No. 23-_____

In the

Supreme Court of the United States

SENECA LOVETT ENGEL,

Petitioner,

v.

DEREK ENGEL; MILLER POLICE DEPARTMENT; CITY OF MILLER, SOUTH DAKOTA; JIM HENSON, MILLER POLICE DEPARTMENT, OFFICIALLY AND INDIVIDUALLY; SHANNON SPECK, MILLER POLICE DEPARTMENT, OFFICIALLY AND INDIVIDUALLY; VARIOUS JOHN AND JANE DOES, MILLER POLICE DEPARTMENT, OFFICIALLY AND INDIVIDUALLY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In *Bell Atl. Corp. v. Twombly*, this Court construed the pleading requirements under Fed. Rule Civ. P. 8 and held the complaint, alleging a conspiracy under § 1 of the Sherman Act, insufficient due to an "obvious alternative explanation" that did involve conspiracy and that the complaint failed to answer for. *Twombly,* 550 U.S. 544, 567-68 (2007). In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Court reviewed discrimination claims against two high-ranking government officials and, like *Twombly*, held the complaint insufficient because an "obvious alternative explanation" existed that did not involve purposeful discrimination. *Iqbal*, at 682. While the *Twombly* Court cautioned that it was not announcing a heightened pleading standard, *id.*, at 570 ("we do not require heightened fact pleading of specifics"), courts have construed *Twombly* and *Iqbal* to require just that, and the decision below is a case in point.

The question presented is:

Whether claims for conspiracy under 42 U.S.C. § 1985(3) and § 1983 are sufficiently stated under Fed. Rule Civ. P. 8(2), so as to survive a Rule 12(b)(6) motion to dismiss, where the complaint alleges a detailed sequence of events from which a conspiracy may reasonably be inferred, including reference to public records which enhance the complaint's factual allegations, where there are no obvious alternative explanations to the conspiracy or the constitutional violations resulting therefrom, and where direct evidence of the agreement to conspire may only be developed from adverse witnesses through discovery.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to, within the meaning of this Court's Rule 14.1(b)(iii), the following proceedings in the Federal District Court for the District of South Dakota and the Eighth Circuit Court of Appeals:

- *Seneca Lovett Engel v. Derek Engel; Miller Police Department; City of Miller, South Dakota; Jim Henson, Miller Police Department, officially and individually; Shannon Speck, Miller Police Department, officially and individually; Various John and Jane Does, Miller Police Department, officially and individually*, No. 3:21-CV-03020-RAL, (District of South Dakota), order issued June 21, 2022;
- *Seneca Lovett Engel v. Derek Engel, et al.*, No. 22-2549, (Eighth Circuit Court of Appeals), Judgment issued April 11, 2023.

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The opinion of the Eighth Circuit Court of Appeals is available at 2023 WL 2889489 and reproduced at App. A. The opinion and order of the Federal District Court for the District of South Dakota is unpublished and reproduced at App. B.

JURISDICTION

The Eighth Circuit Court declined rehearing on May 18, 2023. This Court extended the deadline to file any certiorari petition due on or after August 16, 2023, to 150 days. This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]"

The Fifth Amendment to the United States Constitution provides, in part: "No person shall…be deprived of life, liberty, or property, without due process of law[.]"

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny

> any person within its jurisdiction the equal protection of the laws. ….

Section 1983 provides a civil action for the deprivation of rights, 42 U.S.C. § 1983, as follows:

> 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[.] ….

Subsection 3 of Section 1985 provides for an action to recover damages for a conspiracy to interfere with civil rights, 42 U.S.C. § 1985(3), as follows:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ….in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is

injured in his person or property, or deprived of having or exercising any right or privilege of a citizen of the United States, the party so deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Rule 201 of the Federal Rules of Evidence, Fed. R. Evid. 201, provides, in part:

> **(a) Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> **(b) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> > **(1)** is generally known within the trial court's territorial jurisdiction; or
> >
> > **(2)** can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
>
> **(c) Taking notice.** The court:
>
> > **(1)** may take judicial notice on its own; or
> >
> > **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information.
>
> **(d) Timing.** The court may take judicial notice at any stage of the proceeding.

> **(e) Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
>
> ….

Rule 8 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 8, provides, in part:

> **(a) Claim for Relief.** A pleading that states a claim for relief must contain:
>
> ….
>
> **(2)** a short and plain statement of the claim showing that the pleader is entitled to relief; …
>
> ….
>
> **(d) Pleadings to Be Concise and Direct; Alternative Statements; Inconsistency.**
>
> **(1)** ***In General.*** Each allegation must be simple, concise, and direct. No technical form is required.
>
> ….
>
> **(e) Construing Pleadings.** Pleadings must be construed so as to do justice.

Rule 12 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 12, provides, in part:

….

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

….

(6) failure to state a claim upon which relief can be granted; ….

….

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Subsection a of Rule 56 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 56(a), provides, in part: "… The Court shall grant summary judgment 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. The Court should state on the record the reasons for granting or denying the motion."

STATEMENT OF THE CASE

A. Rule 8 and this Court's Decisions in *Twombly* and *Iqbal*

Construing Fed. R. Civ. P. 8(a)(2) in *Bell Atl. Corp. v. Twombly*, the Court recognized the Rule "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests,'" *Id.*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). There, the Court held that stating a claim under § 1 of the Sherman Act for an illegal agreement in restraint of trade "requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made." *Id.*, at 556. In doing so, the Court announced the requirement that the pleadings must state "plausible grounds" showing an entitlement to relief:

> Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that recovery is very remote and unlikely.' ….
>
> The need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects the threshold requirement of Rule 8(a)(2) that the 'plain

> statement' possess enough heft to 'sho[w] that the pleader is entitled to relief.' ….

Id., at 556-57 (footnote 4 omitted) (alteration original).

In applying the plausibility standard in *Twombly* – a class-action antitrust lawsuit – the Court found the anticipated expenses associated with discovery to be compelling: "It is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, … but quite another to forget that proceeding to antitrust discovery can be expensive." *Twombly,* 550 U.S. 544, 558 (internal citation omitted). In this regard, the Court noted the nature of the case:

> plaintiffs represent a putative class of at least 90 percent of all subscribers to local telephone or high-speed Internet service in the continental United States, in an action against America's largest telecommunications firms (with thousands of employees generating reams and gigabytes of business records) for unspecified (if any) instances of antitrust violations that allegedly occurred over a period of seven years.
>
> ….it is only by taking care to require allegations that reach the level suggesting conspiracy that we can hope to avoid the potentially enormous expense of discovery in cases with no reasonably founded hope that the discovery process will reveal relevant evidence to support a § 1 claim.

Id. at 559 (internal citations and quotations omitted). Finally, the Court clarified *Conley* with respect to its "no set of facts" language as "incomplete," explaining:

> On such a focused and literal reading of *Conley's* 'no set of facts,' a wholly conclusory statement of claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some 'set of [undisclosed] facts' to support recovery. …
>
> ….
>
> ….To be fair to the *Conley* Court, the passage should be understood in light of the opinion's preceding summary of the complaint's concrete allegations, which the Court quite reasonably understood as amply stating a claim for relief. …. once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint. *Conley*, then, described the breadth of opportunity to prove what an adequate complaint claims, not the minimum standard of adequate pleading to govern a complaint's survival.

Id. at 561-563 (alteration in *Twombly*) (internal citations omitted).

The question presented in *Twombly* was "whether a § 1 complaint can survive a motion to dismiss when it alleges that major telecommunications providers engaged in certain parallel conduct unfavorable to competition, absent

some factual context suggesting agreement, as distinct from identical, independent action." *Id.*, 550 U.S. at 548-49. The complaint alleged that the defendant telecommunications providers (known as Incumbent Local Exchange Carriers or ILECs) "conspired to restrain trade in two ways, each supposedly inflating charges for local telephone and high-speed Internet services." *Id.*, at 550. First, the complaint alleged the defendants " 'engaged in parallel conduct' in their respective service areas" which was allegedly inhibiting the growth of the competing upstarts (known as competitive local exchange carriers or CLECs). *Id.* The complaint alleged that "the ILECs' 'compelling common motivatio[n]' to thwart the CLECs' competitive efforts naturally lead them to form a conspiracy[,]" *Id.*, 550 U.S. at 550-51. Second, the complaint alleged that the ILECs entered agreements not to compete against one anther, which agreements were "to be inferred from the ILECs' common failure 'meaningfully [to] pursu[e]' 'attractive business opportunit[ies]' in contiguous markets where they possessed 'substantial competitive advantages,'" and from a statement of an ILEC executive that competing in the territory of another ILEC " 'might be a good way to turn a quick dollar but that doesn't make it right[.]'" *Id.* at 551.

The Court discussed the appropriate legal standards for analyzing claims brought under § 1 of the Sherman Act and the required showing necessary to establish a claim based on evidence of parallel conduct. *Id.*, at 553-54. The Court noted that the "inadequacy of showing parallel conduct or interdependence, without more, mirrors the

ambiguity of the behavior: consistent with conspiracy, but just as much in line with a wide swath of rational and competitive business strategy unilaterally prompted by common perceptions of the market." *Id.*, at 554 (citation omitted). Accordingly, the Court, citing *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 104 (1984), noted "proof of a § 1 conspiracy must include evidence tending to exclude the possibility of independent action…[]…; and at the summary judgment stage a § 1 plaintiff's offer of conspiracy evidence must tend to rule out the possibility that the defendants were acting independently," citing *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). *Id.*

In analyzing the sufficiency of the complaint's factual allegations, the Court first observed that "the complaint leaves no doubt that plaintiffs rest their § 1 claim on descriptions of parallel conduct, not on any independent allegation of actual agreement[.]" *Twombly*, at 564. The Court recognized, then, that the complaint's "sufficiency turns on the suggestions raised by this conduct when viewed in light of common economic experience." *Id.*, at 565.

In concluding that "nothing in the complaint invests either the action or inaction alleged with a plausible suggestion of conspiracy[,]" the Court explicitly approved of the district court's finding that "nothing in the complaint intimates that resisting the upstarts was anything more than the natural, unilateral reaction of each [defendant] intent on preserving its regional dominance." *Id.*, at 566. The Court noted an "economic incentive [that] was powerful" and determined that "there is no reason to

infer that the companies had agreed among themselves to do what was only natural; so natural, in fact, that if alleging parallel decision to resist competition were enough to imply an antitrust conspiracy, pleading a § 1 violation against almost any group of competing businesses would be a sure thing." *Id*. (alteration added).

The Court looked to the history of telecommunications, determining that the parallel conduct of ILECs not to compete in each other's service territories "was not suggestive of conspiracy, not if history teaches anything." *Id*., at 567. The Court found significant that there existed "an obvious alternative explanation." *Id*. Specifically, "a natural explanation for the noncompetition alleged is that the former Government-sanctioned monopolists were sitting tight, expecting their neighbors to do the same thing." *Id*., at 568. Significantly, the Court determined that the complaint failed to answer for this obvious alternative explanation and, in fact, gave "reasons to believe that the ILECs would see their best interests in keeping to their old turf." *Id*. Therefore, the Court determined that the alleged conspiracy "was not suggested by the facts adduced under either theory of the complaint, which thus fails[.]" *Id*., at 568-69.[1]

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[1] The *Twombly* Court in footnote 14 stated, in part: "In reaching this conclusion, we do not apply any 'heightened' pleading standard[.] …. Here, our concern is not that the allegations in the complaint were insufficiently 'particular[ized],'; rather, the complaint warranted dismissal because it failed in *toto* to render plaintiffs' entitlement to relief plausible." (internal citations omitted).

Thus, in substance, the Court in *Twombly* held that to plead a plausible antitrust conspiracy claim, the complaint must set forth sufficient factual allegations to answer any obvious alternative explanations for the defendants' parallel conduct. Further, cautioning that its analysis did not run counter to *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508 & 514 (2002) (holding that "a complaint in an employment discrimination lawsuit [need] not contain specific facts establishing a prima facie case of discrimination"… where plaintiff's pleadings "detailed the events leading to his termination, provided relevant dates, and included the ages and nationalities of at least some of the relevant persons involved with his termination"), the Court stated: "Here, in contrast, we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Id.*, at 570.

The holding in *Twombly* was used to craft the Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). There, following the September 11, 2001, terrorist attacks, a Pakistani Muslim, Iqbal, was "arrested in the United States on criminal charges and detained by federal officials." *Id.*, at 666. Iqbal claimed he was deprived of various constitutional protections while in federal custody under restrictive conditions and filed a *Bivens* action against numerous federal officials including the former Attorney General, Ashcroft, and the then Director of the Federal Bureau of Investigation (FBI), Mueller. *Id.* The Court noted that Iqbal's "account of his prison ordeal could, if proved, demonstrate unconstitutional misconduct by some government actors. But the

allegations and pleadings with respect to these actors are not before us here." *Id.* Instead, the Court stated, the case turned on the narrower question of whether Iqbal's complaint "plead factual matter that, if taken as true, state[d] a claim that [Ashcroft and Mueller] deprived him of his clearly established constitutional rights." *Id.* (alterations added). In holding that Iqbal's pleadings against Ashcroft and Mueller were insufficient, the Court detailed the security measures taken by the Department of Justice following the 2001 attacks that included "an investigation of vast reach to identify the assailants and prevent them from attacking anew." *Id.*, at 667.

The Court first noted the necessity of beginning its analysis of Iqbal's complaint by "taking note of the elements a plaintiff must plead to state a claim of unconstitutional discrimination against officials entitled to assert the defense of qualified immunity." *Id.*, at 675. In this regard, Iqbal's complaint attempted to set forth a claim for invidious discrimination in contravention of the First and Fifth Amendments, which required Iqbal to "plead and prove that [each] defendant acted with discriminatory purpose" through their own actions. *Id.*, at 676 (alteration added).

Turning to the allegations in Iqbal's complaint, the Court cited *Twombly* to explain:

> …the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. …

> 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.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. 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. …
>
> Two working principles underlie our decision in *Twombly*. First, the tenant 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. Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has

> alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'

Iqbal, 556 U.S., at 678-79 (quoting and citing *Twombly* & Fed. Rule Civ. Proc. 8(a)(2)) (internal citations and parenthetical notations omitted).

The Court further explained that "[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. 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. In *Twombly*, the Court noted, the complaint "flatly pleaded that the defendants 'ha[d] entered into a contract, combination or conspiracy to prevent competitive entry … and ha[d] agreed not to compete with one another.' " *Id.* (quoting *Twombly*, 550 U.S., at 551). And, that the defendant's "'parallel conduct to prevent competition' and inflate prices was indicative of the unlawful agreement alleged." *Id.*, at 679-80 (quoting *Twombly*).

The Court next took note of *Twombly's* holding that the asserted "unlawful agreement" was a mere "legal conclusion" alleging a conspiracy. *Iqbal*, at 680 (discussing *Twombly*). As to "the well-pleaded, non-conclusory factual allegation of parallel behavior…[and]…whether it gave rise to a 'plausible suggestion of conspiracy[,]'" the Court recognized the *Twombly* Court's conclusion that parallel behavior "was not only compatible with, but indeed was more likely explained by, lawful, unchoreographed free-market behavior." *Id.* (discussing *Twombly*). Accordingly, "[b]ecause the well-pleaded fact of

parallel conduct, accepted as true, did not plausibly suggest an unlawful agreement," Twombly's complaint was subject to dismissal." *Id.* (discussing *Twombly*).

Likewise, turning to Iqbal's complaint, the Court concluded that it failed to allege a plausible discrimination claim against Ashcroft and Mueller and was, therefore, also subject to dismissal. *Iqbal*, at 680. In reaching its conclusion, the *Iqbal* Court first identified which allegations in the complaint were mere conclusions and, therefore, "not entitled to the assumption of truth." *Id.* The Court identified the following allegations as merely conclusory:

- Mueller and Ashcroft "'knew of, condoned, and willfully and maliciously agreed to subject [him]' to harsh conditions of confinement 'as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest.'"
- "Ashcroft was the 'principal architect' of this invidious policy[.]"
- "Mueller was 'instrumental' in adopting and executing it[.]"

Id., at 680-81 (alterations in *Iqbal*).

Examining next the factual allegations in Iqbal's complaint that could "plausibly suggest an entitlement to relief[,]" the Court identified the following allegations:

- The FBI, under Mueller's direction, "'arrested and detained thousands of Arab Muslim men … as part of its investigation of the events of September 11.'"
- "'[T]he policy of holding post – September – 11th detainees in highly restrictive conditions until they were 'cleared' by the FBI was approved by Defendants ASHCROFT and MUELLER in discussions in the weeks after September 11, 2001.'"

Id. Taking these allegations as true, the Court found them to be "consistent with [Mueller and Ashcroft having] purposefully designated detainees 'of high interest' because of their race, religion, or national origin." *Id.* Like in *Twombly*, however, the Court looked to obvious alternative explanations for the conduct that did not involve purposeful discrimination. *Id.* ("given more likely explanations, they do not plausibly establish this purpose").

In that regard, the Court discussed the September 11 attacks "perpetrated by 19 Arab Muslim hijackers who counted themselves members in good standing of al Qaeda, an Islamic fundamentalist group." *Id.*, at 682. The Court explained,

> It should come as no surprise that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the purpose of the policy was to target neither Arabs nor Muslims. On the facts respondent alleges the arrests Mueller oversaw

> were likely lawful and justified by his nondiscriminatory intent to detain aliens who were illegally present in the United States and who had potential connections to those who committed terrorist acts. As between that 'obvious alternative explanation' for the arrests, *Twombly*, *supra*, at 567, 127 S.Ct. 1955, and the purposeful, invidious discrimination respondent asks us to infer, discrimination is not a plausible conclusion.

Iqbal, at 682.

The Court went on to note that the complaint failed to plausibly allege "that [Ashcroft and Mueller] purposefully adopted a policy of classifying post – September – 11 detainees as 'of high interest' because of their race, religion, or national origin." *Id*. The Court further noted that the only factual allegation against Ashcroft and Mueller "accuses them of adopting a policy approving 'restrictive conditions of confinement' for post – September – 11 detainees until they were ' 'cleared' by the FBI.'" *Id*., at 683. In that regard, the Court found that "the complaint does not show, or even intimate, that [Ashcroft and Mueller] purposefully housed detainees in the ADMAX SHU due to their race, religion, or national origin." *Id*. Rather, indirectly referencing the obvious alternative explanation, the Court stated the only plausibly suggestion from the allegation is that "the Nation's top law enforcement officers, in the aftermath of a devastating terrorist attack, sought to keep suspected terrorists in the most secure conditions available until the suspects could be cleared of terrorist activity." *Id*.

Importantly, the Court went on to consider certain contrasts between the pleadings in *Twombly* and those in *Iqbal*. The Court found it significant that in *Twombly* the doctrine of respondent superior could bind the corporate defendant, whereas in *Iqbal*, Ashcroft and Mueller could not be held liable "unless they themselves acted on account of a constitutionally protected characteristic." *Id*. Here, the Court noted, Iqbal's complaint "d[id] not contain any factual allegation sufficient to plausibly suggest petitioners' discriminatory state of mind." *Id*. Nevertheless, the Court took care to note that it would "express no opinion concerning the sufficiency of [Iqbal's] complaint against defendants who are not before us[,]" noting those allegation involved "serious misconduct[.]" *Id*., at 684.

Further, the Court considered Iqbal's additional arguments bearing on its disposition, setting forth guidance to interpreting and applying its decisions in *Twombly* and *Iqbal* , summarized as follows:

- The standard announced in *Twombly* is the pleading standard to be applied in all civil actions.
- Where the suit is against a government official asserting the defense of qualified immunity, avoiding "disruptive discovery" is an especially important consideration.
- Although Rule 9 allows certain conditions of the mind to be plead generally, i.e., discriminatory intent, the stricture of Rule 8 as announced in *Twombly* and *Iqbal* are still

> operative and must be complied with to survive a motion to dismiss.

See Iqbal, at 684-87.

B. This Court's Decision in *Adickes*

More than 35 years prior to the *Twombly* and *Iqbal* decisions, the Court had issued its decision in the case of *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970). In that case, "Sandra Adickes, a white school teacher from New York," brought suit against Kress to recover damages under 42 U.S.C. § 1983 "for an alleged violation of her constitutional rights under the Equal Protection Clause of the Fourteenth Amendment." *Adickes*, 398 U.S. 144, 146. The suit arose out of "Kress' refusal to serve lunch to Miss Adickes at its restaurant facilities in its Hattiesburg, Mississippi, store on August 14, 1964, and Miss Adickes' subsequent arrest upon her departure from the store by the Hattiesburg police on a charge of vagrancy." *Id.* At the time of the events, "Adickes was with six young people, all Negroes," who were offered service, and were not arrested. *Id.*, at 146-47.

"The second count of [Adickes'] complaint, alleging that both the refusal of service and her subsequent arrest were the product of a conspiracy between Kress and the Hattiesburg police, was dismissed before trial on a motion for summary judgment." *Id.*, at 148. In dismissing count two, the district court ruled that Adickes " 'failed to allege any facts from which a conspiracy might be inferred[,]'" which was affirmed by the Court of Appeals. *Id.*

Reviewing the decision to dispose of Adickes' conspiracy claim on summary judgment, this Court stated the allegations in the complaint as follows:

> While serving as a volunteer teacher at a 'Freedom School' for Negro children in Hattiesburg, Mississippi, petitioner went with six of her students to the Hattiesburg Public Library at about noon on August 14, 1964. The librarian refused to allow the Negro students to use the library, and asked them to leave. Because they did not leave, the librarian called the Hattiesburg chief of police who told petitioner and her students that the library was closed, and ordered them to leave. From the library, petitioner and the students proceeded to respondent's store where they wished to eat lunch. According to the complaint, after the group sat down to eat, a policeman came into the store 'and observed (Miss Adickes) in the company of the Negro students.' A waitress then came to the booth where petitioner was sitting, took the orders of the Negro students, but refused to serve petitioner because she was a white person 'in the company of Negros.' The complaint goes on to allege that after this refusal of service, petitioner and her students left the Kress store. When the group reached the sidewalk outside the store, 'the Officer of the Law who had previously entered (the) store' arrested petitioner on a groundless charge of vagrancy and took her into custody.

Id., at 149. Based on these underlying facts, Adickes' complaint alleged that Kress and the Hattiesburg

police had conspired to violate her constitutional rights. *Id.*, at 149-50.

The Court next reviewed the elements necessary to establish a conspiracy between public officials and private persons. Here, the court explained that Adickes "will have made out a violation of her Fourteenth Amendment right and will be entitled to relief under § 1983 if she can prove that a Kress employee, in the course of employment, and a Hattiesburg policeman somehow reached an understanding to deny Miss Adickes service in The Kress store, or to cause her subsequent arrest because she was a white person in the company of Negroes." *Id.*, at 152. The Court continued:

> The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized, or lawful[.] Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under § 1983. 'Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents[.]'

Id. (citations omitted).

Considering the district court's decision to grant summary judgment, this Court noted that the district court "simply stated that there was 'no evidence in the complaint or in the affidavits and other papers from which a 'reasonably-minded person' might draw an inference of conspiracy[.]'" *Id.*, at 153. In support of its summary judgment motion, Kress had pointed to Adickes' own deposition testimony wherein she testified that "she had no knowledge of any communication between any Kress employee and any member of the Hattiesburg police, and was relying on circumstantial evidence to support her contention that there was an arrangement between Kress and the police." *Id.*, at 155-56. However, in opposing summary judgment, the Court noted that Adickes had "pointed out that respondent had failed in its moving papers to dispute *the allegation in petitioner's complaint*, a statement at her deposition, and an unsworn statement by a Kress employee, all to the effect *that there was a policeman in the store at the time of the refusal to serve her, and that this was the policeman who subsequently arrested her*." *Id.*, at 156-57 (emphasis added). Adickes had argued that "although she had no knowledge of an agreement between Kress and the police, the sequence of events created a substantial enough possibility of a conspiracy to allow her to proceed to trial, especially given the fact that the noncircumstantial evidence of the conspiracy could only come from adverse witnesses." *Id.*, at 157.

This Court held it was error to have granted summary judgment in favor of Kress on Adickes' conspiracy claim. This was because, the Court explained, reviewing the record "in the light most

favorable to [Adickes,]" Kress had failed "to foreclose the possibility that there was a policeman in the Kress store while petitioner was awaiting service, and that this policeman reached an understanding with some Kress employee that petitioner not be served." *Id*. The Court continued: "If a policeman were present, we think it would be open to a jury, in light of the sequence that followed, to infer from the circumstances that the policeman and a Kress employee had a 'meeting of the minds' and thus reached an understanding that petitioner should be refused service." *Id*., at 158.

C. *Cochran v. Gilliam*, 656 F.3d 300 (6th Cir. 2011) and This Court's Decision in *Soldal*

In *Gilliam*, the Sixth Circuit held that a tenant's § 1983 claims against deputy sheriffs, stemming from their alleged participation in a landlord's removal of personal property from the tenant's house, constituted an actionable seizure and violated the tenant's clearly established federal rights. The case arose from the execution of an eviction notice where deputy sheriffs assisted landlords in seizing the personal property of a tenant, Cochran. *Gilliam*, 656 F.3d 300, 303. The Sixth Circuit noted the participation of the deputy sheriffs, Don and Dan Gilliam, as follows:

> Don and Dan Gilliam were both present on the premises during the removal of Cochran's personal property. Don Gilliam admits that he paid $100 to the Williams [landlords] for a television that was removed from Cochran's home. He states that he purchased the

> television for use at the sheriff's office. Cochran's guns and prescription medications were also taken by the deputy sheriffs. At the Williams request, the guns were turned over to Mr. Williams' uncle, Constable John Williams the next day.

Gilliam, at 304. The deputies had also assisted the landlords in "removing Cochran's property from the house and loading it onto a blue pickup truck" and, thus, "their actions that day were not limited to simply serving the Warrant and keeping the peace." *Id.*, at 305.

Cochran filed suit "pursuant to 42 U.S.C. § 1983 and the Fourth, Fifth, and Fourteenth Amendments, alleging violations of his constitutional rights by the Gilliams." *Id.* "Specifically, Cochran argue[d] the Gilliams violated his Fourth Amendment right to be free from unreasonable seizures, and his Fourteenth Amendment due process rights, when the Gilliams, acting in their role as deputy sheriffs, assisted the Landlords in removing and transporting away all his personal property from the house." *Id.*

The Sixth Circuit reviewed the issue of whether Cochran had shown a violation of clearly established constitutional rights. *Id.* The court noted that although Gilliams did not take all of Cochran's personal property, "they actively assisted those who did." *Id.*, at 307. Analyzing Cochran's Fourth Amendment claim, the Sixth Circuit recognized this Court's reasonableness analysis for determining what actions can constitute a "meaningful interference with property[.]" *Id.* (citing *Soldal v. Cook County, Ill.*, 506

U.S. 56, 69-71 (1992)). The court further recognized its own Sixth Circuit precent that "where police officers take an active role in a seizure or eviction, they are no longer mere passive observers and courts have held that the officers are not entitled to qualified immunity." *Id.*, at 308 (citing *Haverstick Enter., Inc. v. Fin. Fed. Credit, Inc.*, 32 F.3d 989, 995 (6th Cir.1994)). With respect to the deputy sheriffs' conduct, the *Gilliam* Court held they interfered with Cochran's property in violation of the Fourth Amendment and that the Fourth Amendment violation was clearly established by this Court's holding *Soldal* and by Sixth Circuit precedent. *Id.*, at 310 (citing *Flatford v. City of Monroe*, 17 F.3d 162, 170 n. 8 (6th Cir.1994) (quoting *Soldal*, 506 U.S. at 69)).

D. Factual and Procedural Background

Petitioner Seneca Lovett Engel ("Seneca") filed a 100-paragraph complaint on October 19, 2021, including 27 paragraphs of factual allegations and 63 paragraphs containing legal conclusion or mixtures of law and fact. *See* App. G. Respondents, including officers of the Miller Police Department, City of Miller, South Dakota, were named defendants.

As detailed in her complaint, Seneca, "a black female" (at ¶ 4), was the victim of a domestic assault on October 29, 2019, by her then husband, Respondent Derek Engel ("Derek"), who had grabbed Seneca by the neck and slammed her against the side of a pick-up truck. ¶ 13-14. At the time of the altercation, Derek had Seneca's phone in his possession and was refusing to return it to Seneca, preventing her from calling 911. ¶ 14-15. Following the physical assault

and upon Derek's refusal to return the phone, Seneca immediately proceeded to the Miller police station with their four-year-old son who had witnessed the altercation take place. Id. Derek followed in a separate vehicle and, in route, Derek called Jim Henson, an officer with the Miller Police Department ("Henson"), advising Henson of the situation and that Derek and Seneca would soon be arriving. ¶ 15.

At the police station, Derek admitted to Henson that he took Seneca's phone and was refusing to return it. ¶ 16. Derek also admitted to Henson that he committed an assault during an altercation over the phone by grabbing and pushing Seneca. ¶ 17.

Henson then spoke with Seneca who reported the circumstances of the assault, that Derek had stolen her phone and was refusing to give it back, and that her phone contained recordings of other instances of domestic violence by Derek against Seneca. ¶ 18-19. Seneca and Derek's four-year-old son confirmed the stories, reporting to Henson that "daddy grabbed and pushed mommy." ¶ 20. Seneca asked Henson for help, requesting that law enforcement return her phone and pursue the domestic assault. ¶ 19.[2]

After receiving this information, Henson consulted with Shannon Speck, Chief of the Miller Police Department ("Chief Speck"), regarding how to proceed considering the situation. ¶ 21. Thereafter, Henson and Chief Speck refused to arrest Derek for

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[2] See SDCL 25-10-36 (requiring mandatory arrest and complete reporting when law enforcement responds to a domestic abuse call and probable cause exists that a crime has been committed).

domestic assault or theft, refused to return Seneca her phone, and allowed Derek to leave the police station with Seneca's phone in his possession. ¶ 22-23. As a result, Derek gained full access to Seneca's social media accounts as well as other electronically stored content including private material on the phone. ¶¶ 23 & 26-27. Fearing for her safety due to law enforcement inaction, Seneca went to a nearby town to stay with a friend and, the following day, Seneca obtained a temporary protection order against Derek. ¶¶ 24-25.

Nevertheless, with Seneca's phone in his possession and access to her private information, Derek began contacting third parties on Seneca's social media accounts and sending Seneca's personal content including private photos to various people in the community and elsewhere. ¶¶ 26-27. Derek persisted in a course of harassment against Seneca involving the use of her phone, repeated threats by electronic means including sending pictures of dead animals, and instances of abusive and threating in person contacts during custody exchanges of their children and at Seneca's place of employment, which forced Seneca to seek employment where she could work from home due to the continuing threat posed by Derek. ¶¶ 30-35.

During this time, Seneca made multiple reports to Henson and Chief Speck concerning violations of the protection order, threats and harassment, property and identity theft, and cyber sexploitation. ¶¶ 28-29. Henson and Chief Speck refused to investigate Seneca's reports or to enforce the protection order, and instead, they sanctioned Derek's

conduct, providing aid and assistance to Derek. ¶¶ 22, 28-29, & 79-98; *see also* App. 31-53; *infra* footnote 5. Upon expiration of Seneca's protection order, she was granted another protection order, and the state court held a hearing where it granted Seneca an extended order of protection against Derek. ¶ 36.

At hearing on Seneca's request for a protection order, Derek, Seneca, and Henson were among the testifying witnesses.[3] Henson testified as follows:

1. Derek called Henson on October 29, 2019, following the physical altercation between Derek and Seneca. Doc. 19-2, at p. 95, ll. 7-16; App. 36.

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[3] In addressing a Rule 12 motion, as the district court did in this case, "[t]he court may consider the pleadings themselves, materials embraced by the pleadings, exhibits attached to the pleadings, and matters of public record." *Mills v. City of Grand Forks*, 614 F.3d 495, 498 (8th Cir. 2010) (citing *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999)); *see also Papasan v. Allain*, 478 U.S. 265, 269 n. 1 (1986); *Twombly*, 550 U.S. at 568, fn. 13 (noting that the District Court "was entitled to take notice of the full contents to the published articles referenced in the complaint" (citing Fed. Rule Evid. 201)). Further, matters outside the pleadings may be presented to and considered by the court if not excluded. *See* Fed. R. Civ. P. 12(d). Here, the protection order proceedings were referenced in the complaint and are matters of public record including a transcript of the proceedings. The court transcript of the protection order hearing was presented to and recognized by the district court pursuant to a motion for judicial notice (the City of Miller Defendants did not object), and it was not excluded from consideration by the district court. See Doc. 19 (Affidavit attaching hearing transcript) & Doc. 20 (Motion for Judicial Notice).

2. Henson agreed to meet Derek at his office at the Miller police station, where Seneca would soon be arriving. Id.
3. At the police station, Henson invited Derek and Seneca into his office. Id. at p. 96, ll. 6-11; App. 37.
4. Henson noted, "Seneca was agitated. She was upset because Derek wouldn't give her her phone back." Id., at ll. 13-14.
5. Henson then "asked Derek to step into another office" where Henson and Derek spoke "privately." Id., at p. 97, ll. 4-6; App. 38.
6. Henson was advised by Derek that "he took [Seneca's] phone. He wanted to try to get into her phone, to see if she had been contacting any men." Id., at ll. 12-20.
7. Henson was also advised by Derek that "[Derek] grabbed [Seneca's] coat and moved her to the side so he could leave. And he said he did push her up against the car so he could get in the pickup." Id., at p. 98, ll. 20-23; App. 39-40.
8. In speaking next with Seneca, Henson learned "that Derek had threatened her" and that "she had video on her phone of him screaming at her; and there were holes in the walls of their apartment." Id., at p. 99, ll. 10-14; App. 40.
9. Seneca had kept asking Henson for her phone back. Id., at p. 98, ll. 2-5; App. 39.
10. Henson consulted with Chief Speck, and they refused to assist Seneca with her phone. Id., at pp. 97-98, ll. 24-5.

11. The following day, Seneca returned to the police station and made a report to Henson that Derek was distributing Seneca's personal photographs from her phone. Id., at pp. 106-07, ll. 19-2; App. 44.
12. Following Seneca's report, that afternoon Derek returned to the police station and met with Henson in Henson's office. The two discussed getting information off the phone, and Derek left Seneca's phone in Henson's possession. Id., at pp. 100-01, ll. 25-11; App. 42.
13. Henson again consulted with Chief Speck concerning the phone, who advised Henson to utilize the Division of Criminal Investigation for accessing Seneca's information that was contained on her phone. Id., at pp. 107-08, ll. 21-16; App. 45-46.
14. The following morning, Derek returned to Henson's office at the Miller police station where he again met with Henson who returned to Derek Seneca's phone to "retrieve the information" from it. Id., at p. 101, ll. 12-17; App. 42-43.

In dismissing the complaint, the District Court examined the claims for conspiracy under 42 U.S.C. § 1985(3) and deprivation of rights under 42 U.S.C. § 1983. The District Court first determined that Seneca's complaint "failed to establish that Derek acted under the color of state law and therefore has not met her burden under § 1983." App. 13. The District Court, construing the factual allegations,

stated that "[w]ithout factual enhancement, Seneca's allegations about Derek being a state actor are 'merely legal conclusions.'" App. 12. (quoting *Faulk v. City of St. Louis*, 30 F.4th 739, 744 (8th Cir. 2022)).

The District Court next dismissed Seneca's § 1983 claims against Henson and Chief Speck, concluding the complaint "fail[ed] to state a claim because [it did] not plausibly allege that the Miller Defendants agreed to a conspiracy with Derek to commit the alleged offenses[,]" eliminating Seneca's Fourth, Fifth, and Fourteenth Amendment claims against Henson and Chief Speck. App. 15. The District Court went on to determine that the same analysis applied to preclude Seneca's § 1983 claim against the City of Miller. App. 20-21.

With respect to Seneca § 1985 conspiracy claims, the District Court determined the factual allegations insufficient in that Seneca "failed to plead facts that suggest a meeting of the minds between Derek and the Miller Defendants and thus her § 1985 claim fails." App. 24. In a footnote, the District Court stated: "It is worth noting that *Iqbal*, 556 U.S. at 662, and *Twombly*, 550 U.S. at 554, which created a more demanding standard for conspiracy allegations at the pleading stage was decided decades after *Adickes*." App. 22, fn. 5; *But see Twombly*, 550 U.S. 544, at 569, fn. 14 ("we do not apply any 'heightened' pleading standard").[4]

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[4] Inasmuch as the District Court made certain factual declarations purportedly adduced from the pleadings, it is worth remembering this Court's guidance on the role of a judge and that of a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255

A panel of the Eighth Circuit affirmed the District Court. App. A. Seneca filed a Petition for rehearing by the panel and rehearing en banc, which was denied. App. D.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Decided Important Federal Questions In A Way That Conflicts With Relevant Decisions Of This Court

The Sixth Circuit in *Gilliam* relied on this Court's holding in *Soldal* which held that a complaint by mobile homeowners (the Soldals), alleging that deputy sheriffs and the owners of a mobile home park dispossessed them of their mobile home by physically tearing it from the foundation and towing it away, sufficiently alleged a Fourth Amendment "seizure" to state a cause of action under § 1983. *See Soldal*, 506 U.S. 56, 61-72. Framing the discussion in *Soldal*, this Court noted respondents' argument that the lower court erred in holding there was sufficient state action to support the § 1983 claim, which holding this Court declined to disturb, citing *Adickes*:

> Under 42 U.S.C. § 1983, the Soldals were required to establish that the respondents, acting under color of state law, deprived them

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(1986) ("Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." (citing *Adickes v. S.H. Kress Co.*, 398 U.S. 144, 158-159 (1970))).

> of a constitutional right, in this instance, their Fourth and Fourteenth Amendment freedom from unreasonable seizures by the State. *See Monroe v. Pape*, 365 U.S. 167, 184, 81 S.Ct. 473, 482, 5 L.Ed.2d 492 (1961). Respondents request that we affirm on the ground that the Court of Appeals erred in holding that there was sufficient state action to support a § 1983 action. The alleged injury to the Soldals, it is urged, was inflicted by private parties for whom the county is not responsible. …. The Court of Appeals found that because the police prevented Soldal from using reasonable force to protect his home from private action that the officers knew was illegal, there was sufficient evidence of conspiracy between the private parties and the officers to foreclose summary judgment for respondents. We are not inclined to review that holding. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152–161, 90 S.Ct. 1598, 1605–1610, 26 L.Ed.2d 142 (1970).

Soldal, 506 U.S. 56, 60, fn. 6.

Thus, this Court's decision in *Soldal* reveals a conflict with the decision below in the instant case. The *Soldal* Court cited *Adickes* in determining not to disturb the lower court's finding that there was sufficient evidence of conspiracy between law enforcement and the private parties to show state action under § 1983. This Court, then, went on to hold that Soldals' complaint sufficiently stated a § 1983 claim based on the alleged "seizure" within the meaning of the Fourth Amendment. The Sixth Circuit in *Gilliam,* moreover, relied on this Court's decision in

Soldal to hold that sheriff's deputies, who were present during an eviction and assisted the landlords in securing the tenant's personal property, violated the tenant's clearly established constitutional rights. *See*, *supra*, *Gilliam*, 656 F.3d 300, 303-305 (citing authorities).

In the instant case, Seneca's complaint alleges that Derek "admitted to Defendant Henson that he took [Seneca's] phone from [her] car while she was grocery shopping and that he was refusing to give it back." ¶ 16. It also alleges that Derek "admitted to Defendant Henson that he grabbed and pushed [Seneca]." ¶ 17. The complaint goes on to allege that Seneca reported to Henson that "Derek assaulted her by grabbing her by the neck and slamming her against a truck[,]" that Derek "had stolen her phone and requested that law enforcement take action to get the phone back and pursue the domestic assault as a criminal matter[,]" that "evidence of domestic abuse was contained on her phone that [Derek] had in his possession and was refusing to return," and that Seneca and Derek's son "also reported to Defendant Henson that 'daddy grabbed and pushed mommy.'" ¶ 18-20. The complaint further alleges that "Defendant Henson consulted with Defendant Shannon Speck, Chief of the Miller Police Department, regarding how to proceed in light of the situation" and that, thereafter, the "Miller Police Department failed to take any action to retrieve [Seneca's] phone, and failed to properly act upon, investigate, and pursue [Seneca's] report of domestic assault[,]" and allowed Derek "to leave the Miller

Police station on October 29, 2019, with [Seneca's] phone in his possession." ¶ 21-23.

Furthermore, as Derek engaged in a campaign of harassment and abuse, threats, identity theft and cyber sexploitation by using Seneca's cell phone while a protection order was active, Seneca made multiple, additional reports to Henson and Chief Speck who were required by law to provide assistance, see footnote 5, *infra*. ¶¶ 28. "Despite [Seneca's] continued reports of domestic violence and abuse as well as [] identity theft and cyber sexploitation, the Miller PD failed to properly act upon and investigate the reports and pursue the perpetrator; the Miller PD failed to interview witnesses, prepare an incident report, follow-up with an investigation, afford crime victim right, and make an arrest." ¶ 29; see also, e.g., ¶¶ 59-68, 81-89 & 93-98.[5]

On January 21, 2020, Seneca was granted another temporary protection order, and after a contested hearing held on March 23, 2020, the state circuit court entered an extended order of protection

[5] South Dakota has a mandatory arrest law in cases of domestic abuse. *See* SDCL 25-10-36; *see also* SDCL 23-3-39.8 (requiring law enforcement to adopt written policies for domestic abuse situations including "verification and enforcement of restraining and stay away orders; …emergency assistance to victims…including standbys for removing personal property; assistance to victims in pursing criminal prosecution; notification to victims for their rights"); SDCL 23A-28C-1(4) (providing right to protection "including enforcement of orders of protection"); S.D. Const. Art. 6, § 29 (guaranteeing "right to due process and to be treated with fairness and respect … to be free from intimidation, harassment, and abuse").

against Derek. ¶ 36. At the hearing referenced in the complaint, Henson offered telling testimony, reinforcing and enhancing Seneca's claims, including: (1) that Henson received the report from Derek that Derek had taken Seneca's phone because "[h]e wanted to try and get into her phone, to see if she had been contacting any men," Doc. 19-2, at p. 97, ll. 14-50; (2) that Henson consulted with Chief Speck in allowing Derek to leave the police station with possession of Seneca's phone and worked with Derek in the subsequent days to help Derek maintain custody of the phone and access its content, upon advice from Chief Speck, id., at pp. 107-08, ll. 21-16; (3) that Henson took custody of the phone on Derek's behalf, brainstormed ideas with Chief Speck about utilizing the Division of Criminal Investigation to retrieve the information from it, and then returned the phone to Derek who had lined up a private company "so they could retrieve information[,]" id., at pp. 100-01, ll. 9-17; and (4) that the Miller Police Department, Henson and Chief Speck, assisted Derek with the phone after the reports from Seneca that Derek was using the phone to commit various crimes against her, id., at pp. 106-07, ll. 19-2, despite issuance of protection order and additional reports to Henson and Chief Speck that Derek was using the phone to threaten and harass Seneca, distribute her personal photographs, and steal her identity. See, e.g., Doc. 1, at ¶ 28.[6]

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[6] The state circuit court ruled from the bench, finding the conduct of Henson and Chief Speck with respect to Seneca's phone to be "mind blowing." See Doc. 19-2, at pp. 107-09 & 147-48, ll. 21-25 (THE COURT: "…blows my mind… …taking her phone just blows my mind…"); App. 45-49.

On these facts, Seneca alleged violations of her clearly established constitutional rights, by state actors, under the Fourth, Fifth, and Fourteenth Amendments, and the decision below conflicts with the Sixth Circuit's decision in *Gilliam* and this Court's decisions in *Soldal* and *Adickes*.

II. Important Federal Questions Were Decided By The Decision Below, That Have Not Been, But Should Be Settled, By This Court

That the decision below decided important federal questions in a way the conflicts with relevant decisions of this Court also includes important federal questions that have not been, but should be settled, by this Court – i.e., the pleading standard under Rule 8 for claims of this nature and this factual context.

The Eighth Circuit in this case decided to affirm the District Court's dismissal of Seneca's complaint for failure to state a claim. However, unlike this Court's decisions in *Twombly*, which involved the alleged parallel conduct of some of the nation's largest telecommunication providers, conduct that was only natural, and in *Iqbal*, which involved justifiable security measures following an unprecedented, organized act of terror, see *Twombly*, at 567, and *Iqbal*, at 682,; here, by contrast, the court below failed to identify any "obvious alternative explanations" to any of Seneca's claims. This is because, unlike the claims in *Twombly* and *Iqbal*, there are no obvious alternative explanations to the constitutional violations alleged in Seneca's complaint. See, e.g., *infra*, footnotes 7 & 8. Nor do Seneca's claims

implicate the discovery considerations of enormous expense and disruption, at least not to the extent that the Court found so compelling to its decisions in *Twombly* and *Iqbal*. *See, e.g.*, *Twombly*, at 560, fn. 6; *Iqbal*, at 684-87. Here, the anticipated discovery would include depositions of Henson and Chief Speck and requests for production of police department records kept in the regular course of business,[7] which are customarily produced to the local state's attorney in connection with criminal matters, all involving a local law enforcement agency in rural Miller, South Dakota.[8] Thus, there exist sharp contrasts between Seneca's pleadings, the pleadings described in *Twombly* and *Iqbal*, the factual contexts and legal claims between the cases, and the considerations involved in allowing this case to proceed to discovery.

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[7] As this Court recognized in *Adickes*, "although she had no knowledge of an agreement between Kress and the police, the sequence of events created a substantial enough possibility of a conspiracy to allow her to proceed to trial, especially given the fact that the noncircumstantial evidence of the conspiracy could only come from adverse witnesses." *Id*., at 157. Here, the well-pleaded allegations of conspiracy in Seneca's complaint and its detailed sequence of events are stronger than those described in *Adickes*. In addition, direct evidence in support of such a claim would generally only be developed through the discovery process including depositions of adverse witnesses.

[8] The population of Miller, South Dakota in 2022 was reported as 1,335 people, 97% of which were White. https://www.southdakota-demographics.com/miller-demographics (citing United States Census Bureau).

In addition, the factual allegations in support of Seneca's conspiracy claims, under § 1983 and § 1985, are more concrete than the facts presented in support of the conspiracy alleged in *Adickes* and are much like those supporting the constitutional violations in *Soldal* and *Gilliam*. Indeed, the facts alleged in Seneca's complaint plausibly state that law enforcement provided aid and assistance to Derek, much like the assistance provided by law enforcement in *Soldal* where the Seventh Circuit held the allegations sufficient to state a claim for conspiracy which this Court did not disturb, see *Soldal*, 506 U.S. 56, 60, fn. 6 (citing *Adickes*, 398 U.S. 144, 152-161), and much like the assistance from law enforcement described in *Gilliam* where the Sixth Circuit determined that law enforcement did not act as mere passive observers and were not entitled to qualified immunity on plaintiff's Fourth and Fourteenth Amendment claims which were held sufficient to state a cause of action, see *Gilliam*, 656 F.3d 300, 307. Thus, the standard for alleging a conspiracy to violate federal rights under Rule 8 implicates an important question of federal law and, as shown by the decision below in this case, it can be prone to an interpretation which conflicts with relevant decisions of this Court.

In that regard, the decision below misses this Court's clarification of *Conley*'s "no set of facts" language which, as this Court explained – "described the breadth of opportunity to prove what an adequate complaint claims, not the minimum standard of adequate pleading to govern a complaint's survival." *Twombly*, 550 U.S. 554, 563; *see id*., fn. 8. The decision below in this case, however, supports a proposition

that "no set of [any] facts" that might be reasonably adduced from the complaint would be sufficient to support Seneca's claims or otherwise offer any hope that would entitle her to discovery on her claims. *But see Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 347, 125 (2005) (requiring " 'reasonably founded hope that the [discovery] process will reveal relevant evidence' " to support the claim (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 741 (1975)); (alteration in *Dura*)); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (a district court weighing a motion to dismiss asks "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims"); *see also*, *supra*, *Soldal*; *Adickes*; & *Gilliam*.

The decision below decided important federal questions in a way the conflicts with relevant decisions of this Court. In addition, this case presents an important federal question that has not been, but should be settled, by this Court, i.e. – whether claims for conspiracy under § 1985(3) and § 1983 survive a motion to dismiss where the complaint's factual allegations include a detailed sequence of events from which such conspiracy may be reasonably inferred, including judicially noticed court records which enhance the complaint's factual allegations, where there are no obvious alternative explanations to the conspiracy or to the alleged constitutional violations resulting therefrom, and where direct evidence of the conspiracy may only be developed from adverse witnesses through discovery.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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