

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Jackson Division

NYKOLAS ALFORD and STEPHEN)
THOMAS; and ACLU OF MISSISSIPPI,)
)
Plaintiffs,)
)
v.)
)
JUDY MOULDER, in her official capacity as)
MISSISSIPPI STATE REGISTRAR OF)
VITAL RECORDS,)
)
Defendant.)

Civil No. 3:16-cv-00350-CWR-LRA

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS’ MOTION FOR RECONSIDERATION**

Pursuant to Federal Rule of Civil Procedure 54(b), Plaintiffs Nykolas Alford and Stephen Thomas and the ACLU of Mississippi respectfully move for reconsideration of this Court’s order dated June 20, 2014, denying Plaintiffs’ Motion for a Preliminary Injunction (ECF No. 20). As discussed below, the Court’s discussion of “plaintiffs’ supporting cases,” *see* Order at 4, raises the possibility that the Court may have overlooked the relevant cases discussed in Plaintiffs’ opening memorandum in support of the motion for preliminary injunction (ECF No. 5) and relied primarily on Plaintiffs’ reply memorandum instead (ECF No. 17).

ARGUMENT

A motion for reconsideration “is the proper vehicle by which a party can correct manifest errors of law or fact or present newly discovered evidence.” *Jones v. Tyson Foods, Inc.*, No. 4:10-CV-00011-GHD, 2013 WL 5781472, at *1 (N.D. Miss. Oct. 25, 2013) (internal quotation marks omitted). “Rule 54(b)(2) of the Federal Rules of Civil Procedure governs a district court’s reconsideration of a motion that disposes of less than all of the claims or parties.” *Taitz v.*

Democratic Party of Miss., No. 3:12-CV-280-HTW-LRA, 2015 WL 11017218, at *1 (S.D. Miss. Mar. 31, 2015) (footnote omitted); accord *Johnson v. TCB Const. Co.*, No. CIVA 205CV370 DCBJMR, 2007 WL 37769, at *1 (S.D. Miss. Jan. 4, 2007). Although Federal Rule of Civil Procedure 54(b) applies to motions for reconsideration of an interlocutory order, courts have utilized the standards of Rule 59 when analyzing such motions.” *Burciaga v. Deutsche Bank Nat’l Trust Co.*, No. 4:14-CV-367, 2016 WL 2758134, at *1 (E.D. Tex. May 12, 2016). “Unless the court has misapprehended some material fact or point of law, such a motion is normally not a promising vehicle for revisiting a party’s case and rearguing theories previously advanced and rejected.” *Palmer v. Champion Mortgage*, 465 F.3d 24, 30 (1st Cir. 2006).

Reconsideration of Plaintiffs’ Motion for Preliminary Injunction is appropriate because this Court may have overlooked material points of law in concluding that Plaintiffs had failed to allege that their injuries are imminent. In its order, this Court concluded that Plaintiffs’ injuries were not sufficiently imminent because “any injury is at least six months away.” Order at 4. This Court further concluded that “[t]he plaintiffs’ supporting cases do not lead to a contrary conclusion.” *Id.* The only cases the Court discussed, however, were *Duarte v. City of Lewisville, Texas*, 759 F.3d 514, 518 (5th Cir. 2014); *Hassan v. City of New York*, 804 F.3d 277, 289 (3d Cir. 2015), *as amended* (Feb. 2, 2016) (cited only in reply). As the Court correctly notes, these cases do not address the issue of temporal imminence. *See* Order at 4.

In Plaintiffs’ opening memorandum, however, Plaintiffs specifically addressed why their claims are sufficiently imminent and cited several cases in which injuries occurring at least six months in the future were deemed sufficiently imminent for purposes of standing. Pls’ Mem. at 11-13. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 212 (1995) (finding imminence based on likelihood that plaintiff will bid on construction contracts at least once per year in the

future); *McCardell v. U.S. Dep't of Hous. & Urban Dev*, 794 F.3d 510 (5th Cir. 2015) (finding imminence based on future harm resulting housing development that had not yet been approved by HUD and explaining that injuries are sufficiently imminent if they “would be concretely felt in the logical course of probable events flowing from an unfavorable decision by this court”); *Fla. State Conference of the NAACP v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008) (explaining that imminence “requires only that the anticipated injury occur with[in] some fixed period of time in the future, not that it happen in the colloquial sense of soon or precisely within a certain number of days, weeks, or months”); *Bryant v. Holder*, No. 2:10-CV-76-KS-MTP, 2011 WL 710693, at *10 (S.D. Miss. Feb. 3, 2011) (“[T]emporal remoteness is but one factor to consider in the broader inquiry of whether a plaintiff’s alleged injuries are sufficiently certain and/or imminent.”); *cf. Lee v. Weisman*, 505 U.S. 577, 584 (1992) (finding “a live and justiciable controversy” even though the alleged injury-causing event was likely to occur at plaintiff’s high school graduation, which was several years away when the complaint was filed).¹

Plaintiffs’ reply memorandum did not reiterate citations to the foregoing cases because Defendant expressly conceded that Plaintiffs’ injuries were not too temporally remote to qualify as imminent. Pls.’ Reply Mem. at 8 n.6; Def’s Opp at 16 (“The time frame in which Plaintiffs might get married is not the operative fact.”).

The omission of the foregoing cases from this Court’s discussion of “plaintiffs’ supporting cases” raises the possibility that this Court may have overlooked the relevant discussion of temporal imminence in Plaintiffs’ opening memorandum. If the cases discussed in Plaintiffs’ opening memorandum were overlooked by the Court, then reconsideration may be

¹ In its order this Court noted that Plaintiffs had not made “concrete plans” analogous to the plans made by the plaintiff in *Duarte*, 759 F.3d at 518. Order at 4. Plaintiffs opening memorandum also addresses why Plaintiffs’ plans are sufficiently concrete under *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). See Pls.’ Mem. at 12-13.

necessary “to correct a clear or manifest error in law.” *Hall*, 2012 WL 956413, at *1 (granting reconsideration when court overlooked relevant law).

CONCLUSION

For the foregoing reasons, Plaintiffs’ respectfully request that the Motion for Reconsideration be granted.

Respectfully submitted,

_____/s/_____

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** Admitted pro hac vice*

Dated: June 20, 2016

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2016, I electronically filed the foregoing Memorandum of Law in Support of Plaintiffs' Motion for Reconsideration with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following persons at their e-mail address on file with the Court:

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This day of June 20, 2016.

/s/ Joshua Block
Joshua Block