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.

On 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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INTRODUCTION

Sprint Communications, Inc. v. Jacobs, 571 U.S. 69, 77-79 (2013), limited the scope of *Younger* abstention to three categories, only one of which is possibly implicated by foster care proceedings: the "quasi-criminal" category, which *Sprint* defined as "act[s] of civil enforcement" that are "'akin to a criminal prosecution' in 'important respects,'" and "are characteristically initiated to sanction the federal plaintiff, *i.e.,* the party challenging the state action, for some wrongful act." *Id.* at 79, 81 (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975)). *Sprint* identified *Moore v. Sims*, 442 U.S. 415, 419-20 (1979), as an example of the type of quasi-criminal civil enforcement proceeding to which *Younger* applies because its underlying state action was a "state-initiated proceeding to gain custody of children allegedly abused by their parents." *Sprint*, 571 U.S. at 79. Like *Moore*, *Brunken v. Lance*, 807 F.2d 1325 (7th Cir. 1986), *Milchtein v. Chisholm*, 880 F.3d 895 (7th Cir. 2018), and *Nicole K. v. Stigdon*, 990 F.3d 534 (7th Cir. 2021), all concerned those initial proceedings "to gain custody of children."

The question here is whether ongoing proceedings to monitor the wellbeing of foster children, which begin after the initial custody proceedings end, are, for those children, quasi-criminal civil enforcement actions as defined by *Sprint*. For the reasons laid out in Plaintiffs' opening brief, they are not.

Defendants do not make an affirmative case that monitoring the wellbeing of foster children in periodic review hearings is an "act of civil enforcement" "'akin to a criminal prosecution' in 'important respects.'" Instead, they contend that the initial

removal proceedings and the ongoing welfare proceedings are inextricably linked, and therefore periodic hearings to monitor the wellbeing of foster children are quasi-criminal by association (i.e., quasi-quasi-criminal). Opp. 39-42. Three arguments prop up Defendants' quasi-criminal by association theory. First, Defendants try to lump together the two distinct proceedings by relying on dicta in *Milchtein* suggesting that *Younger* extends to *all* "civil litigation brought by the state to vindicate its policies," including "child-welfare and child-custody proceedings." Opp. 30 (quoting *Milchtein*, 880 F.3d at 898). Next, Defendants infer from *Moore* that all proceedings within a statutory scheme should be treated the same for *Younger* purposes, even those indisputably unlike criminal prosecution. Opp. 39-41. Finally, Defendants contend the two proceedings should be treated the same because parental rights are considered in both. Opp. 40-42.

Sprint, however, explicitly rejects the idea originally laid out in *Moore*, and cited in *Milchtein*, that *Younger* extends to any parallel state proceedings that implicate an "important state interest." 571 U.S. at 81. *Sprint* also confirms that the threshold *Younger* question concerns the nature of the underlying state proceeding, not the statutory scheme on which it is based. And Defendants' attempt to broaden the quasi-criminal category to include any proceedings implicating parental rights is precisely the type of unchecked expansion that the Supreme Court sought to curtail when it warned that *Younger* extends to only the three "exceptional circumstances" identified in *Sprint* and "no further." *Id.* at 82.

Defendants are also wrong that *Ashley W. v. Holcomb*, 34 F.4th 588 (7th Cir. 2022), forecloses a panel of this Court from respecting *Sprint*'s categorical limitations on *Younger* abstention here. While the facts in this case, like *Ashley W.*, reflect the continuing health and safety risks endured by foster children in the custody of the Indiana Department of Child Services (DCS), the relief sought in this case differs in important respects. In *Ashley W.*, this Court instructed future plaintiffs to state relief that Children in Need of Services (CHINS) courts could not grant and that federal courts could. Plaintiffs here endeavored to do just that, and the request for relief is tailored to meet the uniqueness and specificity instructions set out by the Court in *Ashley W.*

Finally, Plaintiffs have standing, and this case does not meet any, let alone all, of the five elements required to block jurisdiction under *Rooker-Feldman*. Plaintiffs are not state court losers and do not seek reversal of any state court judgment. The in-custody Named Plaintiffs have pled an imminent risk of future harm that is traceable to DCS's conduct and redressable by a federal court. And because the length of foster care is uncertain and Plaintiffs' claims are capable of repetition, the claims of the out-of-custody Named Plaintiffs qualify for the inherently transitory exception to mootness.

This Court should reverse the judgment of the district court and reinstate the Amended Complaint.

ARGUMENT

I. *Younger* Abstention Does Not Apply to Plaintiffs' Claims

Defendants' *Younger* argument rests on two load-bearing supports: (1) the periodic child-welfare hearings at issue here fall within one of the strictly limited categories laid out in *Sprint*; and (2) the relief sought in this case is indistinguishable from the requested relief in *Ashley W.* and can be adequately provided by state courts in individual periodic reviews. Neither of those supports withstand scrutiny.

A. Defendants Misread *Sprint* and *Moore*

Defendants argue that *Moore* and selected progeny "establish that state-initiated child-welfare litigation like CHINS litigation is the type of state civil-enforcement proceedings that triggers *Younger* abstention[.]" Opp. 32. The state proceedings in this case, per Defendants, constitute "civil enforcement proceedings" comparable to those in *Moore*—that is, "child-welfare litigation"—which extends *Younger* to all "'civil proceedings in which important state interests are involved.'" Opp. 28-29 (quoting *Moore*, 442 U.S at 423).

As Plaintiffs explained in their opening brief, *Moore*'s broad application of *Younger* to all civil enforcement proceedings has not survived the Supreme Court's decision in *Sprint*. Defendants' arguments to the contrary (Opp. 37) are demonstrably false. After reviewing the three types of ongoing proceedings discussed in *New Orleans Public Service, Inc. v. Council of New Orleans*, 491 U.S. 350 (1989), the Supreme Court expressly held "they define *Younger*'s scope." *Sprint*, 571 U.S. at 78. Acknowledging that lower courts were inappropriately treating the three *Middlesex* factors as a stand-alone test, the Court clarified that "[t]he three *Middlesex* conditions . . . were not dispositive," but "were, instead, *additional* factors appropriately

considered by the federal court before invoking *Younger*." *Id.* at 81 (citing *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982)).

Defendants do not and cannot cite any precedent supporting their proposition that *Sprint* had little effect, because courts unanimously disagree: "After more than forty years of unchecked doctrinal expansion, [in *Sprint*] the Supreme Court changed course and made clear that *Younger* abstention was appropriate only in the two 'exceptional' categories of civil cases it had previously identified[.]" *Cook v. Harding*, 879 F.3d 1035, 1039 (9th Cir. 2018) (quoting *Sprint*, 571 U.S. at 78); *see also, e.g.*, *Malhan v. Sec'y U.S. Dep't of State*, 938 F.3d 453, 462 (3d Cir. 2019); *Aaron v. O'Connor*, 914 F.3d 1010, 1020 (6th Cir. 2019); *Google, Inc. v. Hood*, 822 F.3d 212, 224 n.7 (5th Cir. 2016); *Catanach v. Thomson*, 718 F. App'x 595, 597 n.2 (10th Cir. 2017).

Indeed, shortly after the decision in *Sprint*, this Court acknowledged that the Supreme Court had "recently emphasized" that "*Younger* abstention is called for in exactly three classes of cases:" (1) "state criminal proceedings," (2) "certain civil enforcement proceedings . . . akin to criminal prosecutions," or (3) "civil proceedings 'that implicate a State's interest in enforcing the orders and judgments of its courts.'" *Mulholland v. Marion Cty. Election Bd.*, 746 F.3d 811, 815 (7th Cir. 2014) (quoting *Sprint*, 571 U.S. at 72-73). This Court affirmed that "[o]utside these three 'exceptional' situations, *Younger* abstention is not appropriate even when there is a risk of litigating the same dispute in parallel and redundant state and federal proceedings." *Id.* (quoting *Sprint*, 571 U.S. at 78).

The only dispute on this threshold question is whether the state proceedings to monitor the welfare of the Plaintiff children "closely resemble criminal prosecutions." *Grason v. Ill. Inspector Gen.*, 559 F. App'x 573, 574 (7th Cir. 2014). Defendants scarcely argue that they do, and make little mention of any features of criminal prosecutions that are reflected in the type of welfare hearings which the Plaintiff children continue to attend. Instead, they return to *Moore*.

As stated in Plaintiffs' opening brief, *Moore* involved coercive state court proceedings seeking the temporary removal of children on an emergency basis. Defendants note that the Supreme Court described the plaintiffs' suit in *Moore* as a "comprehensive attack on an integrated statutory structure." Opp. 39 (quoting *Moore*, 442 U.S. at 426 n.10). The ongoing state proceeding itself, however, was unquestionably quasi-criminal. Specifically, the pending state court proceeding in *Moore* was a "Suit Affecting the Parent-Child Relationship" under the then-in-force Texas Family Code. *See* Tex. Fam. Code, tit. 2, § 11.02 (1975). The case sought removal of a child from his parents (the federal plaintiffs) and appointment of conservator. *See Sims v. State Dep't of Pub. Welfare*, 438 F. Supp. 1179, 1190 (S.D. Tex. 1977). The process for that suit was discussed by the district court:

> [It] begins with . . . the reporting of suspected child abuse and the initial investigative steps by the State Department of Public Welfare. Once suspected abuse is identified . . ., [state law] enables the State to take possession of the victims for the "Protection of a Child in an Emergency." By the terms of [state law], the State may then institute a 'Suit affecting the parent-child relationship." This term of art is defined . . . as "a suit in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is sought."

Id. (cleaned up). The pending suit "related the documented child abuse and prayed that a writ of attachment issue to protect the minor child." *Moore*, 442 U.S. at 434. The parents (who had sued in federal court to stop the removal) then absconded, impeding the attachment and service of a show-cause order.

In this posture—and shortly before a "show-cause hearing regarding the writ of attachment, at which time the parents could press their objections"—the district court enjoined prosecution of the suit. *Id.* The Supreme Court reversed, finding it was "hard pressed to conclude that with the state proceedings in this posture federal intervention was warranted." *Id.* Without expressing much concern about the fact that those proceedings were not a criminal prosecution, the Court opined that a prior 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.

Huffman itself involved a state nuisance action to close a cinema accused of displaying obscene materials. The Court there concluded that the state court suit was "in important respects . . . more akin to a criminal prosecution than are most civil cases," and "in aid of and closely related to criminal statutes which prohibit the dissemination of obscene materials." *Huffman*, 420 U.S. at 604. The *Moore* Court, in turn, found that a state action for "the temporary removal of a child in a child-abuse context" was similarly "'in aid of and closely related to criminal statutes.'" 442 U.S. at 423 (quoting *Huffman*, 420 U.S. at 604).

Notably, both *Huffman* and *Moore* drew vigorous opposition. In *Huffman*, Justice Brennan joined by two other justices objected that the tradition of deference

to state criminal prosecutions "has been quite the opposite as respects federal injunctive interference with pending state civil proceedings," and cautioned against the danger of extending *Younger* "to state civil proceedings generally." 420 U.S. at 613-14 (Brennan, J., dissenting). In *Moore*, Justice Stevens joined by three other justices noted that "[i]t has never been suggested that every pending proceeding between a State and a federal plaintiff justifies [*Younger*] abstention." 442 U.S. at 436 (Stevens, J., dissenting).

Heeding those concerns, the *Sprint* Court halted the expansion of *Younger* doctrine in the realm of civil cases. In particular—although without explicitly citing *Moore*—it rejected the idea originally laid out in *Moore* that *Younger* extends to any parallel state proceedings that implicate an "important state interest." *Sprint*, 571 U.S. at 81. Instead, it housed both *Moore* and *Huffman* within the class of civil enforcement actions "characteristically initiated to sanction the federal plaintiff, *i.e.*, the party challenging the state action, for some wrongful act." *Id.* at 79. The underlying state proceeding in *Moore* fit within that class of civil enforcements as a "state-initiated proceeding to gain custody of children allegedly abused by their parents." *Id*.

Importantly, *Sprint* establishes that *Younger*'s threshold categorical question is answered by examining the nature of the ongoing state proceeding, not the breadth or quality of the federal suit that would interfere with it. The nature of the requested federal relief may be relevant to the *Middlesex* factors (and other *Younger* predicates further down the line, like irreparable harm). But to get there one must first clear

the initial hurdle of finding that the underlying state proceeding itself fits within one of *Sprint*'s exceptional categories. Returning to *Moore*, it is easy to see why that condition was satisfied. The underlying proceeding was not an indeterminate set of periodic hearings making interim decisions to assure a child's welfare. It was a single coercive action to seize custody of a child from his parents after an investigation revealed suspected abuse. That is, it "closely resemble[d] [a] criminal prosecution[]." *Grason*, 559 F. App'x at 574.

Defendants do not address that action. Instead, they speak at length about the breadth of the *federal* suit in *Moore* and how, unlike this case, it was a multifaceted challenge to multiple parts of a greater statutory scheme. That fact has little bearing on the underlying state action here, and how that action would fit within one of the *Sprint* categories, which it does not. Defendants instead attempt to wave away any close examination by adopting the broad proposition that *any* form of state-initiated child welfare litigation implicates *Younger*—i.e., that it is inherently quasi-criminal. This argument cannot succeed. As discussed in greater detail below, the type of proceedings at issue here (and in *Jonathan R.* and in other cases) bear no resemblance to criminal actions to sanction the Plaintiff children.

B. Periodic Case Reviews for Foster Children Are Not Akin to Criminal Prosecutions

The proceedings at issue here are "semiannual hearings in which the juvenile court reviews the child's placement and services." Opening Br. 5. As Plaintiffs have consistently acknowledged, the CHINS process begins with state-initiated proceedings that sanction parents for wrongdoing by removing their children. Those

proceedings are quasi-criminal. At the end of that process, the presiding juvenile court issues a "dispositional decree" that may, among other requirements, order supervision of the child by Defendants and remove the child from their home to place them elsewhere. Ind. Code § 31-34-21-1. At the time this suit was brought, a dispositional decree had been issued for each Plaintiff child except Zara S.[1]

The semiannual review hearings begin afterward. These hearings, referred to in state law as "periodic case reviews," commence "at least six (6) months" after the date of the child's removal or the dispositional decree placing the child in state custody, whichever comes first. Ind. Code § 31-34-21-2(b). Before each periodic review, DCS prepares a report on the child's progress. Ind. Code § 31-34-21-3. At each periodic review the court must determine three things:

> (1) whether the child's case plan, services, and placement meet the special needs and best interests of the child;
> (2) whether the department has made reasonable efforts to provide family services; and
> (3) a projected date for the child's return home, the child's adoption placement, the child's emancipation, or the appointment of a legal guardian for the child[.]

Ind. Code § 31-34-21-5. Notably, none of these findings involve the investigation of wrongdoing or sanction of any person, especially not the children themselves. No court, including *Ashley W.*, found that *these* proceedings are like those in *Moore* or akin to a criminal prosecution. *Ashley W.* simply observed without explanation or detail that "*Younger* applies to state-initiated child-welfare litigation." 34 F.4th at

[1] *See* Dkt. 21-1 at 90 (Annabel B. and Levi B.); Dkt. 21-2 at 40 (Joshua J.); Dkt. 21-3 at 54, 59 (Kimberly F.); Dkt. 21-4 at 52 (Miles M.); Dkt. 21-5 at 39-40 (Ashley M., Matthew M., and Nigel M.); Dkt. 21-6 at 11 (Sophia P.); Dkt. 21-7 at 87 (Stephanie M. and Kyle M.).

591. That broad statement does not bind this Court on the specific question of whether these periodic case reviews serve to "sanction the federal plaintiff," the children, "for some wrongful act," and therefore fall within *Sprint*'s category of quasi-criminal civil enforcement actions; because, of course, they do not.

Defendants attempt to address the point that periodic case reviews are not quasi-criminal by objecting to the distinction Plaintiffs and courts have drawn between initial child-custody adjudications and subsequent child-welfare hearings. Defendants argue that any proceeding that falls within the scope of Indiana's CHINS statutory scheme must be given equal treatment for *Younger* purposes, no matter its nature. *See* Opp. 39-41. They further suggest that even the periodic case reviews have features that render them quasi-criminal and subject to *Younger*. Opp. 42. These arguments fail.

Defendants' lead argument is, again, that *Moore* established that a "state child-welfare system should be viewed as an integrated structure for purposes of *Younger* analysis." Opp. 39. But that is not what *Moore* says, especially after *Sprint*. As *Sprint* laid out, the lesson to be drawn from *Moore*, *Huffman*, and other civil enforcement cases as to the threshold *Younger* question is the nature of the underlying state proceeding, not the statutory scheme on which it is based or the relief sought by the federal plaintiffs. Defendants' discussion of the statutory framework at issue in *Moore* does not even mention the underlying state proceeding, and misses the point that the state suit was a quasi-criminal "state-initiated

proceeding to gain custody of children allegedly abused by their parents." *Sprint*, 571 U.S. at 79.

Defendants next suggest that Indiana's CHINS system is set up in a way that blurs the line between initial custody adjudications and later placement reviews, such that *Younger* abstention should apply equally to any proceedings that fall within that statutory scheme. Opp. 40-42. Defendants' argument relies on the fact that "parental rights" are recognized throughout the CHINS process, including after a dispositional decree is entered. Opp. 41-42. At the outset, that argument has no bearing on cases like that of Plaintiff Joshua J., where parental rights have been terminated. App. 19. But regardless, parental rights in removal proceedings are not what makes them "'akin to a criminal prosecution' in 'important respects.'" *Sprint*, 571 U.S. at 79 (quoting *Huffman*, 420 U.S. at 604). Litigants have rights in all kinds of judicial and administrative proceedings. Removal proceedings are quasi-criminal as to the parents not because they have rights, but because they are investigated and punished by the state for wrongdoing.

The periodic case reviews at issue here differ from those removal proceedings —and criminal prosecutions—in important and unavoidable ways, most particularly that they have no purpose to investigate or punish anyone. They certainly do not serve to "sanction the federal plaintiff"—i.e., the child. *Sprint*, 571 U.S. at 79; *see also Doe v. Franklin Cty. Children Servs.*, 2020 U.S. App. LEXIS 31163, *3 (6th Cir. Sep. 30, 2020) (even removal proceedings "are not at all 'akin to a criminal prosecution' as

far as the *child* is concerned."). Quite the opposite, the proceedings serve to ensure the children's well-being while they are under Defendants' supervision.

Defendants acknowledge that the Fourth Circuit came to that exact conclusion about West Virginia's foster care system in *Jonathan R. v. Justice*, 41 F.4th 316 (4th Cir. 2022),[2] but argue that decision is "off-base" because of broad language in *Moore* (which holds no water, as discussed above), and because of differences between Indiana and West Virginia law. Opp. 43. Those differences purportedly amount to courts in Indiana being "concerned with parental rights throughout the CHINS process," whereas in West Virginia the "ongoing individual hearings . . . serve to protect the children who would be plaintiffs in federal court." Opp. 43 (citing *Jonathan R.*, 41 F.4th at 329-30). But there is no meaningful factual or legal difference between the underlying hearings in *Jonathan R.* and the periodic case reviews here. *Compare* Ind. Code § 31-34-21-4 & -5 (a hearing to be conducted every 6 months to determine the placement and well-being of the child in which parents may participate), *with* W.V. Code § 49-4-608 (a hearing to be conducted every 12 months to determine the placement and well-being of the child in which parents may participate). Both hearings serve to protect the children who are federal court plaintiffs, and both provide for certain parental rights, including notice and a right to be heard. Neither resemble criminal prosecutions.

[2] Defendants do not address *Bryan C. v. Lambrew*, 340 F.R.D. 501, 510 (D. Me. 2021), *Jeremiah M. v. Crum*, 595 F. Supp. 3d 1060, 1079 (D. Alaska 2023), or *M.D. v. Perry*, 799 F. Supp. 2d 712, 723 (S.D. Tex. 2011), where courts reached the same conclusion about analogous periodic review hearings in Maine, Alaska, and Texas, respectively. Opening Br. 23.

The only other difference identified by Defendants is that in West Virginia, "roughly 10% of the children arrive to state custody through [its] delinquency and status-offender proceedings," *Jonathan R.*, 41 F.4th at 330, which do not implicate parental rights, whereas "all children in the CHINS process are victims of abuse and/or neglect." Opp. 43-44. That difference underscores the fact that roughly 90 percent of the children in both states arrive at these proceedings the same way. In any event, some children in the CHINS process have had parental rights terminated, so for them, too, there is no ongoing concern for parental rights. The purported distinctions fail even cursory review.

Finally, the fact that Indiana has chosen a single statutory structure that provides for investigation of parents, attachment of children, and periodic child-welfare hearings under a single name (CHINS) is irrelevant to whether *Younger* categorically applies to any specific kind of hearing. A state cannot unify its statutory framework to evade federal court review, any more than a state could invite unwarranted federal scrutiny by placing proceedings in distinct titled sections. The question under *Sprint* is not the structure of state law, but the nature of the hearings themselves. That inquiry requires attention to detail which dismantles Defendants' lumping and reveals that Indiana's periodic review hearings are categorically excluded from *Younger*, at least for the children they serve to protect. For that reason alone, the district court must be reversed.

C. Even if the Periodic Case Reviews Were Quasi-Criminal, the Juvenile Court Proceedings Here Are Inadequate to Address Plaintiffs' Risk of Harm

Even if the periodic review hearings were akin to criminal prosecutions, *Younger* abstention does not apply because the hearings cannot provide relief that would alleviate the risk of serious harm that Defendants' systemic deficiencies create, for at least two reasons.

First, the constitutional injury that Plaintiffs assert on behalf of a putative class is the risk of *future* harm to themselves and others similarly situated. That risk cannot be addressed in individual hearings because, among other issues,[3] the juvenile courts are rendered ineffective by the very deficiencies they would have to correct. Plaintiffs allege that staffing shortages at DCS cause it to omit important information from court submissions and sometimes falsify information. For example, Plaintiffs allege that because of DCS's failures, it falsely reported to the court during a periodic review that Plaintiffs Stephanie M. and Kyle M. had "no physical or psychological conditions." App 31 (¶¶ 158, 160). Similarly, DCS retaliates against parents who seek assistance, discouraging them from reporting critical problems to the courts. App. 57-59 (¶¶251, 253, 257). Plaintiffs also allege that DCS's failure to maintain an adequate recordkeeping system creates a risk that children will not receive timely or appropriate treatment. App. 52-54 (¶¶ 234, 239-242).

As Plaintiffs allege, Defendants' failures afflict the CHINS process upstream of the juvenile courts. Even if those courts could order relief, they are prevented from doing so because the lack of accurate reporting obscures its necessity. Defendants'

[3] *See* Brief of Amici Curiae Nonprofit Child Advocacy Organizations (Doc. 37-2) at 17-20.

assurances that the juvenile court concluded that DCS was acting appropriately for Kyle M., for example, Opp. 15, are undermined by allegations that the information provided by DCS to support that decision was not accurate. It cannot be the case that the only reason DCS gives false information to juvenile courts is because those courts have not yet ordered DCS to tell the truth. But that is what Defendants' avowal of state court adequacy here implies.

Likewise the district court's suggestion that a juvenile court could "craft relief that would require DCS to maintain accurate and available medical records" or "prohibit retaliation," Short App. 9-10, is undermined by the fact that the juvenile court would not have any way of knowing about inadequate recordkeeping that prevents it from receiving critical medical information, or retaliation that chills foster parents from reporting their concerns. That is why it is not the case that, as Defendants say, Plaintiffs merely "prefer" systemic relief or the vehicle of a class action. It is because under Defendants' system, those are the *only ways* that the risk of harm to Plaintiff children can be meaningfully abated.

For that reason, Plaintiffs have proposed specific and concrete systemic remedies that could be ordered in this suit, including requiring DCS to establish a crisis response system and a crisis helpline, and an office supporting caseworkers. App. 73-76. Although Defendants opine that these requests are "futile" and suggest that a juvenile court could just as capably order the same in individual cases, Opp. 34, they do not cite a single instance in which a state court has ordered any form of relief that could address these higher-level issues. It is also why the relief in this case

differs from the relief in *Ashley W.*, where counsel could not identify anything that the state court could not itself provide. 34 F.4th at 593.

There is yet another reason why Plaintiffs' requested relief differs from *Ashley W.* and makes *Younger* abstention inappropriate here. "In abstention cases, the emphasis is on interference. So the threshold question . . . is whether the federal action threatens to interfere with or intrude upon a state court proceeding." *Vega v. Chi. Bd. Of Educ.*, 109 F.4th 948, 957 (7th Cir. 2024). Every requested remedy, *see* Opp. 20-21, imposes obligations upon DCS to better fulfill its obligations to children by improving and refining its policies and administrative processes. None interfere with or intrude upon the underlying juvenile court proceedings, and Defendants do not explain how they would. There is nothing akin to the federal court relief sought in *Younger* itself, or *Moore*, where the Plaintiffs attempted to enjoin the state court proceedings themselves. Nor is there a suggestion, as there was in *Ashley W.*, that it would be appropriate to order state courts to hold more frequent hearings. 34 F.4th at 593. Rather than stopping or inhibiting the juvenile court process, if Plaintiffs' proposals here were faithfully implemented, the juvenile courts would benefit from improved access to information and additional tools to more ably fulfill their mandate. *Younger* abstention is inappropriate here, and the district court should be reversed.

II. Defendants' *Rooker-Feldman*, Standing, and Mootness Arguments Are Wrong

By Defendants' account, Plaintiffs seek to reverse or modify state court judgments, which is barred by *Rooker-Feldman*, but Plaintiffs also lack standing

because they do not seek to reverse or modify state court judgments. Opp. 45-52. Defendants' argument is not only internally contradictory, but also based on a fundamental misunderstanding of these legal doctrines and Plaintiffs' claims.

A. *Rooker-Feldman* Does Not Apply

The *Rooker-Feldman* doctrine, like *Younger* abstention, has been limited in recent years by the Supreme Court. The doctrine requires district courts to "disclaim jurisdiction only in 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *Gilbank v. Wood Cty. Dep't of Hum. Servs.*, 111 F.4th 754, 766 (7th Cir. 2024) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). Additionally, *Rooker-Feldman* does not apply if the plaintiff "did not have a reasonable opportunity to raise her federal issues in the state courts." *Id.* A case must satisfy all of these elements to trigger *Rooker-Feldman*. None are present here.

Most basically, Plaintiffs are not state-court losers complaining about state-court judgments and are not seeking to change any prior state court decision. They are seeking to alter the behavior of Defendants—a state agency and its officers. Indeed, Plaintiffs could not receive favorable court orders so long as Defendants fail to ensure an adequate supply of appropriate placements and services.

And to the extent Plaintiffs point to already-inflicted injuries, *Rooker-Feldman* does not apply to "an independent prior injury that the state court failed to remedy." *Gilbank*, 111 F.4th at 767 (quoting *Sykes v. Cook Cty. Circuit Court Prob. Div.*, 837

F.3d 736, 742 (7th Cir. 2016)). Any injuries sustained between Plaintiffs' entry into DCS custody and their in-force interim orders are "independent prior injur[ies] that the state court failed to remedy," and "the claims are for *Rooker-Feldman* purposes still 'independent' of the state court's [operative] judgment." *Id* at 767.

Finally, as discussed above, there is no reasonable opportunity for Plaintiffs to bring these claims in their individual proceedings. *See supra* Part I.C. Moreover, as *Amici* explain, "Children are rarely physically present in CHINS courts," "Children who are present are rarely informed as to their constitutional and statutory rights—including those which Plaintiffs-Appellants here seek to validate," and "far too often [CHINS courts] are hamstrung by factors including lack of knowledge, prior decisions made by Indiana child welfare personnel," and lack of counsel. Brief of Child Advocates, Inc. (Doc. 31-1) at 2-3.

B. Plaintiffs Have Standing To Asserts Their Claims

Article III standing requires three elements: (1) "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; (2) "a causal connection between the injury and the conduct complained of"; and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (cleaned up).

i. Injury-in-Fact

Defendants contend Plaintiffs' current situations arise from juvenile court orders, and therefore Plaintiffs must claim "harm from those decisions . . . to show

'injury in fact.'" Opp. 50. Not so. Plaintiffs allege substantial past injuries caused by Defendants' failure to provide an acceptable standard of care and illustrate how that failure creates a "risk of harm" that is "imminent and substantial," such that Plaintiffs "may pursue forward-looking, injunctive relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 415 (2021).

Plaintiffs' past harms are "evidence that future violations are likely to occur." *Sierakowski v. Ryan*, 223 F.3d 440, 445 (7th Cir. 2000). Far from conjectural or speculative, Plaintiffs' allegations illustrate that the vicious cycle spawned by DCS's policies and practices creates an ongoing and pervasive risk of harm to which children are immediately exposed upon entering DCS custody. Just as a detainee may "complain about demonstrably unsafe drinking water without waiting for an attack of dysentery," a foster child may seek a remedy for unsafe conditions without waiting for sexual assault or suicide. *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *Farmer v. Brennan*, 511 U.S. 825, 845 (1994). If the conduct alleged in the Amended Complaint is true, children in DCS custody are under real and imminent threat of future injury that will persist as long as they remain in custody, unless Defendants take meaningful action to abate it.

ii. Traceability

The traceability element asks if Plaintiffs' injuries were sustained "as a consequence of" Defendants' conduct. *Indiana v. EPA*, 796 F.3d 803, 809 (7th Cir. 2015). Defendants' theory of causation is that all decisions related to foster children must go through the juvenile courts, and therefore any injuries having anything to

do with placements or services are necessarily solely traceable to juvenile court orders and can only be redressed by altering those orders. Opp. 47-48. This theory is wrong for multiple reasons.

Plaintiffs plead extensive past injuries and imminent future harm as a direct consequence of Defendants' practices, not any court order. Joshua was forced into placements and institutions that could not meet his individualized needs, App. 20 (¶¶ 95-97), because DCS's policies and practices, not court orders, caused a statewide placement deficit. App. 56-60 (¶¶249-62). And that DCS-caused placement deficit spawned a vicious cycle of harm: Joshua's placement instability prevented consistent medical treatment, App. 18-19 (¶¶ 86, 90-91), and his untimely and inconsistent treatment caused his psychological wellbeing to deteriorate significantly. The resulting suicidal ideation and behavioral issues increased his risk of placement disruption and institutionalization, and created a demand for even more specialized placements that DCS has failed to supply. App. 19-20 (¶¶ 91-94).

In Kyle's case, it was DCS, not the juvenile court, that was unable to find him a therapist due to a services desert DCS itself caused. App. 31, 60-62 (¶¶ 154, 263-70). During the year in which DCS failed to secure treatment for his severe trauma, App. 31 (¶ 155), Kyle's mental health deteriorated significantly; he tried to hang himself in his bedroom. App. 32 (¶ 160). And it was DCS, not the juvenile court, that failed to provide Zara's foster parents with basic medical information needed to provide proper medical care, App. 37-39 (¶¶ 185-91), a pervasive problem resulting from DCS's defunct recordkeeping system and practices. App. 51-56 (¶¶ 234-48). It is

fantastical to say, as Defendants do, that these Plaintiffs' injuries were solely caused by a court's approval of DCS's services recommendations. For each Plaintiff, the state court orders themselves say that DCS is responsible for the child's placement and care.

State and federal law confirm that Plaintiffs' injuries are traceable to Defendants. Indiana law provides that DCS, not juvenile courts, is "the driving force behind all decisions in a CHINS case." *See* App. 42 (¶ 205). Indiana law creates a presumption of correctness for DCS's recommendations, and juvenile courts are afforded limited discretion to decide otherwise. *See Ind. Dep't. of Child Servs. v. LaPorte Circuit Court* (In re T.S.), 906 N.E.2d 801, 804 (Ind. 2009). The juvenile court *must* accept DCS's final recommendations unless they are "unreasonable, based on the facts and circumstances of the case," or "contrary to the welfare and best interests of the child." App. 42 (¶ 203) (quoting Ind. Code § 31-34-19-6.1(d)). And federal law requires DCS to accept responsibility for foster children's placement and care in exchange for federal funds. *See* 42 U.S.C. § 472(a)(2)(B) ("The removal and foster care placement of a child meet the requirements of this paragraph if . . . the child's placement and care are the responsibility of—the State agency administering the State plan . . .").

Plaintiffs' risk of future injury is traceable to DCS's policies and practices, not to individual court orders.

iii. Redressability

If Plaintiffs' relief is granted, foster children in Indiana will have "more placement and services options . . . ," *Jonathan R.*, 41 F.4th at 333-34, and the relief is substantially likely to remedy Plaintiffs' risk of injury. If anything, the state courts will also benefit from these increased options.

Plaintiffs know that the relief requested here is substantially likely to redress the substantial risk of harms associated with DCS's systemic deficiencies because it has been tested successfully in other states. Defendants ignore the numerous examples of federal injunctive relief redressing the injuries of similarly situated foster children. *See, e.g.*, Brief of Amicus Curiae Child Advocates, Inc. (Doc. 31-1) at 7-12 (collecting examples); Brief of Amici Curiae Nonprofit Child Advocacy Organizations (Doc. 37-2) at 16-17 (same). *See also B.K. v. Snyder*, 922 F.3d 957, 967 (9th Cir. 2019) ("If those allegedly deficient policies and practices are abated by an injunction, that harm may be redressed by a favorable court decision."); *Clark K. v. Guinn*, 2007 U.S. Dist. LEXIS 35232, at *14-15 (D. Nev. May 9, 2007) ("[t]he relief Plaintiffs seek would clearly remedy their claimed injuries . . . [and] federal courts have generally afforded foster children standing in situations like this case.").

For example, some states have found that a crisis response system and helpline improved foster parent retention, reduced placement instability, and reduced the risk of institutionalization and incarceration. The state with the lowest caseworker turnover in the country achieved its remarkable success in part by establishing a peer-counseling helpline, where current caseworkers could seek confidential support from former child welfare workers and supervisors, and by establishing regional units

that assist local offices in maintaining caseload standards by taking on overflow.[4] None of these proposed solutions are a panacea, but they are tested solutions that can be incorporated into a comprehensive injunction tailored to mitigate the ongoing risk of harm and correct the constitutional injuries alleged.

Juvenile courts in Indiana, and analogous state courts elsewhere, have never granted and are fundamentally incapable of granting the relief necessary to reduce the risk of future harm to Plaintiffs, and thereby redress their constitutional injuries.

C. Out-of-Custody Named Plaintiffs' Claims Qualify for the Inherently Transitory Exception to Mootness

Defendants contend that out-of-custody Named Plaintiffs' claims have been mooted. Opp. 46. This case, however, presents a quintessential example of an "inherently transitory" claim. There are two elements for that exception to apply: "(1) it is uncertain that a claim will remain live for any individual who could be named as a plaintiff long enough for a court to certify the class; and (2) there will be a constant class of persons suffering the deprivation complained of in the complaint." *Olson v. Brown*, 594 F.3d 577, 582 (7th Cir. 2010) (citations omitted).

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[4] *See, e.g.*, *How does New Jersey maintain a stable child welfare workforce?*, CASEY FAMILY PROGRAMS (Feb. 7, 2022), https://www.casey.org/new-jersey-staff-turnover/#:~:text=Annual%20child%20welfare%20turnover%20rates,over%20the%20past%2015%20years ("Annual child welfare turnover rates have averaged between 20% and 40% over the past 15 years. In New Jersey, however, DCF's Division of Child Protection and Permanency (DCPP) has maintained a turnover rate between 6% and 10% since 2006. This is a result of strategic activities…"); New Jersey Department of Children and Families Workforce Report 13 (2015-2016), https://www.nj.gov/dcf/childdata/exitplan/NJ.DCF.Workforce.Report_2015-2016.pdf; Center for Advanced Studies in Child Welfare, *Ep. 3 Broadening Worker Safety: A New Jersey Story* (Nov. 17, 2022), https://soundcloud.com/user-818593337/interview-with-ricardo-pina-and-nancy-carre-lee.

First, like pretrial detention, foster care "is by nature temporary," the length of custody "cannot be ascertained at the outset," "it may be ended at any time," and "it is by no means certain that any given individual, named as plaintiff, would be in [state] custody long enough for a district judge to certify the class." *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975).

Moreover, there is no "bright-line rule" that disqualifies "a claim that has been alive beyond a given number of days." *Olson*, 594 F.3d at 582. That a foster child (or pretrial defendant) may languish for days, weeks, or years underscores its transitory nature. "[T]he essence of the exception is *uncertainty* about whether a claim will remain alive for any given plaintiff long enough for a district court to certify the class." *Id*. (emphasis added).

Second, there is a constantly changing class of foster children who will suffer the same unconstitutional conditions alleged in this case. Plaintiffs allege that the conduct is ongoing, and so children who are just now entering, or will soon enter, DCS custody are immediately exposed to a substantial risk of harm in violation of their federal rights. Unlike the "capable of repetition but evading review" exception, the "inherently transitory" exception is unconcerned about the *likelihood* that any given Named Plaintiff's claim will be resurrected; "just that the claim is capable of repetition." *Olson*, 594 F.3d at 583 (citation omitted). The claims presented in this case more than *capable* of repetition—they are ongoing.

Because the length of custody is uncertain and the claims are capable of repetition, the claims of the out-of-custody Named Plaintiffs qualify for the inherently transitory exception to mootness, and persist.

CONCLUSION

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

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Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

I verify that this brief contains 6,715 words according to the word-count function of Microsoft Word, the word-processing program used to prepare this brief.

/s/ Kimberly Kennedy

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 January 13, 2025.

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

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