SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 52

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EDWARD SANCHEZ, RODNEY SANCHEZ, G.S., An Infant by Her Father and Natural Guardian RODNEY SANCHEZ, and THOMAS VALERIO,

Plaintiffs,

-against-

CITY OF NEW YORK, NEW YORK COUNTY, NEW YORK CITY POLICE DEPARTMENT, MANHATTAN DISTRICT ATTORNEY'S OFFICE, CY VANCE, JR., MEGAN JOY, POLICE OFFICER JOHN DOE 1, POLICE OFFICER JOHN DOE 2, POLICE OFFICER JOHN DOE 3, POLICE OFFICER JOHN DOE 4, POLICE OFFICER JOHN DOE 5, POLICE OFFICER JOHN DOE 6, POLICE OFFICER JOHN DOE 7, POLICE OFFICER JOHN DOE 8, POLICE OFFICER JOHN DOE 9, POLICE OFFICER JOHN DOE 10, POLICE OFFICER JOHN DOE 11, POLICE OFFICER JOHN DOE 12, POLICE OFFICER JOHN DOE 13 and POLICE OFFICER JOHN DOE 14,

Defendants.

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DECISION & ORDER

Index No.:153009/2018

ALEXANDER M. TISCH, J.:

This action arises out of damages allegedly sustained by plaintiffs Edward Sanchez (E. Sanchez), Rodney Sanchez (R. Sanchez), G.S., an Infant by Her Father and Natural Guardian R. Sanchez, and Thomas Valerio in connection to E. Sanchez's arrest. Plaintiffs allege causes of action grounded in false arrest and imprisonment, malicious prosecution, conspiracy and civil rights violations, including the failure to train and supervise. Defendants the New York County District Attorney's Office (DANY)[1], District Attorney Cyrus R. Vance, Jr. (DA Vance) and Assistant District Attorney Megan Joy (ADA Joy) (collectively, DA defendants), move, pursuant to CPLR 3211 (a) (4) and (7), for an order dismissing plaintiffs' complaint as against them. For the reasons set forth herein, the aforementioned defendants' motion is granted.

[1] Referred to in the complaint as the Manhattan District Attorney's Office.

BACKGROUND AND FACTUAL ALLEGATIONS

The relevant facts are as follows: On December 30, 2016, a grand jury voted to indict approximately 30 members and associates of a drug trafficking organization, Indictment 4858/2016. E. Sanchez was one of the defendants indicted and charged with conspiracy in the second degree in violation of Penal Law § 105.15.[2] He was also indicted and charged with 24 counts of criminal sale of a controlled substance in the third degree, in violation of Penal Law § 220.39 (1).[3] E. Sanchez was accused of, among other things, knowingly and unlawfully selling cocaine to another individual. As a result of this grand jury indictment, the Supreme Court, New York County, issued an arrest warrant for E. Sanchez's arrest and arraignment. On January 3, 2017, Honorable Ellen Biben issued a search warrant, commanding law enforcement personnel to enter and search plaintiffs' apartment. The search warrant instructed law enforcement personnel to bring certain property found, including "[c]urrency and other evidence of proceeds from cocaine possession and sale," to the court. DA defendants' exhibit 3 at 1.

In any event, plaintiffs allege that, in the early morning of January 4, 2017, defendants Police Officers John Doe Nos. 1-14 (PO defendants) "broke the door to plaintiffs' apartment and entered said apartment." Complaint, ¶ 49. The PO defendants allegedly entered plaintiffs' apartment with their guns drawn and one PO defendant "aimed a gun at infant plaintiff G.S. and ordered the plaintiffs not to move." *Id.*, ¶ 41. The PO defendants handcuffed plaintiffs. Although E. Sanchez asked to see a search warrant, the PO defendants "did not show any form of identification, search warrant or arrest warrant . . . ." *Id.*, ¶ 44. The PO defendants then raided and searched plaintiffs' apartment while plaintiffs

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[2] "A person is guilty of conspiracy in the second degree when, with intent that conduct constituting a class A felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct." Penal Law § 105.15.

[3] "A person is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells: 1. a narcotic drug." Penal Law § 220.39 (1).

remained in handcuffs and were ordered not to speak. Plaintiffs further allege that a PO defendant found E. Sanchez's backpack and removed $3,150 from the backpack. Although E. Sanchez advised defendant that he received this money legally from his employment, the PO defendant did not return the money.

The PO defendants questioned plaintiffs about weapons and narcotics in the apartment. The PO defendants did not find any contraband. Plaintiffs claimed that they advised the PO defendants that they had the wrong apartment. As a result, the PO defendants "intentionally detained and imprisoned the plaintiffs without cause." *Id.*, ¶ 60.

According to plaintiffs, the PO defendants arrested E. Sanchez, despite knowing "that they did not have just or probable cause to arrest" him. *Id.*, ¶ 57. E. Sanchez was taken to the 32nd Precinct and was "fingerprinted, photographed and searched . . . ." *Id.*, ¶ 65.

On January 4, 2017, E. Sanchez "was arraigned in Part 61 of Criminal Supreme Court of the State of New York . . . before Judge B. Wittner . . . on Indictment 4858/2016 charging [Sanchez] with the following crimes: Attempted Conspiracy in the Second Degree, Attempted Criminal Sale of a Controlled Substance and other related crimes." *Id.*, ¶ 67.

On January 25, 2017, E. Sanchez appeared before Judge Wittner and bail was set for $75,000. E. Sanchez states that he was incarcerated between January 4, 2017 and February 28, 2017. E. Sanchez's family posted bail for his release and he has appeared in court nine times. E. Sanchez alleges that his attorney advised the DANY, DA Vance and ADA Joy that E. Sanchez was falsely arrested and provided evidence in his defense. The complaint continues that, from March 16, 2017 to date, the DANY has been on notice that E. Sanchez was falsely arrested but has refused to dismiss the criminal charges.

On April 3, 2018 plaintiffs filed the instant complaint, under state and federal law, alleging that the DA defendants, in their individual and official capacities, violated plaintiffs' civil and constitutional

rights.[4] The first cause of action, grounded in false arrest and imprisonment, is alleged as against all defendants. In relevant part, it states that defendants falsely arrested and imprisoned plaintiffs, falsely arrested and imprisoned E. Sanchez for 55 days, illegally entered plaintiffs' home and destroyed property, and "[f]alsely swore to a Criminal Court Indictment charging [E. Sanchez] with Attempted Conspiracy in the Second Degree and other related charges when the defendants knew that [E. Sanchez] had not committed such crimes." *Id.*, ¶ 79. Plaintiffs allege that all defendants, jointly and severally, "entered into and carried out a plan and scheme designed and intended to deny and deprive plaintiffs of their rights, privileges and immunities and guaranteed to them, by the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments . . . ." *Id.*, ¶ 80.

The second cause of action states, in relevant part, that the DANY "failed to adequately train, discipline and supervise" DA Vance, ADA Joy and the PO defendants and that the acts of DA Vance, ADA Joy and the PO defendants, "committed under color of state law," deprived plaintiffs of their constitutional rights. *Id.*, ¶ 85.

In the third cause of action, E. Sanchez alleges that all defendants maliciously prosecuted him by commencing and continuing a criminal proceeding against him, despite knowing that he was innocent of the charges. He continues that defendants exhibited "actual malice" by falsely arresting him and continuing the criminal action against him, "upon receipt of exculpatory evidence." *Id.*, ¶ 92.

In the fourth cause of action, plaintiffs allege that all defendants violated their right to due process by unlawfully arresting and imprisoning them.

The fifth cause of action, pursuant to 42 USC §§ 1981, 1983, 1985 and 1986, alleges that defendants, by their actions, deprived E. Sanchez of his constitutional rights. It reiterates that, in relevant part, the DA defendants "(1) covered up their actions; (2) falsely swore to a criminal complaint against plaintiff; and (3) attempted to prevent plaintiff from redress for the violations." *Id.*, ¶ 101.

[4] In the complaint, plaintiffs do not differentiate between state and federal law.

The last cause of action states that defendants illegally seized $3,150 from Sanchez. It further alleges that defendants did not provide E. Sanchez with a property receipt for his money and also refused to return the money.

Instant Motion

The DA defendants state that the prosecution from E. Sanchez's criminal case is still open and pending. They explain that, in general, a court should stay a plaintiff's claims for monetary relief until the conclusion of the underlying criminal proceedings. *See Younger v Harris*, 401 US 37 (1971). However, in this situation, the DA defendants argue that plaintiffs are unable to set forth viable claims against them and "these claims should be dismissed regardless of the absentia doctrine." DA defendants' memo of law at 8.

DANY

In their motion, defendants provide several theories for why plaintiffs' claims must be dismissed. To begin, the DA defendants state that all claims should be dismissed against the DANY, because the DANY is not a suable entity.

In opposition, plaintiffs argue that, as status conferences have been scheduled and E. Sanchez's underlying criminal matter is still pending, the DA defendants' motion is premature and must be dismissed.

Probable Cause

The DA defendants note that probable cause is a complete defense to the state or federal claims for false arrest/imprisonment (causes of action one and four), malicious prosecution (causes of action three and five) and property seizure (the sixth cause of action). According to the DA defendants, arrest and search warrants were issued based on the grand jury indictment charging E. Sanchez with various felony offenses. This grand jury indictment created a presumption of probable cause to search the apartment, seize property, arrest and prosecute. Even though the criminal charges are still pending, as

plaintiffs have not alleged any fraud or misconduct with the grand jury proceeding, they cannot rebut the presumption of probable cause.

Plaintiffs state that there was no probable cause for E. Sanchez's arrest. They argue that the DA defendants, while acting under color of state, violated plaintiffs' constitutional rights and denied them due process when they wrongfully arrested and imprisoned them and when they commenced criminal proceedings against E. Sanchez. E. Sanchez has been required to make numerous court appearances and states that he did not commit any criminal conduct.

Malicious Prosecution

For a successful malicious prosecution claim under either federal or state law, a plaintiff must establish that the matter terminated in plaintiff's favor. Here, the DA defendants allege that, regardless of the issue of probable cause, the federal and state claims for malicious prosecution must be dismissed as the criminal charges are still pending.

In opposition, plaintiffs state that, as there was no probable cause for the arrest, they have sufficiently plead a cause of action for malicious prosecution.

Negligence-Failure to Train and Supervise

The DA defendants argue that this cause of action must be dismissed as plaintiffs have not established that DA Vance, or any other policy maker, was on notice of the existence of a similar pattern of prior misconduct by untrained or unsupervised employees.

In opposition, plaintiffs argue that defendants, jointly and severally, had no probable cause to arrest E. Sanchez. They assert that the DA defendants were personally involved in creating a policy that violated plaintiffs' constitutional rights when they failed to supervise or train their district attorneys who engaged in malicious prosecution. In addition, the DA defendants allegedly allowed their district attorneys to continue criminal causes of action against E. Sanchez, even after receiving exculpatory evidence.

The Eleventh Amendment and Absolute Immunity

Defendants argue that the Eleventh Amendment bars all 42 § USC 1983 and state law claims asserted against DA Vance and ADA Joy in their official capacities. Here, as the DA defendants were acting in their official capacities by deciding whether or not to initiate a prosecution, they may not be sued in their official capacity. The DA defendants state that, even if plaintiffs were able to sufficiently plead a state or federal claim for malicious prosecution, prosecutorial immunity is broad and covers all the allegations in the complaint related to the criminal proceedings. As a result, the DA defendants argue that absolute immunity bars those claims against them in their individual capacities.

Plaintiffs do not address any these arguments, nor the argument that the DANY is a non-suable entity. Further, they do not reference the sixth cause of action alleging that the DA defendants failed to return $3,150 to E. Sanchez.

Personal Involvement

In addition, the DA defendants argue that the false arrest/imprisonment and illegal seizure claims should be dismissed as plaintiffs failed to plead that DA Vance or ADA Joy were personally involved in this conduct. According to the DA defendants, the complaint only states that the PO defendants were involved in the arrest, search and seizure. Similarly, as plaintiffs allegedly failed to plead that DA Vance, who supervises other prosecutors, was not personally involved in E. Sanchez's prosecution, the claim for malicious prosecution should be dismissed as against him.

Plaintiffs assert that they alleged the personal involvement of the DANY, DA Vance and ADA Joy in the malicious prosecution claim. As noted, plaintiffs state that E. Sanchez's attorney provided evidence to the DA defendants that E. Sanchez had been falsely arrested. As a result, plaintiffs maintain that the DA defendants were on notice that E. Sanchez was falsely arrested, yet have refused to dismiss the criminal charges.

Conspiracy

In addition to being immune from suit, the DA defendants argue that plaintiffs' conspiracy claim must fail because plaintiffs only provide conclusory allegations, and not specific facts, that a conspiracy occurred.

In opposition, plaintiffs allege that they have sufficiently plead a cause of action for conspiracy under 42 USC § 1985. Plaintiffs continue that the DA defendants engaged in a conspiracy to violate E. Sanchez's constitutional rights by not dismissing the criminal charges after receiving exculpatory evidence.

DISCUSSION

I. Dismissal

On a motion to dismiss pursuant to CPLR 3211 (a) (7), "the facts as alleged in the complaint [are] accepted as true, the plaintiff is [given] the benefit of every possible favorable inference," and the court must determine simply "whether the facts as alleged fit within any cognizable legal theory." *Mendelovitz v Cohen,* 37 AD3d 670, 671 (2d Dept 2007). However, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration." *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013) (internal quotation marks and citation omitted).

II. DANY

Courts have held that the DANY does "not have an existence separate from the district attorney," and "is not a suable entity." *Michels v Greenwood Lake Police Dept.*, 387 F Supp 2d 361, 367 (SD NY 2005). Therefore, the DANY is not a proper party to this action and the claims as against it are dismissed.

III. False Arrest and False Imprisonment - New York Common Law and Under 42 USC § 1983

To establish a cause of action for false arrest and imprisonment, plaintiff must prove that defendants "intended to confine the plaintiff, that the plaintiff was conscious of the confinement and did

not consent to it, and that the confinement was not otherwise privileged." *Hernandez v City of New York*, 100 AD3d 433, 433 (1st Dept 2012). A confinement is considered "privileged if it stems from a lawful arrest supported by probable cause." *De Lourdes Torres v Jones*, 26 NY3d 742, 759 (2016). "Where an arrest warrant has been issued by a court of competent jurisdiction, there is a presumption that the arrest under that warrant was made on probable cause." *Martinez v City of New York*, 153 AD3d 803, 806 (2d Dept 2017) (internal quotation marks and citation omitted). Probable cause for an arrest "constitutes a complete defense to a cause of action alleging false arrest and false imprisonment including a cause of action asserted pursuant to 42 USC § 1983 to recover damages for the deprivation of Fourth Amendment rights under color of state law, which is the federal-law equivalent of a state common-law false arrest cause of action." *Sinclair v City of New York*, 153 AD3d 877, 878 (2d Dept 2017) (internal citations omitted).

As set forth in the facts, E. Sanchez was indicted and charged with, among other things, Conspiracy in the Second Degree, in violation of New York Penal Law § 105.15. Based on this charge, the court issued an arrest warrant authorizing E. Sanchez's arrest and arraignment. The court then issued a search warrant, commanding police officers to search E. Sanchez's property, and the warrant lists the same address as on the instant complaint. The remaining plaintiffs were residing with E. Sanchez in this same apartment at the time of the search. In addition, the PO defendants were instructed to seize any property, such as "[c]urrency and other evidence of proceeds from cocaine possession and sale," and bring it to the court. Accordingly, as there was probable cause for the search and arrest, the DA defendants are granted dismissal of the state common law causes of action alleging false arrest and imprisonment.

The parallel federal claims alleging that the DA defendants unlawfully arrested and detained plaintiffs in violation of 42 USC § 1983 are also untenable because, as discussed above, probable cause existed for the arrest. *See also Medina v City of New York*, 102 AD3d 101, 108 (1st Dept 2012) ("The

cause of action for violation of civil rights must be dismissed based on the dismissal of the antecedent tort claims of false arrest/false imprisonment . . . .").

Although plaintiffs allege that the PO defendants unlawfully searched plaintiffs' home, arrested E. Sanchez and seized his property, plaintiffs never alleged that either DA Vance or ADA Joy were personally responsible for these actions. Therefore, the false arrest and imprisonment claims alleging a violation of plaintiffs' constitutional rights and also the sixth cause of action alleging an illegal seizure of property are dismissed on the additional ground that plaintiffs failed to plead the DA defendants' personal involvement.[5] *See e.g. Farrell v Burke*, 449 F3d 470, 484 (2d Cir 2006) (internal quotation marks and citation omitted) ("personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983").

IV. Malicious Prosecution - New York Common Law and Under 42 USC § 1983

"The elements of the tort of malicious prosecution [under New York State law] are: (1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, (2) the termination of the proceeding in favor of the accused, (3) the absence of probable cause for the criminal proceeding and (4) actual malice." *De Lourdes Torres v Jones*, 26 NY3d at 760 (internal quotation marks and citations omitted). To plead a viable malicious prosecution claim under 42 USC § 1983, a plaintiff must establish the elements of a malicious prosecution claim under New York law and also assert that "there was a sufficient post-arraignment liberty restraint to implicate the plaintiff's Fourth Amendment rights." *Rohman v New York City Transit Auth.*, 215 F3d 208, 215 (2d Cir 2000). To implicate his fourth amendment rights, E. Sanchez alleges that he suffered from a post-arraignment liberty interest in that he was incarcerated, had to post bail and was required to appear multiple times in court.

[5] In any event, in response to the DA defendants' motion, plaintiffs abandoned the sixth cause of action alleging an illegal seizure of property.

Here, "the presumption of probable cause [attaches to plaintiff's] Grand jury indictment." *Pang Hung Leung v City of New York*, 216 AD2d 10, 10 (1st Dept 1995); *see also Johnson v Follett Higher Educ. Group, Inc.*, 113 AD3d 819, 820 (2d Dept 2014) ("Further, since the plaintiff was indicted by the grand jury for the subject incident, a presumption of probable cause was created for the purposes of the malicious prosecution cause of action"). "That presumption may be rebutted only by evidence that the indictment was procured by fraud, perjury, the suppression of evidence or other police conduct undertaken in bad faith." *Manganiello v City of New York*, 612 F3d 149, 162 (2d Cir 2010) (internal quotation marks and citations omitted).

In the instant situation plaintiffs are unable to rebut the presumption of probable cause that attached to E. Sanchez's grand jury indictment. As noted in the facts, a grand jury voted to indict members of a criminal drug trafficking organization, including E. Sanchez. The court issued a valid warrant authorizing E. Sanchez's arrest and arraignment, on the basis of this indictment. The court also issued a valid search warrant. Here, plaintiffs do not allege any fraud in connection to the grand jury indictment, only alleging that there was no probable cause to arrest E. Sanchez.

Regardless, even accepting plaintiffs' allegations as true, absolute immunity would bar the claim for malicious prosecution against the DA defendants in their individual capacities. "[A] prosecutor is entitled to absolute immunity for actions taken within the scope of his or her official duties in initiating and pursuing a criminal prosecution and in presenting the People's case." *Spinner v County of Nassau*, 103 AD3d 875, 877 (2d Dept 2013). Absolute immunity protects a prosecutor's decision to prosecute, even if that decision was motivated by bad faith. *See e.g. Dory v Ryan*, 25 F3d 81, 83 (2d Cir 1994) ("absolute immunity protects a prosecutor from 1983 liability for virtually all acts, regardless of motivation, associated with his function as an advocate. This would even include . . . allegedly conspiring to present false evidence at a criminal trial").

Here, without actually specifying the exculpatory evidence provided to DA Vance and ADA Joy, plaintiffs allege that these defendants falsely commenced a criminal proceeding by falsely swearing to a criminal complaint against E. Sanchez and then falsely continued a criminal proceeding, despite receipt of exculpatory evidence establishing innocence. However, absolute immunity protects a prosecutor from these allegations. *See e.g. Shmueli v City of New York*, 424 F3d 231, 238 (2d Cir 2005) (internal quotation marks and citation omitted) ("A prosecutor is also entitled to absolute immunity despite allegations of his knowing use of perjured testimony and the deliberate withholding of exculpatory information").[6]

Plaintiffs state that there is a status conference scheduled for E. Sanchez's criminal case, which is still pending. The court notes that, even if E. Sanchez was able to establish a lack of probable cause, his malicious prosecution claims would be dismissed as premature as he failed to plead that the proceeding terminated in E. Sanchez's favor. *See e.g. Brown v Sears Roebuck & Co.*, 297 AD2d 205, 208 (1st Dept 2002) ("Failure to establish any one of these elements defeats the entire [malicious prosecution] claim").

V. Failure to Train and Supervise

Pursuant to 42 USC § 1983, "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage * * * subjects, or causes to be subjected, any citizen of the United States * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured." Plaintiffs allege that the DANY, in relevant part, created a policy and custom in their failure to train and supervise their district attorneys, allowing them to commence and continue criminal proceedings against E. Sanchez, despite receiving exculpatory evidence. *See e.g.*

[6] Although not addressed by plaintiffs, the court notes that the claims seeking money damages asserted against the DA defendants in their official capacities would also be barred by the Eleventh Amendment. "To the extent that a state official is sued for damages in his official capacity, such a suit is deemed to be a suit against the state, and the official is entitled to invoke the Eleventh Amendment immunity belonging to the state." *Ying Jing Gan v City of New York*, 996 F2d 522, 529 (2d Cir 1993).

Johnson v Kings County Dist. Attorney's Off., 308 AD2d 278, 289-290 (2d Dept 2003) ("Giving the plaintiff's allegations the benefit of every favorable inference . . . . [the allegations] taken as a whole, allege that the District Attorney's office . . . acted with deliberate indifference to his constitutional rights in failing to adequately train, supervise, and discipline their prosecutors . . . .").

As previously noted, the DANY is not a suable entity and DA Vance and ADA Joy are immune from liability. However, courts have found that, with respect to a failure to train claim, the "actions of the District Attorney's office may subject the City to liability under 42 USC § 1983." *Id.* at 290. Thus, the relevant issue is whether DA Vance "acted as a policymaker for defendant City of New York so as to bring the City within the ambit of a Section 1983 claim." *Ramos v City of New York*, 285 AD2d 284, 303 (1st Dept 2001).[7] If DA Vance, in a managerial capacity, failed to train and supervise ADAs, this could "correlate with defects in the District Attorney's role as a local policymaker." *Id.* at 303.

> "In order for a policymaker to be liable for supervisory defects, it must be shown that the policymaker knows to a moral certainty that employees will confront a given situation; that the situation either presents the employee with a difficult choice of the sort that training or supervision will make less difficult or that there is a history of employees mishandling the situation; that the wrong choice by the city employee will frequently cause the deprivation of a citizen's constitutional rights and that the extent of such managerial inadequacies manifests 'deliberate indifference' to the Federal constitutional rights of persons with whom the employees interact. The policy need not be an intentional one to deprive a criminal suspect of his or her constitutional rights."

Id. at 304 (internal citations omitted).

"A pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of failure to train . . . . Without notice . . . decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights." *Connick v Thompson*, 563 US 51, 62 (2011) (internal quotation marks and citations omitted).

[7] There is no indication that ADA Joy acted as a policymaker.

Here, plaintiffs failed to sufficiently allege "a pattern of similar constitutional violations" by the ADAs. *Id.* at 62. Plaintiffs solely claim that the DANY created a policy and custom in their failure to train and supervise their district attorneys and allowed their district attorneys to continue criminal proceedings against E. Sanchez, despite receiving exculpatory evidence. *See e.g. D'Alessandro v City of New York*, 713 Fed Appx 1, 10 (2d Cir 2017) ("Rather, the complaint merely insists — over and over again in a conclusory fashion — that a pattern or custom of misconduct existed"). In addition, plaintiffs do not provide any examples of similar conduct beyond their own experience. "[A] municipality cannot be said to be on notice of a recurrent problem in a district attorney's office simple because a prosecutor erred in one case." *Id.* at 10.

Accordingly, as plaintiffs have failed to plead a basis to impute liability to the City of New York for the conduct of DA Vance pursuant to the 42 USC § 1983 failure to train claim, this claim is dismissed as against the DA defendants.

VI. 42 USC § 1985 Conspiracy

Plaintiffs argue that the DA defendants covered up their actions and conspired to violate E. Sanchez's constitutional rights pursuant 42 USC § 1985 (3).[8] "To state a cognizable claim under the pertinent provisions of section 1985, [E. Sanchez] had to allege that he was a member of a protected class, that the defendants conspired to deprive him of his constitutional rights, that the defendants acted with class-based, invidiously discriminatory animus, and that he suffered damages as a result of the defendants' actions." *Gleason v McBride,* 869 F2d 688, 694-695 (2d Cir 1989). Here, plaintiffs allege that the DA defendants entered into and carried out a scheme intended to deprive plaintiffs of their civil rights by covering up their actions and actively conspiring to "prevent plaintiffs from obtaining redress."

[8] The complaint states that the DA defendants covered up their actions and committed constitutional violations actionable under 42 USC §§ 1981, 1983, 1985 and 1986. Plaintiffs do not differentiate the statutes. Regardless, as the complaint contained only vague and generalized allegations, plaintiffs have failed to adequately plead claims under any of these statutes.

However, plaintiffs do not provide any details as to what the alleged scheme entailed or how the DA defendants followed through. As a result, plaintiffs' allegations are conclusory and are inadequate to establish a conspiracy claim. *See e.g. Webb v Goord*, 340 F3d 105, 11 (2d Cir 2003) (internal quotation marks and citation omitted) ("Section 1985 . . . applies specifically to conspiracies. In order to maintain an action under Section 1985, a plaintiff must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end").

Furthermore, the 42 USC § 1985 (3) conspiracy claim fails as plaintiffs have not plead that the DA defendants "acted with class-based, invidiously discriminatory animus" when they conspired to deprive Sanchez of his constitutional rights. *Gleason*, 869 F2d at 694-695.

VII. Remaining Claims under 42 USC § 1983

"A cause of action under 42 USC § 1983 exists where the evidence demonstrates that an individual has suffered a deprivation of rights as a result of an official policy or custom, and must be pleaded with specific allegations of fact." *Leung v City of New York*, 216 AD2d 10, 11 (1st Dept 1995) (internal citations omitted). Here, in addition to the failure to supervise, plaintiffs generally allege that the DA defendants created policies and customs that violated plaintiffs' constitutional rights, including arresting E. Sanchez without probable cause, denying plaintiffs due process and conspiring against plaintiffs. However, to the extent that the claims were not dismissed as demonstrated above, plaintiffs have failed to adequately plead any additional causes of action under 42 USC § 1983. *See e.g. Martin v City of New* York, 153 AD3d 693, 694 (2d Dept 2017) (internal quotation marks and citation omitted) ("Here, although the complaint alleged as a legal conclusion that the defendant[ ] engaged in conduct pursuant to a policy or custom which deprived the plaintiff of certain constitutional rights, it was wholly unsupported by any allegations of fact identifying the nature of that conduct or the policy or custom which the conduct purportedly advanced").

CONCLUSION

Accordingly, it is ORDERED that the motion of defendants the New York County District Attorney's Office, District Attorney Cyrus R. Vance, Jr. and Assistant District Attorney Megan Joy to dismiss the complaint herein is granted, and the complaint is dismissed in its entirety as against these defendants.

Dated: February 26, 2019

ENTER:

J.S.C.

HON. ALEXANDER M. TISCH