

United States District Court  
Southern District of Texas

**ENTERED**

July 13, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

FRANCES RIOS,	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 2:14-CV-00409
	§	
CITY OF CORPUS CHRISTI, TEXAS,	§	
et. al.,	§	
Defendants.	§	

**MEMORANDUM OPINION AND ORDER**

This Court dismissed Frances Rios’ claims against the City of Corpus Christi and individual Defendants on the Defendants’ Rule 12(b)(6) motions and dismissed one of Rios’ claims *sua sponte*. D.E. 67, 68. Rios filed a motion for new trial. D.E. 69, 70. She challenges this Court’s *sua sponte* dismissal of her Fourteenth Amendment claim. Rios argues that this Court misapplied the standards for dismissal and that there are fact issues that cannot be resolved on a motion to dismiss. The Defendants filed a joint response opposing the motion. The facts are well known to the parties.

**ANALYSIS**

**A. Rule 59(e)**

“Rule 59(e) ‘serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence.’” *Templet v. HydroChem, Inc.*, 367 F.3d 473, 479 (5th Cir. 2004); *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002). A Rule 59(e) motion should not be used “to raise arguments which could, and should, have been made before the judgment issued.” *Simon v. United States*, 891

F.2d 1154, 1159 (5th Cir. 1990); accord *United Nat'l Ins. Co. v. Mundell Term. Svcs, Inc.*, 740 F.3d 1022, 1031 (5th Cir. 2014).

### **B. Elements of Fourteenth Amendment Due Process Claim**

Rios alleged the defendants violated her Fourteenth Amendment right to due process. “[A] state’s manufacturing of evidence and knowing use of that evidence along with perjured testimony to obtain a wrongful conviction deprives a defendant of his long recognized right to a fair trial secured by the Due Process Clause.” *Castellano v. Fragozo*, 352 F.3d 939, 955 (5th Cir. 2003)(en banc); see also *Good v. Curtis*, 601 F.3d 393, 401 (5th Cir. 2010) (“[K]nowing efforts to secure a false identification by fabricating evidence or otherwise unlawfully influencing witnesses constitutes a violation of the due process rights secured by the Fourteenth Amendment.”). In habeas cases, the elements have been stated more simply: 1) a witness for the State testified falsely; 2) the State knew the testimony was false; and 3) such testimony was material. *Knox v. Johnson*, 224 F.3d 470, 477 (5th Cir. 2000) (citing *Giglio v. United States*, 405 U.S. 150, 153 (1972)).

### **C. Fourteenth Amendment Claim Requires Knowingly False Evidence**

Rios argues that her Fourth Amended Complaint and exhibits plausibly state a claim that she was prosecuted using knowingly false testimony by the defendants.<sup>1</sup> Yet, her Fourth Amended Complaint alleges only false testimony by witnesses. Importantly, Rios

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<sup>1</sup> Although Rios argues that a person may be liable for requesting and securing an arrest warrant without probable cause, such a claim may violate the Fourth Amendment, not the Fourteenth. See *Manuel v. City of Joliet*, 137 S.Ct. 911, 917 (2017) (arrest without probable cause is a violation of Fourth Amendment). This Court previously found that Rios’ Fourth Amendment claim is barred by limitations, a finding she does not challenge.

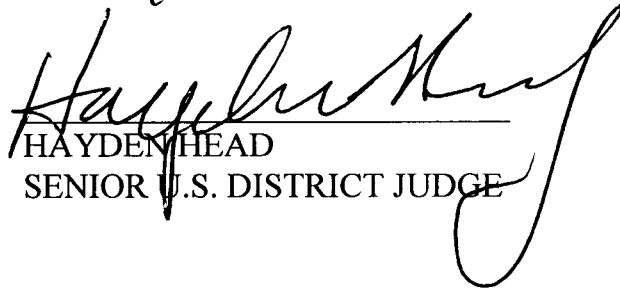
does not claim the prosecuting authority, the State, through Nueces County, knowingly presented false evidence, a critical element of her claim. *Fragozo*, 352 F.3d at 955 (“a state’s manufacturing of evidence and knowing use of that evidence along with perjured testimony . . .”).

A plaintiff’s failure to allege sufficient facts to support every element of her cause of action requires dismissal. *See Hale v. King*, 642 F.3d 492, 501 (5th Cir. 2011) (dismissing plaintiff’s ADA claim because he failed to allege he suffered from a qualifying disability in his); *see also Bohannon v. Griffin*, 2017 WL 2230250 at \*1 (5th Cir. May 19, 2017) (per curiam) (unpublished) (dismissing § 1983 claim against individual defendants for failure to allege their personal involvement in the events alleged); *HansaWorld USA v. Carpenter*, 662 Fed. App’x. 259, 262 (5th Cir. 2016) (per curiam) (unpublished) (dismissed claim for malicious interference for failure to plead facts to support element of damages).

### CONCLUSION

The Court DENIES Rios’ motion (D.E. 70) for new trial.

ORDERED this 13 day of July, 2017.

  
HAYDEN HEAD  
SENIOR U.S. DISTRICT JUDGE