No. 21-5031

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CARLY GRAFF, et al.,

Plaintiffs-Appellants,

v.

ABERDEEN ENTERPRIZES II, INC., et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Oklahoma
Civil Action No. 4:17-cv-00606-TCK-JFJ
Hon. Terence C. Kern

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INTRODUCTION

This lawsuit challenges an extortionate scheme in which a private debt-collection company called Aberdeen Enterprizes II, Inc. ("Aberdeen"), in concert with local officials, uses threats of arrest and actual incarceration to coerce indigent Oklahomans convicted of criminal and traffic offenses into paying fines, fees, and costs ("court debt"), without any court process, hearing, or inquiry into their ability to pay. As a result of this scheme, thousands of impoverished Oklahomans have had to sacrifice basic necessities or hand over protected government benefits to avoid being thrown in jail, while others have been arrested and jailed until they could either pay the price of their release or satisfy the court that they had served enough time to account for the money they owe. The scheme traps indigent court debtors in repeated cycles of debt, poverty, arrest, jailing, and more debt.

Plaintiffs are indigent court debtors who allege that Defendants infringe on their rights and the rights of other indigent court debtors in Oklahoma by (1) threatening them and extorting money, in violation of the Constitution, federal racketeering law, and state tort law; (2) delegating law enforcement authority to a non-neutral private entity incentivized to maximize the extraction of money from debtors, in violation of the Constitution; (3) failing to assess their ability to pay before seeking a warrant for their arrest, in violation of the Constitution and state law; and (4) jailing them for not making payments that they cannot afford, in violation of their rights under the Fourteenth Amendment.

The district court dismissed Plaintiffs' claims wholesale without properly engaging with the facts alleged in the Complaint or subject to proper judicial notice. Eschewing a claim-by-claim and defendant-by-defendant analysis, the district court broadly held that three doctrines—*Rooker-Feldman*, *Younger* abstention, and *Heck*[1]—prevented Plaintiffs from proceeding on any claim against any defendant. This finding was based on three significant errors that warrant reversal.

First, the district court erroneously found that Plaintiffs' claims challenge or implicate the fines, fees, or costs imposed at sentencing. Plaintiffs do not challenge *any* aspect of their criminal convictions, or the process or amount that they were ordered to pay at that time. Nor do they challenge the payment plans that were set up contemporaneously with their convictions. Rather, they challenge Defendants' actions beginning when they, as indigent debtors, were unable to make payments. Because they do not challenge any aspect of the underlying state-court judgments, *Rooker-Feldman*, which prevents federal district courts from revisiting state-court judgments, is inapplicable. Similarly, their claims do not implicate *Heck*, which prevents plaintiffs from bringing claims that imply the invalidity of their underlying convictions or sentences. Again, this lawsuit *in no way* challenges the fact or amount of fines, fees, and costs originally assessed by state courts.

[1] *See generally Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Younger v. Harris*, 401 U.S. 37 (1971); *Heck v. Humphrey*, 512 U.S. 477 (1994).

Second, the district court found that Plaintiffs' state cases are ongoing proceedings to which federal courts must defer under *Younger*. This too was clear error; when they filed this lawsuit, all Plaintiffs had been tried, convicted, and sentenced in state criminal court. There were thus no ongoing state court proceedings that justified abstention.

Third, the district court held that abstention was warranted because Plaintiffs had an adequate opportunity to present their constitutional, statutory, and state law challenges to the state court, either prior to sentencing, on direct appeal, or at a Rule 8 hearing. But there are no allegations nor evidence in the record that any opportunity existed, or could have existed, at which Plaintiffs could raise their claims. Defendants serially disregard constitutional requirements (and state law) requiring an inquiry into ability to pay, and the only time a person is offered an opportunity to see a judge is after they suffer the threats and jailing that they challenge. Plaintiffs had no adequate opportunity under state law to challenge the practices at issue, and abstention was inappropriate.

The district court premised its dismissal on erroneous assumptions that have no basis in the operative Complaint, the facts subject to proper judicial notice, or the law. This Court must therefore reverse the judgment of the district court and allow this case to proceed.

JURISDICTIONAL STATEMENT

Plaintiffs invoked the district court's jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. *See* Second Am. Compl. ("SAC") ¶ 16.[2] On March 12, 2021, the district court dismissed Plaintiffs' complaint and entered final judgment in favor of all Defendants. JA1941–65, vol. VIII. Plaintiffs filed a timely notice of appeal on April 8. JA1966, vol. VIII; Fed. R. App. P. 4(a)(1)(A). This Court has jurisdiction over this appeal under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

I. Whether the *Rooker-Feldman* doctrine is inapplicable because Plaintiffs' claims do not ask the district court to sit in direct review of any state-court judgment.

II. Whether *Younger* doctrine is inapplicable because unpaid court debt does not constitute an ongoing state court proceeding entitled to federal court deference, and because Plaintiffs do not have an adequate opportunity to address their claims in state court.

III. Whether *Heck* is inapplicable to Plaintiffs' section 1983 claims because those claims do not turn on the validity of Plaintiffs' convictions or sentences.

[2] The Second Amended Complaint can be found in Volume I of the Joint Appendix (JA) at pages 86–204. When citing the complaint, references to paragraph and page numbers therein refer to the complaint itself, rather than the Joint Appendix. All other citations to the Joint Appendix appear as "JA__" and cite the page number (and volume) within the appendix. Citations to district court filings not included in the Joint Appendix appear as "Dist. Ct. ECF No. __," followed by the relevant page number.

STATEMENT OF THE CASE

I. Factual Background[3]

Plaintiffs Carly Graff, Randy Frazier, David Smith, Linda Meachum, Kendallia Killman, Christopher Choate, Ira Wilkins, and Melanie Holmes are impoverished individuals who were convicted of a criminal or traffic offense, and assessed an amount of fines and fees as part of their sentence. SAC ¶¶ 1 n.3, 2, 6, 18–25, 117, 133, 144. After sentencing, a number of additional "costs" were imposed on Plaintiffs by a court administrator. *See id.* ¶¶ 1 n.3, 2, 117, 133. At the conclusion of sentencing, or after release from incarceration following a prison sentence, Plaintiffs were instructed to make a payment or set up a payment plan with a court administrator. *See id.* ¶¶ 9, 35–37, 108–09, 118, 134. Plaintiffs do not challenge their convictions, their sentences, the original imposition of fines, fees, and costs, or the initial requests for payment and/or imposition of payment plans. Accordingly, they took no appeals in the state courts.

Plaintiffs challenge what happened to them (and what happens to other, similarly situated indigent individuals throughout Oklahoma) when they could not make or continue making those payments. Defendants—including Aberdeen and its officers Robert and Jim Shofner (collectively, "the Aberdeen Defendants"); the Oklahoma

[3] In its opinion below, the district court entirely ignored the facts explaining the operation of Defendants' unlawful scheme. Instead, it adopted the facts and analyses set forth in several Defendants' motions to dismiss nearly verbatim, *compare* JA1943–55, 1959–63, vol. VIII, *with* JA611–19, 621–22, vol. III, *and* JA789–91, 794–97, vol. IV, disregarding many of the facts set forth in Plaintiffs' complaint. Because these facts are critical to the doctrines at the heart of its ruling, Plaintiffs recount them herein.

Sheriffs' Association ("OSA"); the sheriffs in the 53 counties that use Aberdeen to collect court debt ("the Sheriff Defendants");[4] the Clerks of Court for the District Courts of Tulsa and Rogers Counties, and the Cost Administrator for the Tulsa County District Court; several district judges in Tulsa and Rogers Counties;[5] and the Boards of Commissioners for Tulsa and Rogers Counties—all took steps to coerce Plaintiffs to pay money they could not afford without the procedural safeguards to which they are entitled and in violation of their substantive rights under the Constitution, federal statutory law, and state law.

Initial FTP Warrant. Defendants' illegal and unconstitutional debt-collection scheme begins when, after a missed payment, delay in payment, or multiple requests for an extension, a Court Clerk or Cost Administrator seeks a "failure-to-pay" arrest warrant without providing notice to the debtor. *Id.* ¶¶ 5, 50 & n.11, 118–21, 136–37. This warrant request is then signed by a district judge as a matter of course without any scrutiny or hearing, *id.* ¶¶ 5, 33–34, 50, 120, 136, and executed by a sheriff who is aware that no notice or hearing has been provided, *see id.* ¶¶ 30–32. Prior to the issuance of this warrant, there is no opportunity for the debtor to explain to the state court or any

[4] Except for the Oklahoma County Sheriff, whom Plaintiffs voluntarily dismissed, *see* Dist. Ct. ECF No. 280, the 53 Sheriff Defendants are those named in the Second Amended Complaint. Although at least two of the 53 stopped using Aberdeen after this lawsuit was filed, *see* SAC ¶¶ 9 n.5, 124; Dist. Ct. ECF No. 342, the Statement of the Case captures the practices of those counties (Tulsa and Rogers) at the time the suit was filed.

[5] The judicial defendants are Rogers County Judge Terrell S. Crosson, and Tulsa County Judges Dawn Moody, Doug Drummond, and William J. Musseman, Jr. SAC ¶¶ 33–34.

other entity that he or she cannot pay, and there is no inquiry into whether nonpayment was willful. *Id.* ¶¶ 5, 33–37, 50, 120, 136.

These arrest warrants are issued for nonpayment and nothing more. They are typically listed in state court dockets as "failure to pay" or "FTP" warrants, or at times just "bench" warrants without further description. *Id.* ¶ 50 & n.11; *see, e.g.*, *id.* ¶ 206. Contrary to the district court's observation that these warrants are issued "for failure to appear as ordered by a court," JA1947 n.6, vol. VIII, the challenged warrants are not based on any failure to attend a court hearing. Indeed, there is typically no scheduled hearing for debtors to attend. Although a hearing is arguably required under Rule 8 of the Oklahoma Court of Criminal Appeals (which states that a debtor "must be given an opportunity to be heard as to the refusal or neglect to pay [an] installment when due"[6]), no such hearing is scheduled; nor could one be requested by the debtor prior to the issuance of the warrant given that no notice is provided. *See* SAC ¶¶ 1–2, 5, 33–37, 50, 95, 121, 136.

Plaintiffs allege in the complaint that these efforts to seek their arrest, without providing facts in a supporting affidavit or otherwise holding any evidentiary hearing to establish that they have *willfully* failed to pay their court debt, violate their due process and equal protection rights under the Fourteenth Amendment (Count 2, SAC ¶¶ 318–28); their Fourth Amendment right to a warrant affidavit that supports probable cause

[6] Rule 8.4, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (hereinafter Okla. R. Crim. App. 8.4).

(Count 3, SAC ¶¶ 329–38); and the state-created liberty interests created by Oklahoma Criminal Rule 8 (Count 5, SAC ¶¶ 345–53).

Referral to Aberdeen for Collection. After an initial FTP warrant for nonpayment has issued, the court clerk or the sheriff has discretion to transfer a case to Aberdeen for collection, at which point a 30-percent surcharge is added to the total debts owed. *Id.* ¶¶ 5, 35–37, 57, 125, 137, 283. Transfer comes as the result of a contract between Aberdeen and OSA, which pays Aberdeen for its collection services from the amount of the surcharge it collects from the debtor. *Id.* ¶¶ 5, 55–59, 125, 137; *see also* Okla. Stat. tit. 19, § 514.5(A)–(B). Aberdeen has no revenue source other than payments by court debtors. SAC ¶ 107. The process of transferring a case to Aberdeen and adding the surcharge occurs yet again without any notice to the debtor, hearing before or involvement of the state court judge, or any other opportunity for the debtor to be heard. *Id.* ¶¶ 5, 50.

In the complaint, Plaintiffs allege that because the contract delegates law enforcement authority to Aberdeen and also creates a significant financial conflict of interest for the company while it exercises those duties, *see id.* ¶¶ 55–59, 107, the referral of the collection process to Aberdeen violates the Fourteenth Amendment, which guarantees Plaintiffs (and the putative class) the right to law enforcement officers who are not biased in their decision-making as a result of their financial incentives in the outcome (Count 6, SAC ¶¶ 354–59).

Threats of Arrest and Jailing. Once Aberdeen takes over collection, it begins repeatedly contacting the debtor and her family and threatening arrest to coerce payment. The company makes such threats even when it knows that the debtor is too poor to pay (or even homeless). *Id.* ¶¶ 2, 7, 82; *see id.* ¶¶ 205–11. Indeed, Aberdeen has specifically trained its employees to coerce debtors into making payments that they cannot afford by stating that the only way to remove an active arrest warrant is to make a payment that Aberdeen deems sufficient, *see id.* ¶¶ 73, 77, and by threatening the person's imminent arrest, *see, e.g.*, *id.* ¶ 75 (describing call in which an Aberdeen employee passed the phone to a purported law enforcement officer "who stated that he would come and immediately arrest the debtor if the debtor did not pay enough money to Aberdeen"). In all cases, "[t]he threat is explicit and systemic as a matter of policy: pay Aberdeen[] what it demands when it demands it, or be arrested and jailed." *Id.* ¶ 71.[7] And Aberdeen's tactics work. Individuals sacrifice basic necessities, beg others for money, and divert money from means-tested disability payments to pay Aberdeen rather than live under the shadow of an arrest warrant. *Id.* ¶¶ 7, 82; *see, e.g.*, *id.* ¶¶ 23, 173, 203. At no point during this process are there any hearings in state court where an individual could contest these unlawful tactics.

[7] Aberdeen has implemented policies to obscure the fact that direct payment to the court is an option (and an almost always preferable one, given that the company usually demands larger payments), and employees often tell people that payment through Aberdeen is the only option. SAC ¶ 83.

Plaintiffs allege in the complaint that the Aberdeen Defendants, OSA, and the Sheriff Defendants intentionally use these threats to extort money from Plaintiffs and the putative class in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* (Count 1, SAC ¶¶ 274–317). Plaintiffs also allege that these threats violate state law in that they force individuals to enter into contracts under duress; unjustly enrich Aberdeen, its owners, and the OSA; and constitute an abuse of process (Counts 8–10, SAC ¶¶ 363–72).

Aberdeen-Requested FTP Warrant. If their threats are unsuccessful, Aberdeen contacts court clerks and/or cost administrators to request an arrest warrant for nonpayment. *Id.* ¶¶ 88–90. When Aberdeen makes this request, it does not provide any of the information it possesses about the person's indigence or ability to pay in the request, nor does it swear to any facts. *Id.* Court clerks help Aberdeen seek new arrest warrants based solely on unsworn allegations of nonpayment and without inquiry into the reason for nonpayment or ability to pay. *Id.* ¶¶ 9, 35–37, 62–63, 88–90. These warrants, like the initial FTP warrants, are routinely issued by judges—without a hearing or providing the debtor any opportunity to explain why he or she did not pay—and executed by the county sheriffs. *Id.* ¶¶ 9–10, 30–34, 64–65, 88–93; *see also, e.g.*, *id.* ¶ 207 ("The public docket states, 'DID NOT PAY ABERDEEN, 2ND BENCH WARRANT ISSUED, DO NOT RELEASE.'"). Again, although a hearing should be provided under Rule 8 of the Oklahoma Criminal Rules, no such hearing is scheduled, nor could one be requested prior to the issuance of the warrant given that no notice is

provided. *See id.* ¶¶ 92–93. Because these warrants are similarly sought without any factual basis in the warrant application or findings in the record about ability to pay, Plaintiffs allege in the complaint that they, too, violate their due process rights under the Fourteenth Amendment (Count 2), their Fourth Amendment right to a warrant affidavit that supports probable cause (Count 3), and the state-created liberty interests created by Rule 8 (Count 5).

Jail. When an individual is arrested on an FTP warrant, the Sheriff Defendants keep them in jail if they are too poor to pay a fixed sum required for their release ($250 in Tulsa County, and the amount of debt owed in Rogers County). *Id.* ¶¶ 10, 31–32, 65, 97–98, 128–29, 139.[8] Those who cannot pay remain in jail for days before they see a judge. *Id.*; *see also, e.g.*, *id.* ¶¶ 25, 209 (explaining that despite having no income and being homeless at the time of her arrest, Plaintiff Melanie Holmes was held in jail for six days before she was brought to see a judge because she could not afford to pay a $500 fixed sum to secure her release). The hearing that often occurs days after arrest is typically the first time an indigent debtor has a chance to explain to a judge that she cannot pay. *See id.* ¶¶ 9–10, 92–98, 120–29, 136–40. Nevertheless, some judges, including in Rogers County, order individuals to remain in jail and "sit out" their debt if they cannot make a payment at the time they are eventually brought to court. *Id.*

[8] Detention allegations against the Sheriff Defendants do not apply to the Sheriffs of Cherokee, McCurtain, Okmulgee, Pottawatomie, and Tillman Counties, which have shifted responsibility for county jails to a "jail trust authority." SAC ¶ 10 n.6.

¶¶ 10, 98 n.24, 140. Neither sheriffs nor judges (nor anyone else) provide any of the inquiries, findings, or procedural safeguards required by Supreme Court precedent and state law before a person can be jailed for not paying a sum of money. *Id.* ¶¶ 10, 30–37, 40–45, 79, 88–93.

Plaintiffs allege in the complaint that the practice of detaining persons who are arrested on debt-collection warrants is based solely on an inability to pay, without any notice or hearing at which a person can challenge the basis for the warrant. Accordingly, they asserted a detention-based claim under the Fourteenth Amendment (Count 4, SAC ¶¶ 339–44).

Plaintiffs' final claim is that they are subjected to *all* of the foregoing practices solely because of their inability to pay, in violation of the Fourteenth Amendment's Equal Protection Clause, which prohibits Defendants from forcing only indigent individuals to endure threats of arrest, arrest, and jail on the basis of their poverty alone (Count 7, SAC ¶¶ 360–62).

* * *

As a result of these practices, Aberdeen has collected—and all Defendants have reaped the benefits of—tens of millions of dollars in payments extracted under threat of imprisonment from the poorest people in Oklahoma. *Id.* ¶¶ 3, 104–15. Meanwhile, Plaintiffs, all of whom are indigent and unable to pay the amounts demanded by Aberdeen, have suffered and continue to suffer serious, persistent, and ongoing harm. For example, Plaintiff David Smith, under threat of arrest, was forced to forego basic

necessities and his child support payments in order to pay Aberdeen, costing him visitation with his son. *Id.* ¶ 173. Plaintiff Kendallia Killman, whose only income is a disability payment for her intellectually disabled son, has been arrested twice due to warrants related to her court debt, and Aberdeen continues to demand a lump sum payment to recall those warrants, threatening her with jail if she does not pay. *Id.* ¶¶ 182, 184. And Plaintiff Melanie Holmes—after suffering eviction and homelessness; near-daily threats of arrest by Aberdeen; one actual arrest on a debt-collection warrant; and a weeklong detention due to her inability to pay for release—was forced to move to Oregon to live with her sister-in-law. *Id.* ¶¶ 204–12. She is afraid to return to Oklahoma, where several of her other family members live, because of her debt-collection warrants. *Id.* ¶ 213.

II. Procedural History

Plaintiffs filed their initial complaint in November 2017. Dist. Ct. ECF No. 2. They amended their complaint three months later and immediately sought a temporary restraining order and preliminary injunction on behalf of Plaintiffs Carly Graff and Randy Frazier. Dist. Ct. ECF Nos. 76, 77, 79.[9] They also moved for class certification. Dist. Ct. ECF No. 78. In September 2018, the district court granted Plaintiffs' motion

[9] Plaintiffs' motion for a temporary restraining order and preliminary injunction was converted into a motion for a preliminary injunction by the district court. Dist. Ct. ECF No. 149. Hearing on that motion was initially set for March 29, 2018, *id.*, but that date was stricken, Dist. Ct. ECF No. 190, and the district court did not hold a hearing on Plaintiffs' motion for a preliminary injunction until September 30, 2020, Dist. Ct. ECF No. 344. No decision was ever rendered.

to file a second amended complaint and dismissed Defendants' motions to dismiss earlier versions of their complaint as moot. Dist. Ct. ECF No. 211.

Defendants filed 13 separate motions to dismiss the Second Amended Complaint in October 2018, JA772–1388, vols. IV–VI, which Plaintiffs opposed, JA1389–1770, vols. VI–VII; *see also* Dist. Ct. ECF No. 259 (denying Plaintiffs' motion to file a consolidated brief in opposition). On March 12, 2021—nearly two years after briefing was completed on Defendants' motions, and over three years after Plaintiffs moved for a temporary restraining order that was never ruled on—the district court dismissed the case in its entirety and entered judgment in Defendants' favor. *See* JA1941–65, vol. VIII.

The district court invoked three legal doctrines in purporting to explain why Plaintiffs could not seek relief in federal court. First, the court held that it lacked subject-matter jurisdiction over Plaintiffs' claims because they "f[ell] within the confines of the *Rooker-Feldman* doctrine," which "bars a federal claim . . . that asserts injury based on a state judgment and seeks review and reversal of that judgment." JA1951, vol. VIII (quoting *Bolden v. City of Topeka*, 441 F.3d 1129, 1141 (10th Cir. 2006)). Second, the court held that it also lacked jurisdiction under the abstention principles announced in *Younger v. Harris*, 401 U.S. 37 (1971), because "several of Plaintiffs' cases [were] still ongoing" and there was an "adequate forum" to hear Plaintiffs' claims. JA1959–60, vol. VIII. Finally, the court concluded that Plaintiffs' § 1983 claims were not actionable, per *Heck v. Humphrey*, 512 U.S. 477 (1994), because those claims "necessarily

undermine[d] a basic characteristic—i.e., the imposed fees, fines and/or costs—of their plea agreements and criminal sentences." JA1961–62, vol. VIII.

Plaintiffs timely appealed. JA1966, vol. VIII.

SUMMARY OF ARGUMENT

In concluding that *Rooker-Feldman*, *Younger*, and *Heck* bar Plaintiffs' claims, the district court wrongly assumed that by challenging Defendants' method of collecting court debt from indigent debtors in Oklahoma, Plaintiffs were necessarily challenging the underlying judgments and sentences in their criminal cases. Put another way, the district court conflated the imposition of fines and fees with the method of their subsequent enforcement. This analytical error infected all three of the district court's rulings.

First, the district court erred in holding that Plaintiffs' claims are barred by *Rooker-Feldman*. *Rooker-Feldman* is a narrow doctrine that prohibits district courts from sitting in direct review of state-court judgments. Here, Plaintiffs challenge no state-court judgment. They do not seek to undo their convictions, nor the imposition of fines, fees, or costs as part of their sentences. They allege that Defendants, including private actors, have violated Plaintiffs' rights in their efforts to *collect* the debt, typically long after any judgments were issued, and not directly caused by any state-court judgment. The challenged collection methods—including extortion by threat, arrest, and jailing, without any determination that nonpayment was willful—do not require the district court to consider the validity of Plaintiffs' convictions or sentences, or any other related

judgment. This Court has been clear that *Rooker-Feldman* does not bar "separate and distinct claim[s]" that challenge "the post-judgment enforcement procedures" arising out of state court cases. *Kiowa Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1171 (10th Cir. 1998). Plaintiffs' injuries are simply not the product of state-court judgments that the district court would need to review in order to adjudicate Plaintiffs' claims.

Second, the district court erroneously held that each of Plaintiffs' claims are subject to dismissal because of *Younger* abstention. *Younger* does not apply here because two of the necessary conditions for abstention—that the state proceedings be "ongoing," and that such proceedings afford Plaintiffs an "adequate opportunity" to present their federal claims—have not been met. *Phelps v. Hamilton*, 122 F.3d 885, 889 (10th Cir. 1997). First, Plaintiffs' underlying state cases have concluded, as their criminal or traffic adjudications are over and the time for appeal has long passed. The only unresolved issue in most of the cases that form the basis for Plaintiffs' claims is unpaid court debt. Collection activities alone, which do not involve any regular hearings before the court and often *no* activity on the docket (sometimes for years), are not the type of ongoing proceedings that warrant deference from a federal court. Second, because there are typically no hearings or other process, these proceedings offer no adequate opportunity for Plaintiffs' claims to be addressed. Contrary to the district court's assumption, Plaintiffs' claims could not be raised at sentencing or on appeal, for at that time debt-collection enforcement has yet to begin. The only time that a debtor sees a state judge is after being arrested on a warrant for nonpayment, at which time she has already suffered the

harms that form the basis for her claims, and at which the state court has no power to remedy the practices challenged in this lawsuit. Thus, the district court's abstention under *Younger* was inappropriate. Moreover, even if the criteria for abstention were satisfied here (which they are not), *Younger* would not apply to Plaintiffs' *damages* claims. *See Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 953 F.3d 660, 668 n.8 (10th Cir. 2020). At the very least, then, the district court should have allowed those claims to proceed in federal court.

Finally, the district court erroneously held that Plaintiffs' § 1983 claims are barred by *Heck*, which only applies where a ruling would necessarily imply the invalidity of a conviction or sentence. Again, a decision in favor of Plaintiffs here would carry no implication for their convictions or sentences. The district court's holding otherwise, if allowed to stand, would constitute an unprincipled expansion of *Heck*, as it would prevent a person from bringing a lawsuit challenging any unconstitutional treatment arising as a result of a sentence, which is completely unsupported by law.

For these reasons, the district court erred in dismissing Plaintiffs' Second Amended Complaint. This Court should reverse.

STANDARD OF REVIEW

This Court generally reviews a district court's grant of a motion to dismiss de novo, whether the dismissal is under Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction or under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. *Smith v. Plati*, 258 F.3d 1167, 1174 (10th Cir. 2001); *see also* JA1958, 1961, vol. VIII (basing dismissal

on a lack of "subject matter jurisdiction" under both *Rooker-Feldman* and *Younger*, and on Plaintiffs' failure to state "actionable" § 1983 claims per *Heck*). In reviewing a Rule 12(b)(6) motion, the court must "accept all the well-pleaded allegations of the complaint as true" and "construe them in the light most favorable to the plaintiff." *Albers v. Bd. of Cnty. Comm'rs of Jefferson Cnty.*, 771 F.3d 697, 700 (10th Cir. 2014). The court may also consider facts subject to judicial notice, but "a matter of public record . . . . may only be considered to show [its] contents, not to prove the truth of the matter asserted therein." *Tal v. Hogan*, 453 F.3d 1244, 1265 n.24 (10th Cir. 2006) (internal quotation mark omitted). The same standards apply when reviewing a Rule 12(b)(1) motion that asserts a facial challenge to subject-matter jurisdiction. *See Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 877 (10th Cir. 2017).

When a Rule 12(b)(1) motion asserts a factual challenge, however, the district court may look beyond the complaint and resolve any factual disputes upon which the jurisdictional allegations depend, and these factual findings are generally reviewed for clear error. *See Davis ex rel. Davis v. United States*, 343 F.3d 1282, 1295–96 (10th Cir. 2003). In this case, the district court purported to resolve such a challenge by looking to "public records" in Plaintiffs' underlying criminal cases. *See* JA1950–52, vol. VIII. But importantly, the district court did so without Defendants submitting any affidavits and without holding an evidentiary hearing. *See generally Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995) ("A court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts

under Rule 12(b)(1)."). Thus, the court was required to "accept as true the complaint's uncontroverted factual allegations," *Sac & Fox Nation of Okla. v. Cuomo*, 193 F.3d 1162, 1165 (10th Cir. 1999), and was bound by the ordinary rules governing the consideration of judicially noticeable documents at the motion-to-dismiss stage.[10]

ARGUMENT

I. The *Rooker-Feldman* doctrine does not apply to Plaintiffs' claims.

The *Rooker-Feldman* doctrine bars federal district courts "from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). In recent years, the Supreme Court has repeatedly admonished that the doctrine is a "narrow" one. *Id.* at 464 (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)); *Skinner v. Switzer*, 562 U.S. 521, 532 (2011) (same). It is "confined to cases of the kind from which [it] acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil*, 544 U.S. at 284.

Following *Exxon Mobil*, this Court has emphasized that the doctrine only applies when a plaintiff cannot prevail on her claims without proving the state court "wrongfully entered its judgment." *Campbell v. City of Spencer*, 682 F.3d 1278, 1283 (10th

[10] In any event, as explained below, several of the district court's findings—including its finding that Plaintiffs' warrants were all issued for failure to appear at a court-ordered hearing—were clearly erroneous.

Cir. 2012). In other words, the plaintiff must seek "to *modify or set aside* a state-court judgment because the state proceedings should not have led to that judgment." *Mayotte v. U.S. Bank Nat'l Ass'n for Structured Asset Inv. Loan Tr. Mortg. Pass-Through Certificates, Series 2006-4*, 880 F.3d 1169, 1174 (10th Cir. 2018). Thus, *Rooker-Feldman* does not bar "separate and distinct claim[s] challenging the post-judgment enforcement procedures ordered by the state courts." *Kiowa Indian Tribe of Okla.*, 150 F.3d at 1171. Because Plaintiffs here are challenging the post-judgment collection procedures ordered by the courts to collect their court debt, and not their underlying state-court judgments, the *Rooker-Feldman* doctrine plainly does not apply.

A. None of Plaintiffs' claims require them to prove the unlawfulness of any state-court judgment, nor do Plaintiffs seek to modify or set aside any such judgment.

Plaintiffs do not allege that they were wrongly convicted of their underlying offenses, nor do they present any challenge to their sentences or to the fines, fees, and costs assessed by a state court.[11] Instead, the complaint challenges debt-collection practices commenced after Plaintiffs are convicted and sentenced—practices including threats, arrests, and confinement without inquiry into ability to pay. Simply put, "there is no need to set aside" Plaintiffs' criminal convictions or sentences, or "even consider the validity" of those judgments, for Plaintiffs to establish their claims. *See Mayotte*, 880

[11] The sole exception to this is Plaintiffs' challenge to the 30-percent surcharge, which automatically applies whenever a sheriff or clerk decides to transfer a case to Aberdeen, *see supra* p. 8, and is not imposed pursuant to any state-court judgment.

F.3d at 1176. That is because Plaintiffs do not challenge the existence of their court debt or the amount at which it was set by state-court judgment. Plaintiffs challenge the unlawful *methods* by which public and private officials *collect* that debt (and in some cases augment it). *See* SAC ¶¶ 281–86 (describing RICO enterprise in Count 1); *id.* ¶¶ 356–58, 361 (discussing Aberdeen's conflict of interest and Defendants' more onerous collection practices in Counts 6 and 7, respectively); *id.* ¶¶ 321–26, 332–36, 342–43, 347–51, 364–66, 369–70, 372 (explaining why Defendants' warrant and detention practices are unconstitutional or violate state law in remaining counts); *see also id.* at pp. 98–100 (prayer for relief).

This distinction is critical: As this Court has explained, *Rooker-Feldman* does not bar "separate and distinct claim[s] challenging the post-judgment enforcement procedures ordered by the state courts." *Kiowa Indian Tribe of Okla.*, 150 F.3d at 1171. In *Kiowa*, the Kiowa Tribe of Oklahoma sought injunctive relief against creditors and state court judges to prevent the use of state-court processes to seize money from the Tribe pursuant to civil-court judgments. This Court reversed the district court's dismissal of the action under *Rooker-Feldman*, concluding that Supreme Court precedent "demonstrates that asking a federal court to enjoin post-judgment collection procedures that allegedly violate a party's federal rights is distinguishable from asking a federal court to review the merits of the underlying judgment." *Id.* at 1170 (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987)); *see also Erlandson v. Northglenn Mun. Ct.*, 528 F.3d 785, 790 (10th Cir. 2008) (reiterating that "a party may challenge state procedures for

enforcement of a judgment, where consideration of the underlying state-court decision is not required" (citation omitted)). The same distinction applies here.[12]

Other courts have refused to apply *Rooker-Feldman* in cases that closely resemble this one. In *Powers v. Hamilton County Public Defender Commission*, 501 F.3d 592 (6th Cir. 2007), the plaintiff brought a federal class action after he was incarcerated for non-payment of a fine that he was ordered to pay in connection with his underlying state criminal case, and he alleged that the public defender's practice of failing to request indigency hearings for clients facing jail time for unpaid fines was unconstitutional. The Sixth Circuit rejected the public defender's invocation of *Rooker-Feldman*, reasoning that the plaintiff had alleged his constitutional rights were violated not by "the state-court judgment," as required by *Rooker-Feldman*, but rather by the public defender's conduct "in failing to ask for an indigency hearing as a prerequisite" to incarceration. *Id.* at 606. *Powers* is on point here: The source of Plaintiffs' injuries is the "*administration* of [their] sentences," *Ray v. Jud. Corr. Servs.*, No. 12-cv-2819, 2013 WL 5428360, at *9 (N.D. Ala. Sept. 26, 2013) (emphasis added), and, in particular, the "post-judgment procedures employed to incarcerate persons who are unable to pay fines," *Fant v. City of Ferguson*,

[12] Oklahoma state law also recognizes the distinction between a sentence and its mode of execution. *See, e.g.*, *Ex parte Wagner*, 50 P.2d 1135, 1138–39 (Okla. 1935) (when a convict is sentenced to pay a fine and costs, and "the court has power and authority to enforce the payment of same by imprisonment of the defendant in the county jail, until the fine and costs are satisfied, ... [t]he payment of the fine and costs is the punishment. The commitment until the fine and costs are paid or satisfied is no part of the punishment, it is the mode of executing the sentence; that is, of enforcing the payment of the fine and costs of prosecution.").

107 F. Supp. 3d 1016, 1030 (E.D. Mo. 2015). It is not the state-court judgments themselves. *Id.*; *see also Cain v. City of New Orleans*, 186 F. Supp. 3d 536, 539, 553 (E.D. La. 2016) (claims challenging the "manner in which [state courts] collect[] post-judgment court costs from indigent debtors" targeted efforts to enforce a judgment and thus did not call for review of any final state-court order). The case law in this Circuit and others is thus clear that *Rooker-Feldman* does not apply to these types of claims.

B. In holding otherwise, the district court misconstrued Plaintiffs' claims.

The district court consistently misstated Plaintiffs' claims as challenging "the assessment of costs and fines as part of the sentences imposed," JA1952, vol. VIII, and the "judgment[s] . . . that included fees, costs, and/or fines," *id.* at 1954. This mischaracterization of Plaintiffs' Complaint resulted in the court's erroneous ruling that Plaintiffs' injuries are the "product of state-court orders." *Id.* at 1955. The Complaint shows that Plaintiffs in no way challenge their underlying state-court judgments or the amount of court debt imposed at sentencing. Rather, they allege that Defendants (including private actors whose unconstitutional conduct is entirely independent of the underlying state-court judgment) have engaged in unconstitutional practices *in the collection of* their debts, long after the judgments against Plaintiffs were entered. *See, e.g.*, SAC ¶ 2 ("Notwithstanding Plaintiffs' repeated pleas of financial hardship, Aberdeen . . . repeatedly threaten[s] [Plaintiffs] to make payments that they cannot afford[,] coerce[s] them with threats of arrest if they do not pay[,] and, with the assistance of the [other Defendants], [has] Plaintiffs actually arrested and detained solely

for nonpayment."); *see also id.* ¶¶ 281–86 (Count 1: RICO); *id.* ¶¶ 318–53 (Counts 2–5: warrant- and detention-based constitutional claims); *id.* ¶¶ 363–72 (Counts 8–10: state-law claims). Plaintiffs also allege that these coercive tactics are encouraged by Aberdeen's receiving a cut of all fees recovered, creating an unconstitutional financial conflict of interest, *id.* ¶¶ 355–58 (Count 6), and that the same tactics are not used to collect money from wealthier debtors, *id.* ¶ 361 (Count 7).

None of these claims cast doubt on the validity of Plaintiffs' convictions and sentences, including the amount of court debt they were ordered to pay. The challenges are to Defendants' chosen methods of post-judgment debt-collection. Plaintiffs' claims "assert injury from a source other than the state court judgments" and "are therefore independent claims outside the scope of the *Rooker-Feldman* doctrine." *McCormick v. Braverman*, 451 F.3d 382, 394 (6th Cir. 2006).[13] Put another way, if Plaintiffs succeeded on every element of their lawsuit tomorrow, absolutely nothing would change about

[13] The district court puzzlingly cited *McCormick* for the proposition that a plaintiff cannot "manufacture jurisdiction" by attributing his injuries to a third party whose conduct was "itself the product of a state court judgment." JA1956, vol. VIII. But *McCormick* in fact affirms that the *Rooker-Feldman* doctrine is "confined to those cases exemplified by *Rooker* and *Feldman* themselves: when a plaintiff asserts before a federal district court that a state court judgment itself was unconstitutional or in violation of federal law." 451 F.3d at 395. In *McCormick*, the Sixth Circuit rejected the application of *Rooker-Feldman* where, as here, the claims did not "assert an injury caused by the state court judgments," noting that "Plaintiff does not claim that the state court judgments themselves are unconstitutional or in violation of federal law." *Id.* at 392. So too here.

their underlying convictions or the initial assessment of court debt; the actors involved would simply have to change the way they pursued payment of such debts.

The district court's improper conflation of Defendants' methods of enforcing the state-court judgments with the judgments themselves is at the center of its misapplication of *Rooker-Feldman*. The district court's discussion of this Court's decision in *Market v. City of Garden City*, 723 F. App'x 571, 575 (10th Cir. 2017), illustrates the point. In *Market*, the plaintiff was twice convicted and jailed for driving under the influence of alcohol, and served the mandatory-minimum jail time required by the municipal ordinances. *Id.* at 571. Years later, she filed a federal lawsuit challenging the legality of the sentencing ordinances, which she had not done in state court. *Id.* at 572. This Court held that *Rooker-Feldman* barred her claims because she could only prevail on them if "the state-court order was unlawful." *Id.* at 574 (internal alteration omitted) (quoting *Campbell*, 682 F.3d at 1284). It also distinguished the case from one where "the state-court judgment could be correct and the enforcement mechanism could still be unconstitutional." *Id.* The latter situation is exactly the case here: were Plaintiffs to prevail on their claims, the validity of the state-court judgment imposing the court debt would be *undisturbed*. Because "the relief sought by the plaintiffs would not reverse or 'undo' the state-court judgment, *Rooker-Feldman* does not apply." *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1237 (10th Cir. 2006).

A related error made by the district court and used to support its faulty *Rooker-Feldman* analysis is its description of the monetary relief sought by Plaintiffs. JA1957–

58, vol. VIII (describing Plaintiffs as seeking "money damages in an effort to put themselves in the same position they would have been in had they never received their state court judgments"). Plaintiffs do not seek to recover the amount of court debt originally imposed. Rather, Plaintiffs seek monetary damages that make them whole for the violations they suffered as a result of Defendants' post-judgment collection methods; for example, the unconstitutional referral to Aberdeen for collection (Count 6) and the extortion based on threats of arrest and jailing (Counts 1, 8, 9, and 10). And, importantly, Plaintiffs seek *non-monetary* relief for almost all their claims as well. The district court entirely ignored Plaintiffs' claims for injunctive and declaratory relief, none of which seek to undo Plaintiffs' state-court judgments. *See* SAC ¶¶ 328, 338, 344, 353, 359, 362, 367, 372; *see also id.* pp. 98–100 (prayer for relief). As *Market* acknowledges, "the requested relief matters," 723 F. App'x at 574, and must be assessed as part of any *Rooker-Feldman* analysis.

C. The district court also erred in relying on supposed "avenue[s] of recourse" under state law, including Rule 8 of the Oklahoma Court of Criminal Appeals, as a reason to apply *Rooker-Feldman*.

The district court supported its application of *Rooker-Feldman* by repeatedly suggesting that Plaintiffs should have asserted their claims in either a direct appeal, "some other post-judgment review mechanism," or Rule 8. JA1953, 1955, 1958, vol. VIII. The district court is wrong as a matter of law and fact as to whether Plaintiffs could and should have availed themselves of these state law mechanisms.

As a preliminary matter, there is no appellate avenue for challenging the *method of enforcing* a state-court judgment rather than the judgment itself. A "direct appeal" would have only allowed Plaintiffs to challenge their convictions or sentences—not the post-sentencing practices actually challenged in this lawsuit. For example, there would have been no opportunity or ability to raise Aberdeen's extortionate collection practices at the time of sentencing or on appeal, not only because those practices occurred long after sentencing and the time for appeal, but also because they have nothing to do with the validity of the underlying conviction and sentence.

Moreover, it is unclear how "other post-judgment review mechanism[s]," such as "a request for a writ of mandamus," JA1955, vol. VIII, would offer any relief for Plaintiffs challenging, for example, threats issued by Aberdeen employees who are not party to any state court proceeding. In any event, the district court's decision misunderstands *Rooker-Feldman* because that doctrine "does not impose a duty to exhaust judicial and administrative remedies before pursuing a federal civil rights suit." *Loubser v. Thacker*, 440 F.3d 439, 442 (7th Cir. 2006). An untaken "avenue of recourse" involving initiation of a new proceeding in state court cannot support the application of the *Rooker-Feldman* doctrine, which turns not on whether a plaintiff can obtain what she seeks via some state proceeding or other, but on whether she can obtain what she seeks from a federal court without "review and rejection" of a state court's judgment against her, *see* JA1953, vol. VIII (quoting *Exxon Mobil*, 544 U.S. at 284). So even if Plaintiffs could have brought their claims by bringing an action seeking post-conviction

relief, as the district court supposed, *Rooker-Feldman* would not have required them to do so before filing this suit.

For similar reasons, the district court erred in treating its *Rooker-Feldman* analysis as "all the more appropriate" given the supposed prospect of Rule 8 proceedings. JA1955, vol. VIII. The district court reasoned that "Plaintiffs have an avenue of recourse available to them through Rule 8 but they have chosen to avoid it solely for the purpose of bringing claims in this Court." *Id.*; *see also id.* at 1958 (claiming that Plaintiffs "consciously elected to avoid" these proceedings). This rationale misunderstands Rule 8, is belied by the record, and, in any event, misinterprets the narrow set of circumstances that trigger *Rooker-Feldman*.

Rule 8 does not empower Plaintiffs to bring their claims to state court. Rule 8 sets forth what Oklahoma state courts must do before imprisoning a person for nonpayment of fines and costs. It specifies when courts must conduct hearings to assess a debtor's ability to pay (*see* Okla. R. Crim. App. 8.1, 8.3, 8.4, 8.5, 8.6); identifies when courts may set up payment plans (R. 8.3); authorizes courts to imprison debtors under certain circumstances, which always follow at least one ability-to-pay assessment (*see* R. 8.2, 8.4, 8.6); provides for direct appeal of such post-hearing detention orders (R. 8.8); and imposes reporting requirements (R. 8.7). These provisions are in keeping with the governing state statute, which provides that:

> Any defendant found guilty of an offense in any court of this state may be imprisoned for nonpayment of the fine, cost, fee, or assessment *when the trial court finds after notice and hearing that the defendant is financially able but refuses*

> *or neglects to pay the fine, cost, fee, or assessment*. A sentence to pay a fine, cost, fee, or assessment may be converted into a jail sentence only after a hearing and a judicial determination, memorialized of record, that the defendant is able to satisfy the fine, cost, fee, or assessment by payment, but refuses or neglects so to do.

Okla. Stat. tit. 22, § 983(A) (emphasis added). The statute also directs the Court of Criminal Appeals to "implement procedures and rules for methods of establishing payment plans of fines, costs, fees, and assessments by indigents." *Id.* § 983(D). But nowhere does Rule 8 give debtors the power to "request" a hearing, as the district court appeared to believe, *see* JA1962, vol. VIII. It obligates courts to conduct hearings and make findings on ability-to-pay before imprisoning someone. If the courts do not hold such hearings, then there is no Rule 8 forum in which Plaintiffs can even appear, let alone bring claims.

Crucially, regardless of what Rule 8 requires or permits, these hearings simply do not happen. Plaintiffs allege that they have been threatened, subjected to arrest warrants, and jailed *without* such a hearing or a proper determination that they had the means to pay their debts. *See, e.g.*, SAC ¶¶ 318–28, 339–44 (Counts 2 and 4). The district court seemed to acknowledge Plaintiffs' jailing claims, *see* JA1952, vol. VIII ("Plaintiffs further claim they have been imprisoned without a proper determination that they had the means to pay"), but asserted that "in those instances the record reflects Plaintiffs chose not to appear for such a determination," *id.* That is wrong on the facts. Review of Plaintiffs' dockets shows that any post-sentencing cost hearings were set only *after* debtors were arrested and jailed on a "failure to pay" warrant that was issued

without any hearing or process. *See, e.g.*, JA279–82, vol. II (Dist. Ct. ECF No. 95-1).[14] This supports Plaintiffs' allegations that warrants are issued for nonpayment without any court date being scheduled (much less missed). Nothing in the Complaint or in any public record properly subject to judicial notice suggests otherwise. The district court erred by not taking Plaintiffs' factual allegations as true at the motion-to-dismiss stage. The district court also failed to address the fact that Count 5 of the Complaint turns on the allegation that the "virtually automatic issuance of debt-collection arrest warrants for those who fall behind on payments violates the requirements" of Rule 8. SAC ¶ 95; *see id.* ¶¶ 345–53 (describing failure to comply with state-created liberty interests embodied in Rule 8 as a violation of the Fourteenth Amendment).

In any event, as explained above, even if Plaintiffs could choose to seek a hearing under Rule 8, any ability to initiate a separate proceeding is not relevant to *Rooker-Feldman*, which again has no exhaustion requirement. The district court's conclusion

[14] Notably, the docket cited above was one of the defense exhibits that the district court relied upon earlier in its opinion to conclude that "Plaintiffs' warrants have been issued for failure to appear as ordered by a court." JA1947 n.6, vol. VIII. These documents do not establish that the warrants at issue were for failure to appear; they were for "failure to pay," JA 279–82, vol. II (Dist. Ct. ECF No. 95-1); *see also, e.g.*, JA505–07, vol. III (Dist. Ct. ECF No. 95-22). The one exception is Plaintiff Kendallia Killman. *See* JA1947 n.6, vol. VIII (citing, inter alia, ECF Nos. 95-28, 95-29, 95-31, and 95-32, which all pertain to Ms. Killman and can be found at JA553–82, vol. III). But the complaint itself acknowledges this fact and explains that although several of Ms. Killman's warrants "purport to be for failure to attend court dates regarding payment of court debt," she "never received actual notice of those court dates" and was not "validly summoned to court." SAC ¶ 184 & n.36. The district court neither credited Plaintiffs' explanation nor gave any reason for discrediting it before dismissing.

that Plaintiffs have "consciously elected to avoid" availing themselves of Rule 8 reflects an erroneous view of both the law and the facts of this case.

This is to say nothing of Plaintiffs' claims on topics entirely unrelated to Rule 8 or anything arising out of state court, such as their financial conflict of interest claim and their RICO claim. Indeed, the district court's own framing demonstrates its utter failure to deal with the many different types of claims and parties involved in this lawsuit. The court suggested that what Plaintiffs fail to bring to the state courts are claims about the "imposition of costs and fines" (which they do not challenge, as explained above) "and/or failure of the district courts to follow appropriate procedures." JA1953, vol. VIII; *accord id.* at 1955, 1958. But Plaintiffs do not merely challenge the failure of "the district courts" to follow appropriate procedures. Even the five claims asserted against court clerks and judges challenge the practices of numerous other Defendants. *See, e.g.*, SAC ¶¶ 322, 324, 332, 334, 361 (asserting Fourth and Fourteenth Amendment claims against Aberdeen Defendants and Tulsa and Rogers County Sheriffs for their role in seeking and executing illegal debt-collection arrest warrants); *id.* ¶ 361 (explaining how Aberdeen subjects those who are too poor to pay to more onerous collection methods). And, as noted, several of Plaintiffs' claims have nothing to do with "appropriate procedures" at all. *See, e.g.*, *id.* ¶¶ 354–59 (challenging Aberdeen's role in collecting court debt and seeking and recalling arrest warrants due to its financial bias). The district court's opinion ignores these distinctions and summarily concludes that the entire "[c]omplaint" falls within the confines of

Rooker-Feldman. JA1951, vol. VIII. It thereby failed to meaningfully account for Plaintiffs' factual allegations, their legal arguments, and the relief they seek. These considerations are the *sine qua non* of any *Rooker-Feldman* analysis. *See Exxon Mobil*, 544 U.S. at 284; *Mayotte*, 880 F.3d at 1176; *Campbell*, 682 F.3d at 1283.

For all these reasons, the district court erred in concluding that *Rooker-Feldman* deprived it of jurisdiction over Plaintiffs' claims.

II. The district court erred in holding that it must abstain from adjudicating Plaintiffs' claims under the *Younger* doctrine.

It is well settled that "a federal court's 'obligation' to hear and decide a case is 'virtually unflagging.'" *Sprint Commc'ns Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). Accordingly, "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule," *Colo. River Water Conservation Dist.*, 424 U.S. at 813, and "[o]nly 'exceptional' circumstances merit *Younger* abstention," *Elna Sefcovic, LLC*, 953 F.3d at 670 (quoting *Sprint Commc'ns*, 571 U.S. at 73); *see also Walker v. City of Calhoun*, 901 F.3d 1245, 1254 (11th Cir. 2018) ("Abstention . . . has become disfavored in recent Supreme Court decisions."). Abstention under *Younger* occurs in a narrow set of circumstances: "When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution." *Sprint Commc'ns*, 571 U.S. at 72. *Younger* abstention is also appropriate if a plaintiff seeks to enjoin ongoing "state civil proceedings that are akin to criminal prosecutions," *id.*, or "civil proceedings involving certain orders that

are uniquely in furtherance of the state courts' ability to perform their judicial functions," *id.* at 73 (citation omitted). Federal courts abstain under *Younger* to preserve "equity, comity, and federalism" by not ruling on legal issues that a state court is already poised to rule on. *Steffel v. Thompson*, 415 U.S. 454, 460–61 (1974).

Before a federal court may abstain under *Younger*, three conditions must be met: "(1) the state proceedings are ongoing; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to present the federal constitutional challenges." *Phelps*, 122 F.3d at 889. And even if these conditions are met, *Younger* abstention is not warranted if one of three exceptions applies. *Younger* abstention is inappropriate where "the [state] prosecution was (1) commenced in bad faith or to harass, (2) based on a flagrantly and patently unconstitutional statute, or (3) related to any other such extraordinary circumstance creating a threat of irreparable injury both great and immediate." *Winn v. Cook*, 945 F.3d 1253, 1258–59 (10th Cir. 2019) (internal quotation marks omitted).

The district court's abstention under *Younger* was wrong for three reasons. First, there are no ongoing state proceedings in any of Plaintiffs' cases. Their criminal cases concluded prior to this lawsuit, and when they brought this suit, they had no pending actions relating to the enforcement of any term of their sentences. Unpaid court debt alone does not make a state prosecution "ongoing." Second, the state court offers no hearing or opportunity to be heard at which Plaintiffs may raise their claims. As Plaintiffs alleged, in practice, there are no opportunities in state court to raise the claims

at issue in this lawsuit. And to the extent any post-conviction hearings *could* have occurred before a state court judge, the allegations establish that these hearings are only held after Plaintiffs have suffered the harms they challenge—threats, warrants, and jailing because of an inability to pay—rendering any such opportunity inadequate. Finally, even if all of the *Younger* criteria for abstention were satisfied, Plaintiffs' claims for damages could not be dismissed.

A. There were no ongoing state proceedings when Plaintiffs filed their lawsuit.

Because none of the Plaintiffs in this case are involved in ongoing state proceedings, *Younger* abstention is improper.

Younger abstention only licenses a federal court to decline jurisdiction when "failing to [abstain] would disturb an ongoing state proceeding." *Rocky Mountain Gun Owners v. Williams*, 671 F. App'x 1021, 1024 (10th Cir. 2016) (collecting cases). If state proceedings are not ongoing, abstention is improper because "the relevant principles of equity, comity, and federalism have little force in the absence of a pending state proceeding." *Steffel*, 415 U.S. at 462 (internal quotation marks omitted). In essence, there is no concern that federal courts are interfering with the state court's authority when the state court does not consider the legal question at issue, or if such consideration has ended. As to criminal cases, state proceedings are no longer ongoing when a criminal conviction and sentence are entered and the time to appeal expires. *See Bear v. Patton*, 451 F.3d 639, 642 (10th Cir. 2006) (concluding in civil proceedings that

"if a lower state court issues a judgment and the losing party allows the time for appeal to expire, then the state proceedings have ended" (citation omitted)). The facts of *Younger* itself make this clear. There, the plaintiff challenged the constitutionality of a state criminal statute and requested "an injunction against the Act's enforcement" while the plaintiff awaited trial as "the defendant in a pending state criminal prosecution under the Act." *Sprint Commc'ns*, 571 U.S. at 77.

In contrast to the plaintiff in *Younger*, who was awaiting trial at the time he filed suit, none of the Plaintiffs in the present case had ongoing criminal proceedings when they filed suit. All of them had been tried, convicted, and sentenced in state criminal court. *See, e.g.*, SAC ¶ 22 (Plaintiff Killman's claims arose out of a 2009 sentence); *id.* ¶ 23 (Plaintiff Choate's claims arose out of a conviction that occurred in 2007). Indeed, Plaintiffs' claims challenging the processes used to collect court debt rely on the fact that their criminal adjudications have concluded. The time for Plaintiffs to appeal their convictions and sentences had long since passed. *See id.*; *see also* Okla. Stat. tit. 22, § 1054(A) (requiring appeals from criminal convictions to be perfected within 90 days of entry of judgment). Thus, there were no ongoing criminal proceedings as to any Plaintiff that would have warranted the district court's abstention.

The district court concluded, without citation, that state court proceedings were ongoing because Plaintiffs had not yet fully paid their fines and costs. JA1960, vol. VIII. That conclusion was mistaken as a matter of law and fact. As a preliminary matter, at least one Plaintiff had completely paid off all her fines and fees by September

25, 2020, several months before the district court ruled. *See* Dist. Ct. ECF No. 342. It was therefore improper for the district court to abstain from deciding her claims against Defendants.

More importantly, there is no legal support for the proposition that criminal proceedings are "ongoing" until someone has completed all the terms of their sentence. Here, Plaintiffs' state criminal proceedings were complete: they had been convicted and sentenced, and the time for appeal had passed. There were no scheduled future proceedings in these courts; the state courts merely had ongoing jurisdiction to hear potential future enforcement actions related to Plaintiffs' criminal convictions and sentences. Courts considering the question in similar circumstances have found that "[t]he mere existence of Plaintiffs' undischarged [court] debts does not constitute an 'ongoing state judicial proceeding,'" and *Younger* abstention therefore does not apply. *Rodriguez v. Providence Cmty. Corr., Inc.*, 191 F. Supp. 3d 758, 763 (M.D. Tenn. 2016) (citing *Steffel*, 415 U.S. at 462); *see Cain*, 186 F. Supp. 3d at 550 (same); *see also id.* at 549 (citing cases). Such decisions accord with this Court's jurisprudence, according to which the possibility of future legal actions based on a failure to comply with some state-law obligation does not create an ongoing state proceeding for *Younger* purposes. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1242 (10th Cir. 2001) ("The possibility of future prosecutions, however—even the likelihood of future prosecutions—is not sufficient to justify *Younger* abstention.").

Courts have similarly held that *Younger* abstention is improper in the analogous contexts of probation and parole, recognizing that the mere possibility that someone will violate their probation and be brought into court does not render the probationer's criminal case ongoing. *Brown v. Montoya*, No. 10-cv-81, 2010 WL 11523669, at *3 (D.N.M. Nov. 16, 2010) ("State Defendants argue that the *Younger* doctrine applies here, presumably because future litigation of his probation conditions may occur. The Tenth Circuit precludes such prospective application of the *Younger* doctrine, noting that the 'possibility of future prosecutions . . . is not sufficient to justify *Younger* abstention.'" (quoting *Pierce*, 253 F.3d at 1242)), *aff'd in part, rev'd in part*, 662 F.3d 1152 (10th Cir. 2011); *see also Trombley v. Cnty. of Cascade*, 879 F.2d 866 (9th Cir. 1989) (no ongoing proceeding when plaintiff "is currently out on parole"); *Almodovar v. Reiner*, 832 F.2d 1138, 1141–42 (9th Cir. 1987) (holding that "[p]ost trial proceedings[] such as probation" do not constitute "a pending criminal action for *Younger* purposes").

The reason for these rules is simple: as with probationers, it is speculative whether state-court debtors will fail to comply with the terms of their sentences or ever appear again before the state court. It is no surprise, then, that in the limited circumstance in which this Court concluded that ongoing state-court jurisdiction *did* constitute ongoing proceedings, it did so because the state court was holding *mandatory* periodic hearings, thus ensuring the state forum would be open to the plaintiff. *See J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1291 (10th Cir. 1999) (holding that children's court

proceedings were ongoing because the court could modify a child's custody disposition and was required to conduct reviews every six months).

Although Plaintiffs have been subject to ongoing debt-collection practices by Defendants, these are not ongoing court proceedings in which Plaintiffs could adequately raise their claims. *See infra* Part II.B. The debt-collection practices Plaintiffs challenge do not involve ongoing *court proceedings* at all. Court debtors do not get a hearing before a "failure to pay" warrant is issued. SAC ¶ 50. The case is transferred to Aberdeen and a 30-percent surcharge is added without a hearing before the state court. *Id.* ¶¶ 5, 35–37, 55, 125, 137. Aberdeen attempts to collect on the debt, including by threatening debtors and coercing them to pay from protected income sources, without court involvement, much less a hearing before the state court. Aberdeen "affirmatively attempts to prevent debtors from learning" of the legal right to be heard before arrest for nonpayment. *Id.* ¶ 95. If the debtor is sufficiently threatened and finds a way to pay Aberdeen, she will have had her rights violated without ever having a court hearing to challenge Aberdeen's practices. And if Aberdeen cannot squeeze any money from the indigent debtor, it seeks a new failure-to-pay arrest warrant, still without a court hearing. Once arrested, people sit in jail for days before seeing a judge. In this way, the entire unconstitutional debt-collection process occurs without a single court proceeding happening at which Defendants' conduct may be challenged.

Consider Plaintiff Randy Frazier: He was charged in Tulsa County with the traffic offense of driving with a suspended license. JA583–84, vol. III. On August 19, 2014,

Mr. Frazier pled guilty and the totality of his sentence was a $200 fine, plus unidentified "costs." *Id.* at 587. After his sentence was imposed, Mr. Frazier was given no further court dates, requirements, or obligations, beyond an instruction to set up a payment plan with the court's cost administrator's office. *See id.* At that, the case appeared to be over. Per the docket, nothing happened under the case number for over two years.

In the intervening time, Mr. Frazier suffered a mini-stroke, which left him unable to earn a living. SAC ¶ 162. On December 28, 2016, without any hearing or evident process, an arrest warrant was issued for Mr. Frazier for "failure to pay a cash payment of $571.50," followed by several additional cost assessments associated with the warrant. JA587, vol. III. On October 18, 2017, the case was transferred by a court administrator to Aberdeen, at which time an additional $171.45 surcharge was added to Mr. Frazier's debt. *Id.* at 588. The docket reflects no activity after transfer to Aberdeen. Indeed, the docket reflects no hearings in which either Mr. Frazier or the state court judge actively participated after his guilty plea. After transfer, Aberdeen proceeded to threaten Mr. Frazier and his daughter that Mr. Frazier would be arrested if they did not pay the amount Aberdeen demanded. SAC ¶¶ 165–68.

As Mr. Frazier's case demonstrates, Plaintiffs' ongoing interactions with Defendants over their outstanding debts do not include *any* state-court proceedings unless and until they appear in court after a warrant has issued. Indeed, they do not guarantee that Plaintiffs will ever appear before the state court. *Cf. J.B.*, 186 F.3d at

1291; *Almodovar*, 832 F.2d at 1141–42; *Brown*, 2010 WL 11523669, at *3. The district court accordingly erred in concluding that it must defer to ongoing state proceedings.

B. Even if they were ongoing for purposes of *Younger*, none of the state proceedings noted by the district court afford Plaintiffs an adequate opportunity to raise their federal claims.

Even if the state proceedings wrongly deemed "ongoing" by the district court were in fact ongoing, *Younger* abstention would still be inappropriate because none of those proceedings would provide an opportunity for Plaintiffs to adequately raise their challenges to Defendants' illegal and unconstitutional debt-collection practices.

The district court concluded that the state court "provides an adequate forum to hear [Plaintiffs'] federal claims." JA 1960, vol. VIII. According to the district court, Plaintiffs are currently able to "assert, in their underlying case, that the procedures employed regarding collections of the fines were improper and/or unconstitutional." *Id.* Further, the district court concluded that Plaintiffs could "appeal any adverse determination concerning their ability to pay under Rule 8." *Id.* Neither conclusion is supported by law and neither accounts for Plaintiffs' actual claims.

As an initial matter, it is not possible for Plaintiffs to raise their challenges to Defendants' debt-collection scheme in an appeal of their underlying criminal cases. All of the claims brought by Plaintiffs challenge Defendants' conduct in collecting fees and costs that were assessed as part of Plaintiffs' sentences. By definition, this conduct occurred only *after* Plaintiffs were sentenced in criminal court, and thus Plaintiffs could not raise these issues in any underlying criminal trial or at sentencing, when they had no

knowledge of how Defendants would seek to enforce against them in the future. The district court offers no explanation of its contrary conclusion.

Nor could Plaintiffs adequately raise all of their legal challenges to Defendants' conduct at any post-conviction state-court hearing related to their failure to pay their outstanding debts. First, the district court is incorrect that Plaintiffs could avail themselves of a hearing under Rule 8, because, as alleged, no such hearings are provided in state court. *See supra* Part I.C. This is clearly illustrated by Plaintiffs in this case like Mr. Frazier, *see supra* Part II.A, whose cases have been transferred to Aberdeen, and who are thus suffering all the attendant harms of Aberdeen's illegal conduct without having any opportunity in state court to challenge that conduct.

Second, Plaintiffs claim that they suffer harms, including jailing based on arrest warrants sought by Aberdeen or local officials, before there is any proceeding at which they can make an argument or present evidence concerning their ability to pay. *See, e.g.*, SAC ¶ 50 ("In no case do Defendants provide any pre-deprivation process, inquiry into ability to pay, or sworn statements supporting the allegations of non-payment."). The availability of a court proceeding *after* Plaintiffs suffer numerous constitutional harms, including being jailed, cannot represent an adequate opportunity to address their injuries. As the Fifth Circuit explained in an opinion upheld in relevant part by the Supreme Court, "no remedy would exist" if arrestees had to wait for a hearing until after they had been jailed, because the harms they sought to address "would have ended as of [that] time." *Pugh v. Rainwater*, 483 F.2d 778, 782 (5th Cir. 1973), *aff'd in relevant*

part by Gerstein v. Pugh, 420 U.S. 103 (1975). Similarly, in *Gibson v. Berryhill*, optometrists sought to enjoin biased state proceedings to revoke their licenses. 411 U.S. 564, 569–70 (1973). Although there was the option to appeal any revocation, the Supreme Court rejected *Younger* abstention, finding that state proceedings were inadequate because the appellate process could not undo the irreparable damage of a temporary loss of license that the optometrists would have been forced to endure between the board proceedings and reversal on appeal. *Id.* at 577 & n.16. The same is the case for Plaintiffs here, who would be, and have been, forced to endure days of incarceration before they have the opportunity to make any argument in front of a state court judge. *See, e.g.*, SAC ¶¶ 129, 140. Indeed, several of Plaintiffs' claims turn on the fact that it is a constitutional violation in and of itself to subject individuals to such a serious deprivation of liberty before they are given an opportunity for a hearing. SAC ¶¶ 339–44.[15]

And, contra the district court, Plaintiffs could not present themselves to the state court to make a Rule 8 argument on their own initiative, after the issuance of an arrest

[15] Indeed, the fact that a hearing would occur after "irreparable injury" has been cast as a standalone reason that abstention is inappropriate. *Younger*, 401 U.S. at 48; *see also Weitzel v. Div. of Occupational & Prof'l Licensing*, 240 F.3d 871, 876 (10th Cir. 2001) ("The *Younger* abstention doctrine is inapplicable . . . where irreparable injury can be shown."). Irreparable injury is found where the "threat to the plaintiff's federally protected rights . . . cannot be eliminated by . . . defense against a single prosecution." *Phelps*, 122 F.3d at 889 (quoting *Younger*, 401 U.S. at 46); *see also Dombrowski v. Pfister*, 380 US. 479, 485–86 (1965) (when "the allegations in th[e] complaint depict a situation in which defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights," then the "allegations, if true, clearly show irreparable injury"). For the same reasons that Plaintiffs lack an adequate opportunity to raise their claims in state court, they also fall within *Younger*'s irreparable injury exception.

warrant, without running an unreasonable risk of those same deprivations. This is aptly demonstrated by a different case arising out of the Northern District of Oklahoma and challenging, among other things, Washington County judges' failure to "conduct an inquiry into criminal defendants' ability to pay . . . before sanctioning indigent defendants for non-payment—including by incarceration." *Feenstra v. Sigler*, No. 19-cv-234, 2019 WL 6040401, at *1 (N.D. Okla. Nov. 13, 2019). There, as Plaintiffs here similarly allege, the judge issued an arrest warrant for nonpayment without holding a hearing or conducting any inquiry into ability to pay. *Id.* at *2–3. When the plaintiff with an active warrant went to court to meet with the judge in the hopes of having it recalled, "the Court Clerk's office notified the police that [the plaintiff] was at the courthouse and she was arrested . . . . and spent the night in jail." *Id.* at *3. Even if the state criminal courts here would eventually hear Plaintiffs' federal claims (which, as discussed below, they could not), *Younger* abstention does not require Plaintiffs to risk the same fate as the plaintiff in *Feenstra* to seek an opportunity to be heard about their fundamental constitutional rights.

Moreover, as a matter of state law, Plaintiffs would not be able to raise their claims about the Aberdeen Defendants' extortionate practices and unconstitutional conflict of interest—which do not turn on whether anyone has properly assessed the willfulness of their nonpayment—at a hypothetical pre-deprivation Rule 8 hearing. *See* SAC ¶¶ 274–317, 363–72 (Counts 1, 8, 9, and 10). The state court's options are limited: The judge is empowered to determine only whether to convert the person's outstanding

debt to a jail sentence due to willful nonpayment. Okla. Stat. tit. 22, § 983(A). And at such a hearing, the state court would determine only whether to relieve the person's debt (but only if the person is unable to pay "because of physical disability or poverty"), order an installment plan for payments, or jail the person for willful nonpayment. Okla. R. Crim. App. 8.2, 8.3, 8.5. The state judge is not empowered in either type of hearing to issue orders dictating how the debt-collection agency behaves when it attempts to collect outstanding fees and costs. In fact, neither the Aberdeen Defendants nor the Sheriff Defendants would be parties to any hearing that would take place before the state court. As a result, even after a hearing, Aberdeen would remain free to continue to threaten and coerce payment from Plaintiffs or other similarly situated individuals in order to maximize the company's profit. Thus, even if Plaintiffs could have obtained a pre-deprivation Rule 8 hearing (which is contradicted by the Complaint and the record), such a hearing would be entirely inadequate to challenge Defendants' extortionate conduct, violations of state tort law, and use of a non-neutral law enforcement official.

In sum, Plaintiffs have alleged that they are serially denied *any* opportunity—much less an adequate one—to be heard in state court before they are subjected to the harms that form the basis of their federal claims in this lawsuit.[16] They ask this Court to reject the district court's unprecedented expansion of *Younger*.

[16] Even if this Court were to determine that all of the abstention criteria are met for each and every claim, the district court would still have erred by dismissing Plaintiffs' damages claims. As to those claims, "a district court may do no more than stay the federal litigation while it awaits the state court's resolution of the state proceeding." *Elna Sefcovic, LLC*, 953

III. The district court erred in holding that the *Heck* doctrine bars Plaintiffs' § 1983 claims.

Lastly, Plaintiffs' § 1983 claims are not barred by *Heck*. The *Heck* bar applies only if a hypothetical ruling in Plaintiffs' favor in this suit would "necessarily imply" the invalidity of their convictions and sentences. 512 U.S. at 487. Federal courts have consistently rejected application of *Heck* where, as here, the plaintiffs merely seek to ensure that court debt is collected in a constitutional way. *See, e.g.*, *Powers*, 501 F.3d at 604–05; *Cain*, 186 F. Supp. 3d at 548; *Fant*, 107 F. Supp. 3d at 1028. The violations alleged by Plaintiffs—including the extortion scheme, the threats of jail, and the failure to consider Plaintiffs' ability to pay before converting a fine into a jail sentence—in no way threaten to invalidate Plaintiffs' sentences. *See supra* Parts I.A & I.B. Thus, Plaintiffs' § 1983 claims "should be allowed to proceed." *Heck*, 512 U.S. at 487.

In holding otherwise, the district court reasoned that Plaintiffs' § 1983 claims, if successful, "would necessarily undermine a basic characteristic—i.e., the imposed fines, fees, and/or costs—of their plea agreements and criminal sentences." JA1962, vol. VIII. But again, Plaintiffs do not challenge the imposition of any fines, fees, or costs,

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F.3d at 668 n.8. And as the district court recognized, only some of Plaintiffs have outstanding obligations. JA1960, vol. VIII ("*several* of Plaintiffs' cases are still ongoing" (emphasis added)). Indeed, Plaintiff Carly Graff—who alleges violations based on a single Rogers County traffic ticket, SAC ¶ 18—per Defendants' own representations, "no longer has an active arrest warrant nor outstanding court debts in Rogers County." Dist. Ct. ECF No. 342. Accordingly, even under the district court's unprecedented expansion of *Younger*, Ms. Graff's damages claims should immediately proceed, along with any other of Plaintiffs' claims that arise out of state cases that have been resolved.

other than the 30-percent surcharge. This surcharge is automatically added whenever a court clerk or sheriff decides to refer a case to Aberdeen for collection, without an order signed by a judge, and it does not go toward paying off any fines and fees associated with the sentence. *See supra* p. 8. Once collected, the surcharge belongs to OSA in the first instance, and a portion may be allocated to Aberdeen as compensation. *See id.* In other words, the surcharge is not part of the state-court judgment and thus cannot implicate *Heck* any more than it can implicate *Rooker-Feldman*. *See supra* note 11.

The rest of the district court's analysis strays from the relevant question that it purports to answer: whether a ruling in Plaintiffs' favor would necessarily imply the invalidity of their convictions and sentences. For example, the district court asserts that application of *Heck* is "all the more appropriate" here because "some Plaintiffs pled guilty and voluntarily entered into plea agreements, and their sentences were the primary issue for consideration in the plea proceedings." JA1962, vol. VIII. The district court cites case law establishing that the basics of contract law apply to plea agreements, *id.* at 1962–63, but none of this changes the fact that no Plaintiff in this lawsuit has challenged their conviction or sentence. Moreover, no plea agreement could possibly bar a person from filing a lawsuit about unconstitutional treatment arising as a result of their sentence, sometimes years after the imposition of their sentence. Taken to its logical conclusion, the contrary view would mean that criminal defendants who voluntarily plead guilty would not even be able to challenge the conditions of their confinement. That result has no support in the law and should be rejected.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, and the Second Amended Complaint should be reinstated.

Dated: August 6, 2021

Respectfully Submitted,

/s/ Seth Wayne

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STATEMENT CONCERNING ORAL ARGUMENT

Due to the complexity of the facts and claims alleged in the Complaint, Plaintiffs believe that oral argument may be helpful to the Court. Oral argument is also warranted here given the implications of allowing the district court's jurisdictional ruling to stand, particularly in cases where, as in this case, plaintiffs seek redress for constitutional violations in federal court.

/s/ Seth Wayne
Seth Wayne

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume, typeface, and type-style requirements of Federal Rule of Appellate Procedure 32(a) and 10th Circuit Rule 32. This brief contains 12,931 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f), as calculated in Version 16.50 of Microsoft Word for Mac. It was prepared in 14-point (above-the-line) or 13-point (footnotes) font using Garamond, a proportionally spaced typeface.

/s/ Seth Wayne
Seth Wayne

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, I electronically transmitted the foregoing brief to the Clerk of the Court using the appellate CM/ECF System, causing it to be served on counsel of record, who are all registered CM/ECF users.

/s/ Seth Wayne
Seth Wayne

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 17-CV-606-TCK-JFJ**
	)	
ABERDEEN ENTERPRIZES, II, Inc., et al.,	)	
	)	
	)	
Defendants.	)	

OPINION AND ORDER

Before the Court is Defendants' Motion to Dismiss the Second Amended Complaint. (Doc. 226). Plaintiffs filed a Response to said motion (Doc. 268), and Defendants filed a Reply (Doc. 292). The definitive question presented is whether this Court has subject matter jurisdiction over Defendants who administer a statutorily created operating fund that is partially sourced, pursuant to state law, by certain categories of statutorily-authorized fines and fees? Although this issue is raised in the instant motion, it is also raised by every other defendant in this case in separate Motions to Dismiss the Second Amended Complaint. See Docs. 226, 227, 228, 230, 231, 232, 233, 234, 235, 236, 237, 238, and 239.

I. BACKGROUND

Plaintiffs are eight individuals that, at some point, became subject to criminal sentences which included a component for payment of fees, costs and/or fines. The Defendants are a collection of entities with differing involvement along a spectrum from the point of sentencing to events occasioned by the Plaintiffs' failure to comply with the financial obligations of their sentences. Defendant Aberdeen Enterprizes, II, Inc's ("Aberdeen") involvement in this spectrum relates solely to an Oklahoma statute which allows Oklahoma county sheriffs to enter into a

"private contract" for the purposes of locating and notifying persons of outstanding failure-to-pay warrants and permits the private contractor to accept payment of the outstanding amounts and remit the payments to the court clerk. [1] See Okla. Stat. tit. 19, § 514.4 (A), (B) and (E); Second Amended Complaint (Doc. 212), Exhibit "A," Agreement for Collection ("Agreement"), at p. 1. Aberdeen does not seek, issue, execute or recall warrants. Rather, Aberdeen collects amounts already owed which have been identified by county officials and notes whether a person has or has not paid amounts due.

The Plaintiffs allege concern over the possibility of arrest based upon their failure (or anticipated failure) to pay the fees, costs and/or fines component of their criminal sentences. Plaintiffs allege one of two possible scenarios: (1) a hearing should have been, but was not, conducted to determine whether they have the financial means to pay fees, costs and/or fines connected with their criminal sentences or (2) their circumstances have changed such that a hearing regarding their inability to pay should be conducted.

When an individual fails to pay fees, costs and/or fines connected to their criminal sentence, a county/court official may seek a warrant for nonpayment. See Second Amended Complaint (Doc. 212), ¶ 5, p. 6. The judges sign the warrants, which are executed by the respective sheriffs. See Id., ¶¶ 5, 64 and 65, pp. 6 and 29. Aberdeen's involvement occurs after nonpayment and after warrants are issued and relates to efforts to collect outstanding amounts through, for example, payment plans. See Id., ¶¶ 5 and 51, p. 6 and 25. [2] The thirty percent (30%) fee added to

[1] In 2011, the Oklahoma Supreme Court mandated that each district court is "authorized and directed to participate" in the warrant collection program authorized by Section 54.4 "immediately."

[2] Aberdeen is one of a number of private vendors utilized in this regard. See Motion to Dismiss of Defendant P.D. Taylor (Doc. 215 at 3)(Defendant P.D.Taylor was voluntarily dismissed from this action by Plaintiffs on December 3, 2018. (Doc. 280).

any outstanding amount owed is set by Oklahoma statute. See Id., ¶ 5, p. 6; Okla. Stat. tit. 19, § 514.5 (A). A person's ability to pay the outstanding fees, costs and/or fines is an issue left to courts. See Okla. Ct. Crim. App. R. 8.1 - 8.4.

A. Overview of State Law

Plaintiffs target thousands of past and future discretionary state court decisions and ask this Court to step into the shoes of the state courts, adjudicate their affirmative defense of indigence, and declare portions of their convictions and sentences invalid. [3] In all state court criminal proceedings, certain costs, fees, and fines are assessed against a defendant at the time of sentencing. These costs, fees, and fines are all part of the sentence imposed upon a criminal defendant. *State v. Ballard*, 868 P.2d 738, 741 (Okl.Cr. 1994); see also Okla. Stat. tit. 28, § 101; *State v. Claborn*, 870 P.2d 169, 171-75 (Okl.Cr. 1994). The collection of costs, fees, and fines is a mandatory duty expressly placed upon the judiciary acting through the district courts and their court clerks. See e.g. Okla. Stat. tit. 28, §§ 151-153; Okla. Stat. tit. 28, § 162; Okla. Stat. tit. 20, §§ 1313.2- 1313.5. As the state's highest court with exclusive jurisdiction in criminal matters, the Legislature charged the Court of Criminal Appeals with developing procedural rules to be followed by lower courts in the collection of costs, fees, and fines in criminal cases. Okla. Const. art. 7, § 4; Okla. Stat. tit. 22, § 983(D). These rules are found within Rule 8.1 through Rule 8.8. Rule 8.1 et seq., Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018). Although they are promulgated by the appellate court, these rules have the force of statute. Okla. Stat. tit. 22, § 1051(b).

[3] An overview of state law is set forth and adopted by this Court in Defendants' brief in support of Motion to Dismiss (Doc. 215 at 1-8).

In addition to the authority vested in the Court of Criminal Appeals, the Oklahoma Supreme Court exercises significant authority over the collection of fines and costs by virtue of their general superintendent control over all inferior courts, Okla. Const. art. 7, § 4, and express statutory authority to institute a cost collection program. Okla. Stat. tit. 28, § 151(D). Pursuant to these powers, on January 13, 2011, the Chief Justice issued the following mandate: "Each district court is authorized and directed to participate in the misdemeanor or failure-to-pay warrant collection program authorized by Title 19 Oklahoma Statutes Sections 514.4 and 514.5 immediately. These collections apply to both misdemeanors and felony cases." (Doc. 99-35) (emphasis added). Section 514.4 authorizes the use of private vendors to notify persons of outstanding warrants issued for failure to pay costs and fines in any criminal case.[4] Okla. Stat. tit. 19, § 514.4(F). As indicated by the plain language of the statute, sheriffs have the option of contracting with such vendors directly or assigning their rights to do so to the statewide association of county sheriffs.

Pursuant to Section 514.4, a number of private vendors have contracted with the Sheriffs' Association. Defendant Aberdeen is one of many vendors. These vendors do not serve every county in the state. While the Sheriffs' Association and the specific vendor may be the parties to each individual contract for services, the Association does not have unlimited ability to retain such vendors. As a practical matter, the Oklahoma Supreme Court retains some measure of ability to reject the use of any particular vendor by virtue of the absolute control they maintain over the Oklahoma Court Information Systems (OCIS) – for it is only the Court through its Administrative

[4] Beginning in 2005, Section 514.4 provided authority for county sheriffs to either enter into contracts with private vendors to locate and notify persons of their outstanding misdemeanor warrants or, in the alternative, assign his or her right to enter into such a contract to the statewide association of county sheriffs. Okla. Stat. tit. 19, § 514.4(F) (2005). In 2010, the Legislature expanded this authority to include notification regarding failure to pay warrants in all criminal cases.

Director that approves and monitors those vendors that are given access to the OCIS system in order to participate in the cost collection program. Rule 5, Rules for Management of the Oklahoma Court Information System, Title 20, Ch. 18, Appx. 2 (2018); (Doc. 212-1), Contract, p. 3. The vendors retained pursuant to Section 514.4 do not come into play in every criminal case within their respective counties and, even when they do, the circumstances of those cases vary.

Except in cases where the defendant has been sentenced to a term of imprisonment, upon imposition of Judgment and Sentence a court shall determine whether a defendant has the ability to immediately satisfy any fines and costs imposed upon him. If unable to satisfy the full amount at the time Judgment and Sentence is rendered, a court may consider whether a defendant is able to pay the amounts owed though installments. Rule 8.1, 8.3, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018). If a defendant is unable to pay even in installments, a court may waive or suspend payment of costs, fees, and fines. Rule 8.5, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018).[5] It is here that a defendant has the first of two opportunities to appeal to the Court of Criminal Appeals from a trial court's determination regarding costs, fees, and fines by taking a direct appeal from the Judgment and Sentence. Rule 8.8(A), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018).

Because costs, fees, and fines are part of the penalty imposed in a criminal proceeding, a defendant remains under the jurisdiction of the district court until such time as the amounts ordered are paid in full. Okla. Stat. tit. 22, § 983. An offender's cost, fine, and fee obligations must be

[5] As reflected by public records, this procedure was followed in Rogers County, Tulsa County, Cleveland County, and Wagoner County. See e.g., Defendant's Motion to Dismiss Doc. 95-7; Doc. 95-11; Doc. 95-12; Doc. 95-22; Doc. 95-23; Doc. 95-25; Doc. 95-27; Doc. 95-28; Doc. 95-29; Doc. 95-33; Doc. 95-34.

periodically reviewed, as financial ability to pay is not a static condition. *Smith v. State*, 155 P.3d 793, 795 (Okl.Cr. 2007). To that end, when installment payments are ordered, a court may also order the defendant to periodically appear before the court. Rule 8.3, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018). At any point in the cost review process, a court retains the discretion to (1) excuse missed installment payments; (2) temporarily suspend installment payments; or (3) waive payment of the costs, fees, and fines imposed if it appears that a defendant, because of poverty or physical disability, is unable to pay. Rule 8.4, 8.5, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018). A criminal defendant who makes a good faith effort to participate in the review process by making installment payments and periodic court appearances, or at least reporting to the court when he is unable to do so, should find himself in good stead with the court.

As with any other stage of the criminal proceedings, a court has the power to compel the attendance of persons who have disobeyed an order of the court through issuance of a bench warrant. Okla. Stat. tit. 22, §§ 454-463. In the context of costs, fines, and fee collections, a bench warrant may be issued for a defendant's failure to appear as directed and/or failure to comply with an order to make installment payments. In issuing a bench warrant, a court is not called upon to determine the reason a court order has been disobeyed, only that it has. Defendants contend "it is here that the fallacy of Plaintiffs' claims are laid bare. Nothing in the law requires a court to make a determination before issuing a bench warrant that a defendant has the financial means to comply with an order for the payment of costs, fines, and fees but that he has made a deliberate choice to evade his obligation. To the contrary, the law is clear that the burden is on a defendant to prove that his noncompliance with a court order to pay costs, fines, and fees was excusable; of course, this inquiry is in the nature of an affirmative defense and comes when a hearing on the issue of

noncompliance is held." (Doc. 215 at 5); See *Tilden v. State*, 306 P.3d 554, 556 (Okl.Cr. 2013); *McCaskey v. State*, 781 P.2d 836, 837 (Okl.Cr. 1989); *Patterson v. State*, 745 P.2d 1198, 1199 (Okl.Cr. 1987).

Prior to issuance of a bench warrant a court need only review its own records – of which it may take judicial notice – to determine whether there is probable cause to believe that the defendant has failed to comply with a court order. No provision of state law requires a court to support the issuance of a bench warrant with a sworn affidavit. Okla. Stat. tit. 22, § 967. The Constitution does not contain such a requirement either. The rationale stems from the purpose served by a bench warrant. Unlike an arrest warrant which is issued for the commission of a crime, bench warrants are issued based upon a violation of a court order and are in the nature of civil contempt. [6] "There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt. And it is essential that courts be able to compel the appearance and testimony of witnesses." *Shillitani v. U.S.*, 384 U.S. 364, 370 (1966). "The authority of a court to issue bench warrants to arrest witnesses who fail to appear is, in fact, unquestioned." *In re Grand Jury Proceedings Harrisburg Grand Jury* 79-1, 658 F.2d 211, 214 (3rd Cir. 1981). The fact of nonappearance and/or nonpayment, without more, is sufficient probable cause to support issuance of a bench warrant. Id. As explained by the Eleventh Circuit:

> The decision of the court to issue a bench warrant constituted a finding made by a neutral magistrate that the defendant failed to appear in a pending criminal matter. We recognize that its issuance did not amount to a judicial finding of probable cause to arrest in the traditional sense – with respect to the bank robberies (i.e., that a crime had been committed and that defendant had committed it). Nonetheless, the police, armed with the warrant, had authority to find and seize the defendant anywhere they could find him for his

[6] Plaintiffs' warrants have been issued for failure to appear as ordered by a court. See e.g. Defendant's Motion to Dismiss Doc. 95-1; Doc. 95-2; Doc. 95-3; Doc. 95-10; Doc. 95-26; Doc. 95-27; Doc. 95-28; Doc. 95-29; Doc. 95-30; Doc. 95-31; Doc. 95-32.

> failure to appear in court. Thus, the presence of the police was pursuant to a direction made by a neutral magistrate. Defendant's rights under the Fourth Amendment require no more.

U.S. v. Phillips, 834 F.3d 1176, 1182 (11th Cir. 2016)(quoting *U.S. v. Spencer*, 684 F.3d 220, 223 (2nd Cir. 1982)).

It is only upon issuance of a bench warrant for failure to appear and/or failure to pay court costs, fines, and fees that the provisions of Section 514.4 and 514.5 of Title 19 are triggered in accordance with the mandate of the Oklahoma Supreme Court that all district courts participate in the misdemeanor or failure-to-pay warrant collection program. Regardless of any activities of a contracting vendor, however, a district court maintains an ongoing obligation to review its records for compliance with its orders to pay court costs, fees, and fines and/or to appear before the court as part of the review process. See e.g. Okla. Stat. tit. 28, §§ 151-152; Okla. Stat. tit. 28, § 153; Okla. Stat. tit. 20, §§ 1313.2-1313.5; Doc. 212, Second Amended Complaint, ¶ 83, 84.

Where court records demonstrate compliance with a court order for payment of costs after a period of non-compliance, a court has discretion to recall an active bench warrant. Similarly, at any time the court records indicate probable cause to believe a defendant has failed to comply with a court order, a court may issue a bench warrant commanding that the offender be brought before the court to explain his reason for disobedience.

A defendant's arrest on an active bench warrant is not tantamount to incarceration of the indigent without a court finding that their failure to pay costs, fines, and fees was willful. To the contrary, it is nothing more than a means by which the court may compel recalcitrant offenders to appear and participate in the cost review process when they have voluntarily chosen not to do so. Once brought back before the court, the reason for a defendant's failure to make a good faith effort to comply with an order of the court becomes relevant. It is here that it is the defendant's burden

to prove that good cause exists for non-compliance with a court order. Rule 8.4, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018). This is true for claims of indigence as well. See *Tilden*, 306 P.3d at 556; *McCaskey*, 781 P.2d at 837; *Patterson*, 745 P.2d at 1199.

Except as it relates to the proof of the elements of a criminal offense, the law traditionally places the burden of establishing an affirmative defense upon the defendant; this is particularly true when the defendant seeks the benefit of a statutory exception or where he or she holds the evidence, or can obtain it with due diligence, to support such a defense. See e.g., *Patterson v. New York*, 432 U.S. 197, 202-10 (1977); *U.S. v. Unser*, 165 F.3d 755, 764-65 (10th Cir. 1999); *Tollett v. State*, 387 P.3d 915, 917 (Okl.Cr. 2016); *Clounce v. State*, 588 P.2d 584, 590 (Okl.Cr. 1978). A defendant who fails to meet their burden of proving indigence or other good cause may be incarcerated for willful nonpayment of costs, fees, and fines. Okla. Stat. tit. 22, § 983(A); Rule 8.4, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018). Prior to incarcerating a defendant for nonpayment, a court must make written findings of fact and conclusions of law that the defendant was able to pay but refused or neglected to do so. Okla. Stat. tit. 22, § 983(A); Rule 8.7, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018). An order for confinement operates to "convert," in whole or in part, that portion of the Judgment and Sentence that imposes costs, fees, or fines to a term of imprisonment at a rate $25.00 for each day of imprisonment.[7] Okla. Stat. tit. 22, § 983(A); Okla. Stat. tit. 28, § 101; Rule 8.7, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018). A defendant ordered to be incarcerated for nonpayment of costs, fines, and fees has the right to appeal

[7] In fact, this is the very procedure that was used by the district court in converting a portion of Plaintiff Meachum's fines, costs, and fees to a term of imprisonment in Tulsa County Case Nos. CF-90-2665, CF-91-2157, CM-97-2864, CF-98-2613, CF-2000-815, and CF2001-5184.

the findings of the district court to the Court of Criminal Appeals and may seek a stay of the order of detention pending the outcome of an appeal. Rule 8.8, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, Appx. (2018).

Here, however, and by their own admissions, each of the Plaintiffs have had bench warrants issued to have them returned to the courts (Doc. 212, Second Amended Complaint, p. 26 n.11, p. 60 n.37-38, p. 63 ¶ 206-07) – warrants issued to have them answer for their disobedience to court orders to participate in the cost collection and review process.[8] In this light, it appears that through their own voluntary non-participation in the court process, each of the Plaintiffs have negated the courts' ability to grant them the relief they now complain they have been denied.

II. STANDARD OF REVIEW

Defendants move to dismiss Plaintiffs' claims for lack of subject-matter jurisdiction. See *Bear v. Patton*, 451 F.3d 639, 641 n.2 (10th Cir. 2006) (noting that the *Rooker-Feldman* doctrine is a rule of subject-matter jurisdiction). Because "federal courts are courts of limited jurisdiction, [they must] presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction." *Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013). Where, "as here, a party attacks the factual basis for subject matter jurisdiction, the court may not presume the truthfulness of the factual allegations in the complaint, but may consider evidence to resolve disputed jurisdictional facts." *SK Fin. SA v. La Plata Cty., Bd. of Cty. Comm'rs*, 126 F.3d 1272, 1275 (10th Cir. 1997).

In order to defeat such a motion, a "plaintiff must present affidavits or other evidence sufficient to establish the court's subject matter jurisdiction by a preponderance of the evidence."

[8] See e.g. Defendant's Motion to Dismiss Doc. 95-1; Doc. 95-2; Doc. 95-3; Doc. 95-10; Doc. 95-26; Doc. 95-27; Doc. 95-28; Doc. 95-2.

Southway v. Central Bank of Nigeria, 328 F.3d 1267, 1274 (10th Cir. 2003). It is Plaintiff's burden to demonstrate that jurisdiction exists. *Kline v. Biles*, 861 F.3d 1177, 1180 (10th Cir. 2017). In this case, Plaintiffs have not presented evidence regarding the Court's jurisdiction and have failed to meet their burden of proof.

Further, as a court of limited jurisdiction, this Court has "an independent obligation to address [its] own subject-matter jurisdiction and can dismiss a case *sua sponte*" on that basis. *City of Albequerque v. Soto Enterprises, Inc.,* 864 F.3d 1089, 1093 (10th Cir. 2017). This obligation is not discretionary. By rule, a federal court "must dismiss" an action "if it determines at any time it lacks subject matter jurisdiction," Fed.R.Civ.P. 12(h)(3), "even [if] the parties fail to raise the issue," *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).[9]

III. ARGUMENT AND AUTHORITIES

A. THE ROOKER-FELDMAN DOCTRINE

"Under what has come to be known as the *Rooker-Feldman* doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments. This preclusion applies to claims actually decided by a state court, and claims inextricably intertwined with a prior state-court judgment." *Kline v. Biles*, 861 F.3d 1177, 1180 (10th Cir. 2017). "*Rooker-Feldman* bars a federal claim, whether or not raised in state court, that asserts injury based on a state judgment and seeks review and reversal of that judgment; such a claim is 'inextricably intertwined' with the state judgment." *Bolden v. City of Topeka*, 441 F.3d 1129, 1141-43 (10th Cir. 2006).

The Second Amended Complaint falls within the confines of the *Rooker-Feldman* doctrine.

[9] As noted *supra*, each defendant in this case has raised the issue of this Court's jurisdiction in separate Motions to Dismiss the Second Amended Complaint. See Docs. 226, 227, 228, 230, 231, 232, 233, 234, 235, 236, 237, 238, and 239.
.

The public records [10] repeatedly reflect the assessment of costs and fines as part of the sentences imposed, findings by the state district courts regarding Plaintiffs' ability to pay, installment payment plans, and review of financial status.[11] Plaintiffs challenge these various rulings claiming that "exorbitant" costs and fines were imposed in the first instance, certain costs were included of which they were not advised, and that the sentencing proceedings were flawed for want of actual judicial consideration of their ability to pay as required by state law. Plaintiffs further claim they have been imprisoned without a proper determination that they had the means to pay the costs, fines, and fees assessed against them, however in those instances the record reflects Plaintiffs chose not to appear for such a determination. Not only do Plaintiffs seek to directly attack these various individual state court determinations, but because the costs and fines assessed are part of the sentence imposed against them, their claims are inextricably intertwined with the Judgments and Sentences themselves.

The *Rooker-Feldman* doctrine exists to prevent a party who lost in state court from seeking what, in substance, would be appellate review of a final state decision in federal district court based on the losing party's claim that the state court order itself violates the losing party's federal rights. *Kline v. Biles*, 861 F.3d 1177, 1180 (10th Cir. 2017); *Harold v. Univ. of Colorado Hosp.*, 2016 WL 741031, at *5 (D. Colo. Feb. 25, 2016). In short, the doctrine bars lower federal courts from hearing "cases brought by state-court losers complaining of injuries caused by state-court

[10] A court may take judicial notice of documents that are public records of the courts of Oklahoma without converting a motion to dismiss to a motion for summary judgment. *Tal v. Hogan*, 453 F.3d 1244, 1264-65, n.24 (10th Cir. 2006). Because Defendants challenge the factual basis for jurisdiction, this Court may consider these public records in the determination of the issue. *SK Finance SA*, 126 F.3d at 1275; Holt, 46 F.3d at 1003.

[11] See e.g. Defendant's Motion to Dismiss Doc. 95-7; Doc. 95-11; Doc. 95-12; Doc. 95-22; Doc. 95-23; Doc. 95-25; Doc. 95-27; Doc. 95-28; Doc. 95-29; Doc. 95-33; Doc. 95-34.

judgments … and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

Plaintiffs' complaints regarding the imposition of costs and fines and/or failure of the district courts to follow appropriate procedures outlined by statute and court rule, could have been challenged on appeal to the Court of Criminal Appeals. Plaintiffs may not circumvent numerous opportunities for appellate review and attempt to seek what is nothing more than a collateral appeal of those state court determinations in this Court by claiming they have been injured by the adverse decisions rendered against them.

The *Rooker-Feldman* doctrine is a rule of subject-matter jurisdiction. It derives "from 28 U.S.C. § 1257(a), which allows parties to a state court judgment to seek direct review in the Supreme Court of the United States, but not to appeal to the lower federal courts." *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1233 (10th Cir. 2006). The doctrine has four requirements:

> 1) "the federal plaintiff must have lost in state court,"
>
> (2) "the state-court judgment must have been rendered before the district court proceedings commenced,"
>
> (3) "the federal plaintiff must complain of an injury caused by a state-court judgment," and
>
> ((4) "the plaintiff's suit must invite district-court review and rejection of the state court judgment."

18 James Wm. Moore, Moore's Federal Practice § 133.33[2][a] (3d ed. 2018) (citing *Exxon Mobil Corp*, 544 U.S. at 284). The Court finds Plaintiffs' claims meet each of these requirements.

1. Plaintiffs lost in state court.

Rooker-Feldman's first requirement limits the doctrine to federal actions brought by "state court losers." A "state court loser" is someone who (1) was a party to a state court proceeding, see Moore, supra, § 133.33[2][b], and (2) now complains that an order of that state court violates his

federal rights, see *Johnson v. Orr*, 551 F.3d 564, 568–69 (7th Cir. 2008); *Hartford Life Ins. Co. v. Solomon*, 910 F. Supp. 2d 1075, 1081 (N.D. Ill. 2012); *Green v. City of New York*, 438 F. Supp. 2d 111, 119 (E.D.N.Y. 2006). Just because a plaintiff acquiesced to an order in state court does not prevent that party from being deemed a "state court loser." See *Hartford Life Ins. Co.*, 910 F. Supp. 2d at 1081; *Niles v. Wilshire Inv. Grp.*, LLC, 859 F. Supp. 2d 308, 336 (E.D.N.Y. 2012). Rather, if the plaintiff complains that an order violates his federal rights, then the order is deemed a "loss" for *Rooker-Feldman* purposes. See *Reyes v. Fairfield Properties*, 661 F. Supp. 2d 249, 273 (E.D.N.Y. 2009); *ScripsAmerica, Inc. v. Ironridge Glob. LLC*, 56 F. Supp. 3d 1121, 1140 n.58 (C.D. Cal. 2014).

Plaintiffs' claims meet *Rooker-Feldman's* first requirement. Plaintiffs were each sentenced and a judgment was entered that included fees, costs and/or fines. Plaintiffs claim these judgments violate their rights under both state and federal law. The judgments are deemed a "loss" for *Rooker-Feldman* purposes.

2. Plaintiffs filed this lawsuit after their state-court proceedings had ended.

Rooker-Feldman's second requirement limits the doctrine to cases where the state decision at issue became final before federal proceedings commenced. Under the Supreme Court's decision in *Exxon Mobil*, "a state court judgment is [considered] sufficiently final for operation of the *Rooker Feldman* doctrine … when 'state proceedings have ended.'" *Federacion de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico*, 410 F.3d 17, 24 (1st Cir. 2005) (quoting *Exxon Mobil*, 544 U.S. at 291). This can occur in one of three situations:

> (1) "when the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved,"
>
> (2) "if the state action has reached a point where neither party seeks further action," or
>
> (3) "if the state court proceedings have finally resolved all the federal questions in the

> litigation, but state law or purely factual questions (whether great or small) remain to be litigated."

Guttman v. Khalsa, 446 F.3d 1027, 1032 n.2 (10th Cir. 2006) (quoting *Federacion*, 410 F.3d at 24).

Here, Plaintiffs do not request further action in State Court although avenues are available, and the relief requested would result in rejection of the state court judgments [12] at issue due to Plaintiffs' allegations concerning "defect[s] in the state proceedings." See *Mayotte v. U.S. Ntl. Bank Assoc.*, 880 F.3d 1169 (10th Cir. 2018). Plaintiffs' complaints about the imposition of fines and costs against them, and the failure of the district courts to follow appropriate procedures as outlined in statutory law, case law, or court rules, could have been asserted in a direct appeal to the Oklahoma Court of Criminal Appeals, had they elected to exercise those rights, or by some other post-judgment review mechanism (such as a request for a writ of mandamus).

This argument is all the more appropriate considering Plaintiffs have an avenue of recourse available to them through Rule 8 but they have chosen to avoid it solely for the purpose of bringing claims in this Court. This satisfies *Rooker-Feldman's* second requirement.

3. Plaintiffs' alleged injuries are the product of state-court orders.

Rooker-Feldman's third requirement limits the doctrine to federal actions complaining of injuries caused by a state-court judgment. See *Mo's Express*, 441 F.3d at 1237. This prohibition extends not only to claims, "actually decided by a state court," but also those "inextricably intertwined with a state court judgment." *Cowan v. Hunter*, 2018 WL 1212541, at *3 (N.D. Okla. Mar. 8, 2018). "A claim is inextricably intertwined if the state-court judgment caused, actually and proximately, the injury for which the federal-court plaintiff seeks redress." *Tal v. Hogan*, 453 F.3d 1244, 1256 (10th Cir. 2006). "In other words, an element of the claim must be that the state court

[12] Court costs imposed in a criminal action are part of the penalty of the offense. See 28 O.S. §101; *State v. Ballard*, 868 P.2d 738, 741 (Okla. Crim. App. 1994).

wrongfully entered its judgment." *Campbell v. City of Spencer*, 682 F.3d 1278, 1283 (10th Cir. 2012).

In applying this limitation, courts "look beyond the four corners of the complaint to discern the actual injury claimed by the plaintiff." *Johnson*, 551 F.3d at 568. Plaintiffs cannot avoid the rule through "clever pleading," *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 88 (2d Cir. 2005), or by "casting the complaint in the form of a civil rights action," *Johnson*, 551 F.3d at 568. Nor can a plaintiff manufacture jurisdiction by pinning his injuries on a third party whose conduct was itself "the product of a state court judgment." *McCormick v. Braverman*, 451 F.3d 382, 394 (6th Cir. 2006). In short, "plaintiffs can't transform the test through creative lawyering." *Market v. City of Garden City*, 723 Fed. Appx. 571, 575 (10th Cir. 2017).

On this point, the Tenth Circuit's recent decision in *Market* is instructive. Much like the present case, *Market* involved a former state-court criminal defendant suing for money damages based on the alleged illegality of her sentence. Id. at 571–72. The plaintiff in that case, Jada Market, had twice been convicted and jailed for driving under the influence of alcohol. Id. On both occasions, she was sentenced to the mandatory minimum required by a municipal ordinance. Id. At the time, she "accepted and served her sentences without challenge." Id. at 572. Later, however, she filed a federal lawsuit against the municipality, alleging that enforcement of the ordinance's mandatory minimums violated her due process rights. Regarding jurisdiction, *Market* argued that her claims were not barred by *Rooker-Feldman* because she was not asking the court to overturn her convictions but rather was seeking money damages for "unlawful enforcement" of those convictions through "illegally extended incarceration." Id. at 574. The district court disagreed, dismissing her claims for lack of subject matter jurisdiction. And on appeal, the Tenth Circuit affirmed.

In doing so, the Tenth Circuit held that *Rooker-Feldman* bars federal suits challenging state court criminal sentences and that *Market's* requested relief, money damages, impermissibly sought to "undo … her state-court punishment." Id. Along the way, the Court stressed that plaintiffs cannot avoid *Rooker-Feldman* through "creative lawyering." Id. at 575. Although Market's claims were "cleverly framed" to avoid the doctrine, the Court nonetheless looked beyond the form of those claims to their substance. Cf. Id.("The limitation on upsetting a state-court judgment isn't a pleading requirement—it's substantive."). Because Market's injuries were the product of a state court judgment, the Court affirmed the dismissal of her claims on jurisdictional grounds.

Here, Plaintiffs' claimed injuries are the direct result of their state-court sentences and judgments. This is precisely the sort of *de facto* appeal that *Rooker-Feldman* was meant to prohibit.

4. Plaintiffs ask this Court to review and reject the state-court sentences and judgments.

Finally, *Rooker-Feldman's* fourth requirement limits the doctrine to claims inviting federal district court review and rejection of a state-court judgment. This requirement focuses on the plaintiff's requested relief, specifically, whether that relief "would reverse or 'undo' [a] state court" decision. *Market*, 723 Fed. App'x at 574 (quoting *Mo's* Express, 441 F.3d at 1237). Once again, creative lawyering "can't transform the test." Id. The fact that a plaintiff does not expressly ask to reverse or undo a state-court judgment—or even denies seeking such relief—is not controlling. See Id.; *Hoblock,* 422 F.3d at 88 ("Can a federal plaintiff avoid *Rooker–Feldman* simply by … alleging that actions taken pursuant to a court order violate his rights without ever challenging the court order itself? Surely not."). Rather, it is "the substance[,] not the form[,] of the requested relief [that] ultimately control[s]." *Centifanti v. Nix*, 865 F.2d 1422, 1429 n.8 (3d Cir. 1989); accord *Market*, 723 Fed. App'x at 574. Thus, where a plaintiff seeks money damages to remedy or "undo, to the extent possible," the effects of a state-court judgment, the doctrine

applies, and the claims are barred. See *Market,* 723 Fed. App'x at 574; *Mo's Express*, 441 F.3d at 1237.

Here, Plaintiffs seek money damages in an effort to put themselves in the same position they would have been in had they never received their state court judgments. This is precisely the sort of "backward-looking request for personal compensation" that *Rooker-Feldman* prohibits. See *Market*, 723 Fed. App'x at 574 ("*Market* seeks to undo, to the extent possible, her state-court punishment. Though time served can't be returned, compensatory damages attempt to put plaintiffs in the position they would be in without the faulty imprisonment. That isn't allowed." (citation omitted)).

The *Rooker-Feldman* doctrine prevents this Court from acting as an appellate court over the appropriateness of these underlying state court judgments. As shown above, the doctrine applies here because the relief requested would result in rejection of the state court judgments at issue due to Plaintiffs' allegations concerning "defect[s] in the state proceedings." See *Mayotte,* supra. Plaintiffs' complaints about the imposition of fines and costs against them, and the failure of the district courts to follow appropriate procedures as outlined in statutory law, case law, or court rules, could have been asserted in a direct appeal to the Oklahoma Court of Criminal Appeals, had they elected to exercise those rights, or by some other post-judgment review mechanism (such as a request for a writ of mandamus). Again, this argument is all the more appropriate considering Plaintiffs have an avenue of recourse available to them pursuant to Rule 8, but they have consciously elected to avoid it solely for the purpose of bringing claims in this Court. This Court does not sit as an appellate forum to determine whether a state court committed legal error in sentencing a defendant for violation of state law offenses. For those reasons, the *Rooker-Feldman* doctrine applies, thereby depriving this Court of subject matter jurisdiction.

B. THE YOUNGER DOCTRINE

In addition to the *Rooker-Feldman* doctrine, Plaintiffs' claims are barred by the principles announced in *Younger v. Harris*, 401 U.S. 37 (1971). In *Younger* and its progeny, the United States Supreme Court set forth the general principle that federal courts are forbidden to interfere with pending state court proceedings except under extraordinary circumstances. *Younger v. Harris*, 401 U.S. 37, 41 (1971); *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, (2013). This conclusion is predicated on notions of comity and federalism which require federal courts to respect state functions and the independent operation of state legal systems. Id. at 44-45. It is for this reason that "*Younger* abstention is jurisdictional." *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004). Furthermore, the *Younger* doctrine applies not only to requests for equitable relief but also extends to claims for monetary relief "when a judgment for the plaintiff would have preclusive effects on a pending state-court proceeding." Id.

"Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." See *Taylor v. Jaquez*, 126 F.3d 1294, 1297 (10th Cir. 1997) (quoting *Younger v. Harris*, 401 U.S. 1137 (1971)). The *Younger* doctrine requires a federal court to abstain from exercising jurisdiction where three (3) conditions have been met: First, there must be ongoing state criminal, civil, or administrative proceedings. Second, the state court must offer an adequate forum to hear the federal plaintiff's claims from the federal lawsuit. Third, the state proceeding must involve important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies. *Taylor*, 126 F.3d at 1297. "Once these three conditions are met, *Younger* abstention is nondiscretionary and, absent extraordinary

circumstances, a district court is required to abstain." *Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1215 (10th Cir. 2003).

The three *Younger* elements are satisfied in this case. First, several of Plaintiffs' cases are still ongoing. Plaintiffs have pled guilty to the underlying infractions and, as part of their sentence, have agreed to pay, or have been sentenced to pay, certain fines and costs associated with their violations. Finally, they have admittedly failed to satisfy their plea agreements.

Second, as noted *supra*, Oklahoma provides an adequate forum to hear their federal claims. Plaintiffs can assert, in their underlying case, that the procedures employed regarding collections of the fines were improper and/or unconstitutional for purposes of determining whether those fines are appropriate and whether they should be enforced against them. Plaintiffs can also claim that the fines were improperly increased (by 30% per 19 O.S. §514.5(A) or otherwise) in those proceedings. Indeed, Plaintiffs' general claims in this case center on their argument that they were impermissibly deprived of a hearing on whether they are capable of paying the fine and/or whether additional issues should be taken into consideration by the Court in that regard. Plaintiffs can make any and all constitutional arguments to the state court regarding their fines and/or the procedures to collect them. Likewise, Plaintiffs can appeal any adverse determination concerning their ability to pay under Rule 8.

Third, the State of Oklahoma clearly has a substantial interest in ensuring its laws are enforced and that its statutory fines and fees are paid by identified offenders. This is particularly true with respect to those who have pled guilty to the underlying violation and have agreed to pay the fines and costs, or have been sentenced to pay certain fines and fees as part of a plea arrangement. Collection of fines and fees is an important state function, which clearly "implicate[s] separately articulated state policies." See *Taylor*, supra; see also *Green v. Whetsel*, 166 Fed. Appx.

375, 376 (10th Cir. 2006) (affirming based on *Younger* and noting that magistrate determined "Oklahoma has an important interest in enforcing its criminal laws."). The present case is encompassed by the *Younger* doctrine and this Court lacks subject matter jurisdiction.

C. THE HECK DOCTRINE

A number of Plaintiffs have filed Section 1983 claims which also focus on criminal charges for which they have received convictions and/or sentences and imply that those convictions/sentences are invalid. The Supreme Court, in *Heck v. Humphrey*, held that a § 1983 plaintiff could only recover on an allegedly unconstitutional conviction or imprisonment, or "other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," if they proved that their conviction or sentence "has been reversed on appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck,* 512 U.S. 477 (1994). If that conviction or sentence has not been invalidated, § 1983 does not recognize a claim for damages. This has come to be known as the *Heck* doctrine, and it requires the trial court to "consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence. *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005).

In this case, Plaintiffs' federal 1983 causes of action are not actionable in light of the *Heck* doctrine. Plaintiffs' §1983 claims are premised on the argument that Defendants have a "policy and practice of arresting and confining individuals on debt-collection arrest warrants issued based on unsworn statements, without inquiry into the individuals' ability to pay or other pre-deprivation process, and on warrant applications that no reasonable person could believe were sufficient to justify arrest."

Plaintiffs' §1983 claims in this case, if successful, would necessarily undermine a basic characteristic – i.e., the imposed fees, fines and/or costs – of their plea agreements and criminal sentences. Before Plaintiffs can "recover damages" for alleged "harm caused" by any denial of an inquiry into their financial ability to pay the underlying fines and costs or regarding alleged "exorbitant" costs, they must "prove that the . . . sentence has been reversed on direct appeal" or "declared invalid by a state tribunal authorized to make such a determination . . ." See *Heck, supra*. That is, Plaintiffs are required to show that they participated in, or requested, a Rule 8 hearing following the plea of guilty and court sentence; and/or that they were denied such a hearing on their ability to pay; and that the resulting fine and/or imprisonment was subsequently vacated, declared invalid or reversed by an Oklahoma tribunal. [13] Plaintiffs cannot pursue a federal court lawsuit based on an alleged failure to provide them with a hearing on their ability to pay court imposed fines, costs and fees without a showing that they have taken advantage of available state court procedures and that their sentences have been reversed on direct appeal. This is true because success on the federal claims would render their sentences invalid. See *Heck, supra*.

This outcome is all the more appropriate considering some Plaintiffs pled guilty and voluntarily entered into plea agreements, and their sentences were the primary issue for consideration in the plea proceedings. It is well established that, much like a contract between two parties, a plea agreement represents an exchange of promises that must be fulfilled. *U.S. v. Rockwell Intern. Corp.*, 124 F.3d 1194, 1199 (10th Cir. 1997). Just as a defendant has an

[13] As previously noted, Plaintiffs have multiple avenues for post-judgment review of their sentence and/or conviction, including direct appeal rights under Rule 8.8, and also potential rights under Oklahoma's Post-Conviction Procedure Act. 22 O.S. §1080. "[W]hen a litigant has not attempted to present his federal claims in related state court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987).

enforceable expectation that the government will abide by the terms of a plea agreement, Id., so too does the State. *U.S. v. Frownfelter*, 626 F.3d 549, 554 (10th Cir. 2010). And, yet, by bringing this action, Plaintiffs seek to invalidate a portion of their plea agreements. Because judgment in favor of Plaintiffs on their claims would seek to invalidate a portion of their sentences, *Heck* bars their Section 1983 claims. See, e.g., *Ariatti v. Edwards*, 171 Fed.Appx. 718, 719 n.2 (10th Cir. 2006) (finding section 1983 claims based on issuance of bench warrant for failure to pay or appear on speeding ticket likely barred by *Heck.*). Because it is undisputed that Plaintiffs have not pursued available state court remedies, their federal claims must be dismissed under *Heck*.

IV. CONCLUSION

Plaintiffs are attempting to use this federal action to circumvent the State's legislative process and avoid a direct state court attack on the relevant statutes. By attacking the statutory framework indirectly in this Court, Plaintiffs have called into question fundamental Oklahoma public policy relating to administration of its courts. Even though at first blush the thirty percent (30%) fee seems excessive, this Court does not have the power to eliminate the statutorial-mandated fee. The Court is aware of a number of efforts in other states to change the fee-based funding of their court systems and the difficulties it presents to low-income defendants. However noble or well-intentioned Plaintiffs goals may be, the structure and funding of the Oklahoma criminal justice system is controlled by the State's legislative and executive branches.

The statutory framework at issue was adopted by the Oklahoma Legislature for lawful purposes, and it is endorsed by the Oklahoma Supreme Court. It serves a critical interest in collecting fines that individuals who have violated Oklahoma law, including the Plaintiffs in this case, have been ordered to pay as part of their debt to society. If Plaintiffs find the statutory system problematic, they must give the courts and legislature of Oklahoma a direct and adequate

opportunity to address such concerns and to establish the State's own policy. Oklahoma's Constitution protects the same relevant interests as the United States Constitution, and Oklahoma has an obvious interest in ensuring such interests are protected under Oklahoma law.

The courts of Oklahoma are not only capable of addressing all of Plaintiffs' alleged concerns, they must address these issues first, pursuant to long-standing principles of comity and federal abstention. Plaintiffs have had opportunities to raise their issues, whether based upon state or federal law, in their criminal actions. Plaintiffs still have an opportunity to raise such claims in state court to the extent their individual cases are ongoing. So, too, upon their future failures, if any, to pay those fines that they have specifically agreed to pay in connection with favorable plea agreements and sentences, Plaintiffs may raise their concerns through the channels of review provided by the Oklahoma state courts. Thus, all of Plaintiffs' claims are improper under several legal doctrines that have a commonality of purpose—to preserve the balance between state and federal sovereignty.

Accordingly, Defendants' Motion to Dismiss is granted. Due to this Court's lack of subject matter jurisdiction, this case is dismissed in its entirety.

IT IS SO ORDERED 12th day of March, 2021.

TERENCE C. KERN
United States District Judge

ATTACHMENT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 17-CV-606-TCK-JFJ**
	)	
ABERDEEN ENTERPRIZES, II, Inc., et al.,	)	
	)	
	)	
Defendants.	)	

JUDGMENT

Pursuant to the Order granting the Defendants' Motion to Dismiss the Second Amended Complaint (Doc. 226) entered the 12th day of March, 2021, the Court enters judgment for the Defendants and against the Plaintiffs.

IT IS SO ORDERED this 12th day of March, 2021.

TERENCE C. KERN
United States District Judge