IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JACQUELINE STEVENS,

Plaintiff

v.

CIVIL ACTION NO.
1:12-CV-1352-ODE

ERIC HOLDER, Attorney General of the United States; JUAN OSUNA, Director, Executive Office of Immigration Review; FRAN MOONEY, Asst. Director, Office of Management Programs, Executive Office of Immigration Review, in her individual and official capacity; MARYBETH KELLER, Asst. Chief Immigration Judge, Executive Office of Immigration Review, in her individual and official capacity; GARY SMITH, Asst. Chief Immigration Judge, Executive Office of Immigration Review, in his individual and official capacity; WILLIAM ANTHONY CASSIDY, Immigration Judge, Executive Office of Immigration Review, in his official capacity; CYNTHIA LONG, Court Administrator, in her individual and official capacity; DARREN EUGENE SUMMERS, Regional District Supervisor, Federal Protective Services, in his individual and official capacity; INSPECTOR DOE, Federal Protective Services; PARAGON SYSTEMS, INC.'S GUARD DOE 1 (a/k/a/ NATHANIEL HAYES); PARAGON SYSTEMS, INC.'S GUARD DOES 2-3; and PARAGON SYSTEMS INC.'S SUPERVISOR DOE,

Defendants

ORDER

This case is before the Court on Plaintiff's motion to amend her complaint [Doc. 62] and her unopposed motion to re-open

discovery [Doc. 63]. For the reasons discussed below, both motions are GRANTED.

I. Background

Plaintiff filed her original, pro se, complaint in this Court on April 18, 2012. After her initial filing Plaintiff retained counsel, and on January 16, 2013 this Court issued an order [Doc. 55] dismissing some of Plaintiff's claims under Rule 12(b)(6), but permitting most of her claims to go forward. On March 29, 2013, Plaintiff, now represented by counsel, filed the instant motion to amend her complaint. The underlying factual allegations are not materially different from her original complaint. The factual allegations are more fully laid out in the January 16 Order, but will be summarized below briefly to provide context.

Plaintiff Jacqueline Stevens ("Dr. Stevens") is a Professor of Political Science at Northwestern University. Her academic scholarship includes research and publications on the misconduct of immigration law enforcement officials, including immigration judges. In addition to academic publications, Dr. Stevens has reported extensively for media outlets, including The New York Times, CNN, and NPR, on issues of secrecy in deportation proceedings and illegal conduct by immigration officials.

Defendant William A. Cassidy ("Judge Cassidy") is an immigration judge with the Executive Office of Immigration Review ("EOIR" or "Immigration Court"), in Atlanta, Georgia. Plaintiff alleges she was denied access to Judge Cassidy's courtroom and proceedings on October 7, 2009 and April 19, 2010 in violation of federal law. In addition to Judge Cassidy, Plaintiff's original complaint named several other federal officials (collectively "the

Federal Defendants"), as well as the private company contracted to provide security services for the Immigration Court, Paragon Systems Inc., and several of its guards and supervisors (collectively "the Private Defendants").

In the January 16 Order the Court construed Plaintiff's original pro se complaint as alleging violations of her First, Fourth, and Fifth Amendment rights brought in two counts: (1) a claim for damages against the private security guards and Judge Cassidy under Bivens, and (2) a claim for injunctive relief against all Defendants, requiring "open access to the immigration hearings in Judge Cassidy's court."

In its January 16 Order, the Court denied the Federal Defendants' motion to dismiss Plaintiff's claims based on violations of the First and Fifth Amendments, but granted the motion as to any Fourth Amendment claim because the Defendants' actions forcing Plaintiff to leave the building did not constitute a seizure. The Court dismissed the Bivens claim for damages against Judge Cassidy in his individual capacity because the Court found Judge Cassidy was entitled to absolute judicial immunity. The Court also dismissed the claim for injunctive relief against Paragon Systems Inc. because it was contracted to provide security and no facts suggested Paragon Systems Inc. had any control over Judge Cassidy's decision to close the courtroom.

In her amended complaint, Plaintiff, now with the benefit of counsel, alleges more specific and discrete counts against Defendants, but the substance of her factual allegations are materially unchanged. The amended complaint is organized into

eight counts, taking into consideration the Court's dismissals in January:

I **First Amendment**--open access to court proceedings (Holder, Cassidy, Keller, Smith, Mooney, Long, Summers, Inspector Doe)

II **Fifth Amendment**--Equal Protection Clause violation (Holder, Cassidy, Keller, Smith, Mooney, Long, Summers, Inspector Doe)

III **Fifth Amendment**--Due Process Clause violation for failing to investigate and/or obstructing the investigation of Plaintiff's administrative complaints and "thus depriving Plaintiff of an available remedy by which to seek redress for her grievances." (Holder, Cassidy, Keller, Smith, Mooney, Long, Summers, Inspector Doe)

IV **Fifth Amendment**--Due Process Clause violation for excluding Plaintiff in violation of federal regulations, specifically 8 C.F.R. § 1003.27 (Holder, Cassidy, Keller, Smith, Mooney, Long, Summers, Inspector Doe)

V **Civil Conspiracy**--under federal common law for "caus[ing], particpat[ing] in, condon[ing] or cover[ing] up Plaintiff's wrongful exclusion from deportation hearings and forcible removal from the Atlanta Immigration Court" (Holder, Cassidy, Keller, Smith, Mooney, Long, Summers, Inspector Doe)

VI **State law claims**--assault, battery, and false imprisonment (Paragon Guards and Supervisor)

VII **Declaratory Judgment--**that Plaintiff, the public, and the press have the right "to attend, observe, take notes on and report on deportation/ removal hearings, to the extent authorized by the Constitution and federal law."

VIII **Permanent Injunction**--enjoining all Defendants from "unlawfully excluding, removing, or causing the exclusion or removal of Plaintiff" from Judge Cassidy's courtroom or "any federal facility within this Court's jurisdiction, where deportation/removal hearings are conducted, as to which Plaintiff has a lawful right of access."

For the most part, these claims are simply re-organized versions of the original complaint's surviving claims. However, there are a few notable differences. In addition to adding a civil conspiracy claim and state law claims, Plaintiff's amended complaint specifically pleads damages against several Defendants sued in their individual capacity pursuant to Bivens. It is these new Bivens claims to which the government objects.

II. Motion to Amend

The government objects only to the amended Bivens claims against Defendants Frank Mooney (Assistant Director for the Office of Management Programs, EOIR), Marybeth Keller (Assistant Chief Immigration Judge, EOIR), Gary Smith (Assistant Chief Immigration Judge, EOIR), Cynthia Long (Court Administrator), Darren Summers (Regional District Supervisor, Federal Protective Services), and Inspector Doe.[1] Defendants object on the grounds these new individual capacity claims are futile because they are barred both by the applicable statute of limitations and by absolute quasi-judicial immunity. The Court disagrees.

A. Standard for Amending

Pursuant to Federal Rule of Civil Procedure 15, a "party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." FED. R. CIV. P. 15(a)(1). After the time to amend has expired, however, a "party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." FED. R. CIV. P. 15(a)(2). "Unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial." Burger

[1]Neither Attorney General Eric Holder, nor Juan Osana (Director, EOIR) are sued in their individual capacity. In addition, Plaintiff's amended complaint properly removed the individual capacity claims against Judge Cassidy, pursuant to this Court's January 16 Order.

King Corp. v. Weaver, 169 F.3d 1310, 1319 (11th Cir. 1999) (citation and internal quotation marks omitted). "In deciding whether to grant a party leave to amend a pleading, a district court may consider several factors, such as undue delay, . . . repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment." Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1241 (11th Cir. 2009) (citation and internal quotation marks omitted).

B. Futility

1. Statute of Limitations

The statute of limitations in a Bivens claim is the state limitation period for personal injury actions. Kelly v. Serna, 87 F.3d 1235, 1238 (11th Cir. 1996) (citing Wilson v. Garcia, 471 U.S. 261 (1985)). In Georgia the applicable statute of limitations period is two years. Kelly, 87 F.3d at 1238; O.C.G.A. § 9-3-33. The original complaint was filed in this Court on April 18, 2012; the motion to amend the complaint was filed on March 29, 2013. Therefore, while any causes of action alleged in Plaintiff's original complaint must have accrued after April 18, 2010, any claims alleged in her amended complaint must have accrued after March 29, 2011--unless the claim "relates back" to the original complaint. FED. R. CIV. P. 15(c). If a claim in the amended complaint relates back to the original complaint, the new claim is subject to the original April 18, 2010 accrual date.

The government's primary argument on statute of limitations is that the new Bivens claims, asserted individually against

several Defendants, do not relate back to the original complaint.[2] An amendment to a pleading relates back to the date of the original pleading when:

> (A) the law that provides the applicable statute of limitations allows relation back;
> (B) the **amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence** set out--or attempted to be set out--in the original pleading; or
> (C) the **amendment changes** the party or **the naming of the party** against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
> (i) **received such notice of the action that it will not be prejudiced in defending on the merits**; and
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

FED. R. CIV. P. 15(c)(1).

Defendants contend that since Plaintiff's amended complaint adds Bivens claims against the federal officials individually, the individual claims essentially add new parties to the complaint such that the relevant relation back provision is subsection (C): "chang[ing] the party or the naming of the party," rather than subsection (B). The Court agrees that subsection (C) is the

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[2]The government also argues any cause of action based on Plaintiff's alleged exclusion from the Atlanta Immigration Court on October 7, 2009 is time-barred, since that claim expired on October 6, 2011. To the extent a cause of action is predicated solely on the events of this one day, the Court agrees. However, in addition to claims brought specifically for her exclusion and/or removal from the courthouse, Plaintiff also alleges due process violations and a civil conspiracy to cover up the exclusion and obstruct her administrative complaint processes. As these claims are based primarily on Plaintiff's administrative complaint and Freedom of Information Act (FOIA) requests, neither of these claims accrued until many months later.

proper analysis. A suit against a federal official in her official capacity is a suit against the governmental entity, while a Bivens claim against an official in her individual capacity is a suit against the individual personally. Kentucky v. Graham, 473 U.S. 159, 166 (1985). Therefore, for all intents and purposes, when a complaint initially only pleads claims against the official in her official capacity, the actual party being sued is the government entity. But when a plaintiff amends a complaint to add individual capacity claims, the plaintiff is effectively adding the individual as a new party.

Under subsection (C), in order for the amendment to relate back, the plaintiff must show both: (1) that the newly added defendant had notice of the suit such that it will not be prejudiced in defending on the merits, and (2) that the new defendant knew or should have known the claim would have been brought against it, but for a mistake about its identity. FED. R. CIV. P. 15(c).

The government argues that because Plaintiff knew the identities of the relevant parties when she filed her original complaint, she "ha[d] all the information she needed" and therefore her "failure to assert individual capacity claims against all Federal Defendants [was] not an error based on misnomer or misidentification." The government's argument is without merit. Although the Court ultimately construed Plaintiff's original pro se complaint as suing only Judge Cassidy and the private security guards in their individual capacities, it

is apparent to the Court that Dr. Stevens, proceeding pro se, did not intend to limit her damages claim to only Judge Cassidy.[3]

First of all, Plaintiff did, in fact, identify the Defendants in their individual capacities in the style of her original complaint. Therefore, the Federal Defendants should have presumed they were being sued individually until this Court said otherwise. The Court also notes that Plaintiff was proceeding pro se when she filed her original complaint. Given her original styling, any error was almost certainly not about whom she intended to sue, but rather was a matter of inarticulate pleading in constructing her counts and prayer for relief.

Second, counsel's argument about *Plaintiff's* purported knowledge of any mistakes in the original complaint misstates the law:

> By focusing on [Dr. Stevens'] knowledge, the [government] chose the wrong starting point. The question under Rule 15(c)(1)(C)(ii) is not whether [Dr. Stevens] knew or should have known the identity of [Defendants] as the proper defendant, but whether [Defendants'] knew or should have known that [they] would have been named as a defendant but for an error. Rule 15(c)(1)(C)(ii) asks what the prospective *defendant* knew or should have known during the Rule 4(m) period, not what the *plaintiff* knew or should have known at the time of filing her original complaint.

Krupski v. Costa Crociere S. p. A., 130 S. Ct. 2485, 2493 (2010).

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[3]In construing Plaintiff's original complaint as only pleading individual damages claims against Judge Cassidy and the private security guards, the Court made a judgment call on the nature and scope of Plaintiff's pro se complaint based primarily on the Constitutional claims and counts alleged at the end of her complaint. However, it would not have been unreasonable for the Court to have instead construed the original complaint as bringing individual Bivens claims against the other Defendants as well.

Finally, the Court finds Defendants will not be prejudiced by this change. As discussed below, the Federal Defendants only filed their answer to the original complaint on February 28, 2013, and no discovery has yet taken place in this case. All of these Defendants were named, in their individual capacities, in the original complaint. The factual underpinnings of the case have not changed. The primary allegations against these Defendants have not changed. The system favors adjudicating disputes on the merits, and there is no evidence Defendants will be "prejudiced in defending on the merits." FED. R. CIV. P. 15(c)(1).

The Court finds the Defendants had sufficient notice of individual liability such that they will not be prejudiced in defending the more specifically pled Bivens claims on the merits. Therefore, the Court finds the amendments relate back to the filing of the original complaint.

2. Absolute Quasi-Judicial Immunity

The government also contends the amended complaint is futile because all of the Federal Defendants are entitled to absolute quasi-judicial immunity. This request for absolute immunity is based solely on the government's assertion that their "conduct is intertwined with the judicial process." Absolute immunity, however, is "strong medicine, justified only when the danger of officials being deflected from the effective performance of their duties is very great." Forrester v. White, 484 U.S. 219, 230 (1988) (internal quotation marks and alterations omitted).

Quasi-judicial immunity is not as broadly applicable as Defendants suggest. Immunity jurisprudence "is not merely a generalized concern with interference with an official's duties,

but rather is a concern with interference with the conduct closely related to the judicial process." Burns v. Reed, 500 U.S. 478, 494 (1991). The presumption is that government officials are entitled only to *qualified* immunity and the grant of absolute immunity is to be employed "quite sparing[ly]" and then only where "necessary to protect the judicial process." Id. at 485, 487. Defendants' blanket assertion that the conduct here was "intertwined" with the judicial process is based on no analysis of any Defendants' actual conduct, but rather, is merely an attempt by the remaining Federal Defendants to ride the coattails of Judge Cassidy's absolute immunity.

The *only* basis the government gives for granting absolute judicial immunity to *all* of the individual capacity Defendants is that "Immigration Court clerks and court administrators are entitled to immunity based on conduct that is intertwined with the judicial process," and that since this Court has "already held that the decision to close or open courtroom proceedings is a 'function normally performed by a judge' . . . the proposed claims against the individual Federal Defendants in their individual capacities are subject to dismissal based on quasi-judicial immunity." [Doc. 66 at 10-11].

The government essentially asks the Court to *presume* absolute immunity for all Defendants merely because this Court granted Judge Cassidy immunity. The law, in fact, requires the exact opposite: "the official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question." Burns, 500 U.S. at 486. The government has failed to meet this burden.

Absolute judicial immunity can encompass non-judicial officers, but only when the officer's action has "an integral relationship with the judicial process." Roland v. Phillips, 19 F.3d 552, 555 (11th Cir. 1994) (citation and internal quotation marks omitted). Therefore, any absolute quasi-judicial immunity must be based on a "functional analysis" of the action taken by the non-judicial officer and its relationship to the judicial process. Id. However, the government's brief engages in no functional analysis at all. It appears to ignore the fact that several of Plaintiff's counts involve allegations that are substantively and temporally distinct from any decisions made by Judge Cassidy on October 7, 2009 or April 19, 2010. For example, not only does Plaintiff allege her rights were violated by the decision, on the relevant days, to exclude her from the courtroom, but she also alleges due process violations and a civil conspiracy to cover up her removal and exclusion. Included in these counts are claims based on incomplete responses to her FOIA requests, and a claim that Keller and Smith, assistant chief immigration judges based at EOIR headquarters in Virginia, failed to properly investigate her administrative complaint. Surely, the government is not asking this Court to grant all executive officials who handle administrative complaints or FOIA requests absolute judicial immunity.

The government has fallen woefully short of its "burden of establishing the justification for such immunity." Roland, 19 F.3d at 555 (citation and internal quotation marks omitted). Judicial immunity, and its derivative quasi-judicial immunity, are "supported by a long-settled understanding that the independent

and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability." Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 435 (1993) (declining to extend immunity to court reporters merely because they are "part of the judicial function"). Therefore, "[w]hen judicial immunity is extended to officials other than judges, it is because their judgments are 'functional[ly] comparab[le]' to those of judges . . . ." Id. at 436. In addition, just because "overseeing the efficient operation of a court may [be] quite important in providing the necessary conditions of a sound adjudicative system," importance does not make "the [decisions] themselves judicial or adjudicative." Forrester v. White, 484 U.S. 219, 229 (1988).[4]

The government has not demonstrated the amended complaint is futile; therefore, Plaintiff's motion for leave to amend is GRANTED.

III. Motion to Re-Open Discovery

According to Local Rule 26.2, discovery commences thirty days after the first defendant answers the complaint. LR 26.2, NDGa. On November 7, 2012, the parties filed a joint preliminary report

[4]The government does provide the Court with a string cite of cases extending absolute quasi-judicial immunity to a sheriff's enforcement of judicial orders, but as the government fails to provide any explanation or analysis as to why any particular Defendants' conduct in this case more closely resembles the sheriffs' situations as opposed to general court administration, the Court finds the string cite unhelpful.

The Court notes, however, that this Order is not a final determination of applicable immunities. The Court's ruling is limited to a finding that the government has, at this time, failed to meet its burden of showing absolute immunity is applicable, and therefore, the Court cannot say Plaintiff's amendment is futile.

and discovery plan adopting the standard discovery commencement date and a four-month discovery track. However, because Paragon Systems Inc. filed its answer on June 14, 2012, the four month discovery time period had actually already expired before the preliminary report and discovery plan was filed by the parties and approved by this Court.

Plaintiff's unopposed motion to re-open discovery indicates the discovery date errors were an oversight and that no party has conducted discovery in this case. Accordingly, the Court GRANTS the motion to re-open discovery for the previously agreed period of four months.

IV. Conclusion

For the reasons discussed above, Plaintiff's motion to amend her complaint [Doc. 62] is GRANTED, and Plaintiff's unopposed motion to re-open discovery [Doc. 63] is GRANTED. Discovery is RE-OPENED for four (4) months from the date of entry of this Order.

SO ORDERED, this 4 day of June, 2013.

ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE