APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 20-1300

MARC FISHMAN,

Plaintiff-Appellant

v.

OFFICE OF COURT ADMINISTRATION NEW YORK STATE COURTS, MICHELLE D'AMBROSIO, IN HER ADMINISTRATIVE AND OFFICIAL CAPACITY, NEW YORK STATE UNIFIED COURT SYSTEM, NANCY J. BARRY, DISTRICT EXECUTIVE OF THE 9TH DISTRICT NEW YORK COURTS, IN HER ADMINISTRATIVE AND OFFICIAL CAPACITY, DAN WEITZ, PROFESSIONAL DIRECTOR, IN HIS ADMINISTRATIVE AND OFFICIAL CAPACITY

Defendants-Appellees

Appeal from the United States District Court for the Southern District of New York.

ARGUED: September 10, 2021
Decided: September 28, 2021

SUMMARY ORDER

Counsel: FOR APPELLANT: CANER DEMIRAYAK, Law Office of Caner Demirayak, Brooklyn, New York.

FOR APPELLEE D'AMBROSIO: DAVID LAWRENCE III, Assistant Solicitor General (Barbara D. Underwood, Solicitor General, Steven C. Wu, Deputy Solicitor

General, on the brief), for Letitia James, Attorney General of the State of New York, New York, New York.

FOR APPELLEES OFFICE OF COURT ADMINISTRATION OF THE NEW YORK STATE COURTS, NEW YORK STATE UNIFIED COURT SYSTEM, NANCY J. BARRY, DAN WEITZ: LISA MICHELLE EVANS, Assistant Deputy Counsel (Elizabeth A. Forman, on the brief), for Eileen D. Millett, Counsel, New York State Office of Court Administration, New York, New York.

Judges: PRESENT: DENNIS JACOBS, SUSAN L. CARNEY, RICHARD J. SULLIVAN, Circuit Judges.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order entered on March 5, 2020, is **AFFIRMED**.

Marc Fishman appeals the dismissal under Federal Rule of Civil Procedure 12(b)(6) of his pro se lawsuit alleging violations of Title II of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12131-12165, and section 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq. Defendants-Appellees are the New York State Unified Court System and its Office of Court Administration ("OCA"); Nancy Barry, an OCA district executive; Daniel Weitz,[2] the OCA professional director (OCA,

[2] In the caption and throughout the briefs, this defendant's last name is spelled "Weisz," but the correct spelling appears to be "Weitz," based on his signature displayed in attachments filed in the district court.

Barry, and Weitz, together, the "OCA defendants"); and Michelle D'Ambrosio, a court attorney to then-Judge Michelle Schauer.

Fishman was involved in state family court proceedings originating with his 2012 divorce and involving disputes about child visitation rights and other related matters.[3] In this suit, filed in the U.S. District Court for the Southern District of New York, he seeks an award of damages against defendants as well as declaratory and injunctive relief with regard to their asserted denials of certain requested ADA accommodations in connection with the state proceedings. We assume the parties' familiarity with the underlying facts, procedural history, and arguments on appeal, to which we refer only as necessary to explain our decision to affirm.

1. Claim for damages against D'Ambrosio. On de novo review, we conclude, for the same reasons as those articulated by the district court in its decision and order, that judicial immunity bars Fishman's claims for damages against D'Ambrosio. In her role as court attorney, D'Ambrosio functioned as a law clerk to [*3] Judge Schauer, and Fishman's claims against D'Ambrosio pertain to Judge Schauer's determinations that "related to" Fishman's individual case. *See Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009) ("[A]cts arising out of, or related to, individual cases before the judge are considered judicial in nature" and protected by judicial immunity); *Oliva v. Heller*, 839 F.2d 37, 40 (2d Cir. 1988) (holding that "for purposes

[3] In his written submissions to this Court, Fishman asserted both that no state court action involving any defendant is still pending and also, contrarily, that "related state court proceedings," in which "defendant OCA" is involved, remain "pending." Appellant's Br. at 29-30. During oral argument, his counsel advised that he is involved in only one matter still pending in New York state courts, but it is a criminal proceeding (related to a violation of an order of protection) and is not before the family court.

of absolute judicial immunity, judges and their law clerks are as one"). Accordingly, D'Ambrosio is sheltered from a damages claim for the actions taken by her in the capacity of court attorney and involving Fishman's case.

2. Claims for injunctive and declaratory relief against D'Ambrosio and OCA defendants. Like the district court, we conclude that Fishman's claims for injunctive and declaratory relief against all defendants must be dismissed: the *Rooker-Feldman* doctrine (as to claims arising from any final state orders) and principles of *Younger* and *O'Shea* abstention (as to claims regarding any ongoing state proceedings and potential interference with state court operations, respectively) preclude the district court from entering the requested relief. *See Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014) (explaining that the *Rooker-Feldman* doctrine prohibits federal courts from exercising jurisdiction over suits [*4] challenging final state court orders); *O'Shea v. Littleton*, 414 U.S. 488, 500, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974) (prohibiting federal courts from intervening in state courts' procedures and processes); *Younger v. Harris*, 401 U.S. 37, 43-45, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971) (cautioning that federal courts generally should refrain from enjoining pending state court proceedings). The district court correctly concluded that it was either unlawful or imprudent for it to enter any order directing the state family court to conduct its affairs differently than it did in dealing with Fishman.

3. Claims for damages against OCA defendants. As to Fishman's remaining claims—those seeking damages from the OCA defendants—the district

court relied on the Eleventh Amendment in entering its dismissal order. We may affirm, however, on any ground fairly presented by the record on appeal. *Munoz-Gonzalez v. D.L.C. Limousine Serv., Inc.*, 904 F.3d 208, 212 (2d Cir. 2018). We do so on the ground that Fishman has failed to state a claim on which relief may be granted.[4]

To establish a prima facie claim under either Title II of the ADA or section 504 of the Rehabilitation Act, a plaintiff must satisfy three requirements: he must show that (1) he is a "qualified individual" with a disability; (2) he was excluded from participation in a public entity's services or programs or was otherwise discriminated against by a public entity; and (3) such exclusion or discrimination was due to his disability. *Hargrave v. Vermont*, 340 F.3d 27, 34-35 (2d Cir. 2003); *see generally Dean v. Univ. at Buffalo Sch. of Med. & Biomed. Scis.*, 804 F.3d 178, 187 (2d Cir. 2015) (explaining that courts analyze claims under Title II and section 504 in tandem). The parties dispute whether Fishman is a qualified individual with a disability—the first requirement. Regardless of the correct resolution of that dispute, however, we conclude that Fishman has not plausibly alleged facts to satisfy the second and third requirements of the prima facie case.

Fishman claims primarily that the OCA defendants refused to provide him with reasonable ADA accommodations when they denied his request for computer-assisted real-time transcription ("CART") services, failed to administratively grant

[4] In light of this conclusion, we do not reach the question whether the state's Eleventh Amendment immunity has been waived or otherwise abrogated under either Title II of the ADA or section 504 of the Rehabilitation Act, including by acceptance of federal funding.

certain other requested accommodations, and failed to provide an ADA-compliant grievance procedure. In considering the complaint's sufficiency under Rule 12(b)(6), we consider the complaint and documents integral to the complaint and also take judicial notice of certain information in the public record. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152-53 (2d Cir. 2002); *see also* Fed. R. Evid. 201.[5]

(a) CART services request. Fishman has not plausibly alleged that the denial of CART services and CART-produced transcripts constituted a failure to provide a reasonable ADA accommodation. His request for CART services was premised on his assertion that he had difficulty remembering the oral instructions of the court. In response to his multiple requests for this accommodation, the OCA defendants explained that the OCA provides CART only as an aid for individuals with hearing impairments. Thus, Fishman was required to provide medical documentation of a hearing impairment to obtain CART services, which he did not appear to do. As the state court records attached to Fishman's filings in the district court show, in addition to the general availability of written transcripts after hearings, the court gave Fishman alternative

[5] The OCA defendants ask us to take judicial notice of exhibits attached to the declaration of Lee Alan Adlerstein filed in the district court. Adlerstein Decl., ECF No. 71. These materials include an email from defendant Barry to Fishman dated June 15, 2018, and Fishman's response email to Barry dated June 18, 2018. Fishman has not objected. Fishman asks the court to take judicial notice of the New York State Unified Court System's webpage describing the ADA accommodations request process. ADA Accommodation Request Process, N.Y. State Unified Ct. Sys., http://ww2.nycourts.gov/ada-accommodation-request-process-32956 (last visited Sept. 9, 2021). We grant both requests, determining that the material is authentic and observing that the parties do not dispute the materials' authenticity. *See Oneida Indian Nation of N.Y. v. New York*, 691 F.2d 1070, 1086 (2d Cir. 1982). We also rely on parts of the state court record attached to the parties' filings in the district court; to the extent that those records are attached to filings other than the amended complaint, they are either incorporated by reference into or "integral" to Fishman's complaint. *Chambers, 282 F.3d at 153* ("Even where a document is not incorporated by reference, the court may nevertheless consider it where the complaint relies heavily upon its terms and effect, which renders the document integral to the complaint." (internal quotation marks omitted)); *see also* Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.").

accommodations during its proceedings. These accommodations included permission to have his ADA advocate present at hearings and permission to use a neutral, non-witness notetaker as well. Further, Fishman makes no plausible allegations that the absence of CART services or CART-produced transcripts affected his ability to participate effectively in proceedings either before or after he first requested ADA accommodations in late 2016.

In light of the alternative accommodations granted or offered by the OCA defendants and reflected in the record, we conclude that he has not plausibly alleged that the denial of CART services by itself constituted unlawful discrimination. *See generally Noll v. IBM*, 787 F.3d 89, 95 (2d Cir. 2015) (reasonable accommodation must be "effective" but need not be "a perfect accommodation or the very accommodation most strongly preferred" by the individual).

(b) Administrative denial of other requested accommodations. Fishman alleges further that the OCA defendants ran afoul of the ADA when they denied his request for judicial accommodations that had already been denied by Judge Schauer. But the record is clear that, by statute and practice, the OCA defendants had no authority to override the judicial decision-makers' denials of requested accommodations.[6] The

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[6] The state court website, of which we have taken judicial notice, *see supra* at 4 n.3, explains this division of authority as follows:

> A Chief Clerk or District Executive cannot grant, as an ADA accommodation, a request that involves a judicial balancing of the rights of the parties or the Judge's inherent power to manage the courtroom and the proceeding. . . . Those types of accommodation requests must be decided by the judge or judicial officer presiding over the case.

ADA Accommodation Request Process, N.Y. State Unified Ct. Sys., http://ww2.nycourts.gov/ada-accommodation-request-process-32956 (last visited Sept. 9, 2021).

ADA does not compel the OCA defendants to take actions they are not authorized to take. *Cf. Bey v. City of New York*, 999 F.3d 157, 161 (2d Cir. 2021) (concluding that an accommodation is not "reasonable" if providing it is prohibited by law).

(c) Grievance procedure. Fishman asserts that the OCA violated the ADA by failing to provide an ADA-compliant grievance procedure. This assertion is flatly contradicted by both general information in the public record and specific records in Fishman's case. The New York State Unified Court System website explains in detail and in plain language the established process for requesting ADA accommodations, including both judicial and administrative accommodations. *See* ADA Accommodation Request Process, N.Y. State Unified Ct. Sys., http://ww2.nycourts.gov/ada-accommodation-request-process-32956 (last visited Sept. 9, 2021). The website also describes how to appeal denials of such requests. The state court judicial record shows that Fishman availed himself of these appeals processes: He has appealed multiple judicial determinations (regarding his ADA accommodations requests and otherwise) through the ordinary state court processes. He also appealed defendant Barry's administrative determination with respect to the provision of CART, and defendant Weitz affirmed the denial with a full explanation. We therefore affirm the district court's dismissal of the damages claims against the OCA defendants: we conclude that Fishman has not stated a claim on which relief may be granted.

* * *

We have considered Fishman's remaining arguments and find in them no basis for reversal. Accordingly, we **AFFIRM** the district court's order dismissing the second amended complaint.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 18-cv-282 (KMK)

MARC H FISHMAN,

Plaintiff.

v.

OFFICE OF COURT ADMINISTRATION NEW YORK STATE COURTS, ET. AL.,

Defendants.

Filed: March 5, 2020

OPINION AND ORDER

KENNETH M. KARAS, United States District Judge:

Pro se Plaintiff Marc Fishman ("Plaintiff") brings this Action, under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 et seq., the Rehabilitation Act, 29 U.S.C. § 794 et seq., and the New York Human Rights Law ("NYSHRL"), N.Y. Exec. Law §§ 290-301. Plaintiff seeks various forms of relief against the Office of Court Administration, New York State Courts ("OCA"); the New York State Unified Court System ("NYSUCS"); Nancy J. Barry, District Executive of the Ninth Judicial District ("Barry"); and Dan Weisz, Statewide ADA Coordinator for NYSUCS ("Weisz") (collectively, "OCA Defendants"); and Associate Court Attorney Michelle D'Ambrosio

("D'Ambrosio)[7] (collectively, "Defendants").[8] All Defendants are sued exclusively in their "administrative and official capacity[ies]." (See generally Sec. Am. Compl. ("SAC") (Dkt. No. 44-1).) Before the Court are D'Ambrosio's and OCA Defendants' respective Motions To Dismiss (the "Motions"). (Not. of Mot. (Dkt. No. 67); Not. of Mot. (Dkt. No. 70).) For the following reasons, the Motions are granted.

I. Background

A. Factual Background

The following facts, which are taken as true for the purpose of resolving the instant Motions, are drawn from Plaintiff's SAC, exhibits attached thereto, and matters of which judicial notice may be taken. *See Leonard F. v. Isr. Disc. Bank of N.Y.*, 199 F.3d 99, 107 (2d Cir. 1999).

Plaintiff is a divorced father of four minor children engaged in proceedings in the New York State Family Court ("Family Court"). (SAC ¶¶ 1, 155.) Plaintiff suffers from traumatic brain injury, post-concussion syndrome, occipital neuralgia, temporomandibular joint syndrome, sleep apnea, and other cognitive disorders. (Id. ¶¶ 1, 10, 173-182.) As relevant here, Plaintiff alleges that his rights were violated when Defendants "discriminated against [him] and other[s] similarly situated" and

[7] Although Plaintiff refers to D'Ambrosio as a "court administrator," her proper job title, "Associate Court Attorney," is listed on the public document displaying Judge Schauer's individual "Part Rules," available on the New York Courts system's official website at: https://www.nycourts.gov/LegacyPDFS/courts/9jd/PartRules/PR_MISchauer.pdf.

[8] Plaintiff names several additional purported defendants in his SAC, including Judge Gordon Oliver, Magistrate Carol Jordan, Judge Kathy Davidson, Judge Michelle I. Schauer, Judge Hal Greenwald, and Judge Alan Scheinkman. (SAC ¶ 1.) However, in issuing its Order of Service, the Court dismissed all such claims on judicial immunity grounds. (See Dkt. No. 46.) Accordingly, the recitation of facts below omits allegations that focus only on these dismissed defendants.

"retaliate[ed] against [them] with deliberate intent and indifference for [their] 'Qualified ADA Disabilities.'" (Id. ¶ 1.)

Plaintiff alleges that Defendants require "excessive proof of disability," (id. ¶ 11), and have therefore denied several of Plaintiff's requested accommodations, including his requests for "a note taker," "large print court orders," " access to medical records held in court," "use of the 'CART' real time transcription services," "use of notes in court," "morning only court appearances," adjournments based on his disability, and "home[-]based based visitation" after surgery. (Id. ¶¶ 1, 36.) The denial of these accommodations caused Plaintiff "and others similarly situated" anxiety and post-traumatic stress disorder, led to "extensive medical[] and therapy review," and "interfered with [Plaintiff's] civil rights as a father." (Id. ¶ 1.) Plaintiff has also been forced to "pay for the auxiliary aid[] of transcriber costs," (P 50), expending over $ 25,000, (id. ¶ 87), even though the requested accommodations could be provided at little cost to the courts, (id. ¶¶ 50, 87, 94-97).

Plaintiff also alleges certain specific adverse acts. In particular, he alleges that Family Court Judge Michelle I. Schauer ("Judge Schauer"), Magistrate Carol Jordan ("Magistrate Jordan") and their judicial staffs denied Plaintiff's requests for a note-taker despite repeatedly permitting his ex-wife "multiple note-takers." (Id. ¶¶ 43, 49, 71.) Additionally, several Family Court judges and officials, including Judge Schauer and D'Ambrosio, "intentionally" delayed the production of transcripts by "instructing the court clerk and staff not to send digital recordings or delay sending recordings" to Plaintiff's transcriber. (Id. ¶¶ 49, 74.) Specifically, Judge Schauer required a court

clerk to obtain individual permission before sending recordings for transcripts in Plaintiff's case, a practice that Plaintiff alleges was unusual. (Id. ¶ 73.)

In 2016, Plaintiff sent gifts to his children for Passover, Memorial Day, Independence Day and his twins' birthday. (Id. ¶ 59.) Although a temporary order of protection ("TOP") prohibited him from doing so, Plaintiff believed at the time that these particular gifts were permitted because they were "on major holidays." (Id. ¶ 60.) Plaintiff now acknowledges that "Defendants" (presumably Judge Schauer and D'Ambrosio) clarified at a prior hearing "that there were no major holidays between April and July 2016." (Id. ¶ 63.) However, with his "slight memory impairment" and without the assistance of a real-time transcript or a note-taker (denied by Judge Schauer), Plaintiff did not remember these instructions. (Id. ¶¶ 59-70.) Nevertheless, Judge Schauer denied him the opportunity to call "rebuttal medical witnesses to testify that [his] disabilities . . . prevented [him] from remembering" the Family Court's instructions. (Id. ¶¶ 70, 153.)

On another, unspecified, occasion, Judge Schauer again refused to allow a social worker to testify on Plaintiff behalf. (Id. ¶ 160.) Additionally, Judge Schauer and other Defendants have refused to lift the TOP restricting Plaintiff's access to his children's school, even though he is "zero threat" to the school and has no history of violence. (Id. ¶¶ 186-89.) Plaintiff believes that Judge Schauer's decisions were discriminatory, as "non-disabled fathers in similar court proceedings" have been treated differently, (id. ¶ 130), and retaliatory, as they followed multiple requests that she recuse herself, (id. ¶ 132).

Although the OCA Defendants were "repeatedly made aware" of Judge Schauer and D'Ambrosio's actions, they failed to "act administratively" to redress his complaints. (Id. ¶ 76-79.) Defendants have also failed to "negotiate or compromise" on Plaintiff's ADA accommodation requests. (Id. ¶ 205.) Plaintiff was informed by a court "ADA liaison," William Curry, that if the decision were his, he would ordinarily grant accommodations similar to those requested by Plaintiff. (Id. ¶¶ 79, 84.) By contrast, Defendants, including D'Ambrosio, scheduled afternoon court sessions (despite awareness of Plaintiff's need for afternoon naps) and denied his requests for a note-taker and related accommodations. (Id. ¶¶ 81, 84.)

Plaintiff further alleges that Magistrate Jordan and OCA staff threatened to jail Plaintiff if he did not bring multiple note-takers (from which she could choose) to court appearances in Family Court. (Id. ¶ 103.) Magistrate Jordan also failed to hear Plaintiff's requests to lower his child support obligations in light of his disabilities, or to "order the support collection unit to credit child support paid in 2014 and other years between September 2014 and November 2018." (Id. ¶ 109.) Additionally, Magistrate Jordan dismissed Plaintiff's cases for failure to appear, even though that failure was due to Plaintiff's recent hospitalization, and despite a doctor's letter indicating that Plaintiff should "not go to court for 5 days." (Id. ¶¶ 110-12.)

Plaintiff's additional allegations against unspecified Defendants include that they have: "exploited" his disabilities and "falsely mislabel[ed his] disabilities as personality disorders," (id. P 1); "sided with" his ex-wife's and children's counsel in custody proceedings and shared confidential medical information with that counsel,

(id. ¶¶ 24, 33); and failed to respond to his request that certain medical records, created by a court-appointed social worker from 2014-2016, be produced to his treating psychologist, (id. ¶ 184).

Plaintiff has tried to appeal adverse ADA decisions, but has determined that successfully appealing the denial of an ADA accommodation to New York's Second Department is "an impossible endeavor." (Id. ¶ 122.) First, Plaintiff was informed by Second Department Clerk of Court Aprilanne Agostino that responding to "ADA accommodations is an 'administrative function that the appellate division could not help me out with.'" (Id.) Likewise, the "[A]ppellate [D]ivision [S]econd [D]epartment recommended [that Plaintiff] contact" OCA and the Commission on Judicial Conduct ("CJC") about such matters. (Id. ¶ 123.) Both OCA and CJC, however, informed Plaintiff that he would need to file an appeal to the Second Department. (Id. ¶ 124.) When Plaintiff has done so, the Second Department has rejected Plaintiff's appeals, explaining that the denial of requested accommodations in Family Court cannot be appealed without a final order. (Id. ¶¶ 124, 141-42.) Plaintiff believes that Defendants have delayed issuing final orders in order to inhibit him from filing such appeals. (Id. ¶ 156.)

According to Plaintiff, "New York State's ADA accommodation process of allowing inexperienced Judges and Court Attorneys . . . in Family [C]ourt hearings to usurp the Experienced Court ADA Liaisons and prevent liaisons like William Curry from granting of ADA accommodations interferes with . . . and violates the ADA." (Id. ¶ 113.) This policy contrasts with the ADA policies of other states which

employ "central [ADA] administration judges" to provide accommodations within "hours or days." (Id. ¶ 116.)

Plaintiff seeks several forms of relief. First, he seeks a declaratory judgment declaring that New York State discriminated against him and others similarly situated in violation of federal and state law. (Id. ¶¶ A, C).[9] Second, Plaintiff requests that the Court issue an order requiring OCA to provide specific accommodations (e.g., "morning[-]only appearances due to my tiredness from sleep apnea," or that all of his requests "be administered by the court [ADA] liaison, not the sitting judge as is customary practice"). (Id. ¶ B.) Third, Plaintiff seeks reimbursement of various legal and medical costs as well as compensatory damages. (Id. ¶¶ D, E.) Fourth, Plaintiff requests that the Court direct Defendants to provide all previously requested accommodations, enjoin Defendants from retaliating against him, and order "a stay of all State Family Court proceedings until Defendants comply" with the ADA and the Rehabilitation Act, as well as grant "other relief as it deems just and equitable." (Id. ¶¶ F-I .)

B. Procedural Background

Plaintiff filed his initial Complaint and a request to proceed in forma pauperis ("IFP") on January 10, 2018. (Dkt. Nos. 1-2.) On January 19, 2018, the Court granted Plaintiff's IFP application. (Dkt. No. 7.) On July 9, 2018, Plaintiff filed his First Amended Complaint. (Dkt. No. 26.) On September 7, 2018, Plaintiff purported to file

[9] The last several paragraphs of Plaintiff's SAC are marked by letter rather than number. The Court identifies these paragraphs accordingly.

a second amended complaint without Defendants' written consent or the Court's leave. (Dkt. No. 32.) On October 9, 2018, the Court directed Plaintiff to file a second amended complaint that complied with Federal Rule of Civil Procedure 8. (Dkt. No. 41.) Plaintiff then filed the operative SAC on November 8, 2018. (Dkt. No. 44-1.) The Court issued an Order of Service as to current Defendants on November 26, 2018, but as it did so, the Court dismissed several original defendants, all judges of Westchester Family Court, on the grounds of absolute judicial immunity. (Dkt. No. 46.)

Plaintiff has also twice sought, and been denied, preliminary injunctions. On April 24, 2018, Plaintiff filed his first Motion for a Preliminary Injunction, seeking to be provided with "a qualified note taker, an aide for the court program of visitation[,] and large print court orders." (Dkt. No. 17.) On June 11, 2018, the Court held oral argument, (Dkt. No. 24), after which it filed an Order denying the Motion, (Dkt. No. 25). On August 31, 2018, Plaintiff filed a second Motion for a Preliminary Injunction, again seeking an order directing OCA to provide him with real-time transcription services during court proceedings. (Dkt. No. 29.) On January 9, 2019, the Court denied that Motion as well. (Dkt. No. 50.)

On May 23, 2019, D'Ambrosio filed her Motion To Dismiss and accompanying papers, (Dkt. Nos. 67-69), and the next day, OCA Defendants followed suit, (Dkt. Nos. 70-72). On July 24, 2019, Plaintiff filed a letter styled, "Request to file for Injunctive relief . . . and [O]pposition to [D]efendant[s'] [M]otion[s] [T]o [D]ismiss," which the Court construed as Plaintiff's Response. (Dkt. Nos. 79-80.) On July 31, 2019,

D'Ambrosio filed a Reply, (Dkt. No. 81), and on August 2, 2019, OCA Defendants file a letter in Reply as well, (Dkt. No. 82).

II. Discussion

Defendants advance several arguments: that D'Ambrosio is shielded by judicial immunity; that federal jurisdiction over the case is barred by Younger abstention; that the Eleventh Amendment bars many of the claims at issue; that Plaintiff, as a non-attorney, is forbidden from representing others in court, (see generally D'Ambrosio's Mem. of Law in Supp. of Mot. To Dismiss ("D'Ambrosio Mem.") (Dkt. No. 69)); and that the SAC fails to state a claim for which relief can be granted, (see generally OCA Defs.' Mem. of Law in Supp. of Mot. To Dismiss ("OCA Mem.") (Dkt. No. 72).) The Court addresses the arguments as needed.

A. Standard of Review

The Supreme Court has held that, while a complaint "does not need detailed factual allegations" to survive a motion to dismiss, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citations, quotation marks, and alterations omitted). Indeed, Rule 8 of the Federal Rules of Civil Procedure "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). "Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement." Id. (quotation marks and

alteration omitted). Rather, a complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Although "once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint," id. at 563, and a plaintiff need allege "only enough facts to state a claim to relief that is plausible on its face," id. at 570, if a plaintiff has not "nudged [his or her] claim[] across the line from conceivable to plausible, the[] complaint must be dismissed," *id.*; *see also Iqbal*, 556 U.S. at 679 ("Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged — but it has not 'show[n]' — 'that the pleader is entitled to relief.'" (citation omitted) (second alteration in original) (quoting Fed. R. Civ. P. 8(a)(2))); id. at 678-79 ("Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.").

In considering a motion to dismiss, the Court "must accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (per curiam); *see also Nielsen v. Rabin*, 746 F.3d 58, 62 (2d Cir. 2014) ("In addressing the sufficiency of a complaint we accept as true all factual allegations . . . ." (citation and quotation marks omitted)). Further, "[f]or the purpose of resolving [a] motion to dismiss, the Court . . . draw[s] all

reasonable inferences in favor of the plaintiff." *Daniel v. T & M Prot. Res., Inc.*, 992 F. Supp. 2d 302, 304 n.1 (S.D.N.Y. 2014) (*citing Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012)). Where, as here, a plaintiff proceeds pro se, the "complaint[] must be construed liberally and interpreted to raise the strongest arguments that [it] suggest[s]." *Sykes v. Bank of Am.*, 723 F.3d 399, 403 (2d Cir. 2013) (per curiam) (citation and quotation [*14] marks omitted). However, "the liberal treatment afforded to pro se litigants does not exempt a pro se party from compliance with relevant rules of procedural and substantive law." *Bell v. Jendell*, 980 F. Supp. 2d 555, 559 (S.D.N.Y. 2013) (citation and quotation marks omitted); *see also Caidor v. Onondaga County*, 517 F.3d 601, 605 (2d Cir. 2008) ("[P]ro se litigants generally are required to inform themselves regarding procedural rules and to comply with them." (citation, italics, and quotation marks omitted)).

Generally, "[i]n adjudicating a Rule 12(b)(6) motion, a district court must confine its consideration to facts stated on the face of the complaint, in documents appended to the complaint or incorporated in the complaint by reference, and to matters of which judicial notice may be taken." *Leonard F. v. Isr. Disc. Bank of N.Y.*, 199 F.3d 99, 107 (2d Cir. 1999) (quotation marks and citation omitted). When a plaintiff proceeds pro se, however, the Court may consider "materials outside the complaint to the extent that they are consistent with the allegations in the complaint," *Alsaifullah v. Furco*, No. 12-CV-2907, 2013 U.S. Dist. LEXIS 110398, 2013 WL 3972514, at *4 n.3 (S.D.N.Y. Aug. 2, 2013) (citation and quotation marks omitted), including, as relevant here, "documents that a pro se litigant attaches to his

opposition papers," *Agu v. Rhea, No. 09-CV-4732*, 2010 U.S. Dist. LEXIS 132706, 2010 WL 5186839, at *4 n.6 (E.D.N.Y. Dec. 15, 2010) (citation and italics omitted).

B. Analysis

1. Claims for Damages

a. Judicial Immunity

Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *See Mireles v. Waco*, 502 U.S. 9, 11, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991) ("A long line of this Court's precedents acknowledges that, generally, a judge is immune from a suit for money damages." (citations omitted)). Generally, "acts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). "[E]ven allegations of bad faith or malice cannot overcome judicial immunity." Id. at 209 (citations omitted). Thus, judicial immunity is "overcome in only two sets of circumstances[:] . . . [(1)] actions not taken in the judge's judicial capacity[,] . . . [and (2)] actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles*, 502 U.S. at 11-12 (citations omitted). The reason for this far-reaching grant of immunity is simple: "[w]ithout insulation from liability, judges would be subject to harassment and intimidation." *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994) (citation omitted), *cert. denied*, 514 U.S. 1102, 115 S. Ct. 1837, 131 L. Ed. 2d 756 (1995). Moreover, this rationale applies with particular force to judicial figures called upon to adjudicate family law disputes. "Not surprisingly, disgruntled ex-spouses often bring claims against state court judges who have

presided over divorce and child custody issues. . . . Given the inherently emotional nature of their work, family court judges may be particularly susceptible to harassment." *Lewittes v. Lobis*, No. 04-CV-155, 2004 U.S. Dist. LEXIS 16320, 2004 WL 1854082, at *5 (S.D.N.Y. Aug. 19, 2004) (citations and quotation marks omitted), *aff'd*, 164 F. App'x 97 (2d Cir. 2006).

Importantly, the absolute immunity afforded to judges is not limited to judges alone, but also extends to "certain others who perform functions closely associated with the judicial process." *Oliva v. Heller*, 839 F.2d 37, 39 (2d Cir. 1988) (citation omitted); see also *McKeown v. N.Y. State Comm'n on Judicial Conduct*, 377 F. App'x 121, 124 (2d Cir. 2016) (*citing Oliva*). Thus, individuals whose responsibilities are "functionally comparable" to those of a judge are also absolutely immune from liability. *Bliven*, 579 F.3d at 211 (*quoting Butz v. Economou*, 438 U.S. 478, 513, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978)). Accordingly, "courts have granted absolute immunity to court clerks where they were performing discretionary acts of a judicial nature," because their "duties and responsibilities are most intimately connected with the judge's own exercise of the judicial function," and because they "are simply extensions of the judges at whose pleasure they serve." *Oliva*, 839 F.2d at 39-40 (citations omitted); *see also Jackson v. Pfau*, 523 F. App'x 736, 737-38 (2d Cir. 2013) (affirming the dismissal of claims against judicial law clerks, court attorneys, and attorneys in the OCA on judicial immunity grounds). Similarly, courts in the Second Circuit have recognized that "court attorneys," who function in New York State courts much like law clerks in federal courts, are protected by judicial immunity. *See Clark*

v. Adams, No. 10-CV-1263, 2010 U.S. Dist. LEXIS 79575, 2010 WL 3123294, at *2-3 (E.D.N.Y. Aug. 8, 2010) (holding that a court attorney in the New York court system "perform[ed] acts of a judicial nature," and was "therefore entitled to absolute immunity"); *Alfano v. Vill. of Farmindale*, 693 F. Supp. 2d 231, 233 (E.D.N.Y. 2010) (confirming that "the legal advisors to state and federal judges are entitled to judicial immunity" (citations omitted)).

Here, Plaintiff's claims against D'Ambrosio are based entirely on conduct that she engaged in within her capacity as Judge Schauer's court attorney. For example, Plaintiff alleges that "Judge Schauer . . . and Michelle D['A]mbrosio . . . instruct[ed] the court clerk and staff not to send digital recordings or delay sending recordings to [his] transcriber," (SAC ¶ 49); that the Family Court's "refusal to pay for [Plaintiff's requested] transcripts . . . was intentional and willful by Defendants[] including Judge Schauer . . . [and] Michelle D'[A]mbrosio," (id. ¶ 57); that "Defendants including Judge Schauer and Michelle D'Ambrosio expected [Plaintiff] to remember words stated at a hearing without a note taker," (id. ¶ 64); that "Judge Schauer, Michelle D'Ambrosio, [and others] purposely and willfully scheduled afternoon court sessions," (id. ¶¶ 81-84); and that "Judge Schauer and . . . D'Ambrosio, [*18] purposefully and intentionally chose the highest cost of disability accommodation", (id. ¶ 90). As illustrated by Plaintiff's intertwining of all allegations against D'Ambrosio with identical claims against Judge Schauer, here, D'Ambrosio simply acted as an "extension[] of the judge[] at whose pleasure [she] serve[s]." Oliva, 839 F.2d at 39-40 (citation omitted). D'Ambrosio is therefore "entitled to absolute immunity as a [court

attorney] to a state court judge because [she] was acting in a judicial capacity." *Gollomp v. Spitzer*, 568 F.3d 355, 365 (2d Cir. 2009) (citation omitted).

b. Eleventh Amendment

As a general rule, "state governments may not be sued in federal court [for damages] unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states' Eleventh Amendment immunity when acting pursuant to its authority under [Section] 5 of the Fourteenth Amendment." *Id*. at 366 (citation, alteration, and quotation marks omitted). This immunity "extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state." Id. (citation and quotation marks omitted). Accordingly, state sovereign immunity also "extends to damage actions against state employees acting in their official capacities, because the State is the real party in interest in such actions." *Cole v. Goord*, No. 05-CV-2902, 2009 U.S. Dist. LEXIS 75580, 2009 WL 2601369, at *5 (S.D.N.Y. Aug. 25, 2009) (citation omitted); *see also Henrietta D. v. Bloomberg*, 331 F.3d 261, 288 (2d Cir. 2003) ("The real party in interest in an official-capacity suit is the government entity." (citation omitted)), *cert. denied*, 541 U.S. 936, 124 S. Ct. 1658, 158 L. Ed. 2d 356 (2004).

Here, all Defendants are sued in their official capacities. (See SAC.)[10] Moreover, the Second Circuit has specifically held that "the New York State Unified

[10] The SAC makes clear that all claims are against Defendants in their official capacities. However, even if that were not clear from the face of the SAC, "[i]t is well settled that individuals in their personal capacities are not proper defendants on claims brought under the ADA or the Rehabilitation Act." *Holly v. Cunningham*, No. 15-CV-284, 2016 U.S. Dist. LEXIS 79893, 2016 WL 8711593, at *4 (S.D.N.Y. June 17, 2016) (quotation marks omitted) (collecting cases).

Court System is unquestionably an 'arm of the State,' and is entitled to Eleventh Amendment sovereign immunity." *Gollomp*, 568 F.3d at 368 (citation omitted). Accordingly, the Eleventh Amendment precludes Plaintiff's damages claims, unless New York State has consented to suit (under the NYSHRL) or Congress has validly abrogated the states' Eleventh Amendment immunity (through passage of Title II of the ADA).

With respect to the NYSHRL claims, uniform precedent establishes that New York State has not consented to suit for such claims. See *Moultry v. Rockland Psychiatric Ctr.*, No. 17-CV-4063, 2018 U.S. Dist. LEXIS 185749, 2018 WL 5621485, at *2 (S.D.N.Y. Oct. 30, 2018) ("New York did not waive its immunity under NYSHRL." (citations omitted)); *Sunnen v. N.Y. State Dep't of Health*, No. 17-CV-1014, 2018 U.S. Dist. LEXIS 126144, 2018 WL 3611978, at *4 (S.D.N.Y. July 27, 2018) ("New York State has not consented or waived its sovereign immunity to suits arising under the NYSHRL or NYCHRL." (citations omitted)), *aff'd*, No. 18-CV-3382, 792 Fed. Appx. 113, 2020 U.S. App. LEXIS 3143, 2020 WL 521858 (Mem) (2d Cir. Feb. 3, 2020). Accordingly, all NYSHRL claims are barred by the Eleventh Amendment and must be dismissed.[11]

The question with respect to the ADA is more complex. While Congress "explicitly stated an intent under Title II [of the ADA] to abrogate the States'

[11] Although the Ex Parte Young doctrine permits suits for injunctive relief against states under federal law, the Eleventh Amendment bars such suits when based on state law claims. *See, e.g., Gym Door Repairs, Inc. v. Young Equip. Sales, Inc.*, 206 F. Supp. 3d 869, 914 (S.D.N.Y. 2016); *see also Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984) ("[I[t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law."). Accordingly, all Plaintiff's NYSHRL claims for injunctive relief are dismissed as well.

sovereign immunity," such abrogation is only effective to the extent it is "a valid exercise of power under [Section] 5 of the Fourteenth Amendment." *Cole*, 2009 U.S. Dist. LEXIS 75580, 2009 WL 2601369, at *5 (citations and quotation marks omitted); see also *Tennessee v. Lane*, 541 U.S. 509, 518, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004) (explaining the scope of Congress's power to abrogate Eleventh Amendment immunity). The Second Circuit has concluded that Title II successfully abrogated state immunity only to the extent that plaintiffs "establish that the Title II violation was motivated by discriminatory animus or ill will based on the plaintiff's disability . . . i.e., conduct that is based on irrational prejudice or wholly lacking a legitimate government interest." *Garcia v. S.U.N.Y. Health Sci. Ctr. of Brooklyn*, 280 F.3d 98, 111 (2d Cir. 2001) (citation omitted).

Subsequent Supreme Court precedent, although consistent with *Garcia*, articulates a more generic test for analyzing whether state immunity precludes Title II suits:

> [L]ower courts will be best situated to determine in the first instance, on a claimby-claim basis, (1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid.

United States v. Georgia, 546 U.S. 151, 159, 126 S. Ct. 877, 163 L. Ed. 2d 650 (2006). Since *Georgia*, courts in the Second Circuit have divided over whether to continue applying *Garcia*. *See Dean v. Univ. at Buffalo Sch. of Med. & Biomedical Scis.*, 804 F.3d 178, 194-95 (2d Cir. 2015) ("Some district courts apply *Garcia*. Others[] adopt[] the approach in *Georgia*." (footnote omitted)). As *Garcia* is consistent with *Georgia*, and as the Second Circuit has given no indication that *Garcia* should be adjusted in light of *Georgia*, this Court continues to assume that *Garcia* governs. *See Davis v. Collado*, No. 16-CV-7139, 2018 U.S. Dist. LEXIS 169419, 2018 WL 4757966, at *8 (S.D.N.Y. Sept. 30, 2018) (applying *Garcia's* "discriminatory animus or ill will due to disability" test).

Here, Plaintiff alleges no facts indicating that any Defendant acted "with discriminatory animus or ill will" toward Plaintiff's disability. For example, Plaintiff cites no discriminatory comments by Defendants. *See Davis*, 2018 U.S. Dist. LEXIS 169419, 2018 WL 4757966, at *8 (dismissing official capacity ADA claims based on a failure to sufficiently allege "discriminatory animus or ill will due to disability," and citing the absence of discriminatory comments as a partial basis for this conclusion (italics omitted)). Nor is there any factual, non-conclusory allegation that Defendants treated disabled persons any differently than non-disabled comparators. *See Doe v. City of New York*, No. 05-CV-5439, 2009 U.S. Dist. LEXIS 130525, 2009 WL 7295358, at *11 (E.D.N.Y. Nov. 10, 2009) (holding that the plaintiff failed to raise an issue of fact as to discriminatory animus by failing to identify similarly situated non-disabled individuals), *adopted by* 2010 U.S. Dist. LEXIS 138705, 2011 WL 37131 (E.D.N.Y.

Jan. 5, 2011), *aff'd*, 473 F. App'x 24 (2d Cir. 2012). In fact, Plaintiff acknowledges that other disabled litigants have been treated better than him. (See SAC ¶ 146 ("Other[] disabled litigants in other courts not in New York [F]amily Court [A]rticle 6 and or 8 proceedings are permitted to appeal as of right, where I am discriminated against for my disabilities against appealing.").) To the extent that Plaintiff does allege disparate treatment compared with non-disabled comparators, all such allegations are entirely generic and conclusory. (*See e.g., id.* PP 133 ("Other non-disabled fathers and mothers are not jailed by [t]he State for sending gifts to their kids."); 149 ("Other nondisabled litigants in front of other judges do not have to pay for transcripts on their own.").) Such conclusory allegations cannot support a claim for the requisite discriminatory intent. *See Clay v. Lee*, No. 13-CV-7662, 2019 U.S. Dist. LEXIS 46182, 2019 WL 1284290, at *7 (S.D.N.Y. Mar. 20, 2019) ("These conclusory allegations fail to allege that Defendants acted with 'discriminatory animus or ill will' at all, let alone 'due to" Plaintiff's alleged "mental health issues.'" (citations omitted)). Accordingly, given the absence of any factual allegations that meet *Garcia's* standard, "Defendants are entitled to Eleventh Amendment immunity on Plaintiff's ADA and Rehabilitation Act claims." Id. (citation omitted).[12]

[12] Plaintiff also argues that the Supreme Court's decision in *Tennessee v. Lane* alters the analysis here because his claims relate to a right of access to the courts. (See SAC ¶ B.) Lane, however, is inapposite. In *Lane*, the Supreme Court was presented with the case of two paraplegics who were physically unable to access county courthouses because of the absence of elevators. 541 U.S. at 513-14. Declining to address the effectiveness of Title II as a whole, the Supreme Court instead conducted an "as-applied" analysis. Concluding that "Congress had the power under § 5 to enforce the constitutional right of access to the courts," the Court held that Title II of the ADA successfully abrogated sovereign immunity "as it applies to the class of cases implicating the accessibility of judicial services." *Id.* at 531 (citation and footnote omitted). The Second Circuit, however, has made clear that *Lane* is not to be applied simply because a plaintiff asserts an infringement of his access to courts; on the contrary, Lane suggests that immunity is abrogated only with respect to claims that raise a genuine issue of the right

2. Injunctive and Declaratory Relief

Plaintiff not only seeks damages; he also requests injunctive and declaratory relief. (SAC PP A-H.) Here, however, the Court is precluded from considering such relief by several additional legal principles, including the so-called *Rooker-Feldman* doctrine, *see generally Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415-16, 44 S. Ct. 149, 68 L. Ed. 362 (1923), and the Court's abstention obligations under *Younger v. Harris*, 401 U.S. 37, 43-44, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971) and *O'Shea v. Littleton*, 414 U.S. 488, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974).

a. The Rooker-Feldman Doctrine

"Under the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction over cases that essentially amount to appeals of state court judgments." *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014) (citation omitted) (per curiam). The *Rooker-Feldman* doctrine is, however, "narrow" and only applies to federal lawsuits brought by "state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v.*

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of access to courts. *See City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 398 (2d Cir. 2008) (explaining that ADA plaintiffs failed to overcome sovereign immunity because a challenged provision "does not impede, let alone entirely foreclose, general use of the courts by would-be plaintiffs"), *cert. denied*, 556 U.S. 1104, 129 S. Ct. 1579, 173 L. Ed. 2d 675 (2009). While Plaintiff conclusorily alleges that Defendants "ma[d]e it extra hard and more difficult [] for [him] to have meaningful access to the state courts," (SAC P 84), no specific factual allegation suggests anything remotely rising to the level of a constitutional deprivation.

Additionally, the Court notes that even if Plaintiff's claims overcome sovereign immunity, this Court would still be barred from considering the merits for reasons of abstention, as discussed below. *See* Section 2, infra.

Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005). Four requirements must be met before the *Rooker-Feldman* bar applies:

> First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must complain of injuries caused by a state-court judgment. Third, the plaintiff must invite district court review and rejection of that judgment. Fourth, the state-court judgment must have been rendered before the district court proceedings commenced—i.e., *Rooker-Feldman* has no application to federal-court suits proceeding in parallel with ongoing state-court litigation.

Green v. Mattingly, 585 F.3d 97, 101 (2d Cir. 2009) (citation, alterations and quotation marks omitted). There is an exception to *Rooker-Feldman* in the case of "judicial review of executive action, including determinations made by a state administrative agency." *Verizon Md. Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 644 n.3, 122 S. Ct. 1753, 152 L. Ed. 2d 871 (2002). This exception applies "even where the administrative agency acted in an adjudicative capacity . . . or where the plaintiff could have sought, but did not seek, review of the agency's determination in a state court." *Mitchell v. Fishbein*, 377 F.3d 157, 165 (2d Cir. 2004) (citations omitted). But this exception does not apply—and thus the *Rooker-Feldman* bar does apply—if the agency is "appropriately characterized as [an] arm[] of the state judiciary qua judiciary, either because [it] exercise[s] powers that are inherent to the judiciary, or because the state has provided mechanisms for judicial review of [its] determinations that distinguish

those determinations from other types of state administrative action." *Id.* at 166 (italics omitted).

Here, the *Rooker-Feldman* doctrine applies to at least some, though not all, of Plaintiff's claims. Plaintiff's SAC challenges numerous rulings by Judge Schauer, Magistrate Jordan, and other judges in the underlying state court proceedings—and at least some of these rulings appear to be final orders. (See, e.g., SAC ¶¶ 59-63 (alleging that Judge Schauer's order jailing him for violation of a TOP violated the ADA); id. ¶ 156 (noting that a final Family Court order was entered on June 13, 2018).) Insofar as Plaintiff seeks to have this Court declare these and other adverse judgments discriminatory and otherwise erroneous, or seeks to be compensated for them, (see id. ¶¶ A-F), Plaintiff runs afoul of *Rooker-Feldman*. This is so because he (i) "invite[s] district court review and rejection of [state court] judgments" that were (ii) rendered before this Action commenced, (iii) with respect to which he is the losing party, and (iv) complaining of injuries that resulted from such judgments. Such claims meet all the requirements of *Rooker-Feldman*. *See Mattingly*, 585 F.3d at 101 (listing the essential elements of *Rooker-Feldman*). Accordingly, all such claims are barred and must be dismissed. *See J.R. ex rel. Blanchard v. City of New York*, No. 11-CV-841, 2012 U.S. Dist. LEXIS 168075, 2012 WL 5932816, at *8 (E.D.N.Y. Nov. 27, 2012) (dismissing a suit under *Rooker-Feldman* because the plaintiff sought that the court "essentially reject the family court's order").

Plaintiff, however, seeks more than the undoing of final state court judgments. At least some of the decisions Plaintiff challenges are preliminary or intermediary

rulings in proceedings that were ongoing when this suit began. (See SAC ¶¶ 140-42 (discussing his struggle to appeal non-final orders).) Such orders are likely not subject to *Rooker-Feldman*. *See Mattingly*, 585 F.3d at 102 (explaining that the *Rooker-Feldman* doctrine bars only "state-court losers" and thus did not bar claims by a parent who temporarily lost custody of her child but who secured the reversal of that decision). Moreover, Plaintiff also challenges the entire organizational structure and allocation of decision-making power within the New York Court system. (See SAC ¶ B (seeking an order requiring that ADA requests "be administered by the court [ADA] liaison, not the sitting judge as is customary practice"). Naturally, such a challenge is not directed at an individual judgment, but at the general procedures of the courts.

b. Younger Abstention

While such claims may not be precluded by *Rooker-Feldman*, they are precluded by the abstention [principles articulated in *Younger* and *O'Shea*.

Younger abstention provides that "federal courts should generally refrain from enjoining or otherwise interfering in ongoing state proceedings." *Spargo v. N.Y. State Comm'n on Judicial Conduct*, 351 F.3d 65, 74 (2d Cir. 2003), *cert. denied*, 541 U.S. 1085, 124 S. Ct. 2812, 159 L. Ed. 2d 247 (2004). The Court is mindful that "abstention is generally disfavored, and federal courts have a virtually unflagging obligation to exercise their jurisdiction." *Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 100 (2d Cir. 2012) (citation and quotation marks omitted). And, "unlike the *Rooker-Feldman* doctrine, *Younger* abstention is a 'prudential limitation' grounded in considerations of comity rather than a

'jurisdictional bar' derived from Article III of the Constitution." *Sullivan v. N.Y. State Unified Court Sys.*, No. 15-CV-4023, 2016 U.S. Dist. LEXIS 79413, 2016 WL 3406124, at *6 (S.D.N.Y. June 17, 2016) (*quoting Kaufman v. Kaye*, 466 F.3d 83, 88 n.1 (2d Cir. 2006)). The Supreme Court has thus "clarified that district courts should abstain from exercising jurisdiction only in three exceptional circumstances involving (1) ongoing state criminal prosecutions, (2) certain civil enforcement proceedings, and (3) civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Falco v. Justices of the Matrimonial Parts of Sup. Ct. of Suffolk Cty.*, 805 F.3d 425, 427 (2d Cir. 2015) (citation and quotation marks omitted), *cert. denied*, 136 S. Ct. 2469, 195 L. Ed. 2d 802 (2016). Finally, "*Younger* abstention is required when three conditions are met: (1) there is an ongoing state proceeding; (2) an important state interest is implicated in that proceeding; and (3) the state proceeding affords the federal plaintiff an adequate opportunity for judicial review of the federal constitutional claims." *Diamond "D" Constr. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002) (*emphasis added*) (citation omitted).

Here, with respect to Plaintiff's challenges of all non-final judicial rulings, the *Younger* abstention conditions are clearly met. First, state-court proceedings regarding the appropriate child custody arrangement are ongoing in Family Court and New York State appellate courts. Indeed, Plaintiff acknowledges that they are ongoing as he explains his various difficulties obtaining appellate review in light of the ongoing nature of proceedings. (See SAC ¶¶ 140-42 ("A[ppellate] Division denied

permission to appeal denial of ADA accommodations twice stating these were not "final orders.").)

Second, child custody disputes are a matter rightfully reserved for state courts. *See Puletti v. Patel*, No. 05-CV-2293, 2006 U.S. Dist. LEXIS 51597, 2006 WL 2010809, at *4 (E.D.N.Y. July 14, 2006) ("The United States Supreme Court . . . has long recognized that 'the whole subject of the domestic relations of . . . parent and child[] belongs to the laws of the States and not to the laws of the United States." (*quoting In re Burrus*, 136 U.S. 586, 593-94, 10 S. Ct. 850, 34 L. Ed. 500 (1890))). Indeed, the Supreme Court has long recognized a "domestic relations exception" that "divests the federal courts of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt v. Richards*, 504 U.S. 689, 703, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992); *see also Reno v. Flores*, 507 U.S. 292, 310, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) (noting that states have "special proficiency in the field of domestic relations, including child custody" (citation and quotation marks omitted)); *Khalid v. Sessions*, 904 F.3d 129, 133 (2d Cir. 2018) ("Family law, after all, is an area of law that federal courts and Congress leave almost exclusively to state law and state courts." (citations omitted)). The underlying child custody proceeding thus undoubtedly involves an "important state interest." *Diamond "D" Constr. Corp.*, 282 F.3d at 198.

Third, Plaintiff would have "an adequate opportunity for judicial review of the federal constitutional claims" in state court. *Id.* After the Family Court makes its final disposition on custody and visitation (or, if it has already done so), Plaintiff may appeal that decision within the state court system and raise all federal constitutional

claims there. *See Donkor v. City of N.Y. Human Res. Admin. Special Servs. for Children*, 673 F. Supp. 1221, 1226 (S.D.N.Y. 1987) ("[The Second] Circuit has often recognized the obligation and competence of state courts to decide federal constitutional questions." (*citing Texaco Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1142 (2d Cir. 1986) and *Star Distributors, Ltd. v. Marino*, 613 F.2d 4, 8 n.10 (2d Cir. 1980))). Plaintiff has "not shown any procedural barrier to [his] assertion of constitutional issues in the state court proceeding." *Id*. at 1226 (*citing Moore v. Sims*, 442 U.S. 415, 430, 99 S. Ct. 2371, 60 L. Ed. 2d 994 (1979)).

Therefore, insofar as Plaintiff seeks to procure federal judicial involvement in any nonfinal judicial proceedings, the *Younger* factors are met. Moreover, there is no showing that any exception to *Younger*, such as bias on the part of OCA, is present. *See Diamond "D" Constr. Corp.*, 282 F.3d at 201 (noting exception to *Younger* "when the state administrative agency was incompetent by reason of bias to adjudicate the issues pending before it" (citation and quotation marks omitted)). Accordingly, "abstention is mandatory and its application deprives the federal court of jurisdiction in the matter." *Id*. at 197 (citation omitted).

c. O'Shea

"Although *Younger* mandates abstention only when the plaintiff seeks to enjoin ongoing state proceedings . . ., the Supreme Court has also held that even where no state proceedings are pending, federal courts must abstain where failure to do so would result in 'an ongoing federal audit of state criminal proceedings.'" *Disability Rights N.Y. v. New York*, 916 F.3d 129, 134 (2d Cir. 2019) (*quoting O'Shea*, 414 U.S.

at 500). In recent years, the Second Circuit has further explained that, while *O'Shea* discussed only criminal matters, "*O'Shea* has also been applied in certain civil contexts involving the operations of state courts." *Id*. (citation omitted). Thus, for example, the Second Circuit has dictated that federal courts must abstain from enjoining internal state court judicial assignment procedures. *See Kaufman*, 466 F.3d at 86. And just last year, the Second Circuit held that similar abstention principles prohibited federal courts from "direct[ing] the New York State Unified Court System, the Chief Judge of the State of New York, and the Chief Administrative Judge for the Courts of New York" to adopt certain procedures in its guardianship proceedings. *Disability Rights*, 916 F.3d at 136. Such relief, whether declaratory or injunctive, would "effect a continuing, impermissible 'audit' of New York Surrogate's Court proceedings, which would offend the principles of comity and federalism." *Id*. at 136.[13]

Here, Plaintiff attempts to subject the New York State court system to precisely the sort of "ongoing audit" and structural interference that *O'Shea* and *Disability Rights* prohibit. As Plaintiff makes clear throughout his SAC, insofar as he

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[13] In *Disability Rights*, the Second Circuit approvingly cited several similar precedents from other circuits. See 916 F.3d at 134-35 (*citing Courthouse News Serv. v. Brown*, 908 F.3d 1063, 1065-66 (7th Cir. 2018) (abstaining from enjoining the Clerk of the Circuit Court of Cook County to release newly filed complaints at the moment of receipt), *cert. denied*, 140 S. Ct. 384, 205 L. Ed. 2d 213 (2019); *Oglala Sioux Tribe v. Fleming*, 904 F.3d 603, 612 (8th Cir. 2018) (abstaining from enjoining allegedly unconstitutional child custody proceedings because "[t]he relief requested would interfere with the state judicial proceedings by requiring the defendants to comply with numerous procedural requirements" and "failure to comply with the district court's injunction would subject state officials to potential sanctions"); *Miles v. Wesley*, 801 F.3d 1060, 1064, 1066 (9th Cir. 2015) (abstaining from enjoining the Los Angeles Supreme Court from reducing the number of courthouses used for unlawful detainer actions); *Hall v. Valeska*, 509 F. App'x 834, 835-36 (11th Cir. 2012) (per curiam) (abstaining from enjoining allegedly discriminatory jury selection procedures); *Parker v. Turner*, 626 F.2d 1, 8 & n.18 (6th Cir. 1980) (providing that O'Shea establishes a rule of "near-absolute restraint . . . to situations where the relief sought would interfere with the day-to-day conduct of state trials")). The instant case falls squarely within this line of precedent.

does not challenge individual judicial decisions, he seeks a federal judicial mandate to shift decision-making from Family Court judges to court bureaucrats. (See SAC ¶¶ B (seeking an order directing OCA to accommodate requests that have been denied by state judges); F (seeking a judgment requiring OCA, rather than state judges, to "provide all accommodation requests"). In other words, Plaintiff "would have federal courts conduct a preemptive review of state court procedure in . . . an area in which states have an especially strong interest." *Disability Rights*, 916 F.3d at 136 (citation omitted). Moreover, providing Plaintiff's requested relief would necessitate an "[o]ngoing, case-by-case oversight of state courts, . . . exactly the sort of interference O'Shea seeks to avoid." *Id.* (citation omitted). Indeed, Plaintiff seeks an order compelling the Family Court to hold hearings at particular times of day, to provide him with specific court records, to adopt specific procedures for transcription proceedings and to transfer certain authorities from state judges to "the court [ADA] liaison." (SAC ¶ B.) It is difficult to imagine a "more substantial invasion of state courts' domain." *Disability Rights*, 916 F.3d at 136. Accordingly, because "a federal district court has no power to intervene in the internal procedures of the state courts," Plaintiff's request that this Court compel OCA Defendants to overrule and seize authority from state judges, or to otherwise tinker with the internal operations of the state courts, is dismissed. *Kaufman*, 466 F.3d at 86 (citation and quotation marks omitted).

To summarize: *Rooker-Feldman* bars Plaintiff's claims insofar as he challenges adverse final judicial orders; *Younger* precludes the Court from interfering in

Plaintiff's ongoing state court proceedings; and *O'Shea* demands that the Court refrain from overhauling the internal procedures of the state courts. Accordingly, the Court declines to exercise jurisdiction over all of Plaintiff's claims for injunctive or declaratory relief.[14]

3. Leave to Amend and Dismissal with Prejudice

This Opinion & Order dismisses all of Plaintiffs claims and terminates all the Defendants from this case. Because Plaintiff has already amended his Complaint twice (not to mention twice argued, and been denied, preliminary injunctions), and because Plaintiffs claims are barred as a matter of law by immunity or lack of jurisdiction, dismissal is with prejudice. *See Nielsen v. Rabin*, 746 F.3d 58, 62 (2d Cir. 2014) (noting that although a "*pro se* complaint should not be dismissed without the [c]ourt granting leave to amend at least once[,] . . . leave to amend a complaint may be denied when amendment would be futile" (citations and quotation marks omitted)). Even the special solicitude afforded to prose litigants does not entitle Plaintiff to file additional amended pleadings when the pleading "contains substantive problems such that an amended pleading would be futile." *Lastra v. Barnes & Noble Bookstore*, No. 11-CV-2173, 2011 U.S. Dist. LEXIS 150112, 2012 WL 12876, at *9 (S.D.N.Y. Jan 3, 2012).

III. Conclusion

[14] The Court's decision to abstain is further "supported by the 'availability of other avenues of relief,'" as Plaintiff is free to "avail [him]self of the state courts to challenge the legality of the state court procedures. *Disability Rights*, 916 F.3d at 137 (citation omitted) (*quoting O'Shea*, 414 U.S. at 504).

For the reasons stated above, both Motions To Dismiss are granted, and all of Plaintiffs claims are dismissed with prejudice.

The Clerk of Court is respectfully directed to terminate the pending Motions, (see Dkt. Nos. 67, 70), to mail a copy of this Opinion & Order to Plaintiff, and to close this case.

SO ORDERED.

Dated: March 5, 2020

White Plains, New York

/s/ Kenneth M. Karas

KENNETH M. KARAS

UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 20-1300

MARC H. FISHMAN,

Plaintiff-Appellant

v.

OFFICE OF COURT ADMINISTRATION NEW YORK STATE COURTS,

Defendants-Appellees.

ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of November, two thousand twenty-one.

Appellant, Marc Fishman, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe

APPENDIX D

STATUTORY AND REGULATORY PROVISIONS INVOLVED

1. 42 U.S.C. 12132 provides:

Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

2. 42 U.S.C. 12134 provides:

Regulations

(a) In General

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part.

3. 29 U.S.C. 794 provides:

(a) Promulgation of Rules and Regulations

No otherwise qualified individual with a disability in the United States…shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance…

4. 28 C.F.R. 35.103 in relevant part, provides:

Relationship to other laws.

(a) Rule of interpretation. Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued…pursuant to that title.

5. 28 C.F.R. 35.130 in relevant part, provides:

General prohibitions against discrimination

(a) No qualified individual with a disability, on the basis of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b) (1) A public entity, in providing any aid, benefit, or service, may not…on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit of service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others

* * *

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the ad, benefit or service.

* * *

(7) (i)

A public entity shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

* * *

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

6. 28 C.F.R. 35.150 in relevant part, provides:

In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

*