

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.)
 MISSISSIPPI DEPARTMENT OF)
 HUMAN SERVICES, SINGING RIVER)
 HEALTH SYSTEM D/B/A SINGING)
 RIVER HOSPITAL, and VICKI HAYES,)
 RALPH (MATT) MATHEWS, JESSIE)
 BETHER, and ABIGAIL MEDINA,)
 individually,)
 Defendants.)
 _____)

Case No. 3:10-cv-446
HTWLRA

FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs in this lawsuit are a Mexican immigrant woman, Cirila Baltazar Cruz, and her minor daughter, R.J.M.B., a U.S. citizen, whose constitutional rights to family integrity were violated by employees and/or agents of the Mississippi Department of Human Services ("MDHS") and Singing River Hospital ("Singing River"). Plaintiff Baltazar Cruz is a member of the Chatino indigenous group from southern Mexico and speaks limited Spanish and virtually no English. The individual defendants conspired to remove R.J.M.B. from her mother in order to place the infant child in the custody of a white attorney couple who were seeking to adopt and who frequently practiced before the same judge sanctioned the removal. In doing so, the individual Defendants deliberately took advantage of Plaintiff Baltazar Cruz's indigence,

inability to speak or understand English, and lack of familiarity with the U.S. legal system in order to attempt to remove R.J.M.B. permanently from her mother.

2. Two days after Plaintiff Baltazar Cruz gave birth to her daughter, R.J.M.B., at Singing River in Pascagoula, Mississippi, MDHS Defendant Vicki Hayes (“Defendant Hayes”) removed R.J.M.B. from her mother’s custody and care on the basis of patently and facially unreliable and deliberately false information provided by Singing River “patient advocate” Defendant Abigail Medina (“Defendant Medina”) and Singing River social worker Jessie Bether (“Defendant Bether”). Defendant Hayes and her supervisor, Defendant Ralph (Matt) Mathews (“Defendant Mathews”), refused to conduct any independent investigation into these obviously flawed allegations before removing R.J.M.B. from her mother’s custody. In violation of Plaintiffs’ due process rights, Defendants Hayes and Mathews continued to forcibly separate R.J.M.B. from her mother despite their awareness that the original allegations against Plaintiff Baltazar Cruz were false. Defendants Hayes, Mathews, Bether, and Medina, together and in concert with the Youth Court judge and the foster parents, manipulated the child welfare system in an attempt to deny Plaintiffs equal protection of the law.

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14. At all times relevant to this action, Vicki Hayes was a case worker employed by the Jackson County office of MDHS. Defendant Hayes is sued in her individual capacity.

15. At all times relevant to this action, Defendant Hayes was a “person” within the meaning of 42 U.S.C. §§ 1983 and 1985.

16. At all times relevant to this action, Defendants’ actions were taken under color of law.

17. At all times relevant to this action, Ralph (Matt) Mathews was an area social work supervisor employed by the Jackson County Department of Human Services. Defendant Mathews is sued in his individual capacity.

18. At all times relevant to this action, Defendant Mathews was a “person” within the meaning of 42 U.S.C. §§ 1983 and 1985.

19. At all times relevant to this action, Defendant Mathews’ actions were taken under color of law.

20. As Defendant Hayes’ supervisor, Defendant Mathews directly participated in the R.J.M.B. case from its earliest stages, by actively taking part in the decision to remove R.J.M.B. from her mother’s custody and in the later pre-removal investigation of Ms. Baltazar Cruz, and by monitoring and directing Defendant Hayes’ work on the case.

The Singing River Defendants

21. Singing River Hospital (“Singing River”), a division of Singing River Health Systems, is a community-owned hospital as defined by Miss. CODE ANN. § 41-13-10 and is a political subdivision of the state of Mississippi.

22. Singing River receives and uses federal funding in the administration of its activities and programs.

23. At all times relevant to this action, Jessie Bether was an employee or agent of Singing River Hospital. Defendant Bether is sued in her individual capacity.

24. At all times relevant to this action, Defendant Bether was a "person" within the meaning of 42 U.S.C. §§ 1983 and 1985.

25. At all times relevant to this action, Defendant Bether's actions were taken under color of law.

26. At all times relevant to this action, Abigail Medina was an employee or agent of Singing River Hospital. Defendant Medina is sued in her individual capacity.

27. At all times relevant to this action, Defendant Medina was a "person" within the meaning of 42 U.S.C. §§ 1983 and 1985.

28. At all times relevant to this action, Defendant Medina's actions were taken under color of law.

STATEMENT OF FACTS

29. Plaintiff Cirila Baltazar Cruz is an indigenous Mexican immigrant from the state of Oaxaca. She is a member of the indigenous Chatino community and speaks Chatino as her primary language.

30. Ms. Baltazar Cruz has limited Spanish proficiency and virtually no understanding of English. She has completed the equivalent of sixth grade education and is unable to read or write in any language.

31. In November 2008, Ms. Baltazar Cruz was living and working in Pascagoula, Mississippi. She was pregnant.

and summoned police assistance in getting to the hospital. Shortly after her arrival at Defendant Singing River, she gave birth to a healthy girl, R.J.M.B.

33. Ms. Baltazar Cruz remained at Singing River during the night of November 16, 2008.

34. At some point during the morning of November 17, 2008, a representative from the Singing River social services department visited Baltazar Cruz in her hospital room, accompanied by Defendant Abigail Medina, a Spanish-speaking "patient advocate" and an employee or agent of Singing River.

35. The social services department representative and Defendant Medina attempted to speak with Ms. Baltazar Cruz in Spanish and English. No Chatino-speaking individual assisted with interpretation. Ms. Baltazar Cruz did not fully understand what they were communicating to her. Ms. Baltazar Cruz told Defendant Medina that she did not understand what Defendant Medina was saying. Knowing that Ms. Baltazar Cruz's comprehension was limited, Defendant Medina used hand gestures and repeated her statements to Ms. Baltazar Cruz multiple times.

36. Later in the day on November 17, 2008, Defendant Medina and the other Singing River employee returned to Ms. Baltazar Cruz's room and questioned her about her living situation. Ms. Baltazar Cruz attempted to explain that she worked at a Chinese restaurant and lived in employer-provided housing. Defendant Medina asked Ms. Baltazar Cruz where she planned to live when she left the hospital. Ms. Baltazar Cruz stated that she would return to the apartment in which she had been living. Defendant Medina told Ms. Baltazar Cruz that she would not be permitted to leave the hospital with her daughter, even though no order of any kind had been entered that authorized R.J.M.B.'s detention at Singing River Hospital.

37. Ms. Baltazar Cruz remained at Singing River Hospital during the night of November 17, 2008.

43. Following this conversation, Defendant Medina—~~and~~ in the presence of Ms. Baltazar Cruz—told Mr. Mendez that Ms. Baltazar Cruz stated she was trading sex for housing and intended to give R.J.M.B. up for adoption. Mendez was incredulous and told Defendant Medina that he believed Ms. Baltazar Cruz had ~~not~~ understood what Defendant Medina was saying. Defendant Medina insisted that Ms. Baltaza

48. Upon information and belief, on or about November 18, 2008, Defendant Bether also instructed Singing River social worker Nancy Fagan to report Baltazar Cruz to federal immigration authorities, which Fagan did.

49. Neither federal nor state law required Defendant Bether or anyone else at Singing River to report Baltazar Cruz to the Mississippi Attorney General's office.

50. Neither federal nor state law required Defendant Bether or anyone else at Singing River to report Baltazar Cruz to federal immigration authorities.

51. At around 12:00 p.m. on November 18, 2008, Defendants Bether, Medina and Hayes returned to Ms. Baltazar Cruz's room and reiterated that she could not leave the hospital with her newborn daughter, R.J.M.B. When Defendants Hayes, Medina, and Bether told Ms. Baltazar Cruz that she would not be permitted to take R.J.M.B. with her when she left the hospital, there was not any court order directing that R.J.M.B. be taken into MDHS custody or otherwise authorizing the detention of R.J.M.B. at Singing River.

52. Around this time, Defendants Medina, Hayes, and Bether ordered Mr. Mendez to leave the room again. When he declined, Defendants Hayes and/or Bether threatened to call the police. Defendants also requested to see Mr. Mendez's identification, and proceeded to make a copy of it.

53. A notation on R.J.M.B.'s physician orders from November 18, 2008 stated "mother is not to see infant."

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60. During the afternoon of November 18, 2008, Ms. Balt Cruz was discharged from Singing River Hospital. Following Defendants Medina and Bether's instructions, Ms. Baltazar Cruz and Mr. Mendez went to the Salvation Army in Pascagoula in the hope that they would be able to see R.J.M.B. in the morning as Defendant Medina had promised.

61. During the afternoon of November 18, 2008, after Defendants Medina and Bether had told Ms. Baltazar Cruz that R.J.M.B. would not be discharged with her, the Youth Court of

65. During the night of November 18, 2008, Ms. Baltazar Cruz and Mr. Mendez slept at the Salvation Army Shelter in Pascagoula as Defendant Medina and Bether had instructed. Ms. Baltazar Cruz suffered great anguish during the night at the Salvation Army shelter, as she experienced post-partum bleeding, was unable to nurse her newborn daughter, and was distraught about her separation from R.J.M.B.

66. During the evening at the Salvation Army shelter, Mendez called Defendant Medina several times on the cell phone number she gave him, but she did not answer. He left a message asking Defendant Medina to call back. She never returned the call.

67. On the morning of November 19, 2008, Ms. Baltazar Cruz and Mr. Mendez went to Singing River to seek information about R.J.M.B. When Ms. Baltazar Cruz and Mr. Mendez arrived at Singing River, they were told that R.J.M.B. was no longer there.

68. Unbeknownst to Ms. Baltazar Cruz, Douglas L. Tynes and Wendy Tynes had picked up R.J.M.B. from Singing River that morning and taken her to their home.

69. At Singing River, Ms. Baltazar Cruz and Mr. Mendez unsuccessfully to obtain information about R.J.M.B.'s whereabouts. They looked for Defendant Medina but were initially unable to find her. Instead, a Singing River employee handed them contact information for Defendant Hayes. Later, they encountered Defendant Medina at her home. B.i ei a 17(2)500]TJ -228.4389(e)3.16

Baltazar Cruz and es gMendeP Do

Baltazar Cruz, a woman who worked at the clinic, spoke to Defendant Hayes over the telephone. Defendant Hayes informed the clinic worker that the hearing would take place at the Jackson County Youth Court that afternoon. The clinic worker located Elizabeth Bjork, an individual who spoke both English and Spanish, to accompany Baltazar Cruz and Mr. Mendez to the hearing.

72.

recommend that R.J.M.B. remain in MDHS custody. The court agreed to continue to withhold custody of R.J.M.B. from Ms. Baltazar Cruz.

78. Through Ms. Bjork, Ms. Baltazar Cruz asked the court if she could see her three-day old child. The court denied her request.

79. Upon instruction from Judge Sigalas, after the hearing at the Jackson County Youth Court, Defendant Hayes, Defendant Mathews, and duress and litem Terry Holtz went to Ms. Baltazar Cruz's home to conduct a "home study." Defendant Mathews also directly supervised and reviewed the work of Defendant Hayes during the "investigatory" phase of the case. Several Pascagoula police officers followed Ms. Baltazar Cruz, Mr. Mendez, and the above-listed individuals to Ms. Baltazar Cruz's residence. At least one Pascagoula police detective accompanied them inside the apartment.

80. Defendant Hayes' notes from the visit fail to document any conversation with Ms. Baltazar Cruz and instead contain a cursory physical description of the apartment, noting such details as "[Ms. Baltazar Cruz's] mattress is not completely covered."

81. Defendants Hayes and Mathews encountered a 16-year-old Chinese girl who also lived in the apartment where Ms. Baltazar Cruz resided her residence. The girl and her mother shared a room separate from that of Ms. Baltazar Cruz. Defendant Hayes recorded in her notes of the visit that the girl stated that she and her mother "found the apartments through the owner of the restaurant where she works." This statement was consistent with Ms. Baltazar Cruz's description of her living arrangement.

82. Upon investigation of Ms. Baltazar Cruz's residence

89. Upon information and belief, Defendants Hayes and Andrews conducted no additional investigation of Ms. Baltazar Cruz's living situation.

90. On December 17, 2008, the Jackson County Youth Court adjudicated R.J.M.B. neglected. The basis for the neglect petition was Ms. Baltazar Cruz "neglected to provide adequate care and supervision" for her child. No interpreter assisted Ms. Baltazar Cruz during the court proceedings. The court records reflect that Ms. Baltazar Cruz, via attorney John Foxworth, pleaded no contest to the neglect petition. Because of the language barrier, however, Ms. Baltazar Cruz did not understand the 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.

91. The petition specifically alleged that MC C.86125()-0.4Ms. pleltazarre7(r)2.3678(e)3.15
hthoce888186125(g)9.06272(a);

Defendants Hayes and Mathews did not inquire as to

during the hearing, did not offer any additional options to permit visitation between Ms. Baltazar Cruz and R.J.M.B.

99. Upon information and belief, MDHS made no attempt to contact Ms. Baltazar Cruz during January 2009. R.J.M.B. continued to live with the Tynes, whose residence remained unlicensed as a foster care home.

100. During January 2009, while custody of R.J.M.B. rested with MDHS, Defendants Hayes and Mathews made no effort to allow Ms. Baltazar Cruz to see her child.

101. During a hearing on January 28, 2009, Judge Sigalas, guardian ad litem Terry Holtz recommended that Ms. Baltazar Cruz learn English should she wish to be reunited with R.J.M.B.

102. During the January 28, 2009 hearing, unlicensed foster mother Wendy Tynes expressed her opposition to reunification between Baltazar Cruz and her daughter, claiming, among other things, that returning 10-week old R.J.B. to her mother would cause “developmental” problems because Ms. Baltazar Cruz could not communicate with her daughter in English. Judge Sigalas agreed and reiterated Holtz’s recommendation that Ms. Baltazar Cruz learn English as part of her “service agreement” with MDHS. Following the hearing, MDHS continued its placement of R.J.M.B. with the Tynes.

103. During February 2009, R.J.M.B. continued to live with the Tynes, whose residence remained unlicensed as a foster care home.

104. On or about February 25, 2009, Ms. Baltazar Cruz saw R.J.M.B. for the first time since MDHS separated them at the hospital over three months earlier, in a visit held at the Youth Court visitation room.

116. At the conclusion of the May 13, 2009 hearing, Judge Sigalas ordered MDHS to prepare a package to terminate Ms. Baltazar Cruz's parental rights. Judge Sigalas also ordered visitation between Ms. Baltazar Cruz and her daughter to cease.

117. Ms. Baltazar Cruz's attorney appealed the order from the May 13, 2009 hearing to the Mississippi Supreme Court.

118. Upon information and belief, from November 2008 through at least May 2009, Defendants Hayes and Mathews, Judge Sigalas, the State, and/or guardian ad litem Terry Holtz, engaged in multiple discussions outside the presence and without the knowledge of Ms. Baltazar Cruz and her attorney about, inter alia, the custody proceedings involving Ms. Baltazar Cruz and R.J.M.B., the terms of any visitation permitted to Ms. Baltazar Cruz and her daughter, and Ms. Baltazar Cruz's appeal of the Youth Court's May 2009 order.

119. On or about June 22, 2009, MDHS submitted a termination of parental rights package to the Mississippi Attorney General's Office, setting in motion the formal legal process to sever permanently Ms. Baltazar Cruz's legal rights to her six-month old daughter, R.J.M.B.

120. Ms. Baltazar Cruz was prohibited from seeing her daughter during the remainder of May, as well as for the entirety of June, July, August, and September of 2009. During this time, R.J.M.B. remained in the legal custody of MDHS and the physical custody of Douglas L. Tynes, Jr. and Wendy Tynes.

121. In August 2009, the United States Department of Health and Human Services (HHS) Office for Civil Rights (OCR) and the HHS Administration for Children and Families (ACF) began investigations into MDHS' handling of R.J.M.B.'s case. OCR also opened an investigation into Defendant Singing River's actions on the matter.

122. On September 23, 2009, after the commencement of the investigations into the Baltazar Cruz case, Judge Sigalas recused herself from the case, citing the fact that foster parents Douglas L. Tynes, Jr. and Wendy Tynes “regularly practice law” before her court. The same day, Prosecutor Michael Breland also moved to withdraw from the case, noting that the Tynes were members of the legal community of Jackson County, Mississippi. Mr. Holtz later moved to withdraw as guardian ad litem to R.J.M.B., also in his acquaintance with the foster parents.

123. Until federal authorities began investigating MDHS handling of the R.J.M.B. case, Defendant Hayes remained the primary case worker on the case.

124. Until federal authorities began investigating MDHS possible civil rights violations as well as violations of federal law governing foster care subsidies, MDHS made no efforts to reunify Ms. Baltazar Cruz and R.J.M.B.

125. On November 19, 2009, Ms. Baltazar Cruz regained legal custody of R.J.M.B.

126. On February 19, 2010, Ms. Baltazar Cruz was granted permanent legal custody of R.J.M.B. and MDHS was ordered to close R.J.M.B.’s case.

127. Due to Defendants Hayes’, Mathews’, Bether’s and Medina’s unconstitutional actions, Ms. Baltazar Cruz lost custody of R.J.M.B. during the first year of her daughter’s life and was only able to see R.J.M.B. four times from November 18, 2008 through October 2009.

128. Defendants Hayes, Mathews, and Medina conspired with another and Judge Sigalas, guardian ad litem Holtz, and the Tynes to deny Ms. Baltazar Cruz and R.J.M.B. their constitutional rights to family integrity because of Ms. Baltazar Cruz’s race and/or national origin by unlawfully removing R.J.M.B. from her mother’s custody just two days after birth. Defendants’ arbitrary and egregious conduct substantially interfered with Plaintiffs’ constitutionally-protected right to family integrity.

129. As a direct result of Defendants' unconstitutional actions which separated her from her daughter for over a year, Plaintiff Baltazar suffered tremendous mental anguish and serious physical problems.

130. As a direct result of Defendants' unconstitutional actions which separated her from her mother during the first year of her life, Plaintiff R.J.M.B. suffered substantial damages.

131. Due to state actors' unconstitutional interference into Plaintiffs' family relationship, Ms. Baltazar /R13 12 opportunity to bond during the formative first year of R.J.M.B.'s life. Plaintiff Baltazar was deprived of the chance to see her daughter grow her first tooth, learn to crawl, and hear her first words. For the first year of her life, Plaintiff R.J.M.B. was denied the chance to hear family and their language and culture, to be soothed and fed by her mother, and to recognize her mother's voice and touch. Plaintiff Baltazar /R13 12 J.M.B., to comfort her when she was sick or distressed, to sing her to sleep, and to watch her grow from an infant to a toddler. Because the foster parents who sought to adopt R.J.M.B. called her by a different name, as R.J.M.B. began to gain recognition of and respond to words during the first year of her life, she did not even know her real name. Plaintiff Baltazar /R13 12 ff R.J.M.B. experienced the profound psychological harm of separation from her mother as a result of Defendants' unconstitutional actions.

CLAIMS FOR RELIEF

COUNT I

42 U.S.C. § 1983 CLAIMS ARISING FROM VIOLATIONS OF AND CONSPIRACY TO
VIOLATE PLAINTIFFS' FOURTEENTH AMENDMENT SUBSTANTIVE DUE
PROCESS RIGHTS
(DEFENDANTS HAYES, MATHEWS, BETHER, AND MEDINA)

132. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs as if set forth herein.

133. Plaintiffs assert these claims pursuant to 42 U.S.C. § 1983 against Defendants Hayes, Mathews, Bether, and Medina according to the specific parameters detailed below.

134. Defendants Hayes', Mathews', Bether's, and Medina's actions occurred under color of state law for the purposes of 42 U.S.C. § 1983.

135. Plaintiff Baltazar Cruz has a constitutionally-protected liberty interest in the care, companionship, upbringing and nurture of her child. Plaintiff R.J.M.B. enjoys a parallel liberty interest in being raised and nurtured by her biological mother.

136. Defendants Hayes, Mathews, Bether, and Medina willfully, deliberately, and without justification, violated Plaintiffs' clearly established Fourteenth Amendment substantive due process right to family integrity. Defendants' acts subjected Plaintiffs to egregious, arbitrary,

138. Defendants Bether's and Medina's fabricated allegations and willful and reckless misrepresentations to MDHS set in motion a chain of events that they knew or reasonably should have known would lead to the deprivation of Plaintiff's substantive due process rights to family integrity. Defendants Bether's and Medina's report of known falsehoods to MDHS, which initiated unjustified intervention into Plaintiff's family life, was arbitrary and egregious.

139. Defendants Hayes and Mathews deprived Plaintiff of their constitutional right to

utter refusal to make efforts to reunite mother and child, and their failure to follow applicable MDHS statutes, regulations, and internal policies.

143. Defendants Hayes and Mathews further violated Plaintiff's substantive due process rights to family integrity by seeking to terminate Plaintiff Baltazar Cruz's parental rights to R.J.M.B. permanently and to ensure that the Tynes could adopt R.J.M.B.

144. Defendants Hayes, Mathews, Bether, and Medina willfully and maliciously conspired with one another and Judge Sharon Sigalas, Douglas Tynes, Jr. and Wendy Tynes, and/or guardian ad litem Terry Holtz to deprive Plaintiff's Fourteenth Amendment substantive due process rights. Defendants Hayes and Mathews conspired with Judge Sigalas to transfer custody of R.J.M.B. to the Tynes directly upon child's discharge from Singing River, knowing that the Tynes sought to adopt and intend to facilitate their potential adoption by depriving Plaintiffs of their substantive due process rights. Defendants Hayes, Mathews, Bether, and Medina conspired with one another and Judge Sharon Sigalas, Douglas Tynes, Jr. and Wendy Tynes, and guardian ad litem Holtz to cause and perpetuate the separation of R.J.M.B. from her mother despite their S

for adoption by the Tynes, a white family. The ~~actions~~ were motivated by an impermissible bias against Ms. Baltazar Cruz due to her status as a Mexican woman of indigenous descent. Defendants furthered the goals of Judge Sigala ~~and~~ Tynes to effectuate a forced, permanent transfer of custody of R.J.M.B. from Ms. Baltazar ~~and~~ Cruz to the Tynes.

146. Defendants Hayes', Mathews', Bether's, and Medina's ~~actions~~ severely subverted the integrity of Plaintiffs' family relationship and ~~caused~~ Plaintiff R.J.M.B. to be separated from her natural mother from the time she was two days ~~old~~ after her first birthday, and caused Plaintiff Baltazar Cruz to miss the first year ~~of~~ her daughter's life.

COUNT II

42 U.S.C. § 1983 CLAIMS ARISING FROM VIOLATIONS OF AND CONSPIRACY TO VIOLATE PLAINTIFFS' FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS RIGHTS (DEFENDANTS HAYES, MATHEWS, BETHER, AND MEDINA)

147. Plaintiffs re-allege and incorporate by reference ~~the~~ allegations set forth in the

Medina and Bether acted knowingly and maliciously to separate Ms. Baltazar Cruz and her newborn daughter by intentionally and recklessly reporting fabricated allegations to MDHS.

151. Defendants Bether's and Medina's deliberate reporting of known falsehoods to MDHS set in motion a chain of events that they knew or reasonably should have known would lead to the deprivation of Plaintiffs' Fourteenth Amendment procedural due process rights.

152. Defendants Hayes and Mathews deprived Plaintiffs of their Fourteenth Amendment rights to procedural due process by, inter alia, failing to investigate any of the allegations that Defendant Medina leveled against Ms. Baltazar Cruz by deliberately or recklessly reporting false statements of neglect when seeking an ex parte custody order from the Jackson County Youth Court. Defendants Hayes and Mathews knew that exigent circumstances existed that would have justified their efforts to initiate court intervention to remove R.J.M.B. from her mother's custody without a pre-deprivation adversarial hearing, yet they maliciously denied Plaintiff Baltazar Cruz her right to be heard to contest the false accusations leveled against her.

153. Defendants Hayes and Mathews further deprived Plaintiffs of their Fourteenth Amendment procedural due process rights by refusing to provide adequate language interpretation during the investigatory stages of the case. Upon information and belief, Defendants Hayes and Mathews also deliberately failed to inform Ms. Baltazar Cruz of the November 19, 2008 hearing, with the intent of causing the hearing to proceed without Ms. Baltazar Cruz's presence.

154. Defendants Hayes and Mathews continued to violate Plaintiffs' procedural due process rights after taking custody of R.J.M.B. by failing to provide adequate language interpretation to communicate with Ms. Baltazar Cruz and by failing almost entirely to communicate with Ms. Baltazar Cruz during a period of approximately ten months after they

took custody of her newborn daughter, thus depriving Mrs. Baltazar Cruz of her right to be heard to challenge her continued separation from R.J.M.B.

155. Defendants Hayes, Mathews, Bether, and Medina and maliciously conspired with one another and Judge Sharon Sigalas, Douglas Tynes, Jr. and Wendy Tynes, and/or guardian ad litem Terry Holtz to deprive Plaintiffs their Fourteenth Amendment procedural due process rights when faced with the state-initiated destruction of their family by commencing

159. Defendants Medina and Bether deprived Plaintiff ~~R.B.~~ of her Fourth Amendment right to be free from unreasonable seizure by ~~rep~~ fabricated allegations regarding Ms. Baltazar Cruz to MDHS and by intentionally and ~~less~~ly misrepresenting and omitting material facts when they reported “neglect” of ~~two~~ old R.J.M.B to MDHS.

160. Defendants Bether’s and Medina’s deliberate ~~report~~ of known falsehoods to MDHS set in motion a chain of events that they ~~know~~ reasonably should have known would lead to the unconstitutional seizure of Plaintiff ~~J.M.B.~~ by the state. Deliberately manipulating Ms. BR

COUNT IV

42 U.S.C. § 1983 CLAIMS ARISING FROM VIOLATIONS OF PLAINTIFFS' FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION OF THE LAWS (DEFENDANTS HAYES, MATHEWS, BETHER, AND MEDINA)

164. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs as if set forth herein.

165. On the basis of Plaintiffs' Latino, Hispanic, and/or indigenous racial background and Ms. Baltazar Cruz's non-American national origin and immigrant status, Defendants Hayes, Mathews, Bether, and Medina deprived Plaintiffs their clearly-established right to equal protection of the laws. Defendants Hayes, Mathews, Bether, and Medina subjected Plaintiffs to different treatment than that received by similarly situated individuals. The different and inferior treatment, included, inter alia, forcibly separating Ms. Baltazar Cruz and her daughter two days after birth for reasons related to Ms. Baltazar Cruz's race, color, national origin, and immigrant status, and Defendants Hayes and Mathews' efforts to terminate Ms. Baltazar Cruz's parental rights permanently and hastily so that R.J.M.B. could be raised with the white American couple with whom she had been placed.

166. Based on animus against and stereotypical perceptions of Ms. Baltazar Cruz based on her race, color, and/or national origin, Defendants Bether and Medina willfully or recklessly initiated MDHS interference into Ms. Baltazar Cruz and R.J.M.B.'s protected family relationship in a discriminatory manner. Defendants Bether and Medina discriminatorily fabricated and reported false allegations against Plaintiff Baltazar Cruz to MDHS with the intent and effect of triggering destructive state interference into Plaintiff Baltazar Cruz's family life. In so doing, Defendant Bether emphasized her belief in Defendant Baltazar Cruz's status as an undocumented Mexican immigrant as a key reason for initiating MDHS intervention and attempted to turn

intent evidenced by, inter alia, Defendants Hayes and Mathews' insistence that Ms. Baltazar Cruz learn English and forego her constitutionally protected rights to raise her daughter to speak Chatino and in accordance with her cultural practices.

COUNT V

42 U.S.C. § 1983 CLAIMS ARISING FROM VIOLATIONS OF AND CONSPIRACY TO VIOLATE 42 U.S.C. § 1981 UNDER COLOR OF LAW (DEFENDANTS HAYES AND MATHEWS)

171. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs as if set forth herein.

172. As set forth supra, Defendants Hayes and Mathews willfully and maliciously conspired with one another and Judge Sharon Sigala, Douglas L. Tynes, Jr. and Wendy Tynes, and/or guardian ad litem Terry Holtz to deprive Plaintiff Cirila Baltazar Cruz of her right to attend and to meaningfully participate in the proceedings through which she was separated from R.J.M.B.

173. Defendants Hayes and Mathews were motivated by animus against Plaintiffs based on Plaintiffs' race and/or national origin when they conspired to deprive Plaintiffs of their rights.

174. In conspiring and taking the actions described supra

COUNT VI

VIOLATIONS OF 42 U.S.C. § 1985(3)
(DEFENDANTS HAYES, MATHEWS, BETHER, AND MEDINA)

177. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs as if set forth herein.

178. Defendants Hayes, Mathews, Bether, and Medina colluded with one another and Judge Sigalas, Douglas L. Tynes, Jr., and Wendy, and/or guardian ad litem Terry Holtz conspired, agreed, planned, coordinated, and acted for the purpose of depriving Plaintiffs of their equal protection rights including, inter alia, their right to be free from arbitrary, egregious, and oppressive interference with their protected family relationship, their right to be provided with fundamentally fair procedures when dealt with the disruption of their family relationships, and Plaintiff R.J.M.B.'s right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures.

179. Defendants Hayes, Mathews, Bether, and Medina motivated by animus against

COUNT VII

VIOLATIONS OF 42 U.S.C. § 2000d et seq.
(DEFENDANTS MISSISSIPPI DEPARTMENT OF HUMAN SERVICES AND SINGING RIVER HOSPITAL)

182. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs as if set forth herein.

183. Defendants MDHS and Singing River, at all times relevant to this Complaint, received federal funding in the administration of activities, services, and programs.

184. As recipients of federal financial assistance, Defendants MDHS and Singing River were at all relevant times bound by the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which prohibits excluding, denying, or subjecting any person to

she and her daughter were subjected; denying Ms. Baltazar Cruz access to the visitation and reunification processes and programs afforded to American-born, non-indigenous, and non-Latino parents under MDHS supervision; and moving to terminate Ms. Baltazar Cruz's parental rights based on animus against non-Americans and indigenous Latinos like Plaintiff.

187. As set forth supra, Defendant Singing River violate

190. Defendants Medina, Hayes, and Mathews acted maliciously and in the absence of probable cause to commence a Youth Court proceeding involving R.J.M.B. and against Plaintiff Baltazar Cruz.

191. The proceeding terminated with a ruling in Plaintiff Baltazar Cruz's favor, resulting in the custody of R.J.M.B. being returned to Plaintiff Baltazar Cruz.

192. As a result of the maliciously-instituted proceeding, Plaintiffs Baltazar Cruz and R.J.M.B. were separated by the state for over a year and suffered substantial damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that there be judgment rendered herein in favor of

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification to the following attorneys for the Defendants:

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