No. 24-2144

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

A.B., by next friend BRIAN WILSON, et al.,

Plaintiffs-Appellants,

v.

ERIC HOLCOMB, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, Case No. 3:23-cv-760-DRL-MGG, Hon. Damon R. Leichty

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JURISDICTIONAL STATEMENT

Annabel B., Levi B., and Kimberly F., by next friend Brian Wilson; Miles M., by next friend Jenna Hullet; Joshua J. and Sophia P, by next friend Meghan Bartells; Nigel M., Ashley M., and Matthew M., by next friend Kristy Long; Stephanie M. and Kyle M., by next friend Barbara Cook; Zara S., by next friend Jason Doe, Plaintiffs-Appellants in this proposed class action, brought this lawsuit against Defendants-Appellees under 42 U.S.C. § 1983 for violations of civil rights protected by the Fourteenth Amendment to the United States Constitution, and also under the Americans with Disabilities Act, 42 U.S.C. § 12132, and its enabling regulations, 28 C.F.R. § 35.101 *et seq*., the Rehabilitation Act, 29 U.S.C. § 794, and the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 670 *et seq*.

The district court had jurisdiction under Article III, § 2 of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3). On June 5, 2024, the district court granted Defendants' motion to dismiss all of Plaintiffs' claims under *Younger v. Harris*, 401 U.S. 37 (1971). Plaintiffs timely filed a notice of appeal on July 2, 2024.

This Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. §§ 1291 and 1294(1). First, the district court's order is "an order of abstention, implemented through dismissal rather than a stay," and is therefore "independently appealable under the rule announced in *Quackenbush v. Allstate Insurance Co*., 517 U.S. 706 (1996)." *Montano v. City of Chi*., 375 F.3d 593, 598 (7th Cir. 2004).

Second, the district court's dismissal without prejudice is a *de facto* final judgement appealable under § 1291 because there is no reasonable way Plaintiffs

could "attempt to resolve the issue that caused the district court to dismiss the case." *Carter v. Buesgen*, 10 F.4th 715, 720 (7th Cir. 2021); *Maddox v. Love*, 655 F.3d 709, 716 (7th Cir. 2011) (quoting *Barnes v. Briley*, 420 F.3d 673, 676-77 (7th Cir. 2005)) ("[I]f the plaintiff cannot cure the defects in his complaint, the dismissal in effect was with prejudice and is final for purposes of appellate review."); *Glas v. Anderson*, 408 F.3d 382, 386 (7th Cir. 2005) (quoting *Muzikowski v. Paramount Pictures Corp.*, 322 F.3d 918, 923 (7th Cir. 2003) (dismissal without prejudice appealable if "there is no amendment [a plaintiff] could reasonably be expected to offer to save the complaint").

The district court held that dismissal is compelled by this Court's prior decisions and state law. Based on its interpretation of these authorities, the district court concluded that it must abstain from adjudicating Plaintiffs' claims because semiannual review proceedings in state juvenile courts could adequately redress Plaintiffs' constitutional injuries. No amendment to Plaintiffs' complaint will change legal precedent or laws governing the state forum. Accordingly, the district court's dismissal without prejudice is "functionally final and thus appealable under § 1291." *Carter*, 10 F.4th at 720 (quoting *Gacho v. Butler*, 792 F.3d 732, 736 (7th Cir. 2015)).

INTRODUCTION

Children taken into state custody rely on state authorities to "provide for [their] basic human needs -- e.g., food, clothing, shelter, medical care, and reasonable safety . . . ." *Deshaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). Deliberate indifference to these basic needs causes irreparable harm to foster children and violates their rights under the Fourteenth Amendment. Indiana's foster care system has long posed an ongoing threat to the safety and wellbeing of Indiana's

foster children, and Defendants' deliberate indifference to these substantial and widespread risks of harm violates Indiana's constitutional duty of care.

Despite the district court's virtually unflagging obligation to exercise its jurisdiction over such claims, it refused to do so here based on a misapplication of *Younger* abstention, which is limited to three categories of claims identified in *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013). The district court did not and could not place Plaintiffs' claims in any of those categories, but instead believed it was compelled to abstain under this Court's decision in *Ashley W. v. Holcomb*, 34 F.4th 588 (7th Cir. 2022), which ignored *Sprint* altogether based on a misunderstanding of this Court's precedent. Because *Ashley W.* is an outlier decision that did not consider the critical distinction between child removal proceedings (which are "quasi-criminal" proceedings subject to abstention under *Sprint*) and the semiannual review hearings that occur during a child's foster care placement (which are wholly civil in nature), it should be limited to its facts, which are distinguishable from this case. Plaintiffs here have carefully set forth claims and relief that resolve the Court's concern in *Ashley W.* that the requested relief in that case was either available in juvenile court or too vague for a federal court to order.

The Court should thus reverse the district court's judgment and allow this case to proceed.

STATEMENT OF THE ISSUES

I. Whether *Younger* abstention is inapplicable to Plaintiffs' claims because the semiannual review hearings that occur during their foster care placements—as distinguished from the child removal proceedings that resulted in their state

custody—are not "quasi-criminal" and therefore are not among the limited set of state civil proceedings that trigger *Younger* abstention under *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013).

II. In the event that this Court determines that the semiannual review hearings are quasi-criminal, whether *Younger* abstention is still improper because the hearings are an inadequate forum for adjudicating Plaintiffs' systemic federal statutory and constitutional claims.

STATEMENT OF THE CASE

The twelve named Plaintiffs[1] in this appeal are child victims of abuse and neglect who seek to represent the approximately 13,500 children in Indiana's foster care system in asserting systemic constitutional and federal statutory challenges to the harmful conditions they currently face in state care. In each of their cases, Indiana initiated proceedings in juvenile court to remove them from the custody of their legal guardians due to abuse and neglect. The juvenile court[2] agreed with the State that Plaintiffs were "Children in Need of Services" (CHINS) and ordered them under the guardianship of the Indiana Department of Child Services (DCS). These removal proceedings then concluded, and the children entered the state's care. Since then, the children's health and safety have been DCS's responsibility. The only

[1] The district court found that two of the twelve Plaintiff children (K.F. and N.M.) had achieved permanency while this case was pending and should be dismissed for lack of standing. *See* Short App. 13.

[2] Indiana juvenile courts have exclusive jurisdiction over Child in Need of Services proceedings. Ind. Code Ann. § 31-30-1-1(a)(2).

ongoing state proceedings are semiannual hearings in which the juvenile court reviews the child's placement and services.

Defendants are collectively responsible for the care and safety of Indiana's foster children: DCS is responsible for administering the foster care system, DCS Director Eric Miller is charged with leading the agency, and Governor Eric Holcomb is responsible for supervising DCS and Director Miller. App. 40-41 (¶¶196-99).

Plaintiffs' complaint documents systemic, widespread shortfalls in Indiana's foster care system that have resulted in serious injury to children under the state's care. Among them are Plaintiffs Stephanie M. and Kyle M., siblings who were placed in foster care after their mother's boyfriend murdered their eight-year-old sister. App. 31 (¶151). Stephanie and Kyle, then 12 and 10 years old, were forced to physically restrain their mother while her boyfriend beat her. *Id.* Both children were sexually abused by the boyfriend. *Id*. The mother and her boyfriend are both serving decades-long prison sentences. *Id.* Stephanie and Kyle's removal proceeding occurred in April 2020 and resulted in a final order placing them in DCS custody.

During their first year in custody, Stephanie and Kyle had 30-minute therapy sessions every week. App. 31 (¶153). But in June 2021, the therapist stopped conducting sessions, and, due to budget shortfalls and purported difficulty locating an appropriate provider, DCS did not provide another therapist for over a year. App. 31 (¶¶154-55). During the gap in treatment Stephanie attempted suicide and self-mutilated multiple times, reportedly dated and communicated with older men on social media, and engaged in sexually inappropriate behavior with her brother. App.

32 (¶¶157-59). Despite these obvious signs of trauma, Stephanie received no specialized treatment for the severe sexual abuse she endured in her parents' home. *Id*. Kyle's condition also deteriorated during this gap in treatment. His behavioral issues worsened, he was suspended from school several times, and he attempted to hang himself in his bedroom. App. 32 (¶160).

As these events unfolded and the children's mental health rapidly deteriorated, DCS did not act in a timely or appropriate fashion, visiting the children's home only four times over the year-long period of crisis. App. 32 (¶161). Making matters worse, at the children's periodic review hearings, DCS falsely reported to the juvenile court that Stephanie and Kyle had "no physical or psychological conditions." App. 32 (¶¶158, 160).

At the time, Stephanie and Kyle were in a kinship placement with their grandparents. App. 31 (¶153). The grandparents repeatedly asked DCS for additional treatment and assistance, but DCS ignored their pleas. App. 33 (¶163). Unequipped to care for their grandchildren without adequate resources from DCS, the grandparents requested that DCS change placement. *Id*. DCS declined to do so. *Id*. Only after a physical altercation did DCS finally change placement. App. 34 (¶165).

One month before Stephanie and Kyle were removed from their grandparents, a new DCS caseworker was assigned to the case. App. 34 (¶166). Due to inadequate training and overwhelming caseloads, the new caseworker was unprepared and uninformed, and when DCS transferred Stephanie to her new foster home, they did not provide Stephanie's safety plan to the new foster parent, nor did they inform the

foster parent about Stephanie's history of suicide attempts. App. 34 (¶¶166-67). As a result of DCS's failures, Stephanie ingested a lethal dose of pills and was rushed to the hospital. *Id*. Unable to trust DCS to provide adequate assistance and treatment, the foster parent requested that Stephanie be removed, and DCS transferred Stephanie to yet another foster home. App. 34 (¶¶168-69).

Plaintiff Joshua J. has suffered similar neglect and deliberate indifference by DCS during his nine years in foster care. App. 18 (¶84). Joshua was taken into DCS custody after he witnessed his stepmother overdose on methamphetamine that his father was trafficking, and watched as his father attempted to revive her by repeatedly injecting her with heroin. App. 18-19 (¶¶86, 89). Joshua's father is serving life sentences for murder and drug trafficking. App. 19 (¶88). In February 2015 the juvenile court issued a final order placing Joshua in DCS custody. *Id*. (¶89). From 2017 to 2022, periodic review hearings were conducted every six months, and the court ordered no changes to DCS's plan. *Id*. (¶90).

During that period, the challenged inadequacies at DCS resulted in it changing Joshua's placement 16 times, with no placement lasting more than a year. *Id*. For seven years, Joshua did not receive consistent treatment for the severe trauma he endured. *Id*. (¶91). His frequent placement changes and constantly disrupted treatment eroded his trust in caseworkers, foster parents, and therapists. *Id*. ¶93. Without a stable home or consistent treatment, Joshua's condition deteriorated; he struggled to form trusting relationships, he exhibited serious behavioral issues, and he expressed suicidal ideation. App. 19-20 (¶¶93-94).

Because DCS was unable to find a foster home capable of meeting Joshua's needs, DCS placed Joshua in a short-term residential treatment facility, and then a long-term one. App. 20 (¶¶95-97). DCS knew that these institutional placements could not provide the kind of treatment Joshua needed. *Id*. As a result of its deficient review, lack of consistent recordkeeping, and staffing and provider shortfalls, DCS has labeled Joshua "unplaceable." *Id*. (¶97). He is currently listed on Indiana's Adoption Program website. *Id*. If DCS cannot find him a permanent home in the next six months, he will age out of the foster care system with no natural family and no support network. App. 20-21 (¶98).

Similar stories abound, all attributable to DCS's deliberate indifference to the substantial risk of harm caused by systemic wrongdoing endemic to Indiana's foster care system. As one departing DCS director put it, the agency operates in ways "that all but ensure children will die." App. 2 (¶2). Plaintiffs' amended complaint details four categories of systemic failure.[3]

First, because of inadequate staffing, DCS caseworkers are so overburdened that they are unable to implement safety plans, inspect placements, conduct visits with children, or make critical decisions about a child's care. App. 44-49 (¶¶208-21). Rather than addressing the problem, DCS fast-tracks investigations into abuse and neglect, underweights caseworker workloads, and offloads cases to caseworkers in neighboring counties. App. 48-49 (¶¶218-20). The rampant caseworker turnover depletes agency resources, exacerbates the caseload problems, and places foster

[3] The operative amended complaint was filed on October 3, 2023.

children at even greater risk of harm. App. 46-47 (¶¶211-16). Juvenile courts are ill-equipped to resolve this problem as the staffing shortage itself results in DCS omitting relevant and necessary information from court submissions, and sometimes outright falsifying information. App. 47 (¶¶216-17). Moreover, any juvenile court order mandating that DCS adequately staff one case would necessarily result in reduced staffing in another, perpetuating a cycle of harm in need of overarching systemic relief.

Second, DCS does not provide the communication, information, and support that foster parents need to care for foster children. App. 53-59 (¶¶239, 241, 247-248, 251-257). Accordingly, current foster parents are giving up their licenses and prospective foster parents are discouraged from seeking a license. App. 56-59 (¶¶249-58). Worse, DCS routinely retaliates against foster parents who seek such basic assistance, creating a culture of fear that further reduces the number of community placements and increases the risk of placement disruption and institutionalization. App. 57 (¶¶251-53). Fear of retaliation discourages foster parents from reporting DCS's critical omissions to the juvenile courts. App. 57-59 (¶¶251, 253, 257).

Third, DCS fails to maintain a recordkeeping system that contains complete and accurate health information for each child, which creates a substantial risk that serious illnesses will not be diagnosed, that foster children will not receive timely or appropriate medical treatment, and that caseworkers and foster parents will lack the information necessary to adequately care for the child. App. 51-56 (¶¶234-48). It also means that even when a reviewing court holds a periodic hearing that could

potentially order appropriate remedial measures, the court often receives incomplete information that prevents it from doing so. App. 52-54 (¶¶234, 239-242).

Finally, DCS-contracted service providers are routinely forced to either end their contracts or make recommendations contrary to their professional judgement because DCS has a practice of retaliating against providers that refuse to rubber-stamp DCS's recommendations. App. 60-62 (¶¶263-70). The administrative and financial burdens placed on DCS-contracted service providers encourages them to terminate their contracts and move into private practice. App. 61-62 (¶¶268-69). As waitlists grow longer, foster children do not receive timely treatment for serious trauma, and their mental and physical condition deteriorates, which increases demand for treatment that DCS does not provide. App. 62 (¶270).

DCS's dysfunction makes it difficult for children to thrive in their placement settings, increasing the likelihood of traumatic placement disruptions. App. 52, 56-57, 59-60 (¶¶236, 250, 259-262); *see Lehman v. Lycoming Cnty. Child.'s Servs. Agency*, 458 U.S. 502, 513-514 (1982) ("It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current 'home,' under the care of his parents or foster parents, especially when such uncertainty is prolonged."). The amount of time it takes for children in Indiana's foster care system to reunify with their families is 19.5 percent higher than the national average, and the number of days to adoption is over

50 percent higher than the national average. App. 49 (¶223). Between 2015 and 2020, Indiana saw a 45 percent increase in the median time to a permanent placement. *Id.*

Plaintiffs seek class-wide injunctive relief redressing these systemic failures. To stop the cycle of crisis caused by crushing caseloads and caseworker turnover, Plaintiffs seek an order requiring DCS to establish "a free confidential peer-counseling helpline for caseworkers," App. 74 at IV(c), "regional non-caseload carrying units that can absorb cases from local offices when caseworkers quit or take leave," App. 74 at IV(d), and "a commissioner-level office dedicated to providing caseworkers with support, resources, and sustainable wellness practices necessary to ensure their physical safety, psychological wellbeing, and professional growth." App. 74 at IV(e).

To stem the exodus of foster parents, Plaintiffs seek an order requiring DCS to establish a "crisis response system that provides immediate crisis response on-site and coordinate subsequent stabilization services," establish "a crisis helpline that connects foster parents and children to licensed clinicians who can help de-escalate crises and prevent the need for more restrictive interventions," and "develop and implement a policy that prohibits retaliation against foster parents who request services for children placed with them." App. 75 at IV(h)-(j). Moreover, increasing the number of community-based placements will reduce the risk that foster children will be unjustly institutionalized and enable juvenile courts to adequately enforce compliance with Title II of the Americans with Disabilities Act and the Rehabilitation Act. *See* App. 71-73.

To ensure that caseworkers and foster parents are equipped with the information necessary to adequately care for foster children, Plaintiffs seek an order requiring DCS to "establish a recordkeeping system sufficient to maintain and update medical records for all children in DCS custody," App. 75 at IV(g), and "ensure foster parents and adoptive parents are provided with a child's full and accurate medical information prior to or at the time of placement," App. 74 at IV(f). And to ensure that there are enough service providers to meet the medical needs of foster children, Plaintiffs seek an order requiring DCS to establish "a policy that reimburses providers for time spent completing administrative tasks," App. 75 at IV(n), and "an expedited administrative review process to determine whether DCS is improperly retaliating against providers." App. 76 at IV(o).

On June 5, 2024, the district court dismissed the case in its entirety based on the abstention doctrine in *Younger v. Harris*, 401 U.S. 37, 43 (1971). The district court believed that this case "effectively involves relief similar to that sought" by the plaintiffs in *Ashley W. v. Holcomb*, 34 F.4th 588 (7th Cir. 2022), a suit that also challenged the conditions of Indiana's foster care system as unconstitutional and violative of federal law. Short App. 8. *Ashley W.*, the court held, mandates the application of *Younger* abstention to all "state-initiated child-welfare litigation." Short App. 7. Plaintiffs now appeal that decision to this Court.

SUMMARY OF ARGUMENT

It has been understood for more than two hundred years that federal courts have "no more right to decline the exercise of jurisdiction which is given, than to usurp

that which is not given." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). Accordingly, when a case does not fit into a carefully and narrowly defined abstention category, the general rule governs: A district 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)).

Sprint explains that *Younger* abstention is permissible only when the relief the plaintiff seeks would intrude on: (1) "a pending state criminal prosecution"; (2) a "civil enforcement proceeding[]" that is "akin to a criminal prosecution" in "important respects"; or (3) a "civil proceeding[] involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.* at 77-79 (third alteration in original) (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975), and *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989)). If there are state proceedings that do fall within one of the *Sprint* categories, then the court determines whether abstention is warranted based on the additional factors established by *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 (1982), including whether the parallel proceeding affords an adequate opportunity to raise constitutional challenges. *Sprint* is emphatic, however, that the *Middlesex* factors come into play only *after* the court has determined that the federal suit falls into one of three categories identified above. *See Sprint*, 571 U.S. at 81.

Plaintiffs' claims do not implicate any of the *Sprint* categories. The Supreme Court case that Defendants relied on below to argue otherwise is a pre-*Sprint* decision, *Moore v. Sims*, 442 U.S. 415 (1979). The plaintiffs in *Moore* sought to enjoin coercive state court proceedings seeking to remove their children to state custody based on alleged physical abuse. *Id.* at 419-22. *Sprint* explained that such removal proceedings implicate the "quasi-criminal" category of cases subject to *Younger* abstention because they are "akin to a criminal prosecution in important respects," which are "characteristically initiated to sanction the federal plaintiff, i.e., the party challenging the state action, for some wrongful act." *Sprint*, 571 U.S. at 79, 81 (quoting *Huffman*, 420 U.S. at 604).

Although the same kind of functionally adversarial child removal proceedings occur in Indiana, none of Plaintiffs' federal claims relate to those proceedings. The parallel state actions at issue in this case are the semiannual review hearings to determine whether a child's placements, services, and permanency plans are serving the best interests of the child. These review hearings bear none of the hallmarks of quasi-criminal proceedings described in *Sprint*. Indeed, when recently faced with the same distinction, the Fourth Circuit "easily reject[ed]" the comparison of ongoing child-welfare hearings to the removal proceedings in *Moore*. *Jonathan R. ex rel. Dixon v. Justice*, 41 F.4th 316, 329 (4th Cir. 2022). As in *Jonathan R.*, Plaintiffs' claims do not implicate any ongoing state proceedings that fall into one of the three *Sprint* categories, and accordingly the abstention analysis is complete: *Younger* does not apply. *See Sprint*, 571 U.S. at 82.

The decision below makes no mention of *Sprint*. Instead, the district court based its abstention holding on *Ashley W. v. Holcomb*, 34 F.4th 588 (7th Cir. 2022). *Ashley W.* does not address whether semiannual review hearings are quasi-criminal as defined by *Sprint*, but rather observes broadly and without analysis that "*Younger* applies to state-initiated child-welfare litigation." *Ashley W.*, 34 F.4th at 591. But the two Seventh Circuit cases it cites for this proposition, *Brunken v. Lance*, 807 F.2d 1325 (7th Cir. 1986), and *Milchtein v. Chisholm*, 880 F.3d 895 (7th Cir. 2018), both involved claims by parents seeking to enjoin a state court order removing their children to state custody due to abuse and neglect—proceedings that are indisputably quasi-criminal under *Sprint*. *See Brunken*, 807 F.2d at 1327-28; *Milchtein*, 880 F.3d at 897. *Ashley W.*'s implicit extension of *Younger* to *any* state court hearings that touch on child welfare is thus not only demonstrably wrong under *Sprint*, but also unsupported by circuit precedent.

Although Plaintiffs reserve their right to seek abrogation of *Ashley W.* by this Court en banc and/or the Supreme Court, such abrogation is unnecessary for Plaintiffs to prevail at the panel stage. *Ashley W.* does not address the question whether the semiannual review hearings during a child's foster care placement are quasi-criminal, leaving room for the Court to resolve that issue head-on in this case. Moreover, and in any event, *Ashley W.* is distinguishable on its own terms. In what appears to be an implicit invocation of the *Middlesex* factors, *Ashley W.* ultimately abstained on the ground that the requested relief was either available in juvenile court or too vague for a federal court to order. *See* 34 F.4th at 593-94. Although *Sprint*

expressly rejects consideration of the *Middlesex* factors where, as here, none of the three *Sprint* abstention categories are implicated, *see* 571 U.S. at 81, Plaintiffs in this case have carefully set forth claims and relief that resolve the Court's concerns in *Ashley W.*

While the plaintiffs in *Ashley W.* did not articulate, either in the complaint or at oral argument, any form of relief that would increase the number of foster homes, Plaintiffs in this case seek several specific and concrete remedies: orders requiring DCS to establish a "crisis response system that provides immediate crisis response on-site and coordinate subsequent stabilization services," to establish "a crisis helpline that connects foster parents and children to licensed clinicians who can help de-escalate crises and prevent the need for more restrictive interventions," and to "develop and implement a policy that prohibits retaliation against foster parents who request services for children placed with them." App. 75 at IV(h)-(j). Plaintiffs also propose several specific and concrete remedies to support overwhelmed caseworkers and stop the cycle of crisis caused by crushing caseloads and turnover: orders requiring DCS to establish "a free confidential peer-counseling helpline for caseworkers," App. 74 at IV(c), "regional non-caseload carrying units that can absorb cases from local offices when caseworkers quit or take leave," App. 74 at IV(d), and "a commissioner-level office dedicated to providing caseworkers with support, resources, and sustainable wellness practices necessary to ensure their physical safety, psychological wellbeing, and professional growth." App. 74 at IV(e).

In holding that the juvenile courts could provide Plaintiffs' requested relief in their individual proceedings, the district court made numerous errors. First, the district court mistook Plaintiffs' past harms as the alleged constitutional harm. Proceeding from this misunderstanding, the district court, citing juvenile court orders after past harms, concluded that those courts can provide an adequate remedy. This misunderstanding is fatal to the district court's analysis. Attempts to redress the symptoms of systemic failure in individual cases does not reduce the risk of future harm that forms the basis of Plaintiffs' constitutional injury.

Second, the district court ignored the inherent limitations of juvenile courts to grant systemic relief at periodic review hearings. The district court held that juvenile courts have "authority to control the conduct of 'any person' in relation to a child," and therefore can enforce federal rights. Short App. 9-10. But juvenile courts lack the time, resources, and procedural tools to address the complex statewide practices that harm Plaintiffs, collect and analyze statewide data, monitor compliance with remedial orders, and enforce those orders. This is particularly true where, as here, the state courts are often denied access to important information because of the very deficiencies Plaintiffs challenge. In light of those shortfalls and practical realities, it is unlikely that an individual foster child, especially one without counsel, "could mount sufficient evidence to secure systemic relief." *Jonathan R.*, 41 F.4th at 337. Moreover, "[s]horing up sufficient evidence to demonstrate the need for systemic relief requires a lot of capital—capital most foster children neither have nor can hope to amass." *Id.*

Finally, the district court erred by disregarding Plaintiffs' well-pleaded allegations. Had the district court accepted Plaintiffs' allegations as true, it could not have concluded that a simple order to produce the child's medical records after placement would redress any harm, let alone the risk of future harm that forms the basis of Plaintiffs' constitutional claims.

STANDARD OF REVIEW

This Court "review[s] de novo a district court's decision to abstain under *Younger*." *Simpson v. Rowan*, 73 F.3d 134, 137 (7th Cir. 1995). The Court must "accept the allegations in the complaint as true" and "draw all reasonable inferences in favor of the plaintiff." *Crescent Plaza Hotel Owner, L.P. v. Zurich Am. Ins. Co.*, 20 F.4th 303, 307 (7th Cir. 2021).

ARGUMENT

I. The Supreme Court has limited *Younger* abstention to three circumstances, none of which is present here.

"In the main, federal courts are obliged to decide cases within the scope of federal jurisdiction." *Sprint Commc'ns., Inc. v. Jacobs*, 571 U.S. 69, 72 (2013). Accordingly, when a case does not fit into carefully and narrowly defined abstention categories, the general rule governs: A district court's "'obligation' to hear and decide a case is 'virtually unflagging.'" *Id.* at 77 (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)).

Defendants successfully urged the district court to refrain from adjudicating Plaintiffs' claims based on *Younger* abstention. *Sprint* explains that *Younger* abstention is permissible only when the relief the plaintiff seeks would intrude on:

(1) "a pending state criminal prosecution"; (2) a "civil enforcement proceeding[]" that is "akin to a criminal prosecution" in "important respects"; or (3) a "civil proceeding[] involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 571 U.S. at 77-79 (third alteration in original) (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975), and *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans* ("*NOPSI*"), 491 U.S. 350, 368 (1989)); *see also, e.g.*, *Cannon v. Newport*, 572 F. App'x 454, 454-55 (7th Cir. 2014) (criminal proceeding); *Mulholland v. Marion Cty. Election Bd.*, 746 F.3d 811, 816 (7th Cir. 2014) (not a quasi-criminal proceeding); *Doe v. Lindell*, No. 22-1666, 2023 WL 196467, at *3 (7th Cir. Jan. 17, 2023) (contempt proceeding). If there are no ongoing state proceedings that fall into one of these categories, the abstention analysis is complete: *Younger* does not apply. *Sprint*, 571 U.S. at 82; *see also id.* at 78 (holding that "these three 'exceptional' categories . . . define *Younger*'s scope") (quoting *NOPSI*, 491 U.S. at 368).

If there are state proceedings that do fall within one of the *Sprint* categories, then the court determines whether abstention is warranted based on the additional factors established by *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 (1982), including whether the parallel proceeding affords an adequate opportunity to raise constitutional challenges. *Sprint* is emphatic, however, that the *Middlesex* factors come into play only *after* the court has determined that the federal suit falls into one of three categories identified above. *See Sprint*, 571 U.S. at 81. Otherwise, the *Middlesex* factors "would extend *Younger* to

virtually all parallel state and federal proceedings, at least where a party could identify a plausibly important state interest," which would be contrary to the "virtually unflagging" obligation of federal courts to adjudicate federal claims. *Id.* at 77, 81 (quoting *Colo. River*, 424 U.S. at 817).

The semiannual hearings held to review Plaintiffs' foster placements do not fall into any of the three *Sprint* categories. The Supreme Court case that Defendants relied on below to argue otherwise is a pre-*Sprint* decision, *Moore v. Sims*, 442 U.S. 415 (1979). *See generally* ECF No. 23. *Moore* involved coercive state court proceedings seeking the temporary removal of children on an emergency basis from allegedly physically abusive parents following the hospitalization of a child due to his injuries. *Moore*, 442 U.S. at 419-22. Less than a month after that suit was initiated and while it was still pending, the parents (who were subject to sanctions in the state court) brought a concurrent federal court suit seeking to enjoin the state court removal proceedings and reverse its custody orders. *Id.* at 420-22, 432. The Supreme Court found abstention necessary under *Younger*. In doing so, it opined that a different case—*Huffman*, 420 U.S. 592—had rendered *Younger* "fully applicable to civil proceedings in which important state interests are involved." *Moore*, 442 U.S. at 423.

In *Sprint*, the Court cabined the *Huffman*/*Moore* principle. In particular, it explicitly rejected *Moore*'s suggestion that *Younger* abstention extends to any parallel state proceedings "where a party could identify a plausibly important state interest." 571 U.S. at 81. Instead, it housed *Moore* and related cases within the second category of civil enforcement actions described above: that is, quasi-criminal proceedings

"characteristically initiated to sanction the federal plaintiff, i.e., the party challenging the state action, for some wrongful act." *Id.* at 79. *Moore* fit within that class of civil enforcement action as a "state-initiated proceeding to gain custody of children allegedly abused by their parents." *Id.* *Sprint* described such proceedings as "akin to a criminal prosecution in important respects." *Id.* (quoting *Huffman*, 420 U.S. at 604). "Investigations are commonly involved" in that type of case, "often culminating in the filing of a formal complaint or charges." *Id.* at 79-80. *Sprint*'s characterization of *Moore* solidified the decades-long understanding of circuit courts, including this Court, that *Younger* bars allegedly abusive and neglectful parents from collaterally attacking juvenile court proceedings to determine whether their children should be placed into the care and custody of the state.[4]

The same kind of functionally adversarial child removal proceedings occur in Indiana at the beginning of the CHINS process. In those proceedings, the parents have numerous procedural protections, including the right to counsel, to cross-

[4] *See, e.g.*, *Lowell v. Vt. Dep't of Children & Families*, 835 F. App'x 637, 639 (2d Cir. 2020) (finding that state proceedings to substantiate allegations of abuse and neglect were quasi-criminal and holding that *Younger* barred the accused parents' federal suit to enjoin enforcement of Vermont's statute governing child abuse reporting, investigations, proceedings, and registration); *Milchtein v. Chisholm*, 880 F.3d 895, 898-99 (7th Cir. 2018) (finding that state proceedings to remove the parents' children were analogous to *Moore* and holding that *Younger* barred the parents' federal suit to enjoin future removal proceedings); *Oglala Sioux Tribe v. Fleming*, 904 F.3d 603, 610 (8th Cir. 2018) (finding that the temporary custody proceedings were analogous to *Moore* and holding that *Younger* barred the parents' federal suit challenging juvenile court procedures); *Brunken v. Lance*, 807 F.2d 1325, 1330-31 (7th Cir. 1986) (finding that state proceedings "to determine the custody of a child who was allegedly sexually abused by her father" are akin to criminal proceedings and holding that *Younger* barred the father's and grandfather's federal suit to enjoin the agency from denying unsupervised visitation); *Malachowski v. Keene*, 787 F.2d 704, 706-07 (1st Cir. 1986) (finding that state custody proceedings were analogous to *Moore* and holding that *Younger* barred the parents' federal suit to restore custody of the child to the parents, withdrawal of juvenile delinquency charges against the child, and enjoin future interference with the parents' custody); *DeSpain v. Johnston*, 731 F.2d 1171, 1178-80 (5th Cir. 1984) (finding that state proceedings to substantiate allegations of abuse and neglect were analogous to *Moore* and holding that *Younger* barred the parents' federal suit to enjoin enforcement of several provisions of the Texas Family Code).

examine witnesses, to present evidence, not to make incriminating statements, and to have the case reviewed by a child protection team. Ind. Code Ann. § 31-34-4-6(a)(2)-(4). Those proceedings culminate in a final order (the "dispositional decree") determining whether the child will be placed in the custody of the parents or the state, and a parent may appeal an adverse decision. *See* Ind. Code Ann. § 31-34-20-1; Ind. Appellate Rule 2(H); *see also In re M.R.*, 452 N.E.2d 1085, 1088-89 (Ind. Ct. App. 1983). That type of proceeding is undeniably quasi-criminal under the dictates of *Sprint*. And for each of the plaintiff children here, it has concluded. None of Plaintiffs' federal claims relate to those proceedings.

The parallel state actions at issue in this case occur afterward. If the dispositional decree orders the child into the custody of the state, there begins a new and fundamentally different type of proceeding: semiannual periodic review hearings to determine whether a child's placements, services, and permanency plans are serving the best interests of the child. *See* Ind. Code Ann. § 31-34-21-2, -5. The hearings do not involve investigations and their purpose is not to sanction the child or anyone else. *See* INDIANA CHINS AND FAMILY LAW DESKBOOK 4-55 (2017). The child is not entitled to an attorney, *see* Ind. Code § 31-32-4-1, and in cases where parental rights have been terminated, like that of Plaintiff Joshua J., *see, e.g.*, App. 19, the former parents have no role in the hearings at all. The review hearings are governed by family law, not state criminal codes. *Compare* Ind. Code Ann. § 35-46-1 (criminal chapter covering offenses against the family), *with* Ind. Code Ann. § 31-34 (civil chapter governing CHINS). Decisions during the periodic review process are

"necessarily continuing (rather than final) in nature," and they are therefore not appealable as final judgments. *In re L.S.*, 212 N.E.3d 708, 711 (Ind. Ct. App. 2023).

In short, these periodic hearings bear none of the hallmarks of quasi-criminal proceedings described in *Sprint*. Indeed, when recently faced with the same distinction, the Fourth Circuit "easily reject[ed]" the comparison of ongoing child-welfare hearings to the removal proceedings in *Moore*. *Jonathan R. ex rel. Dixon v. Justice*, 41 F.4th 316, 329 (4th Cir. 2022). Because "*Moore* concerned the other side of the foster care process: parental rights," it was "[n]o surprise . . . that the Court equated the *initial* child-removal proceeding with the public-nuisance adjudication in *Huffman*." *Id.* That differed markedly from ongoing hearings that serve to protect foster children; "[i]t would turn decades of Supreme-Court jurisprudence—and logic—on its head to put these foster children in the shoes of the abusive parents in *Moore*," or "the obscene-theater director in *Huffman*." *Id.* at 330 (citations omitted); *see also, e.g.*, *Bryan C. v. Lambrew*, 340 F.R.D. 501, 510 (D. Me. 2021) ("While it is true that a state-initiated proceeding to gain custody of children allegedly abused by their parents could fall into [the quasi-criminal] category, here, the state proceedings are beyond the custody determination and are not attempts to sanction a party by removing parental rights for some wrongful act." (footnote omitted); *Jeremiah M. v. Crum*, 695 F. Supp. 3d 1060, 1079 (D. Alaska 2023) (holding that *Moore* and its progeny require a distinction between initial child-custody determinations which are quasi-criminal and ongoing placement reviews which are not); *cf. M.D. v. Perry*, 799 F. Supp. 2d 712, 723 (S.D. Tex. 2011) ("[T]he overwhelming majority of cases have

rejected *Younger* abstention in similar lawsuits challenging foster care systems, both at the circuit and district court level." (collecting cases)).[5]

As in *Jonathan R.*, Plaintiffs' claims do not implicate any ongoing state proceedings that fall into one of the three *Sprint* categories, and accordingly the abstention analysis is complete: *Younger* does not apply. *See Sprint*, 571 U.S. at 82.

II. *Ashley W.* does not compel *Younger* abstention in this case.

The decision below makes no mention of *Sprint*. Instead, the district court based its abstention holding on *Ashley W. v. Holcomb*, 34 F.4th 588 (7th Cir. 2022), a decision that ignored the *Sprint* categories altogether based on a misunderstanding of this Court's precedent. Because *Ashley W.* is an outlier decision that did not consider the critical distinction between child removal proceedings (which are "quasi-criminal" proceedings subject to abstention under *Sprint*) and the semiannual review hearings that occur during a child's foster care placement (which are wholly civil in nature), it should be limited to its facts, which are distinguishable from this case.

A. *Ashley W.*'s extension of *Younger* to periodic review hearings is demonstrably wrong under *Sprint* and unsupported by this Court's precedent.

Ashley W. involved a broad challenge to DCS's policies and practices brought by a group of children in foster care (which by the time of decision had been reduced to two children with live claims). The decision did not consider whether semiannual review hearings are quasi-criminal as defined by *Sprint*, but rather observed broadly

[5] Moreover, as the Sixth Circuit has recognized, even removal proceedings "are not at all 'akin to criminal prosecution' as far as the *child* is concerned." *Doe v. Franklin Cty. Children Servs.*, No. 20-3983, 2020 U.S. App. LEXIS 31163, at *3 (6th Cir. Sep. 30, 2020) (org. emph).

and without analysis that "*Younger* applies to state-initiated child-welfare litigation." *Ashley W.*, 34 F.4th at 591. It cited two Seventh Circuit cases for this proposition. The first, *Brunken v. Lance*, 807 F.2d 1325, 1330-31 (7th Cir. 1986), is a pre-*Sprint* case applying *Younger* abstention to a father's suit seeking to enjoin child custody proceedings brought against him because of alleged sexual assault. Because such proceedings fall squarely within *Sprint*'s quasi-criminal category, *Brunken* provides no support for applying *Younger* abstention to periodic review hearings, which are distinguishable for all the reasons laid out above. *See supra* Part I.

The second, *Milchtein v. Chisholm*, 880 F.3d 895 (7th Cir. 2018), likewise involved claims by parents seeking to enjoin a state court order removing two of their children. *Id.* at 897. The panel's decision to abstain under *Younger*, *id.* at 899, was thus correct, as those proceedings are indisputably quasi-criminal under *Sprint*. Although the panel characterized *Moore* and other pre-*Sprint* precedent as continuing to extend *Younger* to *all* "civil litigation brought by the state to vindicate its policies," including "child-welfare and child-custody proceedings," *id.* at 898, that language was dicta, as it speculatively suggested *Younger* could extend far beyond the actual quasi-criminal scenario then confronted, and reflected an outdated doctrine that *Sprint* had expressly overruled.

Ashley W. also quotes at length from a third Seventh Circuit decision, *Nicole K. v. Stigdon*, 990 F.3d 534 (7th Cir. 2021). In describing Indiana's child welfare proceedings, *Nicole K.* did not address *Younger*'s application to those proceedings, as *Ashley W.* recognizes. *See* 34 F.4th at 593. *Nicole K.* involved claims by foster children

who asserted that they were entitled to counsel at the initial removal proceedings and beyond. *See* 990 F.3d at 535-37. Recognizing "the variety of goals and outcomes" in child welfare proceedings writ large, the panel declined to "decide categorically whether *Younger* does, or does not, apply across the board." *Id.* at 537. It instead invoked general "[p]rinciples of comity" as a basis for leaving it to the state court "to resolve the appointment-of-counsel question" for each of the Plaintiffs. *Id.* at 537-38. Whatever the merits of that comity holding,[6] *Nicole K.* expressly withholds judgment on *Younger*'s application to periodic review hearings.

In short, *Ashley W.*'s implicit extension of *Younger* to *any* state court hearings that touch on child welfare is not only demonstrably wrong under *Sprint*, *supra* Part I, but also unsupported by circuit precedent.

B. Plaintiffs' claims distinguish this case from *Ashley W.*

Although Plaintiffs reserve their right to seek abrogation of *Ashley W.* by this Court en banc and/or the Supreme Court, such abrogation is unnecessary for Plaintiffs to prevail at the panel stage. As an initial matter, *Ashley W.* does not actually address whether the semiannual review hearings that occur during a child's foster care placement are quasi-criminal, leaving room for the Court to resolve that issue head-on in this case. Moreover, and in any event, *Ashley W.* is distinguishable on its own terms. In what appears to be an implicit invocation of the *Middlesex*

[6] The Supreme Court has "confined the circumstances appropriate for abstention" to four categories: *Pullman* abstention; *Burford* abstention; *Colorado River* abstention; and *Younger* abstention. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813-17 (1976). If a case does not fit into these carefully defined exceptions, "[f]ederal courts . . . have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" *Sprint*, 571 U.S. at 77 (quoting *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821)).

factors, *Ashley W.* ultimately abstained on the ground that the requested relief was either available in juvenile court or too vague for a federal court to order. Because eight of the ten plaintiffs had been adopted or aged out of the system, the suit had been narrowed to the claims of two children. And when the Court asked at oral argument "just what relief the two children with live claims want that could not be provided by the judge in a CHINS proceeding," "counsel for the plaintiffs could not identify any." *Ashley W.*, 34 F.4th at 593. For example, the court observed, children seeking permanency hearings every three months instead of every year can make that request in the periodic review hearing. *See id*. Similarly, children insisting that provisions of state law that they think are "underenforced, be fully enforced" is "a problem that CHINS judges can fix, if the state laws and regulations are pointed out to them." *Id.* at 594. And any relief that was unavailable in periodic review hearings, the court held, was not specific or concrete enough for a federal court to order. If "placements are too slow" "or are made less than optimally" "because there aren't enough people willing to serve as foster parents," or if the "bureaucracy moves sluggishly and makes too many mistakes," the court opined, "what can a federal court do about these things that a CHINS judge could not? Counsel did not have an answer." *Id.* at 593-94.

Although *Sprint* expressly rejects consideration of the *Middlesex* factors where, as here, none of the three *Sprint* abstention categories are implicated, *see Sprint*, 571 U.S. at 81-82, Plaintiffs in this case have carefully set forth claims and relief that resolve the Court's concerns in *Ashley W.* While the plaintiffs in *Ashley W.* could not

articulate, either in the complaint or at oral argument, any form of relief that would increase the number of foster homes, Plaintiffs in this case seek several specific and concrete remedies: orders requiring DCS to establish a "crisis response system that provides immediate crisis response on-site and coordinate subsequent stabilization services," to establish "a crisis helpline that connects foster parents and children to licensed clinicians who can help de-escalate crises and prevent the need for more restrictive interventions," and to "develop and implement a policy that prohibits retaliation against foster parents who request services for children placed with them." App. 75 at IV(h)-(j). These specific and concrete remedies could not be mandated by a juvenile court in any individual periodic review hearing, and target the root causes of the placement crisis to stem the exodus of foster parents.

With respect to caseloads and caseworkers, the *Ashley W.* complaint listed one outcome-based form of relief: "[e]njoin Defendants from failing to maintain caseloads for all workers providing direct supervision and planning for children at accepted professional standards," and "[r]equire that DCS periodically verify that it is meeting and maintaining the applicable caseload standards." *See* App. 80. Here, by contrast, Plaintiffs propose several specific and concrete remedies that address the inherent barriers preventing DCS from achieving outcomes. To support overwhelmed caseworkers and stop the cycle of crisis caused by crushing caseloads and turnover, Plaintiffs seek orders requiring DCS to establish "a free confidential peer-counseling helpline for caseworkers," App. 74 at IV(c), "regional non-caseload carrying units that can absorb cases from local offices when caseworkers quit or take leave," App. 74 at

IV(d), and "a commissioner-level office dedicated to providing caseworkers with support, resources, and sustainable wellness practices necessary to ensure their physical safety, psychological wellbeing, and professional growth." App. 74 at IV(e).

Although the district court concluded below that the juvenile courts could provide Plaintiffs' requested relief in their individual proceedings, this holding misunderstands the basis of the constitutional violation, ignores the inherent limitations of juvenile courts conducting the semiannual review hearings, and rejects Plaintiffs' well-pleaded facts.

i. The district court misunderstood the alleged constitutional harm.

Plaintiffs base their Fourteenth Amendment due process claim on allegations that Defendants are deliberately indifferent to substantial risks of serious harm posed to foster children, and that Defendants did not take reasonable available measures to abate the risk of serious harm to foster children. App. 68-70 (¶292-295).[7] Plaintiffs seek prospective injunctive relief to abate the risk of future harm. The past harms described in the complaint are evidence to establish the likelihood of future harm. *See Los Angeles v. Lyons*, 461 U.S. 95, 124 (1983).[8]

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[7] *Compare Farmer v. Brennan*, 511 U.S. 825, 828 (1994) (holding that "it is enough" for a prisoner to establish deliberate indifference under the Eighth Amendment when an "official acted or failed to act despite his knowledge of a substantial risk of serious harm"); *Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) (holding that pretrial detainees can establish deliberate indifference under the Fourteenth Amendment by showing that an official's deliberate action or inaction was objectively unreasonable).

[8] Defendants did not dispute injury-in-fact or causation. And the district court's dismissal under *Younger* assumes subject matter jurisdiction. *See Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.,* 477 U.S. 619, 626 (1986) ("[*Younger* abstention] does not arise from lack of jurisdiction in the District Court"); *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans,* 491 U.S. 350, 358-359 (1989).

The district court, however, mistook Plaintiffs' past harms as the alleged constitutional harm. Proceeding from this misunderstanding, the district court, citing juvenile court orders after past harms, concluded that those courts can provide an adequate remedy. *See* Short App. 10 n.2. This misunderstanding is fatal to the district court's analysis. Attempts to redress the symptoms of systemic failure in individual cases does not reduce the risk of future harm that forms the basis of Plaintiffs' constitutional injury.

The district court held, for example, that juvenile courts can address caseloads and caseworker turnover "by addressing mistakes that arise from an overburdened caseload, requiring a new caseworker, or even requiring one with a lighter or capped load that can afford the desired attention to his or her slate of children." *Id.* at 10. First, "addressing mistakes that arise from an overburdened caseload" after they occur does not reduce the ongoing risk of harm created by unmanageable workloads, or the irreparable harm that may occur before it can be addressed at a semiannual hearing. *See Gibson v. Berryhill*, 411 U.S. 564, 577 n.16 (1973) (refusing to abstain under *Younger* from a challenge to biased occupational licensing proceedings subject to state court appeal because the temporary revocation of optometry licenses would cause irreparable harm that a subsequent reversal could not fix). Second, replacing one overburdened caseworker with another does not help a child who has already been harmed. Assigning a caseworker with a "capped load" ignores Plaintiffs' allegation that DCS does not impose any meaningful limitations on caseloads. Assigning a caseworker with a "lighter" load assumes that such unburdened

caseworkers are available in that county or a neighboring county. And because the district court ignored Plaintiffs' allegation that DCS underweights cases, *see* App. 48-49 (¶¶219-20), it mistakes a "lighter or capped" caseload for a manageable workload. Moreover, any such order would necessarily increase the burden on other caseworkers critical to the wellbeing of other foster children, pitting members of the putative class against one another in a cruel zero-sum game. Finally, because none of these proposed solutions addresses caseworker turnover, there remains a substantial risk that any newly assigned caseworker will soon absorb additional cases that further prevent them from providing the necessary care and supervision, which continues to place children at risk of imminent harm no matter what happens at any individual hearing.

To address the placement deficit, the district court suggests that a juvenile court could "require DCS to maintain accurate and available medical records, prohibit retaliation in any given case, or address crises . . . ." Short App. 9. But the problem of inaccurate and unavailable records itself prevents juvenile courts from ordering appropriate relief in any individual case. After all, a court won't order DCS to maintain complete and accurate medical records if it doesn't know that the records are incomplete or inaccurate. As in the case of Plaintiffs Stephanie and Kyle M., DCS reported to the juvenile court that Stephanie and Kyle had "no physical or psychological conditions" despite their suicide attempts and serious behavioral problems. App. 32 (¶¶158, 160). "Without an adequate recordkeeping system, an agency is incapable of even *knowing* whether children have been provided timely and

appropriate treatment," App. 52 (¶234), which means the court lacks critical information it needs to identify and prevent future harm. Moreover, ordering DCS to maintain a complete and accurate record for a child would not address the structural problems that prevent DCS from doing so: it lacks an adequate recordkeeping system, and its caseworkers lack the capacity and training to obtain updated medical information from foster parents and services providers.

Similarly, prohibiting retaliation in an individual case does not combat the culture of fear that deters prospective foster parents from seeking a license or current foster parents from giving up their licenses, nor will the juvenile court be aware of the risk of retaliation when those who face it are chilled from reporting it. And ordering DCS to "address crises" after the fact cannot alter structural problems (like unmanageable caseloads and caseworker turnover) that prevent DCS from responding to crises in a timely manner and endanger Plaintiffs and the putative class. These piecemeal proposals do nothing to address the ongoing risk of harm caused by DCS's systemic failures.

ii. The district court overlooked the inherent limitations of juvenile courts to provide an adequate remedy for Plaintiffs' constitutional injuries.

Second, the district court ignored the inherent limitations of juvenile courts to grant systemic relief at periodic review hearings. The district court held that juvenile courts have "authority to control the conduct of 'any person' in relation to a child," and therefore can enforce federal rights. Short App. 9-10. But a juvenile court's willingness to hear arguments grounded in federal law means little if it is unable to adequately enforce those rights. Juvenile courts lack the time, resources, and

procedural tools to address the complex statewide practices that harm Plaintiffs, collect and analyze statewide data, monitor compliance with remedial orders, and enforce those orders. *See LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1323 (D.C. Cir. 1993) (holding that periodic review hearings are not "an appropriate forum" for a "multi-faceted class-action challenge" to a state's "administration of its entire foster-care system" because they are "intended merely to reassess periodically the disposition of the child."). This is particularly true where the state courts are denied access to important information due to the very deficiencies Plaintiffs challenge. In light of those shortfalls and practical realities, it is unlikely that an individual foster child, especially one without counsel, "could mount sufficient evidence to secure systemic relief." *Jonathan R.*, 41 F.4th at 337; *see also id.* ("acting alone, a foster child can hardly appreciate the universe of interrelated deficiencies that may plague the system"). As a class, however, "Plaintiffs can share their insider knowledge and identify the most productive structural changes to pursue." *Id.*

Moreover, "[s]horing up sufficient evidence to demonstrate the need for systemic relief requires a lot of capital—capital most foster children neither have nor can hope to amass." *Id.* Citing the Supreme Court's decision in *Deposit Guaranty National Bank v. Roper*, the Fourth Circuit reasoned that "where such 'individual suits' are not 'economically feasible,' 'aggrieved persons may be without any effective redress unless they may employ the class-action device' to 'allocate[e the] costs among all members of the class.'" *Id.* (citing *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 338 n.9 (1980)).

For plaintiffs alleging an ongoing risk of harm stemming from a lack of foster homes (e.g. placement mismatching, placement instability, disruption of medical and mental health services), it makes little sense for a child to seek a placement change in their individual case. Absent statewide remedies, any such relief would only relocate the child within the miasma of systemic shortfalls that endangers children across Indiana. It does not eliminate the ongoing risk of harm caused by DCS's policies and practices.

The caselaw bears out this analysis. Neither Defendants nor the district court identified a single example where a child during a periodic review hearing challenged agency actions that allegedly violated their due process rights to reasonable care and safety, or where a child was granted interlocutory appeal on such a challenge. Indeed, the Court of Appeals of Indiana has generally held that "placement orders by the juvenile court in CHINS proceedings are not final judgments," and not subject to appeal. *Child. v. Ind. Dep't of Child. Servs.*, 225 N.E.3d 184 (Ind. Ct. App. 2023) (collecting cases). Every example cited by the district court involves a parent challenging a final, appealable judgement for violating their due process rights to the custody of their children. *See* Short App. 7 (citing *In re N.E.*, 919 N.E.2d 102, 108 (Ind. 2010) (parent appealing custody determination); *McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003) (parent appealing termination of parental rights); *Hatch v. Ind. Dep't of Child Servs.*, No. 1:17-CV-357-TLS, 2018 U.S. Dist. LEXIS 58082, at *3 (N.D. Ind. Apr. 5, 2018) (parent challenging custody order in federal court)). And of these examples, none evidence a juvenile

court's willingness or ability to order the statewide relief necessary to address the root problems that create an ongoing risk of harm. *Compare Jonathan R.*, 41 F.4th at 337-39 (finding that the seven examples identified where a state court purportedly ordered the agency to change its policies or practices did not support defendants' theory that state courts were willing or able to provide adequate relief).

iii. The district court rejected Plaintiffs' well-pleaded allegations.

Finally, the district court erred by disregarding Plaintiffs' well-pleaded allegations. *See Reed v. Palmer*, 906 F.3d 540, 553 (7th Cir. 2018). For example, according to the district court, a juvenile court can redress an agency's failure to provide a child's medical information to the foster parents by simply ordering the agency to do so (at some point in the indefinite future, perhaps even months after the initial placement). *See* Short App. 10 n.2. This conclusion ignores Plaintiffs' allegations that DCS does not maintain an adequate recordkeeping system, and that children's medical records are either incomplete, incorrect, or missing entirely. *See* App. 51-56 (¶¶234-248). Had the district court accepted Plaintiffs' allegations as true, it could not have concluded that a simple order to produce the child's medical records would redress any harm, let alone the risk of future harm that forms the basis of Plaintiffs' constitutional claims.

****

Indiana's deliberate indifference to the basic needs of the children in its custody is a profound violation of constitutional and statutory federal law. As explained in Part I, Plaintiffs are entitled under *Sprint* to adjudication of their claims

by a federal court because their semiannual review hearings do not implicate any of the three *Sprint* categories, making the district court's erroneous assessment of the availability of relief in those hearings irrelevant. But the injustice of the district court's abstention is made far worse by the reality that Plaintiffs cannot in fact obtain meaningful relief through those hearings. As detailed above and recognized by the Fourth Circuit, innumerable legal and practical obstacles prevent foster children from challenging systemic failures in their individual periodic hearings; "forcing Plaintiffs to litigate their claims in the state foster-care proceedings" thus amounts to "an empty promise." *Jonathan R.*, 41 F.4th at 316. "[F]ederal reform of systemic deficiencies in the executive branch . . . does not asperse the 'competency' of state courts to conduct periodic individual foster-care hearings or to independently correct any structural problems state courts themselves identify," *id.* at 336, but instead respectfully acknowledges that the juvenile courts are not designed or equipped to remedy the structural failures identified by Plaintiffs in this suit. The bottom line is that the children in Indiana's foster care system are suffering and will continue to suffer irreparable harm if they are denied access to a federal forum. *Younger* abstention simply has no application to their claims, and the district court erred in holding otherwise.

CONCLUSION

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

Dated: September 26, 2024

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system on September 26, 2024.

I certify that service on all parties to the case will be accomplished by the CM/ECF system.

/s/ Kimberly Kennedy
Kimberly Kennedy

REQUIRED SHORT APPENDIX

Pursuant to Seventh Circuit Rule 30(d), counsel for Appellants hereby certify that the Rule 30(a) appendix bound with this brief and the separate Rule 30(b) appendix submitted with this brief contain all the materials required by parts (a) and (b) of Circuit Rule 30.

/s/ Kimberly Kennedy
Kimberly Kennedy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

A.B., a minor,
by next friend BRIAN WILSON *et al.*,

Plaintiffs,

v.

ERIC HOLCOMB *et al.*,

Defendants.

CAUSE NO. 3:23cv760 DRL-MGG

OPINION AND ORDER

For the second time in five years, Hoosier children pursue a putative federal class action to force changes to Indiana's foster care system. Federal law required the last district court to abstain in favor of the state courts supervising ongoing child-welfare proceedings. The law has not changed. Nor in truth has the nature of the claims materially changed to permit this second suit to continue.

Twelve children in Indiana's system—and really only ten who retain live claims because their state child-welfare matters still pend—say the system isn't what it should be. In a detailed amended complaint, they seek an injunction for perceived constitutional and statutory violations. They want changes. They want timely and focused treatment for children. They want new helplines for caseworkers and parents. They want lower caseloads. They want peer review. They want a new recordkeeping system. They want new policies. They want better and faster placement decisions. They want other things too, and all may be noble for consideration, but they have an ear for these requests already.

Today these children can present concerns about their placement, care, treatment, records, supervision, and the like to a state court designed specifically for them and their ongoing cases—a Child in Need of Services (CHINS) court. If not the Indiana General Assembly, a CHINS court can address these issues. And because that is so, federal law tells this court that it cannot. The court must dismiss this suit under a doctrine called *Younger* abstention.

BACKGROUND

Twelve children who are or were in the custody of Indiana's Department of Child Services (DCS), by their next friends, bring this putative class action on behalf of themselves and all children who are now or will be in DCS custody. The children sue DCS, DCS Director Eric Miller, and Indiana Governor Eric Holcomb for declaratory and injunctive relief.

The State of Indiana addresses allegations of child abuse and neglect primarily through CHINS proceedings. Ind. Code § 31-34-9-1. Once DCS substantiates an allegation, it may initiate a CHINS proceeding by filing a petition with a trial court, and the CHINS court normally must hold a hearing within ten days, Ind. Code § 31-34-10-2(a), or within two days when a child has been removed from the home, Ind. Code § 31-34-5-1(a). A CHINS court has the authority to control the conduct of "any person" in relation to a child. Ind. Code § 31-32-13-1(1).

If the court finds after a hearing that a child needs services, it will hold a dispositional hearing within thirty days thereafter to consider the child's care, placement, treatment, and rehabilitation, to be followed by its dispositional decree. Ind. Code §§ 31-34-19-1(a), 31-34-20-1. A CHINS case remains open until "the objectives of the dispositional decree have been met." Ind. Code § 31-34-21-11. The case does not end until the child achieves a permanent placement. Ind. Code § 31-19-11-6. This may mean reunification, adoption, or termination of parental rights.

In the interim, the CHINS court reviews the case at least once every six months to ensure that a child's case plan, services, and placement continue to serve his or her best interests. Ind. Code §§ 31-34-21-2, 31-34-21-5(a). The court evaluates whether DCS has reasonably provided family services and complied with the child's case plan. Ind. Code §§ 31-34-21-5(a)(1), (b)(1). The court may modify its dispositional decree on its own or upon the motion of the child, the child's representative, the DCS attorney, or a service provider. Ind. Code § 31-34-23-1. During this process, most children are represented by a guardian ad litem or a court-appointed special advocate (CASA), or both.

For purposes of today's motion, the court takes the amended complaint's well-pleaded facts as true. Today's children, and what they hope will be more by way of a class, want to overhaul Indiana's foster care system. They allege statistics that give rise to their concerns. They say, since 2017, the average time that children remained in Indiana foster care rose from 490 days to 596 days. From 2015 to 2020, children stayed in the system 45 percent longer without a permanent placement. In 2020, a fifth of children who were discharged from foster care in Indiana reentered such care within two years. The year after, Indiana exceeded the national average for the number of days to reunification by 19.5 percent, and the number of days to adoption by 52.3 percent.

In 2021, according to the amended complaint, DCS lost a net 390 caseworkers and then another 339 the year after. Staffing matters because some DCS caseworkers report having as many as 35 active cases when the recommended average is 12-15 cases. The children advancing this case allege that the Indiana Inspector General's investigative reports revealed numerous instances of caseworkers falsifying entries to "buy time." The children also allege that DCS has used SafeACT—the Safe Assessment Closure Team created in 2021 to close out assessments when a child is deemed safe—to conclude cases in an effort to decrease caseloads that in reality pose serious safety concerns.

The United States Department of Health and Human Services, in a 2022 report entitled "Indiana Did Not Comply with Requirements for Documenting Psychotropic and Opioid Medications Prescribed for Children in Foster Care," found that in a random sample of healthcare records for children prescribed psychotropic or opioid medications, 95 percent lacked medical passports, 62 percent lacked documents from their providers, 58 percent omitted authorizations for these medications, and a majority of such medications had not been recorded in the Management Gateway for Indiana's Kids (MaGIK)—DCS's electronic records management system. Its director has since acknowledged that DCS's recordkeeping "requires updating." DCS has been developing a new system, I-KIDS, but it remains incomplete.

According to the amended complaint, in 2018, a study conducted by the Child Welfare Policy and Practice Group, a group that endeavors to improve outcomes for children and their families by

designing and implementing system changes and improving frontline practices, found that 1,791 Indiana foster families withdrew their licenses over a 24-month period. This report also found a "gap in resources" for children who require a higher level of care than a foster home. After this report, and between March 2021 and March 2022, DCS lost nearly 500 licensed foster homes. The children allege that a culture of retaliation does not help—particularly when DCS responds by removing children from the foster home, removing providers from cases, threatening to rescind foster care licenses, and threatening allegations of abuse or neglect against those who participate. In one alleged instance, DCS filed to remove children from their grandparents after they wrote legislators and the governor for help when DCS reportedly provided no help for the children's needs.

The amended complaint alleges other serious concerns. The children say deficiencies in Indiana's foster care system have had a direct impact on them. Extended stays in the foster care system and frequent placement disruptions exacerbated the mental health condition of certain children. Slow responses to reports of abuse led to more tragic abuse. Some foster parents received inaccurate medical information. Some foster parents were told that their foster children have no psychological conditions despite the children verbalizing and acting out on wanting to commit suicide. Some children who needed therapy never received it because their foster parents were not told how severe their trauma was. Another child remained in residential facilities despite DCS's knowledge that he was not receiving the treatment he needed there. Yet another child did not receive specialized treatment because of the limited supply of providers. Missing medical records and the seeming lack of help from DCS led some foster parents to relinquish their foster licenses altogether, according to the amended complaint.

Indiana's foster care system has evolved with the oversight of all branches of state government, and that oversight rests on the wisdom that most all things of human enterprise can be subject to neglect or can present opportunities for improvement, some more urgent than others. For instance, the General Assembly regularly reviews caseloads and the number of children serviced through DCS programs. *See* Ind. Code §§ 31-25-2-4, 31-25-2-6, 31-25-2-26. The executive branch, through a Department of

Administration's ombudsman, "receive[s], investigate[s], and resolve[s] complaints that allege [DCS], by an action or omission, failed to protect the physical or mental health or safety of any child or failed to follow specific laws, rules, or written policies." Ind. Code § 31-25-5-1. The judiciary's Child Welfare Improvement Committee examines "ways to improve safety, timely permanency, and well-being outcomes for children and families involved in the child welfare system." Ind. Admin. R. 4(A)(5). Even the federal Children's Bureau, operating under the Department of Health and Human Services, investigates state child welfare matters and publishes the results of these investigations. 42 U.S.C. § 192. With our children in need, it most often takes a village.

STANDARD

A Rule 12(b)(1) motion "can take the form of a facial or a factual attack on the plaintiff's allegations." *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 279 (7th Cir. 2020). When evaluating a facial challenge to subject matter jurisdiction, the court must accept alleged factual matters as true and draw all reasonable inferences in favor of the plaintiff. *See id.*; *Silha v. ACT, Inc.*, 807 F.3d 169, 173 (7th Cir. 2015). The defense raises a facial attack here, even for its abstention request that "fits more comfortably under Rule 12(b)(1)." *Ali Nadzhafaliyev v. Hardy*, 403 F. Supp.3d 663, 667 (N.D. Ill. 2019). The plaintiffs bear the burden of establishing the jurisdictional requirements. *Ctr. for Dermatology and Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588-89 (7th Cir. 2014).

DISCUSSION

The children claim that Governor Holcomb and DCS Director Miller violated their Fourteenth Amendment due process rights while they were in Indiana's custody and subject to the foster care system's deficiencies, *see Lewis v. Anderson*, 308 F.3d 768, 773 (7th Cir. 2002), and their right to a case plan under the Adoption Assistance and Child Welfare Act (AACWA), 42 U.S.C. §§ 675(1)(C), (5)(D).[1] They

[1] In one paragraph of the amended complaint, the children allude to the First Amendment and Ninth Amendment as well, but they remain undeveloped as independent grounds for injunctive relief already pursued through the channel of 42 U.S.C. § 1983 under the guise of the Fourteenth Amendment. Mere mention of these other amendments ultimately has no effect on today's outcome.

say all three defendants, including DCS, violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act by failing to give those children with disabilities the same access to foster care as non-disabled children. *See* 29 U.S.C. § 794; 42 U.S.C. § 12132. As relief, aside from a declaration, they seek an injunction to force the defendants to update DCS's recordkeeping system, to create a crisis helpline, and to implement new policies that will address caseloads and timely treatment, among other things.

The state defendants ask the court to abstain and allow CHINS courts to address these concerns. "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," *Younger v. Harris*, 401 U.S. 37, 43 (1971), including by way of injunction, *see* 28 U.S.C. § 2283. Equitable restraint and warranted respect for federalism undergird "a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger*, 401 U.S. at 44.

A federal court should abstain when "there is an ongoing state proceeding that is judicial in nature, involves important state interests, provides the plaintiff an adequate opportunity to raise the federal claims, and no exceptional circumstances exist." *Ewell v. Toney*, 853 F.3d 911, 916 (7th Cir. 2017). From this record, there is no doubting that the ten minors with live claims remain involved in judicial CHINS proceedings (absent a permanent placement), and that the State of Indiana has legitimate interests in the protection of children and the promotion of their health and welfare. As it turns out, today's claims can be redressed in a CHINS proceeding, and no exceptional circumstances exist to carve out an exception for raising them in federal court rather than in those ongoing CHINS proceedings. *See FreeEats.com, Inc. v. Indiana*, 502 F.3d 590, 596 (7th Cir. 2007) (exceptional circumstance means a showing of "such great, immediate, and irreparable injury as to warrant intervention in state [] proceedings").

At the start, the children devote a significant amount of ink to arguing that *Younger* should not apply. They contend that CHINS proceedings are not like criminal prosecutions and that they have not

sued a state court or state judge. The law has answered their arguments already. The *Younger* abstention doctrine, as it has become known, "applies to state-initiated child-welfare litigation," *Ashley W. v. Holcomb*, 34 F.4th 588, 591 (7th Cir. 2022) (called *Ashley* here) (citing *Moore v. Sims*, 442 U.S. 415 (1979)), and applies equally to claims against the Indiana governor, DCS, and DCS director, *see id.* at 591.

The real question is whether these children seek relief that exceeds the scope or authority of a CHINS court, for otherwise "[d]isputes that can be resolved in a CHINS case must be resolved there." *Id.* at 593. This isn't a one-size-fits-all analysis. The "scope and complexity of CHINS proceedings makes a one-size-fits-all solution inapt," so the court must "figure out which, if any, of [the] requests should be submitted to the CHINS court under *Younger* and which remain for federal adjudication." *Id.* at 592-93. "For the same reason, however, the existence of some issues outside the ambit of a CHINS proceeding does not mean that *Younger* drops out of the picture." *Id.* at 593.

These minors can pursue due process claims in a CHINS proceeding. "State courts, as much as federal courts, have a solemn obligation to follow federal law." *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 571 (1983). The law never presumes that state courts will just ignore federal constitutional rights. *See Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). "Principles of comity entitle the states to make their own decisions, on federal issues as well as state issues, unless there is some urgent need for federal intervention," *Nicole K. v. Stigdon*, 990 F.3d 534, 537-38 (7th Cir. 2021), or Congress directs otherwise, *see Wilhelm v. Cnty. of Milawaukee*, 325 F.3d 843, 847 (7th Cir. 2003).

There is no such need or directive here. Parties in Indiana may bring federal due process claims during a CHINS proceeding and may appeal an adverse decision on the same basis. *See N.L. v. Ind. Dep't of Child Servs.*, 919 N.E.2d 102, 108 (Ind. 2010) (vacating CHINS judgment for due process violation); *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003) (parent waived due process challenge by not objecting in CHINS court); *see also Hatch v. Ind. Dep't of Child Servs.*, 2018 U.S. Dist. LEXIS 58082, 5 (N.D. Ind. Apr. 5, 2018). When "vital state interests are involved, a federal court should abstain unless state law clearly bars the interposition of the constitutional claims." *Middlesex*,

457 U.S. at 432. No one today demonstrates that such claims would not find their ear in a CHINS court, and "[n]o more is required to invoke *Younger* abstention." *Juidice v. Vail*, 430 U.S. 327, 337 (1977).

This case effectively involves relief similar to that sought in *Ashley*, even if in a measure expanded. There, children in DCS custody sued Governor Holcomb, the DCS director, and DCS—the same officers and agency here—for violations of the Fourteenth Amendment's due process clause as well as state and federal law. The children wanted "the court to issue a detailed regulatory injunction specifying better procedures for both [DCS's] operations and CHINS proceedings." *Ashley*, 34 F.4th at 591. They wanted "an injunction requiring [DCS] to maintain caseloads and accepted professional standards for all workers providing direct supervision and planning for children as well as an order requiring [DCS] to periodically verify and report that it is meeting those standards." *Id.* at 592-93.

Only two of the children in *Ashley* retained live claims, so it became "important to know just what relief [these two children] want[ed] that could not be provided by the judge in a CHINS proceeding." *Id.* at 593. They argued that "many children could benefit from hearings at intervals shorter than six months, but [they] conceded that the judge hearing the CHINS case has authority to reduce the time between hearings if that seems appropriate." *Id.* They also argued "that many placements are too slow—in part because there aren't enough people willing to serve as foster parents—or are made less than optimally," or because "the bureaucracy moves sluggishly and makes too many mistakes," but the court of appeals found that, short of ordering the state to come up with more money, a federal court had no more options than a CHINS court. *Id.* at 593-94. The children also argued that the federal court could order certain state law provisions to be fully enforced, but a federal court could not issue a mere "obey-the-law" injunction. *Id.* at 594. The court dismissed the case. *Id.*

So too here. For one, like *Ashley*, today's case involves children engaged in active CHINS cases. It features the same federal claims and against the same parties. *See Ashley W. v. Holcomb*, 467 F. Supp.3d 644, 648 (S.D. Ind. 2020), *rev'd*, 34 F.4th 588 (7th Cir. 2022). The plaintiffs in *Ashley* equally sought prospective relief designed to revamp Indiana's foster care system.

The children here raise a host of challenges to Indiana's foster care system. The prevailing question today is: "what can a federal court do about these things that a CHINS judge could not?" *Ashley*, 34 F.4th at 594. They argue that they cannot receive the relief they seek here in CHINS proceedings. They say the *Ashley* plaintiffs could not sufficiently articulate in 2022 what a CHINS court could not do when their case today presents enough differentiation that calls on a federal court to act. But their case is virtually the same as the one before—and even in its minor differences is met by the law's demand that the court abstain in favor of a CHINS court.

First, they argue that a CHINS court cannot order Indiana to recruit and retain enough foster homes. Aside from ordering the state's provision of more money, either funding to the system as a whole or ultimately to foster parents—an unrealistic and troublesome idea that these children stop short of requesting—the court sees no options available solely here and not available in a CHINS court. *See Ashley*, 34 F.4th at 593. To increase the number of foster homes, these children say the court could require DCS to provide foster and adoptive parents accurate medical information, establish a sufficient recordkeeping system, establish a crisis response system, establish a crisis helpline, and implement a policy that prohibits retaliation. They say this will help Indiana recruit and retain more foster parents. But they can seek this relief in a CHINS court. They say they can't, but they offer no authority for this view.

A CHINS court has the authority to control the conduct of "any person" in relation to a child. Ind. Code § 31-32-13-1(1). The court may do so on its own or upon the motion of a child's parent, guardian, custodian, or guardian ad litem, or a probation officer, caseworker, prosecuting attorney, DCS attorney, or any other person providing services to the child, parent, or guardian. Ind. Code § 31-32-13-1. A CHINS court also may decide in its periodic case review whether DCS has made reasonable efforts to provide family services or whether DCS has complied with a child's case plan. Ind. Code §§ 31-34-21-5(a)(2), (b)(1). This broad authority demands some deeper response from the plaintiffs—some answer as to why a CHINS court can't use its authority to craft relief that would require DCS to maintain accurate and available medical records, prohibit retaliation in any given case, or address crises all with the overall

aim of encouraging the involvement of more foster parents.[2] The court doesn't operate under the presumption that state courts won't enforce federal rights or statutes. *See Middlesex*, 457 U.S. at 431.

Second, these children argue that a CHINS court cannot address caseworkers and caseloads. This too was addressed by *Ashley*, 34 F.4th at 594, which found no answer as to what a federal court could do about this issue that a CHINS court could not. The children here say the court could order peer counseling among caseworkers, establish regional non-caseload carrying units that could absorb cases when caseworkers quit, and establish an office that will ensure their physical safety, psychological well-being, and professional growth, and thereby reduce turnover.

But again, they cite no authority that would curtail a CHINS court's ability to address caseloads—say by addressing mistakes that arise from an overburdened caseload, requiring a new caseworker, or even requiring one with a lighter or capped load that can afford the desired attention to his or her slate of children. Nor do they explain why a so-called overburdened system of caseworkers would be served by adding the burden of counseling caseworkers peer-to-peer or, even if sense could be made of it, why this would not be within a CHINS court's power to order. Nor do they articulate this federal court's authority to establish new state government offices, much less to exercise supervisory authority over Indiana's coffers or to direct management of the state fisc to increase the agency's budget. Any such suggestion tends to erode rather than respect the very concerns of federalism that undergird *Younger* abstention. In short, they have not developed an argument outside the result of *Ashley*.

Third, the children argue that a CHINS court cannot grant adequate systemic relief. They prefer to change the system rather than address constitutional issues on a case-by-case basis. Though they

[2] The record presents instances of a CHINS court acting consistent with this interpretation of broad statutory authority. For instance, a CHINS court ordered DCS to provide a child's full psychological report to the guardian ad litem and CASA [21-1 at 74 (A-073)], to ensure that children received sexually maladaptive counseling [21-1 at 82 (A-081)], and to provide trauma therapy and medication management services for children [21-5 at 112 (E-111)], and ordered a medical provider to release the necessary paperwork to allow the children to begin taking prescribed medications [21-6 at 87 (F-086)]. Even as a facial attack, "it is a well-settled principle that the decision of another court or agency . . . is a proper subject of judicial notice." *Opoka v. INS*, 94 F.3d 392, 394 (7th Cir. 1996).

acknowledge that a CHINS court could address constitutional issues in each case, including the adequacy of children's placements and services, they say the reality is that a child will be thrown right back into a broken system after one issue is fixed. One circuit has declined to abstain under such a theory and thereby declined to follow *Ashley*. *See Jonathan R. v. Justice*, 41 F.4th 316, 336 (4th Cir. 2022) ("Reforming foster care case-by-case would be like patching up holes in a sinking ship by tearing off the floorboards."). Though another circuit might espouse a different view, this court has no such authority to ignore *Ashley*, nor have the plaintiffs here offered a salient reason for doing so today.

Lest one forget, *Ashley* featured a request for systemic relief as well. The court of appeals nonetheless held that "[d]isputes that can be resolved in a CHINS case must be resolved there." *Ashley*, 34 F.4th at 593. One might seriously debate, given the unique and individual circumstances of each child in Indiana's foster care system, whether a federal class action really is best suited to address constitutional deficiencies in any one child's case, but the fact of the matter is each concern today may be addressed by a CHINS court. For instance, if children in CHINS proceedings need faster placements or more detailed medical records, CHINS courts can resolve these issues, and thoughtfully so within the context of the needs and interests of these children. If children need care, if they need specific treatment, if they need monthly (or bimonthly) visits, if they need modified placements, or if they need other resources, either for them or their foster parents, a CHINS court has the power to see to it. And no one should presume that relief in CHINS proceedings has no effect on the overall system.

These plaintiffs exalt a preference for a federal forum to air their grievances, but not a need for one—not when CHINS courts stand authorized and ready to address these same concerns adequately. A preference for this venue doesn't alter the court's obligation to abstain. *See 31 Foster Children v. Bush*, 329 F.3d 1255, 1281 n.12 (11th Cir. 2003) (question is not "whether the broad relief the plaintiffs would prefer is available but instead whether the forum itself is adequate for addressing the claims and providing a sufficient remedy to the individual plaintiffs"); *Joseph A. v. Ingram*, 275 F.3d 1253, 1274 (10th Cir. 2002) (plaintiffs cannot "avoid the effects of the *Younger* abstention doctrine in cases where relief is available to

individual litigants in ongoing state proceedings but not to represented parties in a class action"). For those ten children yet with live claims, the court must abstain under *Younger* and *Ashley*.

The other two (of twelve) children lack standing today. A plaintiff must have standing—an injury, fairly traceable to the defendant's conduct, that the court's decision will likely redress. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 797 (2021); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Standing is individualized. It is not "dispensed in gross," so a plaintiff "must demonstrate standing for each claim [he presses] and for each form of relief [he seeks]." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021). An injury "must affect the plaintiff in a personal and individual way," *Spokeo*, 578 U.S. at 339, *see also Matlin v. Spin Master Corp.*, 979 F.3d 1177, 1181 (7th Cir. 2020), and "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision," *Dep't of Educ. v. Brown*, 600 U.S. 551, 561 (2023) (quotations omitted).

If the court's decision won't affect a litigant's rights, "the aggrieved party [is] unable to illustrate the redressability component of standing, rendering any judicial decision in the case an impermissible advisory opinion." *United States v. Brixen*, 908 F.3d 276, 280 (7th Cir. 2018). This case seeks prospective injunctive relief that pertains to Indiana's foster care system, so it follows that someone not in the system won't have their concerns redressed by the court. The other two plaintiffs (K.F. and N.M.) achieved permanency—the former's wardship ended on August 23, 2023 [21-3 at 41 (C-040)], and the other's CHINS case closed on February 7, 2023 [21-5 at 35 (E-034)]. They lack standing to proceed today.[3] *See also Ashley*, 34 F.4th at 592 ("hard to accept that standing should be resolved in the abstract [when] the question is whether [their] issues . . . matter to these plaintiffs in a way that a court could redress").

From here, the court need not address any other doctrine raised by the parties (including the *Rooker-Feldman* doctrine). *Younger* may take priority over another jurisdictional issue when "there is no

[3] Their claims are likewise moot—lacking as these plaintiffs do a legally cognizable interest in the outcome of any live claim. *See Olson v. Brown*, 594 F.3d 577, 580 (7th Cir. 2010). That ten children retain live claims today also demonstrates the inherently transitory exception to mootness will not apply. *See id.* at 582.

practical difference in the outcome." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *see also Ashley*, 34 F.4th at 594 (dismissing live claims under *Younger* without reaching the *Rooker-Feldman* question).

CONCLUSION

The children in DCS custody who retain live claims today have a ready and adequate ear for their complaints in ongoing CHINS proceedings before CHINS courts. The issues these children attempt to raise here must be raised there. The court must abstain under *Younger* and *Ashley*, so the court GRANTS the motion to dismiss [19], DISMISSES this case without prejudice, GRANTS the motion to seal [22], and DENIES AS MOOT the motion to eliminate class allegations [24]. This order terminates the case in this federal court.

SO ORDERED.

June 5, 2024

s/ Damon R. Leichty
Judge, United States District Court

AO 450 (Rev. 01/09) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Indiana

A. B. a minor, by next friend Brian Wilson;
L. B. a minor, by next friend Brian Wilson;
K. F. a minor, by next friend Brian Wilson;
M. M. a minor, by next friend Jenna Hullet;
J. J. a minor, by next friend Meghan Bartells;
N. M. a minor, by next friend Kristy Long;
A. M. a minor, by next friend Kristy Long;
M. M. 2 a minor, by next friend Kristy Long;
S. P. a minor, by next friend Meghan Bartells;
STEPHANIE M. a minor, by next friend Barbara Cook;
KYLE M. a minor, by next friend Barbara Cook;
ZARA S. a minor, by next friend Jason Doe

Plaintiffs

v. **Civil Action No.** 3:23cv760

ERIC HOLCOMB in his official capacity as
the Governor of Indiana;
ERIC MILLER in his official capacity as
the Director of the Indiana Department of Child Services;
INDIANA DEPARTMENT OF CHILD SERVICES

Defendants

JUDGMENT IN A CIVIL ACTION

The court has ordered that (*check one):*

☐ the plaintiff_____recover from the defendant_____ the amount of _____, which includes prejudgment

interest at the rate of____% plus post-judgment interest at the rate of ____% along with costs.

☐ the plaintiff recover nothing, the action is dismissed on the merits, and the defendant _____recover

costs from the plaintiff _____.

X Other: Case DISMISSED without prejudice.

This action was (*check one):*

☐ tried to a jury with Judge_____ presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

X decided by Judge Damon R. Leichty on a motion to dismiss.

DATE: June 6, 2024

Chanda J. Berta, Clerk Of Court

by s/ D. Johnson
Signature of Clerk or Deputy Clerk