No. 21-_____

In The
Supreme Court of the United States

NICOLE K., BY NEXT FRIEND LINDA R., ET AL.,
PETITIONERS,

v.

TERRY J. STIGDON, IN HER OFFICIAL CAPACITY
AS DIRECTOR OF THE INDIANA DEPARTMENT
OF CHILD SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a federal court "has discretion to put any federal proceeding on hold while a state works its way through an administrative process," as the Seventh Circuit held in affirming dismissal, or whether abstention is instead permissible only where the case involves certain narrowly defined "extraordinary circumstances" not present here.

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs-appellants below) are Nicole K., by next friend Linda R.; Roman S., by next friend Linda R.; Abigail R., by next friend Nancy B.; Lily R., by next friend Nancy B.; Rachel H., by next friend Nancy B.; Anna C., by next friend Jessie R.; Brian P., by next friend Jessie R.; Amelia P., by next friend Jessie R.; Alexa C., by next friend Jessie R.; and Zachary H., by next friend Jessie R.; for themselves and those similarly situated.

Respondents (defendants-appellees below) are Terry J. Stigdon, in her official capacity as Director of the Indiana Department of Child Services; Marilyn A. Moores, in her official capacity as Marion Superior Court Judge; Mark A. Jones, in his official capacity as Marion Superior Court Judge; Thomas P. Stefaniak, Jr., in his official capacity as Lake Superior Court Judge; Marsha Owen Howser, in her official capacity as Scott Superior Court Judge; and Jason M. Mount, in his official capacity as Scott Circuit Court Judge.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

Nicole K., by next friend Linda R., et al. v. Stigdon, Director of the Indiana Department of Child Services, et al., No. 19-cv-1521-JPH (S.D. Ind.) (order granting motion to dismiss issued March 3, 2020);

Nicole K., by next friend Linda R., et al. v. Stigdon, Director of the Indiana Department of Child Services, et al., No. 20-1525 (7th Cir.) (opinion affirming dismissal issued March 5, 2021, and order denying rehearing and rehearing en banc issued April 26, 2021).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Federal courts cannot pick and choose the cases they hear. Chief Justice Marshall famously wrote that the courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). These foundational principles are reflected in the oft-repeated mantra that a federal court's "obligation" to decide a case within its jurisdiction is "virtually unflagging." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-18 (1976). Abstention doctrines represent the rare exception to this rule. Time and again, this Court has made clear that refusal to hear federal claims in deference to state proceedings can be justified only by certain extraordinary circumstances.

Despite those clear instructions, one court of appeals has claimed virtually unbridled discretion to refuse to decide claims that offend its notions of comity and federalism. Breaking from its sister courts and the well-defined limits of this Court's abstention cases, the Seventh Circuit has struck out on its own to exercise "discretion to put *any* federal proceeding on hold" because of a parallel state proceeding unless it is convinced of "some urgent need for federal intervention." Pet. App. 6a.

That freewheeling, ad hoc approach to jurisdiction has been expressly repudiated by two other courts of appeals. And it is irreconcilable with decisions of at least five others. No circuit other than the Seventh

has claimed broad discretion to abstain from hearing federal claims where not compelled to do so by the particular requirements of a recognized abstention doctrine.

This case is a prime example of the Seventh Circuit's radical departure from this Court's abstention teachings. The decision below flipped the ordinary presumption in favor of exercising jurisdiction on its head, requiring petitioners to provide reasons the district court should have heard their federal constitutional claims. It relied on the supposed adequacy of state procedures to find abstention warranted, even though this Court has rejected that reasoning. It identified none of the specific exceptional circumstances that this Court requires before federal courts may override Congress's grant of jurisdiction. And in exercising its supposed broad discretion to abstain from deciding constitutional questions implicating state proceedings, the Seventh Circuit reached out to opine on the merits of one of petitioners' constitutional claims—even though none of the parties had even briefed that issue.

This Court should grant a writ of certiorari. The sharp and acknowledged conflict between the Seventh Circuit and other courts of appeals will not resolve itself. Indeed, the decision below is only the latest in a recent series of Seventh Circuit decisions committing similar errors. The issue presented is of critical importance to every litigant subject to unconstitutional state action who seeks relief in federal court. This case cleanly tees up that critical abstention issue.

As Justice Alito recently observed, a court's attempt to "exercise [its] discretion" not to consider a case squarely within its jurisdiction should be "reverse[d] in the blink of an eye" along with a stern rebuke "that a federal court's obligation to hear and decide cases within its jurisdiction is 'virtually unflagging.'" *Texas v. California*, 141 S. Ct. 1469, 1469 (2021) (Alito, J., dissenting from denial of leave to file a bill of complaint). The facts here justify that rebuke and even warrant summary reversal.

ORDERS BELOW

The district court's order granting respondents' motion to dismiss is unreported, but reproduced at Pet. App. 10a-23a. The Seventh Circuit's opinion (Pet. App. 1a-9a) is available at 990 F.3d 534 (2021). The Seventh Circuit's order denying rehearing en banc is unreported, but reproduced at Pet. App. 24a.

JURISDICTION

The court of appeals entered judgment on March 5, 2021 (Pet. App. 1a), and denied rehearing and rehearing en banc on April 26, 2021 (Pet. App. 24a). This Court's March 19, 2020 and July 19, 2021 orders related to the COVID-19 pandemic extended the deadline to file this petition for a writ of certiorari to 150 days. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No state shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

Indiana Code § 31-32-4-2 provides that in an Indiana juvenile court proceeding, "[t]he court may appoint counsel to represent any child," but is not required to do so unless a child is "alleged to be a delinquent."

STATEMENT OF THE CASE

A. Indiana Deprives Children Of Basic Legal Protections In Proceedings That Decide Their Liberty Interests

Indiana's Department of Child Services is a state agency responsible for handling reports of alleged child abuse and neglect. The Department responds to such reports in two stages. In the first stage, the Department may file a petition in juvenile court to remove children from their families and initiate dependency proceedings (also called Child In Need of Services or "CHINS" proceedings). Removal ends with a dispositional decree that establishes a case plan for each child's care, treatment and placement, such as in foster care. Ind. Code §§ 31-34-19-6, 31-34-19-10. In the second stage, the juvenile court maintains jurisdiction over the child for limited purposes after

the dispositional decree. Ind. Code § 31-34-22-1(a). It receives periodic reports on the child's progress and assesses whether the state is meeting the child's needs. *Ibid.*

These are high-stakes proceedings for children. Removal subjects children to total government control, empowering the state to decide where they live, when and how they see their family, and who makes decisions about their health and safety. C.A. A16-17.[1] Young adults who spent significant time in foster care tend to have worse outcomes than their peers when it comes to education, employment, housing, and early parenthood. C.A. A22-23. And that is to say nothing of the immediate risk of serious harm—even death—created by chronic mismanagement within Indiana's child services system. *See* C.A. A23 (former director of Department of Child Services warning Indiana was "systematically" placing foster care children "at risk," "all but ensur[ing] children will die"). Given these vital interests, the majority of states guarantee children legal representation in dependency proceedings. C.A. A17. And the federal government reimburses states for up to half the cost of providing children with counsel. C.A. A18-19.

But Indiana remains an outlier in declining to provide legal representation to children in dependency proceedings. Despite guaranteeing parents a right to counsel, children have no such right and are rarely

[1] Citations to C.A. A[#] are to the appendix filed with the opening brief in the court of appeals.

appointed counsel. C.A. A20; Ind. Code §§ 31-32-4-1, 31-32-4-2, 31-34-4-6.

Denying children representation has had a profound effect. Indiana removes children from their homes and keeps them removed at a much higher rate than other states. C.A. A22. A 2018 study found that Indiana has more than double the national average of children per capita placed in out-of-home state-run care. C.A. A81-83.

B. Petitioners Sued To Vindicate Their Federal Rights, But The Courts Below Refused To Hear Their Suit

1. The district court abstained under Younger *and dismissed petitioners' suit*

Petitioners are ten Indiana children. After the state removed them from their families and placed them in foster care, the children filed this putative class action suit under 42 U.S.C. § 1983 in federal district court. They sought a declaration that Indiana Code § 31-32-4-2(b) violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment by authorizing state court judges to withhold appointment of counsel for children in dependency proceedings. C.A. A49-51. They also sought an injunction requiring the Director of Indiana's Department of Child Services to provide children in dependency proceedings with counsel. C.A. A49-51. Petitioners sued several state court judges who conduct periodic reviews of their cases, but sought only declaratory relief against them. C.A. A49-51.

The district court granted respondents' motion to dismiss. C.A. A5-14. Its sole basis for dismissal was its conclusion that "[i]mportant state interests presented in CHINS proceedings require the [c]ourt to abstain under the doctrine of *Younger v. Harris*," 401 U.S. 37 (1971). C.A. A5-14.

2. The court of appeals affirmed dismissal, applying its own discretion to abstain independent of Younger

Petitioners appealed, seeking review of "[w]hether Congress's grant of jurisdiction to the district court obliged that court to decide the children's claims." C.A. Opening Br. 1-3. Respondents similarly identified the sole issue presented as "[w]hether the district court correctly applied *Younger* abstention to dismiss Plaintiffs' complaint for declaratory and injunctive relief." C.A. Response Br. 2.

The Seventh Circuit affirmed without deciding "whether *Younger* does, or does not, apply." Pet. App. 6a. That issue, the court held, "does not matter" because "a federal court has discretion to put any federal proceeding on hold while a state works its way through an administrative process that was under way before the federal suit began." Pet. App. 6a. The court declared that, "unless there is some urgent need for federal intervention," "[p]rinciples of comity entitle the states to make their own decisions, on federal issues as well as state issues." Pet. App. 6a. The court's sole support for this broad authority was its own prior

precedent in *Courthouse News Serv. v. Brown*, 908 F.3d 1063 (7th Cir. 2018).

The Seventh Circuit saw no "urgent need" to exercise its jurisdiction here because, in its view, the state proceedings were adequate to protect any interest the children had in obtaining counsel. Pet. App. 6a-9a. It based that conclusion almost entirely on its views on the merits of the children's Due Process claim—which no party had briefed and the district court had never addressed: "Unless there is a 'civil *Gideon*' principle requiring counsel in every case," the court opined, "the state's procedures suffice." Pet. App. 7a. It reasoned that because parents are not "automatically" entitled to counsel when a court terminates parental rights, "children are not automatically entitled to lawyers." Pet. App. 8a-9a (citing *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981)). And "[b]ecause children are not automatically entitled to lawyers—as opposed to the sort of adult assistance that Indiana routinely provides—it would be inappropriate for a federal court to resolve the appointment-of-counsel question in any of the ten plaintiffs' state proceedings." Pet. App. 9a.

Thus, the Seventh Circuit exercised its purported discretion to abstain from deciding the merits of petitioners' claims based on its view of the merits of one of their claims. Pet. App. 7a-9a. It did so based in part on its alleged findings about the supposed adequacy of other assistance for children—findings contrary to the complaint's allegations, which the court was required to accept as true. *Compare* Pet. App. 7a-9a

(purporting to find that "most children have adult representatives" in dependency proceedings, which "suffice" to protect children), *with* C.A. A26 (complaint identifying "empirical studies" finding that any such representatives are insufficient to protect children's "most fundamental protected interests").

Petitioners sought rehearing and rehearing en banc, which the Seventh Circuit denied in a summary order. Pet. App. 24a.

REASONS FOR GRANTING THE PETITION

I. THE SEVENTH CIRCUIT'S DECISION CONFLICTS WITH RULINGS OF NUMEROUS OTHER COURTS OF APPEALS

As the Fourth Circuit recently observed, the Seventh Circuit's approach to abstention as "'a license for freeform ad hoc judicial balancing'" is "inconsistent" with the decisions of other circuits. *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 325 n.2 (4th Cir. 2021) (quoting *Courthouse News Serv. v. Brown*, 908 F.3d 1063 (7th Cir. 2018)). The conflict is deeply entrenched. Two circuits have specifically repudiated the Seventh Circuit's abstention decisions. At least five more have rejected abstention in ways that show a direct conflict with the decision here. Those courts have refused calls to expand abstention based on general principles of comity and federalism. Notably, no circuit beyond the Seventh has held that federal courts have free-wheeling discretion to abstain absent the exceptional circumstances of a particular abstention doctrine. That sharp conflict warrants this Court's review.

A. Two Circuits Expressly Recognize A Conflict With The Seventh Circuit And Openly Reject That Court's View

Two circuits have expressly acknowledged their conflict with the Seventh Circuit, openly rejecting its approach to abstention.

Fourth Circuit. In *Schaefer*, Courthouse News sued officials from two Virginia courts, alleging that denying its reporters prompt access to newly filed civil complaints violated the First Amendment. 2 F.4th at 322. The defendants argued that the federal court should abstain under *Younger*, 401 U.S. 37. *Id.* at 324. The Fourth Circuit rejected those arguments because "federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress" absent "'carefully defined' situations in which courts may abstain." *Ibid*. (citing *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996), and *New Orleans Public Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 359 (1989) (*NOPSI*)).

Applying those principles, the Fourth Circuit rejected abstention. *Younger* was inapposite, the Fourth Circuit explained, because the defendants had "not pointed to any ongoing state proceeding with which this case would interfere." *Ibid*. Nor were plaintiffs seeking relief that fit within any of the "carefully defined" situations necessary for abstention. *Ibid.* The court emphasized that the district court had denied injunctive relief, and the declaratory relief the plaintiffs sought did not threaten the kind of undue

interference required for abstention. *Ibid*. (citing *O'Shea v. Littleton*, 414 U.S. 488 (1974); *Rizzo v. Goode*, 423 U.S. 362 (1976)).

In reaching this conclusion, the Fourth Circuit expressly repudiated the Seventh Circuit's rule that "'general principles of federalism'" permit abstaining even though the underlying claims did not fit the "principal categories of abstention." *Id*. at 325 n.2 (quoting *Brown*, 908 F.3d at 1071). That free-form approach to abstention "is inconsistent with our precedent and Supreme Court guidance," the Fourth Circuit held. *Ibid.*

The Fourth Circuit's decision in *Schaefer* unquestionably conflicts with the Seventh Circuit's decision here. Unlike the Fourth Circuit, the Seventh Circuit found no need to meet the "'carefully defined' situations in which courts may abstain," *Schaefer*, 2 F.4th at 324, instead relying on the ad hoc approach the Fourth Circuit disavowed. Indeed, *Courthouse News Serv. v. Brown*—the specific Seventh Circuit decision the Fourth Circuit criticized—was the Seventh Circuit's sole citation in support of its assertion here that "a federal court has discretion to put any federal proceeding on hold while a state works its way through an administrative process." Pet. App. 6a (citing *Brown*, 908 F.3d at 1063). And contrary to *Schaefer*, the Seventh Circuit failed to distinguish between petitioners' requests for injunctive and declaratory relief. *See Schaefer*, 2 F.4th at 324-25 ("[W]e note that a holding that the injunction Courthouse News sought was beyond the district court's power would not

undermine that court's ability to grant the request for declaratory judgment.").

Ninth Circuit. The Fourth Circuit is not alone in rejecting the Seventh Circuit's approach to abstention. In *Courthouse News Serv. v. Planet* (*Planet I*), Courthouse News brought a First Amendment suit against a California superior court clerk for failing to provide same-day access to newly filed civil complaints. 750 F.3d 776, 779 (9th Cir. 2014). The Ninth Circuit rejected the clerk's *Younger* abstention arguments, explaining that abstention "is inappropriate where the requested relief may be achieved without an ongoing intrusion into the state's administration of justice," and that those requirements were not met. *Id*. at 790.

Despite being presented with a "nearly identical" case, the Seventh Circuit in *Brown* expressly "disagree[d]" with the *Planet I* decision. *Brown*, 908 F.3d at 1074. Even though no established preemption doctrine provided "a perfect fit," the Seventh Circuit nonetheless concluded that "adjudication of this dispute in the federal court would run contrary to the considerations of equity, comity, and federalism" generally underlying abstention—the same ad hoc approach endorsed in the decision here. *Id*. at 1071, 1075. And the Seventh Circuit in *Brown* did not require the same kind of "ongoing intrusion" into state judicial proceedings required by the Ninth Circuit. *Planet I*, 750 F.3d at 790.

In the later *Courthouse News Serv. v. Planet* (*Planet II*), the Ninth Circuit itself acknowledged this conflict. 947 F.3d 581 (9th Cir. 2020). The court noted that it "disagree[d] * * * with the Seventh Circuit's decision" in *Brown*. *Id*. at 591 n.4. Thus, the Ninth Circuit reaffirmed its holding in *Planet I* that abstention requires exceptional circumstances, such as "'a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state * * * proceedings.'" *Id*. at 591 n.4 (quoting 750 F.3d at 790-92; alteration in *Planet II*).

The Seventh Circuit's decision here, which adhered to and expanded upon its decision in *Brown*, conflicts with the Ninth Circuit's decisions in *Planet I* and *Planet II*. At no point did the Seventh Circuit inquire into any exceptional circumstances, like an "ongoing intrusion" into a state's administration of criminal justice. Instead, it relied on the same general "[p]rinciples of comity" approach that the Ninth Circuit expressly rejected. *Compare* Pet. App. 6a, *with Planet I*, 750 F.3d at 790.

B. Holdings From Five Other Circuits Plainly Conflict With The Seventh Circuit's Overbroad View Of Abstention

While the Fourth and Ninth Circuits are the only courts of appeals to have called out the Seventh Circuit's abstention decisions by name, other circuits have issued decisions that plainly conflict with the Seventh's ad hoc approach.

Fifth Circuit. In *ODonnell v. Harris County*, for example, the plaintiffs sued various county officials alleging that the court's bail system for indigent misdemeanor arrestees violated Due Process and Equal Protection. 892 F.3d 147, 152 (5th Cir. 2018). The Fifth Circuit rejected the defendants' *Younger* abstention arguments because the plaintiffs' requested relief—"improvement of pretrial procedures and practice"—fell outside the carefully defined situations warranting abstention. *Id*. at 156. The Fifth Circuit rejected the argument that general "policy concerns" about "comity and federalism" warranted abstention absent *Younger*'s specified exceptional circumstances, such as relief that would "require federal intrusion into pretrial decisions" in criminal cases. *Id*. at 156-57.

ODonnell is incompatible with the Seventh Circuit's holding here. Rather than rely on vague "policy concerns" as the Seventh Circuit did, the Fifth Circuit rejected abstention because plaintiffs' requested relief did not fit the exceptional circumstances laid out in *Younger* and its progeny.

Eleventh Circuit. The Eleventh Circuit faced circumstances similar to *ODonnell* in *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir. 2018). After an indigent misdemeanor arrestee brought a constitutional challenge to a city's bail practices, the city invoked *Younger* abstention. *Id.* at 1251, 1254. The Eleventh Circuit found abstention inappropriate because the plaintiff did "not ask for the sort of pervasive federal court supervision of State criminal proceedings" that this Court had previously found warranted abstention.

Id. at 1255. For that reason, "the relief [plaintiff] seeks is not sufficiently intrusive to implicate *Younger*." *Ibid.* While the court acknowledged that *Younger* is grounded in "'principles of equity and comity,'" the Eleventh Circuit noted that "'a federal court's obligation to hear and decide a case is virtually unflagging,'" and thus rejected abstention absent the specific "exceptional circumstances" laid out in *Younger* and its progeny. *Id*. at 1254 (citation omitted).

Walker conflicts with the Seventh Circuit's approach. Rather than flipping the presumption in favor of jurisdiction by asking whether there was "some urgent need for federal intervention," as the Seventh Circuit did here (Pet. App. 6a), the Eleventh Circuit treated abstention as the exception, not the rule, requiring "exceptional circumstances" of "pervasive federal court supervision" over state criminal proceedings to abstain. *Walker*, 901 F.3d at 1254-55.

Tenth Circuit. The Tenth Circuit's decision in *Joseph A. ex rel. Corrine Wolfe v. Ingram* also conflicts with the decision below. 275 F.3d 1253 (10th Cir. 2002). Children removed from their families by a New Mexico state agency brought suit in federal court, alleging that they were denied meaningful access to adoption services. *Id*. at 1257. On those facts, the court explained that *Younger* abstention would be justified only if "federal court oversight of state court proceedings is required, coupled with significant restrictions on the freedom of attorneys to present information to the court." *Id*. at 1272. Because the Tenth Circuit was not convinced that every part of the parties' consent decree

met that specific requirement, it vacated the district court's decision to abstain and remanded for a "provision-by-provision" analysis. *Id*. at 1272-73.

Again, that reasoning is irreconcilable with the Seventh Circuit's approach. The Seventh Circuit never addressed whether petitioners' relief would "interfere" through ongoing "oversight" and "significant restrictions," as the Tenth Circuit required in *Ingram*. *Id*. at 1272. The Seventh Circuit merely saw no "urgent need" to decide petitioners' claims. Pet App. 6a. And unlike the Tenth Circuit, the Seventh Circuit summarily abstained across the board without ever analyzing whether each particular part of petitioners' requested relief required abstention. *See Ingram*, 275 F.3d at 1273 (requiring "provision-by-provision" analysis).

First Circuit. In *Planned Parenthood League of Massachusetts v. Bellotti*, the plaintiffs challenged the constitutionality of a Massachusetts statute that required minors seeking an abortion without parental consent to obtain permission from a superior court judge. 868 F.2d 459, 460 (1st Cir. 1989). Noting that "abstention is the exception, not the rule," and "an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it," the First Circuit reversed the district court's decision to abstain. *Id*. at 464 (citation omitted). The court explained that the plaintiffs sought only to have a statute declared unconstitutional, "a permissible [remedy] to pursue in federal court." *Id.* at 465. Because that relief would merely prohibit "an unconstitutional

process," rather than cause "ongoing intermeddling with the state judiciary," no "extraordinary" circumstances justified abstention. *Id*. at 464-65.

Bellotti, too, is at odds with the Seventh Circuit's decision. Petitioners here likewise sought a declaration that a state statute imposed an unconstitutional procedure. But the Seventh Circuit abstained based on the mere existence of a state "administrative process" (Pet. App. 6a), without requiring that petitioners' relief involve "ongoing intermeddling with the state judiciary." In doing so, the Seventh Circuit applied the opposite presumption from the First Circuit's. *Compare* Pet. App. 6a (no abstention absent "urgent need for federal intervention"), *with Bellotti*, 868 F.2d at 464 (abstention is "extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it"; citation omitted).

D.C. Circuit. The decision below is also in considerable tension with *Kaplan v. Hess*, 694 F.2d 847 (D.C. Cir. 1982) (per curiam). There, the plaintiffs brought a First Amendment challenge to D.C. superior court judges' requirement that the plaintiffs stand when the judges entered or exited the courtroom, asking the federal court for both injunctive and declaratory relief. *Id*. at 849. The D.C. Circuit reversed the district court's decision to abstain. *Id*. at 849-50. The court of appeals explained that it doubted whether plaintiffs' requested relief—especially declaratory relief—would have sufficiently "intrusive consequences" into judicial proceedings to warrant abstention. *Id*. at

850. By contrast, here the Seventh Circuit made no distinction between injunctive and declaratory relief, nor did it make any attempt to analyze the intrusiveness of petitioners' requested relief.

C. No Circuit Has Embraced The Seventh Circuit's View Of Discretion To Abstain In Any Case Merely Because Of An Ongoing State Proceeding

Even decisions upholding district court orders abstaining under *Younger* and its progeny make clear that the Seventh Circuit is an outlier. No other circuit has abstained in circumstances remotely similar to those here without first concluding that the facts fit one of the carefully defined categories necessary for abstention, such as a suit requiring significant and ongoing federal intrusion into certain state proceedings. *See*, *e.g.*, *Disability Rts. v. New York*, 916 F.3d 129, 136 (2d Cir. 2019) (upholding abstention where "requested relief would effect a continuing, impermissible 'audit' " of state proceedings); *Family C.L. Union v. Dep't of Children & Family Servs.*, 837 F. App'x 864, 868-69 (3d Cir. 2020) (plaintiffs sought "vague and unworkable" relief that "would result in 'nothing less than an ongoing federal audit'"); *Parker v. Turner*, 626 F.2d 1, 7-9 (6th Cir. 1980) (rather than challenge "a statute or court rule" plaintiffs sought relief that "would necessarily require monitoring" state proceedings); *Bonner v. Cir. Ct.*, 526 F.2d 1331, 1336-37 (8th Cir. 1975) ("ongoing federal audit"). And none of those decisions claimed the kind of unfettered discretion to abstain advanced by the Seventh Circuit.

* * *

The Seventh Circuit's decision here entrenches that court in open conflict with two circuits and in plain conflict with at least five more. Only this Court's intervention can resolve this clear conflict.

II. THE SEVENTH CIRCUIT'S DECISION IS WRONG

The Seventh Circuit's decision is riddled with error. The court's ad hoc, discretionary approach to abstention turns the presumption in favor of exercising jurisdiction on its head. The court relies on the supposed adequacy of state procedure even though this Court has held that this factor cannot be determinative. Even worse, the Seventh Circuit reached beyond the issues presented by the parties to opine on the merits of a constitutional question with no bearing on the abstention question before it. And under the established test for *Younger* abstention—which the Seventh Circuit simply refused to apply—no exceptional circumstances warranted the court's refusal to hear petitioners' claims.

A. Abstention Is The Exception, Not The Rule

This Court's abstention decisions are clear: federal courts have a "virtually unflagging" obligation to "hear and decide" cases within their jurisdiction. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (citation omitted). Although this Court has developed various abstention doctrines, generally named for the case that first recognized the relevant principle, those

doctrines share a common core: federal courts may decline to decide cases within their jurisdiction in only "exceptional," and specifically delineated, circumstances. *Id.* at 73 (addressing *Younger* abstention); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 19 (1983) (*Colorado River* abstention requires "exceptional circumstances"); *Quackenbush*, 517 U.S. at 726 (*Burford* abstention applies to "narrow range of circumstances").

An ongoing state proceeding related to a federal claim, standing alone, has never been enough to trigger any of those abstention doctrines. "Parallel state-court proceedings do not detract from th[e] obligation" federal courts have to exercise the jurisdiction Congress granted them. *Sprint*, 571 U.S. at 77. Instead, significantly more is required to "justify a federal court's refusal to decide a case in deference to the States." *NOPSI*, 491 U.S. at 368.

Sprint delineated the specific exceptional circumstances, developed under *Younger* and its progeny, that warrant abstention because of a parallel state proceeding. 571 U.S. at 77-78. For starters, the federal plaintiff must be the target of an exercise of coercive state authority in a pending state proceeding. *Id.* at 78-79. The plaintiff also must be seeking relief that would effectively enjoin the state proceeding against it. *Ibid.* And even then, the state proceeding must be one of three specified types to trigger abstention: an "ongoing state criminal prosecution"; certain "civil enforcement proceedings" that are "akin to criminal prosecutions"; or state "civil proceedings involving

certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial function." *Id.* at 72-73, 78-79. Only if all those circumstances exist should courts consider "*additional* factors," including the importance of any state interest in being free from potential federal interference and whether the state proceeding provides an adequate opportunity to raise the federal claim. *Id.* at 81-82 (emphasis in *Sprint*). But in the end, *Sprint* was clear that abstention in deference to state proceedings extended to those specified exceptional circumstances, and "no further." *Ibid.*

The Seventh Circuit turned these basic rules on their head. It asserted unfettered "discretion" to "put *any* federal proceeding on hold" in deference to state proceedings "unless there is some urgent need for federal intervention." Pet. App. 6a (emphasis added). In this way, the Seventh Circuit transformed federal courts' "virtually unflagging" obligation to exercise jurisdiction into a general presumption in favor of abstention whenever state proceedings are implicated. *Sprint*, 571 U.S. at 77. That approach is directly and obviously contrary to this Court's binding precedent.

The Seventh Circuit was wrong to insist that "the norm is that the state tribunal handles the entire proceeding." Pet. App. 6a-7a. This Court's "dominant instruction" is "that, even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the 'exception, not the rule.'" *Sprint*, 571 U.S. at 81-82 (quoting *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984)). Simply put, "there

is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts." *NOPSI*, 491 U.S. at 373.

The decision below is thus irreconcilable with this Court's unequivocal instructions. Federal courts "have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" *Sprint*, 571 U.S. at 77 (quoting *Cohens*, 19 U.S. (6 Wheat.) at 404). Overriding that principle requires "exceptional circumstances" beyond "parallel state proceedings." *Id.* at 81-82. Any other rule would render meaningless this Court's carefully delineated abstention doctrines, under both *Younger* and other cases not implicated here. *Ibid*.

B. State Procedures For Hearing Federal Claims Are Insufficient To Compel Abstention

The Seventh Circuit's view of nearly limitless discretion to abstain from any case involving state proceedings conflicts with this Court's decisions in another way: the Seventh Circuit erroneously relied on its belief that "the state's procedures suffice" to protect children's federal rights. Pet. App. 7a.

This Court has specifically repudiated abstention premised only on the adequacy of state procedure. In *Sprint*, the Eighth Circuit had held that federal courts may abstain "whenever 'an ongoing state judicial proceeding implicates important state interests, and the state proceedings provide an adequate opportunity to raise federal challenges.'" 571 U.S. at 75-76 (cleaned

up). This Court rejected that standard's "extraordinary breadth" because it would apply "to virtually all parallel state and federal proceedings." *Id.* at 81.

So too here. Without more, the mere availability of state procedures for raising petitioners' constitutional claims cannot justify abstention. The Seventh Circuit's contrary holding directly conflicts with *Sprint*. Pet. App 7a.

What is more, it is far from clear that any such procedures were actually available to petitioners. Juvenile dependency proceedings are generally an inadequate forum for children to demand federal constitutional relief, especially as a class. *See LaShawn A. ex rel. Moore v. Kelly*, 990 F.2d 1319, 1322-23 (D.C. Cir. 1993) (rejecting abstention in part for this reason). The Seventh Circuit nonetheless asserted that "state judges have the authority to appoint counsel for children" and that "most children have adult representatives," some of whom "may be lawyers." Pet. App. 7a. But petitioners are children who were, in fact, not appointed counsel. And nothing in the pleadings suggests these children—some of whom were preschool age when they filed this suit—could have asserted a right to counsel in the state dependency proceedings. Yet the Seventh Circuit simply assumed that the unrepresented minor petitioners could have raised their constitutional claims in state court.

C. Unbriefed And Undecided Merits Questions Cannot Justify Abstention

Compounding these errors, the Seventh Circuit exercised its purported discretion to abstain based on its view of the merits of petitioners' Due Process claim. In the court's own words, "[b]ecause children are not automatically entitled to lawyers * * * it would be inappropriate for a federal court to resolve the appointment-of-counsel question." Pet. App. 7a. That reasoning is baffling. Abstention is a legal conclusion that a federal court should not reach the merits of a claim. *Younger*, 401 U.S. at 54. It is not an invitation for federal courts to summarily dismiss federal claims they think lack merit.

To make matters worse, the Seventh Circuit reached its merits conclusions without the benefit of adversarial briefing or even a district court decision to review. Basic principles of party presentation generally limit courts to "decid[ing] only questions presented by the parties." *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (reversing Ninth Circuit for failing to follow this principle; internal quotation marks and citation omitted). The Seventh Circuit's slapdash opinion here confirms the importance of these principles—the court failed to recognize key precedent concerning children's due process rights to counsel (*e.g.*, *In re Gault*, 387 U.S. 1, 19, 41 (1967) (holding that "fundamental requirements of due process" require providing children counsel in proceedings that "may result in commitment to an institution")); failed to apply this Court's three-step framework for

determining due process rights to counsel in civil proceedings (*see Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); and failed to even acknowledge petitioners' separate equal protection claim (Pet. App. 6a-9a).

D. No Exceptional Circumstances Warrant Abstention Here

The Seventh Circuit identified no "exceptional circumstances" warranting departure from federal courts' general obligation to exercise their jurisdiction. None exists.

As relevant here, the only exceptional circumstances that could warrant abstention require: a federal plaintiff (1) who is the target of (2) quasi-criminal state enforcement proceedings and (3) seeks to have a federal court effectively enjoin the state action, at least so long as (4) those proceedings implicate important state interests and provide an adequate opportunity to raise federal claims. *Sprint*, 571 U.S. at 73, 77-79, 81-82. Absent any one of those, abstention is unwarranted. *Ibid.* Thus in *Sprint* itself, although Sprint sought a declaration that federal law preempted ongoing state proceedings, this Court reversed the lower court's choice to abstain. *Id.* at 78-79. The ongoing state proceeding was not invoked "to sanction Sprint for commission of a wrongful act." *Id.* at 79-81. Likewise, the state proceeding—to decide a private-party dispute about utility rates—was not the sort of "quasi-criminal" proceeding required for abstention. *Ibid.*

This case falls outside *Younger*'s specifically limited reach for similar reasons and more. Indiana dependency proceedings are not brought to sanction children for wrongdoing. Ind. Code § 31-34-9-3. Rather, the proceedings are purportedly for the children's benefit, to determine whether they need state services and to develop and implement a plan for providing those services. *Ibid*. Nor do the children seek relief that would effectively enjoin the dependency proceedings or require the kind of ongoing, pervasive federal oversight that has been required in the past. *See O'Shea*, 414 U.S. at 500-02 (abstention warranted where plaintiffs sought "continuous supervision by the federal court over the conduct" of state criminal trials). Instead, the children's requested declaratory and injunctive relief would aid the state proceedings, because providing children counsel would improve case planning, reduce the time children spend within the juvenile court system, and save costs. C.A. A6-7, C.A. A18-19; C.A. A89-106 (describing the conclusions of multi-year U.S. Department of Health and Human Services study on providing children counsel).

Although those reasons alone require rejecting abstention, there is another: the ongoing state dependency proceedings here fit none of the specified types of judicial proceedings required for abstention under *Younger*. The district court thought the proceedings were akin to criminal prosecutions because of the potential for parents to be sanctioned for abusing children in their care. C.A. A9-12 (citing *Moore v. Sims*, 442 U.S. 415 (1979)). But the district court ignored

that by the time petitioners filed suit, they had long since been removed from their parents. C.A. A28-37. Thus, when this case was filed, no child was party to the types of proceedings at issue in *Moore*. C.A. A28-37; *Moore*, 442 U.S. at 418-23 (applying abstention where parents sought to enjoin Texas proceeding in which Texas accused parents of abuse and sought to remove children). Instead, the relevant ongoing state proceedings here involved only periodic review of the children's case files to determine whether Indiana was providing adequate services to meet the children's needs. Ind. Code §§ 31-34-21-1, 31-34-21-2. For this additional reason, abstention was improper.

* * *

Considered together, the Seventh Circuit's errors reflect "a clear misapprehension" of the law, and its opinion cannot "be reconciled with the principles set out" in this Court's abstention jurisprudence. *Tolan v. Cotton*, 572 U.S. 650, 659-60 (2014) (per curiam). For those reasons, summary reversal would even be warranted.

III. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING, AND THIS CASE IS AN IDEAL VEHICLE TO ANSWER IT

This case presents the perfect opportunity for this Court to clarify a question of law central to countless litigants' efforts to vindicate their constitutional rights in federal court. For one, proper resolution of this case is critical to thousands of children currently in Indiana

foster care, whose lives are permanently—and often catastrophically—altered by dependency proceedings in which they have no voice.

But the Seventh Circuit's departure from this Court's abstention teachings—and the law of every other circuit—has much broader implications. If abstention is, as the Seventh Circuit insists, a matter of unbridled judicial discretion, then no litigant whose federal suit touches on any state proceeding can know whether federal courts remain an available forum. Indeed, the decision below is only the latest in a rash of cases, in a variety of contexts, in which the Seventh Circuit has recycled its flawed approach. *See Krueger v. Kaul*, 805 F. App'x 411, 413 (7th Cir. 2020) (relying on general "principles of equity, comity, and federalism" to abstain even where the case "does not fit neatly into the scenarios under which it is appropriate to abstain under *Younger*"); *Wade v. Barr*, 775 F. App'x 247, 248 (7th Cir. 2019) (asserting that "federal courts *normally* should abstain from exercising jurisdiction over federal constitutional claims that would interrupt ongoing state-court proceedings" without any mention of exceptional circumstances); *Brown*, 908 F.3d at 1071 (treating abstention as the "ordinar[y]" course of action even where recognized circumstances requiring abstention are "not a perfect fit"). The issue is thus certain to recur.

This case presents an excellent vehicle for this Court to restore uniformity and clarity to the law of abstention. The Seventh Circuit rested its decision solely on its view of broad authority to "put any federal

proceeding on hold while a state works its way through an administrative process." Pet. App. 6a. This Court's intervention is needed to make clear that the Seventh Circuit had no such discretion.

CONCLUSION

The petition for a writ of certiorari should be granted or, alternatively, the judgment should be summarily reversed.

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