No. 11–2131

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SOLOMON STRATTON
Petitioner–Appellant

v.

MECKLENBURG COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.
Respondent–Appellee

On Appeal from the United States District Court for the Western District of North Carolina Charlotte Division The Honorable David C. Norton, U.S. District Judge

REPLY BRIEF OF COURT-APPOINTED *AMICUS CURIAE* IN SUPPORT OF APPELLANT

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Defendants' arguments under the *Rooker–Feldman* doctrine, substantiality, and Fed. R. Civ. P. 12(b)(6) all require this Court to accept an incomplete picture of Stratton's allegations that suggests his conspiracy theories are the entirety of his Amended Complaint. They are not. Stratton's good-faith allegations include:

- The Mecklenburg County Department of Social Services (MCDSS) improperly seized Stratton and his siblings without proper cause, as evidenced in Officer Jeanette Seagle's affidavit. JA 133–34, 136.

- MCDSS filed inaccurate documents for the purposes of hiding their misconduct. JA 131–32.

- MCDSS systematically provides insufficient notice to parents of their rights or the possibility of losing custody of their children. JA 115–16.

- MCDSS intentionally makes it unreasonably difficult for parents to assert their right to a hearing, JA 117–18, improperly pressures parents into waving adjudicatory hearings, JA 119, 136, and forces undesired counsel on parents without notice or consent, JA 118.

- MCDSS subjected Stratton to invasive health exams that were not authorized by "any court order of any kind," JA 134, and physically assaulted him, JA 157–58.

- MCDSS suppressed information by refusing to turn over relevant evidence that would have allowed Stratton to seek a remedy. JA 152.

Indeed, not only does Stratton's Amended Complaint contain these allegations, which is all that would be necessary at this stage of the case, it also contains an affidavit from a Gaston County Deputy substantiating

some of these very same allegations. JA 194–97. Taken together, these allegations, substantiated by the affidavit, do not fall within the *Rooker–Feldman* doctrine's narrow reach; they are not so insubstantial as to rob this Court of subject-matter jurisdiction; and they state a claim for relief under Rule 12(b)(6). This Court should reject Defendants' arguments to the contrary and reverse the district court's order of dismissal.

A. *ROOKER–FELDMAN* DOES NOT BAR STRATTON'S CLAIMS BECAUSE HE CHALLENGES INDEPENDENT STATE ACTION, NOT STATE-COURT DECISIONS.

Defendants make three principal arguments why the *Rooker–Feldman* doctrine bars Stratton's entire Amended Complaint. First, Defendants assert that Stratton makes no claim independent of North Carolina state court judgments, and that his requested relief demonstrates this fact. Defendant's Br. at 17–18. Second, Defendants claim that Stratton's independent Fourteenth Amendment claims actually flow from judicial actions of the Mecklenburg County Juvenile Division. Defendant's Br. at 17. Finally, Defendants claim that Stratton waived his arguments of independent Fourteenth Amendment violations.

While each of these arguments is incorrect, for specific reasons detailed below, they all suffer from a common flaw. A recurring theme cutting across all of Defendants' arguments on this issue is their attempt to

categorize all of Stratton's claims as an attack on "the North Carolina courts' judicial termination of Jack and Kathy Stratton's parental rights," Defendant's Br. at 17 (citing JA 373), even those which allege malfeasance by specific government agents or challenge proceedings to which Stratton was not a party. *See* JA 157, 129–30. However, the *Rooker–Feldman* doctrine bars specific claims in which "state-court losers complain[] of injuries caused by state-court judgments rendered before the district court proceedings commenced and invit[e] district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1521–22 (2005).

Furthermore, the doctrine does not nullify an entire complaint because some of that complaint's many claims seek such impermissible review. Rather, *Rooker–Feldman* eliminates only the claims that violate its precise precepts, while preserving other claims for federal review. *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 483–84, 103 S. Ct. 1303, 1316 (1983). Therefore, Defendants may not avoid Stratton's Amended Complaint even if *Rooker–Feldman* bars *some* of its claims; rather, the doctrine must bar each and every claim for a federal court to dismiss the complaint. *See id.* (distinguishing between review of bar application rule's

constitutionality and review of rule's application, and preserving federal review as to constitutionality).

1. Stratton's Amended Complaint requests money damages, a request that does not seek to overturn state judicial decisions.

Stratton seeks damages from Mecklenburg County and from its various employees, as well as from other parties named in the Amended Complaint. These damages flow from the extra-judicial actions of county employees, JA 128–30, and from "certain Mecklenburg County policies, practices, and procedures," JA 97, that allegedly violate the U.S. Constitution. Because this request seeks monetary redress for the wrongs of state employees, and not the "overturn [of a] state-court judgment," *Exxon Mobil*, 544 U.S. 280, 125 S. Ct. 1517 at n.2, it does not run afoul of *Rooker–Feldman*. Defendants attempt to gloss over Stratton's requested monetary relief, *id.* at 18 ("The only other items listed in the prayer for relief are '[a]dditional declaratory and injunctive relief' and $2.65 billion in damages."), but such damages demonstrate a separate and distinct claim that does not seek to overturn a state court judgment. Simply put, a grant of money damages does not "undo the [state court] judgment" in Stratton's favor. *Exxon Mobil*, 544 U.S. at 293, 125 S. Ct. at 1527..

Section 1983 provides an injured party, like Stratton, with the options of an "action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983 (2006). Stratton requested both equitable and legal relief, in the form of an injunction *and* of money damages against Mecklenburg County, its agents, and other defendants. JA 158–59. While *Rooker–Feldman* may bar his specific requests for equitable relief against North Carolina courts, his request for money damages unquestionably remains. Given the solicitude owed to *pro se* plaintiffs, *see Erikson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200 (2007); *Dolgaleva v. Va. Beach City Pub. Schs.*, 364 F. App'x 820, 827 (4th Cir. 2010), Stratton's claim is more than sufficient to survive review at this stage of the case.

In attempting to recharacterize Stratton's complaint as one devoid of any request for legal damages stemming from Fourteenth Amendment violations, Defendants rely heavily on *Beaudett v. City of Hampton*, 775 F.2d 1274 (4th Cir. 1985). Defendant's Br. at 19. Defendants cite *Beaudett* for the proposition that a district court need not "conjure up questions never squarely presented" by a complaint, apparently suggesting the court can therefore ignore what a complaint *does* say in order to divine its "essential grievance." *Id.* That is not what *Beaudett* holds. In *Beaudett*, the plaintiff, who had originally filed a tort claim that was dismissed without

jury trial, initiated an illegal vigil in the city hall to protest the dismissal. *Beaudett*, 775 F.3d at 1277. He then brought a Section 1983 action in federal court, demanding a jury trial for his tort claim and making vague allegations of an official conspiracy. *Id.* On appeal, he attempted to fabricate a detailed First Amendment claim barely mentioned in his complaint and supported by *nothing* in his one-sentence prayer for relief. This Court held that the "essence" of plaintiff's claim was his demand for a jury trial, and it properly refused to pluck a new claim out of thin air. *Id.* at 1279.

Stratton's Amended Complaint is different. It alleges specific violations that support an independent Fourteenth Amendment claim, *see* JA 128–30, 157, and explicitly requests money damages for those violations, JA 158–59. Unlike the plaintiff in *Beaudett,* Stratton has from the beginning argued that his challenge to the County's allegedly improper conduct in removing him from his home and his parents' custody is the core of his claim. Such a complaint, which seeks legal relief stemming from state conduct that preceded and was independent of state-court decisions, presents claims that are not barred by *Rooker–Feldman*. Even if other of Stratton's claims are so barred, the proper course is to remand his surviving

claims for further proceedings, not to dismiss the case outright. *Feldman*, 460 U.S. at 483–84, 103 S. Ct. at 1316.

2. Stratton's claims challenge government actions influenced by the state court before Stratton was a party or that were wholly outside the scope of the state court's authority.

Defendants argue that because North Carolina's state courts played *some* role in separating the Stratton family, *Rooker–Feldman* forbids federal courts from hearing claims relating to *any* part of the termination process, regardless of whether individual actions were judicial. Defendants' Br. at 17, 20–21. This is incorrect. Of course, the *Rooker–Feldman* doctrine would bar any effort to enjoin or declare null the declarations of the North Carolina Court of Appeals. The doctrine would also prohibit a federal court from entering an injunction against any of the trial court judgments for which the Stratton family participated as litigants. *See* JA 135–36. However, it does not bar federal review of MCDSS actions taken pursuant to state-court actions to which Stratton was not a party. *See Lance v. Dennis*, 546 U.S. 459, 466, 126 S. Ct. 1198, 1202 (2006). It also does not bar suits based on the actions of Mecklenburg County employees who exceeded their authority in implementing such orders.

The vast majority of Stratton's claims against MCDSS and its agents fall within these latter two categories. *First*, the Strattons were not parties

to several of the state-court orders to which Defendants refer. Defendants' Br. at 20–21. The *Lance* Court makes clear that the *Rooker–Feldman* doctrine does not bar a party's federal suit when that party was not involved in the original lawsuit. 546 U.S. at 464, 126 S. Ct. at 1201. That Court also noted that the presence of other parties in the original state proceeding did not bind a federal challenger, *id.* at 465, 126 S. Ct. at 1202, and cautioned lower courts not to "erroneously conflate[] preclusion law with *Rooker–Feldman* ." *Id.* Here, neither Solomon Stratton nor his parents were parties to several key state court decisions that helped to split the Stratton family and colored the actions of MCDSS agents. Specifically, only Joan Stratton, Solomon's grandmother, was party to the December 21, 2000 "Juvenile Summons" order that entered key findings of fact later used to justify MCDSS actions. JA 204, 206–10. The Stratton parents (and Solomon) also do not appear to have been parties to any proceeding authorizing the initial January 30, 2001 seizure. *See* JA 212. The first document in which father Jack Stratton is actually a party is the Juvenile Summons of January 30, 2001. JA 214. Under *Lance*, *Rooker–Feldman* does not forbid Stratton from seeking federal review of these actions.

Second, Stratton also alleges that specific agents acted in ways that both exceeded their authority under any state-court grant and violated his

Due Process rights. *See* JA 128, 131, 195–97 (alleging misrepresentation and ill-will from MCDSS employee Gretchen Caldwell exceeding any authority under state court order); JA 134 (alleging assault on Solomon Stratton unauthorized by "any court order of any kind"). These claims also survive. *See Washington v. Wilmore*, 407 F.3d 274, 280 (4th Cir. 2005). *Rooker–Feldman* does not bar suits against a government agent who violates the plaintiff's constitutional rights. *Skinner v. Switzer*, 131 S. Ct. 1289, 1297–98 (2011). And an agent may not act outside of constitutional mandates even when acting under color of lawful government authority. *See, e.g.*, *Vathekan v. Prince George's Cnty.*, 154 F.3d 173, 179–80 (4th Cir. 1998) (denying qualified immunity to officer who allowed resident to be attacked during otherwise proper raid).

This Circuit has affirmed that the mere presence of a trial or of state-court action does not automatically bar Due Process claims against government officials. In *Washington v. Wilmore*, an officer "falsely reported to the prosecutor that [the defendant] had nonpublic information about" a crime. 407 F.3d at 280.Even though the defendant had been sentenced and convicted in Virginia state court, this Court held that a district court could hear Due Process claims relating to the agent's inappropriate conduct. Because the Due Process claim did not explicitly

flow from the conviction, *Rooker–Feldman* did not apply. *Id.* For Stratton, the issue of whether agents acted properly during initial raids and during the lead-up to the state-court termination proceedings is wholly separate from the actual order permanently severing the Stratton family. Like the underlying misconduct in *Washington*, issues of MCDSS obstruction before any hearings, JA 131, or of the misconduct alleged in Officer Jeanette Seagle's affidavit, JA 133–34, are outside of the North Carolina court's narrow ruling in the deprivation hearing itself. For this reason, those claims are not barred.

Other claims fit this same exception, but are even more egregious. Stratton claims that the children were subjected to invasive health exams that he explicitly notes were not authorized by "any court order of any kind." JA 134. He also claims that he was physically assaulted. JA 157–58. These allegations, even more so than the ones in *Washington*, fall outside of the scope of the state court orders as reflected in the Joint Appendix. As such, this Court should recognize that like the claims in *Washington*, these claims simply do not fall within *Rooker–Feldman*'s "narrow doctrine." *Lance*, 546 U.S. at 464, 126 S. Ct. at 1201.

It is undeniable that the North Carolina state courts were a player at some key moments in the process that ultimately terminated Jack and

Kathy Stratton's parental rights. *Rooker–Feldman* bars any of Stratton's claims that seek to enjoin those judgments themselves. But that is all it does. Stratton prays for money damages for separate Fourteenth Amendment violations—those claims survive. He challenges state behavior authorized prior to his or his parents' involvement in the case—those claims also remain. And he claims that agents took actions against him, his parents, and his siblings that exceed the scope of what a state court could authorize. This Circuit has made clear that *Rooker–Feldman* does not apply to these claims. Therefore, this Court should reverse the district court's decision to dismiss Stratton's entire Amended Complaint.

3. Stratton did not waive his challenge to the district court's *Rooker–Feldman* ruling.

Defendants contend that Stratton "waived" his argument that his complaint states independent Due Process claims not barred by the *Rooker–Feldman* doctrine. Defendants' Br. at 24–26. This argument misapplies this Circuit's cases and misapprehends Stratton's Amended Complaint and objection to the magistrate's report.

a. Stratton did not waive his independent Due Process arguments in the district court.

Defendants first argue that Stratton waived his independent Due Process arguments by not raising them in the district court below. Defendants' Br. at 24–25. That is incorrect. Contrary to Defendants' claim

that Stratton's "exclusive focus" was that "the state courts lacked jurisdiction," Defendants' Br. at 25, Stratton's Amended Complaint clearly alleges a number of independent Due Process violations. The Amended Complaint contains several explicit challenges to the "state policies, practices, and procedures used in the implementation of 'child protective services,' " JA 97, and constitutes an "original, *independent* action" for relief. JA 98 (emphasis added). As explained above, the Amended Complaint's factual allegations support these independent claims. *See supra*, at 1, 6–7, 9–10; *see, e.g.*, JA 97, 128–31, 133–34, 152, 157–59, 195–97. This Circuit has held that even the "implied" arguments in a *pro se* litigant's filings should survive an argument of waiver. *United States v. Wilson*, 321 F.2d 85, 87 (4th Cir. 1963); *see also Boseman v. Bazzle*, 364 F. App'x 796, 803–04 (4th Cir. 2010) (holding argument preserved despite lack of a "separate, specific allegation"); *United States v. Pavlico*, 961 F.2d 440, 444 n.2 (4th Cir. 1990) (finding *pro se* motion sufficiently raised litigant's claims, even though his "appellate counsel undoubtedly have restated these claims in a more artful manner"). Given this strong solicitude for *pro se* litigants, Stratton's explicit allegations more than suffice to preserve his claims for review. *See, e.g.*, *Gordon v. Leeke*, 574 F.2d 1147,

1151 (4th Cir. 1978) (noting that *pro se* "pleadings should not be scrutinized with such technical nicety that a meritorious claim should be defeated").

b. Stratton did not waive his independent Due Process arguments in his objections to the magistrate's report.

Defendants also argue that Stratton waived his arguments by not raising them in his objection to the magistrate's report. Defendants' Br. at 26. The one case Defendants cite in support of this argument, *Wells v. Shriners Hosp.*, 109 F.3d 198 (4th Cir. 1997), stands only for the proposition that litigants waive the right to appeal by neglecting to file *any* objections to a magistrate's report. *Id.* at 199–200; *United States v. Midgette*, 478 F.3d 616, 621 (4th Cir. 2007) (observing that *Wells* is limited to complete failure to object). *Wells* is therefore inapplicable to this case, where Stratton indisputably objected to the magistrate's report. JA 376–88; *see* Defendants' Br. at 26 (quoting from Stratton's objections).

Rather, Defendants seem to argue that Stratton objected to the magistrate's report for the wrong *reasons*, claiming that "Stratton did not object to the Report on the basis of his ostensibly independent claim." Defendants' Br. at 26. This argument fails for two reasons. First, it is contrary to this Circuit's precedent. This Circuit, consistent with the Federal Rules of Civil Procedure, has held "that a party . . . waives a right to appellate review of particular *issues* by failing to file timely objections

specifically directed to those *issues*." *Midgette*, 478 F.3d at 621 (emphasis added) (citing 28 U.S.C. § 636(b)(1) (2006); Fed. R. Civ. P. 72(b)). Given *Midgette*'s focus on *issues*, this Circuit has found waiver only where litigants have failed *entirely* to object as to a particular issue,[1] or where litigants made "general" objections without any identifiable basis.[2] This Circuit has never relied on *Midgette* to find that a litigant waived a particular *argument* as to an issue despite properly objecting to the magistrate's findings on that issue.[3] Stratton unquestionably objected to the

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[1] *E.g.*, *Pickens v. U.S. DOJ*, 479 F. App'x 460, 461 (4th Cir. 2012) (per curiam) (appellant "failed to object" to finding); *Carty v. Westport Homes of N.C., Inc.*, 472 F. App'x 255, 261 (4th Cir. 2012) (appellant did not "even hint at" objection to dismissal of economic duress claim); *Bacchus v. Scarborough*, 466 F. App'x 269, 272 (4th Cir. 2012) (per curiam) (appellant "failed to raise any objection" on issue)

[2] *E.g.*, *United States v. Benton*, 523 F.3d 424, 428 (4th Cir. 2008) (objection contained only "general allusion to various legal claims"); *Myers v. Ozmint*, 310 F. App'x 564, 565 (4th Cir. 2008) (per curiam) (appellant did not "specifically identify [his] bases for objecting").

[3] Indeed, federal law requires the reviewing court to "make a *de novo* determination of those portions of the report . . . to which objection is made." 28 U.S.C. §636(b)(1) (2006) ; *see also* Fed. R. Civ. P. 72(b)(3) ("The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to."). Therefore, this Circuit has held that "as part of its obligation to determine *de novo* any issue to which proper objection is made, a district court is required to consider *all arguments directed to that issue, regardless of whether they were raised before the magistrate*." *United States v. George*, 971 F.2d 1113, 1118 (4th Cir. 1992) (emphasis added).

magistrate's application of the *Rooker–Feldman* doctrine, JA 386, thereby preserving his arguments for appeal in this Court, *see United States v. George*, 971 F.2d 1113, 1118 (4th Cir. 1992).

Second, even if Stratton could, contrary to this Circuit's holdings, waive an argument directed to an "issue to which proper objection is made," *id.*, he did not do so here. In objecting to the magistrate's reliance on *Rooker–Feldman*, Stratton stated that *Rooker–Feldman* has "nothing to do with Plaintiffs' case." JA 386. To this point, Stratton explicitly argued that he was "not appealing any state court judgments." JA 386. Defendants ignore these statements, focusing on sections of Stratton's objections that do not deal with *Rooker–Feldman* at all. Defendants' Br. at 26. But the relevant portion of Stratton's objections, when read with the proper solicitude, *Beaudett*, 775 F.2d at 1277–78, presents the argument that *Rooker–Feldman* "has nothing to do with" his Amended Complaint's independent Due Process claims, which do not involve "appealing any state court judgments," JA 386; *see supra* Parts A.1–2. Therefore, while Stratton did not have to raise his independent Due Process arguments to preserve them for *de novo* review, *George*, 971 F.2d at 1118, he did so anyway.

B. STRATTON'S CLAIMS SATISFY THE VERY LOW SUBSTANTIALITY STANDARD.

Defendants revive their argument that this Court should dismiss Stratton's claims under Rule 12(b)(1) for lack of subject-matter jurisdiction under the doctrine of substantiality. Defendants' Br. at 27. As they did in the courts below, Defendants support their argument by repeatedly quoting Stratton's conspiracy theories, without showing that his actual legal claims are "so attenuated and unsubstantial" as to require the extraordinary step of finding that this Court lacks subject-matter jurisdiction. *Hagans v. Lavine*, 415 U.S. 528, 536, 94 S. Ct. 1372, 1379 (1974). Because Defendants' focus on select factual allegations in the Amended Complaint neglects the substantial legal claims therein, this Court should find their argument to dismiss the entire complaint unpersuasive.

1. Stratton alleges substantial procedural Due Process claims that do not depend on the truth of his conspiracy theory.

Defendants spend many pages of their brief describing what they call Stratton's "bizarre and fanciful" conspiracy allegations. *See* Defendants' Br. at 4–9, 29–32. These allegations, Defendants argue, are so frivolous as to mandate dismissal of Stratton's *entire* Amended Complaint. Of course, this Court need not and should not accept that Defendants are part of an "International Luciferian Child Trafficking Criminal Enterprise." *Id.* at 29.

But the proper remedy for specific allegations such as these is to move to strike them. *See* Fed. R. Civ. P. 12(f). The mere presence of such allegations somewhere in the complaint does not automatically entitle Defendants to dismissal of the entire case for lack of subject-matter jurisdiction. For subject-matter jurisdiction to exist, a complaint need merely contain some substantial federal question, and at least with respect to Mecklenburg County and its agents, Stratton states substantial federal claims that do not depend on the truth of the conspiracy allegations.

Substantiality presents less than even "a relatively low hurdle." Defendants' Br. at 28. It is a minimally demanding standard, and an argument for insubstantiality must satisfy "stringent prerequisites." *Crosby by Crosby v. Holsinger*, 816 F.2d 162, 163 (4th Cir. 1987). Courts lack jurisdiction only over federal claims that are "so attenuated and unsubstantial as to be *absolutely* devoid of merit, *wholly* insubstantial, *obviously* frivolous, *plainly* insubstantial, or no longer open to discussion." *Hagans*, 415 U.S. at 536–37, 94 S. Ct. at 1378–79 (emphasis added) (citations omitted). "Any foundation of plausibility" is enough to survive a Rule 12(b)(1) motion, *Crosby*, 816 F.2d at 163–64 (citation omitted), and when ruling on the substantiality of a *pro se* litigant's complaint, a court

must construe the complaint liberally, *see Ricketts v. Midwest Nat'l Bank*, 874 F.2d 1177, 1183 (7th Cir. 1989).

Defendants correctly state that "the principle of liberal construction does not require the Court to treat bizarre allegations as plausible when they are not." Defendants' Br. at 33. But courts also should not allow the implausibility of part of a plaintiff's complaint to doom it in its entirety. *See Franklin v. Oregon*, 662 F.2d 1337, 1343–48 (9th Cir. 1981) (affirming dismissal of some claims for insubstantiality, while reversing dismissal of others).

Stratton does not seek damages on the basis of Defendants' role in a global conspiracy. Rather, he seeks damages for Mecklenburg County and its agents' alleged failure to follow the Fourteenth Amendment's requirement of "fundamentally fair procedures," *Santosky v. Kramer*, 455 U.S. 745, 754, 102 S. Ct. 1388, 1395 (1982), when it seized Stratton and terminated his relationship with his parents, s*ee, e.g.*, JA 97, 115–19, 129–34, 136. These claims are based on articulated facts and are not "plainly unsubstantial" or conclusively foreclosed by Supreme Court precedent. *Hagans*, 415 U.S. at 536–37 , 94 S. Ct. at 1378–79.

For that reason, this case is distinguishable from those relied on by Defendants. For instance, in *Newby v. Obama*, the plaintiff claimed *only*

that President George W. Bush and other government officials stalked her and required her to work extra hours to prevent her from participating in Senate confirmation hearings. 681 F. Supp. 2d 53, 55–56 (D.D.C. 2010). Similarly, in *O'Brien v. United States Department of Justice*, the plaintiff rested her *entire claim* on allegations that Hillary Clinton, Janet Reno, and Frank Sinatra, among others, exposed her to "vile germs" and attempted to force her to marry Neil Diamond. 927 F. Supp. 382, 384–85 (D. Ariz. 1995).

In both of these cases, *all* of the plaintiff's claims depended on the truth of outrageous conspiracy theories. By contrast, the factual allegations underlying Stratton's actual Fourteenth Amendment claims are independent of his conspiracy theories and are not by themselves outrageous or facially implausible.[4] Sometimes state family-services

[4] The other cases cited by Defendants are distinguishable for the same reason. *See Blake-Bey v. Cook Cnty.*, 438 F. App'x 522, 522–23 (7th Cir. 2011) (only claim was that county "enslaved" plaintiffs by creating false birth certificates); *Tooley v. Napolitano*, 586 F.3d 1006, 1007–09 (D.C. Cir. 2009) (only claim was that government installed technologically impossible wiretaps in plaintiff's home to retaliate against his suggestions for how to improve airline security); *Douglas v. Ducomb Ctr.*, 28 F. App'x 562, 563 (7th Cir. 2002) (only claim was that defendant implanted plaintiff with an "ear size transmitter"); *Richard v. Duke Univ.*, 480 F. Supp. 2d 222, 228–30 (D.D.C. 2007) (entire claim depended on allegations (1) that Duke University and Georgetown University engaged in expansive surveillance of plaintiff, harassed her by calling on her more often in class, and rewrote her law-review article to suggest she was homosexual, and (2) that Microsoft stole plaintiff's ideas to prevent Bill Gates from leaving his wife for her); *O'Connor v. United States*, 159 F.R.D. 22, 23–24 (D. Md. 1994) (entire

agencies do exceed the limits of the Fourteenth Amendment. *See, e.g.*, *Santosky*, 455 U.S. at 768, 102 S. Ct. at 1402 (finding that state's parental-termination procedures violated the Fourteenth Amendment); *Jordan by Jordan v. Jackson*, 15 F.3d 333, 340 (4th Cir. 1994) (finding that allegations that county improperly seized plaintiffs' child stated a claim for relief). Thus, Defendants have not satisfied the "stringent prerequisites" this Circuit requires for a finding of insubstantiality. *Crosby*, 816 F.2d at 163.

2. Stratton's claims present a substantial federal question.

Defendants also argue that Stratton's claims do not present a substantial federal question because they "involve[] questions of state law." Defendants' Br. at 36. In order to succeed on this claim, however, Defendants must establish that Stratton's claims "have such a tenuous connection with a federal question that *no possible facts* would entitle the plaintiff to relief." *Crosby*, 816 F.2d at 164 (emphasis added). This they cannot do.

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claim depended on allegations that DEA electronically monitored every room, phone, and computer in plaintiff's house; employed thousands of civilians to surround and harass plaintiff daily; and planted threatening codes in newspapers, magazines, books, clothes, license plates, and bumper stickers).

While *Davis v. Pak* does remove jurisdiction "where a wholly frivolous federal claim serves as a pretext to allow a state law issue, the real focus of the claim, to be litigated in the federal system," 856 F.2d 648, 651 (4th Cir. 1988), that principle does not apply to this case. The County's seizure of Stratton and its termination of his parents' parental rights unquestionably implicate federal constitutional issues. *See Jordan*, 15 F.3d at 342 ("The state's removal of a child from his parents indisputably . . . triggers the procedural protections of the Fourteenth Amendment.").[5] As explored above, the core of Stratton's claim is a Fourteenth Amendment Due Process challenge to the conduct of the County and its agents. [6] *See supra* Part A. So while it is true that Stratton challenges a "state system," Defendants' Br. at 36, he does so on the basis of the U.S. Constitution and thus states a federal question.[7]

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[5] *See also Santosky*, 455 U.S. at 753, 102 S. Ct. at 1394 ("When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures."); *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554–55 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.").

[6] Whatever the jurisdictional importance of the private status of some defendants with respect to Stratton's claims against those defendants, *see* Defendants' Br. at 37, it is wholly irrelevant to his claims against the County and its agents.

[7] Defendants point to Stratton's statements that the County's procedures do not accord with North Carolina law in an attempt to characterize his core

Defendants do not point to a single case finding that a constitutional challenge to state family-law procedures does not pose a federal question. In contrast, this and other Circuits repeatedly have exercised jurisdiction over such cases. *See, e.g.*, *Jordan*, 15 F.3d at 336 (challenge to county's removal of child and to governing state statute); *Sturgis v. Hayes*, 283 F. App'x 309, 311 (6th Cir. 2008) (challenge to termination proceedings); *Pittman v. Cuyahoga Cnty. Dep't of Children & Family Servs.*, 241 F. App'x 285, 285–86 (6th Cir. 2007) (challenge to denial of custody); *Lewis v. Anderson*, 308 F.3d 768, 770 (7th Cir. 2002) (challenge to placement of foster children); *Southerland v. Giuliani*, 4 F. App'x 33, 35–36 (2d Cir. 2001) (challenge to removal of children). Thus, Stratton states substantial federal claims over which this Court may exercise jurisdiction.

C. THE AMENDED COMPLAINT STATES A CLAIM FOR RELIEF AND SHOULD NOT BE DISMISSED UNDER FED. R. CIV. P. 12(B)(6).

Stratton's Amended Complaint articulates plausible, specific facts that, when taken as true, state a claim for relief. Despite Defendants' fixation on the Amended Complaint's passages that allege conspiracy theories, key sections do allege actions by MCDSS and its agents that would

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claims as resting on state law. A fair reading of Stratton's Amended Complaint, however, makes clear that these state-law issues are wholly secondary to Stratton's constitutional claims. *See, e.g.*, JA 97 (asserting five "constitutional challenge[s]" to state procedures).

unquestionably violate procedural Due Process and would afford relief. Because these allegations are more than sufficient to clear the 12(b)(6) bar, the Amended Complaint should survive this Court's review.

To survive review under Fed. R. Civ. P. 12(b)(6), a complaint must merely make a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a), and allege "facts to state a *claim to relief* that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007) (emphasis added). Such a standard "does not impose a probability requirement at the pleading stage." *Id.* at 556, 127 S. Ct. at 1965. Nor does it require perfection from a complaint. *Id.*

Stratton has claimed numerous violations of his and his family's procedural Due Process rights, and these claims do not center on any of the conspiracy theories that Defendants so eagerly cite. *See* Defendants' Br. at 41–42. Regardless of the motivating force behind MCDSS's actions, the alleged deprivations of process and subsequent splintering of the Stratton family are the sort for which a federal cause of action unquestionably exists in this country and in this Circuit. *E.g.*, *M.L.B. v. S.L.J.*, 519 U.S. 102, 107, 117 S. Ct. 555, 559 (1996) (striking down law requiring parent to pre-pay fee for appeal of parental-rights termination), *Santosky*, 455 U.S. at 754, 102 S.

Ct. at 1395; *Jordan*, 15 F.3d at 340; *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 393 (4th Cir. 1990) (noting that allegations of parental rights termination without adequate hearing would state due process claim); *see also Sturgis*, 283 F. App'x at 311. Defendants' attempts to mock Stratton's Amended Complaint or to insinuate that Stratton must prove every paragraph within it to survive 12(b)(6) review are misguided and incorrect. *See Jordan*, 15 F.3d at 336 (rejecting key elements of plaintiff's complaint but noting that one challenge, to the processes involving initial removal of plaintiff's children, survived). The law requires only that specific facts be pleaded so that *some* claims for relief can survive. Stratton easily clears this bar.

Furthermore, facts in the record do indeed support Stratton's claims, contrary to Defendants' assertions. Stratton offers the testimony of Officer Jeanette Seagle, who implies ill will on the part of MCDSS agents, JA 195–97, and questions the veracity of the MCDSS agent testimony that led to the removal of the Stratton children. *Compare* JA 196–97, *with* JA 200. Though a 12(b)(6) motion is largely decided on the basis of the complaint itself, *Twombly*, 550 U.S. at 556, 127 S. Ct. at 1966, outside corroboration of Stratton's complaint undermines Defendants' argument that the complaint contradicts the facts, Defendants' Br. at 46–47. Finally, Stratton is not

required to have a deep "understanding of the procedures and legal issues in the state" to seek redress for violations of his constitutional rights. *Id.* at 44. He is, rather, required to state a claim as articulated in *Twombly*. That Stratton does not grasp the difference between statutory hearings and an agreement to mediate, Defendants' Br. at 44, does not negate his procedural Due Process claims or remove his constitutional protections, *see* Amicus Br. at 42–43. If this Court does choose to rule on the County's 12(b)(6) motion on appeal, it should hold that Stratton's Amended Complaint states a claim.

However, now is not the time to rule on Defendants' 12(b)(6) motion. To be sure, Defendants are correct that this Court may dismiss a complaint for different reasons than the district court dismissed it, Defendants' Br. at 49, and nothing affirmatively *precludes* this Court from deciding whether the allegations in this complaint sufficiently state a federal constitutional claim. Nonetheless, *amicus* respectfully submits that the more prudent course is to pretermit the issue. As in *Davani v. Virginia Department of Transportation*, 434 F.3d 712, 720 (4th Cir. 2006), "prudence counsels that, because of the undeveloped state of the record," *id.* at 718–19, this Court refrain at this time because the lower court expended far more analysis on the *Rooker–Feldman* doctrine than on 12(b)(6), JA 371–74. The

undeveloped record in that case closely resembles the undeveloped record here. The *Davani* court remanded, ordering the district court to make findings as to whether the plaintiff was afforded the necessary termination procedures, *Davani*, 434 F.3d at 720, for purposes of determining whether *res judicata* attached. Similarly here, more information would aid the district court in ruling whether MCDSS's conduct toward Stratton complied with the Fourteenth Amendment. *Davani*'s message of prudence should hold at least as powerfully when the threshold question is one of constitutional significance.

A carefully crafted remand instruction can focus the parties and the district court on a very specific theory–namely, whether any of the actions of MCDSS or its officials deprived Stratton of his procedural Due Process rights.[8] That is an important issue. Each year, more than 200,000 children

[8] *See McCaskey v. Henry*, 461 F. App'x 268, 270 (4th Cir 2012) (remanding Title VII claim and instructing district court to "determine whether [plaintiff] sufficiently pleaded that she was qualified for the [employment] position"); *Smith v. Wash. Metro. Area Transit Auth.*, 290 F.3d 201, 211 (4th Cir. 2002) (directing district court in governmental immunity case to consider on remand issues of negligent repair and proximate cause); *Flip Mortg. Corp. v. McElhone*, 841 F.2d 531, 536 (4th Cir. 1988) (remanding case to district court with instructions to determine amount of debt accrued).

are removed from their families' homes,[9] and such terminations of or interferences with parental rights have spawned extensive federal constitutional litigation. *See supra*, at 16. Remand will allow the district court to offer a preliminary view on these issues or, alternatively, to conclude that this case does not require a definitive opinion on the matter due to some other pleading-stage defense (such as official immunity). By contrast, those other defenses are not before this Court at this time, so resolving the 12(b)(6) issue now could force this Court to weigh in needlessly on a hotly litigated issue in the federal appellate circuits. Where possible, courts should avoid wading into constitutional quagmires, *see Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575, 108 S. Ct. 1392, 1397 (1988), and remand best comports with that admonition.

CONCLUSION

Defendants urge this Court to exercise "practicality" and "common sense" and to simply make Mr. Stratton go away. Defendants' Br. at 49. But Mr. Stratton alleges government conduct causing constitutional harm to

[9] U.S. DEP'T OF HEALTH & HUMAN SERVS., FOSTER CARE STATISTICS 2010 (2012), *available at* http://www.childwelfare.gov/pubs/factsheets/foster.cfm.

him and to his family. Evidence in the record supports his claims. *See* JA 195–97. Defendants' understandable desire to end this litigation cannot justify doing so at the wrong stage, for the wrong reasons. And in cases involving families, cases of "vital importance" where the state may effectuate the "irretrievable destruction of their family life," *Santosky*, 455 U.S. at 753, 102 S. Ct. at 1395, the utmost care should be taken. Fed. R. Civ. P. 12 is not a blunt hammer to end vexing litigation, it is a collection of specific dismissal doctrines. None applies here. On remand, Defendants will have a full opportunity to avoid trial through other arguments or on a motion for summary judgment. But Stratton has met his burdens under the *Rooker–Feldman* doctrine, substantiality, and Rule 12(b)(6), and this Court should not dismiss his Complaint.

By: /s/

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,341 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in using Microsoft Word 2010 in 14-point Georgia font, a proportionally spaced typeface.

/s/

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November 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2012, I filed an electronic copy with and mailed six copies of this brief to the Clerk's Office of the United States Court of Appeals for the Fourth Circuit. I also certify that, for parties or counsel registered with the CM/ECF system, electronic service was effected. The following parties are not registered with the CM/ECF system and have been served the required number of paper copies by first-class mail on this date:

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