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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION (LOS ANGELES)

OCEAN S., et al.,

Plaintiffs,

v.

LOS ANGELES COUNTY, et al.,

Defendants.

Case No.: 2:23-cv-06921-JAK-E

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Before: Hon. John A. Kronstadt
Hearing Date: March 25, 2024
Hearing Time: 8:30 am
Department: 10B

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I. INTRODUCTION

This civil rights action arises from Defendants' failure to meet their Constitutional and statutory obligations to maintain a system to ensure that safe and appropriate placements and crucial supportive services are available to meet the needs of foster youth aged 16 to 21 in Los Angeles County.

Defendants[1] argue that Plaintiffs' claims are "not redressable by federal injunction." (*See* County Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss (Dkt. 51-1) at 5.) Alternately, Defendants urge this Court to dismiss this case based upon *Younger v. Harris*, 401 U.S. 37 (1971), under which a federal court must abstain from hearing certain suits that would enjoin, or have the practical effect of enjoining, an ongoing state criminal prosecution or quasi-criminal enforcement action.

These arguments are without merit. With respect to redressability, Defendants fail to cite a *single case* in which a lawsuit challenging systemic failures by a child welfare system was dismissed on redressability grounds. Worse, County Defendants simply ignore the controlling Ninth Circuit authority that refutes their redressability arguments. *See, e.g.*, *B.K. el rel. Tinsley v. Snyder*, 922 F.3d 957, 967 (9th Cir. 2019) (finding plaintiff foster children had standing where "allegedly deficient policies and practices [could be] abated by an injunction" and plaintiff's "harm may be redressed by a favorable court decision").

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[1] This motion was brought by "**County Defendants**." *See* Dkt. 51 (Motion by Los Angeles County, Department of Children and Family ("DCFS"), Department of Mental Health ("DMH"), DCFS Director Brandon Nichols, and DMH Director Lisa Wong). The "**State Defendants**" then moved to join. *See* Dkt. 62 (Motion by California Health and Human Services Agency and its Secretary Mark Ghaly; the California Department of Health Care Services and its Director Michelle Baass; and the California Department of Social Services and its Director Kim Johnson.) All of the foregoing are referred to herein as "**Defendants**."

Similarly, *Younger* abstention is not warranted here. In fact, Defendants do not even show that this case meets the threshold requirement that it pertain to state criminal or quasi-criminal proceedings. The overwhelming weight of judicial authority holds that state dependency proceedings cannot be the basis for *Younger* abstention. While proceedings challenging the initial *removal* of children from their parents have been held to be akin to criminal prosecutions in light of the allegations of abuse or neglect against parents, "[i]t would turn decades of Supreme-Court jurisprudence – and logic – on its head to put these foster children [in dependency proceedings] in the shoes of the abusive parents." *Jonathan R. by Dixon v. Just.*, 41 F.4th 316, 330 (4th Cir.), *cert. denied sub nom. Just. v. Jonathan R.*, 143 S. Ct. 310, 214 L. Ed. 2d 137 (2022). Furthermore, even if state dependency proceedings could trigger *Younger* abstention, Plaintiffs' action threatens no interference with those proceedings, nor do Plaintiffs here seek to reverse, modify, or otherwise displace any state court orders entered in their individual dependency cases. Moreover, Plaintiffs are unable to obtain the type of systemic relief sought here in individual state foster care review proceedings, because "[r]eforming foster care case-by-case would be like patching up holes in a sinking ship by tearing off the floorboards." *Id.* at 336; (*see also* Dkt. 21 ¶¶ 276-279.)

This Court possesses a virtually unflagging obligation to exercise its power to vindicate federal civil rights. The exercise of that power is vital when the federal rights of the young people who are in Defendants' care are at stake. Plaintiffs are particularly vulnerable to civil rights abuses as they have limited, if any, voice in day-to-day political and legislative discourse. Plaintiffs, therefore, rely on this Court to provide a forum in which their voices and legal grievances may be heard. Plaintiffs respectfully ask this Court to deny Defendants' motion to dismiss and to grant them their day in court and a full and fair opportunity to prove their claims.

II. BACKGROUND

Plaintiffs are seven transition age foster youth, aged seventeen to twenty-one as of the filing of the Complaint, who bring this lawsuit on behalf of a putative class of transition age foster youth who are now, or will be, in extended foster care in Los Angeles County. (*See* Plaintiffs' First Amended Complaint ("FAC"), Dkt. 21, ¶¶ 1, 16-21; *see also* Complaint, Dkt. 1, ¶ 17.) Plaintiffs have suffered injuries and remain at risk of ongoing harm, as a result of:

(1) Defendants' failure to develop a minimally adequate array of safe and stable placements, in violation of Plaintiffs' substantive due process rights;

(2) Defendants' failure to implement a system for providing Plaintiffs with legally compliant case plans and transition plans, as required by the Adoption Assistance and Child Welfare Act of 1980 ("AACWA");

(3) Defendants' opaque and arbitrary process for processing applications for housing benefits and inadequate procedural safeguards when removing transition age foster youth from placements, in violation of their procedural due process rights;

(4) Defendants' policies of deliberate indifference to the family integrity of expecting and parenting youth, in violation of their rights to freedom of familial association;

(5) Defendants' discrimination against youth with mental health disabilities, in violation of their rights under Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act ("ADA"); and

(6) Defendants' failure to ensure transition age foster youth have access to early and periodic screening, diagnostic and treatment ("EPSDT") services, in violation of the Medicaid Act. (*See* Dkt. 21 ¶¶ 1-11.)

In California both the foster care and Medicaid systems are county operated and state supervised.

With respect to the County Defendants, the Department of Children and Family Services ("DCFS") "is the agency responsible for administering foster care services in Los Angeles County, for providing placements for youth in the foster care system, and for ensuring the safety and wellbeing of children under court supervision." Cal. Welf. & Inst. Codes §§ 16500, 16501(a); (Dkt. 21 ¶ 24.) The Department of Mental Health ("DMH") is the County agency "responsible for providing behavioral health services to transition age foster youth in Los Angeles, including providing necessary Specialty Mental Health Services." (Dkt. 21 ¶ 26.)[2] These agencies are overseen by Los Angeles County. (*Id.* ¶ 23.)

With respect to the State Defendants, the California Department of Social Services ("CDSS"), led by Director Kim Johnson, is the "single state agency" responsible for administering California's foster care system and ensuring that the foster care system complies with federal law. Cal. Welf. & Inst. Code § 10600; (Dkt. 21 ¶ 30.) CDSS is directly responsible for ensuring there is an adequate array of safe, stable, and appropriate placements for foster youth throughout the state. (Dkt. 21 ¶¶ 129, 147 (citing 42 U.S.C. § 671(a)(2)).) The Department of Health Care Services ("DHCS"), led by Director Michelle Baass, is the "single state agency" that is responsible for administering health care services and for ensuring that the state's Medicaid program complies with all federal requirements. *See* 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10; Cal. Welf. & Inst. Code §§ 10721, 10740; (Dkt. 21 ¶¶ 32-33.) The California Health and Human Services Agency ("CalHHS"), led by Secretary Mark Ghaly, is the cabinet-level agency that is responsible for overseeing CDSS and DHCS. Cal. Gov't Code § 12803(a); (*see also* Dkt. 21 ¶ 28.)

[2] Plaintiffs have agreed to the dismissal of their claims against DCFS and DMH Directors Wong and Nichols.

III. ARGUMENT

A. Defendants' Standing Argument Is Meritless.

Defendants' motion is purportedly directed only to one prong of the standing inquiry, redressability. (Dkt. 51-1 at 5.) Given that the majority of Defendants' cases are directed to other prongs of the standing inquiry, however, and given the Court's independent obligation to satisfy itself that standing exists, Plaintiffs will briefly address all of the standing requirements.

In order to meet Article III standing, plaintiffs must present (1) an injury that is "concrete, particularized, and actual or imminent," (2) the injury must be "fairly traceable to the defendant's challenged action," and (3) the injury must be "redressable by a favorable ruling." *Horne v. Flores*, 557 U.S. 433, 445 (2009) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). In class action suits, "standing is satisfied if at least one Named plaintiff meets the requirements." *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007). At this stage of the proceedings, the third prong is satisfied when it is "likely, although not certain, that [the plaintiff's] injury can be redressed by a favorable decision." *Wolfson v. Brammer*, 616 F.3d 1045, 1056 (9th Cir. 2010).

1. Plaintiffs Have Suffered Concrete Injuries that Are Traceable to Defendants' Actions and Are Redressable by a Favorable Ruling.

Plaintiffs' First Amended Complaint sets forth in detail actual or imminent injuries Plaintiffs face and explains how they are traceable to Defendants' statutory and constitutional violations. In addition, Plaintiffs' requested relief sets forth how those injuries could be redressed by injunctive relief from the Court.

Substantive Due Process: All of the Named Plaintiffs have suffered injuries and/or are at substantial risk of future harms because of Defendants' failure to develop a minimally adequate array of safe and stable placements. (*See, e.g.*, Dkt. 21 ¶¶ 37-38) (Plaintiff Erykah B. lived on the streets and survived an attempted sexual assault

due to inadequate emergency housing placements); *id.* ¶¶ 50-51 (Plaintiff Onyx G. has cycled through homeless shelters and STRTPs where she has faced harassment and an inappropriately restrictive living environment); *id.* ¶¶ 66-67 (when Rosie S. reached out to DCFS to re-enter extended foster, DCFS only referred her to homeless shelters, which are not placements, hindering her ability to transition out of homelessness, and the placements she was ultimately offered were unsuitable and unstable.) These injuries are traceable to Defendants' actions. (*See, e.g.*, *id.* ¶¶ 140, 164-68.)

Plaintiffs' injuries are redressable through injunctive relief requiring Defendants to "correct systemic failures to ensure there is a minimally adequate placement array such that Class members have access to safe and stable placements at all times." (Dkt. 21 at 98 Request For Relief (d).) For example, an injunction requiring Defendants to maintain an adequate number of emergency housing placements will redress the imminent risk to all Named Plaintiffs of injury of the type experienced by Erykah B. when she lived on the streets due to Defendants' constitutional violations. (*See id*. ¶¶ 37-38.)

AACWA: Defendants have a responsibility "to develop and implement a system for providing transition age foster youth with legally compliant case plans and transition plans" under AACWA. (*Id.* ¶ 7.) Defendants are responsible for developing case/transition plans for transition age foster youth, but have failed to maintain systemic policies and procedures to do so. (*Id.* ¶¶ 174-80 (describing DCFS case/transition planning responsibilities under federal and state law); *id.* ¶¶ 181-84 (describing DCFS's use of inappropriate formulaic and non-individualized case/transition plans). The FAC is replete with examples of the concrete harms suffered by the Named Plaintiffs as a result of Defendants' policies and practices. (*See, e.g.*, *id.* ¶¶ 52-58 (lack of appropriate case/transition planning for Onyx G. led to inappropriate STRTP placements, without necessary supportive and therapeutic

services); *id*. ¶¶ 66-70, 72 (lack of appropriate case planning for Rosie S. led to inappropriate placement in Nevada away from her support network in Los Angeles, without necessary supportive and therapeutic services); *id*. ¶¶ 92-97, 100-102) (lack of appropriate case/transition planning for Ocean S. led to inappropriate placements, without necessary supportive and therapeutic services); *id*. ¶¶ 109, 111 (lack of appropriate case planning for Junior R. led to inappropriate and unstable placements and homelessness without necessary supportive and therapeutic services).)

Plaintiffs' injuries are redressable through injunctive relief requiring Defendants to "correct systemic failures resulting in Class members not receiving mandated case plans and transition plans." (*Id.* at 98 Request For Relief (d).) Such an injunction would, for example, redress the imminent risk of injury to all Named Plaintiffs of the type experienced by Rosie S. when she was placed hundreds of miles away from her support networks due to Defendants' systemic statutory violations. (*See id.* ¶¶ 66-70, 72.)

Procedural Due Process: All of the Named Plaintiffs have suffered injuries and/or are at substantial risk of future harms because of Defendants' opaque and arbitrary placement process and inadequate procedural protections once a youth is in a placement. (*See, e.g.*, *id.* ¶ 187) (Plaintiffs Rosie S. and Junior R. did not learn the reasons for, and therefore had no opportunity to contest, their denials of benefits); *id.* ¶ 190 (the absence of any coherent waitlist or notification led to a loss of a placement when Defendants failed to notify Erykah B. that she had in fact received a placement); *id.* ¶ 201 (Jackson K. was given a three-day notice to vacate his THPP-NMD placement that did not cite any program rules violation and noted that it was his responsibility to find a placement once he was discharged, demonstrating the substantial risk of future harm from inadequate procedural protections regarding loss of placements).) These injuries are traceable to Defendants' actions. (*See, e.g.*, *id.* ¶ 171) (DCFS does not effectively track the transition age foster youth who applied

to and are waiting to be placed with THPP-NMD providers); *id.* ¶¶ 197-204) (detailing inadequacies in Defendants' discharge policies and procedures).)

Plaintiffs' injuries are redressable through injunctive relief requiring Defendants to "correct systemic failures to ensure that Class members receive adequate notice and due process after any denial of placement or pushout from placement." (*Id.* at 98 Request For Relief (d).) For example, an injunction requiring Defendants to provide adequate notice and opportunity to be heard prior to pushout, instead of the inadequate notice received by Jackson K., would redress imminent risks of injury such as living on the streets due to a lack of meaningful pre-deprivation opportunity to contest pushouts or find alternative housing. (*See id.* ¶ 201.)

Freedom of familial association: Over 250 youth in foster care in Los Angeles County are themselves parents or pregnant. (*Id.* ¶ 136.) The FAC adequately alleges injuries or substantial risk of future harms among pregnant or parenting Named Plaintiffs like Rosie S., Ocean S., and Monaie T. (*Id.* ¶¶ 62-73; 87-103; 118-126.) For example, during the period she was unhoused, Ocean S. was caught in a vicious cycle – she could not get her daughter back without stable housing, but she was ineligible for the limited THPP-NMD placements available for parenting youth without having physical custody of her daughter. (*Id.* ¶ 214.) This injury was fairly traceable to DCFS's policy of failing to maintain sufficient placements for parenting youth, as well as their policy of permitting their contracted providers to restrict those limited placements to parenting youth with physical custody of their children, both of which policies created barriers to reunification and injured her right to family integrity. (*Id.*)

Plaintiffs' injuries are redressable through injunctive relief requiring Defendants to "correct systemic failures to ensure that Defendants do not violate the Expecting and Parenting Subclass members' right to familial association." (*Id.* at 98 Request For Relief (d).) For example, enjoining Defendants to require their

contracted THPP-NMDs to make adequate numbers of placements available to parenting youth would redress the imminent risk of injury all expecting and parenting Plaintiffs face, the type Ocean S. experienced by when Defendants' failures created an additional barrier to reunification with her child. (*See id*. ¶ 214.)

Disability discrimination: Many foster youth experience the mental health effects of complex trauma, which limit their ability to perform major life activities, such as sleeping, concentrating, long-term planning, and emotional self-regulation. (*Id.* ¶¶ 217-220.) These individuals, including each of the Named Plaintiffs, have been injured or are at imminent risk of injury from Defendants' failure to provide legally-mandated supports or from their discriminatory policies. *Id.* ¶¶ 221-225. For example, even though Onyx G was eligible for THPP-NMDs when she turned 18 and became a nonminor dependent in Defendants' care, she nonetheless remained in her STRTP placement and was illegally placed at a disadvantage in seeking a less restrictive placement "because Defendants' discriminatory policies weed out applicants with mental health needs and trauma symptoms." (*Id.* ¶¶ 52, 54, 226.) DCFS approved the decision of its THPP-NMD provider to terminate Ocean S.'s placement after she survived a physical assault by her then-partner, instead of supporting her with appropriate services that could have facilitated her healing and allowed her to remain in the program. (*Id.* ¶ 228.) These injuries or imminent risks of harm, such as screening transition age foster youth who report mental health diagnoses or display behaviors consistent with trauma from participating in THPP-NMD, excluding them on the basis of disability and without individualized assessment of whether the youth could participate with reasonable accommodations, are traceable to the systemic policies and practices of Defendants. (*Id.* ¶ 224, 228.)

Plaintiffs' injuries are redressable through injunctive relief requiring Defendants to "correct systemic failures to ensure Defendants do not discriminate against ADA Subclass members and instead provide them an adequate array of

placements and services in the most integrated, least restrictive setting appropriate to their needs." (*Id.* at 98 Request For Relief (d).) For example, enjoining Defendants' discriminatory processes for placing youth in THPP-NMD housing would reduce the risk of the Named Plaintiffs and the members of the ADA Subclass being excluded from such housing on account of their disabilities. (*See id.* ¶¶ 226, 228.)

Medicaid Act violations: Virtually all transition age foster youth, including the Named Plaintiffs, receive their health services, including behavioral health services, through Medi-Cal, California's Medicaid program. (*Id.* ¶ 260; *see also id.* ¶¶ 35, 47, 75, 88, 105, 119.) Federal law requires California, as a state participating in Medicaid, to cover certain mandatory services, including EPSDT services for Medicaid-eligible youth under the age of 21. *See* 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(C), 1396d(a)(4)(B), 1396d(r). Defendants' own data demonstrate inadequate provision of EPSDT services to transition age foster youth: at age 18, participation of eligible foster youth in Specialty Mental Health Services significantly declines, from over 60% to under 40%. (Dkt. 21 ¶ 271.) Plaintiffs have also suffered concrete injuries: Plaintiff Onyx G., for instance, was forced to leave her STRTP and enter a youth homeless shelter because she did not receive necessary mental health and crisis services, and Defendants failed to provide Plaintiff Junior R. with necessary crisis services when his placements destabilized, leading to his homelessness. (*Id.* ¶ 273.) These injuries are fairly traceable to Defendants' policies and practices. (*Id.*; *see also, e.g.*, *id.* ¶ 229 (DMH does not have a functional process to provide needed Medicaid services that would help youth access the SILP program); *id.* ¶ 275 (insufficient coordination between Defendants results in transition age foster youth with mental health disabilities being unable to access legally required services).)

Plaintiffs' injuries are redressable through injunctive relief requiring Defendants to "correct systemic failures to ensure that Named Plaintiffs, ADA Subclass members, and Medicaid Subclass members have access to and receive the

Medicaid services to which they are entitled." (*Id.* at 98 Request For Relief (d).) For example, an injunction requiring Defendants to improve coordination and create an accountable system for delivery of EPSDT services would address the types of injuries experienced by Onyx G. and Junior R. (*See id.* ¶¶ 273-275.)

2. Defendants Do Not Cite Any Case in Which a Federal Challenge to a Child Welfare System Has Been Dismissed on Redressability Grounds.

The Ninth Circuit has consistently found plaintiffs meet the redressability requirement in civil rights actions similar to this one. In *B.K.,* for example, the class representative of a class of Arizona foster children claimed that she had been "deprived of necessary health care, separated from her siblings, deprived of family contact, and placed in inappropriate care environments," in violation of her rights under the Fourteenth Amendment and the Medicaid Act. *See, e.g.*, *B.K.*, 922 F.3d at 964. The Ninth Circuit stated that the plaintiff would have standing if the "allegedly deficient policies and practices" violative of due process could be "abated by an injunction," and concluded that the plaintiff did in fact have standing to press due process claims on behalf of the class. *Id.* at 967. Similarly, the Ninth Circuit found that the class representative had standing to bring her Medicaid claim because her claims were "redressable by an injunction ordering the Directors to abate the policies and/or practices that caused the delivery failure." *Id.* at 973; *see also, e.g.*, *C.R. Educ. & Enf't Ctr. v. Hosp. Props. Tr.*, 867 F.3d 1093, 1102 (9th Cir. 2017) (finding that plaintiffs' requested injunctive relief "mandating that the [defendants] comply with the ADA" would satisfy redressability requirement).

The Ninth Circuit's approach is consistent with decades of court decisions from around the country that have ordered injunctive relief to address the types of systemic failures alleged here. *See, e.g.*, *Lynch v. Dukakis*, 719 F.2d 504, 506 (1st Cir. 1983) (affirming injunction to "provide a case plan and a periodic review of that plan to each child in foster care"); *L.J. By & Through Darr v. Massinga,* 838 F.2d 118, 120

(4th Cir. 1988) (affirming injunction against state and city officials to, *inter alia,* "expand its medical services to foster children"); *see also Katie A. ex rel. Ludin v. L.A. Cnty.*, 481 F.3d 1150, 1157 (9th Cir. 2007) (holding that trial court erred regarding the nature of services required by Medicaid EPSDT, but had not overstepped its authority in ordering the defendants to provide services required under federal law). Further, numerous courts have certified classes of foster children seeking similar types of injunctive relief. *See, e.g.*, *Baby Neal for & by Kanter v. Casey,* 43 F.3d 48, 59 (3d Cir. 1994) (collecting cases); *see also Elisa W. v. City of New York*, 82 F.4th 115, 119 (2d Cir. 2023) (vacating denial of class certification).

Most of the cases cited by Defendants to support their argument for lack of standing do not turn on redressability. In *United States v. Hays,* a redistricting challenge (which federal courts indisputably have the power to redress) failed because the out-of-district plaintiffs failed to show that they had been personally injured. 515 U.S. 737, 747 (1995). But Defendants have not sought dismissal on a theory that Plaintiffs have not been injured or are unlikely to suffer future injury, and for the reasons explained above, Plaintiffs' allegations more than satisfy the injury prong of the standing analysis. County Defendants' other cases are similarly inapposite. *See Rizzo v. Goode*, 423 U.S. 362, 366 (1976) (plaintiffs failed to show likelihood of future injury from challenged police practices); *Lewis v. Casey*, 518 U.S. 343, 360 (1996) (remedy ordered by court should not be broader than the actual injury that the plaintiffs had proven at trial); *United States v. Texas*, 599 U.S. 670, 676-77 (2023) (states lack a cognizable injury from increased enforcement costs due to alleged underenforcement of immigration laws by federal government); *Horne*, 557 U.S. at 450 (superintendent had standing because he was a named defendant); *Brown v. Plata*, 563 U.S. 493, 537-38 (2011) (affirming injunctive relief where district court left the "details of implementation to the State's discretion"); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1119 (9th Cir. 2009) (confirming that plaintiffs have standing).

The *only* case relied upon by County Defendants that actually turns on redressability is *Juliana v. United States*, and it serves merely to demonstrate the spuriousness of County Defendants' arguments.[3] 947 F.3d 1159, 1169 (9th Cir. 2020). In *Juliana,* the plaintiffs claimed that the government had deprived them of their alleged constitutional right to a "climate system capable of sustaining human life." *Id.* at 1170. The Ninth Circuit, assuming *arguendo* that such a constitutional right existed, concluded that it was beyond the power of an Article III court to order "a comprehensive scheme to decrease fossil fuel emissions and combat climate change." *Id.* at 1171. The novel theory raised by the plaintiffs in that case is nothing like the Plaintiffs' claims here, which follow in the footsteps of numerous successful challenges to the administration of state- and county-run programs for foster youth and seeks reforms to Defendants' practices and policies that are fully within the Court's power to order.

[3] In their Reply in Support of Motion to Stay Discovery, Defendants argue that *Ashley W. v. Holcomb*, 34 F.4th 588 (7th Cir. 2022), also turned on redressability. *See* County Defendants' Reply in Support of Motion to Stay Discovery (Dkt. 63 at 6). But Defendants briefed *Ashley W.* only as an *abstention* case, (dkt. 51-1 at 15, 17), and for good reason: the case states that the question of whether the court can "redress" the injuries raised by plaintiffs "depends on whether *Younger* channels some or all of plaintiffs' contentions into the [state] proceedings." *Ashley W.*, 34 F.4th at 592. Thus, the case does not turn on the inquiry that is relevant here, namely, whether (abstention aside), a federal injunction could redress the injuries alleged by Plaintiffs. *See id.* Defendants' reliance on *Connor B.* is even further afield, since the trial court there expressly found that plaintiffs had standing; the opinion relied upon by Defendants merely affirms the later judgment that Plaintiffs failed to prove their case at trial. (*See* Dkt. 63 at 6 (citing *Connor B. ex rel. Vigurs v. Patrick*, 774 F.3d 45, 48 (1st Cir. 2014). *Compare with Connor B. ex rel. Vigurs v. Patrick*, 771 F. Supp. 2d 142, 153 (D. Mass. 2011) (plaintiffs have standing).)

B. County Defendants' Motion to Dismiss Based on Abstention Is Meritless.

Abstention is "an extraordinary and narrow exception" to federal courts' "virtually unflagging obligation" to decide cases properly brought before them. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 817 (1976); *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 69 (2013). One such exception, the *Younger* doctrine, provides that a federal court should abstain from issuing an injunction when it would interfere with certain state judicial proceedings. 401 U.S. at 43.

As an initial step, the Court must determine that the threshold requirements for abstention are met. *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014). Here, Defendants' arguments do not get past this threshold inquiry, for two reasons.

First, Plaintiffs' dependency hearings do not fall into the narrow category of cases to which *Younger* abstention may apply. Defendants' argument that dependency hearings qualify for *Younger* abstention as "quasi-criminal enforcement actions" is without merit. While *removal* proceedings may implicate ancillary criminal enforcement against *parents*, no parental conduct and no removal proceedings are at issue in this litigation.

Second, Juvenile Court dependency proceedings would not allow Plaintiffs to raise the type of challenges that are the subject of this lawsuit, which seeks systemic reforms.

Finally, even if these threshold elements are met, *Younger* abstention is not warranted here because this case will not have the "practical effect of enjoining the state proceeding." *Id.* Defendants' theory, that this Court cannot enjoin executive officials to implement reforms because such reforms could have knock-on effects in

dependency proceedings, would eviscerate the carefully circumscribed boundaries of *Younger* that make abstention the exception rather than the rule.

1. Dependency Hearings Do Not Fall into the Narrow Category of State Court Proceedings to Which Younger *Applies.*

One threshold requirement for *Younger* abstention is that it applies only in certain "exceptional categories" of state cases. *Id.* The "exceptional category" Defendants rely upon here is "quasi criminal enforcement actions." (Dkt. 51-1 at 11.) But that category has no applicability to Plaintiffs' dependency cases.

Numerous courts have specifically held that review hearings in dependency proceedings are not criminal or quasi-criminal proceedings under the *Younger* abstention analysis. In *Tinsley v. McKay*, for example, the court found that periodic review hearings in juvenile court for purposes of child welfare placements are *not* quasi-criminal in nature because their primary purpose is "to plan for and monitor the development and well-being of children." 156 F. Supp. 3d 1024, 1034 (D. Ariz. 2015). Other courts have found the same. *See Jeremiah M. v. Crum*, 2023 WL 6316631, at *6 (D. Alaska Sept. 28, 2023) (holding that review hearings for foster youth were "fundamentally dissimilar" from quasi-criminal enforcement proceedings against parents); *Jonathan R.*, 41 F.4th at 330 (finding "[i]t would turn decades of Supreme-Court jurisprudence – and logic – on its head" to equate ongoing hearings to provide services to foster youth with initial child removal proceedings against parents).

Defendants' reliance on *Moore v. Sims*, 442 U.S. 415, 423 (1979), is misplaced. (Dkt. 51-1 at 11.) As Defendants concede, *Moore* states that a removal proceeding may be "in aid of and closely related to criminal statutes" where it involves removal of a child due to abuse or neglect. 442 U.S. at 423 (citation omitted). But "*Moore* and its progeny do not suggest that, if the initiation of a state proceeding is considered an act of civil enforcement, a state court's continuing oversight of one of the parties affected by that enforcement – here, the foster children – continues to bear the

'enforcement' label." *Jeremiah M.*, 2023 WL 6316631, at *6. For example, Plaintiff Jackson K. entered foster care in 2007 when his mother went to prison, and was adopted in 2009. (Dkt. 21 ¶ 76.) In January 2022, he found himself living in shelters, and petitioned to re-enter foster care. (*Id.* ¶ 78.) It is absurd for Defendants to argue that the Court's hypothetical impact on Jackson K.'s dependency proceedings in 2024 could somehow impinge on the criminal proceedings against his mother from 2007. Defendants' other authorities fail for the same reason. *See Negrete v. L.A. Cnty.*, 2021 WL 2551595, at *1 (C.D. Cal. June 22, 2021) (removal proceedings against parent); *Hui Lan Ke v. Gonzalez*, 2018 WL 1763296, at *1 (N.D. Cal. Apr 12, 2018) (same); *Yahvah v. Cnty. of L.A.*, 2018 WL 3222042, at *1 (C.D. Cal. Mar. 9, 2018) (same); *Zayas v. Nguyen*, 2021 WL 5987100, at *1 (W.D. Wash. Dec. 17, 2021) (same).

Although not cited by Defendants for this point, the Seventh Circuit recently stated, outside of the removal context, "[w]e know from [*Moore*] that *Younger* applies to state-initiated child-welfare litigation." *Ashley W.*, 34 F.4th at 591. As a result, the *Jeremiah M.* court concluded there is a division of authority that merits an interlocutory appeal. *See* 2023 WL 6316631, at *28; (*see also* Dkt. 51-1 at 16 n.3.) This single sentence from the Seventh Circuit, however, lacks any of the analysis of the Fourth Circuit in *Jonathan R.* or other district courts within this circuit, and the Court should decline to follow it as unreasoned and unpersuasive.[4] Because this case

[4] In its Reply In Support of Stay, Defendants imply that the weight of authority is on the side of abstention by further citing to *31 Foster Child. v. Bush*, 329 F.3d 1255, 1278 (11th Cir. 2003), and *Joseph A. ex rel. Corrine Wolfe v. Ingram*, 275 F.3d 1253, 1274 (10th Cir. 2002). (Dkt. 63 at 7-8.) But as *Jeremiah M.* notes, those are pre-*Sprint* cases that relied only on the *Middlesex* factors, and not on the further holding of *Sprint* that the three "exceptional" categories "define *Younger's* scope." *See* 2023 WL 6316631, at *5 (quoting *Sprint*, 571 U.S. at 78). Defendants also rely on *Oglala Sioux Tribe v. Fleming*, but that case is expressly about removal proceedings. *See* 904 F.3d 603, 607 (8th Cir. 2018). Thus, the weight of *relevant* authority – post-

does not fall into one of the "exceptional categories" to which *Younger* may apply, the Court should exercise jurisdiction.

2. State Dependency Proceedings Are Not an Adequate Forum for These Claims.

A second threshold inquiry is whether the state forum provides "an adequate opportunity to raise [federal] challenges." *Sprint*, 571 U.S. at 81 (citation omitted).[5] Here, the state juvenile courts are not "an appropriate forum for this multi-faceted class-action challenge to [Los Angeles County's] administration of its entire foster-care system." *LaShawn A. ex rel. Moore v. Kelly*, 990 F.2d 1319, 1323 (D.C. Cir. 1993) (concluding that court should not abstain under *Younger*).

In *Tinsley*, *supra*, for example, in addition to concluding that dependency proceedings were outside the narrow scope of *Younger,* the court found that this further threshold requirement was not met because "it does not appear [p]laintiffs could raise their classwide claims or pursue the systemic reforms they seek within the framework of the periodic review hearings in the juvenile courts." 156 F. Supp. 3d at 1040-41; *see also, e.g.*, *Jeremiah M.*, 2023 WL 6316631, at *8 (declining to abstain because juvenile courts were not an "adequate forum" for plaintiffs to seek systemic reform of child welfare agency practices); *People United for Child., Inc. v. City of New York*, 108 F. Supp. 2d 275, 291-92 (S.D.N.Y. 2000) (holding that "[b]ecause child protective proceedings must focus on the narrow issue of the child's health,

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Sprint cases outside of the removal context – is squarely on the side of exercising jurisdiction.

[5] The Ninth Circuit paraphrased this factor as whether the forum "allows litigants to raise federal challenges." *ReadyLink*, 754 F.3d at 759. The crux of the Supreme Court's test, however, is the *adequacy* of the forum. *See Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) (courts must assess whether there "is there an *adequate* opportunity in the state proceedings to raise constitutional challenges" (emphasis added)).

safety, and welfare in a particular case, they do not provide these plaintiffs with an adequate opportunity to raise their constitutional claims"); *M.D. v. Perry*, 799 F. Supp. 2d 712, 721 (S.D. Tex. 2011) (finding that "[state] court placement review hearings focus on whether the particular child's needs are being met, not overarching systemic concerns or constitutional violations"); *Lahey v. Contra Costa Cnty. Dep't of Child. & Fam. Servs.*, 2004 WL 2055716, at *11-12 (N.D. Cal. Sept. 2, 2004) (*Younger* does not apply because state juvenile courts overseeing dependency proceedings are not "designed nor equipped to hear cases of constitutional dimension"); *see also Ashley W.*, 34 F.4th at 593 (it is "essential to determine" which requested relief can be afforded in state court, because unavailable relief would not be subject to abstention).

Defendants rely on cases in which parents alleged federal and constitutional violations in the manner in which their children were removed. (*See* Dkt. 51-1 at 12 (citing *Negrete*, 2021 WL 2551595, at *1 (mother alleged deprivation of parental rights in unlawful removal of her child); *Sanders v. Dep't of Child. & Fam. Servs.*, 2014 WL 1255829, at *3 (C.D. Cal. Mar. 25, 2014) (same); *Zayas*, 2021 WL 5987100, at *1 (same); *Wood v. Cnty. of Contra Costa*, 2020 WL 1505717, at *1 (N.D. Cal. Mar. 30, 2020) (same).) Those child removal cases are unlike the present lawsuit, where Plaintiffs seek class-wide injunctive relief to correct Defendants' systemic failures to maintain legally-required placement arrays and medical care systems. And while a juvenile court may order a particular placement for a particular youth, it is simply not in a position to adjudicate, for example, whether Defendants failed to maintain a "minimally adequate array of safe and stable placements," as Plaintiffs have alleged here, or to impose an appropriate system-wide remedy. (Dkt. 21 ¶ 295; *see also d.* ¶ 278) (identifying the limitations of the juvenile court to address the specific remedies sought in this litigation); *In re Luke H.*, 221 Cal. App. 4th 1082, 1087 (2013) (juvenile court has "limited jurisdiction" to make "only those

determinations authorized by specific statutory authority"). As a result, reforming foster care "case-by-case" through dependency proceedings "would be like patching up holes in a sinking ship by tearing off the floorboards." *Jonathan R.*, 41 F.4th at 336.

Defendants cite only one case involving periodic review hearings rather than removal proceedings. (*See* Dkt. 51-1 at 12 (citing *Belinda K. v. Cnty. of Alameda*, 2012 WL 273661, at *3 (N.D. Cal. Jan. 30, 2012).) However, the constitutional claims in *Belinda K.* allege an overburdened state dependency court system and deprivation of the right to competent counsel for parents at six-month status review hearings. 2012 WL 273661, at *1. A juvenile court's ability to ensure the right to competent counsel in its own courtroom is not comparable to, and does not establish, its ability to implement systemic constitutional reforms to the administration of the foster care system on a case-by-case basis through dependency proceedings. For this further independent reason, the threshold requirements of *Younger* are not met.

3. This Case Will Not Have the Practical Effect of Enjoining Any Dependency Proceedings.

Even if the Court finds that the threshold requirements of *Younger* are met, the Court should exercise jurisdiction because the relief sought in this action will not have the practical effect of enjoining any dependency proceedings. In cases such as this one, seeking systemic reforms to executive policies and practices for administering child welfare systems, case after case has found abstention inappropriate. *See, e.g.*, *Tinsley,* 156 F. Supp. 3d at 1037 (declining to abstain where Plaintiffs' alleged deficiencies in child welfare agency's policies and requested systemic reforms did "not interfere with the juvenile courts' authority or ability to order initial child placements or to review the adequacy of placements"); *M.B. ex rel. Eggemeyer v. Corsi*, 2018 WL 327767, at *6 (W.D. Mo. Jan. 8, 2018) (declining to abstain where plaintiffs challenged child welfare agency policies and practices because "[i]t is the executive's actions that are being questioned, not the power of the juvenile court");

M.D., 799 F. Supp. 2d at 719 (declining to abstain where plaintiffs alleged systemic failures by child welfare agencies because "[t]he relief sought is directed against executive branch officials . . . , not the judiciary"); *Dwayne B. v. Granholm*, 2007 WL 1140920, at *5-7 (E.D. Mich. Apr. 17, 2007) (declining to abstain where plaintiffs' alleged failures in child welfare agency practices and requested systemic relief would "not require ongoing federal court interference with the daily operation of [the state's] juvenile courts").[6] As in those cases, Plaintiffs here similarly seek injunctive relief directed at the policies and practices of state and county executive agencies overseeing and administering placement and supportive services for transition age foster youth. (*See* Dkt. 21 at 98 Request for Relief (d).) Plaintiffs do not seek any remedies aimed at directing or interfering with the administration of the juvenile courts.

County Defendants' cases are inapposite because they involved requests for relief which explicitly and directly implicated state court proceedings. *See, e.g.*, *Ashley W.*, 34 F.4th at 591 (requested injunction would restrict "what relief the Department may or must pursue in [juvenile] court."); *31 Foster Child.*, 329 F.3d at 1279 (plaintiffs sought to have the district court "appoint a panel" to oversee judicial decisions in dependency proceedings); *Oglala Sioux Tribe*, 904 F.3d at 611 (plaintiffs sought to "dictate a host of procedural requirements for the ongoing state proceedings"); *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1292 (10th Cir. 1999)

[6] *See also Olivia Y. ex rel. Johnson v. Barbour*, 351 F. Supp. 2d 543, 565-70 (S.D. Miss. 2004) (rejecting application of *Younger* abstention in case involving administration of child welfare system); *Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 285 (N.D. Ga. 2003) (same); *Brian A. ex rel. Brooks v. Sundquist*, 149 F. Supp. 2d 941, 957 (M.D. Tenn. 2000) (same); *Marisol A. by Forbes v. Giuliani*, 929 F. Supp. 662, 688-89, (S.D.N.Y. 1996), *aff'd sub nom. Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir. 1997) (same); *LaShawn A.*, 990 F.2d at 1322-24 (same).

(plaintiffs' relief would require federal court to make "dispositional decisions" in individual cases).

Such holdings do not apply here, where Plaintiffs' proposed remedies are designed to address Defendants' ongoing violations of the U.S. Constitution and federal statutes, not to review decisions made in juvenile court proceedings. Plaintiffs seek, for instance, injunctive relief requiring Defendants to "correct systemic failures to ensure that Class members receive adequate notice and due process after any denial of placement or pushout from placement" and to "correct systemic failures to ensure Defendants do not discriminate against ADA Subclass members and instead provide them an adequate array of placements and services in the most integrated, least restrictive setting appropriate to their needs." (Dkt. 21 ¶ 278.) Neither of those seeks to enjoin a dependency proceeding.

For example, in *Laurie Q. v. Contra Costa County*, the district court understood plaintiffs to be asking the court to "pass upon the efficacy and propriety" of the plaintiffs' case plans and thereby approve or disapprove of the Juvenile Court's review of those same plans. 304 F. Supp. 2d 1185, 1204 (N.D. Cal. 2004). Here, by contrast, Plaintiffs allege that Defendants have "failed to develop and implement a system for providing transition age foster youth with legally compliant case plans," (dkt. 21 ¶ 7), and it is those executive actions (or lack thereof) that would be the focus of the Court's review, not the Juvenile Court's approval or disapproval of a particular Plaintiff's case plan. Similarly, in *31 Foster Child.*, *supra*, the court worried that the federal and state courts might issue "conflicting orders about what is best for a particular plaintiff, such as whether a particular placement is safe or appropriate." 329 F.3d at 1278. The Plaintiffs here do not seek any such relief, and they do not seek to challenge the Juvenile Court's prior rulings regarding their placements, but, rather, seek an injunction requiring Defendants to institute policies that would ensure that an adequate placement array and medical care are available for the population of

transition aged youth who are entitled to them. (Dkt. 21 ¶ 7.) The Court need not shy away from reviewing DCFS' actions for fear of interfering in a quasi-criminal proceeding in Juvenile Court – no such conflicting proceeding exists.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court deny Defendants' motion to dismiss for lack of subject matter jurisdiction (Dkt. 51).

DATED: January 23, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs certifies that this brief contains 22 pages, which complies with Court's Standing Orders. (*See* Dkt. 18 at 9(d).)

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