

# Magistrate Judge Recommends Denial of Defendants' Motion to Dismiss in Civil Rights Lawsuit Brought by Gibson Dunn and Barrasso Usdin

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**Judge Carol Whitehurst of the U.S. District Court for the Western District of Louisiana issued a Report and Recommendation denying Defendants' motion to dismiss a civil rights lawsuit seeking to hold Louisiana District Attorney's office liable for the unconstitutional incarceration of innocent third-party witness for more than six months in flagrant disregard of her constitutional rights.** Lafayette, La. Magistrate Judge Carol Whitehurst has recommended denial of the defendants' motion to dismiss a civil rights action filed by Gibson, Dunn & Crutcher LLP and Barrasso Usdin Kupperman Freeman & Sarver, LLC on behalf of Tayjha Alfred against Martin Bofill ("Bo") Duhé, the District Attorney for the 16th Judicial District of Louisiana, and Assistant District Attorney Alister Charrier. The suit seeks damages and injunctive relief for the constitutional violations Ms. Alfred suffered when the defendants caused her to be incarcerated as a material witness for more than six months despite never charging her with a crime, and for similar constitutional violations against other material witnesses. The suit also seeks to have Louisiana's material-witness statute declared facially unconstitutional. In 2019, Ms. Alfred happened to be in the vicinity of an area that later became the scene of a murder and voluntarily told police who she saw in the area before any crime occurred. More than three years passed before Bo Duhé and Alister Charrier decided they wanted Ms. Alfred to testify at the trial for the murder suspect. In the interim, Ms. Alfred had obtained a nursing degree and became a traveling nurse, providing care to the nation's most vulnerable at the height of the COVID-19 Pandemic. In February 2023, rather than serve Ms. Alfred with a subpoena, they caused Ms. Alfred to be arrested and incarcerated for more than six months as a material witness until she testified at the trial. Ms. Alfred was never charged with committing any crime, nor was she a suspect. During her incarceration, Ms. Alfred was never appointed counsel—as every accused criminal defendant receives upon arrest—nor was she provided with an appearance bond or any meaningful hearing to challenge her incarceration. Ms. Alfred lost her job and her spot in an advanced nursing program while she was incarcerated and suffered severe mental and emotional distress. Mr. Duhé and Ms. Charrier moved to dismiss Ms. Alfred's complaint on multiple grounds, including that they are immune from any liability for their actions against Ms. Alfred. Ms. Alfred opposed that motion, and Judge Whitehurst recommended denying it in full. Judge Whitehurst recognized that Mr. Duhé's and Ms. Charrier's actions of allowing an innocent third-party witness "to remain in jail for six months without the chance to defend herself and without the most basic rights given even to accused criminals" are not protected by prosecutorial immunity. She also held that they are not entitled to qualified immunity, because Mr. Duhé and Ms. Charrier should have known of the "obvious constitutional problems of incarcerating an innocent witness for an extended period of time without access to counsel, the opportunity for bail or bond, or the opportunity to defend herself." Judge Whitehurst also rejected the defendants' attempts to dismiss Ms. Alfred's claims against Mr. Duhé in his official capacity as district attorney, finding that Ms. Alfred had alleged that Mr. Duhé's office had misused the material witness statute 100% of the time it had invoked the statute. And Judge Whitehurst recommended denying dismissal of Ms. Alfred's claim for negligent infliction of emotional distress, and requests for declaratory and injunctive relief and damages for reputational harm. Mr. Duhé and Ms. Charrier have until September 11, 2024 to file objections to Judge Whitehurst's Report and Recommendation to the district court. Katherine Marquart, partner and chair of Gibson Dunn's pro bono program, stated: "We are grateful to the Court for its ruling, recommending denial of the District Attorney's motion to dismiss Ms. Alfred's civil rights lawsuit. As the Court recognized, imprisoning an innocent witness for 6 months to testify at a trial for 30 minutes is an obvious and outrageous constitutional violation. District Attorney Bo Duhé and Assistant District Attorney Alister Charrier put Ms. Alfred in jail and threw away the keys, without providing even the barest procedural processes. This unconscionable conduct cost Ms. Alfred her nursing job and educational opportunities she had earned to advance her career even further. We look forward to holding the Defendants accountable." Judge Whitehurst's order recommending denial of the defendants' motion to dismiss is available here: [Report and Recommendation, Alfred v. Duhé](#). The Amended Complaint is available here: [Tayjha Alfred v. Martin Bofill \("Bo"\) Duhé, in his individual capacity and in his official capacity as the 16th Judicial District Attorney; and Alister Charrier, in her individual capacity](#).