

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

CIRILA BALTAZAR CRUZ AND  
R.J.M.B., BY AND THROUGH HER  
NEXT FRIEND, CIRILA BALTAZAR CRUZ

PLAINTIFFS

V.

CIVIL ACTION NO. 3:10-CV-446-HTW-FKB

MISSISSIPPI DEPARTMENT OF  
HUMAN SERVICES, SINGING RIVER  
HEALTH SYSTEM D/B/A SINGING  
RIVER HOSPITAL, AND JESS IE BETHER, VICKI HAYES,

## I. COMPLAINT

On August 12, 2010, plaintiffs filed their Complaint in this court [docket no. 1]. On August 21, 2012, with permission of the court, plaintiffs filed their First Amended Complaint [docket no. 95]. The First Amended Complaint alleges eight (8) counts against the defendants.

Count I asserts claims pursuant to Title 42 U.S.C. § 1983<sup>1</sup> for denial of substantive due process against defendants Vicki Hayes (“Hayes”), Ralph Mathews (“Mathews”), Jessie Bether (“Bether”), and Abigail Medina (“Medina”). Plaintiffs allege

Plaintiffs allege that these defendants acted under color of law to deprive the plaintiffs of fair procedures in the removal of R.J.M.B. from Baltazar Cruz's custody. Plaintiffs allege that in seeking to disrupt the relationship between mother and child, these defendants submitted false information to the Mississippi Department of Human Services and the Youth Court, and defendants maliciously and recklessly initiated an unfounded child welfare investigation. Plaintiffs further allege that defendants deliberately failed to provide adequate language interpretation to communicate with Baltazar Cruz, thus depriving her of the right to be heard and to challenge the allegations made against her.

Plaintiffs contend that these defendants willfully and maliciously conspired among themselves and with Judge Sigalas, Douglas L. Tynes, Jr., Wendy Tynes, and Holtz to deny the plaintiffs of their Fourteenth Amendment pr

unreasonable seizure by reporting fabricated allegations regarding Balatazar Cruz to the Mississippi Department of Human Services (“MDHS”).

Count IV asserts claims pursuant to Title 42 U.S.C. § 1983 for violation of the Fourteenth Amendment<sup>4</sup> right to Equal Protection against defendants Hayes, Mathews, Bether, and Medina. Plaintiffs contend that these defendants discriminated against the plaintiffs on the basis of the plaintiffs’ Latino, Hispanic, and indigenous racial background, as well as Baltazar Cruz’s national origin and immigrant status. Plaintiffs contend that they were subjected to different treatment than similarly situated individuals based on this animus.

Count V asserts claims pursuant to Title 42 U.S.C. § 1983 for violation and conspiracy to violate Title 42 U.S.C. § 1981<sup>5</sup> against defendants Hayes and Mathews. Plaintiffs contend that these defendants willfully and maliciously conspired among themselves and with Judge Sigalas, Douglas L. Tynes, Jr., Wendy Tynes, and Holtz to deprive Baltazar Cruz of her right to attend, and to meaningfully participate in, the proceedings through which she was separated from R.J.M.B. Plaintiffs allege that these defendants were motivated by animus based on race or national origin, and that these

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<sup>4</sup> U.S. CONST. amend XIV, § 1 states, in its pertinent part:

. . . nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws.

<sup>5</sup> Title 42 U.S.C. § 1981 states, in its pertinent part:

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

\* \* \*

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

defendants knowingly, willfully, maliciously, intentionally, and without justification acted to deprive the plaintiffs of their rights.

Count VI asserts claims pursuant to Title 42 U.S.C. § 1985(3)<sup>6</sup> against defendants Hayes, Mathews, Bether, and Medina. Plaintiffs claim that these defendants collaborated with one another and with Judge Sigalas, Douglas L. Tynes, Jr., Wendy Tynes, and Holtz for the purpose of depriving the plaintiffs of their equal protection rights. Plaintiffs contend that these defendants were motivated by animus against the plaintiffs' race and national origin, and as a consequence seized R.J.M.B. in violation of the Fourth Amendment, depriving the plaintiffs of their right to a familial relationship.

Count VII asserts violations of Title 42 U.S.C. § 2000d *et seq.*<sup>7</sup> against defendants MDHS and Singing River Hospital. Plaintiffs contend that as recipients of federal financial assistance, these defendants were bound by the requirements of Title

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<sup>6</sup> Title 42 U.S.C. § 1985(3) states:

Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

<sup>7</sup> Title 42 U.S.C. § 2000d states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

VI of the Civil Rights Act of 1964, Title 42 U.S.C. § 2000d, *et seq.*, which states: “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Plaintiffs argue that these defendants violated Title VI by intentionally discriminating against the plaintiffs based on the plaintiffs’ Latino, Hispanic, and indigenous racial background, as well as on the basis of Baltazar Cruz’s national origin.

Count VIII asserts a state law claim based on malicious prosecution of Baltazar Cruz against defendants, Medina, Hayes, and Mathews. Plaintiffs contend that these defendants acted maliciously and in the absence of probable cause to commence a Youth Court proceeding against Baltazar Cruz. The proceeding terminated with a ruling in favor of Baltazar Cruz.

Plaintiffs also request relief in the form of (1) reasonable damages to compensate for emotional distress suffered as a result of the defendants’ unconstitutional activities; (2) punitive damages; (3) appropriate injunctive and declaratory relief; (4) court costs.

This court also has subject-matter jurisdiction to rule on plaintiffs' requests for declaratory and injunctive relief pursuant to Title 28 U.S.C. 2201(a)<sup>9</sup>, which permits a federal court to declare the rights of a party so long as there exists an "actual controversy.

Furthermore, pursuant to Title 28 U.S.C. § 1367(a)<sup>10</sup>, this court has subject-matter jurisdiction to hear any state law claims that may be supplemental to the federal claims already alleged.

### III. BACKGROUND

This case arises out of the removal of R.J.M.B., a minor, from the custody of her mother, Baltazar Cruz. Baltazar Cruz is a Mexican immigrant who, in 2008, was living in Pascagoula, Mississippi. Baltazar Cruz is a member of the indigenous Chatino group in Oaxaca, Mexico, and speaks no English and only limited Spanish. Baltazar Cruz's primary language is Chatino, an indigenous language that is very different from Spanish. Furthermore, she has only attained the equivalent of a first-grade education and can neither read nor write in any language.

In November 2008, Baltazar Cruz was living and working in Pascagoula, Mississippi. She worked at a Chinese restaurant and lived in a three bedroom

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<sup>9</sup> Title 28 U.S.C. § 2201(a) states, in its pertinent part:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

<sup>10</sup> Title 28 U.S.C. § 1367(a) states, in its pertinent part:

[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.







That same morning, Medina and Bether agreed to fill out a MDHS “Report of Suspected Abuse and Neglect,” formally to report child abuse and neglect against Baltazar Cruz. The report alleged that Baltazar Cruz was trading sex for housing, that she intended to give up her child, and that she was an illegal alien.

Bether contacted the Office of the Mississippi Attorney General to report that Baltazar Cruz was not a U.S. citizen. Bether also instructed another Singing River Hospital social worker to report Baltazar Cruz to federal immigration authorities.

Hayes, a case worker employed by the Jackson County, Mississippi office of MDHS, arrived at Singing River Hospital around noon on November 18, 2008. Bether, Medina, and Hayes proceeded to Baltazar Cruz’s room. They reminded her that she could not leave the hospital with R.J.M.B. According to Baltazar Cruz, Peña Mendez was ordered to leave the room, even though at the time, she had looked pleadingly at her cousin urging him to stay. When he declined to leave the room, Hayes or Bether threatened to call the police.

Hayes has an alternative story. Hayes claims that it was Baltazar Cruz who asked Peña Mendez to leave the room, at which time she admitted to trading sex for housing, that she was held hostage by the Asian man who leased the apartment, that the Asian man made her move every six (6) months, and that R.J.M.B’s father had abandoned her. Hayes also claims that she saw no communication difficulty between Baltazar Cruz and Medina, nor did Medina mention any difficulty.

According to Hayes, the interview lasted approximately fifteen (15) minutes, a period of time that the plaintiffs claim could not have been sufficient for Baltazar Cruz to convey her story in Spanish, in which she is not fully proficient, and have that story

translated into English by Medina. Further, say plaintiffs, Hayes spoke with another Spanish-speaking hospital employee, Alicia Dred (“Dred”), who acknowledged she, Dred, had experienced communication problems when conversing with Baltazar Cruz in Spanish.

Upon contacting the Jackson County Youth Court in Pascagoula, Mississippi to obtain a custody order for R.J.M.B, Hayes was told by Marilyn Montgomery (“Montgomery”), the Youth Court designee, to visit Baltazar Cruz’s residence. Baltazar Cruz admits that she was hesitant to allow MDHS agents to enter her apartment. She said she feared her employer, who leased the apartment, might not approve. Regardless, Baltazar Cruz claims that she gave Hayes the address that one of her roommates had written down.

Hayes, however, contends that Baltazar Cruz did not want Hayes to go to the house because Baltazar Cruz was concerned that the Asian man who leased the apartment might cause trouble if someone from MDHS showed up. Hayes again called Montgomery, who instructed Hayes to file a Minor’s Complaint and that a home visit was still necessary. Hayes filed the Minor’s Complaint and alleged that the child was a

Minor born to illegal immigrant with unstable home environment. Mother of newborn is said to move every six months. Currently living in apartment where she trades sex for rent money with two other families, the mother is not sure she will be able to return. The husband left the mother for another woman.

In the late afternoon of November 18, 2008, Hayes attempted to visit Baltazar Cruz’s residence. The address was correct, but the apartment number was incorrect. Hayes concluded that Baltazar Cruz must have given false information regarding her residence.

That same afternoon, Baltazar Cruz was discharged from the hospital. Baltazar Cruz insists that Medina and Bether told her that if she stayed at the Salvation Army Shelter that night, she would be able to see her daughter the next morning at the Singing River Hospital. Baltazar Cruz was told that R.J.M.B. would not be discharged with her because the Youth Court of Jackson County had issued an "Order To Take Child Into Custody." R.J.M.B. was placed in the custody of Douglas L. Tynes, Jr., and Wendy Tynes (collectively "the Tynes"), a white couple, both lawyers, who desired to adopt a child. The Tynes' home was not a licensed foster home.

On the morning of November 19, 2008, Baltazar Cruz and Peña Mendez went to Singing River Hospital to seek information about R.J.M.B. They were told that R.J.M.B. was no longer at the hospital. They were given Hayes' contact information.

When Baltazar Cruz and Peña Mendez found Medina, Medina denied any knowledge about R.J.M.B.'s whereabouts, and told them to contact Hayes. Baltazar Cruz and Peña Mendez recruited the assistance of a Spanish and English speaking individual, Elizabeth Bjork ("Bjork"), who assisted them in contacting Hayes. Hayes informed them that the Jackson County Youth Court would hold a hearing that afternoon. Bjork accompanied Baltazar Cruz and Peña Mendez to the hearing, so that Bjork could translate the English to Spanish and Peña Mendez could translate the Spanish to Chatino.

At the hearing, Montgomery recommended that R.J.M.B. remain in the custody of MDHS. Bjork, on behalf of Baltazar Cruz, testified that Baltazar Cruz denied the charges leveled against her and that she had experienced difficulty understanding much of what Medina had said. Montgomery, in response acknowledged that Baltazar Cruz

spoke a different “dialect” of Spanish, which may have caused some interpretation



proceedings in which she was embroiled, including the charges against her, what her attorney was pleading on her behalf, or the consequences of this plea.

Baltazar Cruz contends that MDHS failed to give first priority in placement of R.J.M.B. to family members, like Peña Mendez, before placing her with the Tynes, in direct contradiction of Miss. Code Ann. § 43-15-13.<sup>12</sup> The Youth Court Judge also denied Baltazar Cruz's request to see her daughter because she had no family members in the area and the meeting could not occur in her home or at the MDHS office. Hayes and Mathews did not volunteer any additional locations that would permit visitation.

In a hearing on January 28, 2009, Judge Sigalas and Holtz recommended that Baltazar Cruz learn English if she wished to be reunited with R.J.M.B. In addition, Wendy Tynes, the unlicensed foster mother in whose care R.J.M.B. remained, expressed her opposition to reunification between Baltazar Cruz and her daughter, claiming that returning the ten (10) week-old child to her mother would cause "developmental" problems because Baltazar Cruz could not communicate with her daughter in English. Judge Sigalas agreed, and reiterated Holtz's recommendation that Baltazar Cruz learn English as part of her "service agreement" with MDHS.

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<sup>12</sup> Miss. Code Ann. § 43-15-13 states:

When the Department of Human Services is considering placement of a child in a foster de Anrrfoster d

On February 25, Baltazar Cruz was finally permitted to see R.J.M.B. during a visit held in the Youth Court visitation room.



without her knowledge. On June 22, 2009, MDHS submitted a termination of parental rights package to the Mississippi Attorney General's Office.

In August 2009, the United States Department of Health and Human Services (USDHHS) Office for Civil Rights and Administration for Children and Families undertook an investigation into MDHS's handling of R.J.M.B.'s case. The agency also opened an investigation into Singing River Hospital's actions in the matter.

On September 23, 2009, after commencement of the federal investigations, Judge Sigalas recused herself from the case, citing that the Tynes, "regularly practice law" before her court. The prosecutor, Michael Breland, also moved to withdraw from the case, noting that the Tynes were members of the legal community of Jackson

BOB, MISSISSIPPI, EVERETT, THE GUARDIAN, *ad litem*, withdrew, citing his

#### IV. STANDARD OF REVIEW

##### A. SUMMARY JUDGMENT

Medina, Bether, and Hayes contend that this court should grant them summary judgment on the issues raised by the plaintiffs. Understandably, this court should grant a motion for summary judgment only “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). A fact is material if “it might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). To determine whether a genuine dispute exists as to any material fact, the court must consider “all of the evidence in the record but refrain from making any credibility determinations or weighing the evidence.” *Turner*, 476 F.3d at 343 (*citing Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000)). While the court must make all reasonable inferences in favor of the non-moving party, “a party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or ‘only a scintilla of evidence.’” *Reeves*, 530 U.S. at 150 (*citing Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)).

##### B. 12(b)(6) MOTION TO DISMISS STANDARD

granted.” When tasked with this question, this court must consider the facts in the light most favorable to the plaintiff and determines whether the complaint states a valid claim for relief. *United States ex rel. Willard v. Humana Health Plan of Tex., Inc.*, 336 F.3d 375, 379 (5th Cir. 2003).

The complaint, preaches the United States Supreme Court, must allege sufficient facts to give rise to a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). The court “must take all of the factual allegations in the complaint as true,” but is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* Furthermore, a motion may be dismissed pursuant to Rule 12(b)(6) if the plaintiff has failed to comply with the applicable statute of limitations. *Moore v. El Paso, Tex.*, 660 F.2d 586, 589-90 (5th Cir. 1981).

#### C. WHEN BOTH A SUMMARY JUDGMENT AND A MOTION TO DISMISS ARE PRESENT

When parties submit motions that request 12(b)(6) relief or, in the alternative, summary judgment relief, the court, at its discretion, may address the entire motion as one for summary judgment. *See Americable Int'l Inc. v. Dep't of Navy*, 129 F.3d 1271, 1273 n.5 (D.C.C. 1997). Furthermore, when parties have submitted and relied upon extensive documentation outside the pleadings, as the parties here present have done, the court may convert the motion to one for summary judgment. *Petrie v. City of Grapevine*, 904 F.Supp.2d 569, 575 n.2 (N.D. Tex. 2012). Therefore, this court will address this matter under the summary judgment standard.

#### D. ANALYSIS

Defendants Hayes, Bether, and

that Hayes is entitled to absolute immunity for her testimony in court, but in a case such as this, where the material facts are so hotly contested, this a s 3 c o n t

rights. Plaintiffs also claim that Medina, Hayes, Mathews, and Bether violated Title 42 U.S.C. § 1981, Title 42 U.S.C. § 1985(3), and various state law claims.

Plaintiffs further contend that defendants violated their right to family integrity. The Fifth Circuit has held that the right to family integrity is well established. *Morris v. Dearborne*, 181 F.3d 657, 671 (5th Cir. 1999). The right, however, exists in a

plaintiff undertaken pursuant to the court-issued warrant); *see also Morris*, 181 F.3d at 672-73 (teacher who reported fabricated allegations of sexual abuse of a child could be held liable for the court-ordered removal of the child). Further, the fabrication of evidence is not objectively reasonable. *Morris*, 181 F.3d at 672.

In *Morris*

parents and the parents filed suit against the teacher. *Id.* In reviewing the circumstances in the context of qualified immunity, the court held that the teacher was not entitled to qualified immunity because she violated the plaintiffs' right to family integrity by fabricating sexual abuse allegations, and a reasonable teacher could not have believed that her actions were reasonable.





Therefore, Medina cannot claim that her seizure of R.J.M.B., before the Youth Court issued an order, is reasonable simply because the Youth Court found it reasonable

that the right to family integrity is so nebulous that it cannot be called a “well established” right, and that she acted reasonably at all times.

As stated above, the right to family integrity is a well-established right, but it can be nebulous when it intersects with the state’s interest in protecting children from abuse and neglect. *Morris*, 181 F.3d at 671. While plaintiffs do complain of the denial of their right to family integrity at the hands of Hayes, their complaint is grounded in Hayes actions, which they contend violated their well-established rights.

Plaintiffs contend that Hayes seized R.J.M.B., in violation of the Fourth Amendment, around noon on November 18, 2009, when she informed Baltazar Cruz that she could not leave the hospital with her child. At that time, Hayes did not have a court order, and her authority as a social worker only gave her the power to seize a child in the event of exigent circumstances. *Gates v. Tex. Dep’t of Protective & Regulatory Servs.*, 537 F.3d 404, 429 (5th Cir. 2008) (“the government may not seize a child from his or her parents absent a court order, parental consent, or exigent circumstances.”). Hayes argues that she did not intend to seize R.J.M.B. at that particular moment, rather it was simply a “heads-up” that when Baltazar Cruz was discharged, her child would not be discharged with her. Plaintiffs, however, contend that Baltazar Cruz could have left the hospital without being discharged and that the hospital could not retain the child without a court order or a medical reason. See generally *Kia P. v. McIntyre*, 235 F.3d 749 (2d Cir. 2000) (a Second Circuit case permitting a hospital to withhold a newborn from her mother when there was concern about methadone being present in the child’s urine).

Plaintiffs further allege that exigent circumstances did not exist for Hayes to seize R.J.M.B. without a court order. See *Gates*, 537 F.3d at 429 (“Exigent circumstances in this context means that, based on the totality of the circumstances, there is reasonable cause to believe that the child is in immi

Cruz in Spanish, as well as Peña Mendez and his assertion that Baltazar Cruz was not proficient in Spanish and had denied the allegations.

Plaintiffs also contend that Hayes violated their Fourteenth Amendment Due Process rights by providing information regarding her investigation that was false or incomplete. In particular, Baltazar Cruz notes that during the visit to her home, Hayes did not ask her questions about the living arrangements or any supplies. In addition, Hayes report informed the court that Baltazar Cruz had made no preparations for the child, but Hayes did not even ask Baltazar Cruz if she had these items, nor did she check the closet where Baltazar Cruz claims the supplies were kept.

Hayes cites *Doe v. State of Louisiana*, 2 F.3d 1412 (5th Cir. 1993), in which the court granted qualified immunity to social workers who manipulated and manufactured evidence against the parents of two children. In that case, however, the court, while

### 3. Bether

Bether, who filed a Motion for Summary Judgment and/or Motion to Dismiss [docket no. 138], asserts that she is entitled to qualified immunity. She claims that she was not the proximate or legal cause of the plaintiffs' separation, that she did not seize R.J.M.B. in violation of the Fourth Amendment, that she was not prejudiced against Baltazar Cruz, and that she acted with objective reasonableness.

The evidence regarding Bether is spotty at best. The only factual allegations plaintiffs make against Bether are the following: Bether was aware of some kind of language barrier; Bether reported suspected abuse or neglect to MDHS; Bether described Baltazar Cruz as an illegal alien; and Bether seized R.J.M.B. without a court order when she told Baltazar Cruz that she could not leave the hospital.

Bether does not deny that she was unable to communicate directly with Baltazar Cruz, instead Bether communicated through Medina. Medina, contending that she could communicate with Baltazar Cruz, told Bether that Baltazar Cruz was trading sex for housing, was being held hostage, lived in

Medina, filled out a Report of Suspected Abused/Neglected Child or Vulnerable Adult. The report enumerated Medina's allegations.

Plaintiffs contend that Bether should have known Medina's translation was false, or that she should have questioned the authenticity of that translation. Plaintiffs point to the fact that Medina had to repeat her statements many times and use hand gestures. Plaintiffs also point to Medina's alleged hostility to Peña Mendez, the only other Chatino speaker available. Plaintiffs also note that Peña Mendez told Medina that she did not speak Spanish well and that her primary language was Chatino. Furthermore, during oral arguments, Bether and Medina's lawyer revealed that Bether and Medina had attempted to call a language line for assistance in translating, but Baltazar Cruz allegedly hung the phone up. This was the first

mandatory, and the USDHHS only seeks voluntary compliance, the guidance letter notes that

in certain circumstances, the failure to ensure that LEP [limited English proficient] persons can effectively participate in, or benefit from, federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and the Title VI regulations against national origin discrimination. Specifically, the failure of a recipient of Federal financial assistance from [USD]HHS to take reasonable steps to provide LEP persons with meaningful opportunity to participate in HHS-funded programs may constitute a violation of Title VI and HHS's implementing regulations.

*Id.* The document urges recipients of financial assistance to consider the nature and importance of their work when considering whether to institute a limited English proficiency policy. *Id.* at 47,315. In particular, the document recommends that timely language assistance, through the use of on-site interpreters or a language line, should be utilized when delay or absence of such assistance would result in the denial of services, benefits, or rights. *Id.* at 47,316.

Bether and Medina say they attempted to call a language line. This is all that the court knows. Did they choose to call because they were concerned about the sufficiency of Medina's translation? Did Bether harbor doubts about Medina's translation, but still proceeded to sign her name to the Report of Suspected Abused/Neglected Child or Vulnerable Adult? Questions of fact exist, and without further discovery, this court cannot hold Bether immune.

As to the Fourth Amendment claim, which this court has discussed at length in the section on Medina, Bether cannot claim that her seizure of R.J.M.B., before the Youth Court issued an order, is reasonable simply because the Youth Court found it

reasonable based on Medina's questionable translation. Bether, Medina, and Hayes took custody of R.J.M.B. before any court order had been issued. Bether, like Medina, argues that "if the facts supporting an arrest are put before an intermediary such as a magistrate or grand jury, the intermediary's decision to issue a warrant or return an indictment breaks the causal chain and insulates the initiating party," even if that party acted inappropriately. *Smith*, 670 F.2d at 526.



however, a general rule that testimony presented at court is entitled to absolute immunity from § 1983 suits. *Mowbray v. Cameron Cnty., Tex.*, 274 F.3d 269, 277 (5th Cir. 2001). Even if the witness perjures himself, or conspires to perjure himself, he is entitled to absolute immunity from suit under § 1983. *Id.* at 277. As such, Hayes is absolutely immune for her testimony at the Youth Court, but that immunity does not extend to any of her actions outside of the court with respect to Baltazar Cruz's case.

### C. OBJECTION TO MAGISTRATE JUDGE'S ORDER ALLOWING IMMUNITY-RELATED DISCOVERY

On February 3, 2011, after Hayes filed her Motion for Summary Judgment [docket no. 42], Baltazar Cruz filed a Motion for Discovery Pursuant to Rule 56(d)<sup>14</sup> [docket no. 47] regarding Hayes. On May 3, 2011, after Medina filed her Motion for Summary Judgment [docket no. 67] and Motion to Dismiss [docket no. 68], Baltazar Cruz filed a Motion for Discovery Pursuant to Rule 56(d) [docket no. 74]. Both Hayes and Medina opposed these motions. On August 17, 2012, the Magistrate Judge granted both of Baltazar Cruz's motions for discovery [docket no. 93]. In response, Hayes filed a Notice of Appeal [docket no. 94], in which she informed the court that she was appealing the Magistrate Judge's decision to the Fifth Circuit. On August 8, 2012, Hayes filed a Motion to Clarify [docket no. 99], requesting that the Magistrate Judge clarify his order to ensure that his decision complied with *Wicks v. Miss. State Emp't Servs.*, 41 F.3d 991 (5th Cir. 1995). *Wicks* requires that, prior to opening limited

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<sup>14</sup> Rule 56(d) of the Federal Rules of Civil Procedure states:  
 When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:  
 (1) defer considering the motion or deny it;  
 (2) allow time to obtain affidavits or declarations or to take discovery; or  
 (3) issue any other appropriate order.

discovery, the court must find that (1) the plaintiff has alleged facts that, if true, would entitle the plaintiff to relief, (2) the court cannot rule on the immunity defense without

exceeded his authority, had failed to decide whether the court could rule without the benefit of limited discovery, and did not narrowly tailor discovery.

The standard for reviewing a Magistrate Judge's order is "clearly erroneous or contrary to law". Titl



2. Magistrate Judge Did Consider Whether The Court Could Rule Without Limited Discovery

This court is aware of the of the cases to which defendants cite that require a Magistrate Judge to only grant limited discovery if he or she concludes the court cannot reach a decision without such limited discovery. This court, however is not persuaded that the Magistrate Judge was in error. The Magistrate Judge, in granting the motion, concluded that additional discovery was necessary. This is the same conclusion that this court has reached. Further, in light of this court's decision to open discovery, defendants can claim no prejudice in the Magistrate Judge's previous decision to open limited discovery. This court need not address whether the order was narrowly tailored. The motion, therefor, is denied.

D. CONCLUSION

Medina, Hayes, and Bether all claim that they are entitled to qualified immunity and that this case should be dismissed on those grounds. This court is unable to reach that conclusion. This case is riddled with contradicting stories and potential indicia of misconduct. Reading the evidence before the court in the light most favorable to the plaintiffs, the non-moving parties, this court finds that the plaintiffs' have presented a prima facie case that their rights were violated, that those rights were clearly established, and that the defendants acted unreasonably. As such, Hayes Motion for Summary Judgment [docket no. 42], Medina's Motion for Summary Judgment [docket no. 67], Medina's Motion to Dismiss [docket no. 68], and Bether's Motion for Summary Judgment and/or Motion to Dismiss [docket no. 137] are dismissed at this time and general discovery should be opened. This court, however, does grant absolute immunity to Hayes for her testimony in court, but that absolute immunity does not

extend to any action she took outside of court. Further, this court denies the Motion to Review the Magistrate Judge's Order [docket no. 120] because the limited discovery order was not insufficient and defendants were not prejudiced by that order. Other outstanding motions, Motion to Strike [docket no. 133] and Motion for Discovery [docket no. 145] are dismissed as moot.

SO ORDERED this 10<sup>th</sup> day of March, 2014.

s/ HENRY T. WINGATE  
UNITED STATES DISTRICT COURT JUDGE

Civil Action No. 3:10-cv-446-HTW-FKB.  
Order