bivens* presented a new context). In this way, Weyker's actions fell somewhere along the spectrum between a *Franks*-type violation and a simple warrantless arrest. *Compare Franks*, 438 U.S. at 155–56 (involving a situation in which an officer makes "a false statement knowingly and intentionally, or with reckless disregard for the truth"), *with District of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018) ("A warrantless arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer's presence."). Not only is this factual difference from *Bivens* meaningful, it also narrows the doctrinal divide between a false-affidavit theory, which the dissent concedes is foreclosed by *Farah*, and one based solely on the initial arrest itself.

Third, although "the mechanism of injury" is a closer call, there is still one meaningful difference. *Farah*, 926 F.3d at 499. In *Bivens*, the injuries included "humiliation, embarrassment, and mental suffering [that] were directly caused by the officers' conduct." *Id.* (internal quotation marks omitted). Ahmed and Mohamud suffered these same injuries, but the "direct[ ] caus[al]" chain is missing. *Id.* Multiple "independent legal actors"—Officer Weyker, Officer

Beeks, and even prosecutors—played a role.[2] *Id*. Indeed, the dissent concedes as much by invoking the collective-knowledge doctrine. *See United States v. Thompson*, 533 F.3d 964, 969 (8th Cir. 2008) (explaining the collective-knowledge doctrine, which involves multiple actors). Even though it is true that "the mechanism of injury" is less attenuated here than in *Farah*, which involved "a series of intervening steps," the claims are still less "straight forward" than in *Bivens*. *Farah*, 926 F.3d at 499.

Fourth, proving these claims would require a different type of showing. *Abbasi*, 137 S. Ct. at 1860. For the allegedly false affidavit, Ahmed and Mohamud would have to establish that (1) Weyker's statements were false; (2) she made them "knowingly and intentionally, or with reckless disregard [for] the truth"; and (3) without them, there would be no probable cause. *Williams v. City of Alexander*, 772 F.3d 1307, 1311 (8th Cir. 2014) (quotation marks omitted); *see Haywood v. City of Chicago*, 378 F.3d 714, 719–20 (7th Cir. 2004) (applying *Franks* to misrepresentations made in the context of continued detention). *Bivens* did not require this type of fact-checking and conscience-probing, 403 U.S. at 389; *Farah*, 926 F.3d at 499, which can, as the Supreme Court has warned, impose "substantial costs," *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982). Similarly, for the arrest itself,

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[2] We read the plaintiffs' allegations as primarily concerned with the role that Weyker played in their *arrests*. To the extent they seek "damages arising out of [their] post-arrest indictment[s]," any such "claim must proceed, if at all, under section 1983." *Farah*, 926 F.3d at 503 n.2.

there would have to be an examination into whether Officers Beeks would have had probable cause to arrest the plaintiffs in the absence of Weyker's allegedly false information. *See Green v. Nocciero*, 676 F.3d 748, 754–55 (8th Cir. 2012); *Fisher v. Wal-Mart Stores, Inc.*, 619 F.3d 811, 814–18 (8th Cir. 2010); *see also Smoak v. Hall*, 460 F.3d 768, 779–80 (6th Cir. 2006) (explaining that whether reasonable suspicion existed depended on "the facts known to the . . . troopers who actually participated in the seizure," not simply what the dispatchers, who relayed misleading and incomplete information, told them). Although it would not quite rise to the level of conscience-probing, it would still require fact-checking what Beeks knew and when. *See Green*, 676 F.3d at 754–55; *Fisher*, 619 F.3d at 814–18. No comparable inquiry was in play in *Bivens*. 403 U.S. at 389 (involving actions only by the arresting officers).

2.

When one or more meaningful differences exist, it is not enough to identify a few similarities. The plaintiffs and dissent make much of the fact that this case, like *Bivens*, arose out of an allegedly illegal arrest. But "a modest extension is still an extension," *Abbasi*, 137 S. Ct. at 1864, even if it involves "the same constitutional provision," *Hernandez*, 140 S. Ct. at 743.

If the test sounds strict, it is. As an example, the Supreme Court refused to recognize an implied cause of action for a claim of inadequate medical treatment against officers in a *privately* contracted prison, *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 63–64, 73–74

(2001), even though it had previously recognized an identical claim against a prison guard in a *federally* run prison, *Carlson*, 446 U.S. at 16–18. *See Hernandez*, 140 S. Ct. at 743 (comparing *Carlson* and *Malesko* on this basis). If *Malesko* was a new context, then this case is too. *See Farah*, 926 F.3d at 498–500; *see also Abbasi*, 137 S. Ct. at 1856 (explaining that the Supreme Court had "no[ ] inten[t] to cast doubt on the continued force, or even the necessity, of *Bivens* in the search-and-seizure context in which it arose" (emphasis added)); *Cantú*, 933 F.3d at 423 (concluding that an unlawful-seizure claim under the Fourth Amendment presented a new context when the plaintiff alleged that officers "falsified affidavits," rather than "entered [a] home without a warrant").

C.

At step two, the task is to determine whether, in this new context, an implied cause of action is available. The focus is on whether there are any "special factors" that "cause[ ] [us] to pause before acting without express congressional authorization." *Abbasi*, 137 S. Ct. at 1857–58 (quotation marks omitted). "It does not take much," *Farah*, 926 F.3d at 500, because Congress is usually "in the better position" to weigh the costs and benefits of creating "a new substantive legal liability," *id*. (quoting *Abbasi*, 137 S. Ct. at 1857). On this point, *Farah* once again does much of the heavy lifting. *Id*.

Just like in *Farah*, a trial would "risk . . . burdening and interfering with the executive branch's investigative . . . functions." *Id*. Perhaps the *level* of

interference would be less than in *Farah*, as the plaintiffs argue, but a jury would still need to determine what Weyker knew, what she did not know, and her state of mind at the time. *Williams*, 772 F.3d at 1311. There are, as we explain above, "substantial costs" associated with requiring public officials to litigate these types of issues, including "the diversion" of public resources and deterring "able citizens from . . . public office." *See Harlow*, 457 U.S. at 814, 816. It may well be that the costs are worth it, but Congress is better equipped than we are to make the call. *Farah*, 926 F.3d at 501.

Moreover, as in *Farah*, other remedies are available "to address injuries of the sort the plaintiffs have alleged[ ]." *Id.* "The so-called Hyde Amendment allows courts to award attorney fees to criminal defendants who prevail against 'vexatious, frivolous, or . . . bad[-]faith' positions taken by the government." *Id.* (quoting Act of Nov. 26, 1997, Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (codified at 18 U.S.C. § 3006A note)). And for "those who are wrongly convicted and sentenced," damages may be available. *Id.* (citing 28 U.S.C. § 1495). We are especially reluctant to supplement those remedies with our own, which could upset the existing remedial structure. *Abbasi*, 137 S. Ct. at 1858; *Farah*, 926 F.3d at 501–02. This factor alone, as the Supreme Court has explained, is "a convincing reason" not to extend *Bivens*. *Abbasi*, 137 S. Ct. at 1858 (quotation marks omitted).

None of this should be surprising. After all, the Supreme Court has not recognized a new *Bivens* action "for almost 40 years." *Hernandez*, 140 S. Ct. at 743; *see also Abbasi*, 137 S. Ct. at 1857 (collecting cases). Our conclusion here is no different.

III.

So what happens next? Just because a *Bivens* remedy is off the table does not mean the plaintiffs' cases are over. If the district court determines on remand that Weyker was acting under color of *state* law, their section 1983 claims may proceed, subject to Weyker's defense of qualified immunity.[3] *Farah*, 926 F.3d at 502–03, 503 n.1 (declining "to skip over the under-color-of-state-law element to decide . . . qualified immunity"); *see Magee v. Trs. of Hamline Univ.*, 747 F.3d 532, 535 (8th Cir. 2014) (evaluating whether an officer acted under color of state law).

IV.

We accordingly vacate and remand to the district court to dismiss the plaintiffs' *Bivens* claims and determine whether their cases can proceed under 42 U.S.C. § 1983.

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[3] It is premature at this point to address Weyker's argument that the district court abused its discretion when, in addressing qualified immunity, it declined to take judicial notice of matters outside the pleadings. *See Cravens v. Smith*, 610 F.3d 1019, 1029 (8th Cir. 2010) (standard of review); 2 James Wm. Moore, *Moore's Federal Practice* § 12.34[2], at 12-94 (3d ed. 2020).

KELLY, Circuit Judge, dissenting.

In Ziglar v. Abbasi, 137 S. Ct. 1843 (2017), the Supreme Court cautioned that extending Bivens to new contexts is a "disfavored judicial activity." Id. at 1857 (cleaned up). But because I believe that one of plaintiffs' claims does not extend Bivens to a new context, I respectfully dissent from the court's conclusion otherwise.[4]

In 2017, plaintiffs Hawo Ahmed and Hamdi Mohamud filed complaints against Officer Heather Weyker in federal court. The complaints identify two separate instances in which Officer Weyker allegedly lied about Ahmed and Mohamud's suspected criminal activity, leading to their detention in federal custody. First, Ahmed and Mohamud claim that Officer Weyker knowingly provided false information to Officer Anthijuan Beeks, which caused Officer Beeks to arrest and transport them to jail when he otherwise had no basis to do so. Second, they claim that, after this initial arrest, Officer Weyker submitted a federal criminal complaint and supporting affidavit, in which

[4] As an initial matter, I note that it may be premature to address Officer Weyker's claim that Bivens does not afford a potential remedy for plaintiffs' claimed injuries. Officer Weyker appeals the district court's denial of her motion to dismiss the case based on qualified immunity. But that opinion concluded that there was "no need to decide" at that time whether Bivens or 42 U.S.C. § 1983 provided the "proper vehicle" for plaintiffs' claims, and we "ordinarily, we do not decide issues the district court did not adjudicate." Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 603 (8th Cir. 2009) (quoting Daisy Mfg. Co. v. NCR Corp., 29 F.3d 389, 395 (8th Cir. 1994)).

she omitted exculpatory information and included information that she knew to be false. This affidavit led the court to issue arrest warrants for Ahmed and Mohamud. They were then placed in federal custody and eventually indicted for violating multiple federal laws. In both of these actions, Ahmed and Mohamud contend, Officer Weyker fabricated "probable cause that did not otherwise exist," causing them to be "seized, arrested, detained, charged and indicted" in violation of their Fourth Amendment rights.

I agree with the court that, based on our precedent, no Bivens remedy is available for plaintiffs' claim that Officer Weyker violated their Fourth Amendment rights by submitting a false affidavit to the district court. In Farah v. Weyker, 926 F.3d 492 (8th Cir. 2019), this court held that a claim that a federally deputized officer (namely, Officer Weyker) "duped prosecutors and a grand jury into believing that the plaintiffs were part of a multi-state sex-trafficking conspiracy" was "meaningfully different" from established Bivens cases. Id. at 498. Because "special factors" weighed against extending Bivens to the new context, we declined to do so. Id. at 500–02. As largely the same differences and special factors are present in Ahmed and Mohamud's second allegation against Officer Weyker, Farah forecloses the possibility of Bivens relief on that claim.

But Farah does not foreclose relief for Ahmed and Mohamud's first allegation—that Officer Weyker lied to Officer Beeks, which resulted in their unlawful arrest.[5] As Ahmed and Mohamud describe it in their complaints, this claim asserts that Officer Weyker caused them to be arrested without probable cause. See United States v. Thompson, 533 F.3d 964, 969–70 (8th Cir. 2008) (explaining that the question of whether officers have probable cause to arrest is based on the collective knowledge of all officers involved). This was the claim at issue in Bivens. Though Bivens also alleged that officers used unreasonable force during their search of his home, one of his core contentions was that the officers did not have probable cause when they arrested him. See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 389 (1971) ("[Bivens's] complaint asserted that the arrest and search were effected without a warrant, and that unreasonable force was employed in making the arrest; fairly read, it alleges as well that the arrest was made without probable cause."). Rather than representing an extension of Bivens, plaintiffs' claim falls squarely within the cause of action recognized by Bivens itself. Cf. Abbasi, 137 S. Ct. at 1856 (refusing to "cast doubt on the continued force, or even the necessity, of Bivens in the search-and-seizure context in which it arose"); see also Hicks v. Ferreya, 965 F.3d 302, 311–12 (4th Cir.

[5] The court describes prosecutors as "play[ing] a role" in the events underlying Ahmed and Weyker's claim. Supra at 8. On my read, the only legal actors involved in the arrest were Officer Weyker and Officer Beeks.

2020) (applying Bivens to a claim of unlawful seizure during a traffic stop); Jacobs v. Alam, 915 F.3d 1028, 1038–39 (6th Cir. 2019) (applying Bivens to claims for excessive force, false arrest, malicious prosecution, fabrication of evidence, and civil conspiracy); Brunoehler v. Tarwater, 743 F. Appx. 740, 743–44 (9th Cir. 2018) (unpublished) (applying Bivens to claims of search and arrest without probable cause).

In concluding that plaintiffs' claim presents a new context, the court highlights several differences between plaintiffs' claim and Bivens that it finds relevant: differences between the "sorts of actions being challenged," "the mechanism of injury" and role of Officer Weyker in that injury, and the type of showing required to prove plaintiffs' claim. See supra at 7–8. To the court, these differences require it to move on to step two of Abbasi and determine whether "special factors" exist that would counsel hesitation in extending a Bivens remedy.

I do not see the differences that the court does. As to the first claimed difference, the type of action being challenged here was also at issue in Bivens: an arrest unsupported by probable cause. That Bivens also included a separate claim about the officers' use of force within Bivens's home does not undermine the fact that in both that case and this one the plaintiffs' claimed injuries stemmed from the arrest itself. Similarly, the mechanism of injury and role Officer Weyker played are the same as in Bivens: actions by law

enforcement officers, one of whom was Officer Weyker. The court points to the absence of a "direct causal chain" and the involvement of "multiple independent legal actors" in this case, see supra at 7, but the situation is simpler than the court makes it out to be. Officer Weyker is alleged to have lied to Officer Beeks about the basis for probable cause to arrest plaintiffs, and Officer Beeks arrested plaintiffs based on that false information. It is unclear to me why we should take pains to separate out Officer Weyker's role in plaintiffs' arrest, particularly when in other contexts we readily recognize the collective role different officers play in effectuating arrests. See, e.g., Thompson, 533 F.3d at 969–70 (describing the collective knowledge doctrine). Finally, the showing required to prove plaintiffs' claim here would be the same as that required in Bivens. In any challenge to a warrantless arrest, the person claiming a violation of her Fourth Amendment rights must show that the facts known to the officers involved did not provide a reasonable probability of criminal activity. See, e.g., District of Columbia v. Wesby, 138 S. Ct. 577, 586 (2018) (explaining probable cause standard). Regardless of why a plaintiff might allege that probable cause was lacking, the court assessing her claim must examine what the officers knew at the time of the arrest—an inquiry that may, in any case, involve "fact-checking" of how those officers came to their conclusions.[6] Cf. Fisher v.

[6] Williams v. City of Alexander, 772 F.3d 1307 (8th Cir. 2014), which addresses an allegedly false warrant affidavit, may support the conclusion that plaintiffs' false affidavit claim is different than that in Bivens. See id. at 1311 ("[W]hen a police

Wal-Mart Stores, Inc., 619 F.3d 811, 817 (8th Cir. 2010) (when one officer instructs another to make an arrest, "[w]e consider the pertinent question to be whether [the instructing officer] had probable cause at the time of the arrest: that is, whether the facts and circumstances would have led to a reasonable conclusion that a crime had been committed"). This is the showing that the plaintiff in Bivens would have had to make and that Ahmed and Mohamud would be making here.

We are also guided by Abbasi, which provides examples of "differences that are meaningful enough to make a given context a new one." Abbasi, 137 S. Ct. at1859–60. These include "the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence or potential special factors that previous Bivens cases did not consider." Id. at 1860. No meaningful differences are present here. Like the agents in Bivens, Officer Weyker was an investigative officer who is alleged to have violated plaintiffs' Fourth Amendment right to be free of unlawful arrest. Cf.

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officer deliberately or recklessly makes false statements to demonstrate probable cause for an arrest warrant, the warrant may be invalidated under Franks v. Delaware."). But in my view, Franks plays no role in a claim that officers effectuated a warrantless arrest without probable cause.

Hernandez v. Mesa, 140 S. Ct. 735, 743–44 (2020) (establishing that "[a] claim may arise in a new context even if it is based on the same constitutional provision" as a previous claim, but describing Bivens as covering "an allegedly unconstitutional arrest and search" by local police officers). The judicial guidance on conducting a lawful arrest remains clear, and the mandate comes from the Constitution. Recognizing plaintiffs' claim risks no more intrusion into the functioning of another branch of government than did Bivens, which also turned on the knowledge and actions of police officers. And here, plaintiffs challenge an "individual instance[ ] . . . of law enforcement overreach, which due to [its] very nature [is] difficult to address except by way of damages actions after the fact." Abbasi, 137 S. Ct. at 1862. While these factors are not exhaustive, see id. at 1859–60, each supports the conclusion that the context for plaintiffs' false arrest claim is not new.

The Supreme Court in Abbasi did "not intend[ ] to cast doubt on the continued force, or even the necessity, of Bivens in the search-and-seizure context in which it arose." Id. at 1856; see also id. at 1856–57 ("Bivens does vindicate the Constitution by allowing some redress for injuries, and it provides instruction and guidance to federal law enforcement officers going forward."). I find no meaningful difference between plaintiffs' Fourth Amendment false arrest claim and what the Supreme Court recognized in Bivens and has continued to recognize in Abbasi and Hernandez. In my view, a Bivens remedy is available

to Ahmed and Mohamud on this claim.[7] Because the court denies them this remedy, I respectfully dissent.

[7] The court maintains that Ahmed and Mohamud may still seek recourse for their claimed harm under § 1983. However, I note that the district court has already determined in a related case that, on the date in question, Officer Weyker was acting as a federally deputized officer, not under color of state law, making a § 1983 claim unavailable. See Yassin v. Weyker, No. 16-cv-2580 (JNE/TNL), 2020 WL 6438892 at *4–5 (D. Minn. Sept. 30, 2020), appeal filed, No. 20-3299 (8th Cir. Nov. 2, 2020). The court's decision here will thus have the likely effect of denying plaintiffs any legal remedy for the constitutional violation they allege. See Abbasi, 137 S. Ct. at 1863 ("There is a persisting concern, of course, that absent a Bivens remedy there will be insufficient deterrence to prevent officers from violating the Constitution.").

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Ifrah Yassin,

Plaintiff,

v.

Case No. 16-cv-2580 (JNE/TNL)
ORDER

Heather Weyker, individually and in her official capacity as a St. Paul Police Officer; John Does 1–2, individually and in their official capacities as St. Paul Police Officers; John Does 3–4, individually and in their official capacities as supervisory members of the St. Paul Police Department; and The City of St. Paul,

Defendants.

Zane A. Umsted and Joshua A. Newville, Madia Law LLC, appeared for Ifrah Yassin.

Glenn Greene and David G. Cutler, United States Department of Justice, appeared for Heather Weyker.

Appendix C

Ifrah Yassin asserted claims against the City of St. Paul and members of the St. Paul Police Department under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for violations of the Fourth, Fifth, Sixth, and Fourteenth Amendments. In August 2017, the Court dismissed Yassin's claims against the City of St. Paul and John Does 3–4; dismissed Yassin's claims against Heather Weyker for violations of the Fifth, Sixth, and Fourteenth Amendments; and denied Weyker's motion to dismiss Yassin's claims under § 1983 and *Bivens* for violations of the Fourth Amendment.[1] Order 13, Aug. 9, 2017, ECF No. 47. Weyker appealed. The United States Court of Appeals for the Eighth Circuit "affirm[ed] the denial of Weyker's motion to dismiss Yassin's unlawful-arrest claim and remand[ed] her case for further proceedings consistent with [its] opinion." *Farah v. Weyker*, 926 F.3d 492, 503–04 (8th Cir. 2019).[2] On remand, Weyker moved for summary judgment. For the reasons set forth below, the Court grants Weyker's motion.

I. BACKGROUND

On June 16, 2011, Yassin, Hamdi Mohamud, and Hawo Ahmed were involved in an altercation with Muna Abdulkadir. The incident took place at Abdulkadir's apartment building in Minneapolis,

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[1] Yassin's claims against John Does 1–2 were dismissed without prejudice by stipulation.

[2] "To the extent Yassin is . . . suing for damages arising out of her post-arrest indictment, the claim must proceed, if at all, under section 1983." *Farah*, 926 F.3d at 503 n.2.

Minnesota. The four entered an elevator, where the altercation took place. Abdulkadir eventually exited the elevator, and the other three descended in the elevator.

Abdulkadir retrieved a knife from her apartment, proceeded downstairs with her mother and her brother, and exited the building. Abdulkadir approached Ahmed's vehicle and smashed its windshield with the knife. A short time later, Yassin, Ahmed, and Mohamud exited the building. Abdulkadir slapped Yassin with the knife. Yassin called 911 and reported that Abdulkadir had slapped her with a knife and smashed the windshield.

After Yassin called 911, Abdulkadir and her family members returned to their apartment. Fearing arrest, Abdulkadir went to a neighbor's apartment and called Weyker, a St. Paul police officer and, from August 2010 to August 2014, a Special Deputy United States Marshal. Weyker's duties as a Special Deputy United States Marshal included investigative work on a federal task force whose efforts led to the indictments of approximately 30 individuals in 2010 in the Middle District of Tennessee. Abdulkadir was a witness in that investigation.

A Minneapolis police officer, Anthijuan Beeks, responded to the 911 call made by Yassin. Beeks interviewed Yassin, Ahmed, and Mohamud while other officers attempted to locate Abdulkadir. Yassin and Ahmed told Beeks that they had been in an altercation with Abdulkadir and that Abdulkadir was the aggressor. Yassin told Beeks about Abdulkadir's use of the

knife and damage to Ahmed's car. Mohamud told Beeks she had witnessed the events but did not participate in them.

Approximately 15 or 20 minutes after he arrived on the scene, Beeks received a message to call Weyker. Beeks called Weyker, who introduced herself as a St. Paul police officer. Weyker also introduced the other law enforcement officers who were on the call. Weyker told Beeks that Abdulkadir was a witness in a federal prostitution investigation; that the investigation resulted in the indictment of 30 Somali males; and that Weyker had information and documentation that Yassin, Ahmed, and Mohamud were looking for Abdulkadir to intimidate her or cause bodily harm to her.

Beeks decided to speak to Yassin, Ahmed, and Mohamud separately. He placed Yassin in the back of a squad car. Yassin told Beeks that she struck Abdulkadir after Abdulkadir hit Ahmed, who was pregnant, in the stomach. Yassin denied knowing about the federal prostitution investigation, acknowledged rumors of 30 men being locked up, and asserted that Abdulkadir was a prostitute.

Beeks continued his investigation. He viewed several videos taken by cameras in the apartment building. One shows Abdulkadir, Yassin, Ahmed, and Mohamud entering the elevator. Another shows Abdulkadir running from the elevator as Yassin and Ahmed chase and strike Abdulkadir.

After he viewed the videos, Beeks located Abdulkadir and interviewed her. Abdulkadir told Beeks that Yassin, Ahmed, and Mohamud attacked Abdulkadir in the elevator, that one of the three stopped the elevator by pressing a "stop" button, that Abdulkadir was able to make the elevator move again, and that Abdulkadir was able to escape the three when the elevator doors opened. Abdulkadir also told Beeks that she took a knife from her apartment, that she smashed the windshield, and that she struck Yassin with the knife.

Additional law enforcement officers were present at the scene. They included agents from the Federal Bureau of Investigation and a sergeant from the Minneapolis Police Department, Gary Manty. Beeks spoke with one of the agents after the agent interviewed Yassin and Ahmed. Beeks also conferred with Manty, who had spoken with Weyker. She told Manty that Yassin, Ahmed, and Mohamud were attempting to intimidate Abdulkadir because Abdulkadir was a witness in a federal sex-trafficking case. Yassin, Ahmed, and Mohamud were arrested.

On June 17, 2011, the United States filed a criminal complaint against Yassin in the Middle District of Tennessee. The United States charged Yassin with retaliation against a witness. Weyker signed the criminal complaint, submitted an affidavit in support of it, and identified herself as an FBI Task Force Officer and St. Paul Police Officer. On June 29, 2011, Yassin was indicted in the Middle District of

Tennessee for retaliation against a witness and obstruction. In July 2013, a jury found her not guilty of all charges.

Three years after her acquittal, Yassin brought this action. She alleged that Weyker "did not have 'information and documentation' that Yassin, Ahmed, and Mohamud had been actively seeking out Abdulkadir to intimidate her and cause bodily harm to her because of her role in the federal investigation"; that Weyker "had no 'information or documentation' of any kind regarding Yassin, Ahmed, and Mohamud – the first time that she even heard of any of them was on June 16, 2011 – the day of the incident"; and that "[t]he reason that Officer Weyker provided false information to Officer Beeks is that Abdulkadir was a lynchpin of Weyker's manufactured human-trafficking case against approximately 30 Somali males." (Compl. ¶¶ 21, 24)

II. DISCUSSION

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). To support an assertion that a fact cannot be or is genuinely disputed, a party must cite "to particular parts of materials in the record," show "that the materials cited do not establish the absence or presence of a genuine dispute," or show "that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(A)–(B). "The court need consider only the cited materials, but it may consider other materials

in the record." Fed. R. Civ. P. 56(c)(3). In determining whether summary judgment is appropriate, a court must view genuinely disputed facts in the light most favorable to the nonmovant, *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009), and draw all justifiable inferences from the evidence in the nonmovant's favor, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

Weyker moved for summary judgment, asserting that Yassin cannot sue Weyker under § 1983, that Yassin cannot sue Weyker under *Bivens*, and that Weyker is entitled to qualified immunity. Yassin maintained that Weyker is "subject to liability under § 1983"; that, in the alternative, "Yassin's claim may proceed under *Bivens*"; and that Weyker is not entitled to qualified immunity.

A. Section 1983

Weyker asserted that Yassin cannot sue Weyker under § 1983 because Weyker did not act under color of state law. According to Yassin, Weyker's "emphasis of her St. Paul credentials during the course of her misconduct . . . makes her a state actor." In addition, Yassin maintained that Weyker is subject to liability under § 1983 under theories of "dual employment" or "joint activity."

Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

> citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. A plaintiff asserting a claim under § 1983 must show that she "has been deprived 'of a right secured by the "Constitution and laws" of the United States' and that the defendant acted 'under color of any statute . . . of any State.'" *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 931 (1982) (alteration in original) (quoting *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 150 (1970)); *see West v. Atkins*, 487 U.S. 42, 48 (1988) ("To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law."). "The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West*, 487 U.S. at 49 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). "Conduct causing a deprivation of civil rights must be 'fairly attributable' to the state to be considered under color of state law." *Smith v. Insley's Inc.*, 499 F.3d 875, 880 (8th Cir. 2007) (quoting *Lugar*, 457 U.S. at 937). "The defendant must act or purport to act 'in the performance of official duties, even if he

oversteps his authority and misuses power.' Acts of officials in 'the ambit of their personal pursuits are plainly excluded' from Section 1983 liability." *Magee v. Trs. of Hamline Univ.*, 747 F.3d 532, 535 (8th Cir. 2014) (citation omitted) (quoting *Johnson v. Phillips*, 664 F.3d 232, 240 (8th Cir. 2011), and *Dossett v. First State Bank*, 399 F.3d 940, 949 (8th Cir. 2005)). "[W]hether a police officer is acting under color of state law turns on the nature and circumstances of the officer's conduct and the relationship of that conduct to the performance of his official duties." *Id.* (alteration in original) (quoting *Roe v. Humke*, 128 F.3d 1213, 1216 (8th Cir. 1997)). Section 1983 "is inapplicable to persons acting under color of federal law." *Haley v. Walker*, 751 F.2d 284, 285 (8th Cir. 1984) (per curiam).

"The Fourth Amendment . . . requires that an officer have probable cause before making a warrantless arrest. Probable cause exists when a police officer has reasonably trustworthy information that is sufficient to lead a person of reasonable caution to believe that the suspect has committed or is committing a crime." *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1257 (8th Cir. 2010) (citation omitted). "[P]retrial detention can violate the Fourth Amendment not only when it precedes, but also when it follows, the start of legal process in a criminal case. The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause. That can happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it also can occur when legal process

itself goes wrong—when, for example, a judge's probable-cause determination is predicated solely on a police officer's false statements." *Manuel v. City of Joliet*, 137 S. Ct. 911, 918 (2017) (citation omitted); *see Stewart v. Wagner*, 836 F.3d 978, 983 (8th Cir. 2016). If the legal proceeding used to establish probable cause is tainted such that probable cause is lacking, "then the ensuing pretrial detention violates the confined person's Fourth Amendment rights." *Manuel*, 137 S. Ct. at 920 n.8 (rejecting view that a grand jury indictment "does expunge such a Fourth Amendment claim"); *see King v. Harwood*, 852 F.3d 568, 587–88 (6th Cir. 2017).

Weyker asserted that Yassin cannot sue Weyker under § 1983 because Weyker did not act under color of state law. Weyker stated that she "was deputized as a Special Deputy U.S. Marshal, sponsored by the FBI, from August 24, 2010, through August 31, 2014"; that her "duties as a Special Deputy included investigative work on a task force supporting the FBI's investigation of approximately 30 subjects associated with Somali gangs"; and that the investigation led to a federal sex-trafficking prosecution "that Yassin was later accused of obstructing." Because she "was federally deputized when Yassin was arrested for tampering with the federal prosecution that Weyker was supporting as a federal officer," Weyker asserted that "§ 1983 is not available to challenge [Yassin's] arrest."

Yassin responded that she may sue Weyker under § 1983 because Weyker presented herself as a St. Paul police officer when she spoke to Beeks on June 16,

2011; Weyker drafted her police report as a St. Paul police officer; and Weyker worked with Abdulkadir "for nearly a year before she was deputized." In addition, Yassin asserted that Weyker is liable under § 1983 based on Weyker's "dual employment":

> While Weyker emphasizes her federal credentials, there can be no dispute that she was also employed by the St. Paul Police Department during the relevant period of time. As such, her decision to wield state-level authority against Ms. Yassin supports a § 1983 [claim], regardless of the extent of her federal employment.

Finally, Yassin maintained that Weyker "engaged in a joint activity supporting § 1983 liability" by "roping in state actors (Office Beeks and Sergeant Manty) as unknowing dupes in her efforts to violate Ms. Yassin's constitutional rights."

Weyker's employment as a St. Paul police officer, her identification as a St. Paul police officer on her call with Beeks, her documentation of Yassin's arrest,[3] and Weyker's relationship with Abdulkadir before Weyker's deputation do not demonstrate that Weyker was acting under color of state law. *Cf. Magee*, 747 F.3d at 536 ("While his editorial noted he was an officer, this recites his occupation and does not necessarily indicate he was acting in his official capacity."). Weyker was a federally deputized member

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[3] In her St. Paul Police Department supplemental offense/incident report, Weyker identified herself as an FBI Task Force Officer.

of a federal task force whose efforts yielded indictments against approximately 30 individuals in 2010 in the Middle District of Tennessee. Abdulkadir was a witness in that investigation. After she received a call from Abdulkadir, Weyker called Beeks. Federal law enforcement officers were also on the call. Weyker told Beeks that Abdulkadir was a witness in a federal prostitution investigation; that the investigation resulted in the indictment of 30 Somali males; and that Weyker had information and documentation that Yassin, Ahmed, and Mohamud were looking for Abdulkadir to intimidate her or cause bodily harm to her. As a federally deputized member of the task force, Weyker was not acting under color of state law when she allegedly violated Yassin's Fourth Amendment rights. *See King v. United States*, 917 F.3d 409, 433 (6th Cir. 2019) ("Although Detective Allen was a detective with the Grand Rapids Police and was therefore employed by the state, Detective Allen was working full time with an FBI task force at the time of the incident at issue . . . . As a deputized federal agent, Detective Allen carried federal authority and acted under color of that authority rather than under any state authority he may have had as a Grand Rapids Police detective."), *cert. granted sub nom. Brownback v. King*, 140 S. Ct. 2563 (2020), and *cert. denied*, 140 S. Ct. 2565 (2020); *Guerrero v. Scarazzini*, 274 F. App'x 11, 12 n.1 (2d Cir. 2008) ("Guerrero framed his false arrest claims against Scarazzini and McAllister as arising under 42 U.S.C. § 1983; however, because Scarazzini and McAllister were federally deputized for their Task Force work, this claim was properly brought (as the parties agree) as a *Bivens* action.");

DeMayo v. Nugent, 517 F.3d 11, 14 n.5 (1st Cir. 2008) ("DeMayo originally brought his claims without knowledge that Nugent and Lugas were part of a DEA task force, rendering 42 U.S.C. § 1983 the appropriate avenue for relief, although his complaint does not explicitly indicate whether the action lay under § 1983 or *Bivens*. The parties and the district court, however, all treated the suit as lying under *Bivens* after the officers' roles were revealed.").

As to Yassin's assertion of joint activity, she has not directed the Court to any evidence that supports her assertion. Instead, she characterized Beeks and Manty as "unknowing dupes" in Weyker's alleged "efforts to violate Ms. Yassin's constitutional rights." Yassin has not supported her assertion of "joint activity." *See Arar v. Ashcroft*, 585 F.3d 559, 568 (2d Cir. 2009) ("A federal officer who conspires with a state officer may act under color of state law; but since 'federal officials typically act under color of *federal* law,' they are rarely deemed to have acted under color of state law." (citation omitted)); *Premachandra v. Mitts*, 753 F.2d 635, 641 n.7 (8th Cir. 1985) (en banc) ("Conspiracies that make federal officials liable under section 1983 are not commonplace but nor are they unheard of."); *cf. Magee*, 747 F.3d at 536 ("To be liable under § 1983, a private actor must be a 'a willful participant in joint activity with the State' in denying a plaintiff's constitutional rights." (quoting *Dossett*, 399 F.3d at 947)). Yassin's claim against Weyker for violation of Yassin's Fourth Amendment rights may not proceed under § 1983.

B. *Bivens*

Weyker asserted that Yassin cannot sue Weyker under *Bivens*. Weyker asserted that Yassin's "evidence-fabrication claim presents a new *Bivens* context for which numerous special factors counsel hesitation." Yassin responded that this Court previously concluded that her Fourth Amendment claim does not present a new context for a *Bivens* action, that the Eighth Circuit did not disturb this Court's resolution of the issue, and that "this Court's prior resolution of the issue remains the law of the case."

The Court previously declined to reach the question of whether Yassin's Fourth Amendment claim should be brought under § 1983 or *Bivens*:

> Because the Court finds that only the Fourth Amendment, and not substantive due process, is applicable; because a Fourth Amendment claim in this case does not present a new context for a *Bivens* action; and because § 1983 and *Bivens* claims are analyzed similarly, the Court does not reach the question of whether Yassin's claim should be brought under § 1983 or *Bivens*.

Order 7 n.5, Aug. 9, 2017, ECF No. 47. The Eighth Circuit did not decide that Yassin's claim is viable under *Bivens*. Instead, the court of appeals assumed it was and considered the issue of qualified immunity:

> Yassin's case is different. Her primary theory is that she was unlawfully arrested because

> Weyker falsely told another police officer that she was trying to intimidate a federal witness. We need not decide whether this theory of liability would require us to extend *Bivens*, because Weyker has not meaningfully briefed the point on appeal.
>
> Even if we assume that Yassin's unlawful-arrest claim is viable under *Bivens*, however, Weyker still claims that she is entitled to qualified immunity for every action she took during the investigation. So we must address the two familiar qualified-immunity questions: assuming Yassin's allegations are true, did Weyker violate her constitutional rights? And if so, were those rights clearly established? On both points, our review is de novo, and our answer is yes.

Farah, 926 F.3d at 503 (citations omitted) (footnote omitted).

This Court's statement in the August 9 Order that "a Fourth Amendment claim in this case does not present a new context for a *Bivens* action" is not the law of the case:

> We have described the law of the case doctrine as providing that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." The underlying intent of the doctrine is to "prevent[] the relitigation of settled issues in a case, thus protecting the settled

> expectations of parties, ensuring uniformity of decisions, and promoting judicial efficiency." The doctrine applies to appellate decisions, as well as to final decisions by the district court that have not been appealed. It does not apply to interlocutory orders, however, "for they can always be reconsidered and modified by a district court prior to entry of a final judgment."

First Union Nat'l Bank v. Pictet Overseas Tr. Corp., 477 F.3d 616, 620 (8th Cir. 2007) (alteration in original) (citations omitted); *see Gander Mountain Co. v. Cabela's, Inc.*, 540 F.3d 827, 830 (8th Cir. 2008) ("The doctrine applies to decisions made by appellate courts and final decisions made by district courts that have not been appealed."). The Court turns to whether Yassin's claim may proceed under *Bivens*.

"Determining whether an implied cause of action is available under *Bivens* involves two steps." *Farah*, 926 F.3d at 498. They are:

> First, we must determine whether the cases before us present one of "the three *Bivens* claims the Court has approved in the past" or whether, instead, allowing the plaintiffs to sue would require us to extend *Bivens* to a "new context." If there is a previously recognized *Bivens* claim alleged, then the cases may proceed. If not, then we advance to the second step and ask whether any "special factors counsel[] hesitation" before implying a new cause of action "in the absence of affirmative action by Congress." Only if we are confident that "the Judiciary is

> well suited . . . to consider and weigh the costs and benefits of allowing a damages action" will we take it upon ourselves to do so. Otherwise, we will leave the balancing to Congress.

Id. (alterations in original) (citations omitted) (quoting *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857-60 (2017)); *see Hernandez v. Mesa*, 140 S. Ct. 735, 743 (2020). "The proper test for determining whether a case presents a new *Bivens* context is":

> If the case is different in a meaningful way from previous *Bivens* cases decided by this Court, then the context is new. Without endeavoring to create an exhaustive list of differences that are meaningful enough to make a given context a new one, some examples might prove instructive. A case might differ in a meaningful way because of the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous *Bivens* cases did not consider.

Ziglar, 137 S. Ct. at 1859–60.

Weyker asserted that "[t]he core holding of the Eighth Circuit's consolidated opinion in this matter is broad and unequivocal" and that the "holding applies with equal force to Yassin's 'primary theory' of *Bivens* liability—that Yassin 'was unlawfully arrested because Weyker falsely told another police officer that she was trying to intimidate a federal witness.'" The Court agrees.

"No Supreme Court case exactly mirrors the facts and legal issues presented here. The one that comes closest is *Bivens* itself. *Bivens* involved a claim against federal agents for an illegal arrest and warrantless search." *Farah*, 926 F.3d at 498 (citations omitted). "Weyker's alleged misdeeds [in this case] are different from those in *Bivens*, even if the 'constitutional right at issue' is the same. The agents in *Bivens* handcuffed and strip-searched the plaintiff and combed through his apartment, all without a warrant. Weyker did none of these things, nor anything similar." *Id.* at 498-99 (citations omitted). Yassin alleged that "she was unlawfully arrested because Weyker falsely told another police officer that [Yassin] was trying to intimidate a federal witness." *Id.* at 503.

In addition, "the mechanism of injury is different. In *Bivens*, the plaintiff's injuries—'humiliation, embarrassment, and mental suffering'—were directly caused by the officers' conduct." *Id.* at 499. Here, Weyker was not the arresting officer; she was not present at the scene. She passed on information to officers at the scene who investigated Yassin and others. The investigation included interviews of several individuals

and review of video taken by cameras in the apartment building. Based on that investigation, Yassin was arrested.

Finally, "recognizing an implied cause of action here would pose a greater risk of interference with the other branches of government than it did in *Bivens*." *Id.* "The initial step would be to discover what Weyker said, to whom she said it, and when. The information Weyker provided to investigators . . . would then need to undergo examination for its truth or falsity. For any false information she provided, the question would be whether the evidence was material. The determination would center on whether other evidence available to investigators . . . would have independently led them to . . . detain" Yassin. *Id.*

"By any measure, [Yassin's claim is] meaningfully different from the Fourth Amendment claim at issue in *Bivens*. [She] does not allege [Weyker] entered [her] home without a warrant or violated [her] rights of privacy." *Cantú v. Moody*, 933 F.3d 414, 423 (5th Cir. 2019), *cert. denied*, 207 L. Ed. 2d 1052 (2020); *see Farah*, 926 F.3d at 500.

Weyker asserted that the Court "should not extend or assume the existence of a *Bivens* remedy for Yassin's claim for the same panoply of special factors that gave the Eighth Circuit 'pause' with respect to the related claims against Officer Weyker." The Court agrees. To prevail, Yassin needs "to show that Weyker's allegedly false information was what established probable cause" for Yassin's arrest. *Farah*, 926 F.3d at 500. That "after-the-fact inquir[y] . . . pose[s]

a risk of intrusion on executive-branch authority to enforce the law and prosecute crimes." *Id.* at 501. "Another 'special factor counselling hesitation' is what Congress has already done to address injuries of the sort" Yassin has allegedly suffered. *Id.* at 501. "[T]he existence of a statutory scheme for torts committed by federal officers" is yet another. *Cantú*, 933 F.3d at 423. The Court concludes that Yassin's Fourth Amendment claim is not viable under *Bivens*.[4]

III. CONCLUSION

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Weyker's Motion for Summary Judgment [Docket No. 74] is GRANTED.

2. Yassin's Complaint is DISMISSED WITH PREJUDICE as to Heather Weyker, John Does 3–4, and the City of St. Paul.

LET JUDGMENT BE ENTERED ACCORDINGLY.

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[4] Having concluded that Yassin's Fourth Amendment claims against Weyker may not proceed under § 1983 or *Bivens*, the Court need not consider the arguments regarding qualified immunity. *See Neb. Beef, Ltd. v. Greening*, 398 F.3d 1080, 1085 (8th Cir. 2005) ("Because we resolve the instant case on the lack of a *Bivens* remedy, we do not reach the issue of qualified immunity.").

Appendix C

Dated: September 30, 2020

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge

Appendix D

United States Court of Appeals
for the Eighth Circuit

No. 17-3207

Yasin Ahmed Farah

Plaintiff - Appellee

v.

Heather Weyker, in her individual capacity
as a St. Paul Police Officer

Defendant - Appellant

The City of St. Paul; John Does 1–5, in their
individual capacities as St. Paul Police Officers;
Richard Roes 1–5, in their individual capacities as
federal law enforcement officers

Defendants

The Human Trafficking Institute

Amicus on Behalf of Appellant

No. 17-3208

Appendix D

Ifrah Yassin

Plaintiff - Appellee

v.

Heather Weyker, individually and in her official capacity as a St. Paul Police Officer

Defendant - Appellant

The City of St. Paul; John Does 1–2, individually and in their official capacities as St. Paul Police Officers; John Does 3–4, individually and in their official capacities as supervisory members of the St. Paul Police Department

Defendants

The Human Trafficking Institute

Amicus on Behalf of Appellant

No. 17-3209

Hamdi Ali Osman

Plaintiff - Appellee

v.

Appendix D

Heather Weyker, in her individual capacity as a St. Paul Police Officer

Defendant - Appellant

The City of St. Paul; John Bandemer, in his individual and official capacities as a St. Paul Police Sergeant; Robert Roes 4–6, in their individual and official capacities as supervisory members of the St. Paul Police Department

Defendants

The Human Trafficking Institute

Amicus on Behalf of Appellant

No. 17-3210

Ahmad Abnulnasir Ahmad

Plaintiff - Appellee

v.

Heather Weyker, in her individual capacity as a St. Paul Police Officer

Defendant - Appellant

Appendix D

The City of St. Paul; John Bandemer, in his individual and official capacities as a St. Paul Police Sergeant; John Does 1–2, in their individual capacities as St. Paul Police Officers; John Does 3–4, in their individual and official capacities as supervisory members of the St. Paul Police Department

Defendants

The Human Trafficking Institute

Amicus on Behalf of Appellant

No. 17-3212

Bashir Yasin Mahamud

Plaintiff - Appellee

v.

Heather Weyker, in her individual capacity as a St. Paul Police Officer

Defendant - Appellant

The City of St. Paul; John Bandemer, in his individual and official capacities as a St. Paul Police Sergeant; John Does 1–2, in their individual

capacities as St. Paul Police Officers; John Does 3–4, in their individual and official capacities as supervisory members of the St. Paul Police Department

Defendants

The Human Trafficking Institute

Amicus on Behalf of Appellant

No. 17-3213

Mohamed Amalle

Plaintiff - Appellee

v.

Heather Weyker, in her individual capacity as a St. Paul Police Officer

Defendant - Appellant

The City of St. Paul; John Bandemer, in his individual and official capacities as a St. Paul Police Sergeant; John Does 1–2, in their individual capacities as St. Paul Police Officers; John Does 3–4, in their individual and official capacities as supervisory members of the St. Paul Police Department

Appendix D

Defendants

The Human Trafficking Institute

Amicus on Behalf of Appellant

Appeals from United States District Court
For the District of Minnesota - Minneapolis

Submitted: November 14, 2018
Filed: June 12, 2019

Before COLLOTON, SHEPHERD, and STRAS, Circuit Judges

STRAS, Circuit Judge.

If a federal law-enforcement officer lies, manipulates witnesses, and falsifies evidence, should the officer be liable for damages? We hold that the Constitution does not imply a cause of action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971), so the answer must come from Congress, not from us. And Congress has, so far, answered no.

Appendix D

I.

In 2008, police officers in St. Paul, Minnesota, were investigating a suspected sex-trafficking operation involving minors. After one alleged victim was reported missing in Minneapolis and then turned up in Nashville, federal investigators in Tennessee became involved too. The government eventually charged thirty people with a variety of crimes allegedly arising out of an extensive conspiracy that spanned ten years and four states.

The cases against nine of the defendants, including Ahmad Ahmad and Mohamed Amalle, proceeded to trial in the Middle District of Tennessee. The jury acquitted some, while the district court acquitted the others after the jury found them guilty. *See United States v. Adan,* 913 F. Supp. 2d 555, 579 (M.D. Tenn. 2012). In affirming, the Sixth Circuit expressed "acute concern, based on [a] painstaking review of the record, that this story of sex trafficking and prostitution may be fictitious." *United States v. Fahra,* 643 F. App'x 480, 484 (6th Cir. 2016) (unpublished). Prosecutors dropped the charges against the remaining defendants, including Yasin Farah, Hamdi Osman, and Bashir Mohamud.

Ahmad, Amalle, Farah, Osman, and Mohamud each sued Officer Heather Weyker, who had led the investigation for the St. Paul Police Department. They accused Weyker of exaggerating and inventing facts in reports, hiding evidence that would have exonerated them, and pressuring and manipulating the alleged victims into lying. She deceived prosecutors,

the grand jury, and other investigators, according to the complaints filed in each case, about the ages of the alleged victims, whether the victims were coerced into sex and the relationships among the supposed conspirators. By doing so, the plaintiffs claimed, Weyker caused them to be charged and detained for periods ranging from four months to over three years, all in violation of the Fourth Amendment's prohibition on unreasonable seizures. *See Manuel v. City of Joliet,* 137 S. Ct. 911, 919–20 (2017).

A sixth plaintiff, Ifrah Yassin, was not part of the alleged federal conspiracy. Rather, according to Yassin's complaint, she was arrested for witness intimidation based on false information from Weyker. The arrest arose out of a fight between a cooperating witness in the sex-trafficking investigation and one of Yassin's friends. After the fight started, Yassin called 911 and the witness called Weyker. Weyker then told the officer responding to the 911 call that, based on "information and documentation," Yassin and her friends were trying to intimidate the witness and prevent her from cooperating in a federal investigation. Relying on Weyker's tip, the officer arrested Yassin, who was later charged with witness tampering and obstruction of justice. A jury acquitted her of both charges.

The crux of Yassin's case against Weyker is that no "information and documentation" ever existed. Rather, Weyker caused Yassin's unlawful arrest and detention by lying about the reason for the altercation.

All six, including Yassin, sought damages. Recognizing that Weyker had been deputized as a U.S. Marshal toward the conclusion of the joint investigation, they pleaded causes of action under both 42 U.S.C. § 1983, which authorizes constitutional claims against state officials; and *Bivens,* which operates similarly against federal officials, notwithstanding the absence of a statutory cause of action, *see* 403 U.S. at 397. Weyker moved to dismiss, arguing that neither theory was viable. She reasoned that section 1983 did not apply to her because she was a deputized federal official. As for *Bivens,* she claimed that nothing she was accused of doing was actionable. And even assuming the plaintiffs could sue her, she added, she was entitled to qualified immunity because the facts they alleged did not show that she had violated their clearly established constitutional rights.

The district court disagreed. It concluded that even if Weyker was right that *Bivens* was the plaintiffs' only remedy, the claims against her could still proceed. Weyker immediately appealed, *see Wilkie v. Robbins,* 551 U.S. 537, 549 n.4 (2007) (holding that the courts of appeals have jurisdiction to hear interlocutory appeals challenging "the recognition of the entire [*Bivens*] cause of action" in qualified immunity cases), and we consolidated all six appeals in light of the overlapping facts and legal issues involved.

II.

We begin with the five plaintiffs charged in the original conspiracy prosecution. The threshold question is whether their cases are the type for which a

Bivens remedy is available. *See, e.g., Bush v. Lucas,* 462 U.S. 367, 390 (1983) (holding that a federal employee demoted for exercising his First Amendment rights did not have a *Bivens* claim). We address this "purely legal question" de novo. *Neb. Beef, Ltd. v. Greening,* 398 F.3d 1080, 1083 (8th Cir. 2005).

On only three occasions has the Supreme Court implied a cause of action under *Bivens*. *See Carlson v. Green,* 446 U.S. 14, 16–18 (1980); *Davis v. Passman,* 442 U.S. 228, 248 (1979); *Bivens,* 403 U.S. at 397. Since then, the Court has become "far more cautious" and has, in fact, "'consistently refused to extend *Bivens* to any new context or new category of defendants'" for almost forty years. *Ziglar v. Abbasi,* 137 S. Ct. 1843, 1855, 1857 (2017) (quoting *Corr. Servs. Corp. v. Malesko,* 534 U.S. 61, 68 (2001)). Recognizing that the *Bivens* inquiry is about *"who* should decide" whether to create a new cause of action, the Court has answered "most often . . . Congress." *Id.* at 1857 (emphasis added) (citation omitted).

Determining whether an implied cause of action is available under *Bivens* involves two steps. First, we must determine whether the cases before us present one of "the three *Bivens* claims the Court has approved in the past" or whether, instead, allowing the plaintiffs to sue would require us to extend *Bivens* to a "new context." *Id.* at 1859–60. If there is a previously recognized *Bivens* claim alleged, then the cases may proceed. If not, then we advance to the second step and ask whether any "special factors counsel[] hesitation" before implying a new cause of action "in

the absence of affirmative action by Congress." *Id.* at 1857 (citation omitted). Only if we are confident that "the Judiciary is well suited . . . to consider and weigh the costs and benefits of allowing a damages action" will we take it upon ourselves to do so. *Id.* at 1858. Otherwise, we will leave the balancing to Congress.

A.

No Supreme Court case exactly mirrors the facts and legal issues presented here. *See id.* at 1859–60 (explaining that the comparison is to Supreme Court cases). The one that comes closest is *Bivens* itself. *See Bivens,* 403 U.S. at 389–90; *cf. Carlson,* 446 U.S. at 16 n.1, 18–23 (allowing a claim against federal prison officials who failed to treat a prisoner's asthma); *Davis,* 442 U.S. at 230, 236–48 (permitting a congressman's administrative assistant to sue after he fired her). *Bivens* involved a claim against federal agents for an illegal arrest and warrantless search. *See* 403 U.S. at 389. Here, the allegations are that a federally deputized officer duped prosecutors and a grand jury into believing that the plaintiffs were part of a multi-state sex-trafficking conspiracy.

To determine whether the differences "are meaningful enough to make [this] context a new one," the Supreme Court has instructed us to consider several factors, including:

> the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to

> the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; [and] the presence of potential special factors that previous *Bivens* cases did not consider.

Abbasi, 137 S. Ct. at 1859–60 (emphasizing that this list is illustrative, not "exhaustive"). The cases before us are meaningfully different from *Bivens* in three ways.

First, Weyker's alleged misdeeds are different from those in *Bivens,* even if the "constitutional right at issue" is the same. *Id.* at 1860. The agents in *Bivens* handcuffed and strip-searched the plaintiff and combed through his apartment, all without a warrant. *See* 403 U.S. at 389. Weyker did none of these things, nor anything similar. She spoke to witnesses, drafted reports, and shared information with prosecutors and other investigators. These information-gathering and case-building activities are a different part of police work than the apprehension, detention, and physical searches at issue in *Bivens.*

Second, the mechanism of injury is different. In *Bivens,* the plaintiff's injuries—"humiliation, embarrassment, and mental suffering"—were directly caused by the officers' conduct. *Id.* at 389–90. Here, by contrast, Weyker's actions injured the plaintiffs through a series of intervening steps. And those intervening steps involved decisions by independent legal actors—the prosecutors who chose to pursue charges

against the plaintiffs, the grand jury that voted to indict them, and the judges and magistrates who approved their continued detention. This indirect mechanism of injury bears little resemblance to the straightforward claims from *Bivens*.

Third, recognizing an implied cause of action here would pose a greater risk of interference with the other branches of government than it did in *Bivens*. *See Abbasi,* 137 S. Ct. at 1860. Probing the causal chain in cases like these would involve delving into the evidence before numerous decisionmakers, including federal investigators, prosecutors, and the grand jury. The initial step would be to discover what Weyker said, to whom she said it, and when. The information Weyker provided to investigators, prosecutors, and the grand jury would then need to undergo examination for its truth or falsity. For any false information she provided, the question would be whether the evidence was material. The determination would center on whether other evidence available to investigators and prosecutors would have independently led them to charge or detain the plaintiffs. *Cf. Williams v. City of Alexander,* 772 F.3d 1307, 1311 (8th Cir. 2014) (citing *Franks v. Delaware,* 438 U.S. 154 (1978)). Only then, after probing executive charging decisions and peeking behind the curtain of customarily secret grand-jury proceedings, would the plaintiffs be able to prove their cases. Nothing so intrusive was required to prove the claims in *Bivens*.

To be sure, similarities exist. *Bivens* involved alleged violations of the Fourth Amendment's

prohibition on "unreasonable searches and seizures," and so do these cases. 403 U.S. at 389 (quoting U.S. Const. amend. IV); *see also Abbasi,* 137 S. Ct. at 1856 (stressing "the continued force ... of *Bivens* in the search-and-seizure context in which it arose"). But treating all search-and-seizure cases the same would contradict the Supreme Court's direction that a context can be new even if it involves the same constitutional right as an existing case. *See Abbasi,* 137 S. Ct. at 1859.

Nor is the context the same just because Weyker and the agents in *Bivens* were "street-level" investigators whose alleged misconduct only impacted a single investigation, rather than senior officers engaged in policymaking activities. It is true, as Osman and Farah point out, that the Supreme Court emphasized "the rank of the officers involved" and "the generality or specificity of the official action" in its most recent refusal to extend *Bivens. See id.* at 1860–61 (addressing claims against Justice Department officials and prison wardens based on post-9/11 detention policies and conditions). Even so, the Court left no doubt that these were just two features among many that could meaningfully differentiate potential causes of action. *See id.* at 1859–60.

The three differences we have identified—the sorts of actions being challenged, the mechanism of injury, and the kinds of proof those injuries would require—are "meaningful enough" that we cannot simply assume that the same reasons that justified permitting the plaintiff to recover damages in *Bivens*

apply equally here. *Id.* at 1859. Allowing the plaintiffs to pursue damages claims in this context would mean extending *Bivens*, no matter how "modest" the extension may be, *id.* at 1864, so we must decide whether this is one of the unusual situations in which we are "well suited . . . to consider and weigh the costs and benefits of allowing a damages action to proceed," *id.* at 1858.

B.

According to the Supreme Court, we must now determine at the second step whether anything about these cases "causes [us] to pause before acting without express congressional authorization." *Id.* It does not take much to make us pause, because "[i]n most instances, . . . [Congress] is in the better position to consider if the public interest would be served by imposing a new substantive legal liability." *Id.* at 1857 (internal quotation marks and citation omitted). Indeed, recognizing the Court's "caution" in this regard, we have adopted a "presumption against judicial recognition of direct actions for violations of the Constitution by federal officials." *Neb. Beef,* 398 F.3d at 1084 (citation omitted).

Among the "special factors" that have been decisive in the past, *Abbasi,* 137 S. Ct. at 1857–58, the most relevant here are whether a *Bivens* action "would require courts to interfere in an intrusive way with sensitive functions of the Executive Branch," *id.* at 1861; whether Congress has taken other action in the area without authorizing a damages remedy, *see id.* at 1862; and whether a "remedial structure" is

already in place to address constitutional violations, even if it does not go as far as a *Bivens* remedy would, *id.* at 1858, 1862–63. *See also id.* at 1858, 1861 (identifying additional "special factors"). When factors like these are present, the Supreme Court has explained, it is "less probable that Congress would want the Judiciary to entertain a damages suit." *Id.* at 1858.

1.

The first special factor present here is a variation on one the Supreme Court has already identified: the risk of burdening and interfering with the executive branch's investigative and prosecutorial functions. *Cf. id.* at 1861; *see also id.* at 1858 (recognizing that other special factors will appear in future cases, but that they are "difficult to predict in advance"). As we explain above, for these plaintiffs to prevail, they would need to show that Weyker's allegedly false information was what established probable cause for their arrests and detention. *Cf. Williams,* 772 F.3d at 1311 (explaining that to succeed on a false-arrest claim against an officer who has lied in a warrant application, a plaintiff must prove that "[o]nce the purportedly false statements are removed, the affidavit's remaining content does not support a finding of probable cause").

This type of showing would invite a wide-ranging inquiry into the evidence available to investigators, prosecutors, and the grand jury. It would not just be limited to the theories *actually* pursued by the prosecutors, because the question is not whether their theories had support. Rather, it would focus on whether

there was probable cause to charge the plaintiffs with a crime that would have justified their detention pending trial. *See Devenpeck v. Alford,* 543 U.S. 146, 153 (2004) ("The Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent [of the officials involved]." (brackets omitted) (quoting *Whren v. United States,* 517 U.S. 806, 814 (1996))); *Keil v. Triveline,* 661 F.3d 981, 986 (8th Cir. 2011). Reconstructing the record before the grand jury, contemplating a panoply of federal crimes, and determining whether it would have been reasonable to think that the plaintiffs committed any of them would be among the likely steps in the analysis.

Take Farah's case, for example. He assures us that there would be no need to look at "the great bulk" of the grand-jury evidence, because Weyker was his only point of contact with investigators, so any possible support for the charges must have come from her. But to verify this assertion, the factfinder still has to know what was in the grand-jury record. Only if there really is nothing implicating Farah—or at least nothing that could have supported probable cause—in the police reports, witness statements, transcripts, and other materials will the factfinder be able to determine that Weyker's alleged misdeeds caused his injuries.

To be sure, sometimes courts must undertake this sort of review. Indeed, if the plaintiffs' section 1983 claims turn out to be viable, *see infra* Part II.C, the district court may have to do so in these cases. But such after-the-fact inquiries still pose a risk of

intrusion on executive-branch authority to enforce the law and prosecute crimes, not to mention encroach on the usual secrecy of charging decisions and grand-jury proceedings. That some section 1983 cases pose similar risks just reflects that *Congress* has balanced the costs and benefits and decided that the potential encroachment is worth it. The fact that recognizing the plaintiffs' claims in these cases would require us to make this determination on our own, without any congressional guidance, is reason enough "to pause before acting." *Abbasi,* 137 S. Ct. at 1858.

2.

Another "special factor counselling hesitation" is what Congress has already done to address injuries of the sort the plaintiffs have allegedly suffered. *Id.* The so-called Hyde Amendment allows courts to award attorney fees to criminal defendants who prevail against "vexatious, frivolous, or . . . bad[-]faith" positions taken by the government. Act of Nov. 26, 1997, Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (codified at 18 U.S.C. § 3006A note). And those who are wrongly convicted and sentenced may seek release under 28 U.S.C. § 2255 or sue the government for damages, *see* 28 U.S.C. § 1495 (creating a cause of action for damages "by any person unjustly convicted of an offense against the United States and imprisoned"); *see also id.* § 2513(e) (capping the damages available for wrongful imprisonment).

Understandably, the plaintiffs are not satisfied with these options, which are unavailable to them. They cannot recover attorney fees, for example,

because they were represented by appointed counsel. *See* § 61 7, 111 Stat. at 2519 (excepting "case[s] in which the defendant [was] represented by assigned counsel paid for by the public"). Nor can they seek release or damages because they were never convicted. *See* 28 U.S.C. § 2255(a) (limiting relief to "prisoner[s] in custody under sentence of a [federal] court"); *id.* § 1495 (requiring "convict[ion]" and "imprison[ment]"). But far from supporting their position, the plaintiffs' ineligibility for these remedies actually cuts against recognizing a new cause of action.

The reason is that it would upset the existing "remedial structure." *Abbasi,* 137 S. Ct. at 1858. These plaintiffs are ineligible for relief under the unjust conviction statute precisely because they were acquitted or had their charges dropped before trial. But had they been convicted and imprisoned, they would be eligible to seek damages under the unjust-conviction statute. The fact that Congress has expressly provided a damages remedy for some victims of this particular type of injury, but not for others, suggests that it considered the issue and made a deliberate choice. This is a "convincing reason" not to imply a second, distinct "freestanding remedy in damages." *Id.* (citation omitted).

The plaintiffs complain that these alternatives would not have offered them "roughly similar compensation" or provided "roughly similar incentives" to deter officers from violating the law. *Minneci v. Pollard,* 565 U.S. 118, 130 (2012). They forget, however, that *Bivens* remedies are the exception, and if they

were available every time "roughly similar" remedies are not, then *Bivens* would become the rule, available in all but the most unusual constitutional cases. To be sure, the availability of "roughly similar" remedies was discussed in one Supreme Court decision, *see id.*, but since then, no case has mentioned it, much less relied on it. *See Abbasi,* 137 S. Ct. at 1858, 1862–63 (saying nothing about similarity or comparability, despite addressing alternative remedies in depth). To the contrary, the Court has since made clear that even remedies that provide *no* compensation for victims and little deterrence for violators, such as injunctions and writs of habeas corpus, trigger the general rule that, "when alternative methods of relief are available, a *Bivens* remedy usually is not." *Id.* at 1863 (citing several cases, including *Minneci,* 565 U.S. at 124–26).

* * *

The bottom line is that a balance must be struck between the costs and benefits of allowing plaintiffs who have been wrongfully charged and detained based on allegedly fabricated evidence to sue for damages. The costs of implying a cause of action include exposing federal officials to "the complex sphere of litigation," *id.* at 1858, and intruding on prosecutorial functions. Among the benefits, however, are deterring misconduct, protecting the integrity of the criminal adjudicatory process, and preventing innocent people from being illegally detained. It is not our place to weigh these competing policy concerns. Rather, having identified "sound reasons to think Congress might

doubt the efficacy or necessity of a damages remedy," we "must refrain from creating [one]" ourselves. *Id.*

C.

Declining to extend *Bivens* does not necessarily end these five cases, however, because the plaintiffs also brought section 1983 claims against Weyker. Before the district court, Weyker argued that she was not acting under color of state law when she committed her alleged misdeeds, because she had been deputized as a federal officer by the time the plaintiffs were indicted. *See Magee v. Trs. Of Hamline Univ.*, 747 F.3d 532, 535 (8th Cir. 2014). This argument, which the district court did not address, potentially requires a fact-intensive analysis of "the nature and circumstances" of Weyker's alleged misconduct and its "relationship ... to the performance of [her] official [state] duties." *Id.* (citation omitted); *see also West v. Atkins*, 487 U.S. 42, 49 (1988) ("The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. '" (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941))). For this reason, and because the parties have not fully briefed this question on appeal, we remand for the district court to consider the applicability of section 1983 in the first instance.[1]

[1] We decline Weyker's invitation to skip over the under-color-of-state-law element to decide her claim to qualified immunity.

III.

Yassin's case is different. Her primary theory is that she was unlawfully arrested because Weyker falsely told another police officer that she was trying to intimidate a federal witness. We need not decide whether this theory of liability would require us to extend *Bivens*, because Weyker has not meaningfully briefed the point on appeal. *See White v. Jackson*, 865 F.3d 1064, 1075 (8th Cir. 2017).

Even if we assume that Yassin's unlawful-arrest claim is viable under *Bivens*,[2] however, Weyker still claims that she is entitled to qualified immunity for every action she took during the investigation. So we must address the two familiar qualified-immunity questions: assuming Yassin's allegations are true, did Weyker violate her constitutional rights? And if so, were those rights clearly established? *See Hager v. Ark. Dep't of Health*, 735 F.3d 1009, 1013 (8th Cir. 2013). On both points, our review is de novo, *see id.*, and our answer is yes.

First, Yassin alleged a constitutional violation. According to her complaint, the officer who arrested her had no reason to suspect her of a crime until Weyker lied to him. In fact, the complaint suggests that the facts known to the officer led him to treat her as a victim, at least until he heard from Weyker. These allegations, if true, would establish an unlawful-arrest

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[2] To the extent Yassin is also suing for damages arising out of her post-arrest indictment, the claim must proceed, if at all, under section 1983. *See supra* Part II.C.

claim under the Fourth Amendment. *See Williams*, 772 F.3d at 1310; *cf. Small v. McCrystal*, 708 F.3d 997, 1006 (8th Cir. 2013) ("Officers remain liable…for the reasonably foreseeable acts of actors they deceive.").

Second, the right Weyker allegedly violated was clearly established. It is true, as Weyker explains, that sexual-abuse and sex-trafficking cases often put investigators in difficult positions, particularly when there are minors involved. *Cf. Myers v. Morris*, 810 F.2d 1437, 1459 (8th Cir. 1987) (noting "[t]he uncertainty surrounding acceptable investigative techniques for suspected child sexual abuse"). But even so, a reasonable officer would know that deliberately misleading another officer into arresting an innocent individual to protect a sham investigation is unlawful, regardless of the difficulties presented by the case. *See, e.g.*, *Williams*, 772 F.3d at 1313; *Small*, 708 F.3d at 1006.

IV.

We accordingly vacate the denial of Weyker's motions to dismiss Ahmad's, Amalle's, Farah's, Osman's, and Mohamud's complaints. We instruct the district court on remand to dismiss their *Bivens* claims and determine whether their cases may proceed under section 1983. We also affirm the denial of Weyker's motion to dismiss Yassin's unlawful-arrest claim and remand her case for further proceedings consistent with this opinion.

Appendix E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Hamdi A. Mohamud,

Plaintiff,

v.

Heather Weyker, in her individual capacity as a St. Paul Police Officer,

Defendant.

Case No. 17-cv-2069 (JNE/TNL)
ORDER

Hawo O. Ahmed,

Plaintiff,

v.

Heather Weyker, in her individual capacity as a St. Paul Police Officer,

Defendant.

Case No. 17-cv-2070 (JNE/TNL)
ORDER

Filed: September 18, 2018

Asserting that they were seized in violation of the Fourth Amendment, Hamdi A. Mohamud and Hawo O. Ahmed brought actions against Heather Weyker under 42 U.S.C. § 1983 (2012) and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Mohamud and Ahmed alleged that Weyker, a St. Paul police officer, provided false

information, fabricated evidence, and withheld exculpatory evidence about them. They were arrested and subsequently charged with witness tampering and obstructing sex trafficking enforcement. Ahmed was acquitted after a jury trial. The charges against Mohamud were dismissed.

Weyker moved to dismiss Mohamud's and Ahmed's actions, arguing that she is entitled to qualified immunity because Mohamud and Ahmed failed to plausibly allege Weyker violated any clearly established constitutional right. Weyker also asserted that no cause of action exists under either *Bivens* or § 1983 to sue her in her individual capacity. For the reasons set forth below, the Court denies Weyker's motions.

I. BACKGROUND

Mohamud's and Ahmed's amended complaints are essentially identical. The following summarizes them.

On June 16, 2011, Mohamud, Ahmed, and another individual were involved in an altercation with Muna Abdulkadir.[1] The incident took place at Abdulkadir's apartment building in Minneapolis, Minnesota. Ahmed and Abdulkadir agreed to fight to settle their

[1] Ifrah Yassin is the third individual who was involved in the altercation with Abdulkadir. Yassin brought an action against Weyker and others that is similar to the actions brought by Mohamud and Ahmed. The Court granted in part and denied in part Weyker's motion to dismiss Yassin's claims. *Yassin v. Weyker*, Case No. 16-cv-2580 (JNE/TNL), 2017 WL 3425689 (D. Minn. Aug. 9, 2017), *appeal docketed*, No. 17-3208 (8th Cir. Oct. 13, 2017).

"beef." After agreeing to fight, Abdulkadir indicated she wanted to go upstairs and change her clothes. The four entered an elevator, where a scuffle briefly took place. Abdulkadir exited the elevator, and the other three descended in the elevator.

Abdulkadir retrieved a knife from her apartment, proceeded downstairs, and exited the building. Abdulkadir approached Ahmed's vehicle and smashed its windshield with the knife. A short time later, Ahmed, Mohamud, and the other individual exited the building. Abdulkadir struck the other individual with the knife. Ahmed, Mohamud, and the other individual called 911 to report Abdulkadir for assault and property damage.

When Abdulkadir realized the police had been summoned, she returned to her apartment building and called Weyker. Abdulkadir told Weyker that she had been in a fight; that she had attacked Mohamud, Ahmed, and the other individual with a knife; that the police had been summoned; that she was hiding in a neighbor's apartment; and that she feared she was going to be arrested.

A Minneapolis police officer, Anthijuan Beeks, responded to the 911 call made by Ahmed, Mohamud, and the other individual. When he arrived on the scene, Beeks regarded them as victims of a crime committed by Abdulkadir. He had no reason to suspect that Ahmed, Mohamud, and the other individual had sought to harm, threaten, or intimidate Abdulkadir because of her role as a witness in a federal prosecution.

Appendix E

Approximately 20 minutes after he arrived on the scene, Beeks received a message that he should contact Weyker before he continued his investigation. He called her, and she told him that Abdulkadir is a federal witness in a prostitution investigation in which 30 people had been indicted; that Weyker had information and documentation that Ahmed, Mohamud, and the other individual had been actively seeking out Abdulkadir and attempting to intimidate and harm Abdulkadir; and that one of Ahmed's friends was dating a man who had been indicted in the prostitution investigation. Weyker knowingly gave false information to Beeks. She had no information or documentation that Ahmed, Mohamud, and the other individual were actively looking for Abdulkadir and attempting to intimidate or harm Abdulkadir. Weyker had no information that one of Ahmed's friends was dating a man who had been indicted in the prostitution investigation.

After he spoke with Weyker, Beeks interviewed Abdulkadir about the altercation. Abdulkadir told Beeks that the altercation started with a casual conversation. Abdulkadir did not say anything about having a dispute with Ahmed, Mohamud, and the other individual; about Ahmed, Mohamud, and the other individual making any threats; about the prostitution investigation or her role in it; about Ahmed, Mohamud, and the other individual having a knife; about why she agreed to fight Ahmed; or about being injured by a knife. Beeks determined that Abdulkadir had not attempted to call 911 and that she instead obtained a knife, proceeded downstairs, and smashed

the windshield of Ahmed's car. Abdulkadir admitted to Beeks that she struck the other individual with the knife.

In addition to speaking with Beeks, Weyker spoke with a Minneapolis police sergeant, Gary Manty, on June 16, 2011. Weyker gave Manty false information: that a friend of Ahmed and Mohamud had stated to Abdulkadir that her friends were incarcerated because of Abdulkadir; that the incarcerated individuals were Somali Outlaws; that a friend of Ahmed and Mohamud was acquainted with a man who had been indicted in the prostitution investigation; that Ahmed, Mohamud, and the other individual went to Abdulkadir's apartment building to intimidate Abdulkadir about being a federal witness against individuals who were arrested and charged in the prostitution investigation; and that Abdulkadir feared for her life and feared retaliation because of her involvement in the prostitution investigation.

Weyker provided the false information to Beeks and Manty to shield Abdulkadir from arrest. Weyker sought to assist Abdulkadir to avoid criminal charges so as to provide Abdulkadir an incentive to continue to work with Weyker by fabricating evidence and providing false testimony in the prostitution investigation.

Beeks arrested Ahmed, Mohamud, and the other individual on suspicion of tampering with a federal witness. While transporting them to jail, Beeks told them they were arrested because of the assertions Weyker had made about them.

Appendix E

On June 17, 2011, Weyker executed a federal criminal complaint and a supporting affidavit against Ahmed, Mohamud, and the other individual for tampering with a federal witness and obstructing the prostitution investigation. Weyker included false information in the criminal complaint. For instance, Weyker stated the altercation was related to the prostitution investigation, but she knew there were no facts to support the assertion. Weyker stated the friend of Ahmed and Mohamud confronted Abdulkadir because Abdulkadir was the reason her friends were incarcerated, but Weyker knew there was no factual basis to support the statement. Weyker claimed that Abdulkadir had been attacked with a knife and injured, but Weyker knew there was no evidence that Abdulkadir was attacked with a knife or injured. Weyker stated that Ahmed, Mohamud, or the other individual chased Abdulkadir outside with a knife, but Weyker knew Ahmed, Mohamud, and the other individual did not have a knife and did not chase Abdulkadir. Weyker asserted that Ahmed, Mohamud, or the other individual attacked Abdulkadir's mother, but Weyker knew nobody had attacked Abdulkadir's mother. Weyker stated that Ahmed, Mohamud, and the other individual had threatened Abdulkadir about putting people in jail, but Weyker knew no such threats were made.

Weyker did not provide exculpatory evidence in the criminal complaint and supporting affidavit. For example, Weyker did not state that Ahmed, Mohamud, and the other individual called 911 to report being assaulted by Abdulkadir. Weyker did not state

that Abdulkadir contacted Weyker while hiding from the Minneapolis police out of fear of being arrested for assaulting Mohamud, Ahmed, and the other individual. Weyker did not state that that there was no record of Mohamud, Ahmed, and the other individual being involved with the individuals who were indicted in the prostitution investigation. Weyker did not state that there was no record of Mohamud, Ahmed, and the other individual communicating with Abdulkadir about the prostitution investigation. Weyker did not state that the on-scene investigator's interview with Abdulkadir revealed no statement about Mohamud, Ahmed, and the other individual threatening Abdulkadir; no statement about Mohamud, Ahmed, and the other individual attacking Abdulkadir with a knife; and no statement about Mohamud, Ahmed, and the other individual mentioning Abdulkadir's role as a witness in the prostitution investigation.

On June 17, 2011, warrants to arrest Mohamud and Ahmed were issued, and they were placed in federal custody. They were indicted on June 29, 2011, for violating federal laws. From June 17, 2011, to July 30, 2013, Ahmed remained in federal custody. She was acquitted of all charges after a jury trial. From June 17, 2011, to July 10, 2013, when all charges against her were dismissed, Mohamud remained in federal custody. She was subject to supervised release for a short time.

II. DISCUSSION

"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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plaintiff satisfies this requirement by "plead[ing] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* at 678.

In considering a motion to dismiss for failure to state a claim, "a district court generally may not consider materials outside the pleadings." *Noble Sys. Corp. v. Alorica Cent., LLC*, 543 F.3d 978, 982 (8th Cir. 2008). A district court may "consider some public records, materials that do not contradict the complaint, or materials that are 'necessarily embraced by the pleadings.'" *Id.*

"[D]efendants seeking dismissal under Rule 12(b)(6) based on an assertion of qualified immunity 'must show that they are entitled to qualified immunity on the face of the complaint.'" *Kulkay v. Roy*, 847 F.3d 637, 642 (8th Cir. 2017) (alteration in original)

(quoting *Carter v. Huterson*, 831 F.3d 1104, 1107 (8th Cir. 2016)); *accord Stanley v. Finnegan*, 899 F.3d 623, 627 (8th Cir. 2018); *Kiesling v. Holladay*, 859 F.3d 529, 533 (8th Cir. 2017). "The doctrine of qualified immunity generally shields public and government officials performing discretionary functions from civil liability 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Kulkay*, 847 F.3d at 642 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "To determine whether a defendant is entitled to dismissal on the basis of qualified immunity, we consider '(1) whether the official's conduct violated a constitutional right; and (2) whether the violated right was clearly established.'" *Stanley*, 899 F.3d at 627 (quoting *Manning v. Cotton*, 862 F.3d 663, 668 (8th Cir. 2017)).

The parties presented matters outside the pleadings in connection with Weyker's motions to dismiss. The Court excludes them. *See* Fed. R. Civ. P. 12(d); *Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 193 & n.7 (4th Cir. 2015) ("Although some of the parties' filings (such as the criminal complaint) could have been used for limited purposes . . . any disputed testimony contained therein should have been ignored in favor of the complaint's allegations. Perhaps more simply, the court could have wholly ignored such attachments and relied exclusively on the complaint." (citation omitted)); *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 701 (8th Cir. 2003) (quotation omitted) (stating a court has complete discretion to determine whether to accept any material beyond the pleadings offered in

connection with a Rule 12(b)(6) motion); *cf. Glob. Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 157 (2d Cir. 2006) ("[A]lthough the final determination of March 2005 and Massie's testimony may be public records of which a court may take judicial notice, 'it may do so on a motion to dismiss only to establish the existence of the opinion, not for the truth of the facts asserted in the opinion.'").

"A warrantless arrest is consistent with the Fourth Amendment if it is supported by probable cause, and an officer is entitled to qualified immunity if there is at least 'arguable probable cause.'" *Ulrich v. Pope Cty.*, 715 F.3d 1054, 1059 (8th Cir. 2013) (quoting *Borgman v. Kedley*, 646 F.3d 518, 522–23 (8th Cir. 2011)). "Probable cause exists if the totality of facts based on reasonably trustworthy information would justify a prudent person in believing the individual arrested had committed an offense." *Small v. McCrystal*, 708 F.3d 997, 1003 (8th Cir. 2013) (quoting *Copeland v. Locke*, 613 F.3d 875, 879 (8th Cir. 2010)). "Arguable probable cause exists even where an officer mistakenly arrests a suspect believing it is based in probable cause if the mistake is 'objectively reasonable.'" *Ulrich*, 715 F.3d at 1059 (quoting *Borgman*, 646 F.3d at 523). "The probable cause standard inherently allows room for reasonable mistakes by a reasonable person, but the qualified immunity standard affords law enforcement officials an even wider berth for mistaken judgments 'by protecting all but the plainly incompetent or those who knowingly violate the law.'" *Id.* (quoting *Hunter v. Bryant*, 502 U.S. 224, 229 (1991)).

"A warrant based upon an affidavit containing 'deliberate falsehood' or 'reckless disregard for the truth' violates the Fourth Amendment." *Small*, 708 F.3d at 1006 (quoting *Bagby v. Brondhaver*, 98 F.3d 1096, 1098 (8th Cir. 1996)). "[W]hen a police officer deliberately or recklessly makes false statements to demonstrate probable cause for an arrest warrant, the warrant may be invalidated" under *Franks v. Delaware*, 438 U.S. 154 (1978). *Williams v. City of Alexander*, 772 F.3d 1307, 1311 (8th Cir. 2014). "To establish a *Franks* violation, the plaintiff must prove '1) that a false statement knowingly and intentionally, or with reckless disregard to the truth, was included in the affidavit, and 2) that the affidavit's remaining content is insufficient to provide probable cause.'" *Id.* (quoting *United States v. Box*, 193 F.3d 1032, 1034–35 (8th Cir. 1999)). "Under *Franks*, [a plaintiff] can challenge the affidavit based on the omission of facts by proving '1) that facts were omitted with the intent to make, or in reckless disregard of whether they thereby make, the affidavit misleading, and 2) that the affidavit, if supplemented by the omitted information, could not support a finding of probable cause.'" *Id.* at 1312 (quoting *Box*, 193 F.3d at 1035).

"It is clearly established that a warrantless arrest, unsupported by probable cause, violates the Fourth Amendment." *Dowell v. Lincoln Cty.*, 762 F.3d 770, 777 (8th Cir. 2014) (quoting *Small*, 708 F.3d at 1003). It is also clearly established that "a seizure without 'a truthful factual showing sufficient to constitute probable cause' violates the Fourth Amendment." *Livers v. Schenck*, 700 F.3d 340, 357 (8th Cir. 2012) (quoting

Hedges v. Poletis, 177 F.3d 1071, 1074 (8th Cir. 1999)).

Weyker asserted that she is entitled to qualified immunity because "probable cause existed for Officer Beeks to arrest Plaintiffs independent of any information provided by Officer Weyker"; "Plaintiffs' initial arrest complied with the Fourth Amendment because probable cause existed for other crimes"; "the federal criminal complaint filed by Officer Weyker was supported by probable cause"; "Plaintiffs' assertions of innocence and reliance on the judicial opinions in the sex trafficking cases lend no plausibility to a Fourth Amendment violation"; and "Plaintiffs' claims are barred because Plaintiffs did not mount a successful probable cause challenge during their criminal proceedings." Weyker's arguments relied heavily on matters outside the pleadings. According to Ahmed's and Mohamud's amended complaints, Beeks regarded Ahmed and Mohamud as victims of a crime committed by Abdulkadir when he arrived on the scene on June 16, and nothing in his subsequent investigation, except the allegedly false information conveyed to him by Weyker, led him to believe that Ahmed or Mohamud had engaged in any criminal activity. Ahmed and Mohamud alleged that Weyker knowingly recounted a false narrative to support the criminal complaint against them. Given the allegations of Ahmed and Mohamud, their failures to successfully contest probable cause during their criminal cases do not vitiate their claims against Weyker. *See Manuel v. City of Joliet,* 137 S. Ct. 911, 919–20 (2017). The Court concludes that Ahmed and Mohamud

plausibly alleged Weyker violated rights under the Fourth Amendment and that their allegedly violated rights were clearly established. *See Odom v. Kaizer,* 864 F.3d 920, 922–23 (8th Cir. 2017); *Dowell*, 762 F.3d at 777; *Livers*, 700 F.3d at 357. At this stage of the litigation, Weyker is not entitled to qualified immunity.

In similar cases, the Court discerned no need to "decide whether the proper vehicle for [the plaintiff's] claims is a § 1983 or Bivens cause of action." *Osman v. Weyker*, Case No. 16-cv-908 (JNE/TNL), 2017 WL 3425647, at *6–7 (D. Minn. Aug. 9, 2017), *appeal docketed*, No. 17-3209 (8th Cir. Oct. 13, 2017); *see Yassin*, 2017 WL 3425689, at *3 n.5. The Court does the same here.

III. CONCLUSION

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Weyker's motions to dismiss [Docket No. 15 in Case No. 17-cv-2069; Docket No. 16 in Case No. 17-cv-2070] are DENIED.

Dated: September 18, 2018

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge

Appendix F

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IFRAH YASSIN,

Plaintiff,

v.

HEATHER WEYKER, *individually and in her official capacity as a St. Paul Police Officer*; JOHN DOES 1–2, *individually and in their official capacities as St. Paul Police Officers*; JOHN DOES 3–4, *individually and in their official capacities as supervisory members of the St. Paul Police Department*; and THE CITY OF ST. PAUL,

Defendants.

Case No. 16cv2580 (JNE/TNL)
ORDER

I. INTRODUCTION

Plaintiff Ifrah Yassin alleges that she was arrested without probable cause on the basis of fabricated evidence and material omissions, in violation of her constitutional rights. She was indicted by a

federal grand jury on charges of obstructing justice by attempting to intimidate a witness in a different federal case, and a jury acquitted her of all charges after a trial. Yassin sues Defendants Heather Weyker, a police officer for the St. Paul Police Department in Minnesota; John Does 3–4, members of the St. Paul Police Department who are alleged to have been Weyker's supervisors; and the City of St. Paul ("St. Paul").[1] Weyker moves to dismiss Yassin's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim and on absolute and qualified immunity grounds. Dkt. No. 22. St. Paul moves on behalf of the City of St. Paul and John Does 3–4 for judgment on the pleadings. Dkt. No. 28.

The witness whom Yassin was charged with intimidating was a witness in a large criminal case prosecuted in the Middle District of Tennessee that at its core alleged a widespread conspiracy to sex-traffic minor girls across Minnesota, Tennessee, and Ohio ("Tennessee Case"). Thirty people, mostly Somali, were indicted in the Tennessee Case in 2010–2011. Twenty of the former defendants in that criminal case have brought separate civil suits alleging that Weyker, an investigator in the Tennessee Case, fabricated evidence, causing them to be arrested and detained unlawfully. The parties in these twenty-one separate civil cases agreed to coordinated briefing on the defendants' motions to dismiss and for judgment on the pleadings. The Court assumes familiarity with its

[1] Yassin's complaint also names John Does 1–2 in Count 2, but that count was dismissed without prejudice by stipulation. *See* Dkt. No. 42.

fuller opinion in one of the related cases, *Osman v. Weyker, et al.*, No. 16cv908 ("Osman Opinion") (filed simultaneously herewith).

The Court held a hearing on Defendants' motions on May 3, 2017, and now grants in part and denies in part Weyker's motion and grants St. Paul's motion.

II. APPLICABLE STANDARDS

A motion to dismiss or a motion for judgment on the pleadings is appropriately granted "only when there is no dispute as to any material facts and the moving party is entitled to judgment as a [m]atter of law." *Greenman v. Jessen*, 787 F.3d 882, 887 (8th Cir. 2015) (citation omitted). To survive a Rule 12 motion, "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 omitted); *Haney v. Portfolio Recovery Assocs., LLC*, 837 F.3d 918, 924 (8th Cir. 2016), *as amended* (Dec. 27, 2016). *See also* Osman Op. 3–4.

III. SUMMARY OF YASSIN'S ALLEGATIONS

On June 16, 2011, Yassin and two friends, Hawo Ahmed and Hamdi Mohamud, were driving to the mall when Ahmed spotted Muna Abdulkadir. Compl. ¶¶ 8–9. Ahmed told her friends that she wanted to fight Abdulkadir, without explaining why, and exited the car to approach Abdulkadir. Compl. ¶ 9. Yassin followed. *Id.* The two followed Abdulkadir into an apartment building, where Ahmed confronted her,

and Abdulkadir agreed to fight. Compl. ¶ 10. The three stepped into an elevator and got into a physical altercation. Compl. ¶¶ 10–11. Yassin did not participate until she felt the need to protect Ahmed, who was pregnant. *See* Compl. ¶ 11. The three parted ways, and Abdulkadir proceeded to go to Ahmed's car, with a knife in hand, and begin breaking the windows. Compl. ¶¶ 12–13. When Yassin approached, Abdulkadir lunged at her with the knife. Compl. ¶ 14.

Yassin broke away and called the police for emergency help. Compl. ¶ 15. Minneapolis Police Department Officer Anthijuan Beeks responded to Yassin's emergency call, and when he arrived at the scene, he spoke to Yassin and her friends, treating them as victims of alleged felony assault and vandalism. Compl. ¶ 17. Before he could find and question Abdulkadir, he received an urgent call from Weyker. *Id.*

After observing that Yassin had called the police, Abdulkadir ran and called Weyker. Compl. ¶ 16. Weyker then got in touch with Beeks. She informed him that she was a St. Paul police officer, that "Abdulkadir was a key witness in a federal human-trafficking investigation that Weyker was working on," and that Weyker "had 'information and documentation' that Yassin, Ahmed, and Mohamud had been actively seeking out Abdulkadir to intimidate her and cause bodily harm to her because of her role in the federal investigation." Compl. ¶ 18.

Without confirming that the "information and documentation" existed, Beeks took Weyker at her word: "her conversation with him 'changed the situation.'"

Compl. ¶ 19. "Based on Weyker's representations, Officer Beeks and his supervisor decided to arrest Yassin, Ahmed, and Mohamud on suspicion of federal witness tampering. The[y] also decided not to arrest Abdulkadir on state felony assault or vandalism charges." Compl. ¶ 20. "Beeks told Yassin in his squad car while driving her to jail that he arrested her based on Officer Weyker's assertions." Compl. ¶ 25.

In fact, Weyker did not have any "information and documentation" about Yassin or her friends, about whom Weyker had only first learned that very day. Compl. ¶ 21. Yassin had been out of the country from 2008 to 2011, Compl. ¶ 22, while the Tennessee Case investigation was ongoing and the indictments were filed. Weyker's statement to Beeks that she had "information and documentation" that Yassin had been trying to intimidate and harm Abdulkadir for her role as a witness was entirely false, and furthermore omitted that Abdulkadir had "previously made multiple false statements to her." Compl. ¶¶ 21, 23. Weyker made these false and misleading statements because "Abdulkadir was a lynchpin of Weyker's manufactured human-trafficking case," the Tennessee Case, in which none of the defendants who stood trial were convicted. Compl. ¶ 24 & n.2 (citing *United States v. Fahra*, 643 Fed. Appx. 480 (6th Cir. 2016)). Weyker "sought to assist Abdulkadir in avoiding criminal charges for her actions against Yassin, Ahmed, and Mohamud as further incentive for Abdulkadir to continue cooperating with Weyker by fabricating events and testimony in the human-trafficking case." Compl. ¶ 24.

After Beeks arrested Yassin, she was temporarily held in custody before being released on conditions. Compl. ¶ 32. She was indicted on federal charges of witness tampering and obstruction of justice. Compl. ¶ 25. A jury acquitted her of all charges in July 2013. *Id.* ¶ 34.

Yassin alleges violations of her rights under the Fourth, Fifth, Sixth, and/or Fourteenth Amendments. She also includes allegations relating to supervisory and municipality liability.

IV. SUMMARY OF ARUGMENTS

The parties briefed many issues. They dispute whether Yassin's claims should be brought under 42 U.S.C. § 1983 or if Weyker was acting in a federal capacity at the time of the alleged violations of Yassin's rights. To the extent Yassin seeks to bring a claim pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), Weyker argues that remedies under *Bivens* are not available in a case like Yassin's. Yassin contends that she may pursue her Fourth Amendment and due process claims pursuant to *Bivens*. Weyker, in her consolidated briefing, asserts absolute immunity to the extent Yassin's allegations rest on Weyker's grand jury testimony, and Yassin counters that absolute immunity does not shield Weyker from liability for her pre-testimonial misdeeds. The parties debate whether Yassin's due process claims are barred by *Parratt v. Taylor*, 451 U.S. 527 (1981), and its progeny. Weyker argues that Yassin's due process claims also fail because they sound, if at all, only in the

Fourth Amendment, that the due process claims also fail to the extent they are based on alleged *Brady*[2] violations because Yassin was not convicted, and that there was at least arguable probable cause to arrest and detain Yassin. Yassin argues that qualified immunity does not shield Weyker as to the substantive due process claims because it was clearly established at the time that it is illegal for a police officer to fabricate evidence, *Brady* violations have also been long established, and it is well established that the Fourth Amendment requires a truthful factual showing of probable cause. As for St. Paul's motion, the parties dispute whether Yassin's allegations adequately plead supervisory and municipal liability in light of Defendants' assertions of qualified immunity.

V. LEGAL ANALYSIS

As explained fully in the Osman Opinion, pursuant to *Manuel v. City of Joliet*, 137 S. Ct. 911 (Mar. 21, 2017), Yassin's claims sound, if at all, in the Fourth Amendment, not the Fifth or Fourteenth.[3] *See*

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[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

[3] Yassin and St. Paul filed a stipulation agreeing to the dismissal of her Sixth Amendment claims in Counts 1 and 4, Dkt. No. 43, which appears to have mooted the parties' arguments as to whether Yassin may pursue a Sixth Amendment claim. However, because the stipulation describes the agreement as "dismiss[ing] without prejudice against the St. Paul City Defendants," *id.*, not Weyker specifically, and Weyker's counsel did not sign the stipulation, it is not entirely clear that the issue is moot. To the extent that the stipulation did not moot the issue, the Court finds that Yassin abandoned any argument that she may

Osman Op. 11–13; *see also id.* at 17–22. Her complaint is that "[b]ut for the testimony manufactured by Weyker, no probable cause existed to detain or otherwise restrict Yassin's liberty." Compl. ¶ 1. In other words, she complains "that a form of legal process resulted in pretrial detention unsupported by probable cause." *Manuel*, 137 S. Ct. at 919. So "the right allegedly infringed lies in the Fourth Amendment." *Id.* A "constitutional division of labor" applies to claims similar to Yassin's. *Id.* at 920 n.8. Thus, because she challenges her pretrial detention, her claim is under the Fourth Amendment. In contrast, if she had been convicted and were to challenge the sufficiency of the evidence supporting that conviction, her claim would then be analyzed under the Due Process Clause of the Fourteenth Amendment because "once a trial has occurred, the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to support *both a conviction and any ensuing incarceration* does so under the Due Process Clause . . . ." *Id.* (emphasis added) (citing *Jackson v. Virginia*, 443 U.S. 307, 318 (1979), and *Thompson v. Louisville*, 362 U.S. 199, 204 (1960)). Although Yassin did stand trial, she was acquitted and thus was never punished pursuant to a conviction. So her claims still are under the Fourth Amendment. *Compare with Jackson*, 443 U.S. at 316 (describing the due process guarantee "that no person shall be made to *suffer the onus of a criminal conviction* except upon sufficient proof") (emphasis added), *and Thompson*, 362 U.S. at 206 (holding that it

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pursue a Sixth Amendment claim by failing to respond to Weyker's arguments for the dismissal of those claims.

violates due process "to convict and punish a man without evidence of his guilt"). Yassin's claims for substantive due process violations under the Fifth or Fourteenth Amendments therefore fail.[4] *See Manuel*, 137 S. Ct. at 919–20; *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (plurality opinion).

Under the Fourth Amendment analysis, the Court must decide whether Yassin plausibly alleges that the Defendants violated her right to be free from unreasonable seizure by arresting and detaining her without arguable probable cause, based on fabricated evidence.[5]

"It is clearly established that a warrantless arrest, unsupported by probable cause, violates the Fourth Amendment." *Small v. McCrystal*, 708 F.3d 997, 1003 (8th Cir. 2013) (citation omitted). "[O]fficers are entitled to qualified immunity if they arrest a suspect under the mistaken belief that they have probable cause to do so, provided that the mistake is objectively

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[4] Moreover, to the extent Yassin's due process claims are based on alleged *Brady* violations, "[a]ssuming [Weyker] failed to disclose exculpatory evidence, there was no *Brady* violation because [Yassin was] not convicted." *Livers v. Schenck*, 700 F.3d 340, 359 (8th Cir. 2012).

[5] Because the Court finds that only the Fourth Amendment, and not substantive due process, is applicable; because a Fourth Amendment claim in this case does not present a new context for a *Bivens* action; and because § 1983 and *Bivens* claims are analyzed similarly, the Court does not reach the question of whether Yassin's claim should be brought under § 1983 or *Bivens*. *See* Osman Op. 13-17.

reasonable." *Id.* (citations omitted). "Probable cause exists if the totality of facts based on reasonably trustworthy information would justify a prudent person in believing the individual arrested had committed an offense." *Id.* (citations omitted). "[I]t is clearly established that the Fourth Amendment requires a truthful factual showing sufficient to constitute probable cause." *Hedges v. Poletis*, 177 F.3d 1071, 1074 (8th Cir. 1999).

For an arrest pursuant to a warrant, when a plaintiff alleges that some statements in support of the warrant were untruthful, the court would set aside the untruthful statements and review the remainder to determine whether probable cause still existed for the arrest. *See Hawkins v. Gage Cty.,* 759 F.3d 951, 958–59 (8th Cir. 2014); *Hernandez-Cuevas v. Taylor,* 723 F.3d 91, 101, 105 (1st Cir. 2013).

a. Analysis of Yassin's Claim Under the Fourth Amendment

In considering whether Yassin plausibly alleges a Fourth Amendment violation, the Court disregards mere conclusory statements, focuses on well-pleaded factual allegations, and applies its judicial experience and common sense. *See Iqbal*, 556 U.S. at 678–79. In ruling on a Rule 12(b)(6) or 12(c) motion, a court accepts the facts alleged in the complaint as true and grants all reasonable inferences in favor of the plaintiff. *Haney*, 837 F.3d at 924. The Court also may consider the court record of Yassin's criminal case in assessing the pleadings. *See, e.g.*, *Greenman*, 787 F.3d at 887.

Weyker argues that she did not cause Yassin's arrest. *See* Weyker Br. 86–88, Dkt. No. 24; Weyker Reply 24–26, Dkt. No. 38. But Yassin specifically alleges that Weyker caused her arrest by her statements to Beeks, and that Beeks acknowledged as much to Yassin in the squad car. "Officers remain liable . . . for the reasonably foreseeable acts of actors they deceive." *Small*, 708 F.3d at 1006.

Weyker also contends there was at least arguable probable cause for the arrest. *See* Weyker Br. 86-88; Weyker Reply 24–26. The Court views Yassin's allegations regarding the warrantless arrest in the light most favorable to her. The basic facts alleged are relatively straightforward. Yassin alleges that Weyker was the proximate cause of her arrest because she made a false statement to Beeks, which was the basis for Beeks' arrest of Yassin. She alleges specifically that Beeks told her, while driving her to the police station, that he "arrested her based on Officer Weyker's assertions." Compl. ¶ 25. She alleges that there is no way Weyker could have had "information and documentation" on Yassin because Weyker had never heard of Yassin, who had been out of the country for several years during the investigation of and indictments in the Tennessee Case. Yassin further alleges that she had never heard of the Tennessee Case and never had any contact with Abdulkadir about her role in that case, again undercutting a possibility that Yassin was seeking to intimidate Abdulkadir because of her role as a witness, as well as undercutting the possibility that Weyker could have had "documentation" to that effect. She also pleads a reason why

Weyker may have made the false statement, alleging that Weyker "sought to assist Abdulkadir in avoiding criminal charges for her actions against Yassin, Ahmed, and Mohamud as further incentive for Abdulkadir to continue cooperating with Weyker by fabricating events and testimony in the human-trafficking case." Compl. ¶ 24. Yassin supports her allegations about Weyker's supposed role in fabricating evidence in the Tennessee Case by citing to *United States v. Fahra*, 643 Fed. Appx. 480 (6th Cir. 2016), an opinion that the Court discusses in the Osman Opinion, concluding that it lends some plausibility to Osman's allegations. Compl. ¶ 24 n.2; *see, e.g.*, Osman Op. 27–28, 35. She also alleges that she and her co-defendants were acquitted of all charges. The Court finds that these allegations, viewed as a whole, meet the *Iqbal* standard and that Weyker is not entitled to qualified immunity based on these allegations that her misrepresentations directly caused Yassin's arrest.

Weyker's arguments for finding that there was arguable probable cause to arrest Yassin are unavailing at the Rule 12 stage. First, Weyker argues that Yassin's own admissions that she and her friend initiated a fight with Abdulkadir and that Abdulkadir was a witness in the Tennessee Case establish at least arguable probable cause even without any allegedly false statements by Weyker. But Yassin's complaint does not allege that Beeks knew, at the time of the arrest, that Yassin's friend had initiated the fight. Rather, it alleges that before Beeks spoke with Weyker, he was operating on the understanding that

Abdulkadir was the perpetrator and Yassin and her friends were the victims. Second, Weyker asks the Court to take judicial notice of several court documents, including a criminal complaint that was filed against Yassin the day after her arrest, attached to which is a lengthy affidavit by Weyker. *See* DOJ Br. 88 n.42 (citing *United States v. Yassin*, No. 3:11cr132, No. 1 (M.D. Tenn. June 17, 2011), submitted in this civil case as Weyker Br. Ex. Q, Dkt. No. 25-1); DOJ Reply 25. Not only does this after-the-fact affidavit not establish what Beeks knew when he arrested Yassin, or on what grounds he arrested her, but it is also fair to read Yassin's complaint as questioning the veracity of Weyker's narrative in the affidavit. The other documents that Weyker filed in support of her motion—the indictment against Yassin, minutes for her first appearance, a motion in limine filed by her counsel in the criminal proceeding, and the exhibit and witness list from her trial; *see* DOJ Br. 9-10—also do not establish Weyker's entitlement to qualified immunity at the pleadings stage.

b. Supervisory Liability

Yassin also sues John Does 3–4 in their individual capacities as supervisors. She alleges that they were deliberately indifferent to Weyker's violations of her rights. *See* Compl. ¶¶ 29–30.

A supervisor sued in his or her individual capacity in a § 1983 or *Bivens* suit "is only liable for his or her own misconduct." *Iqbal*, 556 U.S. at 677; *see also S.M. v. Krigbaum*, 808 F.3d 335, 340 (8th Cir. 2015). "When a supervising official who had no direct participation

in an alleged constitutional violation is sued for failure to train or supervise the offending actor, the supervisor is entitled to qualified immunity unless plaintiff proves that the supervisor (1) received notice of a pattern of unconstitutional acts committed by a subordinate, and (2) was deliberately indifferent to or authorized those acts." *Krigbaum*, 808 F.3d at 340 (citing *Livers*, 700 F.3d at 355). "This rigorous standard requires proof that the supervisor had notice of a pattern of conduct by the subordinate that violated a clearly established constitutional right. Allegations of generalized notice are insufficient." *Id.* The notice prong requires that "[t]o impose supervisory liability, other misconduct [allegedly giving the supervisor notice] must be very similar to the conduct giving rise to liability." *Id.* (quoting *Livers*, 700 F.3d at 356).

Yassin's complaint contains essentially no well-pleaded facts, only conclusory allegations, regarding supervisory liability. She alleges that the supervisory defendants "were aware of Weyker's fabrication of evidence and multiple courts' recognition of this fact," Compl.¶ 29, and that "[b]y no later than February 15, 2012, they had actual knowledge that Weyker fabricated evidence on multiple occasions with respect to her human trafficking case," Compl.¶ 30. Even assuming these allegations are oblique references to the same court documents that Osman cited more particularly, the Court would find that these allegations do not sufficiently plead supervisory liability based on notice, nor establish a pattern of unconstitutional acts by Weyker, for the same reasons given in the Osman Opinion. *See* Osman Op. 37–41.

The allegations fail to state a claim for supervisory liability, and John Does 3–4 are entitled to qualified immunity as to these counts.

c. Municipal Liability

Yassin sues St. Paul as well as Weyker and John Does 3–4 in their official capacities for municipal liability under *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). "[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents." *Id.* at 694. "Instead," a municipality is liable "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury . . . ." *Id.* "A plaintiff who sues public employees in their official . . . capacities sues only the public employer and therefore must establish the municipality's liability for the alleged conduct." *Miller v. City of St. Paul*, 823 F.3d 503, 506 (8th Cir. 2016) (quoting *Kelly v. City of Omaha*, 813 F.3d 1070, 1075 (8th Cir. 2016)).

A plaintiff therefore must show that there is an "official" policy or a "custom or usage with the force of law." *Kelly*, 813 F.3d at 1075. A plaintiff must plead "allegations, reference, or language by which one could begin to draw an inference that the conduct complained of . . . resulted from an unconstitutional policy or custom." *Crumpley-Patterson v. Trinity Lutheran Hosp.*, 388 F.3d 588, 591 (8th Cir. 2004) (citation omitted). "Misconduct among a municipality's employees must be 'continuing, widespread, [and]

persistent' to establish such a custom." *Kelly*, 813 F.3d at 1075 (citation omitted). Also, "the municipality will not be liable unless policymaking officials exhibit '[d]eliberate indifference to or tacit authorization of such conduct . . . after notice to the officials of that misconduct.'" *Id.* at 1075–76 (citation omitted). The question is whether a "governmental policy or custom was the 'moving force' that led to the deprivation of [the plaintiff's] constitutional rights." *Speer v. City of Wynne*, 276 F.3d 980, 986 (8th Cir. 2002). Even if no individual employee is found liable, a municipality might be liable, but only where "the combined actions of multiple officials or employees may give rise to a constitutional violation." *Id.*

Yassin does not adequately support her conclusory municipal liability allegations. She does not allege with well-pleaded facts that Weyker or other St. Paul Police Department employees fabricated evidence in other investigations, nor that policymaking officials in the department were aware of any previous incidents of fabrication of evidence. She does not allege well-pleaded facts to support a theory that multiple St. Paul Police Department members combined to violate his rights. Nor does she allege facts that would demonstrate an official department *policy* that moved officers to fabricate evidence and mislead prosecutors and grand juries to secure indictments. She also does not plausibly allege any such *custom* because, among other reasons, she has not adequately alleged notice, as explained above. The defendants sued in their official capacities, and the City of St. Paul, are entitled to qualified immunity.

VI. Conclusion

Defendants are entitled to qualified immunity on all counts except Counts 1 and 4, which survive in part. As to Defendants John Does 3–4 and the City of St. Paul, the Court grants their motions and dismisses with prejudice. *See Ulrich v. Pope Cty.*, 715 F.3d 1054, 1060–61 (8th Cir. 2013); *C.N. v. Willmar Pub. Sch., Indep. Sch. Dist. No. 347*, 591 F.3d 624, 635 (8th Cir. 2010). The Court will not grant leave to amend based on a request made in passing at the end of a brief without complying with local rules or in any way indicating what changes might be made. *See In re Baycol Prod. Litig.*, 732 F.3d 869, 880 n.8 (8th Cir. 2013).

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Defendants Heather Weyker's Motion to Dismiss [Dkt. No. 22] is GRANTED IN PART and DENIED IN PART consistent with the above opinion.

2. Defendant City of Saint Paul's Motion for Judgment on the Pleadings [Dkt. No. 28] is GRANTED.

3. Plaintiff Ifrah Yassin's Complaint is DISMISSED WITH PREJUDICE as to Defendants John Does 3–4 and the City of St. Paul.

4. Counts 1 and 4 of Plaintiff Ifrah Yassin's Complaint are DISMISSED WITH PREJUDICE to the extent they plead violations of the Fifth, Sixth, and Fourteenth Amendments.

Dated: August 9, 2017

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge

Appendix G

List of Cases Resulting from Respondent's Task-Force Investigation

Yassin v. *Weyker*, No. 16-CV-2580, 2020 WL 6438892 (D. Minn. Sept. 30, 2020) (on remand from *Farah* v. *Weyker*, 926 F.3d 492 (8th Cir. 2019)),aff'd, 39 F.4th 1086 (8th Cir. 2022).

Mohamud v. *Weyker*, No. 17-CV-2069, 2018 WL 4469251 (D. Minn. Sept. 18, 2018), vacated and remanded *sub nom. Ahmed* v. *Weyker*, 984 F.3d 564 (8th Cir. 2020), reh'g & reh'g en banc denied (Mar. 16, 2021), cert. denied sub nom. *Mohamud* v. *Weyker*, 142 S. Ct. 2833 (2022).

Adan v. *Weyker*, No. 16-CV-1235, 2017 WL 3421388 (D. Minn. Aug. 9, 2017).

Afyare v. *Weyker*, No. 16-CV-1758, 2017 WL 3421390 (D. Minn. Aug. 9, 2017).

Ahmad v. *Weyker*, No. 16-CV-1902, 2017 WL 3425685 (D. Minn. Aug. 9, 2017), vacated and remanded *sub nom. Farah* v. *Weyker*, 926 F.3d 492 (8th Cir. 2019).

Ali v. *Weyker*, No. 16-CV-1241, 2017 WL 3425667 (D. Minn. Aug. 9, 2017).

Amalle v. *Weyker*, No. 16-CV-1898, 2017 WL 3425683 (D. Minn. Aug. 9, 2017), vacated and remanded *sub nom. Farah* v. *Weyker*, 926 F.3d 492 (8th Cir. 2019).

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Fahra v. *Weyker*, No. 16-CV-1146, 2017 WL 3421387 (D. Minn. Aug. 9, 2017).

Faduma Farah v. *Weyker*, No. 16-CV-1175, 2017 WL 3425662 (D. Minn. Aug. 9, 2017).

Yasin Farah v. *Weyker*, No. 16-CV-1289, 2017 WL 3425676 (D. Minn. Aug. 9, 2017), vacated and remanded, 926 F.3d 492 (8th Cir. 2019).

Hassan v. *Weyker*, No. 16-CV-1911, 2017 WL 3425687 (D. Minn. Aug. 9, 2017).

Hersi v. *Weyker*, No. 16-CV-3714, 2017 WL 3425694 (D. Minn. Aug. 9, 2017).

Ibrahim v. *Weyker*, No. 16-CV-1865, 2017 WL 3425678 (D. Minn. Aug. 9, 2017).

Jama v. *Weyker*, No. 16-CV-1230, 2017 WL 3425665 (D. Minn. Aug. 9, 2017).

Khalif v. *Weyker*, No. 16-CV-1237, 2017 WL 3425666 (D. Minn. Aug. 9, 2017).

Mohamud v. *Weyker*, No. 16-CV-1894, 2017 WL 3425681 (D. Minn. Aug. 9, 2017), vacated and remanded *sub nom*. *Farah* v. *Weyker*, 926 F.3d 492 (8th Cir. 2019).

Abdifatah Omar v. *Weyker*, No. 16-CV-1243, 2017 WL 3425672 (D. Minn. Aug. 9, 2017).

Liban Omar v. *Weyker*, No. 16-CV-1113, 2017 WL 3425654 (D. Minn. Aug. 9, 2017).

Appendix G

Mohamed Omar v. *Weyker*, No. 16-CV-1166, 2017 WL 3425656 (D. Minn. Aug. 9, 2017).

Osman v. *Weyker*, No. 16-CV-908, 2017 WL 3425647 (D. Minn. Aug. 9, 2017), vacated and remanded *sub nom. Farah* v. *Weyker*, 926 F.3d 492 (8th Cir. 2019).

Salad v. *Weyker*, No. 16-CV-1242, 2017 WL 3425671 (D. Minn. Aug. 9, 2017).

Yusuf v. *Weyker*, No. 16-CV-1012, 2017 WL 3425649 (D. Minn. Aug. 9, 2017).

United States v. *Afyare*, No. 3:10-CR-00260, 2013 WL 2643408 (M.D. Tenn. June 12, 2013), aff'd in part, rev'd in part, 632 Fed. Appx. 272 (6th Cir. 2016).

United States v. *Adan*, 913 F. Supp. 2d 555 (M.D. Tenn. 2012), aff 'd *sub nom. United States* v. *Fahra*, 643 Fed. Appx. 480 (6th Cir. 2016).

United States v. *Mohamud*, 3:10-CR-260, 2013 WL 1935506 (M.D. Tenn. May 9, 2013).

Appendix H

Circuit Court Appendix Excerpts

Case Report with Supplements | **Minneapolis Police Department** | **CCN: MP-11-172855**

Report Details

Reporting Officer:	000375: Anthijuan Beeks Sr.	**Approval Status:**	Approved
Assisting Officer:		**Approval Date:**	Jun 17, 2011
Supervising Officer:	004407: Gary Manty	**Date Returned:**	
Approving Supervisor:	004407: Gary Allen Manty	**Return Count:**	0
Call/Sqd:	561	**Date Printed:**	Aug 16, 2019
Precinct:	05	**Last Uploaded:**	Jul 21, 2013
Related CCN :	–	**Solvability:**	170
Reported Date:	Jun 17, 2011 00:25	**Primary Routed Unit:**	4116 - Assault
Entered By:	007186	**Assigned Investigators:**	002072: Fossum, Michael

Incident Details

Offense1:	ASLT2	**Desc:**	Assit W/dngrs Weapon	**Statute:** 609.222	**Attempted:**
Offense2:	TAMPWI	**Desc:**	Tamper With Witness	**Statute:** 609.498	**Attempted:**
Offense3:	ASLT5	**Desc:**	Atmpt-cause Bod Harm	**Statute:** 609.224	**Attempted:**
Address:	2848 Pleasant AV Minneapolis, MN 55408				
Occurred From:	06/16/2011 18:46			**Dispatched:**	18:48:00
Occurred To:	06/16/2011 23:55			**Arrived:**	18:49:00
Location:	29 St W/28 St W			**Cleared:**	01:30:00
Minor Involved:	No				

Public Data

AP-1, AP-2 and AP-3 were booked at HENNEPIN COUNTY JAIL for Tamper with Federal Witness.

RECOMMENDATION: FURTHER INVESTIGATION

JUDICIAL PROBABLE CAUSE: THE COMPLAINANT, BEING DULY SWORN, SWEARS THE BELOW FACTS ARE TRUE AND CORRECT TO THE BEST OF COMPLAINANT'S KNOWLEDGE AND BELIEF AND CONSTITUTE PROBABLE CAUSE TO BELIEVE THAT THE BELOW-NAMED ARRESTEE COMMITTED THE OFFENSE (S) DESCRIBED HEREIN.

COMPLAINANT'S SIGNATURE _____

NOTARY SIGNATURE AND STAMP _____

SUBMITTED UNDER OATH BY _____

SIGNATURE OF NOTARY _____

A.B.,Peace Officer License Number_____, Hennepin County, Minnesota.
My license expires on June 30, ____.

ON 06-16-11 I WAS ASSIGNED TO 561-ABLE. I WAS DISPATCHED TO THE ABOVE LOCATION REGARDING A FIGHT WITH POSSIBLE WEAPONS. IN CONDUCTING MY FIELD INVESTIGATION, IT WAS BROUGHT TO MY ATTENTION BY FBI AGENT WEYKER THAT THE VICTIM IS A FEDERAL WITNESS IN AN ACTIVE CASE. IN SPEAKING WITH AP-1, AP-2 AND AP-3 SEPARATELY, ALONG WITH VIEWING VIDEO FOOTAGE OF THE ATTACK, IT WAS DETERMINED THAT THESE THREE PARTIES SHOWED UP AT THIS LOCATION WITH INTENTIONS TO LOCATE AND ASSAULT THE VICTIM (ABDULQIR). PC WAS AUTHORIZED BY SERGEANT MANTY (BADGE NUMBER 4407). AP-1, AP-2 AND AP-3 WERE BOOKED AT HENNEPIN COUNTY JAIL.

Appendix H

Arrestee

Role / Role #:	A001	**MPD#:**	0020110678
Name:	Ahmed, Hawo Osman		
Residence:	1020 Burnsville PK Apt. 267 Burnsville, MN 55337		
Telephone:	C:952-457-5130		
Date of Birth:	[redacted]/1992	**Event Age:** 18	**Est. Age:** 18 - 18
Race:	Black	**Medical Treatment:**	No
Sex:	Female	**Prior Injury:**	No
Height:	505	**City of Origin:**	Eo
Build:	LI		
Email:	Unknown		

Arrest Information

Arrest Address:	2648 Pleasant AV S Minneapolis, MN	**Precinct:**	05
Arrest Date:	Jun 16, 2011 23:55		
Arrest Location:			
Disposition:	Booked County		
Arresting Officer:	000375: Beeks Sr., Anthijuan Corvelle S	**Call/Sqd:**	561

Charges

Status	Type	Charge Code	Statute	Citation	Related CCN
PC	Felony	TAMPWI - Tamper With Witness	609.498		
Other	Misdemeanor	ASLT5 - Atmpt-cause Bod Harm	609.224		

Personal Description

Category	Description	Related Offense	Comments
Agg Asit Circm	Other Felony Involved	ASLT2	
Agg Asit Circm	Other Felony Involved	ASLT5	
Agg Asit Circm	Other Felony Involved	TAMPWI	
Appearance	Nervous		
Complexion	Dark		
Cultural Ethnic	Somali		
Employment Status	Unknown		
Eye Color	Brown		
Facial Hair	None		
Force Used	No		
Hair Color	Black		
Hair Length	Long		
Hair Style	Curly/Wavy		Curly
Identification	Passport		
Identification	Other		Minnesota DVS
Injury Type	None	ASLT2	
Injury Type	None	ASLT5	
Injury Type	None	TAMPWI	
Weapon Used	Hand/Feet/Bodily For	ASLT5	
Weapon Used	Hand/Feet/Bodily For	TAMPWI	Attempted to intimidate the victim
Weapon Used	None	ASLT2	

Arrestee

Role / Role #:	A002	**MPD#:**	0020111992
Name:	Yassin, Ifrah Abdi		

Appendix H

Residence: 3554 June AV N Robbinsdale, MN
Telephone: C:612-281-5858
Date of Birth: [redacted]/1991
Race: Black
Sex: Female
Height: 504
Build: LI
Email: Unknown
Event Age: 20
Est. Age: 20 - 20
Medical Treatment: No
Prior Injury: No
City of Origin: Somalia

Arrest Information

Arrest Address: 2848 Pleasant AV S Minneapolis, MN
Arrest Date: Jun 16, 2011 23:55
Arrest Location:
Disposition: Booked County
Arresting Officer: 000375: Beeks Sr., Anthijuan Corvelle S
Precinct: 05
Call/Sqd: 561

Charges

Status	Type	Charge Code	Statute	Citation	Related CCN
PC	Felony	TAMPWI - Tamper With Witness	609.498		
Other	Misdemeanor	ASLT5 - Atmpt-cause Bod Harm	609.224		

Personal Description

Category	Description	Related Offense	Comments
Agg Asit Circm	Other Felony Involved	ASLT2	
Agg Asit Circm	Other Felony Involved	ASLT5	
Agg Asit Circm	Other Felony Involved	TAMPWI	
Appearance	Nervous		
Complexion	Dark		
Cultural Ethnic	Somali		
Employment Status	Unemployed		
Eye Color	Brown		
Facial Hair	None		
Force Used	No		
Hair Color	Black		
Hair Length	Medium		
Hair Style	Curly/Wavy		Curly
Identification	Passport		
Identification	Other		Minnesota DVS
Injury Location	Head/Neck	ASLT2	FOREHEAD: Knot
Injury Type	Apparent Minor Injury	ASLT2	
Injury Type	None	ASLT5	
Injury Type	None	TAMPWI	
Weapon Used	Hand/Feet/Bodily For	ASLT5	
Weapon Used	Hand/Feet/Bodily For	TAMPWI	
Weapon Used	None	ASLT2	

Arrestee

Role / Role #: A003
Name: Mohamud, Hamdi Ahmed
Residence: 525 Humboldt AV N Apt. 405 Minneapolis, MN 55411
Telephone: C:651-500-7446
MPD#: 0020111993

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Beeks Decl. Ex. C. 3 of 15

Appendix H

Date of Birth:	[redacted]/1993	**Event Age:** 18	**Est. Age:** 18 - 18
Race:	Black	**Medical Treatment:**	No
Sex:	Female	**Prior Injury:**	No
Height:	502	**City of Origin:**	Somalia
Build:	ST		
Email:	Unknown		

Arrest Information

Arrest Address:	2848 Pleasant AV S Minneapolis, MN	**Precinct:**	05
Arrest Date:	Jun 16, 2011 23:55		
Arrest Location:			
Disposition:	Booked County		
Arresting Officer:	000375: Beeks Sr., Anthijuan Corvelle S	**Call/Sqd:**	561

Charges

Status	Type	Charge Code	Statute	Citation	Related CCN
PC	Felony	TAMPWI - Tamper With Witness	609.498		

Personal Description

Category	Description	Related Offense	Comments
Agg Asit Circm	Other Felony Involved	ASLT2	
Agg Asit Circm	Other Felony Involved	ASLT5	
Agg Asit Circm	Other Felony Involved	TAMPWI	
Appearance	Nervous		
Complexion	Medium		Medium Brown
Cultural Ethnic	Somali		
Employment Status	Unemployed		
Eye Color	Brown		
Facial Hair	None		
Force Used	No		
Hair Color	Black		
Hair Length	Medium		
Hair Style	Straight		
Identification	Other		Minnesota DVS
Injury Type	None	ASLT2	
Injury Type	None	ASLT5	
Injury Type	None	TAMPWI	
Weapon Used	None	ASLT2	
Weapon Used	None	ASLT5	
Weapon Used	None	TAMPWI	Attempted to intimidate the victim

Victim

Role / Role #:	V001		
Name:	Abdulqir, Muna Mohmud		
Residence:	2848 Pleasant AV S Apt. 325 Minneapolis, MN 55408		
Telephone:	C:320-223-4866		
Date of Birth:	[redacted]/1993	**Event Age:** 18	**Est. Age:** 18 - 18
Race:	Black	**Medical Treatment:**	R
Sex:	Female		
Height:	505		
Build:	ME		
Email:	Unknown		

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Beeks Decl. Ex. C. 4 of 15

Appendix H

Victim of: ASLT5, TAMPWI

Personal Description

Category	Description	Related Offense	Comments
Employment Status	Unknown		

Victim

Role / Role #: V002
Name: Hamed, Hawo Osman
Residence: 1020 Burnsville PK Apt. 267 Burnsville, MN 55337
Telephone: C:952-457-5130
Date of Birth: [redacted]/1992 **Event Age:** 18 **Est. Age:** 18 - 18
Race: Black **Medical Treatment:** R
Sex: Female
Height: 505
Build: LI
Email: Unknown
Victim of: ASLT2

Personal Description

Category	Description	Related Offense	Comments
Agg Asit Circm	Other Felony Involved	ASLT2	
Agg Asit Circm	Other Felony Involved	ASLT5	
Agg Asit Circm	Other Felony Involved	TAMPWI	
Employment Status	Unknown		
Injury Location	Head/Neck	ASLT2	FOREHEAD: Knot
Injury Type	Other	ASLT2	
Victim Location	On Street	ASLT2	
Victim Was	Hit/Assaulted	ASLT2	Hit with butt of knife

Victim

Role / Role #: V003
Name: Yassin, Ifrah Abdi
Residence: 3554 June AV N Robbinsdale, MN
Telephone: C:612-281-5858
Date of Birth: [redacted]/1991 **Event Age:** 20 **Est. Age:** 20 - 20
Race: Black **Medical Treatment:** R
Sex: Female
Height: 505
Build: ME
Email: Unknown
Victim of: ASLT2

Personal Description

Category	Description	Related Offense	Comments
Agg Asit Circm	Other Felony Involved	ASLT2	
Agg Asit Circm	Other Felony Involved	ASLT5	
Agg Asit Circm	Other Felony Involved	TAMPWI	
Employment Status	Unknown		
Injury Type	None	ASLT2	
Victim Location	On Street	ASLT2	

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Victim Was	Hit/Assaulted	ASLT2	Slapped with knife

Suspect

Role / Role #:	S001		
Name:	Abdulqir, Muna Mohmud		
Residence:	2848 Pleasant AV S Apt. 325 Minneapolis, MN 55408		
Telephone:	C:320-223-4866		
Date of Birth:	[redacted]/1993	**Event Age:** 18	**Est. Age:** 18 - 18
Race:	Black		
Sex:	Female		
Height:	505		
Build:	ME		
Email:	Unknown		

Personal Description

Category	Description	Related Offense	Comments
Cultural Ethnic	Somali		
Desc. Comments	Comments		Suspect In Assault 2
Employment Status	Unknown		
Injury Type	None	ASLT2	
Injury Type	None	ASLT5	
Injury Type	None	TAMPWI	
Weapon Used	Knife	ASLT2	
Weapon Used	None	ASLT5	
Weapon Used	None	TAMPWI	

Parent/Guardian

Role / Role #:	PG001		
Name:	Hassan, Lella		
Residence:	2848 Pleasant AV S Apt. 325 Minneapolis, MN 55408		
Telephone:	C:320-223-4866		
Date of Birth:	[redacted]/1977	**Event Age:** 34	**Est. Age:** 34 - 34
Race:	Black		
Sex:	Female		
Height:	507		
Build:	ME		
Email:	Unknown		

Personal Description

Category	Description	Related Offense	Comments
Employment Status	Unknown		

Special Person

Role / Role #:	SP001		
Name:	Bandemer, John		
Residence:	367 Grove ST Saint Paul, MN 55101		
Telephone:	W:651-291-1111		
Date of Birth:		**Event Age:** 0	**Est. Age:** 0
Race:		**Medical Treatment:**	No

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Sex:
Height:
Build:
Prior Injury: No

Employment Information

Employer/School	Address	Telephone	Occupation
Saint Paul Police Department			Police Officer

Availability:

Personal Description

Category	Description	Related Offense	Comments
Employment Status	Employed		
Force Used	No		

Reporting Person

Role / Role #: R001
Name: Weyker, Heather
Residence: Unknown
Telephone: H:Unknown C:615-401-6609
Date of Birth: **Event Age:** 0 **Est. Age:** 0
Race: Unknown
Sex: Female
Height:
Build:
Email: Unknown

Employment Information

Employer/School	Address	Telephone	Occupation
St Paul Police Department	367 Grove ST St Paul, MN 55101		Officer

Availability:

Personal Description

Category	Description	Related Offense	Comments
Employment Status	Employed		

Reporting Person

Role / Role #: R002
Name: Vincent, Van
Residence: Unknown
Telephone: C:615-401-6609
Date of Birth: **Event Age:** 0 **Est. Age:** 0
Race: Unknown
Sex: Male
Height:
Build:
Email: Employed

Personal Description

Category	Description	Related Offense	Comments
Employment Status	Employed		

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Reporting Person

Role / Role #: R003
Name: Koeth, Kathryn
Residence: Unknown
Telephone: H:Unknown
Date of Birth: **Event Age:** 0 **Est. Age:** 0
Race: Unknown
Sex: Female
Height:
Build:
Email: Unknown

Employment Information

Employer/School	Address	Telephone	Occupation
Fbi	111 Washington AV S Minneapolis, MN	376-3200	Agent

Availability:

Personal Description

Category	Description	Related Offense	Comments
Employment Status	Employed		

Reporting Person

Role / Role #: R004
Name: Cannizzaro, Michael Jr
Residence: Unknown
Telephone: H:Unknown W:612-376-3200
Date of Birth: **Event Age:** 0 **Est. Age:** 0
Race: Unknown
Sex: Male
Height:
Build:
Email: Unknown

Employment Information

Employer/School	Address	Telephone	Occupation
Fbi	111 Washington AV S Apt. 1100 Minneapolis, MN 55401	376-3200	Agent

Availability:

Personal Description

Category	Description	Related Offense	Comments
Employment Status	Employed		

Relationships

Subject		Relationship Type	Object	
PG001	Hassan, Leila	Parent	V001	Abdulqir, Muna

Modus Operandi

Category	Description	Related Offense	Comments
Crime Elements	Someone Can ID Suspect		

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Beeks Decl. Ex. C. 8 of 15

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Crime Elements	Arrest(s) Made
Crime Location	Street/Sidewalk

Non-Inventoried Property

Vehicle

Vehicle Number:	1		
Owner Role:	A001	**Owner Name:**	Ahmed, Hawo
Make:	Chevrolet	**Model:**	Lumina
Model Year:	1997	**VIN #:**	[redacted]
Plate:	MN PLX925	**Plate Year:**	2012
Estimated Value:	$1.00		

Vehicle Status

Category	Date	Description
Vehicle Impounded		Yes
Vehicle Used In Crime		Yes

Vehicle Description

Category	Description	Comments
Vehicle Color Side	Comments	Dark
Vehicle Color Top	Comments	Dark
Vehicle Type	4 Door	

Property and Evidence

P#	Item #	Description	Owner	Qty	Make/Mod/Ser #	Auth ID	Dsp Dt	Dsp Mnr
2011-20451	1	MOBILE VIDEO RECORDING, TAPE # 2550, P # 76578		1		002072		Hold For Investigations
2011-20452	1	BLACK NOKIA T-MOBILE CELL PHONE		1		002072	Jun 23, 2011	Release
2011-20452	2	GREY SAMSUNG CAMERA CELL PHONE		1		002072	Jun 23, 2011	Release
2011-20452	3	BLACK T-MOBILE GOOGLE CELL PHONE		1		002072	Jun 23, 2011	Release
2011-20455	1	DIGITAL PHOTOGRAPHIC EVIDENCE		1		002072	Jun 23, 2011	Release
2011-23042	1	PAPER BAGS CONT CLOTHING (CAN BE RELEASE TO LAWYER OR A-2)	A002	2				
2011-23043	1	MAILING NAME OF HAWO AHMED		1		002072	Sep 2, 2013	Release
2011-23043	10	SILVER & BLACK CLUTCH PURSE CONT TARGET, JC PENNY, WASHINGTON QUEST & S.A. GIFT CARDS		1		002072	Sep 2, 2013	Release
2011-23043	2	VEHICLE PURCHASE RECEIPT NAME OF HAWO AHMED		1		002072	Sep 2, 2013	Release
2011-23043	3	TRESPASS NOTICE NAME OF HAWO AHMED		1		002072	Sep 2, 2013	Release
2011-23043	4	HC JAIL BRACLET NAME OF HAWO AHMED		1		002072	Sep 2, 2013	Release
2011-23043	5	APPLICATION FOR EMPLOYMENT FOR HAMBI MOHAMUD		1		002072	Sep 2, 2013	Release
2011-23043	6	TCF DEBIT CARD NAME OF RAWLS		1		002072	Sep 2, 2013	Destroy

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2011-23043	7	BANK OF AMERICA CARD NAME OF RAWLS		1	002072	Sep 2, 2013	Destroy
2011-23043	8	WALMART GIFT CARD (UNK OWNER/DENOMINATION)		1	002072	Sep 2, 2013	Release
2011-23043	9	WALMART VISA GIFT CARD $100.00		1	002072	Sep 2, 2013	Release
2011-24843	1	BLACK T-MOBILE CAMERA CELL PHONE W/ CHARGER (MISSING BATTERY COVER)	A002	1	002072	Sep 2, 2013	Release
2011-25325	1	HTC/SPRINT CAMERA PHONE W/CHARGER	A002	1	002072	Sep 2, 2013	Release

Case Supplements

9 supplements begin on the following page.

Supplement number: 1 CCN: MP-11-172855 Author: 006090 - Jarrod Roering

Supplement of Sgt J.Roering #006090 on 06/17/2011 01:03
On 06/16/2011 I was working in the Juvenile Unit when Officer Beeks asked me to remove his squad MVR tape. I removed tape #2550 from squad 561 on 06/16/2011 at 2330 hours. I snapped the security tab, marked the time of removal and turned the tape over to Officer Beeks for inventory.

SGT. JARROD ROERING
JUVENILE INVESTIGATIONS

END of Supplement 1

Supplement number: 2 CCN: MP-11-172855 Author: 000375 - Anthijuan Beeks Sr.

Supplement of Off A.Beeks Sr. #000375 on 06/17/2011 02:39
CCN 11-172855, TYPED BY ST

On 06-16-11 at 1847 hours, I was dispatched to the 2900 block of Pleasant Avenue South in regards to a fight with weapons. The remarks in the call stated: Caller was just slapped with a knife. Suspect is a Somali female and suspect broke caller's window. Suspect MUNA, 18 years old. Further remarks stated: Caller is now not answering TC's questions. Suspect is in the apartment. Caller further stating suspect is throwing stuff off balcony second floor.

Upon arrival, I was immediately met by three females who were standing next to Minnesota License PLX-925. These three parties were yelling and screaming all at the same time. I told them that I could only understand one person at a time and asked who would like to tell me their story first.

I then spoke with AP-1/Victim 2 (HAMED). She stated they were here to meet a friend and also visit the local mall within a block. She further said she was walking down the street southbound on Pleasant Avenue from 29th when she saw Victim 1 (MUNA ABDULQIR). She further said she and her two friends began speaking with Victim 1 (MUNA ABDULQIR) about old times due to the fact they used to be friends but they had not seen each other in some time. I asked AP-1 (HAMED) what led up to the fight. AP-1 (HAMED) said Victim 1 (MUNA ABDULQIR) does not get along with AP-2/Victim 3 (YASSIN) due to them liking the same boy named FAHAD. She went on to state that they got into the elevator and when they were inside the elevator Victim 1 (MUNA ABDULQIR) attacked AP-1 (HAMED) and AP-2/Victim 3 (YASSIN).

I then spoke with AP-2 (YASSIN). I asked her to tell me her side of what had occurred. She too had pretty much the same story as AP-1, however, I explained to AP-2 (YASSIN) that it did not make sense that one party would attempt to attack three parties. AP-2 (YASSIN) stated, "I promise that's exactly how it happened."

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I spoke with AP-3 (MOHAMUD) and I asked her what her involvement was in this incident. She said that she was just along for the ride, that they were here to see a friend but she did not know who. AP-3 (MOHAMUD) said she did not assault Victim 1 (MUNA ABDULQIR) nor did Victim 1 (MUNA ABDULQIR) assault her.

I was then alerted by fellow Officers that I had an urgent message via the MDC. I then returned to my patrol vehicle and read the message which stated, "OFFICER HEATHER WEYKER 710 out of St Paul would like Officers to call her ASAP at 615-401-6609." I immediately called and spoke with this Officer. This Officer introduced herself along with several law enforcement officials which she had placed us on a conference call. This Officer had advised me Victim 1 (MUNA ABDULQIR) is a federal witness in a prostitution investigation where 30 Somali males had been indicted and that they had information and documentation that these three females, AP-1 (HAMED), AP-2 (YASSIN) and AP-3 (MOHAMUD) had been actively seeking out Victim 1 (MUNA) and attempting to intimidate or cause bodily harm. This Officer also provided me with the name of AP-3 (MOHAMUD) and stated that she is currently dating a gentleman by the name of "CHITOWN" and that "CHITOWN" was one of the individuals who was indicted on this prostitution investigation. I then determined that there was more to this incident in which I was being told by these three parties. I formulated a plan to speak with these individuals separately and again to gather further information.

In speaking with AP-1 (HAMED) I had her again explain to me what brought her to the 2900 block of Pleasant Avenue South. Again she stated that she was here to visit a friend and then go shopping at the mall. I asked her who her friend was and she told me a female, unknown name. She went on to say as she was walking with AP-2 (YASSIN) and AP-3 (MOHAMUD) southbound on Pleasant Avenue she saw Victim 1 (MUNA ABDULQIR) outside of 2848 Pleasant Avenue South. She said that they began talking about old times and they then went into the building where they got into the elevator. As they got into the elevator Victim 1 (MUNA ABDULQIR) got into a verbal disagreement with AP-1 (HAMED) and AP-2 (YASSIN) regarding a male named FAHAD. She stated the verbal disagreement turned into a physical fight which she said Victim 1 (MUNA ABDULQIR) was the agresser. AP-1 (HAMED) also said that they used to be friends but when she found out Victim 1 (MUNA ABDULQIR) was a prostitute then she discontinued associating with her. She went on to say everyone knows Victim 1 (MUNA ABDULQIR) assisted in putting those 30 Somali brothers in prison. I asked AP-1 (HAMED) to tell me about the story regarding the 30 males being put in prison because I had no idea what she was talking about. AP-2 (YASSIN) continued to state after the fight inside the elevator Victim 1 (MUNA ABDULQIR) ran to her apartment and must have gotten a knife. By the time they had exited the building Victim 1 (MUNA ABDULQIR) was smashing the front windshield of the vehicle. She went on to state that Victim 1 (MUNA ABDULQIR) assaulted her by striking her in the head with the butt end of the knife and she had received a knot on her forehead. I did not observe any injuries to be photographed. I did observe damage to the front windshield of the vehicle in question. A UBS Card was property inventoried. It should also be noted a Squad tape was property inventoried along with three cell phones. On one of the phones I did observe a blurry photo which showed the outline of an outfit and whomever was wearing the outfit it was also showing the outline of a large knife.

AP-1 (HAMED) said that Victim 1 (MUNA ABDULQIR) was part of the prostitution ring and she had worked with the Police to get all these parties put in prison. I asked her how she came to obtain this information. Again she said Victim 1 (MUNA ABDULQIR) is famous and everyone knows. It should be noted that AP-1's boyfriend's name is ABDIRIZAK YARE (DATE OF BIRTH: [redacted]-86) from information given.

I then spoke with AP-2 (YASSIN) again. I asked her to again tell me the story of what brought them to 29th and Pleasant Avenue South. She stated they were here to visit a friend by the name of ABDI who goes by the name of GAMU. In Somali language this means "Fingers". She further stated that they were outside 2848 Pleasant Avenue South speaking with Victim 1 (MUNA ABDULQIR). They then went inside the building and got into the elevator. A verbal argument ensued which led to a physical fight. She too attempted to get me to believe that Victim 1 (MUNA ABDULQIR) attacked them and was the aggressor. It should be noted that AP-2's (YASSIN'S) boyfriend's name is ABDULLAHI JAMA. She stated his age is 22 but provided no Date Of Birth and he goes by the street name of "AJ". I told her her story does not match that of AP-1 (HAMED) and she said "how so?" I explained to her that AP-1 (HAMED) stated they were here to see a female and she was telling me that they were here to see a male. She then changed her story stating she really did not know who they were here to visit. I asked her to tell me more about these 30 Somali males being indicted for prostitution. At first she stated she did not know anything about it, however, she did state she knew Victim 1 (MUNA ABDULQIR) was a prostitute and Victim 1 (MUNA ABDULQIR) was involved with those guys. I asked her how she knew that and she said everyone knows. It should be noted AP-2 (YASSIN) told me she was slapped with the butt end of the knife. Again there was no visible marks which was photographable.

I then spoke with AP-3 (MOHAMUD) again and had her explain to me what brought them to 29th and Pleasant Avenue South. Her story pretty much remained the same and she was just along for the ride and that she did not have anything to do with nothing. She further said she did not assault Victim 1 (MUNA ABDULQIR) nor did Victim 1 (MUNA ABDULQIR) assault her.

It should be noted I was able to view video footage of the incident. The video footage I saw was AP-1 (HAMED), AP-2 (YASSIN)

Appendix H

and AP-3 (MOHAMUD) were on the main floor awaiting the elevator. These three parties, along with Victim 1 (MUNA ABDULQIR) got onto the elevator and it appeared just as soon as they got on and the doors began to close Victim 1 (MUNA ABDULQIR) began to be assaulted. The elevator went to the second floor where AP-1 (HAMED) and AP-2 (YASSIN) got off the elevator as the continued to assault Victim 1 (MUNA ABDULQIR) and I could see AP-3 (MOHAMUD) still on the elevator in the background. I spoke with security and he stated he would be able to obtain DVD footage of the entire incident which was caught on camera and this DVD would be ready for me on 06-17-11.

I spoke with FBI AGENT MICHAEL CANNIZZARO, JR and CATHRYN KOETH, 111 Washington Avenue South, Suite 1100, Minneapolis, Minnesota 55401 (TELEPHONE NUMBER: 612-376-3200) in regards to the incident which took place within our city. I told them about the video footage I had observed, however, I had not had the opportunity to speak with Victim 1 (MUNA ABDULQIR) up to this point. We formatted a plan that we would interview Victim 1 (MUNA ABDULQIR) together.

In speaking with Victim 1 (MUNA ABDULQIR) she stated she and her father were returning from WALGREENS purchasing female products. She went on to say she was waiting at the front door and holding the door as her father parked the vehicle. She continued to say that her father was checking the mail and she was at the main floor lobby at the entry to the elevator. She said she saw her father let in three girls but did not know who they were at first. She said as they got closer she immediately recognized them. She said they began holding casual conversation and then the elevator came down, individuals got off and they got on. Just as soon as they got on she said she was attacked by the three girls. She said at one point one of the girls had pushed the stop button in order to get the elevator to stop. She said at some point she was able to get the elevator moving again. She went on to say the elevator went to the second floor and as the door opened she was able to get away and run to her apartment. She continued to say she ran to her apartment and grabbed a knife. She said she went back downstairs but did not see the three girls. She stated she had smashed the front windshield of the vehicle. This is when the three females appeared. She also noticed her mother not too far behind the three females. Her mother asked the three females, What are you trying to do to my daughter or something to that effect and AP-1 (HAMED) turned around and slapped Parent Guardian 1 (LELIA HASSAN). Victim 1 (MUNA ABDULQIR) said this is when she went towards the three girls and struck AP-1 (HAMED) in the head with the butt of the knife and slapped AP-2 (YASSIN) with the butt of the knife. I asked Victim 1 (MUNA ABDULQIR) what her intentions were with this knife and she stated she just wanted to scare them because this has been a daily occurrence of individuals attempting to harass, threaten, intimidate and cause bodily harm to her. In speaking with Parent Guardian 1 she stated the exact same thing.

It should be noted that while en route to HENNEPIN COUNTY JAIL, I had my squad camera recording and these parties were talking about who they know, how they know them, etc in both the English language and also speaking in their native tongue.

I then spoke with SERGEANT MANTY of Squad 502 and he advised me that all three females should be placed under arrest for Tamper with a Witness. All three parties were placed under arrest after the FBI Agents on the scene had spoken with all three parties. They were then transported to HENNEPIN COUNTY JAIL and booked. The vehicle was towed.

END of Supplement 2

Supplement number: 3 **CCN: MP-11-172855** **Author:** **004407 - Gary Manty**

Supplement of Sgt G.Manty #004407 on 06/17/2011 03:19

On 06/16/2011 at approximately 2100 Hours while working marked Squad 502 I responded to 29th Street and Pleasant Ave South at the request of Officer Beeks. Offioer Beeks initially was dispatched to a PERWEA Call. While Officer BEEKS was interviewing the Victim and AP's he received a call from R1, Officer HEATHER WEYKER, from the Saint Paul Police Department on Special assignment with the FBI in Tennessee. WEYKER is working an active case that involves Victim #1 ABDULQIR, who is a Federal Witness in Federal Court Docket # 3-10-00260, Middle District of Tennessee.

Officer BEEKS briefed me on the initial Assault Call, and advised me that two Special Agents from the FBI were enroute to our call. Beeks stated that A1 and A2 fought with V1 in and near the elevator inside of 2848 Pleasant Ave South. There is also video showing this assault that Officer Beeks will inventory on 06/17/11. V1 was able to get to her apartment and then went outside confronting A1 and A2 with the knife. V1 stated she was assaulted with a knife while in the elevator. There were no visible injuries on any of the persons involved in the fight.

Special Agents MICHAEL CANNIZZARO and KATHRYN KOETH, arrived at our location and asked to interview the Victim and AP's.

While they were conducting their interviews I received a message to call WEYKER. Also present at her location on the conference

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call was Assistant US Attorney VAN VINCENT. She advised me on the situation involving ABDULQIR, and that she is a Federal Witness in a Sex Trafficking Case. WEYKER was called by V1 after the Assault took place tonight and advised her of the confrontation with A1, A2, and A3. A2, YASSIN, made reference to V1 that she had her "niggaz locked up," and that they were SOL (Somali Outlaws). Apparently A2 knew one of the persons locked up in the case as "Chi-town". WEYKER stated that A1, A2, and A3 were there to intimidate V1 regarding her being a Federal Witness against those that have already been arrested and charged in the Sex Trafficking Case. V1 was in fear for her life and fears retaliation because of her involvement in the case.

I authorized PC Arrest for A1, A2, and A3 on Witness tampering.

WEYKER also did a Supplement Report that she e-mailed to me. I will forward this e-mail to the ASSAULT UNIT.

END of Supplement 3

Supplement number: 4 **CCN: MP-11-172855** **Author:** **002072 - Michael Fossum**

Supplement of Lt M.Fossum #002072 on 06/17/2011 09:27

On 6/17/11, I reviewed this case involving the arrests of AP-Hawo Osman Ahmed, [redacted]/92; AP-Ifrah Abdi Yassin, [redacted]/91; and AP-Hamedi Ahmed Mohamud, [redacted]/93. I was aware of an on-going federal investigation involving a Somali sex trafficking ring involving the cities of Minneapolis and Nashville, TN.

I contacted FBI SSA Steve Warfield and requested that this case be routed to the assigned agents. I was subsequently notified by FBI SSA Timothy Wittman that all three arrested parties will be held pursuant to a federal warrant which is now in the process of being obtained. The arrested parties will then be taken from the Hennepin County Jail to federal custody.

At 0920 hours, I sent a FAX, and followed up with a telephone call to HCJ in-custody records stating that the three arrested parties will be held pending a federal warrant.

CASE CLOSED EXCEPTIONALLY--TRANSFERRED TO FEDERAL JURISDICTION (40).
Lt. Michael Fossum
Robbery/Assault Unit

END of Supplement 4

Supplement number: 5 **CCN: MP-11-172855** **Author:** **002072 - Michael Fossum**

Supplement of Lt M.Fossum #002072 on 06/23/2011 10:51

On 6/21/11, I was made aware that arrested parties Hawo Osman Ahmed, Ifrah Abdi Yassin and Hamdi Ahmed Mohamud were charged and made their initial appearances in Minneapolis federal court on 6/21/11.

On 6/23/11, at 1030 hours, I received a call from Officer John Bandemer, St. Paul PD, phone # 651-775-2342, regarding evidence in this case. Officer Bandemer stated that he would like to pick up the evidence from the MPD P&E and have it transferred to Assistant US Attorney Van Vincent in Nashville, TN for presentation to a federal grand jury next week.

At 1030 hours, I sent a work order to the crime lab to copy the squad's MVR onto a DVD. I also sent another work order ordering that the digital photographs that were taken of the victim at the scene be developed into prints.

END of Supplement 5

Supplement number: 6 **CCN: MP-11-172855** **Author:** **109079 - Alison Murray**

Supplement of FVA-n A.Murray #109079 on 06/23/2011 22:53
MPD Crime Lab Unit; Work Order Request

Per a work order received in the Crime Lab Unit on 6/23/11, on this date I removed one MVR, PI# 11-20451, Line 1, from the Property and Evidence Unit. At the request of Lt. Fossum, Robbery Unit, I made one DVD copy of the portion of the MVR pertaining to this incident. The DVD copy was labeled and Fossum was notified that the copy was available for pickup from the Crime Lab. The original MVR was resealed in an envelope with evidence tape, signed, and returned to the Property and Evidence Unit.

END of Supplement 6

Supplement number: 7 **CCN: MP-11-172855** **Author:** **002072 - Michael Fossum**

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Supplement of Lt M.Fossum #002072 on 06/24/2011 09:20

On 6/23/11, Ali Murray, MPD Crime Lab, copied onto a DVD the squad MVR from Officer Beeks. I picked up the DVD on 6/24/11 at 0800 hours and brought it to Rm. 108 and reviewed it for sound clarity. At 22:23:52, the three arrested parties, AP-1 Hawo Ahmed, AP-2 Ifrah Yassin and AP-3 Hamdi Mohamud are in the rear of Officer Beeks' squad. From the conversation at the jail, I determined that AP-1 Ahmed was in the rear seat middle; AP-3 Mohamud was seated in the right rear of the squad and AP-2 Yassin was seated in the left rear of the squad. The three arrested parties are transported by Officer Beeks, who is a lone officer, to the Hennepin County Jail. During the entire transport, all three arrested parties are talking among themselves and also asking Officer Beeks questions. At 22:29:00 hours, the arrested parties start speaking in Somali to one another. Throughout the rest of the transport and upon their arrival to the jail, they are speaking in English and Somali to one another. At 23:05:20, one of the arrested parties is removed from the squad and processed for booking. At 23:08:31 a second arrested party is removed from the squad and processed for booking. At 23:11:31, the last arrested party is taken from the rear of the squad and processed for booking.

On 6/23/11, at 1300 hours, I was notified by the crime lab's photo unit that they had the digital still photos developed. I immediately retrieved the photos, which consisted of four 94) 8"x10," photos. Photo #1 showed the street sign of "W. 29th St.." Photo #2 showed the front license and grille of impounded vehicle, MN license PLX-925. Photo #3 showed the front grille, hood and windshield of MN license PLX-925. Also on the passenger side of the vehicle is an unknown Somali female. The right side lower corner of the windshield of this vehicle has a softball-sized indentation. Photo #4 shows a close-up of the damage to the right lower corner of the vehicle.

On 6/24/11, i notified Officer Bandemer that the evidence was ready to be picked up from Rm. #33, MPD P&E, and from Rm. 108, MPD CID.

END of Supplement 7

Supplement number: 8 **CCN: MP-11-172855** **Author:** **002072 - Michael Fossum**

Supplement of Lt M.Fossum #002072 on 06/24/2011 14:38

On 6/24/11, at 1000 hrs., I went to the incident address at 2848 Pleasant Av. S. The building is a 4-story, 77 unit rental complex on the west side of Pleasant Av. at the intersection of West 29th St. I met Basim Sabri, the owner of the building and requested that he provide me surveillance images from the building's cameras that captured the incident on 6/16/11, as noted in Officer Beeks's report.

Sabri called his manager, Tracy Davis, ph# 612-799-4848, who met me in the security room of the apartment complex. David provided me with a 8GB SanDisk memory stick and recorded images from five cameras from the first floor elevator lobby, second floor elevator lobby, second floor hallway, third floor elevator lobby and third floor hallway on 6/16/11 at approximately 1833 hours.

I interviewed Tashi Phuntsok, DOB 3/24/1971, ph# 612-532-0621. Phuntsok is a uniformed security guard employed by Basim Sabri. Phuntsok was working when the incident occurred on 6/16/11. Phuntsok was walking the perimeter of the building when he saw several police cars in front of 2828 Pleasant Av. When he inquired about what had occurred, he was told by the officers that an assault had occurred inside the building. Phuntsok stated that he overheard one of the defendants say that the vicitm was responsible for her boyfriend getting arrested and jailed. When I asked Phuntsok what defendant made that statement to him, he had me watch the surveillance video with him which showed the victim getting assaulted in the elevator lobby on the second floor. The elevator door opens and the victim is getting assaulted by one of the female defendants. Phuntsok pointed to the female defendant in the middle, who had yet to begin her assault on the victim and stated that she was the defendant who told him that the victim was responsible for her boyfriend getting arrested. A third female defendant is seen in the elevator not taking part in the physical assault.

I brought the memory stick back to the crime lab and confirmed that the images from the five cameras had been property downloaded.

I called Officer Bandemer and told him that I had the memory stick from the apartment complex. He picked up the memory stick at 1435 hours.

END of Supplement 8

Supplement number: 9 **CCN: MP-11-172855** **Author:** **002072 - Michael Fossum**

Supplement of Lt M.Fossum #002072 on 07/07/2011 11:38

On 7/6/11, I drafted a search warrant for MN license PLX-925, which is in the MPD Impound Lot. The vehicle was occupied by all three AP's and was impounded outside of 2848 Pleasant Av. on 6/16/11.

The search warrant was reviewed and signed by Hennepin County District Court Judge Thorwald Anderson on 7/6/11 at 0930

Beeks Decl. Ex. C. 14 of 15

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hours. At 1130 hours, I executed the search warrant in row 2A, Minneapolis Impound Lot. I removed two large bags of women's clothing, at the request of federal public defender Reggie Aligada. AP-2 Yassin, and inventoried them in the MPD P&E for release to AP-2. Several dozen sets of women's clothing was left stacked in the trunk of the vehicle.

MN PLX-925 is still registered to its previous owner, [redacted]. However, I found a purchase receipt from Unrich Motors to Hawo Ahmed. One Spring cell phone and one Samsung cell phone were also recovered and eventually deposited in the property room.

Several gift cards were also recovered and inventoried. I recovered one Bank of America debit card in the name of Delisa D. Rawls and one TCF Visa in the name of Delisa Rawls. These two cards were also inventoried.

One HCJ jail bracelet w/ photograph for Hawo Ahmed was found on the front seat. One mailing in the name of Hawo Ahmed and one trespass notice with Hawo Ahmed's name was also found in the front seat and inventoried.

Inside a zebra-striped clutch purse I found one Super America Speedy rewards card, one Washington Quest debit card, one JC Penney gift card and one Target debit Visa card. These items were also inventoried.

On the back seat I found a two-page job application filled out by Hamdi Mohamud.

In the ash tray I recovered a Walmart gift card and a Walmart Visa gift card for $100.00.

I was informed by the impound lot staff that the vehicle was set for auction for 7/21/11. The impound lot had already sent a notice letter to the registered owner that the auction would take place for unapid impound and staorge fees that exceeded $500.00.

On 7/7/11, I sent an e-mail to AP-2's legal counsel notifying him that his client could pick up her clothing from the property room and, if she wanted the additional clothing in the trunk, she would have to make arrangements with the impound lot before 7/21/11.

I filed the search warrant with the Hennepin County Clerk of Courts on 7/7/11.

Case Closed--Charging.
Lt. Michael Fossum
Robbery/Assault Unit

END of Supplement 9

End of report for case MP-11-172855. Print ID: 15d609ce-53f7-431d-a635-63a7c3008eae

Appendix H

U.S. Department of Justice
United States Marshals Service

SPECIAL DEPUTATION APPOINTMENT
OATH OF OFFICE

I, Heather L. Weyker-Sanders *(Use name as stated on authorization)* do solemnly swear (affirm) that I will faithfully execute all lawful orders issued under the authority of the United States directed to the United States Marshal, the United States Marshals Service, or to an appropriate Federal Official. I will perform the duties of a Special Deputy United States Marshal with integrity, professionalism, and impartiality. I will exercise the authorities as limited by this Special Deputation solely in furtherance of the mission for which I have been specially deputized, and only while this Special Deputation shall be in effect. I agree to abide by the conditions set forth in the appointment. So help me God.

Subscribed and sworn to me this

24th day of August, 2010, at Nashville, TN
City State

Signature of Appointee

Signature of U.S. Marshal or Official Administering Oath

8/31/12
Expiration Date of Special Deputation

Middle District of Tennessee
District or Division

AGENCY EMPLOYMENT

St. Paul Police Department
Appointee's Employer

Federal Bureau of Investigation
Sponsoring Agency

Mark Shafer (615)232-7500
Sponsoring Agency Contact during Special Deputation (U.S. Marshal or Designated Federal Official)

Questions in reference to Special Deputation should be referred to the appointee's sponsoring agency.

LIMIT OF SPECIAL DEPUTATION AUTHORITY

- ☐ To serve as a special agent of an Inspector General's Office
- ☐ To protect persons under federal assault statutes
- ☒ To seek and execute arrest and search warrants supporting a federal task force
- ☐ To monitor Title III intercepts
- ☐ To carry or transport firearms for personal protection
- ☐ To investigate other Title 18 violations
- ☒ Other (please explain): Not Authorized to participate in Federal Drug Investigations unless also deputized by DEA or FBI.

TERMS OF SPECIAL DEPUTATION

The individual named herein is appointed, under authority delegated by the Attorney General, to perform the duties of the Office of Special Deputy United States Marshal as directed by an appropriate official of the United States Marshals Service or some other appropriate Federal Official as so designated. This appointment does not constitute employment by the United States Marshals Service, the United States Department of Justice, or the United States Government. The appointee agrees to perform the duties required under this Special Deputation with the knowledge that he or she is neither entering into an employment agreement with the Federal Government or any element thereof, nor being appointed to any position in the Federal Service by virtue of this special deputation. The appointee understands and acknowledges that the authorities vested in him or her by this special deputation can only be exercised in furtherance of the mission for which he or she has been specially deputized and extend only so far as may be necessary to faithfully complete that mission. Moreover, those authorities terminate at the expiration of the term of the Special Deputation.

Original - Appointee
Copy 2 - Sponsoring Agency
Copy 3 - USMS District/Division

Previous Editions of USM-3 and USM-3A Obsolete.

Form USM-3
Rev. 10/84
(Combines USM-3 and USM-3A)

Appendix054

Shafer Declaration, Exhibit A
1 of 2

Appendix H

Saint Paul Police Department

SUPPLEMENTAL OFFENSE / INCIDENT REPORT

Complaint Number: 08044622
Reference CN:
Date and Time of Report: 06/16/2011 08:55:00
Primary offense: INVESTIGATE-AND ALL OTHER

Primary Reporting Officer: Weyker, Heather L
Primary squad:
Secondary reporting officer:
Approver:
District: Eastern
Site:
Name of location/business:
Location of incident: 367 GROVE ST ST PAUL, MN 55101
Date & time of occurrence: 03/13/2008 21:10:00 to 03/13/2008 21:10:00
Arrest made:
Secondary offense:

Police Officer Assaulted or Injured:
Crime Scene Processed:
Police Officer Assisted Suicide:

OFFENSE DETAILS

INVESTIGATE-AND ALL OTHER

Attempt Only:
Appears to be Gang Related:

NAMES

Arrestee
Ahmed, Hawo Ahmed
1020 BURNSVILLE PA Apt 267
BUNSVILLE, MN 55337

UNKNOWN

Nicknames or Aliases
Nick Name:
Alias:
AKA First Name:
AKA Last Name:

Details
Sex: Female Race: Black Hispanic: DOB: [redacted]1992 Age: 18 from to
Resident Status:

Phones
Home: 952-457-5130 Cell: Contact:
Work: Fax: Pager:

Employment
Occupation:
Employer:

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Discovery 037882

5PB36E85C26ADFC

Appendix H

Saint Paul Police Department

SUPPLEMENTAL OFFENSE / INCIDENT REPORT

Complaint Number: 08044622
Reference CN:
Date and Time of Report: 06/16/2011 08:55:00
Primary offense: INVESTIGATE-AND ALL OTHER

Identification
SSN: License or ID#: License State:

Arrestee
UNKNOWN

Mohamud, Hamdi Ahmed
525 HUMBOLDT AV N Apt 405
MINNEAPOLIS, MN

Nicknames or Aliases
Nick Name:
Alias:
AKA First Name: AKA Last Name:

Details
Sex: Female Race: Black DOB: [redacted]1993 Resident Status:
Hispanic: Age: 18 from to

Phones
Home: 651-500-7446 Cell: Contact:
Work: Fax: Pager:

Employment
Occupation: Employer:

Identification
SSN: License or ID#: License State:

Arrestee
UNKNOWN

Yassin, Ifrah Abdi
3554 JUNE AV N
ROBBINSDALE, MN

Nicknames or Aliases
Nick Name:
Alias:
AKA First Name: AKA Last Name:

Details
Sex: Female Race: Black DOB: [redacted]1991 Resident Status:
Hispanic: Age: 20 from to

Phones
Home: 612-281-5858 Cell: Contact:
Work: Fax: Pager:

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Discovery 037883

SPB36E66C26A0FC

Appendix H

Saint Paul Police Department

SUPPLEMENTAL OFFENSE / INCIDENT REPORT

Complaint Number	Reference CN	Date and Time of Report
08044622		06/16/2011 08:55:00

Primary offense:
INVESTIGATE-AND ALL OTHER

Employment

Occupation: Employer:

Identification

SSN: License or ID#: License State:

NARRATIVE

On 06-16-11 at approximately 1844 hrs, I, FBI TFO Heather Weyker, received a phone call from 320-223-4866. When I answered the phone, a female voice was crying and very upset, breathing heavy and out of breath. As the girl started to speak, I recognized the voice to be Muna Abdulkadir, known throughout this report as Muna. Muna is a witness in this investigation. Muna was a juvenile when this case was initiated. Also present during the conversation was ICE SA Tony Langeland, TBI SA Jason Wilkerson, and the AUSA Van Vincent.

I read Muna her Miranda Rights, per SPPD Form PM 247.1-95R. Muna verbally stated she understood her rights and agreed to speak with us.
Muna told us the address of the incident was 2848 Pleasant Ave, #325, Minneapolis, MN.

Muna said she and her dad, Geele Shire, [redacted]-70, were walking back from Walgreen's on Pillsbury/Lake, from purchasing feminine products. When they returned to her dad's building, at 2848 Pleasant Ave, they entered the building, and Muna waited by the elevators. Her dad checked his mailbox area, and Muna noticed a girl, known to her as Hawo, pounding on the outside window. Hawo pointed at Muna and told her she wanted to speak with her. As Muna walked to the door, she observed Ifrah standing behind Hawo. Muna's dad, then opened the door for the two females and they entered the lobby area.

After the girls entered the building, Hawo and Ifrah said "Muna let me talk to you". Then they went to the corner of the door lobby area , as Hawo and Ifrah spoke to Muna. Hawo asked Muna why she was talking about her (Hawo) to other people. At that time, Muna observed Hawo she started to take off her earrings. Muna asked her if she was going to fight me. Hawo said yes.

Hawo said Muna was talking shit about her to a girl named Ayan Duffy. Muna said she doesn't know any Ayan Duffy. Ifrah interrupted, and stated " I want to talk to her about what I need to talk to her about." Ifrah said to Muna "you locked all my niggaz up." Muna asked "who?" Ifrah replied, "The SOL". Muna asked ,"who she was talking about." Ifrah replied, "ChiTown." Muna asked Hawo and Ifrah if they wanted to fight. Hawo and Ifrah replied yes and confirmed that they wanted to fight. Muna said that the 3rd girl had come in shortly after the first two entered, who she stated she knews as Hameda. Hawo finished taking off her earrings which meant to Muna that she was going to fight her. Muna said ok, she would fight, she just wanted to change clothes. She informed the girls they could follow her up to her apartment while she changed clothes. Hawo said she wanted to fight her together with the other 2 girls. All girls then get into the elevator together.

Once inside the elevator, Muna said she tried to push her floor button , which was the 3rd floor, but Hawo pushed the pause button on the elevator, which stopped it. Muna isn't sure how they managed to do that, she just did. Muna said Hawo "hit me", and the other two tried to hold me on the floor. Muna was able to some how push a button on the elevator during the fight. Muna said in her defense, she tried to hold Hawo against the wall of the elevator so she wouldn't continue to be struck by the girls.

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Discovery 037884

SPB38E65C26A0FC

Appendix H

Saint Paul Police Department

SUPPLEMENTAL OFFENSE / INCIDENT REPORT

Complaint Number	Reference CN	Date and Time of Report
08044622		06/16/2011 08:55:00

Primary offense:
INVESTIGATE-AND ALL OTHER

Muna said somewhere during the elevator altercation, she was cut with a knife that one of the girls was carrying. Muna said she did not initially see the knife, and thought it was a folding knife. Muna said she was struck by the knife on her hand and wrist area, in which she has several cuts.
Muna said the elevator doors opened and she was able to escape the elevator and run away from the 3 girls. Muna said the elevator opened on the 2nd floor. Muna said the girls attempted to chase after her. Muna said she was able to get away from the girls, and ran to her mother's apartment on the 3rd floor. Muna said she obtained a knife and went back down stairs.

Muna said when she got downstairs, she observed the car the 3 girls came in, and went over to it, and broke a car window.
Muna said she then saw the 3 girls, Hawo, Ifrah, and Hameda coming out of the building and they were running towards her with a knife. Muna said Hawo had her cell phone out like they were video taping her do damage to her car. Muna said at the time the 3 girls exited the building, her mother came out the same door and confronted the 3 girls. One of the 3 girls then struck her mother on the facial area. When Muna saw the girls fighting with her mother, she ran to her aid and struck one of them on the head with the butt end of the knife. Muna said Ifrah then struck her from behind on the head with an object Muna thought Ifrah got from the ground like a stick or other longer object. Muna was unsure what the object was.
Muna said the knife she had was inside her mother's apartment.

Muna said the girls were telling her, " We are going to get you tonight..., we are gonna make sure something gets done to you tonight..., your not safe tonight at your home." "Your gonna get it."

Muna said she was able to get away from the 3 girls again and she tried to call 911 for help. She then called me.

Muna said she was scarred and in fear for her life. Muna said she has been threatened in regards to this case. Muna is very fearful for her life and she said that they won't be able to stay in their apartment tonight because of fear of retaliation.

Muna said she knew Hawo and used to be friends when they lived next to each other in Hopkins, MN. They got into an argument over a cell phone. Hawo and Hameda were fighting before and Muna was scarred. She locked herself in a bathroom and she called the police to Hawo's house but she didn't want to get beat up by Hawo or Hameda. Muna has never met Ifrah, saw her a few times but never met.

Muna said a Hopkins officer told she and Hawo and Hameda to not be around each other.

Muna said she has seen Hawo and Hameda in a car with Junior, Abdullahi, Mohamed Afyare, which Muna knows to be SOL gang members.
Minneapolis Police Officer A. Beeks, responded to the scene. He assisted in the investigation, see his supp reports. MPD CN 11-172-855. Sgt Gary Manty, squad # 502, also assisted in the investigation. See his supp report for further info.

Sgt. Manty arrested the 3 girls, later id'd by Ofcr Beeks as:
-u Hawo Osman Ahmed, [redacted]92, 1020 Burnsville Parkway, # 267, Burnsville, MN 55337, 952-457-5130,
-? Ifrah Abdi Yassin, [redacted]91, 3554 June Ave N., Robbinsdale, MN, 612-281-5858,

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5PB36E60C26A0FC

Appendix H

Saint Paul Police Department

SUPPLEMENTAL OFFENSE / INCIDENT REPORT

Complaint Number	Reference CN	Date and Time of Report
08044622		06/16/2011 08:55:00

Primary offense:
INVESTIGATE-AND ALL OTHER

-Hamedi Ahmed Mohamud, [redacted]-93, 525 Humboldt Ave N., #405, Minneapolis, MN, 651-500-7446,

The girls were arrested for Tampering with a Witness.

Through MN DMV records, I was able to confirm the names of the girls. Hamedi Ahmed Mohamud gave MN DMV a different spelling for her first name; the DOB; address were all the same; the name listed as Hamdi Ahmed Mohamud, [redacted]93.

Using MN BCA web site, MRAP, I found that Hawo Osman Ahmed, has been arrested as an adult twice:
-h First arrest - 03-01-11 for 1st degree Assault, Great Bodily Harm in Minneapolis PD 11-056-665.
-n Second arrest was on 06-13-11, by Eden Prairie PD for Possession of Dangerous Drugs, 2 counts, and traffic offenses, CN# 11-015-45

The girls were booked into the Hennepin County Jail.

FBI SA Kate Koeth also assisted during the incident.

Note: "ChiTown" is defendant # 9, in this case and has been identified as Idris Ibrahim Fahra, [redacted]-87.

PUBLIC NARRATIVE

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Discovery 037886