No. 25-___

IN THE

Supreme Court of the United States

DEMETRIC SIMON,

Petitioner,

v.

KEITH GLADSTONE, *et al.*,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The District Court's grant of a Motion to Dismiss under Statute of Limitations is supposed to be for "rare circumstances." This case examines the open question of law in this Court, subject to a Circuit Split, of when inquiry notice begins and/or Petitioner's claims are otherwise equitably tolled or fraudulently concealed when: (1) Respondent Officers Gladstone, Vignola, and Hankard, conspired and concealed not only their direct involvement, but existence, planting evidence to frame Petitioner and found guilty between 2019 through 2022, and (2) a reasonable fact-finder would conclude the criminal indictment unsealed in 2019 began Petitioner's inquiry notice. Lacking definite analysis from this Court, the case was simply and wrongly dismissed before discovery began for not being filed by 2017, for the initial incident in 2014. The Questions Presented are:

1. In a now proven criminal conspiracy framing Petitioner but likely undiscoverable before Federal indictment on Conspiracy to Deprive Civil Rights, should a plausibly plead and argued "Equitable Tolling," "Equitable Estoppel," and/or "Fraudulent Concealment" apply to Petitioner's Federal Civil Rights case on matching facts to the Motion to Dismiss based on Statute of Limitation defense?

2. Whether Federal Courts should allow "High Low" Agreements on Appeal, especially when kept secret and undisclosed, the subject of a Circuit Split, which characteristics are more in nature of "collusive" from this Court's classical cases of *Lord v. Veazie*, 49 U.S. 251 (1850) and *Am. Wood Paper Co. v. Heft,* 131 U.S. 92 (1869).

3. Whether Summary Reversal should be issued on whether the 660-Page Steptoe Taskforce Report on the Gun Trace Task Force (GTTF), admissible under both public record and judicial notice, published two months prior to Petitioner's suit being filed, incorporated specifically into the Complaint with page number citations, linked to in other Reported Fourth Circuit cases like *United States v. Paylor*, 88 F.4th 553, 563 n.2 (4th Cir. 2023), and discussing throughout the Report, Respondents' continuing pattern of similar corruption for many years, and as Inspector Bromwich explained based on other public and sealed records, over 200 interviews with public officials and police personnel, explaining the extraordinary fraudulent, perjurious, and unconstitutional lengths both generally and specifically involving Petitioner, but which the trial Court noted she would "not consider" this Report attachment as "way too long[…]."

PARTIES TO THE PROCEEDINGS

Petitioner Demetric Simon, is the plaintiff in the district court and the appellant in the Fourth Circuit. Petitioners is an individual, and there is no corporate ownership to disclose.

Respondents Keith Gladstone, Robert Hankard, Wayne Jenkins, Carmine Vignola, Benjamin L. Frieman, Ryan Guinn, Dean Palmer, and Sean Miller, are former or present police officers and civil defendants in the district court and the appellees in the Fourth Circuit Court of Appeals. Respondent Baltimore City Police Department (BPD), was involved as the responsible Governmental entity employing the individual respondents as agents, representatives and/or employees.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the United States District Court for the District of Maryland (Northern Division), and the United States Court of Appeals for the Fourth Circuit.

1. *Demetric Simon v. Keith Gladstone, et. al.*, No. 1:22-cv-00549-JRR (J. Julie Rubin (Final Judgment and Memorandum Decision Entered on March 18, 2023); *Gladstone*[1] *v. Gladstone,* Civil

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[1] Judge Rubin's Memorandum, issued on Saturday, March 18, 2023, inexplicably mislabels Petitioner's name as "Simon Gladstone" which thus also mislabels the Caption as *Gladstone v. Gladstone,*

Action No. 1:22-cv-00549-JRR, 2023 U.S. Dist. LEXIS 45885, (D. Md. Mar. 18, 2023). (16a)

2. *Demetric Simon v. Keith Gladstone, et. al.*; *Simon v. Gladstone*, No. 23-1431, 2025 U.S. App. LEXIS 5254,(4th Cir. Mar. 6, 2025); (1a) *Petition for Rehearing Denied,* April 1, 2025. (44a)

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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which is how it is mistitled in legal databases up through the present.

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The district court's opinion is also available [Simon] v. *Gladstone*, Civil Action No. 1:22-cv-00549-JRR, 2023 U.S. Dist. LEXIS 45885, (D. Md. Mar. 18, 2023) and reprinted at 16a-43a.

The Motion to Disclose Settlement Agreements filed in the Fourth Circuit, [2] on April 22, 2024, was denied officially on August 29, 2024, reprinted at 45a, but is not available on a legal databases, though is available via PACER with respect to filings in the Fourth Circuit (ECF, 44-48, 52-54.).

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[2] This Was Titled "Appellant's Motion For Fourth Circuit To Order Appellees And Appellees' Counsels To Disclose And Produce All Secret And/or Claimed Confidential "High-Low" Settlement Agreements Involving Gun Trace Task Force (GTTF) Cases, Including: (1) *Rich V. Hersl,* 1:20-Cv-00488-ADC, (*Pro Se Appeal Noted By Plaintiff Eric Rich, Dated* 7/31/2023), 4th Cir. Case #23-6775 (Pending), (2) *Baltimore City Police Dep't V. Potts [And James]*, 468 Md. 265 (2020) (Certified Questions From State And Federal Court To Supreme Court Of Maryland), And (3) Any Other Previous Or Pending Appellate Or Federal Cases, And Other Appropriate Relief."

STATEMENT OF JURISDICTION

The Fourth Circuit issued its decision on March 6, 2025, denying relief to Petitioner. Timely Rehearing and Rehearing *En Banc* was sought, and was ultimately denied by the Fourth Circuit on April 1, 2025.

This denial of rehearing, made the original deadline for Certiorari due under this Court's Rule 13(1) and (3), "within 90 days after the entry of the judgment" due on or before June 30, 2025. Extensions of Time Request were filed with this Court and granted, extending the time to file the Petition for Writ of Certiorari through August 29, 2025. (No.24A1283) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED IN THE CASE

§ 1983. Civil action for deprivation of rights.

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, except that in any action brought against a judicial officer for an act or omission taken in such

officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C.S. § 1983

Federal Rule of Civil Procedure (FRCP) 12
[…]
(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:
(1) lack of subject-matter jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.
A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.
(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to

delay trial—a party may move for judgment on the pleadings.

(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.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

USCS Fed Rules Civ Proc R 12

STATEMENT OF THE CASE

Factual And Procedural History at District Court from First Amended Complaint for Damages, Incorporated Hyperlinks of Public Investigations and Task Forces of GTTF

On Monday, March 7, 2022, Petitioner Demetric Simon filed suit against various Baltimore City and Gun Trace Task Force (GTTF) officers directly involved with his false arrest, imprisonment of 317 days, and planted evidence, and their supervisors who failed to intercede for years. (ECF 1; ECF 11) The Complaint and First Amended Complaint explained the specific planted evidence was a realistic looking BB Gun, to *post-facto* justify GTTF Sergeant Wayne Jenkins initial actions, after chasing Petitioner while driving an unmarked vehicle, going on a sidewalk, and then hitting Simon. Simon was initially unable to move his legs and paralyzed by the injury. This incident posed a problem for the GTTF and danger as a whole, as Jenkins was a leader for the group, and at the very least could be sued civilly and a "use of force" investigation initiated. So he called in reinforcements from other GTTF officers, to help make this go away.

A gun was procured by Respondents Officers Gladstone, Hankard, Vignola, who conspired together to make sure Petitioner would be unable to fight the bogus charges, by planting the weapon nearby, after Simon was already on the ambulance to the hospital.

It was never even remarked at the scene, in any police reports, and unknown to everyone in the public as well including Simon, that Officers Gladstone, Vignola and Hankard were ever there or active participants in planting the weapon nearby, despite Respondent Officer Guinn seeing them. (50a, 59a) The Baltimore City Police Department (BPD), remains the responsible Governmental Entity for actions involving their police department employees. *See Baltimore City Police Department v. Potts* and *James,* 468 Md. 265 (2020).

A plan was quickly hatched between Jenkins, Gladstone, Vignola and Hankard to do a frame-up, as they had done before, but without the planning they were used to. This worked, for about 5 years, concealing not only the true breadth of the conspiracy, *but that there was any actual conspiracy.* It was designed to prevent interference with the GTTF group, supporting the BPD, should Jenkins' actions be scrutinized properly, and determined administratively to have been unjustified. (50a)

The first domino made public on the conspiracy to deprive of civil rights in this case, was the unsealing of Petitioner Gladstone's plea agreement, which took place on March 6, 2019, which was followed 2 weeks letter with a "Victim Notification" letter to Petitioner. (59a-61a) Despite an upcoming criminal trial for Respondent Hankard, and it only being two months since the Steptoe Report was publicly issued, out of an abundance of caution, Petitioner's Complaint was filed on the 3-year Anniversary of that day, (on a Monday) with a

hyperlink attached to Respondent Gladstone's Factual Plea agreement before Judge Catherine Blake, and made public. *See* *United States v. Gladstone*, No. 1:19-cr-00094-CCB (D. Md. June 3, 2019) (Transcript and Public Guilty Plea Facts of Officer Keith Gladstone. (Hyperlink included).

About six months after Gladstone's criminal prosecution for violating Petitioner's civil rights, Respondent Vignola was the next former Baltimore City police officer, identified through the Federal investigation for depriving Petitioner's civil rights. Carmine Vignola also pleaded guilty to lying to a grand jury about the incident. *United States v. Carmine Vignola*, Crim. No. CCB-19-0431, Information, 2019 WL 8886313 (D. Md. Sept. 10, 2019); *id.*, Sentencing, 2019 WL 8886314 (Sept. 23, 2019).

About five months after Vignola's plea became public, on or about January 15, 2020, Respondent Hankard was publicly acknowledged, as another officer having conspired and participated in Simon's false arrest, false imprisonment, and planting of the realistic BB gun weapon. *United States v. Robert Hankard*, Crim. No. CCB-20-017, Order Granting Unsealing of Indictment (ECF 15); Superseding Indictment, 2020 WL 4954865 (D. Md. Aug. 11, 2020); Hankard, however, did not agree to a guilty plea. Due *inter alia* to the COVID pandemic closures, his criminal trial was delayed, and pending at the time Petitioner's original Complaint for damages was filed.

On April 11, 2022, about a month after Petitioner Simon's Civil Complaint was filed, a Federal jury convicted Robert Hankard on all counts,

related to giving the gun to Gladstone and Vignola to plant at the scene of Simon's assault and arrest. *Id.*, Verdict Form, 2022 WL 1191299 (Apr. 11, 2022). An Amended Complaint was filed after Hankard's conviction, on May 31, 2022. (ECF 11), incorporating the recent factual public disclosures and discussions from Hankard's public Federal trial, such as the repeated use of "false police reports" of "a widespread and well-known practice within the BPD and the GTTF" as well as the fact that Hankard was convicted, *specifically* of depriving Petitioner of his civil rights, and later lying under oath to the grand jury, under the harsher standard of the criminal law of guilt beyond reasonable doubt.

Other legislative entities also started getting involved, before the Simon lawsuit was filed, also within the three years of Gladstone's unsealed indictment. The State of Maryland, ordered a Task Force on the GTTF, and headed by Former Federal Judge Alexander Williams, Jr. noting *inter alia,* "even BPD itself in civil litigation [of *Baltimore City Police Department v . Potts* and *James,* 468 Md. 265 (2020)*]* has described the GTTF officers' misconduct as a 'criminal conspiracy." This resulted in a 184-page Report published in December 2020 by the State of Maryland on the Gun Trace Task Force.

Chief Judge James Bredar had been previously instrumental and heavily involved in the "Consent Decree" arising from 2016, and the litigation against the BPD, initiated from the Department of Justice's Civil Rights Branch. A copy of the Consent Decree, is considered an "Order" and is linked to, on the Maryland District Court's Web Page at

https://www.mdd.uscourts.gov/Baltimore-City-Consent-Decree .

Nevertheless, Chief Judge Bredar had to adjust to the new GTTF revelations, holding the BPD accountable and transparent for when the GTTF scandal continued to crescendo with regular public revelations of more dirty Baltimore city cops, given free reign by the City to commit Civil Rights violations. As described in the Complaint for Damages, as well as both *supra* and *infra,* the "full report" prepared by Steptoe & Johnson, was 660-pages, with approximately 1/10 of the Report in 62 instances, referencing "Simon" and the various interactions of Petitioner as a victim of the pernicious conspiracy, when he was made to suffer about a year in jail, after the indignity of being run over, just to keep concealed the GTTF's corrupt behaviors and the supervisory officer from being hit with a civil lawsuit for Jenkin's reckless actions in an unmarked police vehicle. (50a)

A search for the keyword for the named lead Respondent, former Detective Keith Gladstone finds *472* times his name is used in the 660-page Steptoe Report. The same Report the trial judge, refused in the first instance to consider "the hyperlinked documents [plus a Youtube video which cited the timestamp and whereby IG Bromwich specifically discussed Petitioner's case] referenced in the Complaint the court will not consider that material in adjudicating the Motions [to Dismiss]." (25a) Meanwhile, the selective portions of any and all Complaints potentially suing Baltimore City, and exhibits, going back to at least the year 2006 years, so long as locatable anywhere on PACER, were

acceptable to Judge Rubin and considered under "judicial notice" as part of the Defendants' Motion to Dismiss. (23a-25a)

As former DOJ Inspector General Michael Bromwich explained personally to Chief Judge Bredar, the "history" involving the same officers that BPD refused to investigate who violated Petitioner's civil rights including discussion of previous instances of "fire-able" offenses that were ignored prior to the acts underlying the criminal convictions of Respondents Gladstone, Vignola, and Hankard. (50a) Specific pages describing incident underlying the case *sub judice,* from the Bromwich Report are listed as well in the Complaint as well as the less lengthy 35-page "Executive Summary," were provided by Petitioner, but ignored by the trial judge in considering the Motions to Dismiss. (24a-25a)[3].

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[3] The Fourth Circuit's decision, completely misstates the matter on a number of levels in their Unpublished Opinion, in less than a page of their decision, issued 13 months after oral arguments were held. (6a) First, it claims that the District Court decided this important issue of the Steptoe Report, under FRCP (8)(a)(2), when the District Court did no such thing, ruling under FRCP 12)(b)(6) only. *See,* J. Rubin Memorandum, pg. 9, ftnt. 10 (6a);(26a);(J.A. 696)—"Although the Complaint is subject to dismissal for violation of Rule 8, the typical "remedy for noncompliance with Rule 8(a) is dismissal with leave to amend." *Plumhoff* [*v. Cent. Mortg. Co.,* 286 F. Supp. 3d 699, 704 (D. Md. 2017)]. As discussed *infra*, **the Complaint will be dismissed with**

The District Court, after the Motions to Dismiss were filed, and an Opposition by Petitioner Simon with Exhibit attachments, despite request, and the unusual circumstances of the facts of case, did not holding a hearing in the matter. (J.A. 688)

Judge Rubin in her decision, relied on the non-precedential *Rich v. Hersl,* 2021 WL 2589731 (D. Ct. 2021). (28a, 33a-36a) [4] No precedents existed at the

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prejudice on other grounds, foreclosing amendment of the Complaint.")[Emphasis Added]

Thus, since this argument is nowhere to be found at the trial level, which the trial judge explicitly disclaimed, and thus with no confusion, neither party made any argument to the Fourth Circuit on this legal issue as well. It was the Fourth Circuit panel that *sua sponte* brought up Rule 8, for the first time in its Opinion, even though the trial judge never made a ruling under FRCP 8. This was discussed explicitly as part of the FRAP 35 and 40 Motion for Rehearing and Rehearing *en banc.* Further discussion *infra* at Question Presented 3, discusses this matter.

[4] *Rich,* a Federal Reported District Court case by Judge Ellen Hollander, was later used for "persuasive" value, and "citability" value by Respondents. There is no question, the BPD and other co-Defendants *explicitly* relied on *Hersl* (J.A. 101, 117, 129, 130, 191, 207,215, 218-22, 224, 286, 290, 296-299, 679-681) and without precedent in this Court, Judge Rubin *explicitly* relied on *Hersl* (J.A. 702)("The court agrees with Judge Hollander's analysis and applies it here.").

Fourth Circuit or this Court that appear to have been cited by Judge Rubin, or otherwise exist when it comes to "Statute of Limitations" being argued as part of 12(b)(6) Motions to Dismiss, other than they are "rarely" granted as it is "relatively rare circumstances where facts sufficient to rule on an affirmative defense are alleged in the complaint, the defense may be reached by a motion to dismiss filed under j[Rule 12(b)(5)." *Goodman v. Praxair, Inc.,* 494 F.3d 458, 464 (4th Cir. 2007)(*en banc*)..(28a)

The trial Court, did not address that *Hersl* was not the result of the proper adversarial process, but instead involved the Plaintiff's Counsel in that case submitting proof that their own client had fully known about the legal matter about ten years earlier in 2007, filing a "Tort Claims Act Notice" which Plaintiff's Counsel attached to a "Response" Motion, and that the named Defendant Hersl had never even joined in the "Motion to Dismiss," For reasons that again, had little if anything to do with the adversary process. *Simon v. Gladstone,* Plaintiff's Response In Opposition to Motion to Dismiss, ECF 72 (Filed 1/17/2023).

Although there were at least three contrary Federal District Court cases in Maryland, to *Hersl,* argued by Petitioner, none of these were cited by the Court in the Memorandum Opinion, to distinguish, or otherwise address. These are directly cited to, because as the Question Presented # 2 addressed, but for *Rich v. Hersl,* there were zero precedents, or even *cites,* that could be used by the BPD, in favor of a trial judge dismissing at the Motion to Dismiss stage, based on "statute of limitations." These contrary precedents, including the two more recent

from the Gun Trace Task Force (GTTF) suits, include:

A. *Green v. Pro Football Inc.,* 31 F. Supp. 3d 714 (D. Md. 2014) (J. Messitte)(Denial of Motion to Dismiss for Washington Redskins "Bounty" Program of Intentional Assaults during sporting events, discovered due to Washington Post news story);
B. *Burley v. Balt. Police Dep't*, 422 F. Supp. 3d 986, 1018 (D. Md. 2019)(J. Hollander), No. 19-2029, 2020 U.S. App. LEXIS 32318, (4th Cir. Oct. 13, 2020);
C. *Johnson v. Balt. Police Dep't,* 2020 WL 1694349 (D. Md. 2020)(J. Gallagher)(Denial of Motion to Dismiss on matter citing with approval *Burley*); *Johnson v. Balt. Police Dep't,* 2022 WL 2209066 (D. Md., Jun 21, 2022)(Denial of Motion for Summary Judgment).

When the *Hersl* came out in 2021, it was after the Respondents lost the *Potts* case certified to the Maryland Supreme Court, and *James* (Certiorari granted from the Circuit Court for Baltimore City) finding that Baltimore could not rely on the *Sawyer* exception, to find that the GTTF officers criminality, could never permit them to be acting within the scope of their employment.

Thus, the Maryland Supreme Court unanimously held:

"We conclude that the stipulations in Potts and James establish that the officers' conduct in each case satisfies the test for conduct within the scope of employment that this Court set forth in Sawyer, 322 Md. at 255-57 […] The officers' conduct in Potts and James is analogous to conduct in cases in which Maryland appellate courts have determined that government employees acted within the scope of employment. As such we hold that in Potts and James, the officers acted within the scope of employment, and, under CJ § 5-303(b)(1), the City is responsible for compensating Potts and James's estate for the officers' actions by paying the settlements that Potts, James's estate, and the officers reached."

[…]

By holding that the officers acted within the scope of employment, we ensure not only that Potts and James's estate have a remedy, but also that the ultimate responsibility for the officers' misconduct rests with the governmental entities that employed and supervised them—namely, the City and the Department."

Baltimore City Police Dep't v. Potts, 468 Md. 265, 274, 319 (2020). [5]

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[5] "In both cases, the plaintiffs and the officers agreed to a settlement of the lawsuits in the amount of $32,000 for the plaintiffs. As part of the settlements, the officers assigned to Potts and James's estate the right to indemnification from the City under CJ § 5-303(b)(1) […] In both cases, in connection with motions for summary judgment, the parties entered into a "Stipulated Statement of Undisputed Material Facts" ("the stipulation").

In Potts, while motions for summary judgment were pending in federal court, the parties filed a joint motion to certify a question of law to this Court, which the United States District Court for the District of Maryland granted. In James, the circuit court granted James's estate's motion for summary judgment, finding that the officers acted within the scope of employment and that the City was required to compensate James's estate. The City appealed, and petitioned for a writ of *certiorari* while the case was pending in the Court of Special Appeals. The certified question of law in Potts and the question presented in the petition for a writ of *certiorari* in James are identical, and state:

Whether, . . . in light of the undisputed facts in the record, the three former Baltimore City Police officers [who are] named in this action are entitled to indemnity for the judgments [that were] entered against them herein; that is, whether, as matter of

In a decision, dated March 18, 2022 (a Saturday), and publicly entered by the Clerk on Monday, March 20, 2022, the District Court dismissed all claims against all Respondents related to Statute of Limitations. (16a) (ECF 79-80) This was followed by Petitioner's timely Appeal filed on April 18, 2023. (ECF 81)

Appeal to Fourth Circuit Court of Appeals

In this case, after Briefing, oral arguments took place before Judges Wilkinson, Niemeyer, and Benjamin, on January 26, 2024, and over 13 months later, an unpublished opinion was issued signed by Judge Benjamin, affirming the dismissal of the Plaintiff's Complaint at a Motion to Dismiss stage,

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law[,] on the undisputed facts, the judgment [that was] sought to be enforced by [the p]laintiff is based on "tortious acts or omissions [that were] committed by the [officers] within the scope of [their] employment with [the City]."

(Quoting CJ § 5-303(b)(1)) (some alterations in original) (emphasis omitted). This Court accepted the certified question of law in Potts, and granted the petition for a writ of *certiorari* in James. *See Mayor & City Council of Balt. v. Estate of James by Lewis,* 466 Md. 309, 219 A.3d 526 (2019). *Balt. City Police Dep't v. Potts*, 468 Md. 265, 272-73 (2020)."

prior to discovery being conducted. (1a-15a)_ It was also done regardless of the essentially now conceded violations of Petitioner's Civil Rights by a conspiracy of Baltimore officers, three officers (Gladstone, Vignola, and Hankard), who weren't even known in any way to have been involved at all with Mr. Simon's case, to have directly planted evidence, until the *Federal authorities* criminally charged and convicted them, including for their perjured testimony before the grand jury.

The only part of the decision that the Court directs to Petitioner Simon and his circumstances was at the end, where the Fourth Circuit states "[w]hile we are disturbed by the egregious civil rights violations alleged against Defendants, we are bound to apply the applicable statutes of limitations and accrual requirements to Simon's claims." (15a).

The Fourth Circuit's Opinion, issued 13 months after oral arguments, doesn't cite any precedent in the Circuit or this Court, on what they contend justified a legal dismissal under Statute of Limitations, at the Motion to Dismiss stage under FRCP 12 (b)(6). Instead, they rely upon, like Judge Rubin below, the *Rich v. Hersl,* 2021 WL 2589731 (D. Md. June 24, 2021) case, but never mentioning the three contrary Federal District Court decisions. (9a). This silence, should confirm there is no direct precedent in the Fourth Circuit, though whether that should be persuasive, when the contrary decisions aren't mentioned, and the decision itself is based on a questionable metric that was not in compliance with the adversary process, is also important.

On the topic of *Rich v. Hersl*, it was surprisingly discovered after oral arguments, that Mr. Rich, who had been the Plaintiff in the 2021 case, had not agreed with his Plaintiff's Counsels insistence of a later $75,000 payday. This was for a 2007 arrest done by GTTF Officer Hersl, who perspicuously did not join in with all the other co-Defendants on the "Motion to Dismiss" filed by Defendants/ Respondents. *Rich,* which was used as the sole "persuasive authority" against *Simon*, since there was no direct precedent, and certainly no other supporting Federal District Court cases. So Mr. Rich appealed the matter *pro se.* That was followed by the Fourth Circuit appointed *pro bono* counsel. *See, Simon v. Gladstone,* et. al., No. 23-1431 (Filing on [Motion to Disclose Related GTTF Settlement Agreements] April 22, 2024 (ECF 44)); Fourth Cir. # 23-6775 (*Rich v. Hersl* (presently awaiting pending oral arguments). [6]

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[6] "In January 2021, every other defendant, save Hersl, sought and received Mr. Rich's consent to join the Police Department's motion. Consent Mot. for Leave to File Mot. to Dismiss Pl.'s Am. Compl. Out of Time, Rich, No. 1:20-CV-488 (D. Md. Jan. 26, 2021) (ECF No. 37); Defs.' Mot. to Dismiss Pl.'s Am. Compl. at *1–3, Rich v. Hersl, No. 1:20-CV-488 (D. Md. Jan. 26, 2020) (ECF No. 39). Despite these signs, Hersl answered Mr. Rich's complaint in February 2020—failing to assert a limitations defense. The district court expressed puzzlement about Hersl's strategy. It observed that "Hersl's failure to plead limitations put[ ] the case in an unusual posture," because it

would ordinarily be "inappropriate for the [c]ourt to address" the timeliness of' Mr. Rich's underlying § 1983 claims. Rich, 2021 WL 2589731, at *10. Even so, the court resolved the Police Department's motion, dismissing every defendant but Hersl and reasoning that the claims against Hersl "cannot be dismissed" because Hersl had waived his ability to assert a limitations defense. Id. at *10, 14." Appellant Rich's Reply Brief (Filed 7/14/2025)(ECF 64).

As the Petitioner explained in the Motion to Disclose any and all GTTF-related Settlement agreements, especially in Mr. Rich's case, the entire basis upon which Judge Rubin's decision rested, with no supporting precedent, very likely involved *another* use by Respondents of "side deal" settlement agreements by agreeable Plaintiffs' Counsels.

Unlike the *Potts* case it wasn't fully on appeal, which was eventually lost. *Potts* also had a "stipulated" Agreement of Facts, used to get Certification granted by the Maryland Supreme Court which made it well worse than similar agreements in the Eleventh Circuit's *Monsanto* case. When *Potts* was discovered the "secret settlement" was not actually $32,000 to each Plaintiff, but $400,000 and $200,000 to Potts and James, which Baltimore's Solicitor's Office called a "High-low" agreement—*Rich v. Hersl* involved a different permutation in obtaining favorable precedent, in obtaining a Federal District Court's opinion on their side, Mr. Rich's and his counsel would later obtain. *See, Simon v. Gladstone,* Fourth Cir., (Filed

With the Fourth Circuit Court's opinion, even criminal misconduct in civil rights violations by State officials, have no remedies, in Federal civil courts, if

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4/22/2024 *(*ECF 44)(Including *Rich's pro se* letter on $75,000 Letter and Baltimore Sun article on "High-Low" Appellate agreement discovered by Sun reporter at Board of Public Works meeting, to pay significant additional compensation to *Potts* and *James* Plaintiffs. *See also,"*Baltimore Approves $1.1 million in Police Misconduct Settlements, Including First Gun Trace Task Force Cases," The Baltimore Sun, August 12, 2020, McKenna Oxenden ("The [first two] Gun Trace Task Force cases account for a combined $600,000, according to the Board of Estimates agenda for Wednesday. Such a sum is a substantially higher figure than previously disclosed. The city previously said it would settle the cases of William James and Ivan Potts for $32,000 each after Maryland's highest court ruled April 24 the city was liable for the judgments. The city had argued the task force officers acted so far outside the scope of their employment that the city should not be responsible for any payouts. The city now says it had a conditional agreement called a "high-low" with both James and Potts that if the high court's ruling was in their favor, they would receive $200,000 and $400,000, respectively. Had the court ruled in favor of the city, the men would have received the lower figure.")

the perpetrators *succeed* in concealing their involvement for more than 3 years and/or the State officials and their internal policing policies, negligently or even intentionally, fail to properly investigate them for many years.

The Fourth Circuit's Opinion, then dovetails into speculation, and a reading of the Steptoe Report, that fails to appreciate this writing helps explain *how and why* the Baltimore City Police Department should have known about the corruption in their ranks, well before 2014, when activities of testifying falsely, writing false police reports, planting evidence, and the like, as detailed in the 660-page Report, "generally indicate that the corruption within the GTTF was highly publicized and documented in public records, not concealed. Thus, Simon's suggestion that he could not have fully discovered his individual claims without knowledge of these broader allegations of misconduct is misplaced."

Simon v. Gladstone, No. 23-1431, 2025 U.S. App. LEXIS 5254, at *14-15 (4th Cir. Mar. 6, 2025).

This is not accurate. The Report which came out in January 2022, squarely placed the blame on a culture of corruption on the BPD leadership and supervisors, who did not have any ethical difficulties countenancing regular false police reports and perjury on the witness stand. The timely Rehearing and Rehearing *En Banc* was denied on April 1, 2025. (44a).[7]

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[7] There was a major typographical error in the Panel's Opinion, and despite prominent mention in

REASONS FOR ALLOWANCE OF THE WRIT

I. CERTIORARI IS DESIRABLE AND IN THE PUBLIC INTEREST ON HOW TO APPLY THE INTERRELATED DOCTRINES OF "EQUITABLE TOLLING," "EQUITABLE ESTOPPEL," AND/OR "FRAUDULENT CONCEALMENT" TO A RULE 12(B)(6) MOTION TO DISMISS, WITH THE FOURTH CIRCUIT, CONTRASTED WITH THE SECOND CIRCUIT'S RECENT OPINION IN *EMIGRANT MORTGAGE COMPANY* SUPPORTS CERTIORARI ON THIS COURT'S "QUESTION OF FIRST

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the *Rehearing* motion, was not corrected by the Court.

> "Simon received two letters from the Department of Justice (DOJ), dated March 18, 2018, and February 21, 2020, respectively, that told him he was a victim in Gladstone and Hankard's criminal cases. [J.A. 39 at ¶ 39]." *Simon v. Gladstone*, No. 23-1431, 2025 U.S. App. LEXIS 5254, at *3 (4th Cir. Mar. 6, 2025). (4a)

However, the actual date of the letter regarding Gladstone, sent to Simon, was on or about March 18, 2019. Simon's Complaint for Damages was filed on Monday, March 6, 2022, within three years of this filing.

IMPRESSION" AND THE EXISTING CIRCUIT SPLIT

Incorporating the points and authorities discussed *supra,* in the Statement of Facts, the above case is well preserved and ideal vehicle for this Court to grant Certiorari.

There are not many precedents on what may be the "worst of the worst" offenders in Federal Civil Rights litigation. This case qualifies and exemplifies that concern. Demetric Simon, was subject to being incarcerated for nearly a year, precisely because he was a victim. But this case is not remotely as simple as the District Court and Fourth Circuit portrays. From the Petitioner's perspective, this case should be "simple" in that at least three (3) of the Respondent/Co-Defendants (Gladstone, Hankard and Vignola), were completely unknown to him or anyone else. They were the ones contacted by Jenkins, after he ran Simon over with his car, and tried to cover up the actions, to continue with his job as leadership in the GTTF. One such brief discussion exists in *Sebelius, v. Auburn.*

> "While equitable tolling extends to circumstances outside both parties' control, the related doctrines of equitable estoppel and fraudulent concealment may bar a defendant from enforcing a statute of limitation when its own deception prevented a reasonably diligent plaintiff from bringing a timely claim."

Sebelius v. Auburn Reg'l Med. Ctr., 568 U.S. 145, 164 (2013).

The Fourth Circuit didn't fare much better in finding actual precedent, which may have thus necessitated much of the litigation. (Though the Maryland Federal Courts, *supra,* have had at least three Federal District Courts, writing on the blank slate on this legal issue, two (*Johnson* and *Burley)* involving GTTF Officers, with Federal Judges denying Motions to Dismiss)

The only case cited by the Fourth Circuit, was *Menominee Indian Tribe* on Equitable Tolling. (14a) However, that case, which was highly case specific, involving a contractual dispute (not anything involving Constitutional or Civil Rights violations)

> "The Tribe calls this formulation of the equitable tolling test overly rigid, given the doctrine's equitable nature. First, it argues that diligence and extraordinary circumstances should be considered together as two factors in a unitary test, and it faults the Court of Appeals for declining to consider the Tribe's diligence in connection with its finding that no extraordinary circumstances existed. But we have expressly characterized equitable tolling's two components as "elements," not merely factors of indeterminate or commensurable weight."

Menominee Indian Tribe v. United States, 577 U.S. 250, 255-56 (2016).

The Fourth Circuit's decision in *Pocahontas*, doesn't add much clarity and confirms there is no nationwide standard before this Court. In *Pocahontas,* there was almost a complete lack of any colorable argument for "fraudulent concealment" beside the Plaintiff believed the civil defendant should have admitted to their knowledge of bad behavior, without looking at any other facts, particularly what happened to the Civil Plaintiff.

> "To permit a claim of fraudulent concealment to rest on no more than an alleged failure to own up to illegal conduct upon this sort of timid inquiry would effectively nullify the statute of limitations in these cases. It can hardly be imagined that illegal activities would ever be so gratuitously revealed. "Fraudulent concealment" implies conduct more affirmatively directed at deflecting litigation than that alleged here; and "due diligence" contemplates more than the unpursued inquiry allegedly made by Pocahontas.

Pocahontas Supreme Coal Co. v. Bethlehem Steel Corp., 828 F.2d 211, 218-19 (4th Cir. 1987).

In Demetric Simon's case, he was immediately jailed, as soon as he left the hospital, with the gun being planted when he was in the ambulance. He spent nearly 11 months imprisoned, for a crime he didn't commit, unable to afford bail, until his criminal charge was *nol prossed* and dismissed. In the meantime, at least three Civil Defendant Police Officers (Gladstone, Vignola, and Hankard) successfully concealed their active involvement in planting the weapon, to cruelly ensure Simon would stay in jail, and that Jenkins would not be administratively charged. They lied about it through later grand jury investigations. They weren't even mentioned in a single police report as being on the scene, because that was what they wanted. It was not until on or about March 6, 2019 that *anyone* publicly knew they existed, or participated or interacted in any way when Petitioner Simon, when the United States Attorney for Maryland, publicly unsealed Officer Keith Gladstone's indictment. Petitioner Simon, in jail on an unrelated charge at the time, was mailed notice he was a victim, a couple of weeks later. And there was a 660-Page Task Force Report on the corruption by the BPD, and specifically the same officers involved, with many pages devoted to Mr. Simon's case in particular. This simply does not compare with the Fourth Circuit's decision in *Pocahontas.*

Compare and contrast that with the Second Circuit's recent Published Opinion in *Emigrant,* though with a noted Dissent in that case believe the Majority was too generous to permit tolling.

"Statutes of limitations are generally subject to equitable tolling where necessary to prevent unfairness to a plaintiff who is not at fault" for lateness in filing. […] "The taxonomy of tolling, in the context of avoiding a statute of limitations, includes at least three phrases: equitable tolling, fraudulent concealment of a cause of action, and equitable estoppel." […] We conclude here that the doctrine of equitable tolling applies to render Plaintiffs' claims timely in this case.

A district court may exercise its discretion to equitably toll the statute of limitations once a litigant has demonstrated "'that some extraordinary circumstance stood in her way' and . . . 'that she has been pursuing her rights diligently.'" […] "This standard calls for reasonable diligence, not maximum feasible diligence, which a [plaintiff] may satisfy by showing that he acted as diligently as reasonably could have been expected under the circumstances." […] (emphases, internal quotation marks, and internal citations omitted). Importantly, equitable tolling is appropriate where, "despite all due diligence," a plaintiff "is unable to obtain vital information bearing on the existence of his claim"

within the statute of limitations period. […]

"While equitable tolling extends to circumstances outside both parties' control, the related doctrines of equitable estoppel and fraudulent concealment may bar a defendant from enforcing a statute of limitation when its own deception prevented a reasonably diligent plaintiff from bringing a timely claim." *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 164, 133 S. Ct. 817, 184 L. Ed. 2d 627 (2013) (Sotomayor, *J.*, concurring). This Circuit has explicitly clarified that "fraudulent concealment is not essential to equitable tolling." […]("The relevant question is not the intention underlying defendants' conduct, but rather whether a reasonable plaintiff in the circumstances would have been aware of the existence of a cause of action.").

To show fraudulent concealment, a plaintiff must establish that: (1) the defendant concealed the existence of the cause of action from the plaintiff; (2) the concealment prevented plaintiff's discovery of the claim within the limitations period; and (3) the plaintiff's ignorance of the claim did not result from a lack of diligence. […]

> A plaintiff can prove concealment by showing "either that the defendant took affirmative steps to prevent the plaintiff's discovery of his claim or injury or that the wrong itself was of such a nature as to be self-concealing." *Id.*
>
> *Saint-Jean v. Emigrant Mortg. Co.*, 129 F.4th 124, 142-43 (2d Cir. 2025), *Certiorari Filed,* No. 25-229 (Aug. 25, 2025).

While the Second Circuit has well-recognised and reasoned opinions extending from multiple precedents over a decade old, virtually none of these hallmarks are present in the Fourth Circuit, which struggles to have any Reported precedent, with Federal District Court judges in Maryland, working on a blank slate, and relying on, if anything, other Federal District Court bench opinions.

> "Our conclusion flows from well-settled principles of equitable tolling and fraudulent concealment. *Lozano v. Montoya Alvarez*, 572 U.S. 1, 11 […] (2014) ("Congress is presumed to incorporate equitable tolling into federal statutes of limitations because equitable tolling is part of the established backdrop of American law.") [Citation Omitted] The dissent paints equitable tolling as a rigid,

> stepwise doctrine, but that is not correct. Indeed, "[a]s the courts in this country recognized early on, 'the essence of the doctrine of equitable tolling is that a statute of limitations does not run against a plaintiff who is unaware of his cause of action.'" [Citation Omitted] (quoting *Serdarevic v. Advanced Med. Optics, Inc.*, 532 F.3d 1352, 1363 (Fed. Cir. 2008))"

Saint-Jean v. Emigrant Mortg. Co., 129 F.4th 124, 144-45 (2d Cir. 2025).

This Court should adopt the Second Circuit's case law in *Emigrant*. Certiorari is justified as well in Mr. Simon's case, (or otherwise held for *Emigrant,* if that case is granted Certiorari) as Civil Rights defendants and their victims, are frequently intentional torts, with the added risk that they may "control the mechanisms of justice." Thus, they have propensity to be victims of, in more complicated circumstances than say a regular contractual dispute. With the often criminal nature involved with legitimate Constitutional violations, as exists in this case with three former Officers criminally within the five (5) year criminal Statue of Limitation, Mr. Simon's case stands out as a particularly striking example and vehicle for Certiorari. But as of now, Mr. Simon illogically has no Civil remedy, despite the serious criminal convictions committed by Respondents when they began, mostly in secret, conspiring to violate Mr. Simon's Civil Rights.

II. CERTIORARI IS ALSO DESIRABLE AND IN THE PUBLIC INTEREST ON THE HIGHLY UNUSUAL INVOLVEMENT OF SECRET "HIGH LOW" AGREEMENTS BEING USED PREVIOUSLY BY RESPONDENTS IN GUN TRACE TASK FORCE (GTTF) CASES IN *POTTS*, JUSTIFYING REVIEW BY THIS COURT ON A CIRCUIT SPLIT, PREVIOUS "CLASSIC" SUPREME COURT PRECEDENTS AGAINST "COLLUSIVE" AGREEMENTS FOR POTENTIAL APPEALS BEING DISCLOSED AND REPORTED, AND WITH NO FEDERAL RULE OF APPELLATE PROCEDURE (FRAP) PROHIBITION, AND "ETHICS EXPERTS" SAYING THIS IS ALREADY DONE IN FEDERAL COURTS, THERE IS NO NEED TO FURTHER DELAY REVIEW.

Incorporating the points and authorities discussed *supra,* in the Statement of Facts, Petitioner Requests this Court grant Certiorari on Question Presented Two as well.

As noted in the "Fold-In" Page, the practice of collusive agreements on appeals, (characterized in modern practice as "High-Low Agreements on Appeal") being not only done, but kept *secret,* is ongoing and already happening for years. (62a) It will continue to worsen, adversely affecting this Court and the Federal Appellate Courts, without Certiorari being granted, as soon as reasonably possible.

Though characterized as not a big deal by Respondents, there's respectfully no question that Respondent Baltimore Police Department, were involved in a "pay for precedent" scheme, in attempting to get most every GTTF case dismissed for not being done within the "scope" of employment, in the *Potts* case, saving Baltimore City many millions of dollars. A similar desperate ploy was recently discovered and made involuntarily public by happenstance as part of the Eleventh Circuit's decision in *Monsanto,*[8] the maker of the "Round-Up"

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[8] *See Carson v. Monsanto, Co.,* 72 F.4th 1261 (11th Cir., 2003)(*en banc*). While most of the Court found there to be sufficient "case and controversy" to distinguish the case from "the collusive lawsuit in *United States v. Johnson* [319 U.S. 302 (1943)]" the Court found that it was "oblig[ed]" to hear a case that was not fully "collusive." *Id.* at 1266.

The Concurrence by Judge Jordan, would almost certainly *not have permitted* the type of "High-low" agreement involved with *Potts* and *James,* (Rich's settlement agreements related to the $150,000 and $75,000 have not yet been provided or publicly acknowledge except for Rich's *pro se* letter) which is distinguishable as both totally "secret" and involving a paid for "Stipulation of Facts." Thus, Judge Jordan noted he would likely find it impermissible and "different if Monsanto tried to control (or limit) the precise legal theories or arguments that Mr. Carson could present on appeal regarding preemption." *Id.* at 1269.

There was also a dissent by Judge Wilson, who opined:

Pesticide and over a Billion dollars resting on the results of appellate cases seeking this Court's review.

A number of filings in the Fourth Circuit in *Simon* detail this, the similarities between *Potts* (Pay for Precedent)*, Monsanto* (Pay for Appeal) and how the *Rich* case relied upon by Judge Rubin, and cited in support by the Fourth Circuit (9a), is another example, of the havoc created, when the adversary system is thrown out the window. Even assuming *arguendo* "high-low" agreements should be tolerable if certain ethical and legal qualifications are met,

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> "Here, Monsanto—the prevailing party below—is the one paying for this appeal. It is Monsanto who is driving this appeal forward. Rather than an honest attempt to liquidate damages and avoid the uncertainty of further litigation, this arrangement seeks to create it. This agreement appears to be nothing more than an attempt by Monsanto to seek a favorable appellate decision in conflict with the Ninth Circuit's decision in *Hardeman v. Monsanto Company,* 997 F.3d 941 (9th Cir. 2021)[…]" *Id.,* at 1271."

they pose a significant danger if left unintended to by this Court, when kept secret, as nearly every Circuit but the Fourth Circuit, at least in decisions, appears to require they at least be fully *disclosed*.

The Circuit Split as exists now, is as follows:

In 2003, the Ninth Circuit in *Gator.com Corp. v. L.L. Bean, Inc.,* 398 F.3d 1125 (9th Cir. 2005), appears to be the first case. There is no indication any sort of "high-low" agreement was kept secret, though ultimately the Ninth Circuit still dismissed the appeal for lack of controversy. The Ninth Circuit found the attempted "high-low" agreement dissolved the controversy itself, and "[a]lthough the parties have negotiated a 'side bet' concerning our resolution of this appeal, that wager does not alter the fact that the personal jurisdiction issue is wholly divorced from any live case or controversy." *Gator.com Corp.,* at 1132.

Thirteen years later, the Second Circuit addressed in *Linde v. Arab Bank, PLC*, 882 F.3d 314, 318 (2nd Cir. 2018) justiciability concerns as well, due to a contingency "High Low" agreement on the trial judgment entered of $100,000,000, with a varying amount at the end of litigation depending on the appeal result, to avoid a retrial on any remand. There is no indication this agreement was kept secret. Notably, the Second Circuit proactively sought a copy of the "settlement agreement" and also cited in support the proposition of "*Keefe v. Prudential Prop. & Cas. Ins. Co.*, 203 F.3d 218, 224 (3d Cir. 2000) ("same, where parties remained "*truly adverse with respect to the critical legal issue that they ask us to resolve*" and review of private

settlement agreement demonstrated "significant stake in the outcome'"). [Emphasis Added] *Linde at* 324. Thus, addressing whether a case and controversy existed, in an appeal argued by former Acting Solicitor General Neal Katyal, the Second Circuit appeared satisfied they were not being brought into the settlement having (1) the agreement not being kept secret from the Courts, (2) a copy of the Settlement agreement was obtained and viewed by the Second Circuit, and (3) there does not appear to have been sufficient concerns the parties weren't "truly adverse" as the Third Circuit put it.

According to the Second Circuit in *Linde,*

> "That is not this case. Arab Bank actively disputes liability, and *we are satisfied, upon review of the settlement agreement,* that the contingent monetary obligations presented therein represent the parties' efforts reasonably to estimate the plaintiffs' ability ultimately to procure the "relief upon which this suit was initially premised" (as well as the value of avoiding retrial or further review), *not a mere "side bet" as to our views on a settled matter*." [Emphasis Added] *Id.* at 325

But these are part of the relatively "good faith" "high low" agreements for appeals. The *Monstanto* case heard *en banc,* was only accidentally discovered to be a purported "High-Low Settlement Agreement on Appeal" by an attorney involved in the Ninth Circuit case, whose curiosity by the amenable Plaintiff's counsel decision-making in the Eleventh Circuit, not knowing originally that she and her client were being paid a substantial additional sum to appeal that case, so as to manufacture a Circuit Split years in the future.

But all is not lost, it's just been forgotten by the Federal appellate courts. At least two Supreme Court cases in the 1800s have dealt with this topic, just not calling it "High-Low Agreements" but calling it for what it typically was—Collusion and "Feigned Controversies."

Back in 1850, this Court in *Lord v. Veazie* held:

> "The court is satisfied, upon examining the record in this case, *and the affidavits filed in the motion to dismiss,* that the contract set out in the pleadings was made for the purpose of instituting this suit, and that there is *no real dispute between the plaintiff and defendant*. On the contrary, it is evident that their interest in the question brought here for decision is one and the same, *and*

not adverse; and that in these proceedings the plaintiff and defendant are attempting to procure the opinion of this court upon a question of law, in the decision of which they have a common interest opposed to that of other persons, *who are not parties to this suit, who had no knowledge of it while it was pending in the Circuit Court, and no opportunity of being heard there in defence of their rights*. And their conduct is the more objectionable, because they have *brought up the question upon a statement of facts agreed on between themselves*, *without the knowledge of the parties with whom they were in truth in dispute, and upon a judgment pro forma entered by their mutual consent, without any actual judicial decision by the court*. It is a question, too, in which it appears that property to a very large amount is involved, the right to which depends on its decision.

[…]

It is the office of courts of justice to decide the rights of persons and of property, *when the persons interested cannot adjust them by agreement between themselves, -- and to do this*

upon the full hearing of both parties. And any attempt, by a mere colorable dispute, to obtain the opinion of the court upon a question of law which a party desires to know for his own interest or his own purposes, when there *is no real and substantial controversy between those who appear as adverse parties to the suit, is an abuse which courts of justice have always reprehended, and treated as a punishable contempt of court*. The suit is spoken of, in the affidavits filed in support of it, as an amicable action, and the proceeding defended on that ground. But an amicable action, in the sense in which these words are used in courts of justice, *presupposes that there is a real dispute between the parties concerning some matter of right.* […] But there must be an actual controversy, and adverse interests. The amity consists in the manner in which it is brought to issue before the court. And such amicable actions, so far from being objects of censure, are always approved and encouraged, because they facilitate greatly the administration of justice between the parties. The objection in the case before us is, not that the proceedings were amicable, *but that there is no real conflict of interest*

> *between them;* that the plaintiff and defendant have the same interest, and that interest adverse and *in conflict with the interest of third persons, whose rights would be seriously affected if the question of law was decided in the manner that both of the parties to this suit desire it to be.*
>
> A judgment entered under such circumstances, and for such purposes, is a mere form. The whole proceeding was in contempt of the court, and highly reprehensible, and the learned district judge, who was then holding the Circuit Court, undoubtedly suffered the *judgment pro forma to be entered under the impression that there was in fact a controversy between the plaintiff and defendant,* and that they were proceeding to obtain a decision upon a disputed question of law, in which they had adverse interests. *A judgment in form, thus procured, in the eye of the law is no judgment of the court. It is a nullity, and no writ of error will lie upon it. This writ is, therefore, dismissed*."
> [Emphasis Added]

Lord v. Veazie, 49 U.S. 251, 254-56 (1850).

Following *Veazie, i*n 1869, this Court further confirmed its concern against feigned controversies, and the need when properly brought to their attention, by ostensible third parties, who were or could be adversely effected by these cases, and for proper affidavits on the question.

> "MR. CHIEF JUSTICE CHASE delivered the opinion of the court.
>
> This is a motion for leave to intervene and to move to dismiss the appeal upon two grounds, namely:
>
> (1) *That the suit of the appellant is merely fictitious, there having been a settlement of the matter in litigation between the parties*.
>
> (2) That the suit is now prosecuted, not to determine any real controversy between the parties to the record, but to obtain a decree on which to found an application for an injunction against persons really interested, *adversely to the appellants, but not parties to the record, and among them against the person in whose behalf the motion is made.*
>
> The affidavits in support of the motion do not show that there was no real controversy in the Circuit Court, but are introduced for the purpose of

satisfying us that since the decree in that court the matters there litigated have been settled in such a manner that the appellees have no further interest in the cause.

An affidavit against the motion has been filed by the appellants, in which affiant describes himself as yet of the company, and denies that the matters in litigation upon the appeal have been settled; but avers, on the contrary, that the appeal is prosecuted in good faith and for the determination of a real controversy. Taking all the affidavits together, in connection with the circumstance that no appearance has been entered in this court for the appellees, *we are of the opinion that enough is shown to warrant a rule against the appellant, to show cause why the appeal should not be dismissed.*

In the case of *Lord v. Veazie*, 8 How. 251, 254, in this court, an appeal was dismissed upon motion, the court being satisfied, by that *affidavit produced, that the suit was fictitious and collusive;* and the same course was pursued upon similar showings […] [Citations Omitted] Rule granted." [Emphasis Added]

Am. Wood Paper Co. v. Heft, 131 U.S. 92 (1869).

Petitioner sought, with an affidavit (consistent with *Monsanto* and the Eleventh Circuit's decision there), all information be provided at least *in camera* to the Fourth Circuit, of the Respondent's use of secret settlements on appeal, or any and all GTTF cases (like that of *Rich v. Hersl,* which appears to also be confirmed). The Fourth Circuit denied this Motion, without any given reasons. (45a) There are no FRAP Rules to guide anyone. There are Law Professors who advertise, to large companies like Monsanto not only is this practice legal and ethical to do in appeals, it's also perfectly ethical to keep them secret *from the appellate Courts*, (62a) possible ignoring the Circuit Courts that have otherwise, and this Cour's classic cases against this practice. This Court should grant Certiorari and Instruct the Fourth Circuit on the appropriate practice for these type of corrosive "High-Low" Appellate agreements.

III. THIS COURT SHOULD GRANT SUMMARY REVERSAL, FOR THE TRIAL COURT'S FAILURE TO EVER CONSIDER ANY PART OF THE 660-PAGE STEPTOE TASKFORCE REPORT, OF WHICH OVER A DOZEN PAGES DISCUSS *SIMON'S* CASE, AND THE EXTENSIVE DISCUSSION OF THE RESPONDENTS' FRAUDULENT AND KNOWN TO BPD'S POTENTIAL CRIMINAL ACTIONS, SHOULD HAVE EASILY

SATISFIED WHATEVER STANDARD APPLIES TO DENY RESPONDENTS MOTIONS TO DISMISS BASED ON STATUTE OF LIMITATIONS.

Incorporating the points and authorities discussed *supra,* in the Statement of Facts, the above case is well preserved and ideal vehicle for this Court to grant Certiorari, or Summary Reversal should be issued. To assist with this Court's consideration on this Question Presented for Summary Reversal purposes, pages 46a-61a illustrate the detailed and good faith efforts made to provide a comprehensive and not yet concise Amended Complaint with the Federal District Court.

There was respectfully no basis for Judge Rubin's determination, on highly admissible and relevant information on Mr. Simon's case and the Respondent's terrible and disturbing actions, for years, and simply dismiss out of hand *considering* any of it. Furthermore, despite the Report discussing the Respondents decades long history of similar Civil Rights abuses, with Petitioner Simon's case being particularly highlighted and discussed over dozens of pages, which were quoted and cited directly in the Complaint filed in March 2022, this should have made it easier to deny the Motion to Dismiss, not for it to be actually granted.

Under important and interesting circumstances of this case, pre-suit there exists lengthy and detailed public documents on the government investigations done on the GTTF (Gun Trace Task Force) scandal

and Petitioner Simon's case in particular, admissible under judicial notice and public records, published in the January 2022 660-Page Steptoe report conducted by independent investigator Michael Bromwich with City of Baltimore's blessing. Yet the trial court specified in granting the Motion to Dismiss, they would simply not consider the "incorporated" document with hyperlinks in the First Amended Complaint, and/or denying leave to file a further Amended Complaint, because it was essentially "too long." This Report was "long because there was overwhelming amount of information to sort through by Mr. Bromwich, tracing back decades, of the GTTF'S actions and activities, that were allowed, tolerated, and supported by the GTTF Supervisors like Keith Gladstone, and BPD leadership in general.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Supreme Court of the United States grant review of this matter. Alternatively, it is requested this Court consider the foregoing Petition as appropriate for this Court's consideration on Summary Reversal, based on the straightforward arguments presented in the claims for relief, in Question Presented #3.

Respectfully Submitted,

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Counsel for Petitioner

APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1431

DEMETRIC SIMON,

Plaintiff – Appellant,

v.

KEITH GLADSTONE; ROBERT HANKARD; WAYNE JENKINS; BALTIMORE CITY POLICE DEPARTMENT; CARMINE VIGNOLA; BENJAMIN L. FRIEMAN; RYAN GUINN; DEAN PALMERE; SEAN MILLER,

Defendants – Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Julie R. Rubin, District Judge. (1:22-cv-00549-JRR)

Argued: January 26, 2024 Decided: March 6, 2025

Before WILKINSON, NIEMEYER, and BENJAMIN, Circuit Judges.

Affirmed by unpublished opinion. Judge Benjamin wrote the opinion, in which Judge Wilkinson and Judge Niemeyer joined.

ARGUED: Michael Alan Wein, LAW OFFICES OF MICHAEL A. WEIN, LLC, Greenbelt, Maryland, for Appellant. James Arba Henry Corley, BALTIMORE CITY LAW DEPARTMENT, Baltimore, Maryland, for Appellees. ON BRIEF: Ebony M. Thompson, Acting City Solicitor, Michael Redmond, Director, Appellate Practice Group, Alexa E. Ackerman, Chief Solicitor, BALTIMORE CITY DEPARTMENT OF LAW, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

DEANDREA GIST BENJAMIN, Circuit Judge:

Demetric Simon was unlawfully arrested and imprisoned for a crime he did not commit after police officers planted a gun on him to cover up their own hit-and-run. Simon commenced a belated 42 U.S.C. §§ 1983 and 1985 lawsuit alleging that the officers committed state-law crimes, conspired to commit civil rights violations, and engaged in civil racketeering. The district court dismissed Simon's complaint in part because it found that the claims were filed outside the applicable statutes of limitations periods and were therefore time barred.[1] We affirm the judgment.

I.

A.

Where, as here, the district court dismissed the complaint under Fed. R. Civ. P. 12(b)(6), we accept the

[1] The court dismissed Counts IV–VII on the basis of sovereign immunity. J.A. 697. Simon does not challenge the dismissal of those counts on appeal, so we do not address them.

factual allegations in the complaint as true.[2] *Parker v. Reema Consulting Servs., Inc.*, 915 F.3d 297, 300 (4th Cir. 2019) (citing *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011)). The allegations show the following. *See* J.A. 17–59.

The events giving rise to this lawsuit involve the Gun Trace Task Force ("GTTF"), a now dismantled unit within the Baltimore City Police Department ("BPD"). During a police chase on March 26, 2014, GTTF Officer Wayne Jenkins ran over Demetric Simon. [J.A. 34 ¶ 26.] Panicked, Jenkins called Officer Keith Gladstone to relay what happened and asked Gladstone to bring him a BB gun. [*Id.*] Gladstone, together with Officer Carmine Vignola, procured a BB gun from the home of Vignola's work partner, Officer Robert Hankard. [*Id.* at 34 ¶ 26; *Id.* at 366.] Then, Gladstone and Vignola drove to the scene where Jenkins ran over Simon, and Gladstone planted the BB gun at the scene. [*Id.* at 34 ¶ 26; *Id.* at 36 ¶ 31.]

Simon was transported to the hospital, where drugs were recovered from his person. [*Id.* at 367.] He was charged with possession of the gun that Gladstone planted at the scene, among other crimes. [*Id.*] To support the charges, Jenkins wrote a false statement of probable cause that was approved by a BPD supervising officer. [*Id.* at 34–35 ¶¶ 26–27; *Id.* at 367.] The criminal charges against Simon were dismissed on January 16, 2015. [*Id.* at 35 ¶ 28.] Simon, however,

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[2] We also take judicial notice of court documents in the record involving the Defendant-officers: (1) Keith Gladstone's deposition testimony; (2) Stipulation of Facts from Keith Gladstone's guilty plea; and (3) Verdict Form from Robert Hankard's jury trial. J.A. 337–57, 366–68, 433–34.

spent around 317 days in prison before he was released on February 5, 2015. [*Id.* at 37 ¶ 35.][3]

The Defendant-officers that participated in Simon's arrest were charged with criminal offenses for conspiring to deprive Simon of his civil rights. In addition, on March 1, 2017, Jenkins and six other officers of the GTTF were arrested on federal racketeering charges. [*Id.* at 367.] Around May 2019, Gladstone pled guilty to conspiracy to violate Simon's civil rights. [*Id.* at 27 ¶ 10; *Id.* at 359.] Vignola also pled guilty to framing Simon and lying to the grand jury about his participation in the conspiracy. [*Id.* at 29 ¶ 13]. Last, in April 2022, a jury convicted Hankard for conspiracy to violate Simon's civil rights. [*Id.* at 28 ¶ 11; *Id.* at 432–33.] Simon received two letters from the Department of Justice (DOJ), dated March 18, 2018, and February 21, 2020, respectively, that told him he was a victim in Gladstone and Hankard's criminal cases. [J.A. 39 at ¶ 39].

B.

On March 7, 2022, Simon commenced a civil action against BPD and seven police officers, including Gladstone, Hankard, Jenkins, and Vignola (together, "Defendants"). The amended complaint, filed May 31, 2022, alleged violations of his constitutional and civil rights arising from his March 2014 unlawful arrest, charge, and incarceration.

Seven counts are relevant to the instant appeal. Simon brought federal constitutional claims asserting

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[3] Simon also received a probation violation because of the criminal charges initiated against him. Although the criminal charges were dismissed on January 16, Simon remained incarcerated until the probation violation was dismissed. [J.A. 35 ¶ 29.]

civil rights violations under 42 U.S.C. §§ 1983 and 1985 (Counts I and II).[4] He also set forth state-law claims: constitutional violations under the Maryland Declaration of Rights, Article 24 (Count IV); malicious prosecution (Count V); civil conspiracy (Count VI); and malicious use of process (Count VII). Last, he asserted federal racketeering and racketeering conspiracy claims in violation of the Civil Racketeer Influenced and Corrupt Organizations Act ("civil RICO"), 18 U.S.C. § 1961, *et seq*. (Count IX).

Defendants filed four motions to dismiss pursuant to Federal Rules of Civil Procedure 8(a), 12(b)(1), and 12(b)(6). The district court dismissed all seven counts because they were filed outside the statutes of limitations and were therefore time-barred. It determined the claims were subject to three- and four-year statutes of limitations, and that Counts I-V and VII accrued by February 5, 2015, and Counts VI and IX accrued by February 2017, at the latest. J.A. 698–709. The court concluded that by those dates, Simon knew that BPD officers had injured him, that he was released from custody, that the criminal proceedings against him terminated in his favor, and that seven GTTF officers had been publicly indicted on racketeering charges. *See id.*

When ruling on the 12(b)(6) motions to dismiss, the court took judicial notice of documents it considered matters of public record attached as exhibits to the parties' briefing. J.A. 695. However, the court declined

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[4] Under Counts I and II, Simon also asserted a related theory of liability against BPD for unconstitutional officer misconduct undertaken pursuant to a BPD policy, pattern, or practice ("*Monell* liability"). *See Monell v. Dep't of Soc. Services*, 436 U.S. 658, 690 (1978).

to consider hyperlinks and a YouTube video embedded in the complaint. J.A. 694–96.

Simon appeals the dismissal of his claims and the district court's refusal to consider his hyperlinks and embedded media. We have jurisdiction over the final judgment of the district court pursuant to 28 U.S.C. § 1291.

II.

We first address Simon's contention that the district court erred when it declined to consider hyperlinks and a YouTube video embedded in the complaint.

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). We review a district court's decision regarding Rule 8 for an abuse of discretion. *Nemphos v. Nestle Waters N. Am., Inc.*, 775 F.3d 616, 628 (4th Cir. 2015). Here, the district court explained that Simon attempted to "incorporate by reference, via hyperlink, documents spanning more than 1,000 pages into his Complaint" as well as a "YouTube video that spans [92 minutes] in length." J.A. 694–96. It declined to consider those items because the thousands of pages and 92-minute video failed to set forth the claims in a short and plain statement as required by Rule 8(a). *Id.* We conclude that the court did not abuse its discretion because the hyperlinks and video in the complaint contravene foundational pleading standards required under Rule 8.

III.

We next analyze the primary issue on appeal: whether the district court properly dismissed Simon's claims under Rule 12(b)(6) as time-barred by the applicable statutes of limitations.

We review the district court's ruling on a Rule 12(b)(6) motion *de novo*. *Harvey v. Cable News Network, Inc.*, 48 F.4th 257, 268 (4th Cir. 2022). In so doing, we must decide whether the complaint alleges sufficient facts "to raise a right to relief above the speculative level" and "to state a claim that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). The court "accept[s] as true all well-pleaded facts in a complaint and construe[s] them in the light most favorable to the plaintiff." *Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193, 208 (4th Cir. 2017) (citing *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 422 (4th Cir. 2015)).

When ruling on a 12(b)(6) motion, courts are limited to considering the sufficiency of the allegations set forth in the complaint and the "documents attached or incorporated into the complaint." *Kolon Indus., Inc.*, 637 F.3d at 448 (citing *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007)). If 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." Fed. R. Civ. P. 12(d). But a court may properly take judicial notice of matters of public record without converting a 12(b)(6) motion to dismiss into a motion for summary judgment. *See Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (citing *Hall v. Virginia*, 385 F.3d 421, 424 (4th Cir. 2004)).

Normally, the court does not "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses" at this stage. *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016) (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999)). But when it appears clearly on the face of the complaint that the statute of limitations period

has run, a defendant may properly assert a limitations defense through a Rule 12(b)(6) motion to dismiss. *See Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007) (quoting *Richmond, Fredericksburg & Potomac R.R. Co. v. Forst*, 4 F.3d 244, 250 (4th Cir. 1993)).

A.

We now consider whether Simon's claims are time-barred by the applicable statutes of limitations. Defendants assert that Simon's claims all accrued no later than February 5, 2015, when Simon was released from prison and the charges against him had been dismissed—more than seven years before Simon filed this lawsuit. Other than the civil RICO claim, which is subject to a four-year statute of limitations, the rest of Simon's claims are governed by Maryland's three-year statute of limitations and are therefore time-barred.

Simon argues that the clock began to run after he was put on inquiry notice, when: (1) Gladstone pled guilty in 2019; (2) the DOJ notified Simon in March 2019 that he was one of Gladstone's victims; and (3) the DOJ notified Simon in February 2020 that he was one of Hankard's victims. In the alternative, Simon argues that the limitations clocks were equitably tolled.

1.

We begin by reviewing the statutes of limitations that apply to Simon's claims.

To determine the statutes of limitations for Simon's claims asserted under 42 U.S.C. §§ 1983 and 1985 (Counts I and II), this court borrows the applicable statute of limitations period from the "most analogous state-law cause of action." *Owens v. Balt. City State's Att'y's Office*, 767 F.3d 379, 388 (4th Cir. 2014) (citing

42 U.S.C. § 1988(a)). Suits filed under §§ 1983 and 1985 are most analogous to personal injury actions, *id.* (citing *Owens v. Okure*, 488 U.S. 235, 249–50 (1989)), which in Maryland are subject to a three-year statute of limitations. *Id.* (citing Md. Code Ann., Cts. & Jud. Proc. § 5–101).

As to Simon's other Maryland state law claims, they are subject to the same three-year statute of limitations. In Maryland, "[a] civil action . . . shall be filed within three years from the date it accrues unless another provision of the Code provides" otherwise. Md. Code Ann., Cts. & Jud. Proc. § 5–101. The same limitations period applies to constitutional violations brought under the Maryland Declaration of Rights for which "no other provision of the Code provides a different period of time for an action." *Davidson v. Koerber*, 454 F. Supp. 1256, 1260 (D. Md. 1978) (applying three-year statute of limitations to Article 23 action); *Rich v. Hersl*, Civil Action No. ELH-20-488, 2021 WL 2589731, at *12 (D. Md. June 24, 2021) (citing Md. Code Ann., Cts. & Jud. Proc. § 5–101) (applying three-year statute of limitations to Article 24 action). In sum, the three-year statute of limitations applies to all other counts except for the civil RICO and civil RICO conspiracy claims (Count IX), for which the applicable statute of limitations is four years. *See CVLR Performance Horses, Inc. v. Wynne*, 792 F.3d 469, 476 (4th Cir. 2015).

2.

Next, we set forth guidance for calculating the accrual date of Simon's claims under federal and state law. The accrual dates of Counts I, II, and IX (the §§ 1983 and 1985 and civil RICO claims) are governed

by federal law,[5] while the accrual dates of Counts IV, V, VI, and VII (the Maryland Declaration of Rights, malicious prosecution, civil conspiracy, and malicious use of process claims) are governed by Maryland law.

i.

Under federal law, an accrual analysis begins with identifying "the specific constitutional right" alleged to have been infringed, and then "referring to the common-law principles governing analogous torts." *McDonough*, 588 U.S. at 115–16 (citing *Wallace v. Kato*, 549 U.S. 384, 388 (2007)). The date of accrual occurs "when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal [the] cause of action." *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951, 955 (4th Cir. 1995) (en banc) (citing *United States v. Kubrick*, 444 U.S. 111, 122–24 (1979)).

Put another way, under the "discovery rule," a cause of action accrues when the plaintiff has "actual or constructive knowledge of his or her claim." *Parkway 1046, LLC v. U.S. Home Corp.*, 961 F.3d 301, 307 (4th Cir. 2020) (citing *Thorn v. Jefferson-Pilot Life Ins.*, 445 F.3d 311, 320 (4th Cir. 2006)). Once a plaintiff obtains knowledge "that he has been hurt and who inflicted the injury . . . the plaintiff is on inquiry notice, imposing on him a duty to inquire about the details of [the offense] that are reasonably discoverable." *Nasim*, 64 F.3d at 955 (citing *Kubrick*, 444 U.S. at 123). However, "[w]here . . . a particular claim may not

[5] Although Simon's §§ 1983 and 1985 claims are governed by the Maryland statute of limitations, "the time at which a § 1983 [or § 1985] claim accrues 'is a question of federal law.'" *McDonough v. Smith*, 588 U.S. 109, 115 (2019); *see also Cox v. Stanton*, 529 F.2d 47, 50 (4th Cir. 1975) ("The time of accrual of a civil rights action is a question of federal law.").

realistically be brought while a violation is ongoing, such a claim may accrue at a later date." *McDonough*, 588 U.S. at 115 (citing *Wallace*, 549 U.S. at 389).

ii.

Maryland law is largely consistent with federal law on accrual. *Burley v. Baltimore Police Dep't*, 422 F. Supp. 3d 986, 1018 (D. Md. 2019). Under Maryland's discovery rule, "a cause of action accrues only when the claimant knows or should know of the wrong." *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 445 (2000).

Applying Maryland's "discovery rule involves a two-prong test." *State Auto. Mut. Ins. v. Lennox*, 422 F. Supp. 3d 948, 964 (D. Md. 2019). "[T]he first prong, 'sufficiency of the actual knowledge to put the claimant on inquiry notice,' concerns 'the nature and extent of actual knowledge necessary to cause an ordinarily diligent plaintiff to make an inquiry or investigation that an injury has been sustained.'" *Id.* (quoting *Georgia-Pacific Corp. v. Benjamin*, 904 A.2d 511, 528–29 (Md. 2006)). Constructive knowledge is not enough. Rather, the plaintiff must have express knowledge from "sources 'cognizant of the fact[s]'" or implied notice, meaning "knowledge sufficient to prompt a reasonable person to inquire further." *Benjamin*, 904 A.2d at 529 (citations omitted). "The second prong, 'the sufficiency of the knowledge that would have resulted from a reasonable investigation,' requires that after a reasonable investigation of facts, a reasonably diligent inquiry would have disclosed whether there is a causal connection between the injury and the wrongdoing." *Lennox*, 422 F. Supp. at 964 (quoting *Benjamin*, 904 A.2d at 529).

B.

Simon's claims can be divided into two groups based on the source of their underlying harm.

The first group of claims, composed of Counts I, II, IV, V, and VII, arose from the chain of events beginning with his March 26, 2014, arrest and his February 5, 2015, release from custody. We conclude that these counts accrued no later than February 5, 2015. On that date, Simon knew that the alleged basis for his arrest—possession of a gun—was faulty because he knew that he did not possess the gun. He had some knowledge of the names of the GTTF officers who unlawfully arrested him because they filed a false statement of probable cause justifying the arrest. And he knew all criminal proceedings brought against him were terminated in his favor on January 16, 2015. Under both state and federal discovery rules, Simon thus had express knowledge of his injury, which was sufficient to put him on inquiry notice of the officers' wrongdoing, and so the statute of limitations began to toll.[6] *See Nasim*, 64 F.3d at 955; *Benjamin*, 904 A.2d at 529.

The second group of claims, composed of Counts VI and IX, were grounded in the officers' alleged conspiracy and racketeering. On March 1, 2017, seven

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[6] Simon thinks Gladstone's 2019 plea agreement and the victim rights letters he received in March 2019 and February 2020 were necessary for him to discover his claims. But the accrual of the statute of limitations does not begin when a plaintiff has actual knowledge of the "full extent of the injury." *Wallace*, 549 U.S. at 391. It requires only "sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action," *Nasim*, 64 F.3d at 955, which it is clear Simon possessed by February 5, 2015, from the face of the amended complaint. *See Forst*, 4 F.3d at 250.

GTTF officers (including Jenkins) were arrested on federal racketeering charges, among others. When the officers were arrested, Simon was already aware of his injury and its source. *See Nasim*, 64 F.3d at 955 (citing *Kubrick*, 444 U.S. at 123). Because he was thus on inquiry notice, Simon had "a duty to inquire about the details of [the offense] that were reasonably discoverable." *Id.* At that point, based on the officers' arrest and extensive news coverage thereof, Simon had constructive knowledge of his claim. *See Parkway*, 961 F.3d at 307 (*citing Thorn*, 445 F.3d at 320). Though this constructive knowledge did not suffice to start the clock on his Maryland civil conspiracy claim, *see Benjamin*, 904 A.2d at 529, it did suffice for his federal RICO claims. *See Parkway*, 961 F.3d at 307. Thus, on March 1, 2017, the statute of limitations for Simon's civil RICO claim, at least, began to toll.

Of all Simon's claims, his civil RICO claim under Count IX stands the greatest chance of surviving Defendants' statute of limitations defense. Count IX is both subject to the longer statute of limitations—four years—and the later accrual date—March 1, 2017. But even Count IX is time-barred. Simon filed his original complaint on March 7, 2022, over a year after his civil RICO claim had expired under the four-year statute of limitations. Because Count IX is time-barred, so too are the rest of Simon's claims with shorter statutes of limitations and earlier accrual dates.

C.

Last, we address Simon's argument that equitable tolling and fraudulent concealment paused the limitations clocks such that his claims are not time-barred.

The Supreme Court set forth a two-part test to determine whether a plaintiff is entitled to equitable

tolling of a statute of limitations. A plaintiff must show: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 256 (2016) (quoting *Holland v. Florida*, 560 U.S. 631, 649 (2010)). This court has set forth a separate three-step test for determining whether a plaintiff is entitled to relief from a limitations period based on fraudulent concealment. In those cases, a plaintiff is required to show: (1) the defendant fraudulently concealed the facts underlying the claim, and that (2) the plaintiff failed to discover those facts within the statutory period, despite (3) the "exercise of due diligence." *Pocahontas Supreme Coal Co. v. Bethlehem Steel Corp.*, 828 F.2d 211, 218 (4th Cir. 1987) (citing *Weinberger v. Retail Credit Co.*, 498 F.2d 552, 555 (4th Cir. 1974)).

Simon does not set forth any allegation that Defendants fraudulently concealed facts underlying his claims, nor does he allege that he diligently investigated whether he had a cause of action after he was released from incarceration on February 5, 2015. Instead, to support his arguments on appeal, Simon invites us to consider a massive number of documents via hyperlink embedded in the complaint along with exhibits attached to the parties' briefing. The documents include a six-hundred-page investigative report on the corruption within the GTTF, prior lawsuits and court documents detailing one or more of Defendants' misconduct, and related news articles. J.A. 17–60, 337–588. Although not dispositive of the tolling issues, these documents generally indicate that the corruption within the GTTF was highly publicized and documented in public records, not concealed. Thus, Simon's suggestion that he could not have fully

discovered his individual claims without knowledge of these broader allegations of misconduct is misplaced.

VI.

While we are disturbed by the egregious civil rights violations alleged against Defendants, we are bound to apply the applicable statutes of limitations and accrual requirements to Simon's claims. Application of these rules compels the conclusion that Simon's claims were filed outside the applicable statutes of limitations periods, are not subject to tolling, and are time-barred. The district court's dismissal of Simon's amended complaint is therefore affirmed.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. 1:22-cv-00549-JRR

SIMON GLADSTONE,

Plaintiff,

v.

KEITH GLADSTONE, *et al.*,

Defendants.

MEMORANDUM OPINION

This matter comes before the court on Defendants Baltimore Police Department ("BPD"), Dean Palmere, and Ryan Guinn's (collectively the "BPD Defendants") Motion to Dismiss Plaintiff's First Amended Complaint (ECF No. 16; the "BPD Motion"); Defendant Carmine Vignola's Motion to Dismiss Plaintiff's First Amended Complaint (ECF No. 44; the "Vignola Motion"); Defendants Sean Miller, Benjamin Frieman, Robert Hankard, and Wayne Jenkins' (collectively the "Individual Defendants") Motion to Dismiss, or in the Alternative, for Summary Judgment (ECF No. 45; the "Ind. Defs. Motion"); and Defendant Keith Gladstone's Motion to Dismiss (ECF No. 46; the "Gladstone Motion"). The court will refer to all Defendants collectively as "Defendants." The parties' submissions have been reviewed and no hearing is necessary. Local Rule 105.6 (D. Md. 2021). For the reasons that follow, by accompanying order, the BPD Motion, Vignola

Motion, Ind. Defs. Motion, and Gladstone Motion (collectively the "Motions") shall be granted and the Complaint dismissed with prejudice.

I. BACKGROUND[1]

On March 7, 2022, Plaintiff filed a Complaint against Defendants arising out of his 2014 arrest, subsequent charges and detainment. (ECF No. 1.) Plaintiff filed an Amended Complaint on May 31, 2022. (ECF No. 11; the "Complaint.") At all times relevant to the Complaint, each of the individual Defendants was a BPD officer and member of its notorious Gun Trace Task Force ("GTTF"). Plaintiff alleges that on March 26, 2014, the individual officer Defendants pursued Plaintiff without probable cause; planted a "realistic-looking BB-gun"[2] on the scene to justify the pursuit; and authored and submitted a false statement of probable cause.[3] (ECF No. 11, ¶¶ 26-27, 29, 32 and 35.) Based on these bad acts, Plaintiff was taken into custody, and falsely charged with various criminal offenses, which resulted and formed the basis of violation of probation ("VOP") charges brought against Plaintiff due to his criminal history. *Id.* ¶¶ 29, 35. All charges related to the 2014 arrest were disposed of by *nolle prosequi* on January 16, 2015; Plaintiff remained

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[1] For purposes of this memorandum, the court accepts as true the well-pled facts set forth in the Amended Complaint.

[2] *United States v. Keith Gladstone*, Case No. CCB-19-094 (D. Md. 2019), stipulation of facts set forth during Defendant Gladstone's guilty plea.

[3] The Complaint, at times, sets forth which of the individual Defendants is alleged to have done certain discrete acts (*e.g.*, Defendant Jenkins authored the false statement of probable cause). For purposes of setting forth the Background of the action, these individualized allegations are not material.

in custody until the VOP charges were dismissed on February 5, 2015. *Id.*

The Complaint contains nine counts:[4] Violation of 42 U.S.C. § 1983 – Malicious Prosecution, Malicious Use of Process, Unlawful Search and Seizure, Intimidation, False Arrest, False Imprisonment, Civil Rights Violations, Civil Conspiracy, Aider & Abettor Liability, Retaliation, Supervisory Liability, Failure to Supervise, Negligent Hiring, Negligent Training, Negligent Retention, Unconstitutional Customs and Practices under *Monell*, and Violations of 4th and 14th Amendments to the United States Constitution against all Defendants, with exception of the *Monell* claim which applies only to BPD (Count I); Violation of 42 U.S.C. § 1985 – Malicious Prosecution, Malicious Use of Process, Unlawful Search and Seizure, Intimidation, False Arrest, False Imprisonment, Civil Rights Violations, Civil Conspiracy, Aider & Abettor Liability, Retaliation, Supervisory Liability, Failure to Supervise, Negligent Hiring, Negligent Training, Negligent Retention, Unconstitutional Customs and Practices under *Monell*, and Violations of 4th and 14th Amendments to the United States Constitution against all Defendants, with exception of the *Monell* claim which applies only to BPD (Count II); Violation

[4] More specifically, the Complaint describes Plaintiff's claims under 9 categories referred to as "Counts." Counts I and II are fashioned as a laundry list of sections 1983 and 1985 claims – each of which has its own elements under the applicable law. Further, Counts I and II aver that each of asserted violation of 42 U.S.C. §§ 1983 and 1985 is lodged against "All Defendants, with Exception *Monell* Claim Only Applies to Defendant Baltimore City Police Department." This monolithic pleading frustrates the court's (and Defendants') evaluation of Plaintiff's claims and illustrates well the reason for Rule 8, which Plaintiff's pleading violates. FED. R. CIV. P. 8.

of 42 U.S.C. § 1988 – Proceedings in Vindication of Civil Rights (Count III); Violation of Maryland Declaration of Rights, Article 24 against all Defendants (Count IV); Malicious Prosecution against all Defendants (Count V); Civil Conspiracy against all Defendants (Count VI); Malicious Use of Process against all Defendants (Count VII); Vicarious Liability by Baltimore City Police Department through *Respondeat Superior* (Count VIII); and Civil Racketeer Influenced and Corrupt Organizations Act (Civil RICO) and Conspiracy to Violate Civil RICO, 18 U.S.C. §§1961, *et seq*., against all Defendants (Count IX). Plaintiff requests (1) compensatory and punitive damages; (2) interest; (3) attorney's fees; (4) costs; and (5) treble damages, attorney's fees, interest, and costs for the civil RICO claims. (ECF No. 11, p. 42.)

The BPD Defendants move to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 8(a), 12(b)(1), and 12(b)(6) on the grounds that: (1) Plaintiff's Complaint is an impermissible "shotgun pleading;" (2) BPD enjoys sovereign immunity against Plaintiff's state claims; (3) Plaintiff's claims are time barred by the applicable statutes of limitation; and 4) the Complaint fails to state a cognizable claim for relief. (ECF No. 16-1, pp. 2, 5.) The Individual Defendants, Defendant Vignola, and Defendant Gladstone move to dismiss the Complaint pursuant to Rules (12)(b)(1) and 12(b)(6) on the same grounds as the BPD Defendants.[5] Accordingly, for efficiency and clarity, the court addresses the BPD Motion, which by reference

[5] Defendants Vignola and Gladstone adopt and incorporate the BPD Motion in their respective motions. (ECF Nos. 44-1 at 5, 46-1 at 8 n.1.) Although the Individual Defendants do not expressly adopt and incorporate the BPD Motion, they raise the same arguments.

extends to all pending motions; the court will expressly refer to the non-BPD motions where appropriate.

II. LEGAL STANDARDS

A. Federal Rule of Civil Procedure 12(b)(1)

"Rule 12(b)(1) of the Federal Rules of Civil Procedure authorizes dismissal for lack of subject matter jurisdiction." *Barnett v. United States*, 193 F. Supp. 3d 515, 518 (D. Md. 2016). "The plaintiff bears the burden of proving, by a preponderance of evidence, the existence of subject matter jurisdiction." *Mayor & City Council of Balt. v. Trump*, 416 F. Supp. 3d 452, 479 (D. Md. 2019). Subject matter jurisdiction challenges may proceed in two ways: a facial challenge or a factual challenge. *Id.* A facial challenge asserts "that the allegations pleaded in the complaint are insufficient to establish subject matter jurisdiction." *Id.* A factual challenge asserts "that the jurisdictional allegations of the complaint [are] not true." *Id.* (quoting *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009)). "In a facial challenge, 'the facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction.'" *Trump*, 416 F. Supp. 3d at 479 (quoting *Kerns*, 585 F.3d at 192 (instructing that in a facial challenge to subject matter jurisdiction the plaintiff enjoys "the same procedural protection as . . . under a Rule 12(b)(6) consideration.")). "[I]n a factual challenge, 'the district court is entitled to decide disputed issues of fact with respect to subject matter jurisdiction.'" *Id.*

BPD asserts a facial subject matter jurisdiction challenge. BPD argues that the court lacks subject matter jurisdiction over Plaintiff's state law claims because the Complaint fails to allege facts that, if true,

destroy BPD's sovereign immunity. Accordingly, BPD's 12(b)(1)-based challenge will be evaluated in accordance with the procedural protections afforded under Rule 12(b)(6), which is to say that the facts alleged in the Complaint will be taken as true per *Trump* and *Kerns*.

B. Federal Rules of Civil Procedure 8(a) and 12(b)(6)

Pursuant to Rule 8(a), "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a). "In 2007, the Supreme Court of the United States set forth a new standard to be applied in assessing whether, under Rule 8(a)(2), a claim was articulated sufficiently to permit a court to conclude that, if its allegations were proved, relief could be granted. In so doing, the Supreme Court retired the standard of sufficiency under Rule 8(a)(2) that was set in *Conley v. Gibson*, 355 U.S. 41, [] (1957)." *Macronix Int'l Co., Ltd. V. Spansion, Inc*., 4 F. Supp. 3d. 797, 799 (E.D. Va. 2014). The *Conley* Court explained the requirements for a legally sufficient complaint as follows:

> The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' [citing Rule 8(a)(2)] that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this.

Conley v. Gibson, 355 U.S. at 48.

"In *Twombly*,[6] the Court changed significantly how the legal sufficiency of a claim is to be measured when it is attacked under Rule 12(b)(6). As one eminent scholar of federal civil procedure has said of *Twombly*: 'Notice pleading is dead. Say hello to plausibility pleading.'" *Macronix*, 4 F. Supp. 3d at 799-800 (quoting A. Benjamin Spencer, *Plausibility Pleading*, 49 B.C. L. REV. 431, 431-32 (2008)). The "liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2) has been decidedly tightened (if not discarded) in favor of a stricter standard requiring the pleading of facts painting a 'plausible' picture of liability." *Id.; see also Nemet Chevrolet, Ltd. V. Consumeraffairs.com, Inc.*, 591 F.3d 250, 262 (4th Cir. 2009) (Jones, J., concurring in part, dissenting in part, and remarking that "*Twombly* and *Iqbal*[7] announce a new, stricter pleading standard.")

A motion asserted under Rule 12(b)(6) "tests the legal sufficiency of a complaint." It does not "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Presley v. Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006) (quoting *Edwards v. Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999)). Accordingly, a "Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Edwards*, 178 F.3d at 244 (citing *Republican Party v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992)). The court, however, is ". . . not required

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[6] *Bell Atl. Corp., v. Twombly,* 550 U.S. 544 (2007).

[7] *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

to accept as true the legal conclusions set forth in a plaintiff's complaint." *Id.* (citing *District 26, United Mine Workers of Am., Inc. v. Wellmore Coal Corp*., 609 F.2d 1083, 1085 (4th Cir. 1979)).

III. ANALYSIS

A. Consideration of Exhibits

As an initial matter, the court addresses its consideration of exhibits provided by the parties. The BPD Defendants attach five exhibits to their motion: Exhibit 1 – 2006 complaint, *Burgess v. Jenkins, et al*., Circuit Court for Baltimore City, Case No. 24-C-06-005375 (ECF No. 16-3; the "Burgess Compl."); Exhibit 2 – 2009 complaint, *Smith v. Baltimore City Police Department, et al*.; Circuit Court for Baltimore City, Case No. 24-C-09-008259 (ECF No. 16-4; the "Smith Compl."); Exhibit 3 – Excerpt of January 5, 2018, Guilty Plea Hearing Transcript; *United States of America v. Wayne Jenkins*; Criminal Case No. CCB-17-106/CCB-17-638 (ECF No. 16-5; the "Jenkins Hr'g Tr."); Exhibit 4 – Excerpt of January 23, 2018, Trial Testimony of Maurice Ward; *United States of America v. Daniel Hersl and Marcus Taylor*; Criminal Case No. CCB-17-106 (ECF No. 16-6; "Ward Trial Test."); and Exhibit 5 – Excerpt of January 29, 2018, Trial Testimony of Evodio Hendrix; *United States of America v. Daniel Hersl and Marcus Taylor*; Criminal Case No. CCB-17-106 (ECF No. 16-7; "Hendrix Trial Test."). The Individual Defendants also attach the Jenkins Compl., Smith Compl., Ward Trial Test., and Hendrix Trial Test. to their motion. (ECF Nos. 45-2 – 45-5.)

Plaintiff attempts to incorporate by reference, via hyperlink, documents spanning more than 1,000 pages into his Complaint. (ECF No. 11, ¶¶ 2a – c.) Additionally, the Complaint includes and cites (by

hyperlink) a YouTube video that spans 1:32:49 in length. *Id.* ¶¶ 37, 60. Plaintiff also attaches ten physical exhibits to his Opposition – Exhibit A – Gladstone Materials (ECF No. 72-1); Exhibit B – Relevant News Articles (ECF No. 72-2); Exhibit C – Hankard Materials (ECF No. 72-3); Exhibit D – Vignola Materials (ECF No. 72-4); Exhibit E – Guinn Depo Excerpt (ECF No. 72-5); Exhibit F – Burley Decision with Cover (ECF No. 72-6); Exhibit G – Excerpt of *Richards v. Vignola* (EF No. 72-7); Exhibit H – *Johnson v. BPD* Decision (ECF No. 72-8); Exhibit I – *Bowles v. Hersl* Excerpt (ECF No. 72-9); and Exhibit J – *Rich v. Hersl* Excerpt (ECF No. 72-10).

In ruling on a motion to dismiss pursuant to Rule 12(b)(6),[8] a court usually does not consider evidence outside of the complaint. A court may consider documents attached to a motion to dismiss if the document is "integral to and explicitly relied on in the complaint and [if] the plaintiffs do not challenge its authenticity." *Am. Chiropractic Ass'n, Inc. v. Trigon Healthcare Inc.*, 367 F.3d 212, 234 (4th Cir. 2004) (quoting *Phillips v. LCI Int'l Inc.*, 190 F.3d 609, 618 (4th Cir. 1999)). "An integral document is a document that by its 'very existence, and not the mere information it contains, gives rise to the legal rights asserted.'" *Chesapeake Bay Found. Inc. v. Severstal Sparrows Point, LLC*, 794 F. Supp. 2d. 602, 611 (D. Md. 2011) (quoting *Walker v. S.W.I.F.T. SCRL*, 517 F. Supp. 2d 801, 806 (E.D. Va. 2007)). "In addition to integral and authentic exhibits, on a 12(b)(6) motion the court 'may properly take judicial notice of matters of public

[8] As set forth earlier, the court will treat BPD's 12(b)(1) motion as a 12(b)(6) motion for procedural purposes because it raises a facial challenge.

record.'" *Id.* (quoting *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)).

Each of the BPD Defendants' attached exhibits is a document from a previous case involving one or more Defendants to this action. Accordingly, the documents are matters of public record, of which the court may take judicial notice without converting the pending motions to dismiss into motions for summary judgment.[9]

With respect to the hyperlinked documents and YouTube video referenced in the Complaint, the court will not consider that material in adjudicating the Motions. Plaintiff would have the court assess in excess of 1,000 pages of documents, a 43-page Complaint, and a 90-plus minute video to determine whether his claims survive a dismissal challenge. This task the court declines to undertake. *See Plumhoff v. Cent. Mortg. Co.*, 286 F. Supp. 3d 699, 704 (D. Md. 2017) (quoting *Belanger v. BNY Mellon Asset Mgmt., LLC*, 307 F.R.D. 55, 58 (D. Mass. 2015)) (remarking that "the complaint is 'way too long, detailed and verbose for either the Court or the defendants to sort out the nature of the claims or evaluate whether the claims are actually supported by any comprehensible factual basis.'"); *see also Hosley v. Collins* 90 F.R.D. 122, 123

[9] The Ind. Defs. Motion is a motion to dismiss or in the alternative for summary judgment. The Individual Defendants assert that, to the extent the court determines that considering any the reference articles turns the motion to dismiss into one for summary judgment, they are entitled to judgment as a matter of law on all claims pursuant to Federal Rule of Civil Procedure 56. As set forth above, the court may, and does here, take judicial notice of matters of public record which includes any referenced articles in the Ind. Defs. Motion. Accordingly, the court will not convert the motion to dismiss into one for summary judgment.

(D. Md. 1981) (quoting *DeFina v. Latimer*, 79 F.R.D. 5, 7 (E.D.N.Y. 1977) (holding that "[t]he instant complaint ... (which) places an unjustifiable burden on defendants to determine the nature of the claim against them and to speculate on what their defenses might be, and which imposes a similar burden on the court to sort out the facts now hidden in a mass of charges, arguments, generalizations and rumors, violates the [FED. R. CIV. P. 8] . . ., and is subject to dismissal.")[10]

With respect to the exhibits attached to Plaintiff's Opposition, contained in Exhibits A through J, Plaintiff groups many (often voluminous) documents in each exhibit, without regard to their individuality or asserted individual significance, and tends to make general, wholesale reference to an entire grouping of exhibits without reference to a particular document. (*See, e.g.*, "See Attachment 'A.'" at page 16 n.4 of the Opposition.) Upon review of Plaintiff's exhibits, the documents appear to the court all to be within the public record, *i.e.*, court records, news articles, and the like; the court will, therefore, take judicial notice of those documents. In view of the *en masse* presentation of Plaintiff's exhibits, the court is unequipped to itemize them in a manner more detailed than is described herein.

B. 12(b)(1) Motion - Sovereign Immunity

In addition to Defendants' chief argument that Plaintiff's claims are time barred, BPD argues that it

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[10] Although the Complaint is subject to dismissal for violation of Rule 8, the typical "remedy for noncompliance with Rule 8(a) is dismissal with leave to amend." *Plumhoff,* 286 F. Supp. 3d at 704. As discussed *infra*, the Complaint will be dismissed with prejudice on other grounds, foreclosing amendment of the Complaint.

is immune from liability for all of Plaintiff's state and common law claims. (ECF No. 16-1, p. 20.) A finding that BPD enjoys sovereign immunity would present a jurisdictional bar to the court's adjudicative authority on Plaintiff's state and common law claims against BPD. Therefore, the court will address BPD's unique sovereign immunity defense before addressing the question of whether Plaintiff's claims are time barred as against all Defendants. *See Cunningham v. General Dynamics Info. Tech*., 888 F.3d 640, 649 (4th Cir. 2018) (holding that "[s]overeign immunity deprives federal courts of jurisdiction to hear claims, and a court finding that a party is entitled to sovereign immunity must dismiss the action for lack of subject-matter jurisdiction.") (quoting *Ackerson v. Bean Dredging LLC*, 589 F.3d 196, 207 (5th Cir. 2009)).

Because sovereign immunity is akin to an affirmative defense, BPD bears the burden of demonstrating that it is shielded by sovereign immunity. *Hutto v. S.C. Ret. Sys*., 773 F.3d 536, 543 (4th Cir. 2014). BPD argues that, to the extent Counts IV, V, VI, and VII assert state law causes of action, they fail as a matter of law as against BPD and must be dismissed. (ECF No. 16-1 at 20.) The BPD "exists as an agency of the State, and therefore enjoys the common law sovereign immunity from tort liability of a State agency." *Baltimore Police Dep't v. Cherkes*, 140 Md. App. 282, 313 (2001). "[T]he State of Maryland and state agencies are generally immune from suits, unless the immunity has been waived by the General Assembly." *Maryland-National Capital Park & Planning Com. V. Kranz*, 308 Md. 618, 622 (1987).

Count IV asserts violations of Article 24 of the Maryland Declaration of Rights; Count V asserts a claim for malicious prosecution; Count VI asserts a

claim for civil conspiracy; and Count VII asserts a claim for malicious use of process. (ECF No. 11.) These claims are asserted against all Defendants. Count IV is a state constitutional claim and Counts V through VII present state common law tort claims. To the extent these claims are asserted against BPD, it enjoys sovereign immunity. The BPD Motion will be granted as to BPD on Counts IV through VII on the basis of sovereign immunity.

C. 12(b)(6) Motion – Statutes of Limitation

Plaintiff filed his original Complaint on March 7, 2022. (ECF No. 1.) As set forth in more detail below, Defendants argue that all of Plaintiff's claims are barred by the applicable statute of limitations and that no tolling basis exists. (ECF No. 16-1 at 7.) Plaintiff counters that his claims accrued on March 18, 2019, when he received a letter from the Department of Justice advising him that he was a "victim of Officer Gladstone and others" and, therefore, that none of his claims is time barred. (ECF No. 72-12 at 4-5.)

Normally, at this stage, the court does not "'resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.'" *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016) (citation omitted). "[I]n the relatively rare circumstances where facts sufficient to rule on an affirmative defense are alleged in the complaint, the defense may be reached by a motion to dismiss filed under Rule 12(b)(6)." *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007) (*en banc*). "Because Rule 12(b)(6) 'is intended [only] to test the legal adequacy of the complaint,' '[t]his principle only applies . . . if all facts necessary to the affirmative defense clearly appear[ ] on the face of the complaint.'" *Rich v. Hersl*, 2021 U.S. Dist. LEXIS 118098 *17 (D. Md. Jun. 24, 2021) (quoting *Richmond*,

Fredericksburg & Potomac R.R. Co. v. Forst, 4 F.3d 244, 250 (4th Cir. 1993) and *Goodman*, 494 F.3d at 464) (citations omitted). The court is satisfied that all fact necessary to determine whether Plaintiff's claims are time barred appear on the face of the Complaint, and therefore, the court will rule on Defendants' challenge that the Complaint is time barred in its entirety.

1. Federal Civil Rights Claims – Counts I and II

"It is well-settled that sections 1983 and 1985 borrow the state's general personal injury limitations period." *Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180, 187 (4th Cir. 1999). In Maryland "[a] civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." MD. CODE ANN., CTS. & JUD. PROC. § 5-101. Accordingly, Plaintiff's constitutional claims are subject to a three-year statute of limitations.[11]

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[11] According to the titles of Counts I and II, each of these counts purports to state no fewer than 18 separate "causes of action" under sections 1983 and 1985, respectively, as against all Defendants, with the exception of Plaintiff's *Monell* claim, which "Only Applies to Defendant Baltimore City Police Department." (ECF No. 11 at pp. 26 and 32.) For purposes of resolving the timeliness challenge, the court need not undertake analysis of whether the Complaint adequately states each of the constitutional claims listed in the titles to Counts I and II; nor does the court need to identify and recite the elements of each identified cause of action. Rather, as all claims asserted under sections 1983 and 1985 are subject to Maryland's 3-year limitations period, the court will evaluate the limitations challenge based on the well-pled factual allegations of the Complaint that, in turn, form the basis for all claims asserted through Counts I and II.

"Although courts look to state law for the length of the limitations period, the time at which a §1983 [or §1985] claim accrues 'is a question of federal law,' 'conforming in general to common-law tort principles.'" *McDonough v. Smith*, 139 S. Ct. 2149, 2155 (2019) (quoting *Wallace v. Kato*, 549 U.S. 384, 388 (2007)). "That time is presumptively when the plaintiff has a complete and present cause of action, though the answer is not always so simple." *Id.* (internal citations and quotations omitted). "Where, for example, a particular claim may not realistically be brought while a violation is ongoing, such a claim may accrue at a later date." *Id.* (citing *Wallace*, 549 U.S. at 389).

With respect to Plaintiff's federal civil rights claims the "accrual analysis begins with identifying 'the specific constitutional right' alleged to have been infringed," *McDonough*, 139 S. Ct. at 2155 (quoting *Manuel v. City of Joliet*, 580 U.S. 357 (2017)). Plaintiff alleges his 1983 and 1985 claims are based on violations of the Fourth and Fourteenth Amendments of the United States Constitution. (ECF No. 11.) Accordingly, the court must determine when Plaintiff was on inquiry notice regarding Defendants' alleged violations of Plaintiff's Fourth and Fourteenth Amendment rights as described in the Complaint.

A plaintiff's constitutional claim accrues once he has "actual or constructive knowledge of his [] claim." *Parkway 1046, LLC v. U.S. Home Corp.*, 961 F.3d 301, 307 (4th Cir. 2020). Stated differently, a plaintiff's claim accrues when he has or should have "possession of the critical facts that he has been hurt and who has inflicted the injury." *United States v. Kubrick*, 444 U.S. 111, 122 (1979); *see also Rich v. Hersl*, 2021 U.S. Dist. LEXIS 118098 *22 (D. Md. Jun. 24, 2021) (holding that "[t]he date of accrual occurs 'when the plaintiff

possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action.'") (quoting *Nasim v. Md. House of Correction*, 64 F.3d 951, 955 (4th Cir. 1995) (*en banc*)). Claim accrual does not require notice or knowledge of all underlying facts, but rather only "sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action." *Nasim*, 64 F.3d at 955. Therefore, once a plaintiff has knowledge "that he has been hurt and who inflicted the injury . . . the plaintiff is on inquiry notice, imposing on him a duty to inquire about the details of [the offense] that are reasonably discoverable." *Id.*[12]

The Complaint alleges:

> 49. Plaintiff also suffered the following injuries and damages arising under the United States Constitution.
>
> a. Violation of constitutional rights under the Fourth Amendment to the United States Constitution to be free from unreasonable search and seizure;

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[12] Plaintiff defends the Motions on the basis that he did not know the identity of the individual Defendant officers until the February 2017 indictments of the GTTF defendants became well-publicized in March 2017. (ECF No. 72-12 at 13.) This argument is unavailing. *Gross v. Hopkins,* 2021 WL 978822, *4 (D. Md. March 15, 2021); *Conaway v. State*, 90 Md. App. 234, 252-53 (1992); *Estate of Knight,* 182 F.3d 908, 1999 WL 390987, *3-*4 (4th Cir. 1999); *see also,* Section III(C)(7), *infra*, regarding Plaintiff's civil RICO claims. Knowledge that BPD officers were responsible for his harms (whether on the date of his arrest or his release from custody)time provided Plaintiff ample notice of the identity of the wrongdoers such that he was on notice to investigate and pursue his claims well before the indictments were publicized and well before his claims were time barred.

b. Violation of constitutional rights under the Fourteenth Amendment to due process of law, and equal protection of the law, as applied to the States.

50. The actions of the Defendants violated the clearly established and well-settled federal constitutional rights of Plaintiff Demetric Simon, including as follows.

a. Freedom from unreasonable searches and seizures of his person and personal property;

b. Freedom from searches and seizures of person and personal property without probable cause;

c. Freedom from prosecution of criminal charges lacking probable cause to support them;

d. Freedom from prosecution of criminal charges as retaliation for and defeat the possibility of administrative review of police misconduct, and scrutiny for a civil lawsuit for personal injury damages, against the tortfeasors and Baltimore City Police Department;

e. By deliberately failing to disclose the foregoing misconduct, the Defendant Officers violated their clearly established duty to report all material exculpatory and impeachment information to prosecutors;

f. Without the Defendant Officers' misconduct, the prosecution of Demetric Simon could not and would not have been pursued. This resulted in the unjust and wrongful incarceration of Plaintiff Simon, in viola-

> tion of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(ECF No. 11 ¶¶ 49-50.)

Because Plaintiff filed his original Complaint on March 7, 2022, Defendants argue, and the court agrees, that for Plaintiff's claims set forth in Counts I and II to be timely, Plaintiff must not have been aware of any injury giving rise to a cause of action set forth in these counts prior to March 6, 2019.[13] (ECF No. 16-1 at 7.)

Plaintiff was arrested on March 26, 2014, and released in February 2015. (ECF No. 11 ¶¶ 29, 35.) In *Rich v. Hersl*, Judge Hollander explained:

> Mr. Rich was arrested in October 2007 and was detained pending trial until his release in June 2008, when the charges against him were dismissed. . . . Regardless of when exactly during that eight-month period the cause of action for false arrest and imprisonment accrued, plaintiff clearly was aware of the non-consensual deprivation of his liberty at all relevant times. Thus, the three-year limitations clock began to run no later than June 2008. Plaintiff filed suit in 2020, well over three years after the end of the limitations period.

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The court agrees with Judge Hollander's analysis and applies it here. Specifically, Plaintiff knew at the

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[13] This holds true for Plaintiff's claims set forth in Counts III through VIII as well, but not for Plaintiff's civil RICO claims of Count IX. *See, infra.*

time of his arrest that he did not possess the planted BB gun, and that he was arrested and placed in custody without basis. Therefore, Plaintiff was on effective notice of some, if not all, of the harms he claims on March 26, 2014. But under even the most liberal construction of events, by his release on February 5, 2015, Plaintiff surely knew that the BB gun used to support his seizure was not his, and his arrest, charges, and incarceration were falsely based and wrongful. Therefore, under this permissive construct, the latest date of accrual of Plaintiff's constitutional claims set forth in Counts I and II is February 5, 2015. Plaintiff did not file his initial Complaint until March 7, 2022, more than four years after the statute of limitations had expired.

In addition to the constitutional claims asserted against all Defendants, Counts I and II include *Monell* claims solely against BPD.[14] "Because municipal liability under § 1983 cannot be predicated solely upon a *respondeat superior* theory, liability arises only where city employees take constitutionally offensive acts in furtherance of municipal policy or custom." *Burgess v. Goldstein*, 997 F.3d 541, 562 (citing *Milligan v. City of Newport News*, 743 F.2d 227, 229 (4th Cir. 1984)). "Therefore, a plaintiff cannot state a claim against local governments or supervisors of local governmental entities 'without a constitutional violation committed by an employee.'" *Hersl*, 2021 U.S. Dist. LEXIS at *31 (quoting *Anderson v. Caldwell Cty. Sheriff's Office*, 524 F. App'x 854, 862 (4th Cir. 2013)).

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[14] Under *Monell v. Dept. of Soc. Servs.,* 436 U.S. 658 (1978), an individual may recover in a 1983 claim against a municipality for violation of constitutional rights by officials of the municipality if the unconstitutional action was engaged in pursuant to official policy, unofficial custom, or due to a failure to supervise or train.

With respect to his *Monell* claims, Plaintiff alleges:

> Prior to and at the time of the events at issue, the BPD, by and through its final policy-makers, maintained a policy, custom, pattern, or practice of failing to adequately supervise, discipline, and train members of its plain-clothes units concerning their constitutional obligations.

(ECF No. 11 ¶ 53.) Because the predicate claims against the individual Defendants accrued no later than February 5, 2015, the *Monell* claims also accrued on that date:

> Further, plaintiff has not brought to the Court's attention any legal authority supporting the separation of the accrual of a *Monell* claim from its predicate. Nor has the Court identified any such authority in Fourth Circuit case law. And, the weight of the relevant case law from other circuits does not seem to support separate accrual rules.
>
> I, too, discern no reason for adopting an accrual theory that would save plaintiff's *Monell* claims, especially without briefing on the issue. Therefore, because Counts I through IV are time barred, it would seem that Counts VII through IX likewise founder.

Hersel, 2021 U.S. Dist. LEXIS at *33-35. Accordingly, Plaintiff's *Monell* claims are barred.

2. State Law Claims – Counts IV, V, VI, and VII

As set forth above, in Maryland "[a] civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides

a different period of time within which an action shall be commenced. MD. CODE ANN., CTS. & JUD. PROC. § 5-101. In determining when a cause of action accrues, "Maryland law is largely consistent with federal law." *Hersl*, 2021 U.S. Dist. LEXIS at *23. "In Maryland, an action typically accrues at the time of the wrong, unless a judicial or legislative exception provides otherwise. *Id.* (citing *Poole v. Coakley & Williams Constr., Inc.*, 423 Md. 91, 131, (2011). Under Maryland's discovery rule, a plaintiff is on inquiry notice when he "possesses 'facts sufficient to cause a reasonable person to investigate further, and . . . a diligent investigation would have revealed that the plaintiffs were victims of . . . the alleged tort.'" *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 168 (2004) (quoting *Pennwalt Corp. v. Nasios*, 314 Md. 433, 448-49 (1988)).

Inquiry notice is based on actual notice, whether express or implied. *Hersl*, 2021 U.S. Dist. LEXIS at *23 (citing *Poffenberger v. Risser*, 290 Md. 631, 637 (1981)). "Express knowledge is direct, whether written or oral, from sources 'cognizant of the fact[s].'" *Georgia-Pacific Corp. v. Benjamin*, 394 Md. 59, 89 (2006) (quoting *Poffenberger*, 290 Md. at 636-37) (citation omitted). Implied notice occurs "when a plaintiff gains knowledge sufficient to prompt a reasonable person to inquire further." *Pennwalt*, 314 Md. at 447. "Constructive notice or knowledge will not suffice for inquiry notice." *Id.* at 89.

> Application of the discovery rule involves a two-prong test. The first prong, "sufficiency of the actual knowledge to put the claimant on inquiry notice," concerns the nature and extent of actual knowledge necessary to cause an ordinarily diligent plaintiff to make an inquiry or investigation that an injury has

> been sustained. The second prong, "the sufficiency of the knowledge that would have resulted from a reasonable investigation," requires that after a reasonable investigation of facts, a reasonably diligent inquiry would have disclosed whether there is a causal connection between the injury and the wrongdoing.

Georgia-Pacific Corp. v. Benjamin, 394 Md. 59, 89-90 (2006) (citations omitted).

3. Maryland Declaration of Rights, Article 24 – Count IV

A claim under Article 24 of the Maryland Declaration of Rights "is also governed by the three-year statute of limitations established in C.J. § 5-101" *Hersl*, 2021 U.S. Dist. LEXIS at *31.

Plaintiff alleges:

> As discussed and described above, Defendant Officers deprived Plaintiff Simon of the rights, privileges and immunities guaranteed under Article 24 of the Maryland Declaration of Rights, in violation of due process, including by planting and fabricating evidence, false police reports, and false statements of probable cause, leading to Plaintiff Simon's wrongful imprisonment for crimes he did not commit, and which Defendant Officers knew or should have known he did not commit.

(ECF No. 11 ¶ 72.) Plaintiff's state constitutional claims are time barred for the same reasons the federal constitutional claims in Counts I and II are barred.

4. Malicious Prosecution – Count V

The elements for the tort of malicious prosecution are: "1) the defendant instituted a criminal proceeding against the plaintiff; 2) the criminal proceeding was resolved in the plaintiff's favor; 3) the defendant did not have probable cause to institute the proceeding; and 4) the defendant acted with malice or a primary purpose other than bringing the plaintiff to justice." *Okwa v. Harper*, 360 Md. 161, 183 (2000) (citing *DiPino v. Davis*, 354 Md. 18, 54 (1999)).

Plaintiff alleges:

> Defendants instituted criminal proceedings against Plaintiff Demetric Simon, without probable cause and with specific and actual malice towards Plaintiff.
>
> As a direct and proximate result of the tortious actions and constitutional violations of the Defendants, taken with malicious intent and willful indifference, Plaintiff Demetric Simon had and continues to have injuries, including but not limited to loss of liberty, physical injury, lost wages, lost time with loved ones, legal costs and fees, mental anguish, emotional pain and suffering, humiliation, anxiety, worry, injury to health, loss of time, and damage to reputation, and other compensatory damages.

(ECF No. 11 ¶¶ 75-76.)

Plaintiff's malicious prosecution claims accrued on the same date as the claims set forth in Counts I and II. Plaintiff was released from incarceration in February 2015. His release date is the latest possible date on which he had actual notice and knowledge that

a criminal proceeding had been instituted against him without probable cause (*i.e.* the harm that put him on notice to investigate further as to the existence of a claim). Accordingly, this claim is untimely.

5. Civil Conspiracy – Count VI

The elements for a civil conspiracy claim are: "1) A confederation of two or more persons by agreement or understanding; 2) some unlawful or tortious act done in furtherance of the conspiracy or use of unlawful or tortious means to accomplish an act not in itself illegal; and 3) actual legal damage resulting to the plaintiff." *Lloyd v. GMC*, 397 Md. 108, 154 (2007) (citation and internal quotation marks omitted).

Plaintiff alleges:

> Defendant Officers of the Baltimore City Police Department, along with Defendants individually, had entered into an agreement to wrongfully arrest, search, detain, and otherwise harass Plaintiff Simon. This occurred during and after Simon was the victim of the intentional, reckless, and/or negligent injury committed by Defendant Jenkins, which would potentially adversely affect Jenkins' job and adversely contribute investigative and legal scrutiny that could dismantle the house of cards of the GTTF.
>
> Additional criminal and tortious acts in furtherance of this conspiracy, include the various false arrests, planting of evidence, and false imprisonments of Plaintiff Demetric Simon, as well as violations of Constitutional Rights.

(ECF No. 11 at 37-38.)[15] Plaintiff's civil conspiracy claim is barred and will be dismissed for the same reasons discussed *infra* with respect to the RICO claims. *See* Section III(C)(7), *infra*.

6. Malicious Use of Process – Count VII

"Five elements must coalesce to permit recovery in an action for malicious use of process. They are: (1) That a prior civil proceeding was instituted by the defendant; (2) That the proceeding was instituted without probable cause; (3) That the proceeding was instituted with malice; (4) That the proceeding terminated in favor of the defendant therein (the plaintiff in the resulting tort action for malicious use of process); and (5) That special damages were sustained of a type not normally sustained in the prosecution of like causes of action." *Herring v. Citizens Bank & Trust Co.*, 21 Md. App. 517, 538-39 (1974).

Plaintiff alleges:

> Defendants instituted criminal and further proceedings against Plaintiff Simon, without probable cause.
>
> These proceedings were instituted against Plaintiff with malice. As a direct and proximate result of the tortious actions and constitutional violations of the Defendants, taken with malicious intent and willful

[15] It is normally the court's practice to cite to the paragraph number of a complaint. Count V of Plaintiff's Complaint ends with ¶ 76; Count VI then begins at ¶ 73, and the numbers continue in sequence. In an effort to minimize confusion, the court cites to the page number rather than the paragraphs of these allegations.

> indifference, Plaintiff Demetric Simon had and continues to have injuries, . . .

(ECF No. 11 ¶¶ 78-80.) Plaintiff does not allege any Defendant instituted a civil proceeding against him, and therefore, he has not alleged the first element of the claim. Even had Plaintiff alleged that one or more of the Defendants instituted a civil action against him in relation to his 2014 arrest, any proceeding (malicious or otherwise) instituted between his March 2014 arrest and February 2015 release would have put Plaintiff on sufficient notice that the proceeding was improper, because he did not possess the BB gun on which any such proceeding would have been based. Accordingly, the claim fails for inadequate pleading and is time barred.

7. RICO Claims – Count IX

"The statute of limitations on private civil RICO claims is four years, beginning on the date the plaintiff 'discovered, or should have discovered, the injury.'" *CVLR Performance Horses, Inc. v. Wynne*, 792 F.3d 469, 476 (4th Cir. 2015) (quoting *Potomac Elec. Power Co. v. Elec. Motor & Supply, Inc.*, 262 F.3d 260, 266 (4th Cir. 2001)).

With respect to the indictment of seven GTTF officers on February 23, 2017, Judge Hollander noted:

> On February 23, 2017, a federal grand jury indicted seven members of the GTTF: Momodu Gondo, Hersl, Rayam, Jenkins, Hendrix, Ward, and Taylor. *See United States v. Momodu Gondo, et al.*, CCB-17-106, ECF 1 (Indictment); see ECF 137 (Superseding Indictment). They were charged with conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO") (Count

> One) and various violations of RICO (Count Two). *See United States v. Momodu Gondo, et al.*, CCB-17-106, ECF 1 (Indictment). The Superseding Indictment, ECF 137, charged Jenkins, Taylor, and Hersl. And, it added charges against Jenkins and Taylor for Hobbs Act Robbery and possession of a firearm in furtherance of a crime of violence against Jenkins and Taylor. *See Id.* Counts Three, Four, Five, and Six. All but Hersl and Taylor pleaded guilty. See CCB-17-106, ECF 156, 157, 195, 215, 257. They proceeded to a jury trial at which Judge Catherine Blake presided, and were convicted of racketeering conspiracy, among other crimes. ECF 17, ¶ 82. They were sentenced to eighteen years' imprisonment. *Id*.

Hersl, 2021 LEXIS 118098, at *5. The court finds Judge Hollander's analysis persuasive. Arguably, Plaintiff was on inquiry notice of his RICO claims at the time of his February 2015 release from custody, because at that time he had sufficient knowledge of the harm suffered that would "cause a reasonable person to investigate further." *Dual Inc. v. Lockheed Martin Corp*., 383 Md. 151, 168 (2004) (citations omitted). Nonetheless, by February 2017, when members of the GTTF were indicted and the subsequent media coverage published details related thereto immediately thereafter, Plaintiff was unquestionably on inquiry notice of his RICO claims. Plaintiff did not file his Complaint until March 2022. Therefore, his RICO claims are time barred.

Because the court finds that all of Plaintiff's claims are barred by the applicable statute of limitations, the court will not reach the Defendants' remaining

arguments. The Complaint will be dismissed with prejudice as time barred.

8. Counts III and VIII

Count III of the Complaint asserts a cause of action under 42 U.S.C. § 1988. "Section 1988 in itself does not create any cause of action, but it instructs federal courts as to what law to apply in causes of action arising under federal civil rights acts." *Moor v. County of Alameda*, 411 U.S. 693, 703-06 (1973); *Scott v. Vandiver*, 476 F.2d 238, 242 (4th Cir. 1973).

Count VIII of the Complaint asserts a cause of action for *Respondeat Superior* against BPD for the wrongful acts of the individual Defendants. "Maryland courts have repeatedly held that *respondeat superior* is a theory of liability, not a standalone cause of action." *Grant v. Atlas Rest. Grp., LLC*, 2021 U.S. Dist. LEXIS 126350 *13 (D. Md. Jul 7, 2021); *see also Crockett v. SRA Int'l*, 943 F.Supp.2d 565, 576 (D. Md. 2013) (likening constructive discharge to *respondeat superior*, because neither is a standalone claim). Regardless, because the predicate claims for Count VIII will be dismissed as time barred, there is no basis to impose *respondeat superior* liability.

For these reasons, Counts III and VIII will be dismissed.

IV. CONCLUSION

For the reasons set forth herein, by separate order, the Motions will be granted and the Complaint will be dismissed with prejudice.

/S/
Julie R. Rubin
United States District Judge

March 18, 2023

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed: April 1, 2025]

No. 23-1431
(1:22-cv-00549-JRR)

DEMETRIC SIMON

Plaintiff - Appellant

v.

KEITH GLADSTONE; ROBERT HANKARD; WAYNE JENKINS; BALTIMORE CITY POLICE DEPARTMENT; CARMINE VIGNOLA; BENJAMIN L. FRIEMAN; RYAN GUINN; DEAN PALMERE SEAN MILLER

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Niemeyer, and Judge Benjamin.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed: August 29, 2024]

No. 23-1431
(1:22-cv-00549-JRR)

DEMETRIC SIMON,

Plaintiff - Appellant

v.

KEITH GLADSTONE; ROBERT HANKARD; WAYNE JENKINS; BALTIMORE CITY POLICE DEPARTMENT; CARMINE VIGNOLA; BENJAMIN L. FRIEMAN; RYAN GUINN; DEAN PALMERE SEAN MILLER,

Defendants - Appellees

ORDER

Upon consideration of the submissions relative to appellant's motions to order appellees and appellees' counsel to disclose settlement agreements and motion to supplement the prior motion, the court denies the motions.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

———

Case No. 1:22-cv-00549-JRR

———

DEMETRIC SIMON
C/o Law Offices of Michael A. Wein, LLC
7843 Belle Point Drive
Greenbelt, MD 20770

Plaintiff

v.

OFFICER KEITH GLADSTONE
601 E. Fayette Street
Baltimore, Maryland 21202
Individually and as a police officer for
BALTIMORE POLICE DEPARTMENT

And

OFFICER ROBERT HANKARD
601 E. Fayette Street
Baltimore, Maryland 21202
Individually and as a police officer for
BALTIMORE POLICE DEPARTMENT

And

OFFICER WAYNE JENKINS
601 E. Fayette Street
Baltimore, Maryland 21202
Individually and as a police officer for
BALTIMORE POLICE DEPARTMENT

And

BALTIMORE CITY POLICE DEPARTMENT
601 E. Fayette Street
Baltimore, Maryland 21202

JURY DEMAND

SERVE

Michael Harrison, Police Commissioner
601 E. Fayette Street
Baltimore, Maryland 21202

And

OFFICER CARMINE VIGNOLA
601 E. Fayette Street
Baltimore, Maryland 21202
Individually and as a police officer for
BALTIMORE POLICE DEPARTMENT

And

OFFICER BENJAMIN FRIEMAN
601 E. Fayette Street
Baltimore, Maryland 21202
Individually and as a police officer for
BALTIMORE POLICE DEPARTMENT

And

OFFICER RYAN GUINN
601 E. Fayette Street
Baltimore, Maryland 21202
Individually and as a police officer for
BALTIMORE POLICE DEPARTMENT

And

OFFICER DEAN PALMERE
601 E. Fayette Street
Baltimore, Maryland 21202
Individually and as a police officer for
BALTIMORE POLICE DEPARTMENT

And

OFFICER SEAN MILLER
601 E. Fayette Street
Baltimore, Maryland 21202
Individually and as a police officer for
BALTIMORE POLICE DEPARTMENT

FIRST AMENDED COMPLAINT FOR DAMAGES AND JURY TRIAL DEMAND

Plaintiff Demetric Simon, by and through his attorneys, Michael Wein, Esquire of the *Law Offices of Michael A. Wein, LLC* and Lawrence Greenberg, Esquire of the *Greenberg Law Offices,* hereby sue the following Defendants: the Baltimore City Police Department ("BPD"), Officer Keith Gladstone, Officer Robert Hankard, Officer Wayne Jenkins, Officer Carmine Vignola, Officer Benjamin Frieman, Officer Ryan Guinn, Officer Dean Palmere, and Officer Sean Miller and states as follows:

INTRODUCTION

1. In these causes of action, Plaintiff Demetric Simon seeks compensatory damages, punitive damages, attorney's fees, related costs, and other relief, pursuant to 42 U.S.C. § 1983 (Violation of Civil Rights under United States Constitution); 42 U.S.C. § 1985 (Conspiracy to Violation of Civil Rights under United States Constitution); Civil Racketeer Influenced and Corrupt Organizations Act (RICO) (18 USC § 1961 *et seq.*)(including Conspiracy amongst the participants); 42 U.S.C. Section § 1988 (Reasonable Attorney's Fees and Costs Awarded for Civil Rights Claims); and various State Tort and State Constitutional claims, many of which are also appropriately argued in the Federal claims.

2. Plaintiff incorporates the facts uncovered and discovered through various comprehensive investigations thus far in this matter and are now public record. This includes the following, with hyperlinks in blue to direct sources:

a. Independent Report and Two-Year Investigation of Gun Trace Task Force (GTTF) Scandal, led by former Department of Justice Inspector General Attorney Michael Bromwich, and the Law Firm of Steptoe & Johnson, available at https://www.gttfinvestigation.org/ and includes:

i. The 660-Page Final Report on "Anatomy of the Gun Trace Task Force Scandal: Its Origin, Causes, and Consequences," (Issued January 2022), based on public information, non-public information, and interviews conducted, and includes specific discussion of Demetric Simon's Civil Rights violations by BPD Officers at Pages xx-xxi, 176-179, 274, 278-279, 390-391, 407, 416-417, 482, A15-18.

ii. The 35-Page Executive Summary of the GTTF investigation, causes and, participants. ("Page ii—"These former BPD officers constituted not a single criminal gang, but instead a shifting constellation of corrupt officers who discovered each other during the course of their careers and committed their crimes individually, in small groups, and then in larger groups. Over the course of many years, they victimized vulnerable Baltimore residents who they trusted would either not complain, or would not be believed if they did. Until the federal investigation developed evidence of their criminal activity, the corrupt officers were correct: most of their carefully selected victims did not complain, and those who

did were virtually never deemed credible when the allegations were denied by the officers.")

iii. Presentation by Michael Bromwich, Esquire, with Members of the Department of Justice and Members of the Baltimore City Police Department and Baltimore Solicitor's Office, on Consent Decree and Report Before Maryland Federal District Court Chief Judge James Breder (January 20, 2022). The transcript at Page 52 discusses the Demetric Simon case in some detail.

Michael Bromwich—"And the next case I want to discuss very briefly is the Demetric Simon case, that's the 2014 case in which Jenkins literally drives his car into a suspect, rams his car into the individual. They come to rest with the front wheel spinning over the suspect's head. And there is no evidence that this gentleman Demetric Simon had a gun or had drugs or anything else.

So what happened is Jenkins calls his friend Keith Gladstone and says that he needs a gun to plant at the scene of the accident to justify what Jenkins had done. And that sets into motion a series of events that ultimately led to criminal charges against Gladstone and Carmine Vignola and Robert Hankard, a case that is still pending in court. But what I wanted to focus on less that than the fact that this case and the way that Jenkins used his car was reviewed by the Use-Of-Force Review Board who incredibly viewed this as a justifiable use of force, the use of his vehicle to ram an individual. But it's important to note how the Use-Of-Force Review Board reviewed the case.

We reviewed the transcript – and the meeting lasted 21 minutes, something that should have

lasted a lot more than that – and the members of the Use-Of-Force Review Board included some of Jenkins' sponsors and patrons and supporters in the Department, Dean Palmere and Sean Miller. Those were people who believed in him, believed in his ability to produce, and protected him at almost every turn. And this is substantial evidence of the lengths to which they were willing to protect him. That is, they participated in really which was a very superficial review of the use of force. And that's the Demetric Simon case.

And that, as I just said, is really the example of the power of productive officers, Jenkins, Gladstone and some others to wield their power in the Department and immunize themselves from any reasonable sanctions. Now, Jenkins was known for his reckless driving. We couldn't even count up the number of vehicle accidents and vehicle accidents not only endanger him, they endanger his colleagues, but most importantly they endanger people in Baltimore. And there was, frequently, no valid reason for the vehicle chases that Jenkins was involved in and certainly no justification for the incredibly high speed with which he drove. But again, another example of the power that Jenkins and Gladstone wielded in the Department.

They were supervised by a lieutenant by the name of Daryl Murphy. And Murphy decided – it was part of a larger program – that he wanted his sergeants to meet regularly with a prosecutor from the State's Attorney's Office so that that prosecutor could review and supervise the legal and factual basis for the investigations they were doing and the cases that they were making.

And Jenkins and Gladstone did not want a lawyer looking over their shoulders and they told Murphy that they didn't want that to happen and Murphy said, "Well, I want it to continue. I think it's something that is good and positive and productive and helpful." And Jenkins and Gladstone thought otherwise. They went to Sean Miller, who was Murphy's superior, and lo and behold the meetings with the assistant state's attorney were canceled. Murphy felt so undermined by Jenkins and Gladstone going to Miller and having his decision overruled that he asked for a transfer and left the position as the lieutenant over Jenkins and Gladstone. So, again, another example of the subversion of the supervisions, the subversion of the chain of command in the interest of deference to productive officers. "

b. Maryland General Assembly's 180-Page Report by "Commission to Restore Trust in Police," (Final Report, Dated December 2020, chaired by former Federal District Court of Maryland Judge Alexander Williams, Jr.)

"Beyond the number (14) of officers involved in criminal misconduct, equally troubling is that the officers did not act simply on their own but instead regularly conspired with each other and in groups to commit crimes. Many of the GTTF officers were convicted of engaging in a criminal racketeering conspiracy, and one of the lead defendants, Sgt. Wayne Jenkins, himself described their behavior as a "criminal enterprise." Individually, in pairs, and sometimes in groups, the GTTF officers intentionally planned criminal misconduct, such that even BPD itself in civil litigation has described

the GTTF officers' misconduct as a "criminal conspiracy."

The GTTF officers engaged in serious, destructive criminal acts that would undermine any citizen's confidence in the trustworthiness of law enforcement. Instead of carrying out their oaths to protect and serve the community, the GTTF officers preyed upon Baltimore residents, abusing their power as police officers for personal gain. The GTTF officers stole money, assaulted citizens, conducted unlawful searches and seizures, lied in internal documents and to the judicial system in testimony and affidavits, and illegally planted evidence, resulting in unfair and improper convictions. The GTTF officers' actions led to at least two deaths—one involving a high-speed and illegal chase with false evidence planted, and one involving theft of money from a drug dealer who thereafter was unable to repay a drug-related debt and was killed. Not the least of the officers' crimes was cheating and stealing from the public, by falsely obtaining overtime payments that were not earned.

In addition to the number of officers involved, the coordinated nature of their actions, and the severity of their crimes, the Commission has found that the misconduct did not occur over a short timeframe but instead continued to occur over a course of many years involving many dozens of incidents. Some of the involved officers were actively engaged in criminal misconduct for several years before they were assigned to the Gun Trace Task Force.

Another upsetting feature of the GTTF scandal is that the misconduct was not committed only by low-level officers, but also by supervisors. Three sergeants are among those who have pleaded guilty.

Those individuals were experienced officers who were well-respected by command and presumably promoted into squad leadership roles because of their perceived quality of performance, but in fact, those individuals participated in and led the criminal behavior."

c. Transcript of Guilty Plea of Officer Keith Gladstone (*United States v. Gladstone*, No. 1:19-cr-00094-CCB (D. Md. June 3, 2019 (ECF 19).

3. The illegal stop, search, physical injuries, seizures, false arrest, false imprisonment, and intimidation of Plaintiff Simon, as well as the fabrication of evidence, false statements, and false testimony to support said illegal conduct, was part of a longstanding pattern and practice of illegal conduct, including illegal stops, searches, seizures, and fabrications and sworn lies. These were also part of a pattern of misconduct, targeted against and done against people in Baltimore, with drug issues and offenses. This was both planned and by design, as those targeted, faced not only retaliation with little hope of being taken seriously, but potential imprisonment for any outstanding warrants or charges, and thus victims were targeted to avert suspicion and accountability. This was sufficiently widespread within the BPD to assume the quality of a "custom or usage" of which BPD policymakers had actual or constructive knowledge. The BPD intended that these "customs or usages" continue and/or condoned such behavior by demonstrating deliberate indifference to stopping or correcting them.

4. BPD, GTTF, and/or the Violent Crimes Impact Division ("VCID") and/or earlier iterations of "flex squads" and "Special Enforcement Units" (SETs) (functioning as supposed "elite units" comprised pri-

marily of plainclothes officers given wide latitude to investigate and/or arrest persons suspected of dealing drugs and/or gun violations),were an "enterprise" or an "association in fact enterprise"(with GTTF and/or VCID and/or "flex squads" and/or "SETs" acting at times as a sub-unit enterprise, in coordination with BPD). They shared all the same illegal goals of giving the "appearance" of "numbers" and "productivity," [footnote omitted] whereas the "ends justified the means" even if the means were carried out perjuriously, corruptly, and unconstitutionally. These false appearances were engendered, by allowing both casual corruption and outright corruption and violations of civil rights, through various criminal racketeering actions. Footnote Omitted] Even if the Baltimore Police Department did not have the "dirty work" done by everyone within the police department, BPD tolerated, condoned, and incentivized these criminal actions by its most aggressive and corrupt employees, servants, and agents, because it benefitted and burnished BPD's own perceived "effectiveness" and led to increased salaries, promotions, and funding.

5. This lawsuit therefore also seeks compensation and relief from the injuries resulting from the Officers' misconduct that was in accord with BPD policies or procedures, condoned by the BPD, and which BPD knew or should have known.

PARTIES

6. Plaintiff Simon hereby incorporates and restates Paragraphs 1 through 5 and further states as follows:

7. Plaintiff Demetric Simon, after being recently paroled for good behavior and receiving and completing drug treatment, is a resident of Howard

County, Maryland. He has authorized as a contact address in this litigation, service upon Plaintiff's counsel, located in Prince George's County, Maryland.

8. Defendant Baltimore City Police Department (hereinafter "BPD" or "Department") is an agency of the State of Maryland and considered a proper party for suit and liability for Federal and State violations. BPD employs or has employed each of the individual Defendants in this case and is a "person" within the meaning of 42 U.S.C. § 1983.

9. At all times relevant herein, Defendants Gladstone, Hankard, Jenkins, Vignola, Frieman, Guinn, Palmere, and Miller, ("Officer Defendants") were employees of the BPD, having committed the acts and omissions described herein under color of the law and within the scope of their employment.

10. Defendant Detective Keith Gladstone is a former member of the BPD, and was at all times relevant to this action, employed by and acting under the control and supervision of the Department. In an indictment unsealed on March 6, 2019, Gladstone has previously been charged with, and later on or about May 13, 2019, plead guilty in Federal Court to, violating Plaintiff Demetric Simon's Civil Rights against 18 U.S.C. § 241. Officer Gladstone recently testified in the criminal trial of Defendant Robert Hankard, who worked with both Officer Vignola and former Officer Gladstone. Gladstone testified he is the one who planted the BB gun, he got it from Vignola, (Hankard's former partner), and that Vignola got it from Hankard. The use of false police reports, to justify false arrests and incarcerations, was testified to be a widespread and well- known practice within the BPD and the GTTF. Former Officer Gladstone has

not yet been sentenced. He is being sued in both his individual and official capacities.

11. Defendant Robert Hankard is a former member of the BPD, and was at all times relevant to this action, employed by and acting under the control and supervision of the Department. He has been previously charged with violating Plaintiff Demetric Simon's Civil Rights, against 18 U.S.C. § 241. Former Officer Hankard was scheduled for trial in Federal Court related to those charges beginning on or about April 4, 2022, and was convicted by the Federal Jury on April 11, 2022, on all Counts, including the Count related to his role in conspiring to deprive Plaintiff Demetric Simon of his Civil Rights guaranteed under the United States Constitution under 18 U.S.C. § 241. Former Officer Hankard is awaiting sentencing for his convictions. Testimony was adduced, of Officer Hankard's previous use of false police reports, to justify false arrests and incarcerations, and was testified to be a widespread and well-known practice within the BPD and the GTTF. He is being sued in both his individual and official capacities.

12. Defendant Wayne Jenkins is a former member of the BPD, and was at all relevant times employed by and acting under the control and supervision of the Department. He was a member of the Violent Crimes Impact Division (VCID), and later became officer-in-charge of the Special Enforcement Section of the Division. Former Officer Jenkins is presently serving a lengthy prison sentence, related to other crimes committed while he was a member of and had supervisory roles in the VCID and Gun Trace Task Force (GTTF). He was not criminally charged related to his actions *inter alia* of assaulting and running over Plaintiff Simon with his car while chasing him down,

and later role in framing an innocent Simon with the planted evidence of the BB Gun and making false police reports and statements of probable cause. The use of false police reports, to justify false arrests and incarcerations, was testified to be a widespread and well-known practice within the BPD and the GTTF. This led to Plaintiff Simon being imprisoned for at least 317 days. He is being sued in both his individual and official capacities.

13. Defendant Carmine Vignola is a former member of the BPD, and was at all relevant times employed by and acting under the control and supervision of the Department. Defendant Vignola later plead guilty to, and was sentenced for his knowledge and role in framing Plaintiff Simon, including by lying to the Grand Jury about the Civil Rights violations perpetrated against Plaintiff Simon. At Former Officer Vignola testified about his role in assisting former Officer Keith Gladstone and former Officer Robert Hankard in framing Plaintiff Demetric Simon, The use of false police reports, to justify false arrests and incarcerations, was also testified to be a widespread and well-known practice within the BPD and the GTTF. He is being sued in both his individual and official capacities.

[….]

FACTUAL SUMMARY

24. Plaintiff Simon hereby incorporates and restates by reference, Paragraphs 1 through 23, particularly the descriptions and hyperlinks included in Paragraph 2, and further states as follows:

25. All of the events and activities described herein occurred in Baltimore City, Maryland.

26. According to Stipulated Facts in his Plea Agreement, in *United States v. Keith Gladstone,* Criminal No. CCB-19-094, while "Gladstone was the officer-in-charge of a Special Enforcement Section (SES) unit assigned to BPD's Western District […] [o]n the evening of March 26, 2014, Gladstone who was on duty [when he] received a call on his cell phone from Sergeant 1 [Wayne Jenkins], who was in a panic." With two other BPD officers [including Robert Hankard and Carmine Vignola], Gladstone was able to locate a realistic-looking BB-gun. "Gladstone then drove to the site of D.S.'s [Demetric Simon's] arrest on Anntana Avenue and Bel Air Road in Northeast Baltimore City. Once there, Gladstone exited his vehicle and carried a BB gun to the front yard of the house where D.S. [Demetric Simon] had been run over. Gladstone dropped the BB gun near a pickup truck that was close to the BPDvehiclethat had struck [Demetric Simon]."

27. After other officers noticed the fake gun that Gladstone had "planted at the scene of [Demetric Simon's] arrest," various criminal charges were initiated against D.S. related to the "possession, use, and discharge of a gas or pellet gun." "Sergeant 1 [Jenkins] wrote a false statement of probable cause in the name of Officer 5, [Benjamin Frieman] which [Frieman] agreed to submit in support of those charges. [Then] [Jenkins] approved the false statement of probable cause as Officer 5's supervisor."

28. As further noted in the Stipulated Facts, Plaintiff Demetric Simon's charges related to his "arrest on March 26, 2014, were disposed of by *nolle prosequi* [about 10 months later], which is a form of dismissal on January 16, 2015."

[Footnote Omitted]

29. According to Department of Corrections commitment records, despite the *nol pros* being dismissed on January 16, 2015, (with those charges being the only premise upon which the VOP (Violation of Probation) charges were open and extant), Plaintiff Simon remained incarcerated through February 5, 2015, when the VOP was dismissed.

30. As further noted in the Stipulated Facts, at a certain point in January 2018, Officers Gladstone and Vignola "arranged to meet in person. In order to avoid detection, they arranged the meeting using their wives' cell phones. […] Gladstone had arranged to meet in the swimming pool to ensure that Vignola did not have a recording device on him. Once Gladstone and Vignola were in the pool, Vignola asked Gladstone words to the effect of, 'do you have anything to worry about now, you know, since [Jenkins] was arrested, do you have any concerns?' Gladstone responded that the only thing he was worried about was the incident on 'Bel Air Road,' which was a reference to the arrest of [Demetric Simon]."

31. "Gladstone told Vignola that if he was brought in for questioning by federal law enforcement or prosecutors who had investigated the GTTF, that [Vignola] should tell them [Vignola] was not there, which both knew was not true. When [Vignola] said he had been seen by another officer at the scene, Gladstone told him to say that they were there for 'scene assessment' or words to that effect, which was also not true because they did not provide any 'scene assessment.' [Vignola] then asked Gladstone, "what about [Hankard] referring to the fact that[Hankard] knew they had obtained the gun from him." Gladstone Plea, Stipulation of Facts, Paragraphs 4-15.

32. Gladstone then asked Vignola to lie about who had actually obtained the realistic BB Gun [Hankard], used to frame Plaintiff Simon. This conspiracy was all done as a defense for Officer Jenkins' indefensible actions, to avoid any and all accountability that would interfere with Jenkins' status and role within the GTTF, and to avoid (1) administrative consequences for Jenkins including a "use of force" panel, (2) Civil suit consequences from Simon against Jenkins (for the injuries and trauma from being hit by the car recklessly driven by Jenkins for reasons unrelated to probable cause against Simon), and (3) reduce the possibility of further detection and oversight on Jenkins and the rest of GTTF and cronies, for their criminal actions that were already reasonably known by BPD then.

[…]

39. In a letter dated March 18, 2019, Plaintiff Simon was notified by the United States Attorney's Office and the United States Department of Justice Victim Notification System, of the charges initiated against Defendant Keith Gladstone, and his status as a "victim or potential victim during the investigation of the above-criminal case." In a letter dated February 21, 2020, Plaintiff Simon through Plaintiff's Counsel, was similarly notified by the United States Attorney's Office and the United States Department of Justice Victim Notification System, of the federal charges initiated against Defendant Robert Hankard.

40. Until the U.S. Attorney's Office revealed the Gladstone and Hankard Indictments, Plaintiff Simon did not know and could not have known the full extent of when, how, and why he was injured as described herein, as well as begin to know those responsible for the same injuries.

[…]

AUSTIN LAW AND ECONOMICS CONSULTANTS, INC.
2210 Greenlee Drive
Austin, TX 78703

February 13, 2020

Jennifer A. Moore, Esq.
Moore Law Group, PLLC

VIA E-MAIL

Dear Jennifer:

You have asked for my expert opinion regarding the permissibility of the parties entering into a high-low agreement in connection with a matter on appeal, including whether any such agreement must be disclosed to the relevant court.

As a tenured professor at the University of Texas School of Law who regularly teaches a course on Professional Responsibility and a seminar on mass tort settlements ("Mega-Settlements"), as a published scholar on the professional responsibilities of lawyers who represent multiple clients, and as an experienced expert and consultant regarding the ethical rules applicable to group litigation and settlements, I am happy to provide my expert opinion.

I know of no authority that prohibits the parties to an appeal from negotiating a binding "high-low" agreement regarding the outcome of the appeal in a situation such as the one contemplated in which the outcome of the appeal would determine the final settlement value. In addition, I know of no authority, including any applicable Ninth Circuit court rule, that requires the parties to disclose such a high-low agreement to the court. ABA Model Rule 3.3 (and the various state equivalents) regarding "Candor Toward the Tribunal" also does not require any such disclosure.

I have been involved in numerous settlements that involved a high-low agreement in connection with an appeal, including one matter that is currently pending in a federal Court of Appeals. In sum, it is my expert opinion that the parties in the current context may ethically enter into a high-low agreement in connection with the appeal and are under no ethical or other obligation to disclose that agreement to the Ninth Circuit.

I have enclosed a complete copy of my resume setting forth my qualifications for serving as an expert in this matter.

Sincerely,

Lynn A. Baker
Frederick M. Baron Chair in Law
University of Texas School of Law