No. _____

In the

Supreme Court of the United States

MONTY BAUCH, INDIVIDUALLY AND AS FATHER AND NEXT FRIEND OF O.B., A MINOR,
Petitioners,

vs.

HOLLY HARTMAN,
Respondent,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1) Whether a social worker is entitled to absolute immunity when she makes false statements and omits highly relevant information as a complaining witness to a magistrate for an *ex parte* removal order to remove a child from her home?

LIST OF PARTIES TO THE PROCEEDING

1) Monty Bauch, Plaintiff and Petitioner

2) O.B., a Minor, Plaintiff and Petitioner

3) Richland County Children Services, Defendant

4) Randy J. Parker, Individually and as the former Executive Director of Richland County Children Service, Defendant

5) Jason Kline, Defendant

6) Nikki Harless, Defendant

7) Holly Hartman, Defendant

8) Tara Lautzenhizer, Defendant

9) Patricia Harrelson, Individually and as Executive Director and/or Agent of Richland County Children Services, Defendant

10) Edith A. Gilliland, Individually and as Agent and/or Employee of Richland County Children Services, Defendant

11) Gina Brandy, Individually and as Agent and/or Employee of Richland County Children Services, Defendant

12) Family Life Counseling & Psychiatric Services, Defendant

13) Steven Burggraf, Defendant

14) Debra Vanromer, Individually and as a Director, Agent, and/or Employee of Family Life Counseling & Psychiatric Services, Defendant

15) Holly Hartman, Defendant and Respondent

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STATEMENT OF THE BASIS FOR JURISDICTION

The United States Sixth Circuit Court of Appeals entered the opinion submitted for review on May 23, 2018. This Court's jurisdiction to review this opinion arises under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED
42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Facts Giving Rise to This Case.

In 2011, Petitioner O.B. was three years old and living with her father, Petitioner Monty Bauch ("Mr. Bauch"), when she was removed from the only parent she knew for over a three-year period. This removal occurred due to a social worker, acting in the role of a complaining witness, who provided false information and omitted highly relevant information in order to secure an emergency *ex parte* removal order from an after-hours magistrate.

Mr. Bauch is a large man with long, shaggy hair and a beard. He presents as a rather burly individual. Mr. Bauch and O.B. had only recently, in the past few weeks of January 2011, moved to Richland County, Ohio and they had very little financial support. None of which has anything to do with the love he has for his daughter. Mr. Bauch has held sole custody of O.B. from the day she was born to present time with the exception of the three years Richland County Children Services deprived Mr. Bauch custody of his daughter.

On January 16, 2011, Mr. Bauch's ex-girlfriend reported concerns about Mr. Bauch's parenting style to the Shelby Police Department, concerns she never raised when she was dating Mr. Bauch. The ex-girlfriend claimed that O.B. bathed with her father, masturbated, and wasn't dressed unless she was leaving the house. The police explicitly asked the ex-girlfriend about possible sexual abuse and she unequivocally denied seeing any inappropriate touching between the father and daughter. The police did not believe that the matter required an investigation and so they faxed the ex-girlfriend's statement to Richland County Children Services

("RCCS"). No one from RCCS ever followed up with the police on this statement or the ex-girlfriend who made the initial statement. And, although the unsubstantiated statement did not meet the sexual abuse classification of the RCCS screening policy, RCCS classified this matter involving O.B. as one for "sexual abuse." As a result, RCCS policy required someone to interview O.B. within twenty-four hours.

No interview with O.B. occurred within the mandated twenty-four hours. Instead, forty-eight hours later, on January 18, 2011, an RCCS caseworker, who requested a police escort, went without notice to the Bauch home to interview Mr. Bauch and O.B. Mr. Bauch openly discussed his parenting of O.B. and allowed the caseworker to speak to her alone. The only thing Mr. Bauch declined was to subject his daughter to a SANE (sexual assault nursing exam)[1] exam. The caseworker was able to obtain all relevant information in less than five minutes of speaking to O.B. as she was able to articulate and answer questions in that timeframe. O.B. denied that her father abused her, inappropriately touched her, or harmed her in anyway. The caseworker concluded that O.B. was well cared for, healthy, and developmentally age appropriate.

Following her visit to the Bauch home and as required by law, the RCCS caseworker completed the Ohio Department of Job and Family Services Comprehensive Assessment Planning Model – I.S. ODJFS 01401 Safety Assessment regarding O.B. All fifteen factors demonstrated that O.B. was safe in the

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[1] Among other things, this exam involves the extensive physical examination and photographing of the child's genital area.

home of her father. The Safety Assessment was signed by the caseworker and her supervisor, Respondent Holly Hartman on January 19, 2011. By completing the Safety Assessment, the RCCS caseworker determined that O.B. was not in danger and was safe in her own home. In response to Safety Factor #14: "Child sexual abuse/sexual exploitation is suspected and circumstances suggest that the child may be in immediate danger or serious harm" the caseworker responded "No" and also commented "Parent denied that the child had been exposed to inappropriate behaviors. Child denied sexual abuse."

On January 20, 2011, RCCS employees conducted a team meeting to discuss O.B. The meeting violated RCCS' policies, which requireed the caseworker who interviewed O.B. to be at the team meeting, and she was not present. The entire team decided at the meeting that there was not enough evidence and a lack of probable cause to obtain a court order to remove O.B. from her home and her father.

Despite their own conclusion that probable cause did not exist, RCCS wanted to remove O.B. from Mr. Bauch and, during that same meeting, they formulated a plan to send different employees, not the original caseworker who found O.B. to be safe, to the Bauch home that very evening. They also planned to seek an emergency *ex parte* order to remove O.B. after hours from a magistrate that same evening. The remainder of the plan was to, again, ask Mr. Bauch to submit O.B. to a SANE exam knowing full well that he had previously refused to subject O.B. to this exam and would likely refuse again. RCCS was so sure that Mr. Bauch would not subject his daughter to a SANE exam that they simultaneously contacted a Shelby police officer, Officer Combs, and informed him that

they would likely be securing an emergency removal of O.B. and requested his presence at the home before even arriving at the Bauch home.

Officer Combs was the only person who entered the Bauch home and spoke to Mr. Bauch on January 20, 2011. He did not believe there was probable cause to remove O.B. He stated that Mr. Bauch and his daughter had little means but that the home was appropriate and further that his own little children were known to run around without a shirt on and he doesn't consider this to render a basis for removal. Likewise, RCCS employees admitted that they did not discover any additional information during their second visit to the Bauch home to support probable cause. The information known at the team meeting a few hours earlier in which unanimously it was decided that probable cause did not exist remained the same.

Still and as part of the plan, with RCCS employees at the Bauch home, Respondent Hartman in her function of a complaining witness, presented a false affidavit to the on-call magistrate in order to obtain an *ex parte* removal order. In her affidavit, Hartman stated that O.B. was an "abused child" under Ohio Revised Code § 2151, which is defined as a "victim of sexual activity" and there was a current referral for sexual abuse with Mr. Bauch as the alleged perpetrator. At deposition, Hartman admitted that neither of these assertions were true. Hartman included additional assertions, some of which were embellished, but all of which were known during the initial meeting with Mr. Bauch and determined by RCCS as insufficient to establish probable cause for removing O.B. from her home. Hartman represented that Mr. Bauch could not provide proof of his child's birth or his custody of O.B. when, in fact, he provided

that information to Officer Combs when requested on January 20, 2011. Hartman also claimed that RCCS had made reasonable efforts to prevent the need to remove O.B. from her home when, in fact, RCCS had made no such efforts. To the contrary, RCCS devised a plan to remove O.B. by orchestrating and conspiring the second visit to her home with different employees in an after-hour situation. Hartman also omitted the fact that O.B. and her father denied sexual abuse. Finally, Hartman falsely represented to the magistrate that it was the conclusion of RCCS that:

> "[C]ontinuation of said child in his/her home would be contrary to the welfare of said child; that [it] is in said child's best interests that he/she be placed out of his/her home; and that the immediate vesting of emergency temporary custody in Richland County Children Services Board is necessary to prevent irreparable harm to said child for the following reasons…she does bath[e] with father…she demonstrated to worker what "pumping" was. (pumping is child's word for masturbation)…she never gets dressed unless she leaves the house. Concerns that child has been in sexual relations with father and SANE exam is necessary to determine if child has been sexually abused…Father admitted…in 2010 that he has been selling prescriptions to an adult in Montanta…Father admitted…that he uses marijuana…" App., p. 30.

Again, RCCS knew all of these allegations after their first meeting with Mr. Bauch and O.B. And, the remaining information in the affidavit was either false or highly relevant information such as the safety of O.B. which was certified to the State and determined during the interview with O.B. was intentionally omitted. Hartman also failed to inform the magistrate that a mere two (2) hours before that RCCS in its team meeting, with all of the information unanimously decided, that no probable cause existed to remove O.B. This false information and omission of critical information was provided as a complaining witness to a magistrate after hours to acquire an *ex parte* removal order. There can be no question that had RCCS been honest and forthright in their dealings with the magistrate, an *ex parte* removal order never would have been signed. This is known because RCCS admits it could not find probable cause under the circumstances and the allegations of abuse were never substantiated. Here, it was based on falsehoods and Officer Combs, who testified that probable cause did not exist for removal, was notified of the removal order via a text message while still speaking to Mr. Bauch.

It is the policy of RCCS that if seeking emergency *ex parte* removal order from a magistrate then a signature from the magistrate as well as a judge is required. In this case, a judge never signed the *ex parte* order.

O.B. was removed from her home for three (3) years. In addition to being separated from her father, she underwent three SANE exams during her separation and multiple families. RCCS never substantiated their allegations of sexual abuse and O.B. was finally returned to her father.

B. The District Court Proceedings.

On December 17, 2014, Petitioners filed their Complaint in the United States District Court in the Northern District of Ohio. They identified numerous defendants, including Respondent Hartman, and asserted multiple state and federal claims, including violations of 42 U.S.C. § 1983. Following extensive discovery, all parties moved for summary judgment. The RCCS defendants, including Respondent Hartman, asserted arguments to the claims against them with the crux of their reliance on an argument based on immunity.

Relying on precedent from the Sixth Circuit, the District Court analogized social workers who initiate judicial proceedings against those suspected of child abuse to prosecutors and concluded that they are entitled to absolute immunity. App., p. 21, citing *Rippy ex rel Rippy v. Hattaway,* 270 F.3d 416, 421(6th Cir. 2001); and *Salyer v. Patrick*, 874 F.2d 374 (6th Cir. 1989). The District Court simultaneously determined that a social worker acting "in the capacity of a complaining witness" is not entitled to absolute immunity. App., p. 21, citing *Kalina v. Fletcher*, 522 U.S. 118-129-30 (1997).

The District Court impliedly concluded that Hartman was acting as a complaining witness and analyzed her affidavit under the standard applicable to qualified immunity. The Court acknowledged the false information in and relevant information omitted from Hartman's affidavit. It further cited Hartman's deposition where she testified that RCCS should provide a magistrate with all evidence available in an emergency removal situation. App., p. 23. Based upon this evidence, the District Court concluded that there

was an issue of fact as to whether Hartman was entitled to qualified immunity.

C. The Appellate Court Proceedings.

On April 27, 2017, Hartman filed an appeal with the Sixth Circuit Court of Appeals challenging the District Court's decision denying her absolute immunity. The Court of Appeals issued its decision reversing the District Court on May 23, 2018. The Appellate Court recognized various cases, including *Kalina, supra*, that supported Petitioners' theory and the District Court's decision but also cited to additional Sixth Circuit authority to reach the conclusion that Hartman's submission of the affidavit under these circumstances was "an act of legal advocacy by social workers." App., p. 6. The Sixth Circuit used this reasoning, combined with the stated need to protect children's services advocates from intimidation, harassment, and protracted litigation by dissatisfied parents, to conclude that Hartman was entitled to absolute immunity from liability for any violation of 42 U.S.C. § 1983. App., pp. 7-8.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. Review Is Warranted Because This Court Has Never Determined the Level of Immunity, If Any, to Which Social Workers Are Entitled.

This Court recognized long ago that 42 U.S.C. § 1983, on its face, provides no official with the defense of immunity. *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S.Ct. 2606, 2608, 125 L.Ed.2d 209 (1993). For this reason, when addressing the defense of immunity, the "initial inquiry is whether an official claiming immunity under § 1983 can point to a common-law counterpart to the privilege he asserts." *Malley v. Briggs,* 475 U.S. 335, 339-40, 106 S.Ct. 1092, 1095-1096, 89 L.ED.2d 271 (1986), citing *Tower v. Glover*, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984). The immunity afforded to judges and prosecutors for § 1983 violations is rooted in common law and this Court's conclusion that Congress, well aware of this common-law defense, intended this defense to continue absent provisions to the contrary. *Briscoe v. LaHue*, 460 U.S. 325, 332 (1983); See, also, *Hoffman v. Harris*, 114 S.Ct. 1631, 1632 (1994). This Court reasoned that "'[c]ertain immunities were so well established in 1871, when § 1983 was enacted, that "we presume that Congress would have specifically so provided had it wished to abolish" them.'" *Hoffman,* 114 S.Ct., at 1632, (quoting *Buckley,* 509 U.S., at 268, 113 S.Ct., at 2608; quoting *Pierson v. Ray*, 386 U.S. 547, 554-555, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288 (1967)). On the other hand, this Court has refused to grant immunity under § 1983 if that same immunity was not found in common law in 1871. *Hoffman*, 114

S.Ct., at 1632 (quoting *Burns v. Reed*, 500 U.S. 478, 498, 111 S.Ct. 1934, 1945, 114 L.Ed.2d 547 (1991)).

Research conducted for this petition did not reveal any case law where a court based a social worker's right to immunity on common law existing prior to the enactment of § 1983. Justice Thomas reached a similar conclusion in his dissenting opinion in *Hoffman*, when he noted that none of the courts granting immunity to social workers had "seriously considered whether social workers enjoyed absolute immunity for their official duties in 1871," assuming, of course, that social workers even existed in 1871. *Hoffman*, 114 S.Ct., at 1632-33. And, to the extent courts have granted immunity to social workers based upon public policy reasons, it is improper because "'federal courts do not have a license to establish immunities from § 1983 actions in the interests of what [they] judge to be sound public policy.'" *Id.*, at 1633 (quoting *Tower*, 104 S.Ct. at 2825-2826).

This Court previously determined that there is no legal right to immunity for violating § 1983 absent a statutory grant or a foundation in common law. Section 1983 does not provide immunity to social workers and there is no precedent showing that the defense comes from common law. Here, the Sixth Circuit followed its prior decisions and some other courts, while ignoring other courts, and granted immunity to Hartman, a social worker, by analogizing her role to that of a prosecutor. App., p. 4. Mere analogy falls far short of a congressional mandate or a common law right that existed long before the statute Hartman is accused of violating even existed. And, Justice Thomas' request to review this issue remains unanswered.

If there was ever a time to revisit Justice Thomas' suggestion, this case presents the ideal circumstances to do so. RCCS employees admitted that they did not have probable cause to remove O.B. from her home after their first visit. So, they arranged a second visit under false pretenses and with a conspiracy to misuse the judicial system after hours. They did not discover any additional evidence during that second visit and yet continued to carry out their plan to circumvent the law. Hartman provided sworn information to an after-hours magistrate to demonstrate that probable cause did exist to remove O.B. That sworn information omitted highly relevant information and contained false information regarding O.B. and her living situation. Throughout their involvement in the Bauch case, RCCS employees, including Hartman, violated RCCS's internal policies and procedures. All of these facts are supported by the testimony of RCCS's employees, including Hartman. As a result of these egregious actions, Mr. Bauch and O.B. were separated from each other and their family sanctity destroyed for three years. RCCS never substantiated its allegations against Mr. Bauch. For these reasons, whether Hartman and social workers in general are entitled to absolute or any immunity whatsoever is not only an unanswered legal question, it is an issue that requires resolution to allow families injured by such brazen constitutional violations to seek redress if absolute immunity, thus far, has been improperly granted to social workers. To cloak social workers with more immunity than police officers and prosecutors are afforded as complaining witnesses does not provide protection to children but empowers egregious behavior which could never be redressed.

II. Review Is Warranted Because the Sixth Circuit's Decision Conflicts With This Court's Holding in *Kalina v. Fletcher*.

In *Kalina*, 522 U.S. 118, this Court considered the level of immunity to which a prosecutor was entitled when obtaining an arrest warrant. This Court conducted an extensive analysis of the circumstances under which a prosecutor is entitled to absolute immunity and those circumstances where only qualified immunity applies. To make the determination, this Court focused on "'the nature of the function performed, not the identity of the actor who performed it.'" *Id.*, at 127 (quoting *Forrester v. White*, 484 U.S. 219, 229, 108 S.Ct. 538, 545, 98 L.Ed.2d 555 (1988)).

In *Kalina*, the prosecuting attorney filed three documents in a Washington state court: (1) an unsworn document charging the respondent with burglary; (3) an unsworn motion for an arrest warrant; and (3) a "Certification for Determination of Probable Cause," which included her sworn statements summarizing the evidence supporting the charge. *Id.*, at 118. The certification caused the trial court to find probable cause and the respondent was arrested. However, the charges were later dropped by the prosecutor and he sued based upon two false states in the certification. *Id.* This Court held that the prosecutor was immune from any liability that may have stemmed from the first two documents but not the certification. *Id.*, at 129.

The prosecutor argued that her preparation of the certification was one part of a presentation that, when viewed in its entirety, was performed in her role as an advocate and "integral to the initiation of the

prosecution." *Kalina*, 522 U.S. at 130. This Court responded to the prosecutor's assertion as follows:

> That characterization is appropriate for her drafting of the certification, her determination that the evidence was sufficiently strong to justify a probable-cause finding, her decision to file charges, and her presentation of the information and the motion to the court. Each of those matters involved the exercise of professional judgment; indeed, even the selection of the particular facts to include in the certification to provide the evidentiary support for the finding of probable cause required the exercise of the judgment of the advocate. But that judgment could not affect the truth or falsity of the factual statements themselves. Testifying about facts is the function of the witness, not of the lawyer. No matter how brief or succinct it may be, the evidentiary component of an application for an arrest warrant is a distinct and essential predicate for a finding of probable cause. **Even when the person who makes the constitutionally required "Oath or affirmation" is a lawyer, the only function that she performs in giving sworn testimony is that of a witness**.

[Emphasis added.] *Id.*, at 130-31.

When deciding this matter, the Sixth Circuit acknowledged the holding of *Kalina* and that, under that holding, "officials who serve as complaining witnesses receive qualified, not absolute, immunity." App., pp. 5-6. The Sixth Circuit then diverged from *Kalina* based on its conclusion that "although the affidavit submitted by the prosecutor in *Kalina* was 'filed as part of an *ex parte* process prior to the indictment that begins the criminal case,' Hartman's affidavit in support of emergency custody was 'an undeniable part of the judicial process' because 'the [affidavit] initiated the [removal] action' and subsequent hearing." App., p. 7, (quoting *Gray v. Poole*, 275 F.3d 113, 118 (D.C. Civ. 2002)).

Petitioners maintain that the Sixth Circuit's analysis is flawed and, as a result, its holding is in direct conflict with this Court's holding in *Kalina*. Just as many of the prosectuor's actions in *Kalina* were found to be those of an advocate for the prosecutor's office and an integral part of the judicial system, this Court distinguished her sworn testimony, "[n]o matter how brief or succinct it may be," from those other acts of advocacy and explicitly concluded that providing those sworn statements were "only [the] function…of a witness." *Kalina*, 522 U.S., at 131.

As in *Kalina*, many of Hartman's acts may be considered that of an advocate, i.e., her drafting of the affidavit, her participation in the investigation, and her presentation of the information to the magistrate. However, just as the prosecutor in *Kalina*, the only function she performed by providing sworn testimony in the form of an affidavit was that of a complaining witness and no other. As a complaining witness, Hartman is not entitled to absolute immunity pursuant to the precedent in *Kalina*. Therefore,

Petitioners' request for review should be granted and the Sixth Circuit's conflict with *Kalina* resolved.

III. Review Is Warranted Because of the Conflict Between State and Circuit Courts on the Application of the Holding in *Kalina* and the Immunity Afforded to a Social Worker as a Complaining Witness.

When asked whether a social worker acting in the capacity of a complaining witness who submitted false information to secure the removal of a child was entitled to absolute immunity, other state and federal courts unequivocally concluded that they were not. *Hardwick v. Cty. of Orange*, 844 F.3d 1112 (9th Cir. 2017); and *Minor v. State of Iowa*, 819 N.W.2d 383 (Iowa 2012). As a result, the families who suffered blatant and willful violations of their constitutional rights in those jurisdictions are permitted to pursue legal redress while those in the Sixth Circuit, like Petitioners, are left to suffer brazen constitutional violations and completely unnecessary, extended separations from their families and are summarily denied the same opportunity for reparation. This incongruent result must be changed and the applicable law applied uniformly throughout our country.

In *Hardwick*, a minor sued California social workers for using perjury and fabricated evidence to separate her from her mother. *Hardwick*, 844 F.3d at 1114. The false/fabricated evidence included statements to the court that the mother had caused her daughters to skip a mandatory meeting with their father, that their mother was responsible for turning her children against the court monitor, and their mother told the children that their father was trying

to take them away when, in each of these instances, it was one of the defendants who caused these circumstances. *Id.*, at 1116-17. The defendants responded by arguing they were absolutely or qualifiedly immune from liability. *Id.*

The Ninth Circuit determined that the plaintiff's allegations "targets conduct well outside of the social workers' legitimate role as quasi-prosecutorial advocates" and that they were "'not entitled to absolute immunity from claims that they fabricated evidence during an investigation or made false statements in a dependency petition affidavit that they signed under penalty of perjury, because such actions aren't similar to discretionary decisions about whether to prosecute.'" *Id.*, at 1116, quoting *Beltran v. Santa Clara County*, 514 F.3d 906, 908 (9th Cir. 2008).

The *Hardwick* court also disclosed that it was reviewing the second case that arose from these circumstances, with the first filed by the plaintiff's mother in the state court. *Hardwick*, 844 F.3d at 1114, citing *Fogarty–Harwick v. Cty. of Orange*, No. G039045, 2010 WL 2354383 (Cal. Ct. App. June 14, 2010). Importantly, the state court refused to provide the social workers with qualified immunity and explained as follows:

> "'[T]he jury specifically concluded that Vreeken and Dwojak lied, falsified evidence and suppressed exculpatory evidence—all of which was material to the dependency court's decision to deprive Fogarty-Hardwick of custody—and that they did so with malice. These findings are clearly sufficient to satisfy the Supreme Court's definition of

> circumstances in which 'qualified immunity would not be available.'"

Id., quoting *Fogarty–Harwick*, 2010 WL 2354383 at *14.

Minor also involved circumstances and allegations practically identical to those in this case. The *Minor* court analogized the social workers' function to those of a prosecutor to determine whether they were entitled to absolute immunity for the false information they submitted in numerous circumstances but simultaneously recognized that they "must 'be sparing in our recognition of absolute immunity.'" *Minor*, 819 N.W.2d at 394-95, quoting *Beck v. Phillips*, 685 N.W.2d 637, 643 (Iowa 2004). When doing so, the court unequivocally concluded that a prosecutor "who prepares and files a sworn affidavit to accompany a motion for an arrest warrant" is not entitled to absolute immunity because he/she is acting in the capacity of a complaining witness. *Id.*, at 395, quoting *Kalina*, 522 U.S. at 130-31.

In *Minor*, the court determined that a social worker acting as a complaining witness is not entitled to absolute immunity for submitting an affidavit that contains false information. *Minor*, 819 N.W.2d at 397, citing *Rehberg v. Paulk*, 566 U.S. at ——, ——, 132 S.Ct. 1497, 1504, 1507, 182 L.Ed.2d 593, 606 (2012). The social worker in *Minor* was accused of submitting two false affidavits: one to commence a CINA (child in need of assistance) action and the second after the CINA action was commenced. Under Iowa law, a CINA petition must be supported by an affidavit which sets forth the "information and beliefs upon which the petition is based." *Id.*, at 399, citing Iowa

Code § 232.36(2). The court concluded that a social worker submitting an affidavit to initiate a CINA action was acting as a complaining witness and, therefore, was not entitled to absolute immunity. *Id.*, at 399.

At the same time, the *Minor* court highlighted the fact that this Court has not addressed the issue and the circuit courts have reached conflicting conclusions on a social worker's immunity for submitting a false information in an affidavit submitted to a court. *Minor*, 819 N.W.2d at 396-97, citing *Beltran*, 514 F.3d 906; *Austin v. Borel*, 830 F.2d 1356 (5th Cir.1987) (both denying absolute immunity to social workers who submitted affidavits containing false information); and *Pittman v. Cuyahoga Cnty. Dep't of Children & Family Servs*., 640 F.3d 716 (6th Cir. 2011) (granting absolute immunity to caseworker who made intentional misrepresentations in affidavit). Additional cases reveal that the conflict is broader still. See *Snell v. Tunnell*, 920 F.2d 673 (10th Cir. 1990) (denied absolute immunity to caseworkers who sought court order allowing removal of children from home); and *Johnson v. Sackett*, 793 So.2d 20 (Fla.Dist.Ct. App. 2001) (caseworker provided with absolute immunity for filing dependency petition with intentional misrepresentations).

The facts in *Hardwick* and *Minor* cannot be distinguished from those in this case. All of the social workers in these cases were accused of submitting affidavits containing false/fabricated information to secure the initial removal of a child from his/her home. But the social workers in *Hardwick* and *Minor* were denied absolute immunity and thereby required to face the consequences of their actions while Respondent Hartman was granted absolute

immunity. Her perjury, proven largely by her own testimony and that of her fellow employees, is left to stand and, frankly, to continue unfettered while those entrusted to her care are left to suffer the consequences. In this case, those consequences needlessly tore the Petitioners apart for more than three years when they are the only family each other has and the allegations against Mr. Bauch, initially fabricated by Respondent Hartman, were never substantiated. Not only must this individual wrong be corrected, but Petitioner requests that this Court provide the lower courts with a determinative directive on this issue as suggested by Justice Thomas in *Hoffman* and the need for which was alluded to in *Minor*.

During the oral argument to the Sixth Circuit, a question was asked as to why would the social worker lie to obtain the order? The question as to her own motivation or that of RCCS is irrelevant. The mere title of social worker does not conclude that the individual will never do any wrong any more than the title does for a prosecutor or a police officer. The review of cases indicate that wrongs have been committed by prosecutors, police officers and even social workers which is why this Court's guidance is so critical at this time. Without direction from this Court, the conflict among *Kalina, Hardwick, Minor,* the additional cases identified above and this case will only get worse and these lower courts will essentially be left to create their own law for their individual jurisdictions.

CONCLUSION

Based on the foregoing, Petitioners respectfully submit that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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