UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

FRANCISCO DE LUNA, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. M-10-268
	§	
HIDALGO COUNTY, TEXAS, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS AND DENYING DEFENDANTS' MOTION TO STRIKE

I. Factual and Procedural Background

Now before the Court are the Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) and the Motion to Strike pursuant to Rule 12(f) filed by Defendants Hidalgo County, Texas ("the County"); Guadalupe Trevino, in his official capacity as Hidalgo County Sheriff ("the Sheriff"); and Mary Alice Palacios, Gilberto Saenz, Jesus Morales, Bobby Contreras, Rosa E. Trevino, Luis Garza, Ismael Ochoa, Charlie Espinosa, and E. "Speedy" Jackson, in their official capacities as Hidalgo County Magistrates and Justices of the Peace ("the Judicial Defendants"). (Doc. 24). Plaintiffs Francisco De Luna and Elizabeth Diaz, individually and on behalf of all others similarly situated, challenge Defendants' alleged federal constitutional violations through this suit brought pursuant to 42 U.S.C. § 1983. (Doc. 23-1). Plaintiffs claim that by consistently jailing individuals aged 17 and older for the non-payment of fines and associated costs without making a determination of indigency and good faith effort to discharge the outstanding debt, and without offering alternatives to incarceration, Defendants violate procedural due process and the guaranteed equal protection right to be free of discrimination based on economic status. *Id.* at ¶¶ 1, 168-89.

Plaintiffs De Luna and Diaz, both 18 years old at the time this lawsuit was filed, were allegedly ordered incarcerated by Judicial Defendants Trevino and Contreras, respectively,[1] after each Plaintiff failed to appear pursuant to a "Notice of Continuing Obligation to Appear" ("NCOA") issued pursuant to Texas Code of Criminal Procedure Article 45.060. *Id.* at ¶¶ 43, 91, 94, 107, 129, 134, 145. Soon after each Plaintiff turned 17 years old, a case manager for Judicial Defendant Palacios issued the NCOA for the purpose of requiring Plaintiffs to answer to outstanding charges for fine-only offenses based on underage conduct. *Id.* at ¶¶ 91, 129. The charges consisted of tickets issued to De Luna for school rule violations under the former and current versions of Texas Education Code § 37.102 and tickets issued to De Luna and Diaz for failure to attend school under Texas Education Code § 25.094. *Id.* at ¶¶ 77-79, 84, 122-23. The tickets were initially referred for adjudication to Palacios and then transferred to the Hidalgo County juvenile court, where Plaintiffs believed the charges were resolved. *Id.* at ¶¶ 85, 88-89, 125, 127. However, no document in Plaintiffs' files at the justice court reveals the disposition of the charges in the juvenile court, leading to the issuance of the NCOA by Palacios's staff. *Id.* at ¶¶ 90-91, 128-29. Neither Plaintiff received the NCOA, apparently because Palacios's staff mailed it to an incorrect address. *Id.* at ¶¶ 91-92, 129-30.[2] When De Luna and Diaz failed to appear pursuant to the NCOA, Palacios signed separate arrest warrants for each of their pending charges. *Id.* at ¶¶ 44, 94, 134. Subsequent to Plaintiffs' arrests, the Magistrates presiding over their cases did not inquire into Plaintiffs' ability to pay the outstanding fines or make a written determination of indigency and good faith effort to discharge the fines as required by Texas

[1] Plaintiffs allege that all nine Judicial Defendants are Hidalgo County Justices of the Peace who serve as Magistrates at the Hidalgo County Jail "on a rotating basis, performing arraignments and issuing process necessary to authorize the confinement of individuals in the jail." (Doc. 23-1 at ¶ 19).

[2] Plaintiffs allege that neither De Luna nor Diaz received written notice from the justice court, as required by statute, informing them of their obligation to notify the court if their address changed, and that they were never told of this obligation. *Id.* at ¶¶ 93, 133.

Code of Criminal Procedure Article 45.046. *Id.* at ¶¶ 103-04, 146-47. Further, the Magistrates failed to offer Plaintiffs the opportunity to discharge the fines through community service, as is authorized under Texas Code of Criminal Procedure Article 45.049, or to pay the fines in installments or discharge the debt through other means. *Id.* at ¶¶ 105-06, 148-49. Instead, the Magistrates signed commitment orders authorizing Plaintiffs' confinement in the Hidalgo County jail "'for the time required by law to satisfy the amount of such fines and costs'" as were assessed for each charge. *Id.* at ¶¶ 107, 145. De Luna and Diaz each served 18 days in jail. *Id.* at ¶¶ 114, 156.[3]

Plaintiffs allege that the above practices are "routine" and seek to represent a proposed class consisting of "[a]ll individuals who have been or may in the future be adjudicated or processed for commitment to jail for unpaid fines or costs, pursuant to the provisions of Texas Code of Criminal Procedure Art. 45.046, while in the custody of the Hidalgo County Sheriff's Office." *Id.* at ¶¶ 1, 161. On their own behalf and on behalf of the class, Plaintiffs seek declaratory and injunctive relief against the Judicial Defendants and the Sheriff. *Id.* at ¶¶ 168-84, 191. More specifically, Plaintiffs seek a judgment declaring as unconstitutional and enjoining the following practices: the Judicial Defendants' practice of ordering the incarceration of persons for the non-payment of fines and associated costs without making a determination of indigency and good faith effort to discharge the outstanding debt, and without offering alternatives to incarceration; and the Sheriff's practice of processing, booking, and confining persons under these circumstances. *Id.* On their own behalf, the named Plaintiffs also seek money damages from the County for the alleged "psychological damage, humiliation, mental

[3] Plaintiffs allege that De Luna served less than the full 132 days needed to discharge his fines due to the intervention of the Hidalgo County Public Defender, who noticed De Luna's confinement in a random review of jail logs and submitted a writ of habeas corpus seeking his release. (Doc. 23-1 at ¶ 115). A County Court at Law Judge granted the writ and discharged De Luna "'from further illegal confinement'" for his offenses. *Id.*

anguish, and emotional injury" they suffered as a result of the County's "policy or custom" regarding the commitment of persons to jail for non-payment of fines. *Id.* at ¶¶ 186-89, 191. The named Plaintiffs further seek expungement of their criminal records with respect to their school-related charges and incarcerations pursuant to those charges. *Id.* at ¶ 191. Finally, Plaintiffs request attorney's fees pursuant to 42 U.S.C. § 1988. *Id.*

Through their Motion to Dismiss, Defendants request the dismissal of only Plaintiffs' classwide claims for declaratory and injunctive relief against the Judicial Defendants and the Sheriff on grounds of absolute judicial immunity (the Judicial Defendants), absolute quasi-judicial immunity (the Sheriff), and Eleventh Amendment immunity (all individual Defendants). (Doc. 24).[4] In the alternative, Defendants ask to dismiss the individual Defendants as "unnecessary" parties because Plaintiffs can secure complete relief from the remaining Defendant, the County. *Id.* Defendants also argue in the alternative that Judicial Defendants Morales and Jackson should be dismissed as Defendants because they do not participate as Magistrates on a rotating basis and therefore do not conduct the hearings at which the alleged constitutional violations occur. *Id.* Through their Motion to Strike, Defendants seek to strike portions of Plaintiffs' pleading as "immaterial" to the due process and equal protection claims asserted. *Id.* For the reasons set forth below, the Court finds that the Motion to Dismiss should be granted insofar as it requests the dismissal of Plaintiffs' claims for injunctive relief against the Judicial Defendants and the dismissal of the Sheriff as a party, and that the Motion should be denied in all other respects. Also for the reasons explained herein, the Court finds that Defendants' Motion to Strike should be denied in its entirety.

[4] The Court recognizes that the Motion to Dismiss provides substantial argument regarding the Judicial Defendants' and the Sheriff's absolute immunity from suit for money damages under § 1983. (Doc. 24). However, the Court need not address this argument because Plaintiffs' First Amended Complaint makes clear that they seek money damages only against the County. (Doc. 23; Doc. 23-1 at ¶ 186).

II. Motion to Dismiss

A. Standard of Review

The applicable standard of review for a motion to dismiss for failure to state a claim under Rule 12(b)(6) is the same as the standard governing a Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction. *Benton v. United States*, 960 F.2d 19, 21 (5th Cir. 1992). To survive a motion to dismiss under these rules, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008) (applying *Twombly* "plausible set of facts" standard of review to Rule 12(b)(1) motion). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555 (internal citations and footnote omitted).

B. Absolute Immunity and Amendment to § 1983

In resolving Defendants' Motion, it is first important to reiterate that Plaintiffs have sued the Judicial Defendants and the Sheriff in their official capacities only. "The performance of official duties creates two potential liabilities, individual-capacity liability for the person and official-capacity liability for the municipality." *Turner v. Houma Mun. Fire & Police Civil Serv. Bd.*, 229 F.3d 478, 484 (5th Cir. 2000). A suit against a defendant in his official capacity "'generally represent[s] only another way of pleading an action against an entity of which an officer is an agent.'" *Id.* at 483 (quoting *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)). "Accordingly, a § 1983 suit naming defendants only in their 'official capacity' does not involve personal liability to the individual defendant." *Id.* Concomitantly, defenses such as absolute immunity that only protect defendants in their individual capacities are not available in official-

capacity suits. *Id.*; *see also Graham*, 473 U.S. at 166-67. Still, as Defendants point out, § 1983 was amended in 1996 to provide 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." 42 U.S.C. § 1983 (emphasis added); *see* (Docs. 24, 31). This language does not exclude official-capacity claims from its application. Further, in *Bauer v. Texas*, 341 F.3d 352, 357 (5th Cir. 2003), the Fifth Circuit recognized that the plaintiff had sought only declaratory relief against a judge sued in his official capacity in light of the amendment to § 1983. The Court thus agrees with Defendants that Plaintiffs cannot seek injunctive relief against the Judicial Defendants, whether sued individually or in their official capacities, for acts or omissions taken in their judicial capacities because they have not alleged or shown that the statutory exceptions apply, *i.e.*, that a declaratory decree has been violated or declaratory relief is otherwise unavailable. *See* (Docs. 24, 31). Further, the language of the amendment, *Bauer*, and additional authority located by the Court instruct that declaratory relief remains available in suits against judicial officers under § 1983. *See Bolin v. Story*, 225 F.3d 1234, 1242 (11th Cir. 2000) (amendment limits relief available to declaratory relief); *Brandon E. ex. rel. Listenbee v. Reynolds*, 201 F.3d 194, 198 (3d Cir. 2000) (amendment was "not intended to alter the availability of declaratory relief against judicial officers.").

Plaintiffs argue that their claims for injunctive relief (or if not otherwise available, declaratory relief) should not be dismissed because § 1983 provides for their dismissal only if the challenged acts or omissions were taken in a "judicial" capacity and these Defendants' "action(s) in failing to inquire into the financial resources of the Plaintiffs prior to their confinement in the Hidalgo County jail is administrative in nature…" (Doc. 30). Cases addressing judicial

immunity provide that "'[w]hether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.'" *Davis v. Tarrant Cnty.*, 565 F.3d 214, 222 (5th Cir. 2009) (quoting *Mireles v. Waco*, 502 U.S. 9, 12 (1991)). "'[T]he relevant inquiry is the 'nature' and 'function' of the act, not the 'act itself.' In other words, [a court should] look to the particular act's relation to a general function normally performed by a judge....'" *Id.* (quoting *Mireles*, 502 U.S. at 13). The Fifth Circuit has adopted a four-part test for determining whether a judge's acts are judicial in nature: "(1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity." *Id.* at 222-23 (citing *Ballard v. Wall*, 413 F.3d 510, 515 (5th Cir. 2005)). "These factors are broadly construed in favor of immunity." *Id.* at 223 (citing same).

The plaintiff in *Davis*, a criminal defense attorney practicing primarily in Tarrant County, filed suit after the county's criminal district judges denied his application to be included on the list of attorneys eligible for court appointment in county felony cases. *Id.* at 216. The plaintiff sued the defendant judges and the county under § 1983, asserting that the establishment and implementation of a policy for the appointment of counsel and the denial of the plaintiff's application violated his due process and equal protection rights. *Id.* at 216-17. The court held after applying the above-described legal standard that the challenged act of "selecting applicants for inclusion on a rotating list of attorneys eligible for court appointments is inextricably linked to and cannot be separated from the act of appointing counsel in a particular case, which is

clearly a judicial act, and therefore…the judges' acts at issue in this suit must be considered to be protected by judicial immunity." *Id.* at 226. Plaintiffs claim that the challenged acts at issue here are less like *Davis* and more akin to those addressed in *Morrison v. Lipscomb*, 877 F.2d 463, 465-66 (6th Cir.1989), in which the Sixth Circuit determined that judicial immunity did not bar a constitutional challenge to a chief judge's declaration of a holiday moratorium on the issuance of writs of restitution. The court determined that the moratorium constituted an administrative rather than a judicial act because it was a general order not connected to any particular litigation that did not alter the rights and liabilities of any parties but rather instructed court personnel on how to process the petitions made to the court. *Morrison*, 877 F.2d at 466. According to Plaintiffs, the Judicial Defendants' "policy" of failing to inquire into indigency is similarly administrative because it "means that no decision related to indigency determination remains to be made in individual adjudications." (Doc. 30).

The Court finds Plaintiffs' attempted factual distinction unavailing. The Judicial Defendants' alleged failure to make indigency determinations or offer alternatives to incarceration prior to committing individuals to jail for non-payment of fines are acts or omissions occurring during a commitment hearing, indisputably a function normally performed by a judge. *See* TEX. CODE CRIM. PROC. Art. 45.046. The hearing occurred in a courtroom setting, directly concerned the adjudication of individual cases before the court, and arose directly out of an appearance before the Judicial Defendants acting in their official capacities as Magistrates. Through their claims for declaratory and injunctive relief against the Judicial Defendants, Plaintiffs are challenging acts or omissions taken within the Defendants' judicial capacities.

For the above reasons, the Court finds that Plaintiffs are statutorily barred from seeking injunctive relief, but not declaratory relief, against the Judicial Defendants in their official capacities. The statutory bar to suit for injunctive relief does not facially apply to the Sheriff, however, and the Court is bound by the holding in *Turner* that "absolute quasi-judicial immunity…[is] unavailable in official-capacity suits." *Turner*, 229 F.3d at 483; *accord VanHorn v. Oelschlager*, 502 F.3d 775, 779 (8th Cir. 2007) ("Case law from our sister circuits…supports the conclusion that absolute, quasi-judicial immunity only extends to claims against defendants sued in their individual—not official—capacities."). Therefore, Plaintiffs may not seek dismissal of their official-capacity claims against the Sheriff on these grounds.

C. Eleventh Amendment Immunity

The Court now turns to Defendants' alternate argument that the individual Defendants are immune from suit under the Eleventh Amendment. (Doc. 24). It is well-settled that the Eleventh Amendment to the U.S. Constitution bars claims against the State of Texas brought pursuant to § 1983. *E.g.*, *Aguilar v. Tex. Dep't of Criminal Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998). Counties do not enjoy the same immunity. *See Crane v. State of Tex.*, 759 F.2d 412, 432 (5th Cir. 1985). Again, Plaintiffs' official-capacity claims against the Judicial Defendants and the Sheriff are in effect claims against the entities of which these individuals are agents. "'A local judge acting in his or her judicial capacity is not considered a local government official whose actions are attributable to the county.'" *Davis*, 565 F.3d at 227 (quoting *Krueger v. Reimer*, 66 F.3d 75, 77 (5th Cir. 1995)). Rather, "Texas judges are entitled to Eleventh Amendment immunity for claims asserted against them in their official capacities as state actors," subject to the well-settled exception that "the Eleventh Amendment does not bar claims for prospective relief against state officials acting in their official capacity." *Id.* Plaintiffs seek only prospective relief against the

Judicial Defendants in their official capacities as judges, and therefore the Eleventh Amendment does not bar the claims against them.

With respect to the Sheriff, it is clear that in carrying out the alleged unconstitutional practice of jailing individuals for non-payment of fines under the circumstances presented here, this Defendant was acting as an agent of the County. *See Crane*, 759 F.2d at 432 (individual defendants sued under § 1983 for roles they played in establishing and implementing unconstitutional county policy of issuing misdemeanor arrest warrants without probable cause acted as county and not state officials). Plaintiffs' allegations do not suggest that the Sheriff took any action on behalf of the State of Texas—in fact, Plaintiffs allege that the challenged incarcerations violate state law—and thus Plaintiffs' official-capacity claims against this Defendant equate to claims against the County itself. *See id.* ("The system [the defendants] created and controlled violated Texas law; thus, it can scarcely be said to represent the official policy of the State of Texas."). Therefore, the Sheriff in his official capacity is not immune to suit under the Eleventh Amendment.[5]

D. Dismissal of Individual Defendants as "Unnecessary" Parties

Defendants support their final argument—that the individual Defendants should be dismissed as parties to the action because the County has also been sued—by appealing to federal rules that govern the required and permissive *joinder* of parties, not their dismissal. *See* (Doc. 24); FED. R. CIV. P. 19, 20. Further, for the reasons explained *supra*, the Court cannot dismiss the Judicial Defendants as "unnecessary" parties because the claims against them do not equate to claims against the County. In contrast, the official-capacity claims against the Sheriff are in reality claims against the County, and under these circumstances case law permits this

[5] Even were the Sheriff considered a state actor, the Eleventh Amendment would not bar a request for prospective relief against him. *See Davis*, 565 F.3d at 227.

Defendant's dismissal on the asserted basis that his presence in this suit is unnecessary. *See*, *e.g.*, *Johnson v. City of Houston*, 2010 WL 3909929, at *6 (S.D.Tex. Sept. 30, 2010) (§ 1983 official-capacity claims against police chief dismissed pursuant to Rule 12(b)(6) motion because city also named as defendant). The Court will therefore dismiss the Sheriff as a party to this action and construe the claims against him as asserted against the County.

E. Judicial Defendants Morales and Jackson

In the alternative, Plaintiffs ask the Court to dismiss Judicial Defendants Morales and Jackson because they "factually have no liability," in that they do not participate as Magistrates on a rotating basis and therefore never have the opportunity to conduct the commitment hearings at which the alleged unconstitutional acts or omissions occur. (Doc. 24). The Court is confined to the pleadings in evaluating whether Plaintiffs have stated a claim against these Defendants, and Defendants present no evidence of the alleged "facts" that would convert the Motion into one for summary judgment. *See* FED. R. CIV. P. 12(d). Therefore, Plaintiffs' alternate request to dismiss Morales and Jackson must be denied.

III. Motion to Strike

Defendants' Motion to Strike requests that the Court strike portions of Plaintiffs' complaint under Rule 12(f), which allows a court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." FED. R. CIV. P. 12(f); *see* (Doc. 24). Rule 12(f) motions to strike are generally disfavored and should not be granted unless the challenged portions of the pleading "have no possible relation to the controversy and may cause prejudice to one of the parties." *E.g.*, *Am. S. Ins. Co. v. Buckley*, 748 F.Supp.2d 610, 626 (E.D.Tex. 2010); *see also Augustus v. Bd. of Pub. Instruction of Escambia Cnty.*, 306 F.2d 862, 868 (5th Cir. 1962) (motion to strike is "'a drastic remedy to be resorted to only when

required for the purposes of justice'" and "'should be granted only when the pleading to be stricken has no possible relation to the controversy'") (quoting *Brown v. Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir. 1953)). Also, "[a] disputed question of fact cannot be decided on [a] motion to strike." *Augustus*, 306 F.2d at 868.

Defendants first challenge the allegations contained in ¶¶ 1-9, 15-16, 21-47, 70-96, 112, 118-43, and 153 of Plaintiffs' pleading as immaterial, and therefore potentially scandalous, because they pertain to the nature of the fines imposed on individuals and how they were incurred, and to the deprivation of counsel, *not* to the only alleged due process and equal protection violations at issue—that is, the failure to conduct indigency determinations and offer alternatives to incarceration. (Doc. 24). The specific paragraphs challenged on this basis include Plaintiffs' summary of the lawsuit contained within the "Preliminary Statement" section of the complaint (¶¶ 1-9), the paragraphs identifying the named Plaintiffs in the "Parties" section (¶¶ 15-16), and those allegations in the "Facts" section which detail the following: the legal consequences of failure to attend school charges in Hidalgo County and how those charges are adjudicated in Palacios's court (¶¶ 21-47); the estimated number of individuals incarcerated for school-related tickets (¶¶ 70-73); how De Luna and Diaz acquired their school-related charges and how those charges were adjudicated in the justice and juvenile courts (¶¶ 74-96, 118-43); and that each named Plaintiff lacked counsel at the commitment hearing and immediately prior to their incarcerations (¶¶ 112, 153). Although the Court agrees with Defendants that the above-cited allegations do not directly concern the alleged unconstitutional conduct occurring at the commitment hearings and after, these allegations underlie the asserted need for prospective relief on a classwide basis and are potentially relevant to a determination of the damages sustained by the named Plaintiffs. The Court cannot say that the allegations have no possible relation to the

case, nor is their description of the backdrop against which the alleged due process and equal protection violations occur so prejudicial as to justify striking them from the complaint.

In the alternative, Defendants advance more specific reasons for why the Court should strike the allegations contained in ¶¶ 1, 80-84, 87, 99, 100, 114, 118-24, 141, 154, 156, and 160 of the complaint. (Doc. 24). Defendants challenge ¶ 1, in which Plaintiffs describe the lawsuit as addressing the jailing of "teens age seventeen and older," as "immaterial and misleading" because persons aged 17 and older are legally classified as adults. *Id.* The Court finds that the age of persons incarcerated is relevant insofar as it underscores the asserted need for classwide relief, as Plaintiffs go on to allege that persons routinely become subject to arrest and then incarceration for non-payment of school-related, fine-only offenses after failing to appear pursuant to the NCOA sent by Palacios's court soon after they turn 17. *See* (Doc. 23-1 at ¶¶ 41-47). Further, that the opening paragraph of a lengthy complaint does not affirmatively state that persons aged 17 and older are adults is not somehow misleading, given that Plaintiffs' ensuing allegations acknowledge this fact. *See id.*

Defendants also claim that the allegations in ¶¶ 80-84 and 118-24 should be stricken as immaterial because they relate only to the treatment of the named Plaintiffs by Edinburg Consolidated School District, a non-party to this suit. (Doc. 24). The Court finds that these paragraphs provide background regarding the school-related charges against De Luna and Diaz that eventually formed the bases for their respective incarcerations, and therefore are not so irrelevant as to require the Court to strike them from the complaint.

Defendants also challenge as immaterial the allegations set forth in ¶¶ 99, 100, 114, 141, and 156 that relate to the mental state and experiences of the named Plaintiffs when they were arrested, brought before the Magistrate for the commitment hearing, and incarcerated, and that

allege the length of De Luna's detention, which are obviously relevant to Plaintiffs' request for mental anguish damages and should not be stricken. *Id.*[6] Defendants further contend that allegations in ¶ 87 relating to the mental state of De Luna's mother at the time she signed a document agreeing to pay off her son's school tickets in installments, and in ¶ 154 regarding the financial condition of Diaz's mother, are immaterial. *Id.* The Court disagrees, given that the lawsuit directly concerns the Magistrates' alleged failure to determine whether the teenage children of these individuals had the ability to pay the fines assessed against them and whether they had made a good faith effort to discharge the fines. Finally, Defendants ask to strike ¶ 160, which contains allegations regarding Diaz's current enrollment in school and future educational plans, as immaterial. *Id.* These allegations are potentially relevant to Diaz's claim to damages as a result of her incarceration, and are not prejudicial. In sum, the Court finds that Defendants' Motion to Strike must be denied in its entirety.

IV. Conclusion

For the foregoing reasons, the Court hereby **ORDERS** that Defendants' Motion to Dismiss is hereby **GRANTED** in part as follows: Plaintiffs' claims for injunctive relief against the Judicial Defendants are hereby **DISMISSED**; and Defendant Guadalupe Trevino, in his official capacity as Hidalgo County Sheriff, is hereby **DISMISSED** as a party to this suit and the claims for declaratory and injunctive relief against this Defendant are deemed to be asserted against the County. Defendants' Motion to Dismiss is hereby **DENIED** in all other respects and

[6] Defendants also challenge ¶ 100 as "false" because it states that De Luna believed that his tickets for school-related charges had been discharged through juvenile court when in reality "court records show Mr. De Luna and his family repeatedly refused the services of the juvenile court." (Doc. 24). Clearly, the Court cannot strike this allegation on the grounds that Defendants dispute its factual accuracy. *See Augustus*, 306 F.2d at 868.

Plaintiffs may proceed with their claims for declaratory relief against the Judicial Defendants and their claims against the County.

Also for the foregoing reasons, the Court hereby **ORDERS** that Defendants' Motion to Strike is hereby **DENIED**.

SO ORDERED this 24th day of June, 2011, at McAllen, Texas.

Randy Crane
United States District Judge