

No. 25-

In the Supreme Court of the United States

R.S., A MINOR CHILD, BY HIS NEXT OF FRIEND AND LEGAL
GUARDIAN, V.H., AND T.H.
PETITIONERS

v.

SUSAN HICKEY; REBECCA VON SAKEN,
RESPONDENTS

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

What is needed to show “deliberate indifference” for the state created danger exception to government immunity on a claim under 42 U.S.C. § 1983.

PARTIES TO THE PROCEEDINGS

PETITIONERS:

R.S., a Minor child, By His Next of Friend and
Legal Guardian, V.H.

T.H.

RESPONDENTS:

Susan Hickey

Rebecca Von Sacken

RELATED PROCEEDINGS

United States District Court (N.D. Ohio)

R.S, T.H. v. Susan Hickey, Rebecca Von Sacken, individually and in their capacity as case workers for Lucas County Children, No. 3:20-CV-2791, 2024 WL 4793819 (March 27, 2025). Judgment entered March 27, 2025.

United States Court of Appeals (6th Cir.)

R.S, T.H. v. Susan Hickey, Rebecca Von Sacken, individually and in their capacity as case workers for Lucas County Children, No. 25-3247, 2025 WL 3215623 (6th Cir. 2025). Judgment entered November 18, 2025; rehearing denied December 26, 2025.

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PETITION FOR WRIT OF CERTIORARI

R.S. and T.H., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Sixth Circuit is unpublished and is reproduced in the appendix at App. 6a–65a. The opinion and order of the district court granting Respondents’ motion for summary judgment is unpublished and is reproduced at App. 66a–133a.

JURISDICTION

The Sixth Circuit issued its judgment on November 18, 2025. It denied a petition for rehearing on December 26, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). On March 17, 2026, Justice Kavanaugh granted Petitioners’ application for extension of time to file a petition for writ of certiorari, from March 26 to May 25, 2026.

STATUTORY PROVISION INVOLVED

42 § U.S.C. 1983 is reproduced at App. 134a–135a.

INTRODUCTION

This Court has held that when a state agency takes an individual into its protection, it has a duty to

ensure that a person remains safe. This Court has explained that when a state agency places an individual in a setting that is actually more dangerous than where the individual was before, the state agency loses the immunity it has for claims under 42 U.S.C. § 1983. Circuit courts have followed this Court's instructions in the creation and application of the state-created danger exception to government immunity. One of the requirements for that exception is that a claimant show that the state acted with "deliberate indifference" to the claimant and harm ensued. "Deliberate indifference" has not been neatly defined.

However, the decision below created an impossible standard for a claimant to meet the "deliberate indifference" requirement of the state created danger exception to immunity. Essentially, the Sixth Circuit requires that a claimant show that a state actor who removes a child from his or her parents and places them with other adults needs to have a clear, unequivocal understanding that the children would be abused by those adults. This standard is absolutely impossible for a claimant to meet and at odds with this Court's instructions.

This case presents an ideal opportunity for the Court to correct the decision of the Sixth Circuit and ensure that other courts do not adopt that same impossible standard that the Sixth Circuit set forth in its decision.

This Court should grant review and reverse.

STATEMENT OF THE CASE

A. Legal framework

1. 42 U.S.C. § 1983 permits a claimant to recover for violations of his or her constitutional rights.

2. State actors may be subject to immunity against claims for 42 U.S.C. § 1983.

3. This Court has recognized an exception to immunity for state actors where a claimant presents evidence that the state created the danger which harmed the claimant. The claimant must show that the state actor showed “deliberate indifference” to the claimant.

B. Factual background

R.S. and T.H. lived with their mother Victoria Hubbard (a/k/a Victoria Bailey) and Victoria’s husband, Armond Bailey in 2014. Their five siblings also lived in the Hubbard/Bailey home. In the early summer of 2014, Victoria Hubbard gave birth to a child. Her labor and delivery were traumatic, and she was in and out of consciousness following the delivery of the baby for several weeks.

The baby was taken home by Armond Bailey. Eventually, Victoria came home from the hospital. The baby did not thrive at home and Victoria Hubbard took the baby to the pediatrician. The pediatrician was concerned that the baby had not gained weight and had signs that the baby’s ribs had been broken. Lucas County Children’s Services (LCCS) was notified

and they suspected that the baby had suffered abuse in the home. Only the baby was suspected of being abused or neglected.

Victoria's children were all removed from her care by LCCS even though it was only the baby that was suspected of being abused. In what was supposed to be a temporary placement, LCCS took the children from Victoria Hubbard and put them in the home of Anthony Haynes and Lisa Haynes. Anthony Haynes was the pastor of a church that Victoria and her family attended. Lisa Haynes was his wife. Lisa Haynes and Victoria had recently developed a friendship through the church. Faced with having her children separated from her and placed with strangers, Victoria instead agreed to have her children placed with Anthony and Lisa Haynes. Anthony and Lisa Haynes had other children living in their home – Marcus Fortune, Alexis Fortune and Taniece Temple.

As part of the process to determine if the Bailey children were going to be safe in their temporary placement, LCCS was supposed to run background checks on the people in the household where the children were to be placed. These background checks were done using a system called SACWIS. The records from the SACWIS search for Anthony Haynes and Lisa Haynes showed they had been involved in incidents involving child abuse.

LCCS workers Rebecca Von Sacken and Sue Hickey had this information available to them when they created the home safety plan for the children in

July 2014. They never followed up on any of this information to find out what the circumstances of the entries were for Lisa Haynes or Anthony Haynes. None of the records for the SACWIS referrals that are identified in the home study records were attached to the home study, even though the home study form specifically instructs to “attach incident history print-out or record”. However, LCCS had an intake report for Anthony Haynes and case notes which indicated that Anthony Haynes had abused Alexis Fortune, his step-daughter.

Despite having this information indicating that there had been abuse by Anthony Haynes, neither Von Sacken nor Hickey followed up and investigated further. Notably, Victoria Hubbard was never informed of this history. The Bailey children were placed in the Haynes’ home by Von Sacken and Hickey.

Also, LCCS’ own records for the cases in the SACWIS system had information showing that Lisa Haynes had previously been incarcerated. Neither Rebecca Von Sacken nor Sue Hickey reviewed this information, which would have alerted them to Lisa Haynes’ previous convictions in 2000 for attempted identify theft, attempted misuse of a credit card, and attempted forgery.

The failure by Von Sacken and Hickey to follow up on the clear indicators of abuse and fraud by the Haynes prior to the placement of the Bailey children was inexcusable, especially given the risk of placing

seven children in a home with two people who had a history in the SACWIS system.

R.S. and T.H. suffered horrible sexual and physical abuse while in the Haynes home. Throughout July 2014 to November 2015, Anthony Haynes, Sr., raped T.H. on a daily basis. T.H. and R.S. were also regularly physically and sexually assaulted by other residents of the Haynes' home, including Anthony Haynes, Jr., Alexis and Markus Fortune.

Also, the Haynes household members would physically assault R.S. and T.H. On numerous occasions, the Haynes would beat R.S. and T.H. R.S. and T.H. not only endured physical torture, but emotional and psychological torture as well. R.S. and T.H. and their siblings were eventually put in a basement. They used a bucket to urinate or defecate.

After T.H.'s school reported suspected abuse, employees of LCCS came to the Haynes' home and discovered the children living in horrific conditions in the basement. R.S. and T.H. were then removed from the Hayneses' home and separated from their siblings.

Von Sacken and Hickey took the children out of a home where they were not being abused and placed them in a home with abusers and liars where they suffered horrible abuse.

C. Proceedings below

1. The district court granted Respondents' motion for summary judgment. App. 66a-133a. In so ruling, it held that Petitioners failed to prove that

Respondents showed a “callous disregard” or an “intent to injure” Respondents. The district court held that Respondents could not meet the “deliberate indifference” requirement of the state-created danger exception to governmental immunity.

The Sixth Circuit Court of Appeals affirmed the district court on November 18, 2025, and found that Petitioners did not meet the standard for “deliberate indifference” to satisfy the exception to state immunity for a claim under 42 U.S.C. § 1983. The Sixth Circuit further held that there was no evidence that Respondents were aware of the specific risk of harm that would befall Petitioners, even though Petitioners had presented evidence of the Hayneses’ prior reports involving sexual abuse and Lisa Haynes’ fraud convictions, which Respondents did not investigate. The Sixth Circuit found that these facts did not amount to a “callous disregard” for Petitioners.

The Sixth Circuit denied a petition for rehearing en banc on May 14, 2025.

REASONS FOR GRANTING THE PETITION

I. THIS COURT ACKNOWLEDGES AN EXCEPTION TO STATE IMMUNITY THAT THE SIXTH CIRCUIT HAS MADE IMPOSSIBLE TO OBTAIN.

The state-created danger exception to government immunity for claims under 42 U.S.C. § 1983’s is detailed by this Court’s decision in *Deshaney v. Winnebago County Dept. of Social Services*, 409 U.S. 189, 109 S. Ct. 998 (1988):

...when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs -- e. g., food, clothing, shelter, medical care, and reasonable safety -- it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf. In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf -- through incarceration, institutionalization, or other similar restraint of personal liberty -- which is the "deprivation of liberty" triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means.

See *Deshaney v. Winnebago Cty. Dept. of Social Servs.*, at 199-200 (citations omitted).

This state created danger exception requires a claimant to show that he or she is in more danger in state custody than he or she was when not in state custody. As part of this, a claimant must show that

the state actors showed “deliberate indifference” to the claimant, which the court below claimed could not be shown in this case because it found that Respondents were not directly aware of the specific harm that would come to Petitioners if they were placed with the Haynes, even though they had access to the Haynes’ criminal records. The Sixth Circuit weighed the evidence and found that Petitioners had only shown that Respondents were negligent, not deliberately indifferent, even though Petitioners had shown that there were ample warning signs that the children would be abused if they were placed with the Haynes.

The courts below created an impossible standard for a plaintiff to meet the state created danger test. The Sixth Circuit required that Petitioners show that Respondents were aware of the exact harm that would befall Respondents in the home of the Haynes – essentially that Respondents knew that the Haynes were going to sexually and physically abuse Petitioners from the start. This is an impossible standard that cannot be met in any case – it would only apply where state actors intentionally place children with known abusers. “Deliberate indifference” is not the same as intent, which is what the Sixth Circuit decision requires, and this Court should address that inappropriate ruling and ensure that other circuits do not adopt this restrictive, improper test.

II. THIS CASE PRESENTS AN IDEAL VEHICLE.

Children in foster homes and protective placements by state agencies need to be protected against abuse.

State agencies that remove children from their parents and place them with other adults need to be certain that the adults will not abuse those children.

Petitioners are not asserting that the general requirements for the state created danger exception be modified. However, those requirements should not be impossible to satisfy. What the district court and Sixth Circuit have done in this case is create an impossible standard that cannot be met. These courts required Petitioners to show that Respondents knew that Petitioners would be sexually and physically abused once they were placed in the Hayneses' home. The "deliberate indifference" exception cannot require actual knowledge, as requiring that high bar would eviscerate the exception. Instead, what is required is a showing that the state actor had or should have had some knowledge of the risk of harm to the child in state control but chose to proceed with placing the child where that risk existed.

This case will allow this Court to directly address the issue of the requirements for showing "deliberate indifference" under the state-created danger exception. This Court should accept this case and correct the Sixth Circuit's decision to the contrary.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 27, 2026

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APPENDIX A

Court of appeals order
(December 26, 2025)

United States Court of Appeals
For the Sixth Circuit

No. 25-3247

R.S., a minor child by his next of friend and legal
guardian, V.H.; T.H.,
Plaintiffs-Appellants,

v.

LUCAS COUNTY CHILDREN SERVICES,
Defendant,

SUSAN HICKEY; REBECCA VON SACKEN,
Defendants-Appellees

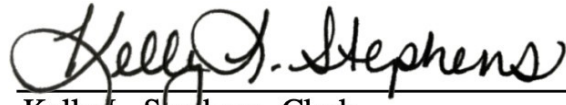
BEFORE: GIBBONS, McKEAGUE, and RITZ, Circuit
Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

3a

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

Kelly L. Stephens,

4a

APPENDIX B

Court of appeals order
(November 18, 2025)

United States Court of Appeals
For the Sixth Circuit

No. 25-3247

R.S., a minor child by his next of friend and legal
guardian, V.H.; T.H.,

Plaintiffs-Appellants,

v.

LUCAS COUNTY CHILDREN SERVICES,

Defendant,

SUSAN HICKEY; REBECCA VON SACKEN,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT OF THE NORTHERN
DISTRICT OF OHIO

November 18, 2025

Before: GIBBONS, McKEAGUE, and RITZ,
Circuit Judges.

RITZ, Circuit Judge. Victoria Hubbard's minor children were removed from her custody and placed with the family of her trusted pastor and his wife, because children's services case workers in Lucas County, Ohio, suspected abuse of Hubbard's youngest child. At the time, the background information the case workers had on file for the pastor and his wife associated the couple's household with alleged sexual abuse. The alleged abuse, however, either had not been substantiated or had been perpetrated by someone besides the couple. Ultimately, Hubbard's children did suffer terrible abuse, including sexual abuse, while in the couple's custody. In fact, the pastor eventually went to prison for sexually exploiting another minor child living in the household.

Plaintiffs R.S. and T.H., two of Hubbard's children, sued various Lucas County children's services employees, alleging a deprivation of the plaintiffs' substantive due process rights.

The defendants moved for summary judgment, arguing that the plaintiffs could not show that the defendants acted with deliberate indifference. The plaintiffs moved to strike several affidavits that the defendants relied on in their summary judgment motion and asked for more time to conduct discovery. The district court granted the defendants' summary judgment motion and denied the plaintiffs' procedural motions in a single order. The plaintiffs now appeal

that order as to defendants Rebecca Von Sacken and Susan Hickey. For the reasons below, we affirm.

BACKGROUND

I. Factual background

A. LCCS's response to suspected abuse of Hubbard's children

In July 2014, Victoria Hubbard's infant presented at a hospital emergency room with several broken rib bones and failure to thrive (that is, the baby was not gaining enough weight). The hospital contacted Lucas County Children Services (LCCS) to report suspected child abuse, and LCCS caseworker Ryan Parker went to the hospital to investigate. Parker met with Hubbard and her son, R.S., about her baby's injuries. After speaking with Hubbard, Parker discussed the investigation with his LCCS supervisor, who instructed Parker to have Hubbard's two other young children brought to the hospital so that LCCS could create a safety plan for them.

Parker discussed potential safety plans with Hubbard, who told Parker that the children could be placed with her pastor, Anthony Haynes, and his wife, Alisa,¹ at their home. At Hubbard's instruction, Alisa brought two of Hubbard's other children to the hospital. Parker informed his supervisor that the Haynes family "already had a case worker in the home," because they were working with LCCS to care for another child, and "had recently been fingerprinted."

¹ Alisa is sometimes referred to as "Lisa" in the record. We will refer to her as "Alisa" for consistency. And, for ease of reference, we will refer to Anthony Haynes and Alisa Haynes by their first names.

RE 109-2, Parker Aff., PageID 2087-88. The supervisor “instructed [Parker] to ensure criminal records checks were completed and to check the Statewide Automated Child Welfare Information System (SACWIS) to see if the family had any LCCS involvement.” Id. at PageID 2088. SACWIS is a “statewide information system to keep and maintain case information on child welfare cases.” RE 109-4, Cully Aff., PageID 2093. Parker performed these checks and found no records demonstrating that either Anthony or Alisa had been “a substantiated perpetrator of abuse or neglect” or had a “disqualifying [criminal] history.” RE 109-2, Parker Aff., PageID 2088. Records also revealed that a case worker had been in their home within the last month, and a check on the Hayneses’ 19-year-old son returned “no results.” Id. Parker entered all of his case notes into SACWIS and transferred the case to LCCS’s “assessment[] department.” Id.

The next day, LCCS case worker Rebecca Von Sacken received the case. She worked with the plaintiffs and the Hayneses for approximately three weeks in July 2014. Von Sacken reviewed a “home study” that another LCCS case worker had completed and did her own “preliminary home study.” RE 106-1, Von Sacken Dep., PageID 1836-37. Von Sacken’s preliminary home study involved seeing the placement home and gathering information about the people who lived in it, as well as checking sources such as criminal records, sex offender registries, and SACWIS records. Von Sacken testified that “certain things,” such as particular criminal convictions or items documented in the SACWIS history, would exclude a person from consideration for child

placement. Id. at PageID 1843. Excludable criminal convictions included things such as certain drug offenses, murder, and domestic violence. As part of their review of SACWIS records, LCCS personnel would review any allegations in the system, the individual's role in the allegations, and the disposition of the allegations, on a case-by-case basis.

The Hayneses' home study document noted the following "referrals"—concerns reported to LCCS—that mentioned either Alisa or Anthony:

- 5/1999 Alisa was listed as the caretaker on an Indicated² Sexual Abuse referral.
- 5/2000 Alisa was listed as the caretaker on a Substantiated³ Sexual Abuse referral.
- 10/2000 Alisa was listed as OIC⁴ on an Unsubstantiated⁵ Neglect referral.
- 10/2003 Alisa was listed as the caretaker on a Substantiated Sexual Abuse referral.
- 4/2004 Anthony was listed as the AP [alleged perpetrator] and Alisa was listed as the caretaker on an Unsubstantiated Sexual abuse referral.

RE 109-9, Home Study for Placement of Child(ren), PageID 2279. The home study document also noted that the Hayneses did "not have history of victimization of other children. Anthony was named AP in one referral which was not substantiated." Id. at PageID 2280.

Von Sacken told her supervisor about the SACWIS referrals, which Von Sacken understood as showing

some referrals with . . . our agency that were either they were not listed as alleged perpetrator, if they were substantiated, or if . . . they had anything . . . where they were listed as alleged perpetrators . . . that were substantiated . . . So there were

² An “indicated” report is one “in which there is circumstantial or other isolated indicators of child abuse or neglect lacking confirmation; or a determination by the caseworker that the child may have been abused or neglected based upon completion of an assessment/investigation.” Ohio Admin. Code 5180:2-1-01(B)(161) (2025); accord *Fondale v. Guernsey Cnty. Child. Servs.*, 978 N.E.2d 918, 922 (Ohio Ct. App. 2012).

³ A “substantiated” report is one “in which there is an admission of child abuse or neglect by the person(s) responsible; an adjudication of child abuse or neglect; or other forms of confirmation deemed valid by the [public children services agency].” Ohio Admin. Code 5180:2-1-01(B)(316) (2025); accord *Kyser v. Summit Cnty. Child. Servs.*, 243 N.E.3d 65, 68 (Ohio 2024).

⁴ The parties do not define “OIC,” but the term does not appear to be synonymous with “alleged perpetrator.”

⁵ An “unsubstantiated” report is one “in which the assessment/investigation determined no occurrence of child abuse or neglect.” Ohio Admin. Code 5180:2-1-01(B)(344) (2025); accord *In re A.Z.*, No. 2022-CA-09,

2022 WL 16704963, at *13 (Ohio Ct. App. Nov. 4, 2022).

no referrals in our system that said that they were [an] alleged perpetrator and it was substantiated.

RE 106-1, Von Sacken Dep., PageID 1850. Other than discussing this information with her supervisor, Von Sacken did not take further action with respect to the SACWIS records, including any further independent investigation: “We read . . . what was contained in the intake and then reviewed . . . the dispositional narrative Those investigations were completed by somebody else. . . . I did not investigate the Hayneses for abuse or neglect.” Id. at PageID 1874.

LCCS’s “Intake Information” records for Alisa, from which the home study document’s “referrals” were drawn, did not show her to be an alleged perpetrator of a substantiated complaint of abuse. With respect to these “referrals,” the intake information—consistent with the “referrals” listed in the home study document described above—noted: (1) in May 1999, Alisa was listed as a “caretaker” of a child on an intake for a report of sexual abuse by an adult who was not Anthony; the alleged perpetrator was Alisa’s ex-husband (Marcus Fortune) and the victim was their daughter; this alleged abuse took place while Alisa and her ex-husband were in the process of getting a divorce; and the case was disposed of as an “indicated” claim; (2) in May 2000, Alisa was again listed as a “caretaker” of a child on another intake form for a report of a sexual abuse; once again, the alleged perpetrator was her ex-husband, not Anthony, and the victim was the daughter of Alisa and her ex-husband; and this claim was deemed to be “substantiated”; (3) in October 2000, Alisa was listed

as an “exception” on an intake form for a claim of child neglect; Alisa’s ex-husband was the alleged perpetrator and their two children were the alleged victims; and this claim was deemed to be “unsubstantiated”; and (4) in October 2003, Alisa was listed as a “caretaker” of two children on an intake for a report of sexual abuse where, again, Alisa’s ex-husband was the alleged perpetrator and their children were the alleged victims; and this claim was deemed to be “substantiated.” RE 109-11, Basic Intake Information for Lisa Haynes, PageID 2305-10, 2314.⁶ The agency’s intake information records for Anthony equally did not show him to be an alleged perpetrator of a substantiated report of abuse: (5) in April 2004, Anthony was listed as an “alleged perpetrator” (and Alisa was listed as a “caretaker”) on a report of sexual abuse; this claim was deemed to be “unsubstantiated.” RE 109-12, Basic Intake Information for Anthony Haynes, PageID 2318.

Other records available to LCCS personnel referenced Alisa’s criminal history. For example, a SACWIS record in LCCS’s possession stated that as of April 2004, Alisa “[wa]s incarcerated.” RE 109-12, Basic Intake Information for Anthony Haynes, PageID 2318. Another SACWIS record mentioned Alisa being arrested “for using stolen credit cards/identification.” RE 109-11, Basic Intake Information for Lisa Haynes, PageID 2307. And the online docket for a Lucas County Common Pleas Case involving Alisa Haynes confirmed convictions for three fraud-related offenses that occurred in October 2000.

B. Relocation to Hayneses’ home

Because of the nature of Hubbard’s infant’s injuries, all seven of Hubbard’s children who were

living with her, including R.S. and her daughter T.H., were removed from her home, and the Hayneses were awarded temporary shelter care of the children. Von Sacken then transferred the case to another LCCS employee, Department of Family Services case worker Susan Hickey. Von Sacken and Hickey held a “transfer conference” to discuss the case and set up a case plan, and Hickey met with the children at the Hayneses’ home just days after receiving the case. RE 107-1, Hickey Dep., PageID 1946-48; 1960-61. Hickey was given the preliminary home study, which

⁶ Alisa had filed a protective order against her ex-husband, and the records indicate that she tried to limit interactions between her children and her ex-husband, but those efforts proved unsuccessful.

contained the SACWIS history for the Hayneses, and she completed the remainder of the home study.

Hickey’s responsibilities included establishing a case plan for Hubbard’s children, based on recommendations from the assessment case worker (here, Von Sacken), and monitoring the children until they could be seen by the local Juvenile Court, where permanent arrangements for their care would be made. Hickey did not “reinvestigate” the work already completed by Von Sacken, meaning she did not re-examine the Hayneses’ background information or SACWIS records. RE 107-1, Hickey Dep., PageID 1953, 1962-63. From July 2014 until February 2015, when the Haynes family obtained legal custody of the

children, including R.S. and T.H., Hickey visited monthly with the family and the plaintiffs.

C. Allegations and incidents of abuse

After custody was awarded to the Hayneses, LCCS closed its case, but later addressed a referral made to it in April 2015 of sexual abuse involving plaintiff T.H. LCCS assessment case worker Kimberly Fraber received the referral, investigated it, and sent the information to the Toledo Police Department. But the police declined to investigate, and Fraber, after further interviews with the people associated with the referral, closed the case as “unsubstantiated.” During Fraber’s interviews, T.H. denied that anyone “had ever touched her in an unsafe way or a way that made her feel uncomfortable.” RE 109-1, Fraber Aff., PageID 2085. T.H. also stated that she “felt safe” in the Hayneses’ home and that “things were going well” there. *Id.*

Hubbard contends, and no defendant disputes, that she was never advised that the SACWIS records contained reports involving Anthony or Alisa. She also contends that no defendant advised her that Alisa had served time in prison for her various fraud convictions. Hubbard claims that, had she known this information, she would not have consented to her children being placed with the Hayneses.

Sadly, and undisputedly, R.S. and T.H. were sexually and emotionally abused by the Hayneses while living in their home. All of the children were removed from the Hayneses’ home—not because of referrals or suspicions of abuse, but after referrals to LCCS made in 2015 revealed that the children were living in substandard conditions. Neither R.S. nor T.H. disclosed the abuse that they experienced while

living with the Haynes family until after they were removed from the home. Anthony and another pastor were later prosecuted federally for sex trafficking and sexual exploitation of a different child, T.T., who is not a plaintiff in the current case. See *United States v. Jenkins*, 821 F. App'x 504 (6th Cir. 2020). T.T. lived in the Haynes home with the plaintiffs and was identified as a person with knowledge of the allegations in their case.

II. Procedural history

In 2020, R.S. and T.H. filed this lawsuit, alleging constitutional and state-law violations, against LCCS; individual LCCS employees Von Sacken, Hickey, Courtney Mowery,⁷ and Charmaine West⁸; and other Lucas County entities and employees. See *R.S. v. Lucas Cnty. Child. Servs.*, No. 22-3501, 2022 WL 17730531, at *2 (6th Cir. Dec. 16, 2022) (“R.S. I”). They also sued the Hayneses, their church, and several other individuals, churches, and businesses for state-law violations. *Id.* All of the Lucas County-related defendants moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), with the individual LCCS employees arguing that

⁷ Plaintiffs alleged that Hubbard reported abuse to Mowery, who did not investigate the claim. See

R.S. v. Lucas Cnty. Child. Servs., No. 22-3501, 2022 WL 17730531, at *2 (6th Cir. Dec. 16, 2022) (“R.S. I”).

⁸ West discovered the children living in substandard conditions. See *R.S. I*, 2022 WL 17730531, at *2.

R.S. and T.H. had failed to state a plausible Fourteenth Amendment substantive due process claim and that the employees were entitled to qualified immunity. *Id.*

The district court agreed, but our court reversed the district court's Rule 12(c) order. In particular, we reversed the district court's determination on the Fourteenth Amendment substantive due process claim against Von Sacken, and, because the district court had not "conduct[ed] an individualized qualified immunity analysis for Hickey, Mowery, or West," remanded the case for "individualized analysis" as to those defendants. *Id.* at *6.

Following remand, R.S. and T.H. filed an amended complaint in March 2023. As this appeal reaches us, they have one remaining claim, arising under 42 U.S.C. § 1983, against the LCCS employees for violation of their Fourteenth Amendment substantive due process rights. Defendants produced documents in September and October 2023 and deposed R.S., T.H., and Hubbard in November and December 2023. The plaintiffs did not serve their first set of discovery requests on the defendants until May 31, 2024, two weeks before the district court's June 14, 2024 discovery deadline.

After discovery closed, the defendants moved for summary judgment on the remaining substantive due process claim against West, Mowery, Von Sacken, and Hickey, arguing each was entitled to qualified immunity. The district court granted summary judgment for the defendants, finding that the plaintiffs had failed to establish a genuine issue of

material fact as to whether the defendants violated the plaintiffs' constitutional rights. The court also denied two procedural motions that the plaintiffs had filed in connection with the summary judgment motion: (1) a motion to strike the affidavits of Fraber, Parker, and T.T., upon which the defendants had relied in moving for summary judgment; and (2) a motion to conduct additional discovery on the facts set forth in those affidavits. The plaintiffs filed this timely appeal as to defendants Von Sacken and Hickey.

ANALYSIS

We reject the plaintiffs' arguments and affirm. The district court properly ruled that R.S. and T.H. failed to set forth a genuine issue of material fact for trial on their § 1983 claim against Von Sacken and Hickey, because they could not show that these defendants acted with deliberate indifference in placing them with Anthony and Alisa Haynes. Also, the plaintiffs offer no developed argument to challenge the district court's rulings on their procedural motions, so they have forfeited those issues on appeal.

I. R.S. & T.H.'s § 1983 claim

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We review *de novo* a district court's grant of summary judgment. *Ewolski v. City of Brunswick*, 287 F.3d 492, 500 (6th Cir. 2002).

In order to overcome the defendants' motion for summary judgment in this § 1983 action, R.S. and

T.H. “must demonstrate a genuine issue of material fact as to the following two elements:

1) the deprivation of a right secured by the Constitution or laws of the United States and 2) the deprivation was caused by a person acting under color of state law.” *McQueen v. Beecher Cmty. Schs.*, 433 F.3d 460, 463 (6th Cir. 2006) (citation modified). Defendants claim that they are entitled to qualified immunity on this claim. Qualified immunity protects public officials from suit unless “(1) . . . the official violated a statutory or constitutional right, and (2) . . . the right was clearly established at the time of the challenged conduct.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (citation modified). “A Government official’s conduct violates clearly established law when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Id.* at 741 (citation modified). A plaintiff ultimately bears the burden to show that the defendant public official is not entitled to qualified immunity. *Guertin v. Michigan*, 912 F.3d 907, 917 (6th Cir. 2019).

A. State-created danger and the deliberate indifference test

A § 1983 action usually requires a state actor, but there is an exception under the “state-created-danger” theory, which allows a plaintiff to hold the government liable for acts done by a third party. *McQueen*, 433 F.3d at 463-64. Due-process liability under the state-created-danger theory exists where there is: (1) an affirmative act that creates or increases the risk; (2) a special danger to the victim as distinguished from the public at large, or a special relationship between the state and either the victim or the private actor; and (3) the requisite degree of state culpability. *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1065-67 (6th Cir. 1998). The district court here focused on the third prong of this test: whether Von Sacken or Hickey acted with the requisite degree of culpability. On appeal, the plaintiffs challenge only the district court’s culpability analysis.

We analyze culpability in the state-created-danger context by asking whether the officials involved were deliberately indifferent. See *Doe v. Jackson Loc. Sch. Dist. Bd. of Educ.*, 954 F.3d 925, 933 (6th Cir. 2020). Where there is an “opportunity for reflection and unhurried judgments,” a plaintiff must show that the state acted with deliberate indifference. *McQueen*, 433 F.3d at 469 (quoting *Bukowski v. City of Akron*, 326 F.3d 702, 710 (6th Cir. 2003)). The deliberate-indifference standard, which we have “equated . . . with subjective recklessness,” consists of two parts. *Id.* First, the state actor must be “aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and . . . must also draw the inference.” *Id.* Second, “[h]aving drawn

the inference, the official . . . must act or fail to act in a manner demonstrating reckless or callous indifference to the individual's rights." Doe, 954 F.3d at 933 (citation modified). Subjective recklessness can "be proven circumstantially by evidence showing that the risk was so obvious that the official had to have known about it." Bukowski, 326 F.3d at 710.

As to the first part, we have held that, to be aware of facts from which the inference of harm could be drawn, the "public official must know of more than a general risk of harm" and "must know of the specific risk that later develops." Doe, 954 F.3d at 933-34. For example, in *McQueen*, a first-grader brought a gun to school and fatally shot his classmate, Jane Doe. 433 F.3d at 462. Before the shooting, the child had attacked other students by beating them and stabbing them with a pencil. *Id.* On the day that he shot his classmate, the child's teacher left him alone in the classroom with other students, and, while left alone, the child killed Doe. *Id.* at 463. Doe's mother argued that the teacher acted with deliberate indifference by leaving the classroom because the teacher knew that the child "might violently assault another student." *Id.* at 469. We rejected that argument, not only because the plaintiff had failed to allege that the teacher knew or suspected that the child had a dangerous weapon with him on the day of the shooting, but also because the child's "history of behavioral problems" gave no indication that "he would escalate from hitting with fists, feet, and pencils" to a gun. *Id.* at 470.

We arrived at a similar result in *Doe*. There, a fifth-grader who was throwing lit matches from a rear school-bus window was told to sit at the front of the bus, where the driver could better supervise him, but

where the fifth-grader ultimately sexually assaulted a kindergartener out of the driver's view. 954 F.3d at 928-30. We reasoned that the school employees might have known about the fifth-grader's "poor judgment, bullying tendencies, . . . dishonesty . . . [and] reckless match-lighting," but that this information did not tend to suggest the specific risk that he posed included "intentional sexual assault." *Id.* at 935.

Finally, in *Range v. Douglas*, 763 F.3d 573 (6th Cir. 2014), a county morgue attendant sexually abused the bodies of young women while drunk or high at work. *Id.* at 578. Evidence suggested that the morgue director might have known that the attendant was drinking, using drugs, and having sex with live women at the morgue. *Id.* at 579. We nonetheless reasoned that knowledge of this behavior would not necessarily have alerted officials of the specific risk of harm at issue—sexual abuse of corpses. *Id.* at 590-91.

As to the second part of the deliberate-indifference standard, we have held that, to act with reckless or callous indifference, a public official's response to the substantial risk of serious harm must also be "conscience shocking." *Doe*, 954 F.3d at 934 (quoting *Schroder v. City of Fort Thomas*, 412 F.3d 724, 731 (6th Cir. 2005)). And we have declined to find actions conscience shocking when officials simply acted with negligence. For example, in *Schroder*, a child was killed by a car speeding through a 25-mile-per-hour zone, which the child's parents had previously asked officials to lower to 15 miles per hour. 412 F.3d at 725. We held that the incident, although undeniably tragic, did not show "callous disregard"; rather, at most, the officials either "shortsightedly did not heed the complaints of its citizens" or "did not strike the correct balance in determining the proper

speed limit” for the road where the child was killed. Id. at 731.

We reached a similar conclusion in *Ewolski*, where a police department’s two-day armed standoff with a suspect ended with the suspect killing himself and his son. 287 F.3d at 496-500. In the subsequent § 1983 lawsuit challenging the officers’ actions under the state-created-danger theory, we noted that the police chief had drawn the inference that the officers’ tactics might provoke the suspect “to respond in a dangerous manner toward his wife and child” and had explicitly “considered the possibility of a murder-suicide.” Id. at 513. Additionally, the plaintiffs had shown that the police chief “should have obtained more information from the mental health professionals on the scene and may have made an incorrect assessment of the risks as a result.” Id. at 515. But simply because we, in hindsight, could “agree that the decisions made were ill-advised” and “agree that [the police chief] was negligent in failing to better inform himself before making the decision,” that did not mean that he callously disregarded the risk of injury to the victims. Id.; see also *Kerchen v. Univ. of Mich.*, 100 F.4th 751, 765 (6th Cir. 2024) (finding that where plaintiffs alleged that director of pharmacology lab did not always follow lab’s plan for safe distribution of drugs, and decedent died of overdose of fentanyl that had been removed from the lab, director’s behavior “sound[ed] in negligence,” rather than callous disregard); *Doe*, 954 F.3d at 936 (“At most, however, the failure to take these additional precautions suggests negligence, which falls well short of establishing the required ‘callous disregard for the safety’ of Minor Doe.” (citation omitted)).

In the present case, the district court examined the SACWIS records and Alisa's criminal history and concluded that, based on the information contained within each, the plaintiffs had not demonstrated a question of material fact concerning Von Sacken or Hickey's deliberate indifference. R.S. and T.H. press both arguments on appeal, and we analyze each one in turn.

B. SACWIS records

The district court found undisputed the fact that the SACWIS records, at the time that the plaintiffs were placed with the Haynes family, "contained no substantiated abuse or neglect allegations where Alisa Haynes was the alleged perpetrator," and only one unsubstantiated report against Anthony "as the alleged perpetrator of sexual abuse." RE 122, Op. & Order, PageID 2580. Moreover, the plaintiffs had not demonstrated that "being aware of abuse allegations that were investigated and determined to be unsubstantiated, or records on which an individual was not the alleged perpetrator of abuse were 'facts from which the inference could be drawn that a substantial risk of harm exists.'" Id. at PageID 2581-82 (quoting McQueen, 433 F.3d at 469). The district court subsequently concluded that the plaintiffs had failed to create a genuine dispute of fact about whether Von Sacken or Hicken actually drew the requisite inference or whether it was subjectively reckless for them to have relied on "these previous investigatory determinations." Id. at PageID 2582.

The district court's analysis was sound. R.S. and T.H. challenge the district court's ruling on several grounds, but their arguments fail. First, the plaintiffs broadly assert that "the issue of deliberate

indifference is a ‘fact question for the jury to decide.’” CA6 R. 14, Appellant Br., at 13 (quoting *Nelson v. City of Madison Heights*, 845 F.3d 695, 702 (6th Cir. 2017)). But the plaintiffs overstate *Nelson*. There, whether the defendant officer had been deliberately indifferent was a fact question for the jury because, in that case, the officer’s arguments “rel[ie]d on his own testimony, which require[d] a credibility determination by the factfinder.” *Nelson*, 845 F.3d at 702. We did not announce a blanket rule in *Nelson* that all questions of deliberate indifference in state-created-danger cases were for the factfinder. Here, given the undisputed facts in the record about the information contained in the SACWIS system, the district court correctly found that the plaintiffs had failed to demonstrate a genuine issue of material fact about whether Von Sacken and Hickey were deliberately indifferent.

The plaintiffs next argue that Von Sacken and Hickey were aware of specific facts from which the inference could have been drawn that the plaintiffs were at risk of being sexually abused in the Hayneses’ home. They cite one record in support of this argument: the April 2004 report of alleged abuse by Anthony against his stepdaughter. But the person investigating the claim noted that the stepdaughter denied any sexual abuse, so the report was disposed of as “unsubstantiated.” RE 109-12, Basic Intake Information for Anthony Haynes, PageID 2318. The plaintiffs nevertheless argue, based on this report, that Von Sacken and Hickey “were aware of facts that showed Anthony Haynes had a history of sexually abusing children that lived with him but did nothing to follow up on those facts and ignored them.” CA6 R. 14, Appellant Br., at 17. The report in

question, however, showed only that allegations of sexual abuse had been made against Anthony, not that that abuse actually occurred and that Von Sacken and Hickey knew it. And the plaintiffs cite no caselaw supporting their argument that this report was enough to put Von Sacken and Hickey on notice of specific facts from which the inference could have been drawn that they were at risk of abuse by Anthony. See *M.F. v. Perry Cnty. Child. & Fam. Servs.*, 725 F. App'x 400, 401 (6th Cir. 2018) (adopting analysis of district court granting summary judgment for children's services agency that placed children in abusive home where "no evidence establishe[d] that the Children's Services Defendants were aware of the risk to the children while the abuse was ongoing" (citation modified)).

The plaintiffs next argue that Von Sacken and Hickey "had time to deliberate on what to do" with them after the hospital reported suspected abuse of Hubbard's infant, because the plaintiffs themselves did not present with any signs of abuse. CA6 R. 14, Appellant Br., at 15-16. But whether Von Sacken and Hickey "had time to deliberate" goes to the question of whether deliberate indifference is the correct standard in the first place. See *McQueen*, 433 F.3d at 469 (deliberate indifference is the appropriate standard where there is an "opportunity for reflection and unhurried judgments") (citation omitted). It is undisputed that deliberate indifference is the appropriate standard here.

R.S. and T.H. next contend that Von Sacken and Hicken in fact drew an inference that they could be harmed in the Haynes home but ignored it. In support, they quote extensively from Von Sacken's deposition testimony explaining that she did not take

additional steps upon reading the SACWIS history for the Hayneses, such as “contact[ing] previous victims of things that were already investigated and found not to be true,” and that she saw “[n]othing [in the Hayneses’ criminal history] that would exclude them from placement of these children.” CA6 R. 14, Appellant Br., at 19-20 (quoting RE 106-1, Von Sacken Dep., PageID 1873-74, 1896-98). The plaintiffs also argue that Von Sacken and Hickey’s statements that nothing in the SACWIS history “stood out” to them “cannot be believed” in light of the “pattern of behavior” in the Hayneses’ home. *Id.* at 20. The plaintiffs posit, without citing any authority, that a jury could conclude that the “prior allegations” against the Hayneses led Von Sacken and Hickey to draw the inference of a risk of child abuse in their home. *Id.* at 21.

But this evidence does not support the conclusion that Von Sacken and Hickey actually drew an inference that a risk of harm existed. Rather, the testimony cited above simply confirms that Von Sacken did not reinvestigate prior claims of abuse and that neither Von Sacken nor Hickey saw anything in the SACWIS history that would preclude the Hayneses from accepting placement of the children. The plaintiffs point to no evidence showing that, upon review of the SACWIS records, Von Sacken and Hickey actually concluded that the children could be harmed if they were to be placed with the Hayneses.

Our decision in *R.S. I* does not mandate a contrary conclusion. In *R.S. I*, we held that, accepting as true the allegations in the pleadings, “Von Sacken was conscious of the risk the Hayneses posed to the children because she documented it in her report . . . [and] disregarded that risk because she did not follow

up on critical information before recommending the placement to the juvenile court.” 2022 WL 17730531, at *3, *5. We therefore reversed the district court’s grant of the defendants’ motion for judgment on the pleadings. *Id.* at *1, *6. Among the allegations accepted as true in R.S. I were the plaintiffs’ claims that “Von Sacken discovered that substantiated allegations of child sexual abuse had been made against Alisa in 2000 and 2003,” and an “‘indicated’ child sexual abuse allegation . . . was made against Alisa in 1999.” *Id.* at *1. Indeed, in R.S. I, the plaintiffs relied on an exhibit—attached to the operative complaint—that listed the reports of abuse in which the Hayneses were mentioned. But the document did not provide any details of the Hayneses’ specific involvement in these reported instances of abuse (that is, whether they were the caretaker or alleged perpetrator). While not explicitly stated in the opinion, R.S. I appeared to have relied upon this vague list of reports mentioning the Hayneses, which the plaintiffs characterized as documented evidence showing the Hayneses were known child-abusers. The SACWIS records relied upon in support of the summary judgment motion, however, tell a different (and more detailed) story. For the 1999 referral, Alisa was listed as the caretaker, not the alleged perpetrator, on the indicated sexual abuse referral. The 2000 referrals included one substantiated sexual abuse report in which Alisa was again listed as the caretaker, not the alleged perpetrator, and one unsubstantiated neglect referral report in which Alisa was listed in one document as “OIC” and another as “Exception.” RE 109-9, Home Study for Placement of Child(ren), PageID 2279; RE 109-11, Basic Intake Information for Lisa Haynes,

PageID 2207, 2210. Further, in 2003, a substantiated sexual abuse referral listed Alisa as a caretaker, not the alleged perpetrator. Documents produced in discovery therefore do not support the conclusion that “substantiated [or indicated] allegations of child sexual abuse had been made against Alisa” in 1999, 2000, and 2003. R.S. I, 2022 WL 17730531, at *1 (emphasis added); cf. *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 336 (6th Cir. 2010) (explaining, in the context of a second appeal on a motion under Rule 56 following an initial appeal on a motion under Rule 12(b)(6), that “discovery will confirm the accuracy of some allegations and disprove others”).

But even assuming that Von Sacken or Hickey had drawn the inference from the SACWIS records, the plaintiffs have not demonstrated that the defendants “act[ed] or fail[ed] to act in a manner demonstrating reckless or callous indifference toward the [plaintiffs’] rights.” *Ewolski*, 287 F.3d at 513 (citation modified). We reasoned in R.S. I that Von Sacken “was required to vet and approve the placement before recommending it to the juvenile court” and that “the essence of [her] job was to protect children from neglect and abuse,” so the plaintiffs had pled sufficient facts to “create the reasonable inference that Von Sacken violated their substantive due process rights.” 2022 WL 17730531, at *5-6. But that decision proceeded from the allegation that Von Sacken had in her files substantiated reports of child sexual abuse against Alisa, an allegation that has since been disproven. This is not a case in which Von Sacken or Hickey left R.S. and T.H. in the home of known child abusers.

In the end, even if Von Sacken or Hickey could have proceeded more cautiously when deciding to place the children in the Hayneses' home—a decision that doubtless led to tragic results—their failure to do so does not meet the high bar that this court has set for callous disregard. See, e.g., *Kerchen*, 100 F.4th at 765; *Doe*, 954 F.3d at 936; *Schroder*, 412 F.3d at 731; *Ewolski*, 287 F.3d at 515; see also *Lintz v. Skipski*, 25 F.3d 304, 307 (6th Cir. 1994) (in case involving social worker's alleged failure to investigate prior sexual abuse by foster parents' sons, "[t]he whole affair might have been better handled from the beginning, but that is not the issue. There must be 'deliberate indifference,' and there was none"). Von Sacken and Hickey have put forth evidence supporting their reasons for placing and keeping R.S. and T.H. with the Hayneses: namely, the facts that prior reports were unsubstantiated and that nothing in the Hayneses' criminal history would have excluded them from placement of the children. Their decision may have been flawed in hindsight, but their decisional process was not without reason based on the information

available. Cf. *Arledge v. Franklin County*, 509 F.3d 258, 260-64 (6th Cir. 2007) (even if defendants were aware that man who shot child owned a gun and posed drug-related concerns, this did not rise to the level of deliberate indifference where state officials had inspected man's home and found it to be a "relatively happy place that was familiar to [the child]" before placing the child with man's family).

C. Alisa's fraud convictions

R.S. and T.H. next argue that they have presented evidence that Von Sacken and Hickey were

deliberately indifferent because Von Sacken and Hickey failed to review Alisa's fraud convictions, which could have disqualified her. The plaintiffs claim that Hubbard would not have allowed her children to be placed with the Hayneses had she known this information. Finally, they argue that Alisa's fraud convictions "rendered any statements she made subject to scrutiny." CA6 R. 14, Appellant Br., at 24.

But R.S. and T.H. do not cite any record evidence for their arguments that "[n]either Rebecca Von Sacken nor Sue Hickey reviewed th[e] information [about Alisa's convictions] despite having full access and the responsibility to do so," and that such convictions "could have disqualified her from allowing [the children] to be placed with her." CA6 R. 14, Appellant Br., at 22-23. Indeed, Von Sacken and Hickey's depositions contain no testimony to this effect.

Even assuming, as the district court did, that R.S. and T.H. could support their arguments, we cannot say that Von Sacken and Hickey's knowledge that Alisa had previously been convicted of fraud-related crimes should have put them on notice of a substantial risk of later sexual abuse. We have required that the "public official . . . know of more than a general risk of harm" and "know of the specific risk that later develops." *Doe*, 954 F.3d at 933-34. That is why, in *McQueen*, it was not enough that the teacher knew that the aggressor child had previously attacked "with fists, feet, and pencils," because this would not have put her on notice that he posed a specific risk of bringing a gun to school and shooting a classmate. 433 F.3d at 470. Likewise, in *Doe*, that meant that school employees' prior knowledge about the fifth-grader's "poor judgment, bullying tendencies,

. . . dishonesty . . . [and] reckless match-lighting” did not tend to suggest the specific risk that he posed of sexual assault. 954 F.3d at 935. And in *Range*, the morgue director’s knowledge that his employee may have been abusing drugs and alcohol and having sex with live women at his worksite did not necessarily put him on notice of the specific risk that the employee would sexually abuse corpses. 763 F.3d at 579, 590-91.

So, too, here. R.S. and T.H. offer no explanation as to why Von Sacken and Hickey’s knowledge of Alisa’s prior fraud convictions would have put them on notice of a risk of sexual abuse by Alisa’s husband ten years later. The plaintiffs offer no decision from this court that would support their argument, and they do not attempt to engage with the district court’s reasoning on this point.

Again, the relevant Lucas County officials could have done more to investigate the situation before placing Hubbard’s children with the Hayneses. But the question for us is not whether the officials could have done more or were negligent. Cf. *Range*, 763 F.3d at 591 (“Viewing the facts in the light most favorable to Plaintiffs, a jury could find much to condemn in the conduct of Kersker and Dr. Cleveland, perhaps even recklessness.”); *Ewolski*, 287 F.3d at 515 (observing that the official at issue may have been “negligent in failing to better inform himself before making the decision”). The question is whether the officials acted with the “callous indifference” necessary to support a claim of deliberate indifference. *Doe*, 954 F.3d at 933 (citation omitted); see also *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (“[D]eliberate indifference entails something more than mere negligence...”). They did not, so we affirm

the district court's ruling granting summary judgment to the defendants.

We make one final point on qualified immunity. We may address the two qualified-immunity prongs in either order. See *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Although R.S. and T.H. have failed to show a violation of their constitutional rights, they have also failed to show that their rights were clearly established. Demonstrating that the right was clearly established requires a plaintiff to show that the rule establishing the right is “settled,” not merely “suggested by then-existing precedent,” and the rule must “clearly prohibit the [official’s] conduct in the particular circumstances before him.” *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018) (citation modified). “The plaintiff bears the burden of showing that the right was clearly established” and must do so by “provid[ing] on-point caselaw that would bind a panel of [the Sixth Circuit].” *Bell v. City of Southfield*, 37 F.4th 362, 367-68 (6th Cir. 2022). R.S. and T.H. offer no caselaw with respect to the “clearly established” analysis in their opening brief on appeal, and they conceded at oral argument that there is no case on point for their constitutional claim. Thus, even assuming that they had shown a constitutional violation, their case would fail at the “clearly established” prong.

II. Motion to strike

Von Sacken and Hickey submitted the affidavits of several witnesses in support of their summary judgment motion, including the affidavits of: (1) Ryan Parker, who initially met Hubbard at the hospital, conducted background checks, and checked the SACWIS records for the Hayneses; (2) Kimberly

Fraber, an LCCS case worker who investigated a claim of sexual abuse involving T.H. in April 2025; and (3) T.T., who was living with the Hayneses at the same time that Hubbard's children were. R.S. and T.H., after filing their response to the defendants' summary judgment motion, moved to strike these three affidavits on the ground that the witnesses were not properly disclosed to them during discovery.

The district court denied the motion. The court concluded that, even if these witnesses had not been properly disclosed under the federal rules, the violation was harmless, because the plaintiffs were well aware of these witnesses. See Fed. Rs. Civ. P. 26(a)(1)(A)(i), 37(c)(1).

"We review the decision to grant or deny a motion to strike for an abuse of discretion, and decisions that are reasonable, that is, not arbitrary, will not be overturned." *Seay v. Tenn. Valley Auth.*, 339 F.3d 454, 480 (6th Cir. 2003) (quoting *Collazos-Cruz v. United States*, 117 F.3d 1420, 1997 WL 377037, at *2 (6th Cir. July 3, 1997) (unpublished table decision) (per curiam)). But R.S. and T.H. fail to engage with the district court's harmlessness analysis on appeal. They simply reiterate their contention that Parker, Fraber, and T.T. were not included in the defendants' initial disclosures and complain that it was "wholly unfair" for the district court not to have stricken these witnesses' affidavits. CA6 R. 14, Appellant Br., at 25. Because R.S. and T.H. offer no argument to challenge the district court's reasoning and conclusion, we affirm the district court's denial of their motion to strike. See *Courser v. Allard*, 969 F.3d 604, 621 (6th Cir. 2020) (holding that parties forfeit arguments not raised in an opening appellate brief).

III. Motion for leave to conduct additional discovery

R.S. and T.H. also filed a motion for leave to conduct additional discovery. R.S. and T.H. claimed that they had not “had the opportunity to depose any of [the] fact witnesses” for whom the defendants had submitted affidavits. RE 115, Mot. for Leave to Conduct Add’l Disc., PageID 2464.

The district court denied the motion, on the basis that R.S. and T.H. had not been diligent in pursuing discovery. R.S. and T.H. had the relevant documents, which identified witnesses and the information that each had, approximately nine months before the defendants filed their summary judgment motion in July 2024. The plaintiffs, in contrast, waited until two weeks before the close of the discovery period to serve their first set of discovery requests on the defendants.

Because Rule 56(d) “makes the trial court’s allowance of additional discovery discretionary, our standard of review is abuse of discretion.” *Siggers v. Campbell*, 652 F.3d 681, 695-96 (6th Cir. 2011) (quoting *Egerer v. Woodland Realty, Inc.*, 556 F.3d 415, 426 (6th Cir. 2009)). But R.S. and T.H. simply argue on appeal that “there was no trial date set” and therefore “there would have been no prejudice to [Von Sacken and Hickey] if the District Court had granted the Motion.” CA6 R. 14, Appellant Br., at 26. The main question, though, is not prejudice but rather whether R.S. and T.H. were diligent in pursuing discovery. *Doe v. City of Memphis*, 928 F.3d 481, 491-92 (6th Cir. 2019). The plaintiffs offer no argument that they were diligent, nor any other argument that the district court abused its discretion or otherwise erred in its analysis. We therefore affirm the district

court's denial of R.S. and T.H.'s motion for leave to conduct additional discovery. See *Courser*, 969 F.3d at 621; *Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019) (explaining that "[p]laintiffs forfeited this issue on appeal because they failed to discuss the district court's reasoning" in ruling on the operative motion).

CONCLUSION

For the foregoing reasons, we affirm the district court's summary judgment order in all respects.

APPENDIX C

District court memorandum
opinion, order & judgment (March 27, 2025)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

R.S., et al.,	:	CASE NO. 3:20 CV
Plaintiffs,	:	2791
v.	:	JUDGE James R.
	:	Knepp II
CHARMAINE WEST,	:	
et al.,	:	
Defendants.	:	

MEMORANDUM OPINION AND ORDER

INTRODUCTION

Currently pending before the Court in this 42 U.S.C. § 1983 action is Defendants Charmaine West, Susan Hickey, Rebecca Von Sacken, and Courtney Mowery's Motion for Summary Judgment. (Doc. 109). Plaintiffs oppose the Motion (Doc. 113), and Defendants reply (Doc. 121). Also pending are Plaintiffs' Motions to Strike (Doc. 114) and Conduct Additional Discovery (Doc. 115). Defendants oppose these Motions (Doc. 119) and Plaintiffs reply (Doc.

120). Jurisdiction is proper under 28 U.S.C. § 1331. For the reasons set forth below, the Court DENIES Plaintiffs' Motions to Strike and to Conduct Additional Discovery, and GRANTS Defendants' Motion for Summary Judgment.

BACKGROUND

This case arises out of horrific and life-altering abuse that Plaintiffs suffered while in the care of Anthony and Alisa (sometimes "Lisa") Haynes following placement by the Lucas County Children Services ("LCCS") and the Lucas County Juvenile Court. The Court summarizes only the information necessary and relevant to the pending motions below.

Factual Background

Plaintiffs lived with their mother Victoria Hubbard (also "Victoria Bailey") and her husband in 2014. In early July 2014, Lucas County Children's Services received a referral that an infant sibling of Plaintiffs had been abused or neglected. (Ryan Parker Aff., Doc. 109-2, at ¶¶ 2-3). Parker, a LCCS Night Intake Case Worker, investigated and met with Victoria Hubbard, Plaintiffs' and the infant's mother, at the hospital. Id. at ¶¶ 4-5. Hubbard identified her pastor and his wife (Anthony and Alisa Haynes) as individuals the children could stay with temporarily. Id. at ¶ 7. Parker discussed with his supervisor that the Haynes family "already had a case worker in the home and had recently been fingerprinted". Id. at ¶ 9.¹ Parker consulted with his supervisor, Ms. Hoffman:

Ms. Hoffman instructed me to ensure criminal records checks were completed and to check the Statewide Automated Child Welfare Information System (SACWIS) to see if the family had any LCCS involvement. I was also to check and ensure a case

worker had been in the home within the last month. I followed up on Ms. Hoffman's direction and found the records checks with no disqualifying history. I also ran a records check on the Haynes'[s] 19 year old son and found no results. I checked SACWIS records for the Haynes'[s] and found no involvement for Mr. Haynes or Mrs. Haynes as a substantiated perpetrator of abuse or neglect. I saw the case note that a case worker had been in the home within the past month.

Id. at ¶ 9; see also Doc. 109-10, at 9 (Parker Activity Log). After doing so, Parker entered his case notes into SACWIS² and then transferred the case "to the assessment's department." Id. at ¶ 10.

1. According to Parker, "Ms. Haynes indicated that she had been working with LCCS on another case and that a worker had been out to their home recently. Ms. Haynes indicated they had already been fingerprinted and cleared by LCCS staff to care for another child in their home." (Parker Aff., Doc. 109-2, at ¶ 8). This child was not related to Plaintiffs. (Temple Aff., Doc. 109-3, at ¶ 2).

2. SACWIS is a "statewide information system to keep and maintain case information on child welfare cases." (Cully Aff., Doc. 109-4, at ¶ 4).

Defendant Rebecca Von Sacken was the LCCS Assessment Case Worker assigned to Plaintiffs' case. (Doc. 106-1, at 52). Von Sacken was involved with Plaintiffs' case for approximately three weeks in July 2014, starting with an emergency placement custody meeting on July 3 and ending the week of July 21. *Id.* at 55-65. She completed the "preliminary home study" and then transferred the case to another LCCS employee, Susan Hickey. *Id.* at 69-70.

Von Sacken started the preliminary home study with the "Home Study for Placement of Children" document, and her name appears on it as "Caseworker." (Doc. 109-9, at 30-38). To complete this portion of the study, Von Sacken testified, "you are supposed to see the home, gather information about the people who live in the home[,] . . . do police checks, sex offender registry checks, [and] SACWIS history check[s]." (Doc. 106-1, at 70). Von Sacken testified she did these checks. *Id.* at 71-73. She also testified that the SACWIS history for an individual "pre-populates" into the home study form. *Id.* at 74-75. "If there was something that was populated and we had questions about it, we would definitely talk to [our] managers[.]" *Id.* at 75. Certain convictions and SACWIS-documented information could exclude someone from being a placement. *Id.* at 75-76. As to information from SACWIS, Von Sacken testified:

A: And then as far as SACWIS, we would look at what the allegations were and what the disposition of those allegations were and what your role was in that investigation.

Q: Okay. And then, was there any type of policy on that? Like there were certain things that were excluded if they popped up on SACWIS?

A: I believe they just looked at each one case-by-case and what the all[e]gations were, what their role was. Like, you can't just broadband exclude everybody. So I think you have to look at what the allegations were, what their role was, and what the disposition of that was.

Q: Okay. And then was that the policy? The policy was we would look at them and then make a decision on it?

A: I can't say it as a policy. I'm not for sure if that was a policy, but that's what we did. We talked about it with our manager, and then we talked – the manager would talk to our supervisor, and our supervisor would talk to the manager if there was anything concerning that popped up on there.

Q: Okay.

A: And then the court would obviously be the ultimate decider on placement.

Q: Right. If you gave the court the information about the different, I guess, issues that may have popped up on a police check or a background check?

A: It's all – it's pre-populated, and then you attach the whole report to the home study.

Id. at 76-77.

The "Summary of Referrals" section of the home study document contains the following:

SUMMARY OF REFERRALS (attach incident history print-out or record)

5/1999 Alisa was listed as the caretaker on an Indicated Sexual Abuse referral.

5/2000 Alisa was listed as the caretaker on a Substantiated Sexual Abuse referral.

10/2000 Alisa was listed as OIC on an Unsubstantiated Neglect referral.

10/2003 Alisa was listed as the caretaker on a Substantiated Sexual Abuse referral.

4/2004 Anthony was listed as the AP and Alisa was listed as the caretaker on an Unsubstantiated Sexual abuse referral.

(Doc. 109-9, at 31).³ Von Sacken testified she specifically recalled discussing the SACWIS information about the Hayneses with her supervisor. (Doc. 106-1, at 77-82). When asked what her understanding of Anthony and Alisa Haynes's history in the SACWIS system, she recalled:

I believe that they had some referrals with the – our agency that were either they were not listed as alleged perpetrator, if they were substantiated, or if they – I don't believe they had anything that sub – where they were listed as alleged perpetrators where they were – that were substantiated, if that makes sense. So

3. It is clear that "AP" stands for "Alleged Perpetrator." Neither party identifies what "OIC" means.

there were no referrals in our system that said that they were alleged perpetrator and it was substantiated.

Id. at 82; see also id. at 132 (“I just want to reiterate that they had nothing – the Haynes adults had no substantiated cases where they were listed as alleged perpetrators. So – that none of that would have excluded – any of their SACWIS history was not excludable based off of that. They were not listed as alleged perpetrators on a substantiated or indicated . . . I’ll say substantiated case.”).

Von Sacken did not do any further independent investigation into the prior allegations contained in the SACWIS system. Id. at 106. Rather, she described the process as: “We read the - - what was contained in the intake and then reviewed, like, the dispositional narrative or the closed - - case-closing narrative or the narrative when the case was finalized. Those investigations were completed by somebody else.” Id. at 106. In responses to a similar question asked later about whether she did “anything in terms of digging around in SACWIS or contacting anybody identified in those previous hits in SACWIS related to the Hayneses” or “call any of the . . . alleged victims or anything else or talk to anybody involved in those cases that popped up in the SACWIS system for the Hayneses”, she explained:

No. I reviewed the allegations, reviewed the dispositions and what happened in the case, and I did not investigate those cases. So that’s - - that was the expectation. So that’s what I did. . . . We don’t go back and contact previous victims of things that were already investigated It was unsubstantiated. They

had a chance to discuss that with the investigator and higher-ups if they disagreed with that disposition.

Id. at 129-30. The intake forms for Anthony and Alisa Haynes show that neither was the alleged perpetrator of abuse on a claim found to be substantiated. See Docs. 109-11 (Alisa) and 109-12 (Anthony). Specifically, with respect to the incidents listed in the “summary of referrals” section of the home study document completed by Von Sacken: (1) in May 1999, Alisa was listed as a “caretaker” on an intake form describing sexual abuse of a child by a different adult man; this case was disposed of as an “indicated” sexual abuse claim. (Doc. 109-11, at 12); (2) in May 2000, Alisa was again listed as a “caretaker” on an intake form describing sexual abuse by the same adult man who was identified as the “alleged perpetrator”; this case was determined to be “substantiated”, id. at 8; (3) In October 2000, Alisa was listed in the role of “exception” on a case alleging neglect by the same adult man (as to his two children) who was identified as the “alleged perpetrator”; this case was found “unsubstantiated”, id. at 5; (4) in October 2003, Alisa was listed as a “caretaker” on an intake form describing child sexual abuse by the same adult male, again identified as the alleged perpetrator; the case was determined to be “substantiated”; and (5) in April 2004, Anthony was listed as the alleged perpetrator on a sexual abuse claim involving a nine year old girl (his stepdaughter) and Alisa was listed as the “caretaker”; the case was disposed of as “unsubstantiated” in May 2004 (Doc. 109-12, at 1).⁴

Von Sacken further recalled reviewing the Hayneses criminal history as part of the preliminary home study, and recalled that it contained “[n]othing

that would exclude them from placement with the children” but she did not specifically recall whether there was anything in that criminal history. *Id.* at 130-31. She also testified that she had no knowledge of Plaintiffs suffering abuse or neglect in the Haynes home. *Id.* at 52, 116-20.

Susan Hickey was the LCCS Department of Family Services (“DFS”) case worker assigned when Plaintiffs were placed with the Haynes family in July 2014. (Doc. 107-1, at 16-

4. Under Ohio law, a “[s]ubstantiated report” is a disposition “in which there is an admission of child abuse or neglect by the person(s) responsible; an adjudication of child abuse or neglect; or other forms of confirmation deemed valid by the [investigating agency].” *Kyser v. Summit Cnty. Children’s Servs.*, 175 Ohio St. 3d 392, 399 (Ohio 2004) (quoting Ohio Admin. Code § 5101:2-1-01(B)(313). An ‘Unsubstantiated report’ means the report disposition in which the assessment/ investigation determined no occurrence of child abuse or neglect.” *In re A.Z.*, 2022-Ohio-3943 (Ohio Ct. App. 2022) (quoting Ohio Admin. Code. § 5101:2-1-01(B)(341)(18). Hickey testified that generally, when a case was referred from an assessment caseworker to the DFS caseworker, the two would hold a transfer conference, set up a time to meet with the family together, and then set up a case plan. *Id.* at 19-20. When Hickey took over the case from Von Sacken, they held a transfer conference. *Id.* at 17-18. She also visited the Haynes home “within a couple of days” of getting the case. *Id.* at 31-32. Hickey’s role was “[t]o get the children into case plan services, [and] to monitor them until [they] went to court and a permanent plan was made.” *Id.* at 24-25.

It was her responsibility to establish a case plan; recommendations come from the assessment case worker, but it was ultimately the DFS case worker's responsibility. Id. at 32.

Hickey did not independently investigate Anthony or Alisa Haynes's background, but that was typically the job of the assessment caseworker. Id. at 33-34. When asked if she "ever double-check[ed] that, Hickey said "I just saw what she had - - what was written on the home study." Id. at 34. She reviewed those sections when she completed the home study "but nothing must have stood out to me." Id. at 34-35. She said she "kn[ew] that they were caretakers in regards to, you know, some history" but "d[idn't] know that they were considered perpetrators or anything like that in regards to it." Id. at 34.

Q: Okay. And then did you look at either Anthony Haynes' or Lisa Haynes' background with regard to the placement?

A: That was already done when I got the case.

Q: Okay. Do you know who did that?

A: Rebecca – well, you know what? I can't say that for sure because I don't know if it came in on nights or you know, on the weekend. If that happened, then it would have been someone from there.

Q: But if not, it's usually the assessment caseworker?

A: Yes.

Q: And what are they supposed to do?

A: Run a background check, fingerprints, look at them in our system to see if they have any history.

Q: When you say “our system,” do you mean the SACWIS system?

A: Yes.

Q: Okay. Did you ever double-check that?

A: I just saw what she had - - what was written on the home study.

Id. at 33-34.

Hickey completed the home study started by Von Sacken; she then gave it to her supervisor, who reviewed and signed it. Id. at 36. She had monthly visits with the Haynes family and Plaintiffs until the Hayneses obtained legal custody in February 2015. (Doc. 107-1, at 16-20, 36, 41-44.

Neither Hickey nor Von Sacken (nor anyone else) informed Hubbard of the SACWIS or criminal history information obtained for the Hayneses. (Doc. 117, at 2). If anyone had shared this information, Hubbard avers she would not have consented to placement with the Haynes household. Id.

There is no dispute that Plaintiffs suffered terrible abuse while in the Haynes home.

In the background section of their brief, Plaintiffs paste two records, seemingly from LCCS, and state the documents “were produced by Defendants in discovery.” (Doc. 113, at 4-5). These records, based on their similarity to other records provided and cited by Defendants, appear to be from LCCS employee activity logs.⁵ The first record, which follows the intake

5. Defendants rely on and attach the Activity Log

Reports of Fraber, West, Mowery, Hickey, Von Sacken, and Parker in support of their Motion for Summary Judgment. (Docs. 109-5 through 109-9). These total 208 pages and do not appear to the Court to contain the documents pasted in the brief, so the Court has no more information regarding them.

report regarding the April 2004 sexual abuse allegations against Anthony, contains no date or author name; it describes various background information and possibly contains interview notes with Alisha and Anthony, but it is not entirely clear. Id. at 4. It also contains a note that Alisha went to jail for fourteen days in 2000. Id. The second record, again not specifically identified but merely pasted into the brief, is dated May 23, 2004, authored by a Melissa Coburn, and identified as a note regarding case category: Assess/Invest (presumably short for “investigate”). Id. at 5. It states that an assistant Lucas County Prosecutor left a message to return a call and then the following note: “mom served some jail-felony-false identification couple years ago-idenify [sic].” Id.

Procedural Background

This case was originally filed in December 2020. (Doc. 1). Following the filing of an Amended Complaint (Doc. 49), this Court granted Defendants’ Motion for Judgment on the Pleadings. (Doc. 70). The Sixth Circuit reversed as to this Court’s determination on the Fourteenth Amendment substantive due process claim against Von Sacken, and, because this Court had not reached the claims against West, Mowery, or Hickey, the Sixth Circuit remanded for “individualized analysis” as to these Defendants. (Doc. 76); R.S. v. Lucas County Children

Servs., et al., 2022 WL 17730531, at *6 (6th Cir.). Following remand, with Court leave, Plaintiffs filed the now-operative Second Amended Complaint on March 17, 2023. (Doc. 80).⁶ Following a period of delay that defense counsel attests was due in large part to Plaintiffs' counsel's lack of responsiveness (Ranazzi Aff., Doc. 119-1, at ¶ 4), an agreed protective order

6. The Second Amended Complaint added additional defendants. See Doc. 80. However, Plaintiffs failed to serve any of these defendants with the Amended Complaint, and, following the issuance of a show cause order to which Plaintiffs did not respond, the Court dismissed the claims against these additional defendants without prejudice in July 2023. (Docs. 84, 85).

was entered in June 2023. (Doc. 83). Plaintiffs' counsel then reviewed documents prepared by LCCS in September 2023 (*id.*), and these were turned over as part of Defendants' initial disclosures in October 2023. (*id.*; Doc. 120, at 5).

In a September 2023 status conference, the Court set a discovery deadline of June 14, 2024, and dispositive motion deadline of July 31, 2024. The docket entry noted that no extensions would be granted on these deadlines. Defendants took depositions of Plaintiffs and their mother in November and December 2023. Plaintiffs took depositions of the four Defendants in March 2024. On May 31, 2024 (two weeks before the discovery deadline), Plaintiffs served Defendants with their first set of interrogatories and requests for production.

(Doc. 114-1). Defendants responded on June 28, 2024. *Id.* at 27.

STANDARD OF REVIEW

Summary judgment is appropriate where there is “no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). When considering a motion for summary judgment, the Court must draw all inferences from the record in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The Court is not permitted to weigh the evidence or determine the truth of any matter in dispute; rather, the Court determines only whether the case contains sufficient evidence from which a jury could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). The moving party bears the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

This burden “may be discharged by ‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Id.* The nonmoving party must go beyond the pleadings and “present affirmative evidence in order to defeat a properly supported motion for summary judgment.” *Anderson*, 477 U.S. at 257. Further, the nonmoving party has an affirmative duty to direct the Court’s attention to those specific portions of the record upon which it seeks to rely to create a genuine issue of material fact. See Fed. R. Civ. P. 56(c)(3) (noting the court “need consider only the cited materials”).

DISCUSSION

Defendants move for summary judgment on the remaining 42 U.S.C. § 1983 substantive due process claim against West, Mowery, Von Sacken, and Hickey, arguing each is entitled to qualified immunity (and summary judgment). Plaintiffs respond that issues of material fact remain, particularly as to Von Sacken and Hickey. (Doc. 113). Plaintiffs further assert that they have separately filed a motion regarding the completeness of discovery. *Id.* at 13 n.1. In reply, Defendants contend Plaintiffs have abandoned their claims as to West and Mowery and have not shown questions of material fact as to Von Sacken or Hickey's entitlement to qualified immunity. (Doc. 121). For the reasons set forth below, the Court grants Defendants' motion for summary judgment.

Motion to Strike / Motion to Conduct Additional Discovery

The Court begins with the pending procedural motions. After requesting and receiving three extensions of time to respond to Defendants' Motion for Summary Judgment, Plaintiffs filed their opposition brief. One day later, Plaintiffs filed the currently-pending Motions to Strike (Doc. 114) and to Conduct Additional Discovery (Doc. 115).

Motion to Strike

In their first motion, Plaintiffs seek to strike the Affidavits of Faber, Parker, and Temple, which Defendants rely upon in moving for summary judgment, arguing Defendants did not properly disclose these individuals as witnesses in their initial disclosures or in written discovery. (Doc. 114). Defendants respond that they did disclose these individuals, in emailed supplemental witness

disclosures, and claim that any alleged disclosure noncompliance was harmless because Plaintiffs were aware of these witnesses based on other discovery in this case and the prior juvenile court custody proceedings. (Doc. 119). Defendants further assert that all the documents they rely upon in support of summary judgment were turned over to Plaintiffs in 2023. *Id.* at 5. Plaintiffs do not dispute this latter assertion (Doc. 120, at 5).

It appears undisputed that Defendants' initial disclosures did not identify these three individuals by name. But it also appears undisputed that Defendants provided these names in emailed supplemental witness lists in early 2024, and that these three individuals were referenced by Plaintiffs and their mother in their late 2023 depositions.

Rule 26(a)(1)(A)(i) provides that initial disclosures must include: "(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment". Rule 26(e)(1)(A) requires a party to supplement its disclosures "if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing". And Rule 37(a)(3)(A) provides: "If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions." "The distinct purpose of the initial disclosure is to alert the opponent to the existence of a witness whose testimony may be helpful

to the disclosing party.” *Harris v. Advance Am. Cash Advance Ctrs., Inc.*, 288 F.R.D. 170, 171 (S.D. Ohio 2012).

It appears undisputed that these witnesses were not disclosed in Defendants’ initial disclosures. It is also undisputed that Defendants did not specifically identify any of the three in response to Plaintiffs’ discovery request to identify “any and all persons known to you who possess or claim to possess knowledge of any facts concerning any allegation in the Complaint”. (Doc. 114-1, at 5-6). But Defendants’ response to this interrogatory states “[t]his information has been previously provided in both the initial disclosures, numerous correspondence providing names of potential witnesses and documents exchanged in discovery and the initial disclosures.” *Id.* at 6. And Plaintiffs’ initial disclosures included reference to “Employees and staff of Lucas County Children Services”, which would include Parker and Fraber, although they are not identified by name. And defense counsel identifies emails from early 2024 entitled “Defendant’s Supplemental Witness disclosures” that list several names under the subheading “LCCS Case Workers”, and includes Parker and Fraber. See Doc. 119-1, at ¶ 4; see also Doc. 100-1, at 10-11. Defense counsel further states he became aware of Temple as a possible witness in March 2024, and again identified her as a witness in an email. See Doc. 119-1, at ¶ 5; see also Doc. 100-1, at 7. Victoria Hubbard’s November 2023 deposition references Parker as “the investigating worker” for LCCS. (Doc. 102-1 at 216). Plaintiffs’ depositions reference Temple throughout (see Docs. 103-1, and 104-1), and one Plaintiff responded to questions regarding interactions with Fraber (Doc. 104-1, at

134-35). And the documents on which Parker and Fraber's Affidavits are based (their Activity Log notes) were turned over to Plaintiffs in 2023. Further, Temple resided in the Haynes house at the same time as Plaintiffs and was mentioned repeatedly in their depositions. See Docs. 103, 104.

Plaintiffs contend the emails were "insufficient to comply with Rule 26(a)(1) because Defendants only provided names, withheld contact information for fact witnesses, and did not summarize the subjects that these fact witnesses may have information regarding." (Doc. 120, at 3). They further contend the discovery responses were insufficient. At no time during the discovery period did Plaintiffs file a motion to compel or any other motion to dispute the adequacy or format of Defendants' disclosures. Thus, their complaints at this late juncture regarding an alleged "document dump" and not properly identifying responsive documents, ring fairly hollow. Cf. *DeLaval Inc. v. Hardy's Holsteins, LLC*, 2023 WL 6396574, at *8 (E.D. Mich.) ("[I]n any event, the Court declines to strike LaBean's declaration because Hardy never moved to compel DeLaval to serve its initial disclosures during discovery."); *FCA US LLC v. Bullock*, 446 F. Supp. 3d 201, 217 (E.D. Mich. 2020) (declining to strike a claim for damages where the moving party "fail[ed] to file a timely motion to compel during the discovery phase.").

The Court finds unpersuasive Plaintiffs' contention that they were unaware of the witnesses whose affidavits Defendants rely upon in support of their summary judgment motion. Even if the witnesses were not properly disclosed pursuant to Rule 26, the Court finds any violation harmless. See Fed. Civ. R. 37(c)(1) ("If a party fails to provide

information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” “[T]he burden is on the potentially sanctioned party to show harmlessness.” *U.S. ex rel. Tenn. Valley Auth. v. 1.72 Acres of Land in Tenn.*, 821 F.3d 742, 752 (6th Cir. 2016).

The Advisory Committee’s comments identify, among other circumstances, that a situation in which a party omits disclosure of a name “of a potential witness known to all parties,” or omits “to list as a trial witness a person so listed by another party,” would be harmless. Fed. R. Civ. P. 37(c), advisory committee notes, 1993 amend. Along the same lines, the supplementation provisions of Rule 26, which require updating of a Rule 26(a)(1) disclosure throughout a case, contain an exemption for information that has otherwise been made known to the opposing party during the discovery process. Fed. R. Civ. P. 26(e)(1)(A). The Sixth Circuit counsels a Court to consider five factors to evaluate harmlessness:

(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party’s explanation for its failure to disclose the evidence.

Howe v. City of Akron, 801 F.3d 718, 748 (6th Cir. 2015) (quoting *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 396-97 (4th Cir. 2014)). The Court has “broad discretion in applying these factors and

need not apply each one rigidly.” *Bisig v. Time Warner Cable, Inc.*, 940 F.3d 205, 219 (6th Cir. 2019) (internal quotation and citation omitted). “The factors simply lend themselves to the task at the heart of Rule 37(c)(1): separating ‘honest,’ harmless mistakes from the type of ‘underhanded gamesmanship’ that warrants the harsh remedy of exclusion.” *Id.* (quoting *Bentley v. Highlands Hosp. Corp.*, 2016 WL 5867496, at *10 (E.D. Ky.)). The Court finds this case falls into the former, rather than the latter, category given Plaintiffs’ awareness of these witnesses as set forth above. And there is “no binding authority for the proposition that Rule 26(e) requires . . . an explicit statement” that a party “intend[s] to rely on [a particular witness] and his records in moving for summary judgment.” *Baker Hughes Inc. v. S&S Chem., LLC*, 836 F.3d 554, 568 (6th Cir. 2016). In *Baker Hughes*, the Sixth Circuit noted that the objecting party “had both (1) knowledge of Giles and his role in th[e] litigation, and (2) ample time to depose Giles or otherwise seek discovery with respect to Giles and his records. Any failure of Defendants to comply with Rule 26 was therefore a ‘harmless’ violation that did not require the district court to exclude the Giles-related documents.” *Id.* at 568-69.

For these reasons, the Court denies Plaintiffs’ Motion to Strike (Doc. 114).

Motion to Conduct Additional Discovery

Relatedly, Plaintiffs seek to conduct additional discovery, namely “discovery on Defendants’ factual assertions set forth in their affidavits submitted in support of their Motion for Summary Judgment.” (Doc. 115, at 5). Federal Civil Rule 56(d) provides:

(d) When Facts Are Unavailable to the

Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d). The determination on a Rule 56(d) motion is within the district court’s discretion. *In re Bayer Healthcare & Merial Ltd. Flea Control Prods. Mktg. & Sales Practices Litig.*, 752 F.3d 1065, 1074 (6th Cir. 2014). The Sixth Circuit has “cited approvingly other circuits’ view that ‘[a] . . . motion requesting time for additional discovery should be granted almost as a matter of course unless the non-moving party has not diligently pursued discovery of the evidence.’” *Doe v. City of Memphis*, 928 F.3d 481, 490-91 (6th Cir. 2019) (quoting *F.T.C. v.*

E.M.A. Nationwide, Inc., 767 F.3d 611, 623 n.7 (6th Cir. 2014) (further internal quotations and citations omitted)) (alterations in original). There are five factors to consider in a Rule 56(d) motion:

(1) when the appellant learned of the issue that is the subject of the desired discovery; (2) whether the desired discovery would have changed the ruling below; (3) how long the discovery period had lasted; (4) whether the appellant was dilatory in its discovery efforts; and (5) whether the appellee was responsive to discovery requests.

CenTra, Inc. v. Estrin, 538 F.3d 402, 420 (6th Cir. 2008) (quoting *Plott v. Gen. Motors Corp.*, 71 F.3d 1190, 1196-97 (6th Cir. 1995)) (the “Plott factors”). But the “main inquiry is whether the moving party was

diligent in pursuing discovery.” Doe, 928 F.3d at 491 (quoting E.M.A. Nationwide, Inc., 767 F.3d at 623); see also Wilson v. Ebony Constr. LLC, 2018 WL 4743063, at *5 (S.D. Ohio) (“[T]hree of the five Plott factors hinge on issues of timeliness and diligence,” i.e., the first, third, and fourth factors.).

Here, the discovery period ran for ten months (September 2023 to June 2024), and the bulk of Defendants’ documents were turned over early in that time period (September/October 2023). These documents are the ones which Defendants’ motion and witness affidavits are based. Plaintiffs submitted their only written discovery requests a mere two weeks prior to the end of the discovery period.⁷ And Plaintiffs did not raise any discovery dispute promptly upon receipt of Defendants’ motion for summary judgment; instead, it was raised sixty-one days later, after seeking three extensions of time that did not reference any potential discovery-related issue, and not until the day after the opposition brief was filed. The Court finds the clear lack of diligence dictates no further discovery should be permitted. See, e.g., Marie v. Am. Red Cross, 771 F.3d 344, 367 (6th Cir. 2014) (finding no abuse of discretion in denying motion to conduct additional discovery when plaintiff “waited nearly nine months to submit their initial discovery requests, which were served only a few weeks before the discovery deadline”); Williams v. Schismenos, 2017 U.S. Dist. LEXIS 38054, *12-13 (N.D. Ohio) (“Plaintiff also waited more than a month after discovery had closed and summary judgment was pending to allege a discovery dispute. This dilatory conduct weighs heavily against delaying this case any further.”).

For these reasons, Plaintiff's Motion for Additional Discovery (Doc. 115) is denied.

7. The Court notes that pursuant to Local Civil Rule 16.1(b)(6), the discovery deadline "is that date by which all responses to written discovery shall be due . . . and by which all depositions shall be concluded. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with this rule, and discovery requests that seek responses or schedule depositions after the discovery cut-off are not enforceable except by order of the Court for good cause shown." By virtue of Federal Civil Rules 33(b)(2) and 34(b)(2)(A), parties have 30 days to respond to interrogatories and requests for production. Plaintiffs' written discovery requests put Defendants' responses due past the Court's discovery deadline. Nevertheless, Defendants responded within the 30-day time period permitted by the rules, despite the fact that it was past the deadline.

Motion for Summary Judgment

Defendants move for summary judgment on the remaining substantive due process claim, brought pursuant to 42 U.S.C. § 1983. (Doc. 109). They contend each Defendant is entitled to qualified immunity. Defendants moved for summary judgment as to the claims against each of them. In opposition, Plaintiffs contend there are genuine issues of material fact which prevent summary judgment on their claims against Von Sacken and Hickey. In a footnote, Plaintiffs state: "based on discovery to date, Defendants Mowery and West/Elkins did not take any affirmative act which removed Plaintiffs from their

mother and placed them with the Hayneses.” (Doc. 113, at 13 n.1). Cf. *Bennett v. Hurley Med. Ctr.*, 86 F.4th 314, 325 (6th Cir. 2023) (“When a litigant fails to address a claim in response to a motion for summary judgment, that claim is deemed abandoned or forfeited.”). Because the Court has determined the Plaintiffs are not entitled to further discovery, and Plaintiffs concede that they have not identified an affirmative act, Defendants Mowery and West are entitled to summary judgment.

Claims Against Von Sacken and Hickey

Remaining are Plaintiffs’ claims against Von Sacken and Hickey. At core, Plaintiffs assert Von Sacken and Hickey took actions that violated their substantive due process rights; their action (and alleged inaction) resulted in Plaintiffs being placed in the Haynes household where they were subsequently abused. Defendants contend Plaintiffs cannot establish a genuine issue of material fact regarding whether Von Sacken or Hickey violated Plaintiffs’ clearly established constitutional rights.

The Fourteenth Amendment’s Due Process Clause limits “the State’s power to act.” *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 195 (1989). It “does not impose on the state an affirmative duty to protect individuals against private acts of violence.” *Engler v. Arnold*, 862 F.3d 571, 575 (6th Cir. 2017) (citation omitted). Rather, “[i]ts purpose was to protect the people from the State, not to ensure that the State protected them from each other.” *DeShaney*, 489 U.S. at 196. There are two exceptions to this maxim. One arises when the plaintiff is harmed while in state custody. See *Lipman v. Budish*, 974 F.3d 726, 741 (6th Cir. 2020). Exception two is the state-created-danger theory. It allows a

plaintiff to hold the state responsible for harm caused by a third party if:

(1) an affirmative act by the state which either created or increased the risk that the plaintiff would be exposed to an act of violence by a third party; (2) a special danger to the plaintiff wherein the state's actions placed the plaintiff specifically at risk, as distinguished from a risk that affects the public at large; and (3) the state knew or should have known that its actions specifically endangered the plaintiff.

Cartwright v. City of Marine City, 336 F.3d 487, 493 (6th Cir. 2003) (citation omitted).

Plaintiffs argue there are genuine issues of material fact remaining on their due process claim pursuant to the state-created danger theory. The Court addresses each element below. As with all § 1983 actions, each defendant's liability "must be assessed individually based on his [or her] own actions." *Binay v. Bettendorf*, 601 F.3d 640, 650 (6th Cir. 2010); see also *Jones v. City of Elyria*, 947 F.3d 905, 913 (6th Cir. 2020) ("[Courts] do not lump together each of the relevant government actors. Rather, [they] assess each actor's liability on an individual basis.").

AFFIRMATIVE ACT

"Whether conduct amounts to an 'affirmative act' in this context is at times a difficult question." *Engler*, 862 F.3d at 575. "[A] failure to act is not enough." *Lipman*, 974 F.3d at 744. The key "question is whether the individual 'was safer before the state action than . . . after it.'" *Jasinski v. Tyler*, 729 F.3d

531, 539 (6th Cir. 2013) (quoting *Cartwright*, 336 F.3d at 493).

Defendants seem to briefly contend Plaintiffs cannot satisfy this element because they “were initially in a home where the youngest child was starved and beaten by an unknown assailant until his ribs and other bones were broken.” (Doc. 109, at 16). But the Court rejects this argument and declines to find that it must weigh the physical abuse of one child against the placement of a different child in an environment involving sexual abuse to determine which is “safer”. On the facts before the Court, Plaintiffs were certainly less safe from sexual abuse following their placement in the Haynes home. Cf. R.S., 2022 WL 17730531, at *4 (stating, at the pleadings stage in the instant case: “Plaintiffs went from a neglectful (and in the baby’s case, abusive) home to a living hell, which certainly meets the definition of an affirmative act.”).

Plaintiffs contend that “Von Sacken and Hickey took actions which removed Plaintiffs from their home and placed them with the Haynes[es].” (Doc. 113, at 13 n.1). They cite Von Sacken’s statement on the home study that the Hayneses were a low-risk placement and Hickey’s participation in completing that home study as the “affirmative act” at issue. *Id.* at 14-17, 18-20. As the Sixth Circuit found, the action of recommending to the juvenile court that the children be removed and placed with the Hayneses is a sufficient affirmative act. R.S., 2022 WL 17730531, at *4. As discussed below, discovery has changed the facts from what they were alleged to be at the pleadings stage (where it was alleged Von Sacken knew of substantiated sexual abuse allegations against the Hayneses but failed to investigate them).

But the Court presumes at least *arguendo*, for purposes of proceeding through the remaining steps of the analysis, that taking actions to recommend placement can constitute the affirmative act necessary under the state created danger exception.

SPECIAL DANGER

Under the second prong, Plaintiffs must show each Defendant's actions "place[d] [them] specifically at risk, as distinguished from a risk that affects the public at large." *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1066 (6th Cir. 1998). The Sixth Circuit explained that "[t]his element is met when 'the government could have specified whom it was putting at risk, nearly to the point of naming the possible victim or victims.'" R.S., 2022 WL 17730531, at *5 (citing *Jones v. Reynolds*, 438 F.3d 685, 696 (6th Cir. 2006)). At the pleadings stage, the Sixth Circuit found this element satisfied because "Plaintiffs' complaint plausibly alleges a special danger because only R.S., T.H., and their siblings were subject to Von Sacken's placement recommendation." *Id.* The same is true here – Von Sacken, and subsequently Hickey, conducted the home study upon which Plaintiffs' placement with the Hayneses was at least partially based.

DELIBERATE INDIFFERENCE

Defendants ultimately contend they are entitled to qualified immunity and therefore summary judgment because Plaintiffs have not established that either Von Sacken or Hickey acted with deliberate indifference. The Court agrees that Plaintiffs' claims falter at the third prong of the state-created danger exception in light of the evidence presented.

Under the third prong, Plaintiffs must show each Defendant acted with the requisite culpability to establish a constitutional violation. See *Arledge v. Franklin Cnty.*, 509 F.3d 258, 263 (6th Cir. 2007). Plaintiffs must show that each Defendant “knew or should have known that [her] actions specifically endangered the plaintiff.” *Cartwright*, 336 F.3d at 493. The Sixth Circuit has equated deliberate indifference with subjective recklessness, meaning “the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *McQueen v. Beecher Cmty. Schs.*, 433 F.3d 460, 469 (6th Cir. 2006) (quoting *Sperle v. Mich. Dep’t of Corr.*, 297 F.3d 483, 493 (6th Cir. 2002)). Subjective recklessness can “be proven circumstantially by evidence showing that the risk was so obvious that the official had to have known about it.” *Bukowski v. City of Akron*, 326 F.3d 702, 710 (6th Cir. 2003). Moreover, the qualified immunity doctrine protects government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Qualified immunity is an affirmative defense; once a defendant raises it, the burden shifts to the plaintiff to demonstrate: (1) the defendant’s acts violated a constitutional right, and (2) the right at issue was

clearly established at the time of the defendant's alleged misconduct. *T.S. v. Doe*, 742 F.3d 632, 635 (6th Cir. 2014). A “clearly established right”, for the purpose of determining whether a public official is entitled to qualified immunity, “is one that is ‘sufficiently clear that every reasonable official would have understood that what he is doing violates that right.’” *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (quoting *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012)). “For a right to be clearly established, ‘existing precedent must have placed the statutory or constitutional question beyond debate.’” *Bell v. City of Southfield*, 37 F.4th 362, 368 (6th Cir. 2022) (emphasis in original) (quoting *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 8 (2021)). “The plaintiff bears the burden of showing that the right was clearly established” and, to meet such a burden, “must provide on-point caselaw that would bind a panel of [the Sixth Circuit].” *Bell*, 37 F.4th at 367-68.

Defendants here contend they are entitled to qualified immunity because Plaintiffs cannot establish the mental state required – deliberate indifference – for a state-created danger claim. Plaintiffs respond that “Von Sacken had information in the SACWIS report contained in the home study for the placement of [Plaintiffs] which showed that the Hayneses had a history which involved abuse cases” and “also should have known that Lisa Haynes had previously been convicted of identity fraud under R.C. 2913.49, which can be a disqualifying conviction for adults seeking to have children placed with them.” (Doc. 113, at 17-18). They argue similarly as to Hickey: “Like Von Sacken, Hickey had information in the SACWIS report which showed that the Hayneses had a history involving abuse cases. Hickey also

should have known about Lisa Haynes'[s] prior convictions and jail sentences. Hickey also should have known that putting the children with the Hayneses would place them in danger." *Id.* at 20. Thus, Plaintiffs rely solely on the SACWIS records and Alisa Haynes's prior conviction on this prong. The Court addresses each below.

SACWIS Records

Defendants contend Plaintiffs have pointed to no clearly established case law to show either Von Sacken or Hickey acted with deliberate indifference in taking actions which resulted in their placement with the Hayneses, where a records check in SACWIS revealed only abuse or neglect claims previously determined to be unsubstantiated or, where substantiated, the individuals were not listed as the alleged perpetrator.

Again, to establish deliberate indifference, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [s]he must also draw the inference." *McQueen*, 433 F.3d at 469 (quoting *Sperle*, 297 F.3d at 493).

In contrast to the record at the pleadings stage, the developed discovery record demonstrates it is undisputed that the SACWIS system at the time of Plaintiffs' placement contained no substantiated abuse or neglect allegations where Alisa Haynes was the alleged perpetrator. And although it contained one record in which Anthony Haynes was identified as the alleged perpetrator of sexual abuse, that claim was found to be unsubstantiated. That is, there were no claims of abuse against Alisa Haynes, and the only claim against Anthony had been determined to be

unsubstantiated. See Docs. 109-11 (Alisa), 109-10 (Anthony). The record reflects that Von Sacken reviewed those prior allegations as part of her preliminary home study. (Doc. 106-1, at 75-82, 129-32). Plaintiffs seemingly argue Von Sacken (and Hickey) should have done more: “Von Sacken and . . . Hickey had this information available to them when they created the home safety plan for the children in July 2014. They never followed up on any of this information to find out what the circumstances of the entries were for Lisa Haynes or Anthony Haynes.” (Doc. 113, at 2-3) (citing “Summary of Referrals” section of home study). Plaintiffs provide no citations for these factual assertions in their brief. And Von Sacken explicitly testified that she “read . . . what is contained in the intake and then reviewed . . . the narrative when the case was finalized” (Doc. 106-1, at 106), and “reviewed the allegations, reviewed the dispositions and what happened in the case”, *id.* at 129.

It is worth reiterating that deliberate indifference requires a showing that the individual is

(1) “aware of facts from which the inference could be drawn that a substantial risk of serious harm exists”, and (2) “also dr[e]w that inference”. *McQueen*, 433 F.3d at 469. Here, the undisputed evidence reflects that Von Sacken reviewed the allegations in SACWIS and determined there were no substantiated allegations as determined by prior investigations. (Doc. 106-1, at 77-82, 132). It also reflects that Hickey reviewed the information on the completed home study “but nothing must have stood out to [her].” (Doc. 107-1, at 35). Although Plaintiffs have demonstrated that allegations of abuse had been made against Anthony Haynes prior to their placement, they have

not demonstrated that being aware of abuse allegations that were investigated and determined to be unsubstantiated, or records on which an individual was not the alleged perpetrator of abuse were “facts from which the inference could be drawn that a substantial risk of serious harm exists”. McQueen, 433 F.3d at 469. Further, even if they had, they have certainly not provided facts from which a jury could conclude that either Von Sacken or Hickey “dr[e]w the inference”. Id. Nor have Plaintiffs presented facts from which a jury could conclude that it was subjectively reckless to rely on these previous investigatory determinations. It is tragic that the risk identified in the abuse report determined by previous investigators to be unsubstantiated is precisely the harm ultimately inflicted upon Plaintiffs. But the benefit of hindsight does not demonstrate that either Von Sacken or Hickey acted with deliberate indifference. For these reasons, the Court finds Plaintiffs have not demonstrated a question of material fact regarding Defendants’ deliberate indifference as it relates to the SACWIS records.

Prior Convictions

In their opposition brief, Plaintiffs paste the two records described in the above background section, which contain references to Alisa Haynes serving jail time, then contend:

Neither Rebecca Von Sacken nor Sue Hickey reviewed this information, which would have alerted them to Lisa Haynes’ previous convictions in 2000 for attempted identity theft, attempted misuse of a credit card, and attempted forgery. See Lucas County Common Pleas Case No. G-48010CR0200002865-000. Notably, Lisa Haynes’ conviction in 2000 under R.C.

2913.49 (identity fraud) could have disqualified her from allowing Plaintiffs to be placed with her. LCCS would have had to review her conviction and probation. Lisa Haynes' probation for that conviction had been terminated unsuccessfully after she had been in jail in 2004 and again in 2006 for violating the terms of her probation. Lisa Haynes had not successfully completed her probation for these offenses, yet Plaintiffs were placed in her home. Neither Von Sacken nor Hickey obtained or reviewed this information before placing the children with the Hayneses, even though it was readily available to them.

(Doc. 113, at 5-6). Other than the included case citation, Plaintiffs' brief provides no other citations for the statements in the above-quoted paragraph. The Court notes that Plaintiffs' counsel asked no questions of either Von Sacken or Hickey at their depositions regarding these records or these now-cited specific prior convictions. Von Sacken testified a criminal history was run and there were no disqualifying convictions (Doc. 106-1, at 73-75, 109-13, 130-31), and Ryan Parker avers that he was instructed by his supervisor "to ensure criminal records checks were completed" and he "found the records checks with no disqualifying history" (Doc. 109-2, at ¶ 9).⁸ Further, at the time Plaintiffs were placed with the Hayneses, they were already caring for another child with LCCS approval. *Id.* And although Plaintiffs assert the cited conviction "could have disqualified her", they point the Court to nothing from which to assess the accuracy of that statement. Defendants respond that the conviction was not disqualifying.

Resolving the question of whether Alisa Haynes’s convictions from the year 2000 were disqualifying is not necessary. Even assuming the convictions were disqualifying, and that Von Sacken or Hickey should have known about it and did not, such a failure does not rise to the level of deliberate indifference in the present context; Plaintiffs have pointed to no clearly established law suggesting it does.

Deliberate indifference is a high bar—one that surpasses mere negligence. *Doe v. Jackson Loc. Sch. Dist. Bd. of Educ.*, 954 F.3d 925, 932 (6th Cir. 2020). “[O]nly extreme misconduct”—conduct that shocks the conscience—“will violate the [Due Process] clause.” *Id.* at 933. Plaintiffs’ argument appears to conflate the affirmative act prong with the deliberate indifference prong. That is, taken to its logical conclusion, Plaintiffs’ argument is that if Von Sacken and Hickey had properly identified that Alisa Haynes had a disqualifying criminal conviction, they would not have been placed with the Hayneses and would not have suffered as they did. But this is not the standard. Rather, the Sixth Circuit has explained, the standard “has two parts”:

8. Defendants also submit, in conjunction with their motion for summary judgment, criminal history records checks from September 2014 that indicate no records for either Anthony or Alisa Haynes (identified as “Lisa Haynes”). (Doc. 109-18).

An official must “be aware of facts from which the inference could be drawn that a substantial risk of

serious harm exists, and he must also draw the inference.” *Ewolski*, 287 F.3d at 513 (quoting *Farmer*, 511 U.S. at 837). “Having drawn the inference,” the official next must “act or fail to act in a manner demonstrating ‘reckless or callous indifference’ toward the individual’s rights.” *Id.* (citation omitted). Given the call for caution in this area, *Collins*, 503 U.S. at 125, our cases set demanding rules for both parts of this standard.

Id. at 933. As to the first part, to “be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,” “a public official must know of more than a general risk of harm. The official must know of the specific risk that later develops.” *Id.* at 933-34 (quotation omitted) (emphasis in original). Here, even if it is somehow enough that Von Sacken and Hickey should have known of the prior convictions (or did know, although Plaintiffs have presented no evidence that they did), there is nothing to suggest that such a conviction would support an inference that there was a substantial risk of the specific harm suffered here, child abuse. Cf. *McQueen*, 433 F.3d at 469-70 (finding a teacher’s knowledge of a student’s “sometimes violent behavior” was not enough to prove that she knew that student posed a risk of gun violence).

The Court therefore finds Defendants have established their entitlement to summary judgment on the 42 U.S.C. § 1983 substantive due process claim against Von Sacken and Hickey.

CONCLUSION

For the foregoing reasons, good cause appearing, it is ORDERED that Plaintiffs' Motion to Strike (Doc. 114) be, and the same hereby is, DENIED; and it is FURTHER ORDERED that Plaintiffs' Motion to Conduct Additional Discovery (Doc. 115) be, and the same hereby is, DENIED; and it is FURTHER ORDERED that Defendants' Motion for Summary Judgment (Doc. 109) be, and the same hereby is, GRANTED.

s/ James R. Knepp II

UNITED STATES DISTRICT JUDGE

Dated: March 27, 2025

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APPENDIX D
42 U.S.C. § 1983

42 U.S. Code § 1983 - Civil action for deprivation of rights

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.