APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-11231
D.C. Docket No. 8:13-cv-02873-JDW-TBM

[Filed December 14, 2018]

DORIS FREYRE,
Plaintiff-Appellee,
Cross-Appellant,

versus

CHAD CHRONISTER, in his official capacity as Sheriff of the Hillsborough County Sheriff's Office,
Defendant-Appellant,
Cross-Appellee,

HILLSBOROUGH COUNTY SHERIFF'S OFFICE, IRIS C. VALDEZ, JESSICA PIETRZAK,
Defendants-Appellees,

UNITED STATES OF AMERICA,
Intervenor.

App. 2

Appeals from the United States District Court
for the Middle District of Florida

(December 14, 2018)

Before TJOFLAT, MARCUS and NEWSOM, Circuit Judges.

TJOFLAT, Circuit Judge:

This interlocutory appeal asks us to determine whether the Hillsborough County Sheriff's Office ("HCSO"), in conducting child-protective investigations under a grant agreement with the Florida Department of Children and Families ("DCF"), acts as an arm of the state entitled to Eleventh Amendment immunity. The District Court held that HCSO was not an arm of the state and, for the reasons explained below, we affirm.

I.

In 1998, the Florida Legislature required DCF to transfer all responsibility for child-protective investigations in certain counties to the county sheriff. Fla. Stat. § 39.3065(1). As to the remaining counties, including Hillsborough County, the Legislature gave DCF the option to transfer DCF's responsibility for child-protective investigations to the county sheriff under grant agreements. *Id.* § 39.3065(3)(a). The Legislature specified certain minimum requirements that grantee sheriff's offices must meet: for example, sheriffs must "operate, at a minimum, in accordance with the performance standards and outcome measures established by the Legislature for protective investigations conducted by the Department of Children and Families." *Id.* § 39.3065(3)(b). The

Legislature also specified other requirements for these grant agreements pertaining to appropriation and segregation of funds, reporting, and program evaluation. *Id.* §§ 39.3065(3)(b)-(d).

On July 1, 2006, HCSO assumed responsibility for child-protective investigation in Hillsborough County accepted by DCF's Abuse Hotline. HCSO conducts these investigations pursuant to a grant agreement ("Grant Agreement"), the details of which we explain, where relevant, below.

On March 16, 2011, DCF received a call on its Abuse Hotline alleging that Doris Freyre had neglected her disabled child, MAF. HCSO, through child-protective investigators Jessica Pietrzak and Iris Valdez and under Sheriff David Gee's supervision, conducted an investigation that ended in the removal of MAF from Freyre's care. At a shelter hearing in state court, the judge agreed with HCSO that there was probable cause to remove MAF from Freyre's care but asked whether, instead of permanent removal, 24-hour home health care services could be obtained. The state was unable to secure those services, and MAF was temporarily hospitalized at Tampa General Hospital.

Unable to find a local, long-term placement that would meet MAF's needs, HCSO then sought to transfer MAF from Tampa General Hospital to a skilled nursing facility in Miami. Freyre was informed of the transfer and refused to consent. Freyre maintains that her father filed and served the state Attorney General's Office with a *pro se* petition on her behalf requesting an emergency hearing in state court. The document was filed with the court, but Freyre was

unable to prove that the state office was served, and HSCO contends that none of its personnel saw this petition. In any event, MAF was transported to the nursing facility in Miami without a hearing, and died shortly thereafter.

In November 2013, Freyre brought this action against HCSO, the State of Florida, Sheriff David Gee, Jessica Pietrzak, Iris Valdez, and other individuals and entities associated with MAF's removal and transfer. In her complaint, she asserted claims under the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, and 42 U.S.C. § 1983 for infringement of her rights under the Fourteenth Amendment. A number of these defendants settled out, and in March 2017 the District Court granted Pietrzak's and Valdez's motions for summary judgment as well as HCSO's motion for summary judgment with respect to all of Freyre's claims except her associational ADA claim. The District Court denied HCSO Eleventh Amendment immunity, and HCSO lodged this interlocutory appeal two days later. Freyre then cross appealed the District Court's grant of summary judgment on her individual ADA, Rehabilitation Act, and § 1983 claims.

II.

As an initial matter, we must determine which issues in this case we have jurisdiction over. Sheriff Chronister[1] raises two issues on interlocutory appeal:

---

[1] Freyre filed this civil action against Sheriff David Gee in his official capacity as Sheriff of the Hillsborough County Sheriff's

(1) whether the District Court erred in concluding that HCSO was not entitled to Eleventh Amendment immunity; and (2) whether the District Court erred in denying HCSO summary judgment on Freyre's associational ADA claim. In addition, Freyre as cross-appellant raises two issues: (1) whether the District Court erred in granting Valdez-Corey's and Pietrzak's motions for summary judgment; and (2) whether the District Court erred in granting HCSO's motion for summary judgment on Freyre's individual ADA, Rehabilitation Act, and § 1983 claims. Although we unquestionably have jurisdiction under the collateral order doctrine to review the question of Eleventh Amendment immunity, we decline to exercise pendent appellate jurisdiction over the parties' remaining issues.

A.

Generally speaking, our Court may only hear appeals from a district court's final order. 28 U.S.C. § 1291. "A final order is one that ends the litigation on the merits and leaves nothing for the court to do but execute its judgment." *World Fuel Corp. v. Geithner*, 568 F.3d 1345, 1348 (11th Cir. 2009) (quoting *Crawford & Co. v. Apfel*, 235 F.3d 1298, 1302 (11th Cir. 2000)). An order that disposes of fewer than all the claims of all the parties is not final and appealable unless the district court certifies the order for immediate review under Federal Rule of Civil Procedure 54(b). *Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244, 1245–

Office. Chad Chronister, Gee's successor, was later substituted as the named defendant for Freyre's official-capacity claim.

46 (11th Cir. 2012) (per curiam). Similarly, an order that contemplates further substantive proceedings in a case is not final and appealable. *Broussard v. Lippman*, 643 F.2d 1131, 1133 (5th Cir. 1981).[2] We refer to this as the final judgment rule.

Like many legal rules, the final judgment rule is subject to exceptions. One such exception is the collateral order doctrine articulated by the Supreme Court in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221 (1949). Under *Cohen*, an otherwise nonappealable interlocutory order is appealable if it (1) "conclusively determine[s] [a] disputed question," (2) "resolve[s] an important issue completely separate from the merits of the action," and (3) "[is] effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 98 S. Ct. 2454, 2458 (1978); *see also Plaintiff A v. Schair*, 744 F.3d 1247, 1252–54 (11th Cir. 2014) (explaining *Cohen*'s three-part test). Both the Supreme Court and this Circuit have held that an order denying a defendant Eleventh Amendment immunity is a collateral order subject to immediate interlocutory appeal. *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 147, 113 S. Ct. 684, 689 (1993); *Black v. Wigington*, 811 F.3d 1259, 1270 (11th Cir. 2016); *Summit Med. Assocs. v. Pryor*, 180 F.3d 1326, 1334 (11th Cir. 1999). Accordingly, the District Court's denial of Eleventh Amendment immunity is properly before this Court.

---

[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all Fifth Circuit decisions rendered before close of business on September 30, 1981.

But the same cannot be said of the other issues raised by the parties. For example, Sheriff Chronister argues that Freyre lacks standing to pursue her associational ADA claim because she "failed to show that she personally suffered exclusion, denial of benefits, or discrimination because of her association with MAF." Appellant's Br. at 31 (emphasis omitted). Even if he's right, that issue is unreviewable: in *Summit Medical Associates*, we held that "the question of standing does not fit within the collateral order doctrine." 180 F.3d at 1334. And it isn't difficult to see why: "[a]lthough a district court's standing determination conclusively resolves a disputed question and settles an important issue separate from the merits of the case, courts have recognized that the issue of standing is not effectively unreviewable on appeal from a final judgment." *Id*. In other words, standing satisfies the first two prongs of the *Cohen* test but fails the third.[3]

What's true of standing is even truer of Freyre's claims as cross-appellant. The District Court's summary judgment order in favor of Valdez-Corey and Pietrzak "conclusively determine[d] [a] disputed question,"[4] but it was not "an important issue completely separate from the merits"[5]—indeed, it *was*

---

[3] Because Sheriff Chronister's challenge to Freyre's associational ADA standing is unreviewable under the collateral order doctrine, his challenge to her associational ADA claim on the merits is unreviewable *a fortiori*.

[4] *Livesay*, 437 U.S. at 468, 98 S. Ct. at 2458.

[5] *Id.*

the merits. And the District Court's grant of summary judgment is reviewable once all the claims in the case—including the claim pending against Sheriff Chronister—reach a final decision. *See Myers v. Sullivan*, 916 F.2d 659, 673 (11th Cir. 1990) ("[E]arlier interlocutory orders merge into the final judgment, and a party may appeal the latter to assert error in the earlier interlocutory order."). This reasoning likewise extends to Freyre's individual ADA, Rehabilitation Act, and § 1983 claims, and precludes us from exercising jurisdiction over them under the collateral order doctrine.

But that's not all there is to say about jurisdiction, for even if an interlocutory order is not appealable under the collateral order doctrine, we may exercise jurisdiction under the pendent appellate jurisdiction doctrine. Under this doctrine, we may address a nonappealable decision when it is "'inextricably intertwined' with the appealable decision or when 'review of the former decision [is] necessary to ensure meaningful review of the latter.'" *King v. Cessna Aircraft Co.*, 562 F.3d 1374, 1379 (11th Cir. 2009) (per curiam) (alteration in original) (quoting *Swint v. Chambers Cty. Comm'n*, 514 U.S. 35, 51, 115 S. Ct. 1203, 1212 (1995)). Although the question of whether to exercise pendent appellate jurisdiction is discretionary, *Summit Med. Assocs.*, 180 F.3d at 1335, we do so "only under rare circumstances," *King*, 562 F.3d at 1379. In this specific context, we have repeatedly stated that where we can resolve the issue of Eleventh Amendment immunity without reaching the merits of a substantive claim, we will not exercise pendent appellate jurisdiction over the substantive

claim. *See, e.g.*, *Black*, 811 F.3d at 1270–71; *Summit Med. Assocs.*, 180 F.3d at 1335–36.

In *Summit Medical Associates*, we considered on interlocutory appeal whether to review standing under our pendent appellate jurisdiction when appellants had properly appealed, under the collateral order doctrine, the District Court's rejection of their Eleventh Amendment immunity defense. 180 F.3d at 1334–35. We ultimately declined to exercise jurisdiction because the two questions were not inextricably intertwined—the question of immunity could be resolved without reaching the merits of the standing challenge. *Id.* at 1335–36. Our reasoning there provides the same result here: the purely legal question of whether the District Court was correct to deny HCSO Eleventh Amendment immunity has nothing to do with whether Freyre has demonstrated standing to pursue her associational ADA claim.[6] *See Black*, 811 F.3d at 1270–71. Sheriff Chronister's argument to the contrary—that the questions are inextricably intertwined because denying Freyre standing would conclusively resolve this case[7]—misses the mark. The question is not whether deciding the pendent issue would moot the properly appealed issue, but whether "review of the former decision [is] necessary to ensure meaningful review of the latter." *King*, 562 F.3d at 1379 (alteration in

---

[6] This also applies to Sheriff Chronister's merits challenge to the associational ADA claim as well as all of Freyre's claims as cross-appellant. All of these issues are separate, legally and factually, from the legal question of whether HCSO is entitled to Eleventh Amendment immunity.

[7] Appellant's Br. at 2.

original) (quoting *Swint*, 514 U.S. at 51, 115 S. Ct. at 1212). And that simply is not the case here.

We should say one final thing about pendent appellate jurisdiction. At oral argument, we suggested that Freyre's claims as cross-appellant would be reviewable under our pendent appellate jurisdiction if, but only if, we reached the question of abrogation.[8] We write now to clarify that these issues—*i.e.*, the question of immunity and the merits issues raised by both parties on appeal—would not be inextricably intertwined even if we were to reach the question of abrogation. "When a plaintiff argues that Congress has abrogated sovereign immunity for a particular type of claim, we review that argument *de novo*." *Black*, 811 F.3d at 1270. If we agree, then "a plaintiff who *alleges* that type of claim . . . successfully invoke[s] our jurisdiction unless [the] allegations are 'immaterial and made solely for purpose of obtaining jurisdiction' or 'wholly insubstantial and frivolous.'" *Id.* (emphasis added) (quoting *Blue Cross & Blue Shield of Ala. v. Sanders*, 138 F.3d 1347, 1352 (11th Cir. 1998)). Here, Sheriff Chronister does not argue that Freyre's associational ADA claim is "immaterial" or "insubstantial and frivolous"; his argument is that she did not adduce enough evidence at summary judgment to proceed with the claim. Appellant's Br. at 44–49. But all we need to proceed to the abrogation question is a legitimate allegation of a claim for which Congress has abrogated sovereign immunity. *See Black*, 811 F.3d at 1270. Accordingly, whether the District Court erred by

---

[8] Oral Argument at 19:35–24:52, *Freyre v. Chronister*, ___ F.3d ___ (2018) (No. 17-11231), goo.gl/pzwMpJ.

denying summary judgment on the associational ADA claim—as Sheriff Chronister argues—or erred by granting summary judgment on all the other claims—as Freyre argues—is not a question "inextricably intertwined" with sovereign immunity or abrogation.

B.

Having defined the scope of this appeal, we next consider whether HSCO is entitled to Eleventh Amendment immunity when performing child-protective investigations. We review this question *de novo*. *Nat'l Ass'n of Bds. of Pharmacy v. Bd. of Regents of the Univ. Sys. of Ga.*, 633 F.3d 1297, 1313 (11th Cir. 2011). Because HCSO asserted Eleventh Amendment immunity in a motion for summary judgment, it should prevail if there is "no genuine dispute as to any material fact" and it is entitled to immunity "as a matter of law." Fed. R. Civ. P. 56(a). We view the evidence in the light most favorable to Freyre and draw all reasonable inferences in her favor. *See Valderrama v. Rousseau*, 780 F.3d 1108, 1112 (11th Cir. 2015).

The Eleventh Amendment protects states from being subject to suit in federal court. It provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. The Supreme Court has extended this protection to bar suits against a state in federal court brought by the state's own citizens. *Hans*

v. Louisiana, 134 U.S. 1, 15–16, 10 S. Ct. 504, 507–08 (1890). But "the Eleventh Amendment does not immunize municipalities from suit." *Abusaid v. Hillsborough Cty. Bd. of Cty. Comm'rs*, 405 F.3d 1298, 1301 (11th Cir. 2005). "An officer, therefore, is entitled to Eleventh Amendment immunity if he is acting as an arm of the state but not if he is acting as an arm of the county." *Stanley v. Israel*, 843 F.3d 920, 924 (11th Cir. 2016).

This Court uses a four-factor test to determine whether an entity is an arm of the state and thus entitled to sovereign immunity. These factors, articulated in *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003) (en banc), are "(1) how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity." *Id.* at 1309. Analysis under *Manders* is function specific; in addition to determining the defendant's general status under state law, we also ask whether the defendant was acting as an arm of the state "in light of the particular function in which the defendant was engaged when taking the actions out of which liability is asserted to arise." *Id.* at 1308; *see also Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp.*, 208 F.3d 1308, 1311 (11th Cir. 2000) ("The pertinent inquiry is not into the nature of [an entity's] status in the abstract, but its function or role in a particular context."). Thus, our question is not simply whether HCSO acts as an arm of the state generally, but whether it does so when performing child-protective investigations under the Grant Agreement with DCF.

1.

The first *Manders* factor asks us to determine how state law defines the defendant entity. Two bodies of state law are relevant here: state law concerning the status of the entity generally, and state law concerning the specific function the entity performs in the instant case. *See Stanley*, 843 F.3d at 926–27; *Abusaid*, 405 F.3d at 1305–06.

As to the former, we have repeatedly acknowledged that Florida sheriffs are, by default, county officers. *Stanley*, 843 F.3d at 926–927; *Abusaid*, 405 F.3d at 1305–06; *Hufford v. Rodgers* 912 F.2d 1338, 1341 (11th Cir. 1990). This is based on several aspects of Florida law, including: (1) the Florida Constitution's definition of sheriffs as "county officers," Fla. Const. art. VIII, § 1(d); (2) the fact that Florida sheriffs are generally elected by electors of each county, *id.*; (3) Florida counties' prerogative to abolish the office of sheriff altogether, *id.* (amended 2018);[9] and (4) Florida courts' recognition of sheriffs as county officers, *see, e.g.*, *Beard v. Hambrick*, 396 So. 2d 708, 711 (Fla. 1981) ("[A] sheriff is a 'county official,' and, as such, is an integral

[9] At the time of the complained-of conduct, the Florida Constitution provided that "any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office." Fla. Const. art. VIII, § 1(d) (amended 2018). But on November 6, 2018, Florida voters approved Amendment 10, which removed this language from the Florida Constitution. After amendment, this section provides that "a county charter *may not* abolish the office of the sheriff . . . [or] transfer the duties of [the sheriff] to another officer or office." Fla. Const. art. VIII, § 1(d) (emphasis added).

part of the 'county' . . . ."). "[T]his definition," we have explained, "weighs heavily against assigning arm of the state status to a Florida sheriff." *Stanley*, 843 F.3d at 926 (quoting *Abusaid*, 405 F.3d at 1305).

Notwithstanding a Florida sheriff's presumptive status as a county officer, we have also held out the possibility that "[w]hen carrying out some . . . functions, the sheriff may well be acting as an arm of the state." *Abusaid*, 405 F.3d at 1310. In contrast to *Abusaid*—where the sheriff was enforcing a *county* ordinance—here HCSO is carrying out state policy. Specifically, HCSO contracted to perform child-protective investigations for DCF, a state agency entitled to sovereign immunity. *See* Fla. Stat. § 20.19. This relationship is governed by the Grant Agreement. When HCSO sheltered and transferred MAF, it was acting pursuant to this Grant Agreement. Thus, the question we must answer is whether, under state law, the relationship created by the Grant Agreement between DCF and HCSO weighs in favor of classifying the latter as an arm of the state.

The Grant Agreement states that "[t]he Grantee [HCSO] shall act in the capacity of an independent contractor while performing child protective services." As we explained in *Rosario v. American Corrective Counseling Services, Inc.*, 506 F.3d 1039 (11th Cir. 2007), the label "independent contractor" is legally significant. *Id.* at 1044–45. Florida statutes draw a distinction between "independent contractors," who are often solely liable for their actions, and "agents," to

whom the state extends sovereign immunity.[10] Florida case law states the point even more clearly. In *Dorse v. Armstrong World Industries, Inc.*, the Supreme Court of Florida explained that "an entity or business acting as an *independent contractor* of the government, and not as a true *agent*, logically cannot share in the full panorama of the government's immunity." 513 So. 2d 1265, 1268 (Fla. 1987) (footnote omitted) (citation omitted) (emphases added); *see also Sierra v. Associated Marine Insts., Inc.*, 850 So. 2d 582, 590 (Fla. Dist. Ct. App. 2003) ("[Defendants'] entitlement, if any, to sovereign immunity protection turns on whether they can be deemed agents of the state under either common law or statute.").

While the label of "independent contractor" serves as persuasive evidence that HCSO did not act as an agent of the state under Florida law, it is not dispositive. *See Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997) (explaining "that the roles of agent and independent contractor are not mutually exclusive" and depend on "the degree of control retained or exercised by [the state]"). In addition to the label, however, the

---

[10] *Compare, e.g.*, Fla. Stat. § 30.24(2)(b) ("independent contractors" transporting prisoners "shall be solely liable for the prisoner while the prisoner is in the custody of the company"), *id.* § 394.462(1)(c) ("independent contractor" transporting patients "is solely liable for the safe and dignified transport of the patient"), *and id.* § 916.107(10)(c) ("independent contractor" transporting clients is "solely liable for the safe and dignified transportation of the client"), *with id.* § 766.1115(2) ("It is the intent of the Legislature to ensure that health care professionals who contract to provide such services as *agents of the state* are provided sovereign immunity." (emphasis added)).

Grant Agreement explains that "the Grantee [HCSO] shall be considered by the Grantor [DCF] as agent of the Grantor *for the sole and limited purpose* of receiving information obtained from or concerning applicants and recipients of public assistance programs." (emphasis added). As if it were concerned that labeling HCSO an independent contractor wouldn't be enough, the Grant Agreement goes out of its way to circumscribe the function in which HCSO serves as an agent of DCF. And notably, the function at issue in this case—child-protective investigations—does not fall into this narrow exception to HCSO's general status as an independent contractor.[11]

As Sheriff Chronister points out, the Grant Agreement states that HCSO "may, during the performance of this grant, assert any privileges and immunities which are available as a result of the Grantee performing the state functions required by Chapter 39, F.S., and this Grant Agreement." Sheriff Chronister attaches much significance to this language. Appellant's Br. at 54. But in our estimation, this language simply leaves intact whatever "privileges and immunities" HCSO might have as a result of performing under the Grant Agreement. Whether there are any such privileges or immunities in the first place is a question we, interpreting the Grant Agreement under Florida law and the law of our Circuit, must decide.

---

[11] The Grant Agreement casts further doubt on HCSO's status as an agent by providing that "[t]he Grantee shall not represent to others that it has the authority to bind the Grantor unless specifically authorized in writing to do so."

All in all, we conclude that this first factor weighs against arm-of-the-state status.

2.

The second factor requires us to look at the degree of control the state exercises over the entity generally as well as with respect to the specific function at issue. As we noted in *Abusaid*, the constitutional default rule is that Florida sheriffs are elected by county voters. 405 F.3d 1306. And, at the time of the events that gave rise to this litigation, counties were free to change that procedure or abolish the office of sheriff altogether. *See supra* note 9. The sheriff must also keep his office in the county seat and reside within two miles thereof, "illustrating the essentially local nature of the office." *Id.* at 1306–07. Unlike, *e.g.*, the South Florida Water Management District, which is governed by a board appointed and removable by the Governor,[12] the office of the sheriff is fundamentally a county entity.

Shifting to the function here, the Grant Agreement requires HCSO to meet state-prescribed standards when conducting child-protective investigations. As Sheriff Chronister notes, this Court in *Stanley* described state-set minimum hiring qualifications as "strong indicia of state control." 843 F.3d at 928. But our precedent also acknowledges that "[e]stablishing minimum requirements is not sufficient to demonstrate [state] control." *Lightfoot v. Henry Cty. Sch. Dist.*, 771 F.3d 764, 773 (11th Cir. 2014).

---

[12] *See United States ex rel. Lesinski v. S. Fla. Water Mgmt. Dist.*, 739 F.3d 598, 603 (11th Cir. 2014).

Although the presence of state-prescribed standards is significant, we find here—as we did in *Stanley*, 843 F.3d at 928–29—that these "strong indicia of state control" do not outweigh the indicia of local control. Specifically, the Grant Agreement provides HCSO significant autonomy in conducting child-protective investigations. In addition to designating HCSO as an independent contractor, the Grant Agreement allows HCSO to develop its own policies and procedures for child-protective investigations. The Grant Agreement also gives HCSO control over child-protective investigators and supervisors, and it leaves it to HCSO to develop hiring criteria for these positions. The Grant Agreement even gives HCSO the ability to subcontract investigations related to neglect reports and assigns HCSO "full responsibility" for safety decisions made by subcontractors.

Despite this, Sheriff Chronister argues that the Grant Agreement "is saturated with instances where DCF and the state maintain substantial control over [HCSO]." Appellant's Br. at 55. In particular, Sheriff Chronister refers to (1) HCSO's obligation to submit financial records for audit by DCF; (2) HCSO's duty to immediately notify DCF of any deaths, serious injuries, or significant accidents during child-protective investigations; and (3) performance evaluations DCF conducts of HCSO's child-protective investigations. *Id.* While these aspects of the Grant Agreement certainly impose requirements on HCSO, they're primarily reporting requirements—they don't speak directly to the "degree of control" the state exerts on HCSO in performing child-protective investigations. *Compare Shands*, 208 F.3d at 1311 (granting arm-of-the-state

status to private program administrator over whom "Florida retains virtually complete control"), *with Rosario*, 506 F.3d at 1042, 1047 (denying arm-of-the-state status to an independent contractor in part because Florida had "no supervision of [its] day-to-day activities" beyond approving letters to prospective program participants).

Sheriff Chronister also argues that HCSO wears a "state hat" when it performs child-protective investigations because the authority to do so derives from Florida statutes. Appellant's Br. at 54. It is true that we have described as a "key question" of the *Manders* analysis the question of "*for whom* sheriffs exercise [a given] power." *Abusaid*, 405 F.3d at 1310 (quoting *Manders*, 338 F.3d at 1319 n.35). As in *Lesinski*, HCSO "derives both the authority and the obligation to [perform the relevant function] directly from the State." 739 F.3d at 604. While this adds some support to Sheriff Chronister's argument, we caution to add that this principle can be taken too far as *every* power the sheriff exercises is ultimately granted by state law. *See Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 47, 115 S. Ct. 394, 404 (1994) ("[U]ltimate control of every state-created entity resides with the State, for the State may destroy or reshape any unit it creates. 'Political subdivisions exist solely at the whim and behest of their State . . . .'" (alteration omitted) (quoting *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 313, 110 S. Ct. 1868, 1877 (1990))).

Considering both the autonomy that the Grant Agreement affords HCSO and the control the state

exerts through state-set standards and reporting requirements, we conclude that this factor is neutral.

3.

Although Florida sheriff's offices are generally funded entirely by county taxes, *Stanley*, 843 F.3d at 929, DCF provides all funding for child-protective investigations, and Freyre does not contest this. Thus, this factor weighs in favor of arm-of-the-state status.

4.

This final factor, the most important of the *Manders* calculus,[13] asks us to determine whether the state treasury would be burdened by a judgment against HCSO in this matter. Sheriff Chronister argues that it would, relying almost entirely on the testimony of an HCSO employee, Major Bullara. Bullara avers that "[i]f there were to be a judgment in this matter, it would be paid strictly out of the DCF grant money provided this fiscal year." But there's reason to think that Bullara's assessment is incorrect. First, Florida law provides that Grant Agreement funds are for "providing child protective investigations," Fla. Stat. § 39.3065(3)(c); the

---

[13] *Rosario*, 506 F.3d at 1046 ("[A]s *Shands* and other Eleventh Circuit cases have noted, the most important factor in determining immunity is who is responsible for judgments against the entity." (citing *Manders*, 338 F.3d at 1325)); *Manders*, 338 F.3d at 1325 (noting that the Supreme Court "weigh[ed] this source-of-payment factor heavily" in *Hess*); *id.* at 1330 (Anderson, J., dissenting) (noting that the Supreme Court "cited with approval the fact that the vast majority of the circuits have concluded that the state treasury factor is 'the most important factor' to be considered" (quoting *Hess*, 513 U.S. at 49, 115 S. Ct. at 405)).

statute makes no reference to judgments. Second, Florida law authorizes sheriffs to purchase liability insurance to cover "claims arising out of the performance of his or her duties or the duties of his or her deputies or employees." *Id.* § 30.555. And HCSO acknowledges that it is self-insured under Florida Statutes §§ 768.28(16) and 324.171. Finally, this Court has repeatedly acknowledged that "no provision of Florida law provides state funds to a Florida sheriff to satisfy a judgment against the sheriff." *Stanley*, 843 F.3d at 930 (quoting *Hufford*, 912 F.2d at 1342); *Abusaid*, 405 F.3d at 1312 (same). For these reasons, we conclude that a judgment against HCSO would not be satisfied with state funds and that this factor weighs against arm-of-the-state status.

While this case presents an especially close call, we ultimately conclude that HCSO does not act as an arm of the state when conducting child-protective investigations pursuant to the specific Grant Agreement between HCSO and DCF.

III.

The District Court correctly denied HCSO summary judgment on its sovereign immunity defense, the only issue we review in this interlocutory appeal. We accordingly affirm the District Court's judgment and remand the case for further proceedings.

AFFIRMED and REMANDED.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:13-cv-2873-T-27TBM

[Filed March 15, 2017]

DORIS FREYRE,
Plaintiff,

vs.

SHERIFF DAVID GEE, as Sheriff of the Hillsborough County Sheriff's Office,
Defendant.

ORDER

BEFORE THE COURT is Hillsborough County Sheriff David Gee's Motion for Summary Judgment (Dkt. 189), and Plaintiff's opposition (Dkt. 202).[1] Plaintiff Doris Freyre, a single, disabled mother, filed this lawsuit after MAF, her 14 year old disabled

[1] Summary judgment was granted in favor of Defendants Iris Valdez-Corey and Jessica Pietrzak, both of whom are Child Protective Investigators ("CPI"), on Count VII, which alleged a § 1985 conspiracy. (Dkt. 247). The undisputed material facts summarized in that Order (Dkt. 247) are incorporated by reference.

daughter, was removed from her custody by a Child Protective Investigator based on allegations of physical and verbal abuse and medical neglect. MAF was temporarily sheltered at Tampa General Hospital ("TGH"), and eventually transported to a skilled nursing facility in Miami, where she died.[2] Plaintiff sues Hillsborough County Sheriff David Gee ("HSCO") for violating the Americans with Disability Act ("ADA")

---

[2] The Child Protective Investigator removed MAF after a Child Protective Team staffing meeting, during which concerns about MAF's safety and well-being were discussed:

> The concern is two fold. Based on the lengthy history of the mother's lack of involvement and concern for the child's care and her claimed back injury, there is a great concern for the child's safety and well-being when the home health care nurses are not in the home. Based on the mother's past actions, the child would be in imminent risk of harm through neglect if left in the mother's care. Most recently, while the child was in the ER on 3/16/11, the ER doctor gave orders to administer a medication that the mother knew the child was allergic to and the mother just sat there and did not inform the doctor of the child's allergy. After the mother did not inform the doctor, the home health nurse had to do so . . . . There have already been documented incidents of physical and verbal abuse by the mother . . . including hitting the child and yelling threats at the child that the mother would place her in a nursing home and no one would ever come and visit her. . . . Based on the continued opportunity for assistance, continued failure to follow through with appointments, continued lack of concern and involvement regarding the child's medical issues, and failure to take the child to the ER when she had a 103.5 fever until the home health nurse made the mother call the ambulance, I gave PC on the basis of prospective neglect.

(Dkt. 189-9 at 5).

(Count II), violating the Rehabilitation Act (Count V), and under 42 U.S.C. § 1983 (Count IX). Upon careful consideration, HCSO's Motion (Dkt. 189) is GRANTED in part.

I. Standard

Summary judgment is appropriate where "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). "A genuine factual dispute exists only if a reasonable fact-finder 'could find by a preponderance of the evidence that the [non-movant] is entitled to a verdict.'" *Kernel Records Oy v. Mosley*, 694 F.3d 1294, 1300 (11th Cir. 2012) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). A fact is material if it may affect the outcome of the suit under the governing law. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing, by reference to materials on file, that there are no genuine disputes of material fact that should be decided at trial. *Hickson Corp. v. N. Crossarm Co., Inc.*, 357 F.3d 1256, 1260 (11th Cir. 2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If the moving party fails to demonstrate the absence of a genuine dispute, the motion should be denied. *Kernel Records*, 694 F.3d at 1300 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160 (1970); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 606-08 (11th Cir. 1991)). On the other hand, "[i]f no reasonable jury could return a verdict in favor of the nonmoving party, there is no genuine issue of material fact and summary judgment will be granted." *See Lima v. Fla. Dep't of Children &*

Families, 627 F. App'x 782, 785-86 (11th Cir. 2015)(quoting *Beal v. Paramount Pictures Corp.*, 20 F.3d 454, 459 (11th Cir. 1994)).

Finally, to the extent that either parties' arguments in their papers are unclear or not fully developed, this court is not required to "search the record and construct every argument that could have been made based upon the proffered materials." *Restigouche, Inc. v. Town of Jupiter*, 59 F.3d 1208, 1213 n.5 (11th Cir. 1995) (citing *Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995)).

II. Discussion

A. Count II - Violation of the ADA

i. Standing

The HCSO argues that Plaintiff lacks individual standing to bring an ADA claim because the alleged discrimination is not traceable to the HCSO's conduct and was not based solely on her disability. Plaintiff counters that she was discriminated against due to her disability when MAF did not receive in-home services, when Plaintiff was not afforded an equal opportunity to participate in the dependency process, and when MAF was transferred to Miami over her objection and without a hearing. She therefore contends that she has demonstrated individual standing.

Standing must be addressed before the merits of the claim are addressed. *CAMP Legal Def Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006). To demonstrate standing, Plaintiff must show that she suffered a concrete injury, the injury is fairly traceable

to HCSO, and that a favorable judgment will redress the injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Traceability requires "something less than the concept of 'proximate cause.'" *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003)(citation omitted). And "even harms that flow indirectly from the action in question can be said to be 'fairly traceable' to that action for standing purposes." *Id.* (citation omitted).

Individual Standing

The ADA protects persons with disabilities from being denied benefits because of their disability.[3] *Bircoll v. Miami-Dade Cty.*, 480 F.3d 1072, 1081 (11th Cir. 2007). There is no dispute that Plaintiff is disabled and that the ADA applies to the HCSO. Plaintiff's individual ADA claim originates from the removal of MAF from her home. Defendant contends that "the undisputed facts clearly show that Plaintiff's inability to care for MAF was only part of the reason" for MAF's removal from her custody. (Dkt. 189 at 13). That is essentially a concession that part of the reason MAF was removed from Plaintiff's home was due to Plaintiff's disability. As noted, standing does not require proximate causation. *See Loggerhead Turtle v. Cty. Council of Volusia Cty., Fla.*, 148 F.3d 1231, 1257 (11th Cir. 1998)(no authority even remotely suggests that proximate causation applies to the doctrine of

[3] The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

standing). Plaintiff has demonstrated individual standing.

Associational Standing

A person has associational standing under the ADA if "they were personally excluded, personally denied benefits, or personally discriminated against because of their association with a disabled person." *McCullum v. Orlando Regional Healthcare System, Inc.*, 768 F.3d 1135, 1143 (11th Cir. 2014). It is undisputed that MAF was disabled and required twenty-four hour care.

Both parties blend their arguments on individual and associational standing, making it difficult to parse out Plaintiff's associational standing contention. Nonetheless, Plaintiff, although herself disabled, has standing if she was "personally excluded, personally denied benefits, or personally discriminated against because of [her] association with [MAF]." *McCullum*, 768 F.3d at 1143; *see* 42 U.S.C. § 12182(b)(1)(E).

After MAF was removed from Plaintiff's home, a Florida Circuit Judge conducted a shelter hearing. The Shelter Order confirmed that there was probable cause to remove MAF from Plaintiff's home, authorized her placement in shelter care, and authorized DCF to provide any emergency and ordinary medical treatment for MAF, but directed that before exercising those rights, the legal custodian was to "make every effort to notify the parents and obtain consent" for the treatment. (Dkt. 189-12). The Shelter Order further provided that "[i]f the parents, after being informed, refuse to provide consent, the Department shall schedule a hearing with the court." (Shelter Order ¶ 7,

Dkt. 189-12). The judge scheduled a status hearing for April 14, 2011.

Although notified of MAF's pending transfer from TGH to the skilled nursing facility in Miami, Plaintiff did not consent to the transfer. And a hearing was not conducted before MAF was transferred. Plaintiff counters that HCSO failed to allow her an equal opportunity to participate in the dependency process because of her disability. Plaintiff, because of her association with MAF, was therefore denied the opportunity to be heard before MAF was transferred. That is sufficient to confer associational standing for her ADA claim.

Having demonstrated standing, to prevail on her ADA claim, Plaintiff must prove to a jury's satisfaction that the HCSO violated her rights under the ADA because of her disability, or because of her association with MAF. *McCullum*, 768 F.3d at 1146-47; *Bircoll*, 480 F.3d at 1081. And to prevail on her claim for compensatory damages, she must show that HCSO acted with discriminatory intent. *McCullum*, 768 F.3d at 1146-47. Discriminatory intent may be shown through evidence that HCSO acted with deliberate indifference to her statutory rights. *Id.* at 1147. Deliberate indifference is established when a defendant "*knew* that harm to a federally protected right was substantially likely and *failed* to act on that likelihood." *Id.* (internal quotation marks and citations omitted)(emphasis in original).

ii. Plaintiff's Individual Claim

As noted, it is undisputed that MAF was totally dependent on her care providers and required twenty-four hour care. Likewise, it is undisputed that Plaintiff could not meet all of MAF's needs without additional services, as Judge Corvo determined during the shelter hearing and memorialized in the Shelter Order. Plaintiff's individual ADA claims appear,[4] therefore, to be that her ADA rights were violated because (1) she was denied the opportunity to participate in MAF's dependency process, (2) she was not provided a reasonable accommodation to enable her to have MAF returned to her home or placed in nearby shelter care, and (3) the HCSO failed to provide MAF with the least restrictive alternatives, which would have enabled Plaintiff to exercise her visitation rights.

Opportunity to Participate

To the extent Plaintiff contends that she was denied an opportunity to participate in the dependency process because of her disability, the undisputed evidence demonstrates to the contrary. The record demonstrates that she was actively involved in the dependency process. When MAF was removed on March 29, 2011, she was notified of the Shelter Hearing. She attended the Shelter Hearing and was represented by counsel. Pietrzak contacted her on April 6, 2011 and again on April 8, 2011. (Dkt. 189-2 at 63, 72). Pietrzak

---

[4] Plaintiff inextricably blends her arguments and contentions as to how her individual rights as a disabled person were violated and how she was excluded, denied benefits, or discriminated against because of her association with MAF.

attempted to meet with her the following week, but she "would not give a date or time." (Dkt. 189-2 at 63). And Pietrzak spoke with her again on April 11, 2011 and April 12, 2011. (Dkt. 189-2 at 57, 58). On April 12, 2011, Pietrzak documented that Plaintiff "does not want to talk with CPI any longer." (Dkt. 189-2 at 56).

After the Shelter hearing, Pietrzak and Valdez-Corey worked with HKI and other agencies, including Maxim and the Opportunity Home Health Care Services ("OHS"), in an attempt to secure either in-home services for MAF or local placement. (Dkt. 189-2 at 52, 54, 60, 63-65, 71; Carstens Dep. 49:4-24, Dkt. 189-13; Dkt. 189-4; Dkt. 189-24; Dkt. 189-29; Dkt. 189-43). Ultimately, however, it was learned that Medicaid would not authorize twenty-four hour coverage and Maxim informed that it was no longer willing to provide the services because of difficulties it had with Plaintiff. And HKI's funding would not meet the requirements of in home service between midnight and 7:00 a.m., as required by the Shelter Order as a condition to returning MAF to the home. (Carstens Note, Apr. 11, 2011, Dkt. 189-2).

On April 11, 2011, the Children's Multidisciplinary Assessment Team informed the Agency for Persons with Disabilities ("APD") that it had determined that MAF would require a "skilled" level of care at a nursing facility for one year, unless there was a significant change. (Dkt. 189-14). And, APD determined that its specialized services would not be needed because of the need for "skilled" care. (Dkt. 189-2 at 59). After receiving these assessments, HKI began searching for a skilled nursing facility for MAF's placement. Nurse

Emerson provided Pietrzak with a list of skilled nursing facilities in Florida that would accept Medicaid pediatric patients.

When it became clear that in-home services and local placement could not be secured, Pietrzak executed a Petition for Adjudication for Dependency prepared by the Attorney General's Office, based on allegations of medical neglect, prospective neglect and physical abuse of MAF. That day, Pietrzak spoke with Carstens about enrolling MAF in Prescribed Pediatric Extended Care ("PPEC") as a solution. However, PPEC advised that MAF would not qualify for PPEC if she was able to attend school. (Dkt. 189-2 at 52).

As a result of the Petition for Dependency, the status conference scheduled for April 14, 2011 was converted to an arraignment before Circuit Judge Emily Peacock. (Dkt. 189-18). Before the hearing, Carstens spoke with Plaintiff about the PPEC, who informed her that MAF was enrolled in Hillsborough County Public School's Homebound Program. Based on what Carstens had been told by PPEC, MAF would not qualify for placement at PPEC.

Plaintiff was present during the hearing before Judge Peacock and represented by counsel. Plaintiff was notified that the hearing would be converted from a status to an arraignment. (Dkt. 189-19). An Assistant Attorney General advised Judge Peacock that HKI was unable to obtain in home care because of Medicaid's refusal to pay for the 24 hour care and Maxim's refusal

to work with Plaintiff.[5] The Assistant Attorney General advised the Judge that PPEC had been looked into as an option, but that Plaintiff did not want to place MAF in a child care facility because of her immune deficiency disorder.[6]

During the hearing, Plaintiff's counsel argued that MAF should be returned to Plaintiff's home, without twenty-four hour in-home care. (*Id.*). In response, Judge Peacock suggested that a motion to modify placement be filed. (*Id.*). No such motion was filed by the attorney, however. Judge Peacock did not enter any orders, and MAF remained at TGH. (Dkt. 189-18).

---

[5] Medicaid would not provide twenty-four hour in-home services. (Dkt. 189-5 at 15; Dkt. 189-13 32:8-17; Dkt. 189-2 at 58-59; Dkt. 189-43).

[6] Although Plaintiff argues that HCSO failed to timely serve her with the dependency petition, her counsel did not object to service and entered a denial during the hearing. (Dkt. 189-19). Plaintiff also complains that several misrepresentations were made to Judge Peacock during the hearing by the Assistant Attorney General, the most serious of which was that MAF was at that time in a nursing home, whereas she was at TGH (Dkt. 202 at 11). Any alleged misstatements are not material, however, since Judge Peacock entered no orders based on those statements and the Shelter order was not modified. Further, her claim that HCSO misrepresented the availability of in-home services and MAF's status is wholly unsupported by the record evidence, although AAG Attila incorrectly represented MAF's status. (Dkt. 189-19). And while Plaintiff is critical of Pietrzak for not correcting the alleged misrepresentations, in the context of a judicial hearing, she fails to demonstrate that Judge Peacock would have considered anything other than what the attorneys represented to her. Plaintiff's "but for" scenario about what the judge may have ordered is nothing but speculation.

Ultimately, since long term funding for in home services and local placements were unavailable, Valdez-Corey consented to MAF's transfer from TGH to Florida Club Care Center ("FCCC"), the skilled nursing facility in Miami, and Pietrzak signed the admission agreement. (Dkt. 189-40 at 12; Dkt. 189-41). Plaintiff was told about the transfer and placement but would not consent. MAF was transferred to FCCC without a hearing on April 26, 2011. Notwithstanding that Plaintiff objected to the transfer, and a hearing was not held as required by the Shelter Order, the undisputed evidence contradicts Plaintiff's unsupported contention that the hearing was not held due to her disability.[7] And Plaintiff has not shown a material factual dispute about the reasons for MAF's transfer. *See Lima*, 627 F. App'x at 785-86 ("[i]f no reasonable jury could return a verdict in favor of the nonmoving party, there is no genuine issue of material fact and summary judgment will be granted."). Accordingly, the HCSO's motion is due to be granted on this claimed violation of the ADA.

Reasonable Accommodation

Under the ADA, a plaintiff can proceed on a theory of failure to make reasonable accommodations. *Rylee v. Chapman*, 316 F. App'x 901, 906 (11th Cir. 2009)(citing *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212 n. 6 (11th Cir. 2008)). "[T]o establish a Title II violation under a reasonable accommodation theory . . . a plaintiff must show (1) she is a qualified individual

---

[7] Plaintiff filed a *pro se* motion requesting a hearing on the transfer. (Dkt. 202-5), Apparently, that motion was never scheduled for hearing.

with a disability, (2) she is unable, because of her disability, to meaningfully access a public *benefit to which she is entitled*, and (3) the public entity failed, *despite her request*, to provide a reasonable accommodation for her disability." *See Todd v. Carstarphen*, No. 1:16-CV-3729-WSD, 2017 WL 655756, at *10 (N.D. Ga. Feb. 17, 2017) (citing *see Nadler v. Harvey*, No. 06-12692, 2007 WL 2404705, at *5 (11th Cir. Aug. 24, 2007)) (emphasis added).[8] And the "duty to provide a reasonable accommodation is not triggered unless a specific demand for an accommodation has been made."[9] *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999).

Plaintiff's contention that she was denied a reasonable accommodation under the ADA is hardly a

---

[8] In *Todd*, a similar theory was pursued, unsuccessfully. There, the plaintiff, a blind mother, sought preliminary and permanent injunctive relief requiring the defendants to transport her children to and from school. 2017 WL 6555756 at *2. She alleged that the public school and its superintendent denied her a reasonable accommodation for her disability by failing to provide transportation for her children. *Id.* at *10. In finding that the plaintiff was not entitled to a reasonable accommodation for a benefit that she was not entitled to, the court reasoned that the benefit the plaintiff sought, public education, was a benefit provided to students, not parents of the students. *Id.* at *12.

[9] At least one district court has stated a plaintiff need not request an accommodation if the need for one was obvious. *Schwarz v. The Villages Charter Sch., Inc.*, 165 F. Supp. 3d 1153, 1173 (M.D. Fla. 2016), aff'd sub nom. *Schwarz, et. al., v. Board of Supervisors, on behalf of the Villages Cmty. Dev. Districts, et al.*, No. 16-11122, 2017 WL 104460 (11th Cir. Jan. 11, 2017).

model of clarity. In her Second Amended Complaint, Plaintiff alleges:

> HSCO discriminated against Plaintiff by denying her medically necessary services in the community as a reasonable accommodation, resulting in Plaintiff's daughter being unnecessarily institutionalized and subsequent death.

(Dkt. 71 at ¶ 122).

This ADA claim fails, based on the undisputed facts. The only conceivable "medically necessary services" relevant to this dispute are the in-home services required by the Shelter Order, and the alternative twenty-four hour care and local placement, all of which were benefits to which MAF was entitled, not Plaintiff. The HCSO could not have denied Plaintiff a reasonable accommodation for her disability by failing to provide a benefit that she herself was not entitled to.

Plaintiff's discussion of her accommodation claim is relegated to two paragraphs in her response to Defendant's summary judgment motion, which fail to explain what accommodation she was entitled to that the HCSO failed to provide *her*. (Dkt. 202 at 31). And she cites no authority supporting such a claim. And Plaintiff seems to conflate the requirements of the Shelter Order, which were imposed for the benefit of MAF, with her right to an accommodation under the ADA. On the other hand, if she is contending that either twenty-four hour services and local placement for MAF was a reasonable accommodation for herself,

the same analysis applies. Those services were for MAF, not Plaintiff.

MAF was removed because of allegations of medical neglect and abuse by Plaintiff. MAF was totally dependent on others for all of her needs, and required twenty-four care. (Dkts. 189-9, 189-10, 189-11, 189-12). Plaintiff fails to explain how the alleged failure to provide in-home services, twenty-four hour care, or local placement to MAF constitutes a failure to accommodate *her*.

Even if Plaintiff raises an arguable claim of failure to accommodate, the undisputed evidence demonstrates that the HCSO did not "deny" in-home services to MAF or twenty-four hour service in a local placement.

First, it was not the responsibility of the HCSO to provide those services. The HKI-HCSO Working Agreement provides that the CPI Division is responsible for investigating allegations and that HKI provides protective services and foster care services. (Working Agreement Art. I, Dkt. 189-47). It further provides that when a child has been admitted to a hospital, the CPI Division will contact placement services at HKI when the child is ready for discharge. (Working Agreement Art. IV § 4.11, Dkt. 189-47).

Even if, under the Working Agreement, the HCSO assumed responsibility to provide services to MAF until after the ESI staffing on April 12, Pietrzak directed HKI to look for in-home services for MAF's care. (Carstens Note, Apr. 5, 2011, Dkt. 191-2 at 73)("staffed case with CPI Pietrzak. She advised that this RS should resume to work towards locating a home health

care provider to place in the home"). Those efforts were, however, unsuccessful, through no fault of the HCSO. Maxim was no longer willing to provide services "due to the past difficulty with working with the mother," as Maxim's home health nurse had asked to be removed from the case (Carstens Note, Apr. 8, 2011, Dkt. 191-2 at 63-65). And although OHS initially indicated it could provide the midnight to seven a.m. services, it expressed the need to review the "contract," but did not thereafter indicate a willingness to take the case. (Carstens Dep. 49:4-10, Dkt. 189-3; Carstens Note, Apr. 6, 2011, Dkt. 189-2 at 71). And, as noted, Medicaid would not authorize twenty-four hour coverage. (Dkt. 189-2).

Finally, if HKI paid for three weeks of twenty-four hour services, additional funding would have been unavailable after its funds were exhausted. (Carstens Note, Apr. 11, 2011, Dkt. 189-2). And there is no evidence that HCSO was required to pay for in-home health care for MAF or that HCSO could require HKI to pay for three weeks of service. (HKI-HCSO Working Agreement Art. I, Art. IV Sec. 4.11, Dkt. 189-47). Indeed, HKI "was responsible for procuring and paying for all goods, services, and placements." (Morris Aff. ¶ 8, Dkt. 189-45). Pietrzak also inquired about placing MAF in a PPEC or group home. (Carstens Notes, Apr. 13, 2011, Dkt. 191-2 at 54; Pietrzak Notes, Apr. 11, 2011, Dkt. 191-2 at 60). However, MAF did not qualify for a PPEC and could not be accepted in a group home because of lack of funding, specifically a Cost Plan Freeze. (Dkt. 189-2 at 52; Dkt. 189-24; Dkt. 189-29). And because of her needs, MAF was not

appropriate for placement in a traditional foster care setting. (Dkt. 189-29).

The question is not, as Plaintiff seemingly urges, whether Pietrzak and Valdez-Corey should have done more, but rather whether their efforts were reasonable. In an unrelated context, it has been held that Title II "does not require States to employ any and all means" to accommodate a disabled individual:

> Title II does not require States to employ any and all means to make judicial services accessible to persons with disabilities, and it does not require States to compromise their essential eligibility criteria for public programs. It requires only "reasonable modifications" that would not fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service.

Tennessee v. Lane, 541 U.S. 509, 531-32 (2004).

In sum, the undisputed evidence demonstrates that Pietrzak and Valdez-Corey's efforts were reasonable, that is, within "within the limits of practicability." *Id.* at 532. It follows that the HCSO never "denied" services to MAF, and therefore never denied Plaintiff a reasonable accommodation.

Moreover, the undisputed evidence demonstrates that Plaintiff never made a specific request that the HCSO provide her with a reasonable accommodation for her disability. Plaintiff's unsupported argument that the Shelter Order "was tantamount to a request for modification" is wholly unpersuasive, and without

legal support. (Dkt. 202 at 31). The Shelter Order imposed conditions on the return of MAF to Plaintiff's home. Again, those services were intended for MAF, not Plaintiff. No reasonable jury could return a verdict in favor of Plaintiff, as there is no genuine issue of material fact. *See Lima*, 627 F. App'x at 785-86. Summary judgment in favor of the HCSO is therefore due to be granted on this alleged ADA violation.

***Failure to Provide Less Restrictive Alternatives* (*Services in the Most Integrated Setting*)**

In her Second Amended Complaint, Plaintiff alleges:

> HSCO have [sic] discriminated against the Plaintiff in violation of the ADA on the basis of her disability by:
>
> a. Segregating M.A.F. and failing to provide her with appropriate community based services;
>
> b. Denying Plaintiff and M.A.F. medically necessary services resulting in the M.A.F.'s [sic] institutionalization and subsequent death; [and]
>
> c. Denying the Plaintiff and M.A.F. access to existing community programs and by requiring M.A.F. to be confined in segregated institutional settings in order to receive the care she required;"

(Dkt. 71 at ¶ 125).

To the extent Plaintiff alleges and contends that the HCSO failed to provide her (or MAF) services in the most integrated setting appropriate to her needs, this claim fails essentially for the same reasons her accommodation claim fails. This claim is based on securing local placement alternatives for MAF.[10] But as noted, MAF had to qualify for alternative local placements because she required twenty-four hour care, and the undisputed facts demonstrate that in-home services and local placement alternatives were not available. Moreover, the ultimate decision maker for MAF was the Judge, who directed sheltering of MAF. In any event, because this claim is based on services intended for MAF, not Plaintiff, summary judgment is due to be granted.

In sum, summary judgment on all of Plaintiff's individual ADA claims is due to be granted.

iii. Plaintiff's Associational Claim

Although the undisputed evidence does not support Plaintiff's individual ADA claims that the HCSO discriminated against her due to her disability, she has proffered evidence to raise a question of material fact

---

[10] Plaintiff never identifies what services she individually required. To the extent Plaintiff argues in her response that "the affected person did oppose the [transfer to a skilled nursing facility in Miami]" (Dkt. 202 at 32), that argument may be pertinent to her associational standing to raise, but nothing to do with her individual ADA claim. In any event, Plaintiff did not proffer evidence that her disability prevented her from visiting MAF in Miami. Rather, she merely had transportation issues. (Dkt. 189-2 at 2, 33).

on her associational claim that MAF was unjustifiably institutionalized in the Miami facility.

Unjustified institutional isolation of persons with disabilities can be a form of discrimination. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999).[11] And while *Olmstead* recognizes that a state may generally rely on the reasonable assessments of professionals, where, as here, the affected person (Plaintiff), objects to the institutional placement, and a court has specified that a hearing must be held on the objection, a reasonable jury could find that Plaintiff was personally discriminated against by virtue of her association with MAF. 42 U.S.C. § 12182(b)(1)(E); *McCullum*, 768 F.3d at 1142 ("It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.").

The Shelter Order required a court hearing if Plaintiff withheld consent for medical treatment. (Dkt. 189-12). And placement in a skilled nursing facility necessarily constitutes medical treatment, since MAF

---

[11] "[U]nder Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." *Id.* at 607.

required twenty four hour care.[12] MAF was originally scheduled to be transferred to Miami on Monday, April 25, 2011. On Friday, April 22 at about 3:00 p.m., CPI Valdez-Corey asked the Attorney General Office's attorneys ("OAG") if MAF could be moved. (Dkt. 189-9). The move was delayed until Tuesday, April 26, 2011, for either a court hearing or to "address the case appropriately." (Adams Email forwarded to Valdez-Corey, Apr. 22, 2011, Dkt. 189-35 at 7).

At 3:30 p.m., AAG Adams advised that "Iris is going to contact the mother to tell her that the only possible placement is across the state and to contact her attorney if she has a problem." (Adams Email, Apr. 22, 2011, Dkt. 189-35 at 7). At 3:52 p.m., Valdez-Corey spoke with Plaintiff who objected to the move, complained she would not be able to see her daughter in Miami, and complained of discrimination. (Dkt. 189-2 at 33). Valdez-Corey advised Plaintiff to speak with her attorney. (Valdez-Corey Dep. 53:12-55:6, Dkt. 189-32). At 4:38 p.m., MAF's grandfather called Valdez-Corey, requested a hearing on Monday regarding the move, and asserted that they were going to fight the move. (Valdez-Corey Dep. 57:7-25, Dkt. 189-32). At 5:01 p.m., Valdez-Corey emailed Pietrzak advising her to "be prepared for potential court hearing" regarding MAF's placement. (Dkt. 189-2 at 29). At about the

[12] Defendant contends that a hearing was not required before MAF was transferred. Although the Shelter Order provides that "[t]he Department of Children and Families shall have placement and care responsibility while the child is under protective supervision in an out-of-home placement," I nonetheless construe the Order to require a hearing in the circumstances of this case.

same time, OAG learned from HCSO that Plaintiff objected to the placement. (Dkt. 189-33 at 84).

At 11:49 a.m. on Monday, April 25, 2011, Plaintiff's *pro se* Petition Requesting Urgent Emergency Hearing was filed. (Dkt. 202-5). The Petition was hand delivered to the OAG the same day. (Freyre Dep. 136:13-19, Dkt. 191-39). At 1:43 p.m., Valdez-Corey spoke to Plaintiff, learned that Plaintiff had not heard from her attorney, and was told that Plaintiff believed MAF could not be moved under the Shelter Order. (Dkt. 189-2 at 26). Two minutes later, at 1:45 p.m., AAG Short told Pietrzak that a hearing was not necessary and that Plaintiff's attorney had not filed any motions. (Dkt. 189-2 at 26).

MAF was moved from TGH because Pietrzak and Valdez-Corey consented, since Pietrzak signed the admission papers to Florida Club Care Center and Valdez-Corey gave verbal consent for MAF's discharge.[13] (Dkts. 189-40 at 12; 189-41).

Valdez-Corey knew that Plaintiff objected to the transfer and had complained of discrimination and that she would be unable to visit MAF in Miami. (Dkt. 189-2 at 33). She also knew that Plaintiff had not heard from her attorney. (Dkt. 189-32 57:7-25; Dkt. 189-2 at 29). Despite this, and notwithstanding the clear language in the Shelter Order granting Plaintiff unsupervised visitation with MAF and requiring a hearing if she

---

[13] Pietrzak authorized FCCC to conduct a comprehensive assessment of MAF and "administer necessary nursing procedures, pediatric procedures, skin scrapping, non-surgical dental procedures, and laboratory and x-ray procedures[.]" (Dkt. 189-41 at 5).

objected to medical treatment, Pietrzak and Valdez-Corey consented to the admission and transfer to Miami, without a hearing. A reasonable jury could therefore find that this decision violated MAF's rights as a disabled dependent in the care of the State, as well as Plaintiff's associational rights.[14] A genuine issue of material fact therefore exists as to whether HCSO acted with deliberate indifference when it consented to MAF's transfer without a hearing, precluding summary judgment in favor of the HCSO on this claim.[15] *See McCullum*, 768 F.3d 1135, 1143 (11th Cir. 2014); 42 U.S.C. § 12182(b)(1)(E).

B. Count V - Rehabilitation Act

The HCSO contends that the Rehabilitation Act does not apply to its CPI Division because the CPI does not receive federal funds. (Dkt. 189 at 18 n. 5, 24). Plaintiff does not rebut the HCSO's contention that "the State of Florida is the sole source of all funding to Defendant for the performance of these state

---

[14] It is undisputed that the attending physician recommended skilled nursing home placement and the Assistant AGS opined that a hearing was not required, and Pietrzak and Valdez-Corey relied on those opinions in consenting to the transfer. Whether their reliance on "others to fulfill their legal responsibilities and contractual obligations" and "the guidance of the medical professionals and OAG before making any determinations or taking any actions" negates Plaintiff's claim of deliberate indifference is for the jury to consider.

[15] To the extent Plaintiff argues that the transport without her consent constitutes a violation of the ADA, that argument is unsupported. Plaintiff's right to be the sole decision maker for MAF's healthcare had been removed by court order.

functions." (Bullara Aff. ¶ 4, Dkt. 189-56).[16] It is therefore undisputed on this record that the HCSO, including its CPI Division, does not receive federal funding.

The Rehabilitation Act makes it unlawful for any programs receiving federal assistance to discriminate on the basis of disability. 29 U.S.C. § 794. "Programs" include all operations, departments, agencies, or other instrumentalities of a State and covers "in the case of federal assistance to a State or local government, the State or local government that distributes the assistance and each department or agency that receives it." *See McMullen v. Wakulla Cty. Bd. of Cty. Commissioners*, 650 F. App'x 703, 706 (11th Cir. 2016).

A sheriff is a county officer whose budget is funded entirely by county taxes. Fla. Const. art. VIII, § 1(d); Fla. Stat. § 30.49(d); *Abusaid v. Hillsborough Cty. Bd. of Cty. Comm'rs*, 405 F.3d 1298, 1310 (11th Cir. 2005). The Grant Agreement between the HCSO and the Florida Department of Children and Families ("DCF") provides that "the State of Florida is the sole source of all funding" for the CPI Division. (Grant Agreement ¶ L.3., Dkt. 202-10). Since Plaintiff proffers no evidence that the HCSO or its CPI Division receives any federal funding, summary judgment is due to be granted on Count V. 29 U.S.C. § 794; *McMullen*, 650 F. App'x at 706.

---

[16] Indeed, whether the HCSO receives federal funding is the subject of a motion in limine and motion to quash service of process. (Dkts. 228, 244). Nonetheless, HCSO raised the issue, albeit in a footnote, and Plaintiff did not proffer any evidence in rebuttal *in her response.*

C. Count IX - 42 U.S.C. § 1983

In Count IX, Plaintiff asserts a § 1983 claim, alleging HCSO had a practice of denying persons with disabilities custody of their children. (Dkt. 71 at 57). "To attribute liability to a municipality under § 1983, the plaintiff must demonstrate that the municipality had an official policy that was 'the moving force of the constitutional violation.'" *Vineyard v. Cty. of Murray, Ga.*, 990 F.2d 1207, 1211 (11th Cir. 1993). (citation omitted).

As HCSO accurately contends, "there is a lack of record evidence to demonstrate any policy or custom of Defendant leading to the violation of disabled parents' civil rights[.]" (Dkt. 189 at 20). Instead of rebutting HCSO's argument, Plaintiff contends that Valdez-Corey, individually, had a practice of placing children with medical needs in nursing homes and HCSO did not provide training regarding services available to these children or compliance with the ADA (Dkt. 202 at 26, 34). But she does not show how this is a violation of her individual rights.[17] And, as noted, any rights that

---

[17] Notwithstanding, MAF was removed with probable cause, and a hearing was held within twenty-four hours, in accordance with statutory requirements. *See Doe v. Kearney*, 329 F.3d 1286, 1293 (11th Cir. 2003)(a state may remove children threatened with harm when it is justified). A Florida Circuit Judge determined that MAF was properly removed from Plaintiff's custody, placed MAF in shelter custody, and imposed conditions required before MAF was returned to Plaintiff's home. *See id.* Plaintiff does not demonstrate how she individually has standing to bring this claim. Claims for unnecessary institutionalization are brought by individual patients. *See e.g. Olmstead, supra* (ADA and § 1983 claims brought individually by institutionalized patients).

Plaintiff had to make healthcare decisions on behalf of MAF were removed by the Shelter Order. Because Plaintiff does not proffer any evidence or argument that HCSO, as opposed to Valdez-Corey individually, has a practice of denying disabled persons custody of their children, HCSO's motion for summary judgment on Plaintiff's § 1983 claim is due to be granted.[18]

D. Eleventh Amendment Immunity

HCSO asserts that Eleventh Amendment immunity bars Plaintiff's remaining ADA claim in Count II. Plaintiff contends that HCSO is an "independent contractor" when performing child protective investigations and is therefore not entitled to immunity under the Eleventh Amendment.

In determining whether a government official is an arm of the state for purposes of Eleventh Amendment immunity, "we 'ask whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue.'" *Stanley v. Israel*, 843 F.3d 920, 924 (11th Cir. 2016)(quoting *McMillian v. Monroe Cty., Ala.*, 520 U.S. 781, 785, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997)). Although the Eleventh Circuit has repeatedly held "that Florida's sheriffs are not arms of the state" in various contexts

[18] Although not raised, this claim is also subsumed within her individual ADA claim. *See Badillo v. Thorpe*, 158 F. App'x 208, 213 (11th Cir. 2005)("a plaintiff cannot maintain a section 1983 action in lieu of—or in addition to—a Rehabilitation Act or ADA cause of action if the only alleged deprivation is the [plaintiff's] rights created by the Rehabilitation Act and the ADA")(quoting *Holbrook v. City of Alpharella, Ga.*, 112 F.3d 1522, 1531 (11th Cir. 1997)(alteration in original).

and therefore are not entitled to Eleventh Amendment immunity, the analysis is dependent on the relevant function the sheriff is performing. *Abusaid*, 405 F.3d at 1303.

The relevant question is whether HCSO acted as an arm of the state while sheltering MAF. *Abusaid*, 405 F.3d at 1304. The four factors considered in determining whether a defendant "while engaged in the relevant function" is acting as an arm of the state are: 1) how state law defines the entity; 2) the degree of control the state maintains over the entity; 3) the source of its funding; and 4) who is financially responsible for judgments. *Stanley*, 843 F.3d at 924; *Manders v. Lee*, 338 F.3d 1304, 1309 (11th Cir. 2003).

Florida Law

Sheriffs are "county officers" and can be abolished by the county if the duties are transferred to another office. Fla. Const. art. VIII, § 1(d). "This definition 'weighs heavily against assigning arm of the state status to a Florida sheriff.'" *Stanley*, 843 F.3d at 926 (quoting *Abusaid*, 405 F.3d at 1305).

State law provides that DCF is authorized to enter into grant agreements with sheriffs pursuant to Florida law, but it is not required to. Fla. Stat. § 39.3065(3)(a). And there are no statutes requiring a sheriff to enter into a grant agreement with DCF. *See e.g.* Fla. Stat. § 30.15 (describing the powers, duties and obligations of sheriffs). Florida law preserves the independence of sheriffs concerning purchases of supplies and equipment, selecting personnel, hiring and firing of

personnel, and setting personnel's salaries. Fla. Stat. § 30.53.

While state law defines DCF as an agency of the State, the Grant Agreement between the HCSO and DCF expressly provides that HCSO "act[s] in the capacity of an independent contractor while performing child protective services." (Dkt. 202-10). And Major Robert Bullara avers that the CPI Division within HCSO "acts in the capacity of an independent contractor." (Bullara Aff. ¶ 6, Dkt. 189-56). Accordingly, this factor weighs heavily against finding arm of the state status.

Degree of Control

Although the Grant Agreement provides that "the [S]tate maintain[s] substantial control over the performance of this grant," in addition to providing that HCSO is an independent contractor, the agreement limits the scope of HCSO's performance as an agent of the State to "the sole and limited purpose of receiving information" regarding applicants and recipients of public assistance programs. (Dkt. 202-10 at 10). While the authority to conduct a child protective investigation is derived from Chapter 39 of the Florida Statutes, "Eleventh Amendment immunity has never been held to apply simply because an independent contractor performs some government function." *Rosario v. Am. Corrective Counseling Servs., Inc.*, 506 F.3d 1039, 1047 (11th Cir. 2007).

Further, Attachment I to the Grant Agreement in this case provides HCSO a level of independence. HCSO is authorized to develop its own policies and

procedures regarding child protective investigations (Dkt 202-10 at 21), the child protective investigators and supervisors are under the control of HCSO (*Id.* at 23), and HCSO is authorized to subcontract investigations relating to child neglect and assumes full responsibility for safety decisions made by its subcontractor (*Id*). This factor weighs against finding arm of the state status.

Source of Funds

This factors weighs in favor of arm of the state status. The funds for child protective investigation services division are derived solely from the state, which Plaintiff does not contest. (Dkt. 202-10 at 9).

Financially Responsibility for Judgments

Major Bullara, a former Major in the CPI Division, avers that any judgment "would be paid strictly out of the DCF grant money provided this fiscal year" because "the office's county money is not allowed to be utilized in such a circumstance." (Bullara Aff. ¶ 5, Dkt. 189-56). Notwithstanding, Florida law provides that the Grant Agreement funds are for "providing child protective investigations" and makes no reference to judgments.[19]

The Grant Agreement does not specify who is liable for a judgment against HCSO while performing under the Grant Agreement. And the Eleventh Circuit

---

[19] "Funds for providing child protective investigations must be identified in the annual appropriation made to the Department of Child and Families, which shall award grants for the full amount identified to the respective sheriffs' offices." Fla. Stat. § 39.3065(3)(c).

recently recognized that "'no provision of Florida law provides state funds to a Florida sheriff to satisfy a judgment against the sheriff.'" *Stanley*, 843 F.3d at 930 (quoting *Hufford v. Rodgers*, 912 F.2d 1338, 1342 (11th Cir. 1990)). Finally, the HCSO acknowledges that it is self-insured. (Dkt. 202 at 39). Based on the record, this weighs against arm of the state status. Considering the record and weighing the relevant factors, I find that the HCSO is not entitled to Eleventh Amendment immunity. *See Stanley*, 843 F.3d at 926.

III. Conclusion

The HCSO's Motion for Summary Judgment (Dkt. 189) is **GRANTED** on Plaintiff's individual ADA claim (Count II), Rehabilitation Act claim (Count V), and § 1983 claim (Count IX). The motion is **DENIED** on Plaintiff's associational ADA claim (Count II).

DONE AND ORDERED this 15th day of March, 2017.

/s/ J. Whittemore
JAMES D. WHITTEMORE
United States District Judge

Copies to: Counsel of Record

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:13-cv-2873-T-27TBM

[Filed March 10, 2017]

DORIS FREYRE, Plaintiff,	)
vs.	)
SHERIFF DAVID GEE, as Sheriff of the Hillsborough County Sheriff's Office, IRIS VALDEZ-COREY, and JESSICA PIETRZAK, Defendants.	)

ORDER

BEFORE THE COURT are the Motions for Dispositive Summary Judgment of Defendants Iris Valdez-Corey and Jessica Pietrzak (Dkts. 190, 191), and Plaintiff's opposition (Dkt. 202).[1] Plaintiff Doris

[1] Sheriff David Gee's Motion for Summary Judgment on Count II, ADA violations, Count V, Rehabilitation Act violations, and Count IX, § 1983 municipal liability (Dkt. 189) is the subject of a separate order.

Freyre, a single, disabled mother, filed this lawsuit after her 14 year old disabled daughter, MAF, was removed from her custody due to medical neglect, temporarily sheltered at Tampa General Hospital ("TGH"), and transported to a nursing home in Miami, where she died. Plaintiff sues child protective investigators Jessica Pietrzak and Iris Valdez-Corey in Count VII for § 1985 conspiracy. Upon consideration, the motions (Dkts. 190, 191) are GRANTED.

I. Undisputed Material Facts

Iris Valdez-Corey and Jessica Pietrzak are child protective investigators with the Child Protective Division of the Hillsborough County Sheriff's Office. On March 16, 2011, after the Department of Children and Families ("DCF") received a call reporting allegations that MAF, Plaintiff's disabled daughter, had been abused, abandoned, and/or neglected, Piertrzak was assigned to investigate.[2] (Dkt. 189-1). Pietrzak visited MAF at University Community Hospital ("UCH") where MAF had been admitted that morning with a 103.5 degree fever and pneumonia. (Dkt. 202-1). She spoke with a nurse who did not have any concerns for the child or the mother and interviewed Plaintiff. (Dkt. 189-2 at 99-102). Five days later, however, Pietrzak spoke with Julie Emerson, a nurse with

---

[2] MAF was diagnosed with cerebral palsy, congenital hydrocephalus, seizures, congenital right dislocation, and developmental delay. (Dkt. 189-5 at 4). She was unable to position, feed, or dress herself. (*Id*.). She was non-ambulatory and could not assist with transfers. (*Id*.). All of her needs had to be met by her caregivers. (Dkt. 189-14 at 2).

Children's Medical Services[3] ("CMS"), who relayed her concerns regarding Plaintiff's inability to care for MAF without a home health aid and Plaintiff's refusal to voluntarily admit MAF into a facility that could provide twenty-four hour care. (Dkt. 189-2 at 98).

A Child Protection Team staffing was held on March 29, 2011. The attendees discussed their concerns about Plaintiff's ability to care for MAF, which Pietrzak memorialized.

> The concern is two fold. Based on the lengthy history of the mother's lack of involvement and concern for the child's care and her claimed back injury, there is a great concern for the child's safety and well-being when the home health care nurses are not in the home. Based on the mother's past actions, the child would be in imminent risk of harm through neglect if left in the mother's care. Most recently, while the child was in the ER on 3/16/11, the ER doctor gave orders to administer a medication that the mother knew the child was allergic to and the mother just sat there and did not inform the doctor of the child's allergy. After the mother did not inform the doctor, the home health nurse had to do so . . . . There have already been documented incidents of physical and verbal abuse by the mother . . . including hitting the

---

[3] CMS is a program established by the legislature to provide children with special health care needs a "family-centered, comprehensive, and coordinated statewide managed system of care[.]" Fla. Stat. § 391.016.

> child and yelling threats at the child that the mother would place her in a nursing home and no one would ever come and visit her. . . . Based on the continued opportunity for assistance, continued failure to follow through with appointments, continued lack of concern and involvement regarding the child's medical issues, and failure to take the child to the ER when she had a 103.5 fever until the home health nurse made the mother call the ambulance, I gave PC on the basis of prospective neglect.

(Dkt. 189-9). Based on the CPT staffing, it was recommended that the child protective investigator shelter MAF "in a safe and nurturing environment where her needs can be properly met." (Dkt. 189-7 at 4). Pietrzak completed a "Probable Cause Statement" requesting that MAF be sheltered in medical foster care with which an Assistant Attorney General agreed. (Dkt. 189-10). At 5:20 p.m. that day, MAF was removed from her mother's home by Pietrzak and placed in shelter care at Tampa General Hospital (Dkt. 189-10 at 2).

The next day, a shelter hearing was conducted by Circuit Judge Vivian Corvo. (Shelter Hearing Tr. 1, Dkt. 189-11). Plaintiff was present and represented by counsel.[4] After reviewing the probable cause statement

---

[4] Plaintiff testified, explaining that she had been turned down for 24 hour care and admitted that she could not care for MAF because of her condition (Shelter Hearing Tr. 7:18 - 8:12; Dkt. 189-11)

and hearing testimony from Plaintiff, Judge Corvo agreed that probable cause existed to remove MAF from the home and authorized placement into shelter care. She asked if there were services that could be placed in Plaintiff's home from midnight to 7 a.m. (Shelter Hearing Tr. 12:3-7, Dkt. 189-11). Kristine Carstens, with Hillsborough Kids, Inc. ("HKI"), represented to the court that HKI had been authorized to use its funds for two to three weeks while HKI attempted to obtain permanent funding for home care from midnight to 7:00 a.m., and HKI would work with Plaintiff to try to have the services paid through Medicaid. (Shelter Hearing Tr. 16: 13-18, Dkt. 189-11).

Judge Corvo stated "this is what's going to happen. Your daughter is going to go back to your home, but I'm allowing the department to continue to come into your home and observe what's going on. . . . They're going to hire somebody, to have someone in that home . . . The child will go home *once they have someone to be therefrom midnight to 7 a.m.* And they're going to provide services to you." (Shelter Hearing Tr. 17:4-19, Dkt. 189-11)(emphasis added).

The Shelter Order provided that MAF was to remain in shelter custody of the Department of Children and Families, that Plaintiff would have unsupervised visitation, and that MAF was to be returned to her mother when in home services were provided for MAF from midnight to 7 a.m. (Dkt. 189-12). DCF was authorized to provide:

> any emergency and ordinary and necessary medical, dental, and mental health examination and treatment . . . but not including non-

> emergency surgery, . . . or other extraordinary procedures for which a separate order or informed consent as provided by law is required. Although the . . . legal custodian shall have the above rights to authorize examination and treatment . . . before exercising these rights, shall make every effort to notify the parents and obtain consent from the parents for the examination and treatment. If the parents, after being informed, refuse to provide consent, the Department shall schedule a hearing with the court.

(Dkt. 189-12). A status conference was scheduled for April 14, 2011.

After the hearing, and for the next week, Pietrzak and Valdez-Corey worked with HKI and other agencies, including Maxim and the Opportunity Home Health Care Services ("OHS"), in an attempt to secure either in home services for MAF or local out of home placement. (Dkt. 189-2 at 52, 54, 60, 63-65, 71; Carstens Dep. 49:4-24, Dkt. 189-13; Dkt. 189-4; Dkt. 189-24; Dkt. 189-29; Dkt. 189-43). Ultimately, however, Carstens learned that Medicaid would not authorize 24 hour coverage and Maxim informed her that it was no longer willing to provide the services because of difficulties it had with Plaintiff. On April 11, 2011, the Children's Multidisciplinary Assessment team informed the Agency for Persons with Disabilities ("APD") that it had determined that MAF would require a "skilled" level of care at a nursing facility for one year, unless there was a significant change. And, APD determined that its specialized services would not

be needed because of the need for "skilled" care. After receiving these assessments, HKI began searching for a skilled nursing facility for MAF's placement. Nurse Emerson provided Pietrzak with a list of skilled nursing facilities in Florida that would accept medicaid pediatric patients.

When it became clear that in home services could not be secured, Pietrzak executed a Petition for Adjudication for Dependency prepared by the Attorney General's Office, based on allegations of medical neglect, prospective neglect and physical abuse of MAF. That day, Pietrzak spoke with Carstens about enrolling MAF in Prescribed Pediatric Extended Care ("PPEC") as a solution. However, PPEC advised Carstens that MAF would not qualify for PPEC if she was able to attend school. As a result of the Petition for Adjudication for Dependency, the status conference scheduled for April 14, 2011 was converted to an arraignment before Circuit Judge Emily Peacock. (Dkt. 189-18). Before the hearing, Carstens spoke with Plaintiff about the PPEC, who informed her that MAF was enrolled in Hillsborough County Public School's Homebound Program. Based on what Carstens had been told by PPEC, MAF would not qualify her for placement at PPEC.

At the arraignment before Judge Peacock, Plaintiff was present and represented by counsel. An Assistant Attorney General advised Judge Peacock that HKI was unable to obtain in home care because of Medicaid's refusal to pay for the 24 hour care and Maxim's refusal to work with Plaintiff. The Assistant Attorney General advised the Judge that PPEC had been looked into as

an option, but that Plaintiff did not want to place MAF her in a child care facility because of her immune deficiency disorder. She also informed the Judge that the State was looking into placing MAF into a nursing home for 24 hour care, based on the recommendations of the medical professionals.[5]

Judge Peacock did not enter any orders, and MAF remained at TGH. (Dkt. 189-18). Trial was set for June.

Ultimately, some long term funding for in home services and local placements were unavailable, Valdez-Corey consented to MAF's transfer from TGH to Florida Club Care Center ("FCCC"), a skilled nursing facility in Miami. Pietrzak signed the admission agreement. (Dkt. 189-40 at 12; Dkt. 189-41). Plaintiff was told about the transfer and placement but would not consent. MAF was transferred to FCCC without a hearing on April 26, 2011, and died shortly thereafter.

---

[5] Plaintiff complains that several misrepresentations were made to Judge Peacock during the hearing by the Assistant Attorney General representing the State, the most serious of which was that MAF was then in a nursing home, whereas she was at TGH (Dkt. 202 at 11). Any alleged misstatements are not material, however, since Judge Peacock did not entered any orders based on the statements. And while Plaintiff is critical of Pietrzak for not correcting the alleged misrepresentations, she fails to demonstrate that Judge Peacock would have considered anything other than what the attorneys told her. Plaintiff's "but for" scenario about what the judge may have ordered is nothing but speculation.

II. Standard

Summary judgment is appropriate where "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). "A genuine factual dispute exists only if a reasonable fact-finder 'could find by a preponderance of the evidence that the [non-movant] is entitled to a verdict.'" *Kernel Records Oyv. Mosley*, 694 F.3d 1294, 1300 (11th Cir. 2012) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). A fact is material if it may affect the outcome of the suit under the governing law. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine disputes of material fact that should be decided at trial. *Hickson Corp. v. N. Crossarm Co., Inc.*, 357 F.3d 1256, 1260 (11th Cir. 2004)(citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If the moving party fails to demonstrate the absence of a genuine dispute, the motion should be denied. *Kernel Records*, 694 F.3d at 1300 (citing *Adickes v. S.H Kress & Co.*, 398 U.S. 144, 160 (1970); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 606-08 (11th Cir. 1991)).

III. Iris Valdez-Corey and Jessica Pietrzak: Count VII - 42 U.S.C. § 1985

In her § 1985 conspiracy claim, Plaintiff contends that Valdez-Corey and Pietrzak conspired to deprive her of the right to raise her daughter and deprived MAF of the right to be free from unnecessary

institutionalization without her mother's consent.[6]

---

[6] This claim was initially filed against eight alleged co-conspirators, six of whom were voluntarily dismissed. (Dkts. 174, 176). Borrowing from criminal law, Plaintiff argues that Pietrzak and Valdez-Corey were the "hub of the conspiracy" and that the dismissed co-conspirators were the spokes. (Dkt. 202 at 34). "A 'hub-and-spoke' conspiracy occurs where 'a central core of conspirators recruits separate groups of co-conspirators to carry out the various functions of the illegal enterprise.'" *United States v. Huff*, 609 F.3d 1240, 1243-44 (11th Cir. 2010)(citation omitted). In this, "'[t]he core conpsirators move from spoke to spoke, directing the functions of the conspiracy.'" *Id.* at 1244 (citation omitted). This argument is not supported by the evidence.

Even viewing the evidence in the light most favorable to the Plaintiff, she does not provide "more than a scintilla of evidence" to support the "hub-and-spoke" conspiracy theory. She points to one instance where Pietrzak directed the functions of the conspiracy by providing a referral for a skilled nursing facility to the Children's Multidisciplinary Assessment Team ("CMAT"). (Dkt. 191-14). But CMAT was not an alleged co-conspirator. And CMAT determined that MAF met the criteria for a skilled nursing facility based on MAF's "need for monitoring, continuous observation of her respiratory, neurological status as MAF requires VP Shunt, Seizure Precautions." (Dkt. 191-14 at 2). Further, this assessment was signed off on by Karen Mitchell, who was not alleged to have been a co-conspirator.

The balance of Plaintiff's argument is directed to the actions and inactions of Pietrzak and Valdez-Corey within the scope of their employment. (Dkt. 202 at 35). Although not raised by Defendants, in this Circuit, the intracorporate conspiracy doctrine ostensibly bars Plaintiff's § 1985(3) conspiracy claim against Pietrzak and Valdez-Corey. See *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1261 (11th Cir. 2010). "'[U]nder the doctrine, a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire among themselves.'" *Id.* (quoting *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) (*en banc*)). This doctrine applies to law

(Dkt. 202 at 34).Valdez-Corey and Pietrzak contend that Plaintiff fails to satisfy the elements of a § 1985 conspiracy claim.

Section 1985 conspiracy claims require "(1) a conspiracy; (2) 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; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." *Park v. City of Atlanta*, 120 F.3d 1157, 1161 (11th Cir. 1997)(citations omitted).

To prove a conspiracy, a plaintiff must show "(1) that some racial, or perhaps otherwise class-based invidiously discriminatory animus [lay] behind the conspirators' action, and (2) that the conspiracy aimed at interfering with rights that are protected against private, as well as official, encroachment." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268 (1993)(internal citations omitted)(alteration in original). Because a class-based animus must be shown, this places "a significant hurdle for section 1985(3) plaintiffs." *Burrell v. Bd. of Trustees of Ga. Military Coll.*, 970 F.2d 785, 794 (11th Cir. 1992). "For a conspiracy claim to survive a motion for summary judgment [a] mere scintilla of evidence . . . will not

---

enforcement officers acting within their job-related duties and in furtherance of their employer's business. *Id.* Pietrzak and Valdez-Corey were acting within their duties as child protective investigators during the investigation, removal, and placement of MAF. (Dkt. 202-10).

suffice; there must be enough of a showing that the jury could reasonably find for that party." *Rowe v. City of Fort Lauderdale*, 279 F.3d 1271, 1284 (11th Cir. 2002)(citation and internal quotation marks omitted)(alteration in original).

I find that in this case, a reasonable jury could not find in favor of Plaintiff on her conspiracy claim. She fails to proffer sufficient evidence from which a reasonable jury could find that Valdez-Corey and Pietrzak acted in concert with a "class-based invidiously discriminatory animus" when the decision was made to transfer MAF to FCCC, after it became apparent that she could not be placed locally and the services specified by Judge Corco in her Shelter Order could not be provided with available resources.

A. Deprivation of a Right

While parents have a protected liberty interest in the care, custody, and management of their children, the State has an interest in the welfare of the child and particularly in sheltering the child from abuse or neglect. *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Kearney*, 329 F.3d at 1293. And as a general rule, before parents are deprived of their liberty interest, "due process – ordinarily a court proceeding resulting in an order permitting removal – must be accorded to them." *Kearney*, 329 F.3d at 1293 (quoting *Tenenbaum v. Williams*, 193 F.3d 581, 593 (2d Cir. 1999)).

Right to Raise her Daughter
(to Keep MAF Sheltered at Home)

As noted, at the shelter hearing on March 30, 2011, Plaintiff was present and represented by counsel. Judge Corvo determined that MAF needed to be sheltered and granted temporary legal and physical custody of MAF to the State. (Dkt. 189-12). Plaintiff does not contest the original removal and sheltering of MAF, but contests the failure to return MAF to her home. In essence, she contends that Valdez-Corey and Pietrzak conspired to deprive her of the right to shelter MAF at home with animus. But this contention is not supported by the undisputed evidence.[7] Rather,

---

[7] The record is replete with undisputed evidence of the efforts to place MAF locally and the difficulty of securing placement and funding for in home care. From April 1st through April 25th, multiple attempts were made to secure twenty-four hour in home services for MAF, or alternative local placements. Rafela Reyes, a home health nurse with Maxim, had been providing in home care to MAF for sixteen hours a day. (Dkt. 189-4). The day before MAF was sheltered at TGH, Rafela asked to be taken off the case due to Plaintiff's treatment of MAF. As a result, when Maxim was approached to provide twenty-four hour in home services, Maxim was unwilling "due to the past difficulty with working with the mother." (Carstens Note, Apr. 8, 2011, Dkt. 191-2 at 63-65). Opportunity Health Services ("OHS") agreed to provide night services, estimated it would take approximately 3 months to get approval for funding through Medicaid, and indicated it would review the contract to see if it could take the case. (Carstens Dep. 49:4-10, Dkt. 189-3; Carstens Note, Apr. 6, 2011, Dkt. 189-2 at 71). OHS never indicated to HKI a willingness to take the case. (Carstens Dep. 49:15-24).

Emerson advised HKI that because Medicaid would not pay for twenty-four hour coverage, night services would not be available after HKI funds were exhausted. (Carstens Dep. 32:8-17, Dkt. 189-

Plaintiff merely criticizes the actions of Valdez-Corey and Pietrzak, and argues that they could and should have done more to secure in home services. (Dkt. 202 at 35-37).[8] She argues that "[t]he animus of the actions

---

13; Carstens Note, Apr. 11, 2011, Dkt. 189-2 at 58-59). She also advised that pursuant to the Medicaid provider's policy "[h]ome health services are meant to supplement home care provided by parents, not to replace the care provided by parents" and "that it is the parents' ultimate responsibility to care for their children." (Dkt. 189-43).

And there were attempts to place MAF in settings other than TGH and at home. On April 13, 2011, Pietrzak inquired about placing MAF in a Physician Prescribed Extended Care ("PPEC") or in a group home. (Carstens Notes, Apr. 13, 2011, Dkt. 191-2 at 54; Pietrzak Notes, Apr. 11, 2011, Dkt. 191-2 at 60). CMS advised that MAF would more than likely not qualify for PPEC because of her enrollment in the Hillsborough County Public School's Homebound Program. (Dkt. 189-2 at 52). On April 15, 2011, the Clinical Operations Manager with HKI determined that MAF was not appropriate "for any traditional foster care settings" or Agency for People with Disabilities ("APD") settings. (Dkt. 189-29). Although APD had beds available in their group homes, APD independently determined that MAF could not be placed in on of their homes due to the "Cost Plan freeze and the inability to increase plans[.]" (Dkt. 189-24).

And after the hearing before Judge Peacock, on April 19, 2011, HKI advised Valdez-Corey that MAF was not going to a group home, that CMS approved a skilled nursing facility, and that the TGH social worker was looking for a skilled nursing facility. (Dkt. 189-2 at 46). The TGH social worker sought placement at five different facilities, including Lakeshore Villas in Tampa. (Dkt. 189-27). Ultimately, Lakeshore Villas declined placement on the morning of April 26, 2011.

[8] Among other things, Plaintiff criticizes Pietrzak and HCSO for not providing information she obtained from the Med Waiver support coordinator to Carstens, for relying "wholeheartedly on

were clear when on April 13, 2011, CPI Pietrzak attested the State's Petition for Dependency, which cited Ms. Fryre's disability as the reason why Ms. Fryre was incapable of providing for the health and safety of MAF." (Dkt. 202 at 35).

As noted, Judge Corvo's Shelter Order imposed conditions on returning MAF to her home. It is undisputed that those conditions were not and could not be met, despite the undisputed efforts of all concerned, including Valdez-Corey and Pietrzak. Could more have been done? Arguably yes, more could have been done. But the efforts of Valdez-Corey and Pietrzak, even if in hindsight are shown to have been less than what could have been done, do not support Plaintiff's conspiracy theory. A reasonable jury simply could not find that they acted with the required class-based invidiously discriminatory animus in a concerted effort to deprive Plaintiff of her rights.

Nurse Emerson's statement that Medicaid would not authorize 24/7 coverage," for not taking action to "re-apply MAF for 24 hour services through Medicaid," for failing to request flex funds "to provide home health services pending adjudication," for making no effort to pursue OHS, for failing to utilize "the Medicaid appeals process to obtain 24 hour coverage," for making "no attempts for less restrictive services that would have guaranteed reunification, or at the very least, allowed visitation," including presenting Plaintiff with the option ofenrolling MAF in public school or PPEC, "instead of being institutionalized," for not attempting to enroll MAF in a PPEC or to re-enroll her in a school, as opposed to having "just a discussion between Carstens and Susan Goetz," failing to pursue placement in a PPEC or a group home, and never attempting to place MAF in a medical foster home.

As noted, at the hearing before Judge Peacock, Plaintiff was present and represented by counsel. (Dkt. 189-19). Judge Peacock was advised that twenty-four hour in home services could not be provided. (*Id*.) Plaintiff's counsel argued that Plaintiff could provide for MAF at home without twenty-four hour services. (*Id*.). Judge Peacock, however, did not order MAF to return home, suggesting that Plaintiff's counsel file a motion for modification of placement. (Hearing Tr. 10: 14-18, Dkt. 189-19) ("I'm going to suggest that you go ahead . . . and file a motion for modification of placement[.]"). But that motion was never filed.[9]

In sum, shelter custody was granted to the State by Judge Corvo's Shelter Order, after a hearing during which Plaintiff was heard and was represented by counsel. Her claim that Valdez-Corey and Pietrzak conspired with class-based invidiously discriminatory animus to deprive her of rights therefore fails, since those rights had been taken from her by the court after notice and an opportunity to be heard.

Right to Refuse Medical Treatment (unnecessary institutionalization without her consent)

Similarly, Plaintiff has not proffered any evidence that Valdez-Corey and Pietrzak conspired, with class-based, invidiously discriminatory animus, to deprive her of the right to refuse medical treatment for MAF. The Shelter Order provides:

---

[9] When she was informed that MAF would be transferred to Miami, Plaintiff filed a pro se motion requesting a hearing. Apparently, that motion was never scheduled for hearing.

> Although the . . . legal custodian shall have the above rights to authorize examination and treatment . . . before exercising these rights, shall make every effort to notify the parents and obtain consent from the parents for the examination and treatment.

In accordance with the Shelter Order, Plaintiff was notified of MAF's impending transfer to FCCC and refused to provide consent. And that is the only "treatment" decision Plaintiff complains that she was denied the right to make. But Plaintiff's consent was not required by the Shelter Order, only an opportunity to consent. Her right to make ultimate health care decisions for MAF, including where and under what conditions she was sheltered, had been removed by the Shelter Order. Because Valdez-Corey and Pietrzak could not conspire to deprive Plaintiff of a right that Plaintiff did not have, this conspiracy claim fails. *See Park*, 120 F.3d at 1161.

B. Class-Based Invidiously Discriminatory Animus

Even assuming that Plaintiff proffered sufficient evidence of the fourth element of a § 1985 conspiracy claim (a person is deprived of a right or privilege of a citizen of the United States), her conspiracy claim fails on the second element (acts 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). Specifically, she does not address, much less rebut, Defendants' contention that this Circuit has never

affirmatively held that the disabled are a protected class under § 1985(3).[10]

Assuming, without deciding, that the disabled in general and individuals with Plaintiff's disability are a protected class, she nonetheless fails to offer more than a "scintilla of evidence" that Pietrzak and Valdez-Corey acted with a class-based, invidiously discriminatory animus.

While Plaintiff relies on the Petition for Dependency, which she contends makes "clear" that Pietrzak and Valdez-Corey acted with animus, as noted, the Petition is only attested to by Pietrzak.[11] Notwithstanding, the Petition alleged that "the mother deprived or allowed [MAF] to be deprived of necessary medical treatment," that there was a delay in taking MAF to the hospital on March 16, 2011,[12] that "[t]he mother has slapped the child and has threatened to put the child in a nursing home and not allow anyone to visit her," and that she has not followed up with a speech pathologist for MAF. (Dkt. 189-18).

And while Pietrzak attested to the difficulty Plaintiff had in changing MAF' s diaper and pulling her

---

[10] See *Corkery v. SuperX Drugs Corp.*, 602 F. Supp.42, 44 (M.D. Fla. 1985) and *Larson v. Sch. Bd. of Pinellas Cty., Fla.*, 820 F. Supp. 596, 601 (M.D. Fla. 1993).

[11] And, trial courts are not required to "search the record" and construct every argument that could have been made. *Restigouche, Inc. v. Town of Jupiter*, 59 F.3d 1208, 1213 (11th Cir. 1995).

[12] MAF was admitted with a 103.5 degree fever, pneumonia, a full body rash, a diaper rash, and was dehydrated.

up because of Plaintiff's back injury, she also attested that "[i]t was determined by medical professionals that the mother could not care for the child due to the mother's physical limitations." (Dkt. 189-18). And in light of the multiple attempts to provide in home services, and to keep MAF locally,[13] a reasonable jury could not find that either Valdez-Corey or Pietrzak acted with a class-based, invidiously discriminatory animus in petitioning the court.

Accordingly, summary judgment is due to be granted on Plaintiff's § 1985(3) claims against Valdez-Corey and Pietrzak.[14]

IV. Conclusion

Defendants' Motions for Summary Judgment (Dkts. 190, 191) are **GRANTED** on Plaintiff's § 1985 conspiracy claim (Count VII). The Clerk is directed to enter final judgment in favor of Defendants Iris Valdez-Corey and Jessica Pietrzak.

---

[13] Medicaid would not pay for twenty-four hour in-home coverage. (Carstens Dep. 32:8-10, Dkt. 189-13; Dkt. 189-3 at 58-59). Home health agencies either refused to work with the family based on prior experience or did not indicate a willingness to take the case. (Carstens Dep. 49:4-24, Dkt. 189-3; Dkt. 189-2 at 63-65, 71). Local skilled nursing facilities and group homes would not accept MAF. (Dkts. 189-29; 189-27). She was not appropriate for traditional foster care and did not qualify for PPEC. (Dkt. 189-2 at 52; Dkt. 189-29).

[14] Because Plaintiff's claim fails on elements two and four, it is unnecessary to analyze the purported acts in furtherance of a conspiracy.

DONE AND ORDERED this 10th day of March, 2017.

/s/ James Whittemore
JAMES D. WHITTEMORE
United States District Judge

Copies to: Counsel of Record