No. 18-257

IN THE

Supreme Court of the United States

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

Petitioners,

v.

HOLLY HARTMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Did the Sixth Circuit Court of Appeals properly apply the facts to the law when it concluded that Respondent social worker Holly Hartman was entitled to absolute immunity while she was acting as a legal advocate initiating a child-custody proceeding under Ohio law?

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I. STATEMENT OF THE FACTS

A. Pertinent factual background

In January 2011, the City of Shelby, Ohio Police Department sent Richland County Children Services ("RCCS") a voluntary statement from a woman who recently lived with the Petitioners. In her statement, she detailed what she personally observed while living with Petitioners Monty Bauch and his four-year old daughter, O.B.:

> He sleeps with his daughter and takes baths in the tub with her (gets in the tub with her). Most of the time he only puts underwear on her unless going somewhere. I have to tell him that she needs to be dressed. I have also repeatedly told him not to take baths with her & about putting her to bed in her bed not his. He won't listen. She also masturbates every day. I tell her to stop when I see her do it. Monty & [O.B.] call it "pumping." Her private area is very red & it hurts her when she pees. If I bathe her, she tells me to be "gentle." (Emphasis in original).

RCCS fulfilled its statutory obligation to protect children by investigating this statement it received from the local police. Caseworker Tara Lautzenhiser (granted immunity by the district court) investigated the matter and reported to her supervisor, Respondent Holly Hartman. Lautzenhiser wanted to interview O.B. alone in a neutral setting (i.e. at RCCS or at a police station) as caseworkers are trained to do in order to get a "clean" interview of an alleged child victim. Mr. Bauch refused and would only allow her to be interviewed in his home.

Caseworker Lautzenhiser's investigation included visiting the Bauch home. During this visit, Bauch denied sexual abuse of his daughter. Caseworker Lautzenhiser asked Bauch to submit O.B. to a Sexual Assault Nurse Examination (SANE exam), of which he refused. He also refused to sign releases for RCCS to obtain medical information on O.B. He did admit to taking baths with his daughter and to sleeping in the same bed with her. He stated that he had been involved with children services agencies in other states, although he refused to give any details other than he believed he was targeted because he was a single father and they closed his case. He also admitted to smoking marijuana in the home in which he resided with O.B. Although she denied sexual abuse, O.B. confirmed that she "pumps" and demonstrated in a manner that indicated that she masturbated.

While waiting for the remaining background-check records, RCCS followed its policy and attempted to reengage Petitioner Bauch. A RCCS placement team reviewed this case on January 20, 2011 and determined that it must file to obtain: a protective services order (court-ordered supervision of parental custody); an order for Bauch to not move out of Richland County; an order for Bauch to complete a drug and alcohol assessment; and an order for a SANE exam of O.B. As the district court found, "Lautzenhiser completed a Safety Assessment form and commented: "'Parent denied that the child had been exposed to inappropriate behaviors. Child denied sexual abuse.' Her supervisor, Holly Hartman, directed Lautzenhiser to return on January 20, 2011 and again request permission for the SANE examination." (Opinion and Order [Pet. App. 26-27].)

That same day, RCCS attempted to reengage Bauch to cooperate. RCCS involved the juvenile court to allow it to mandate how to proceed. Respondent Hartman executed an affidavit and contacted Magistrate Schulz of the Richland County Juvenile Court. Respondent Hartman's affidavit for emergency custody necessarily triggered a subsequent custody proceeding under Ohio law. The Ohio Revised Code states that:

> If a judge or referee pursuant to division (D) of this section issues an ex parte emergency order for taking a child into custody, the court shall hold a hearing to determine whether there is probable cause for the emergency order. The hearing shall be held before the end of the next business day after the day on which the emergency order is issued, except that it shall not be held later than seventy-two hours after the emergency order is issued.

Ohio Rev. Code § 2151.31(E).

The Court took control from RCCS and ordered the removal of O.B. RCCS followed Court orders and removed O.B. O.B. was removed on January 20, 2011 pursuant to an ex parte emergency order issued by an Ohio magistrate under Ohio Revised Code § 2151.31(D) and (E) and Ohio Juvenile Rule 6(B).[1]

1. Section 2151.31(D) provides that "a juvenile judge or a designated referee may grant by telephone an ex parte emergency order authorizing the taking of [a] child into custody if there is probable cause to believe that" certain specified conditions are present. Section 2151.31(E) and Ohio Juvenile Rule of Procedure 6(B) mandate that "the court shall hold a hearing to determine

Under Ohio Rev. Code §2151. 31(E), a hearing was held the next day. Upon consideration of the evidence presented at the hearing, the juvenile court found that there was probable cause for the issuance of the emergency order, that RCCS had made reasonable efforts to prevent O.B.'s removal, and that it would be "contrary to the child's best interest and welfare" to continue living with Bauch at that time.

Legal counsel represented Petitioner Bauch at the time. Nevertheless the juvenile court found sufficient probable cause to continue the removal of O.B. On April 13, 2011, while being represented by legal counsel, Petitioner Bauch voluntarily admitted to his daughter's dependency. Specifically, as the district court held, "the evidence demonstrates that Bauch admitted in open court that O.B. was a dependent child as defined in R.C. §2151.04(C). The Magistrate further found that the admissions were "voluntarily made with an understanding of the nature of the allegations and of the consequences of such admission." When O.B. might be returned to her father rested solely in the discretion of the juvenile court.

B. The district court without detailed analysis denied absolute immunity

Petitioner Bauch sued in federal district court a year after he regained custody of O.B. Petitioners alleged various claims against numerous defendants. The only defendant relevant to this appeal is Respondent Hartman,

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whether there is probable cause for the emergency order ... before the end of the next business day" and no later than seventy-two hours after such an order is issued.

a licensed social worker and caseworker supervisor employed by RCCS, who supervised the initial RCCS investigation of Bauch.

All parties briefed the case on summary judgment before the district court. Pertinent to this Appeal, Respondent Hartman argued that the claims against her in her individual capacity were barred by absolute immunity and other defenses. The district court rejected these immunity claims and denied Respondent Hartman summary judgment. The district court stated, without further explanation, that Respondent Hartman was not shielded by absolute immunity for the act of vouching for the truth of the facts she presented in her affidavit in support of emergency custody.

C. The Sixth Circuit unanimously reversed

The Sixth Circuit unanimously held that Respondent Hartman was entitled to absolute immunity. In an unpublished opinion, the Sixth Circuit explained Respondent Hartman's actions were more analogous to a prosecutor's decision to prosecute than a police officer's testifying by affidavit in support of probable cause. *Bauch v. Richland Cty. Children Servs.,* 733 F. App'x 292, 297 (6th Cir. 2018). [Pet. App. 10.] That is, Respondent Hartman's affidavit for emergency custody necessarily triggered a subsequent custody proceeding in court pursuant to Ohio law. Ohio Rev. Code 2151.31(E). (*Id.*) The Sixth Circuit noted that, "Just as absolute immunity is essential for prosecutors engaged in legal advocacy because "any lesser degree of immunity could impair the judicial process itself," [citation omitted], that same immunity must be given to a children's services

advocate as the initiator of home-removal actions; any lesser protection would jeopardize the essential process that has been established to provide protection to those children who need it most." [*Id.* at 11.]

Petitioners now seek review in this Court.

D. Clarification of the Record

Petitioners' statement of the case/facts is unnecessarily argumentative. Respondent Hartman generally objects to the various legal conclusions asserted throughout, but specifically provides clarification regarding O.B.'s Richland County Children Services' initial safety assessment.

Petitioners suggest that Respondent Hartman acted outside the scope of her immunity because RCCS initially determined there was no probable cause to remove O.B. before she contacted the magistrate and obtained the ex parte removal order. Petitioners' suggestion misunderstands the law governing safety assessments that Ohio children services agencies are required to conduct during their investigations. In reality, the safety assessment bears no relevance on the contact with the magistrate.

At the time RCCS came into contact with the Petitioners, O.A.C. §5101:2-37-01(I) required children services agencies to complete a safety assessment detail, form JFS 01401, within the next working day of having contact with a child and his/her family. This assessment is a "snapshot in time" to initially determine if the child is at risk at the time the report is first received by a

children services agency. It is not a final determination as to her ongoing safety. A children service agency cannot realistically gather information from collateral sources within one working day. Hence, it is merely an initial assessment.

O.A.C. §5101:2-37-03 mandates that children services agencies complete a Family Assessment Detail, form JFS 01400, within 30 days of screening the witness statement. This Family Assessment Detail is a significantly more comprehensive assessment of the child's safety. The 30-day timeline gives children services agencies more time to gather collateral information about the family, obtain a fuller and more accurate picture of the child's safety, and form a more informed conclusion about whether they should recommend that the child be removed from the home.

In this case, RCCS completed the mandatory safety assessment detail within the one-workday timeframe. RCCS could not realistically conclude its investigation of Petitioners upon completion of the report. In fact, RCCS was legally not permitted to end its investigation at that point. Caseworker Tara Lautzenhiser opined that O.B. was safe in the home at that immediate moment in time. However, as she and RCCS were legally required to do, she returned to RCCS to continue an investigation into O.B. and Mr. Bauch.

Upon further research, RCCS learned through collateral sources that Mr. Bauch had sold his prescription medication nine times in the last two years, that he attempted to mail a package containing photographs of him and his daughter and some of his medication, and that

he had drug paraphernalia in his home. As was required by law, RCCS later completed the Family Assessment Detail form JFS 01400. Given the additional information learned, RCCS substantiated the Bauch matter for sexual abuse/neglect.

RCCS's initial determination of no probable cause to seek immediate removal of O.B. on the day that Caseworker Lautzenhiser first met the Petitioners was irrelevant once RCCS had an opportunity to seek additional information about the Petitioners through collateral sources. RCCS's return back to the Petitioners' home on January 20, 2011 was not a conspiracy. It was a follow-up to gather additional information and to give Petitioner Bauch an opportunity to cooperate and reengage with RCCS. His refusal to work with RCCS does not make RCCS or Supervisor Hartman in violation of his or O.B.'s constitutional rights. RCCS's completion of the initial Safety Assessment is irrelevant to Supervisor Hartman's immunity.

II. REASONS FOR DENYING THIS PETITION

A. Petitioners have not articulated a "compelling" reason for this Court's discretionary review.

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. This case poses no "compelling reason" for review.

While § 1983 does not mention immunities, this Court has long read the statute "in harmony with general principles of tort immunities and defenses rather than in derogation of them." *Imbler v. Pachtman*, 424 U.S. 409, 418 (1976).

Because social workers play an integral role in the judicial process, courts routinely extend absolute immunity to social workers and child protective services investigators performing quasi-prosecutorial and quasi-judicial functions connected with the initiation and pursuit of child protection proceedings. The law is quite consistent and apparent deviations generally result from unique facts or unique requirements of state law.[2]

Consistent with this Court's precedent, federal courts granting social workers absolute immunity employ a "functional approach" that examines the particular wrongs the defendant is alleged to have committed rather than one based purely on the status of the defendant. *Cleavinger v. Saxner*, 474 U.S. 193, 201-02 (1985). That is, courts look to the particular task the social worker performed and its nexus to the judicial process rather than deciding that social workers as a class are entitled to absolute immunity. See *id.* at 201 (stating it is "the nature of the responsibilities of the individual official"

2. See e.g.s: *Holloway v. Brush*, 220 F.3d 767, 774 (6th Cir. 2000) (en banc)(Social workers are "entitled to absolute immunity" when they are acting in their capacity as legal advocates initiating court actions or testifying under oath, etc.); *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 854 (7th Cir. 1990) ("We may assume that a caseworker who initiates a proceeding to remove a child from its parents' custody or who executes an order made by a judge in a juvenile proceeding, enjoys absolute immunity."); *Beltran v. Santa Clara Cnty.*, 514 F.3d 906, 908 (9th Cir. 2008) (Social workers may have absolute immunity when discharging functions that are "critical to the judicial process itself."); *Breakwell v. Allegheny Cty. Dep't of Human Servs.*, 406 F. App'x 593, 597 (3d Cir. 2010)(functions performed by child welfare workers in initiating dependency proceedings are analogous to those that prosecutors perform).

that is determinative of absolute immunity—not the public official's role or title).

The scope of this immunity is akin to the scope of absolute prosecutorial immunity, which applies to conduct "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). The central dispute over absolute immunity therefore concerns whether Respondent Hartman was acting in her capacity as a legal advocate when she completed and submitted her affidavit in support of emergency custody. The Sixth Circuit here, based on Ohio law and the Respondent's conduct, simply applied the law and reached a conclusion that Petitioners, not unexpectedly, do not like.

Petitioners' primary argument for review is based on a dissent in an order denying certiorari in *Hoffman v. Harris*. (Pet. at 10-12, citing Order Denying Certiorari in *Hoffman v. Harris*, 511 U.S. 1060 (1994) (J. Thomas, dissenting). In sum, more than 20 years ago Justice Thomas in his *Hoffman* dissent stated that review in that case should be granted to address the "threshold question whether social workers are, under *any* circumstances, entitled to absolute immunity." *Id.*, emphasis in original. In that dissent, Justice Thomas stated he would conduct a historical analysis to determine whether a social worker claiming immunity could point to a common-law counterpart that immunity for a social worker existed before 1871. In his view, if that counterpart did not exist, then absolute immunity could not apply at all.

Petitioners claim this case is the "ideal circumstance[]" to review an issue that Justice Thomas noted two decades ago. (Pet. at 12.) But, federal courts have long applied

this immunity to social workers. See further e.g.s.: *Holloway, supra at* 775 (6th Cir.2000) ("[S]ocial workers are absolutely immune only when they are acting in their capacity as legal advocates—initiating court actions or testifying under oath—not when they are performing administrative, investigative, or other functions."); *Meyers v. Contra Costa Cnty. Dep't of Soc. Servs.*, 812 F.2d 1154, 1157 (9th Cir.1987) ("[S]ocial workers are entitled to absolute immunity in performing quasi-prosecutorial functions connected with the initiation and pursuit of child dependency proceedings."); *Thomas v. Kaven*, 765 F.3d 1183, 1192 (10th Cir. 2014). That aside, and more fatal to their request, Petitioners here had never raised that argument below.

Petitioners did not brief that argument at the district court level or the intermediate appellate court level. The lower courts did not have the benefit of briefs and arguments on the novel argument they now present to this Court as their primary reason for certiorari. Courts of review do not address issues on appeal that were not raised and reviewed in the lower court. See *United States v. Poole*, 407 F.3d 767, 773 (6th Cir. 2005)(reviewing court will "not address on appeal issues that were not raised and ruled upon in the district court" except in "exceptional circumstances.").

Naturally, the issue would have not been fully developed in the traditional adversary manner and would provide a poor foundation or platform for this Court to review the issue. The district court's opinion provided no analysis on absolute immunity. The district court merely cited an unreported Sixth Circuit decision and cited this Court's *Kalina v. Fletcher*, 522 U.S. 118, 129-31 (1997) decision. The Sixth Circuit panel in an unpublished opinion

unanimously determined that there were no genuine issues of material fact. Because the issue was not before it (because it was not argued), the Sixth Circuit did not analyze whether absolute immunity should exist at all with regard to social workers. Rather it applied established law and addressed the parties' "central dispute" over whether Respondent Hartman was acting in her capacity as a legal advocate when she completed and submitted her affidavit in support of emergency custody. The Sixth Circuit unanimously disagreed with the Petitioners' position.

If the argument was raised in the lower courts – which it was not – Petitioners would be incorrect because the act of child advocacy most certainly did exist before 1871. See John E.B. Myers, A Short History of Child Protection in America, 42 Fam. L.Q. 449, 450 (Fall 2008) (stating "[c]riminal prosecution has long been used to punish egregious [child] abuse and citing cases from the early 1800s"); Basyle J. Tchividjian, Catching American Sex Offenders Overseas: A Proposal for A Federal International Mandated Reporting Law, 83 UMKC L. Rev. 687, 692 (2015) (observing in some states, magistrates were granted authorization to remove children from unfit homes prior to the era of privatized child protection). Thus, the function at issue—assisting the judicial process in protecting a child's welfare—existed in 1871. That the term "social worker" did not is irrelevant.

B. Despite Petitioners' claim, the Sixth Circuit's unpublished opinion does not conflict with this Court's precedent.

Petitioners otherwise quibble about the application of the facts to the law, not the law itself. Even if they were correct – and they are not – Petitioners' claim

constitutes mere error correction, not an issue of national or compelling importance.

Petitioners' basis for a conflict is ill founded. Petitioners argue that the Sixth Circuit's unpublished decision here conflicts with *Kalina v. Fletcher*, 522 U.S. 118 (1997) and this warrants review. The purported conflict with an unreported case – even if correct – would not be so compelling as to warrant review. *Sheets v. Moore*, 97 F.3d 164, 167 (6th Cir.1996) (Stating that unpublished opinions "carry no precedential weight ... [and] have no binding effect on anyone other than the parties to the action."), *Crump v. Lafler*, 657 F.3d 393, 405 (6th Cir. 2011)(unpublished decisions not binding precedent on subsequent panels).

That aside, the Sixth Circuit applied this Court's general precedent in the present case. Petitioners are naturally unhappy with the unfavorable ruling below. But that displeasure does not transform this case into a compelling case for review or generate a legitimate or compelling conflict. See *N.L.R.B v. Pittsburgh S.S. Co.*, 340 U.S. 498, 502 (1951)(explaining that the Supreme Court "is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way.").

Moreover, the *Kalina* decision supports immunity for Respondent Hartman's statement under oath that necessarily initiated a subsequent custody proceeding in court under Ohio law. In *Kalina*, a prosecutor contemporaneously filed three documents in a criminal prosecution – an information charging respondent with

burglary, a motion for an arrest warrant, and an affidavit supporting the issuance of the arrest warrant. *Kalina* at 121. The Court granted absolute immunity for the first two documents – the information and the motion for an arrest warrant. The Court denied absolute immunity for the affidavit that was given in support of the arrest warrant, however, because the prosecutor was not functioning as " 'an advocate for the State' " when she submitted the affidavit. *Id.* at 126 (quoting *Buckley*, 509 U.S. at 273). Thus, *Kalina* confirms that officials who serve as complaining witnesses receive qualified, not absolute, immunity.

In this case, Respondent Hartman's statement under oath was not that of a "complaining witness." Rather, she initiated the neglect action in state court, just as a complaint does in federal district court, and Respondent Hartman's sworn statement was thus an undeniable part of the "judicial process." In *Kalina* by contrast, the sworn statements merely supported warrant applications, filed as part of an ex parte process prior to the indictment that begins the criminal case. Here, Respondent Hartman's statements are "intimately associated" with the judicial process under Ohio law. As the Sixth Circuit found, "Unlike a police officer's application for a search warrant, Hartman's affidavit for emergency custody necessarily triggered a subsequent custody proceeding in court pursuant to Ohio law [R.C. 2151.31(E)]." *Bauch v. Richland Cty. Children Servs.,* 733 F. App'x 292, 297 (6th Cir. 2018). [Pet. App. 9.]

The Sixth Circuit here merely found that "Hartman's actions were more analogous to a prosecutor's decision to prosecute than a police officer's testifying by affidavit

in support of probable cause" and that *Kalina* was distinguishable "from the facts of *Kalina*—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." (*Id.* at 297, citing *Gray v. Poole*, 275 F.3d 1113, 1118 (D.C. Cir. 2002)[Pet. App. 10.].)

C. There is no real legal conflict.

Petitioners' "conflict" is illusory.

Petitioners cite to a case in the Ninth Circuit in support of a purported conflict. (Pet. at 16, citing *Hardwick v. County of Orange*, 844 F.3d 1112 (9th Cir. 2017).) But, the Ninth Circuit generally recognizes that social workers may have absolute immunity when discharging functions that are critical to the judicial process itself. *Hardwick v. County of Orange* is distinguishable. 844 F.3d at 1116 (finding that absolute immunity did not extend to social workers acting "well outside of the social workers' legitimate role as quasi-prosecutorial advocates in presenting the case"). In fact, *Hardwick* is consistent with the general law that finds that defendants enjoy absolute immunity for discharging functions that have a close nexus with the judicial process and involve the exercise of discretion to resolve disputes. See 844 F.3d at 1116.

This is not surprising because the Ninth Circuit has long held that social workers are entitled to absolute immunity in certain circumstances. See e.g., *Meyers v. Contra Costa County Dept. of Social Services*, 812 F.2d

1154, 1157 (9th Cir.1987)("Social workers are entitled to absolute immunity in performing quasi-prosecutorial functions connected with the initiation and pursuit of child dependency proceedings."). Under Ohio law, Hartman's affidavit for emergency custody necessarily triggered a subsequent custody proceeding in court pursuant to Ohio law. Ohio Rev. Code § 2151.31(E). The actions of Hartman seeking emergency custody are entitled to absolute immunity because they constitute preparing for and initiating proceedings. Such actions are part of the emergency custody proceedings in Ohio.

The Petitioners also cite a state-law case from Iowa. (Pet. at 18, citing *Minor v. State of Iowa*, 819 N.W.2d 383 (Iowa 2012).) *Minor* is distinguishable because it does not deal with unique Ohio law, as demonstrated above. Furthermore, the *Minor* court recognized that immunity for social workers is well-established when they are acting in a capacity that functionally constitutes advocacy. The state court in *Minor* merely applied the facts under Iowa law to reach a different result; this is not a substantial or legitimate conflict worthy of review. Petitioners cite *Minor* for the proposition that "a prosecutor 'who prepares and files a sworn affidavit to accompany a motion for an arrest warrant' is not entitled to absolute immunity." (Pet. at 18, quoting *Kalina*, supra.) But, as the Sixth Circuit here observed, "Unlike a police officer's application for a search warrant, Hartman's affidavit for emergency custody necessarily triggered a subsequent custody proceeding in court pursuant to Ohio law." *Bauch v. Richland Cty. Children Servs.*, 733 F. App'x 292, 297 (6th Cir. 2018). [Pet. App. 9-10.]

Petitioners go on to string cite various cases that either do not support a legitimate conflict or otherwise demonstrate the consistency of the law. (Pet. at 19.) As an initial matter, Petitioners' citation to *Pittman v. Cuyahoga Cnty. Dep't of Children & Family Servs.*, 640 F.3d 716 (6th Cir. 2011)(granting immunity to caseworker) and *Johnson v. Sackett*, 793 So.2d 20 (Fla.Dist.Ct. App. 2001)(same) only support immunity.

Petitioners then reach back to a 30-year-old case from the Fifth Circuit that operates under the provisions of unique state law to argue a conflict exists. *Austin v. Borel*, 830 F.2d 1356 (5th Cir.1987). The *Austin* case is distinguishable. In *Austin*, the plaintiff sought to recover from child welfare workers who filed an allegedly false "verified complaint," averring that reasonable grounds existed to believe that a child should be taken into custody. *Id.* at 1361. Although a court may issue an order removing the child from his parents' custody upon the filing of a verified complaint, only the district attorney's filing of a "petition" initiates the adjudication process. *Id.* Accordingly, the Fifth Circuit held that under Louisiana law, the dependency proceedings do not begin until the district attorney decides to file a petition. *Id.*

Under Ohio law, Hartman's affidavit for emergency custody necessarily triggered a subsequent custody proceeding in court pursuant to Ohio law. Ohio Rev. Code § 2151.31(E). Such actions are part of the emergency custody proceedings in Ohio, where in *Austin*, supra, the actions of the caseworkers were not part of the adjudication process under Louisiana law.

Likewise, Petitioners' citation to the almost 30-year-old case of *Snell v. Tunnell*, 920 F.2d 673 (10th Cir. 1990) is also distinguishable on similar grounds. In *Snell*, the appeals court held that a social worker's activity was not integral to the judicial process and not afforded absolute immunity. The Tenth Circuit stated that "courts have looked to the particular task a defendant was performing and its nexus to the judicial process rather than deciding that social workers or guardians ad litem as a class are entitled to absolute immunity." *Id.* at 687. Here, as noted above, Hartman's conduct had a direct nexus to the judicial process under Ohio law.

Respondent Hartman's goal was to protect Petitioner O.B., nothing more. The Sixth Circuit pointedly observed what circuit and district courts consistently recognize,

> Nearly every instance in which a children's services advocate must act to remove a child from his or her home promises to be contentious and emotionally charged. If absolute immunity were denied to these advocates, a flood of litigation against individual advocates would follow as parents challenged the factual assertions of each affidavit in support of emergency custody. See *Barber* [*v. Miller*], 809 F.3d at 843 [6th Cir. 2015] (explaining that absolute immunity is necessary to "enable[ ] social workers to 'protect the health and well-being of the children ... without the worry of intimidation and harassment from dissatisfied parents' " (citation omitted)). This in turn could negatively affect children's services in the future, as advocates, fearing individual reprisal,

> might fail to act expediently in situations where a child's welfare is at risk. Just as absolute immunity is essential for prosecutors engaged in legal advocacy because "any lesser degree of immunity could impair the judicial process itself," *Malley* [*v. Briggs*], 475 U.S. at 342, 106 S.Ct. 1092 [1986], that same immunity must be given to a children's services advocate as the initiator of home-removal actions; any lesser protection would jeopardize the essential process that has been established to provide protection to those children who need it most.

Bauch v. Richland Cty. Children Servs., 733 F. App'x 292, 297 (6th Cir. 2018). [Pet. App. 10-11.] The law throughout the circuits reflects this policy.

III. CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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