No._____

In The

Supreme Court of the United States

Petitioner - Sergeant Nathan D Crisp *pro se*

v.

Respondent(s) THE STATE OF GEORIA, et al.

On Petition For Writ Of Certiorari

From

United States Court of Appeals for the Eleventh Circuit

To The Honorable United States Supreme Court

APPENDIX

Sergeant Nathan D. Crisp

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Appendix A

The Opinion

In the

United States Court of Appeal

For the Eleventh Circuit

No. 21-14190

Non-Argument Calendar

SERGEANT NATHAN D. CRISP,

Plaintiff-Appellant,

versus

THE STATE OF GEORGIA,

GWINNETT COUNTY,

MS. TOOLE,

Gwinnett County Assistant District Attorney,

TUWANDA RUSH WILLIAMS,

Gwinnett County Law Office,

WARREN DAVIS,

Gwinnett County Superior Court Judge, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-00175-AT
Before WILSON, LUCK, and MARCUS, Circuit Judges. PER CURIAM:

Nathan Dee Crisp, proceeding pro se, appeals following the dismissal of his civil complaint, which brought claims arising out of his arrest for impersonating a public officer or employee in violation of Ga. Code Ann. § 16-10-23. On appeal, Crisp challenges: (1) the district court's dismissal of his action against Gwinnett County and the State of Georgia on sovereign immunity and Eleventh Amendment immunity grounds; and (2) the district court's dismissals of his action as to four remaining defendants for failing to state a claim upon which relief can be granted, in part, based on *Heck v. Humphrey*, 512 U.S. 477 (1994).[1]

(1 Crisp does not expressly challenge the district court's dismissal, without prejudice, of this action as to seven other defendants, for failing to effectuate service. As a result, Crisp has forfeited any claim against these defendants. See *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (holding that while we liberally construe pro se pleadings, issues not briefed on appeal are normally deemed abandoned and will not be considered); see also *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681–82 (11th Cir. 2014) (explaining that an appellant can abandon a claim by: (1) making only

passing reference to it, (2) raising it in a perfunctory manner without supporting arguments and authority,(3) referring to it only in the "statement of the case" or "summary of the argument," or (4) referring to the issue as mere background to the appellant's main arguments)).

After careful review, we affirm.

The relevant background is this. In 2017, Crisp was arrested by Gwinnett County, Georgia police officers for impersonating a public officer or employee and charged with violating Ga. Code Ann. § 16-10-23. In 2018, a Gwinnett County grand jury indicted him for the same. The charges were brought by Daniel J. Porter, the former Gwinnett County District Attorney, and Assistant District Attorney Ramona Toole prosecuted the case. Crisp's case was assigned to Gwinnett County Superior Court Judge Warren Davis.

While his criminal case was pending, Crisp sued Porter, Gwinnett County, and the officers who arrested him in federal court. The civil lawsuit, which alleged several constitutional violations, was assigned to United States District Court Judge Eleanor Ross, who stayed the civil case pending the outcome of Crisp's state court criminal case under the Younger abstention doctrine.[2]

(2 *Younger v. Harris*, 401 U.S. 37 (1971)).

Crisp later sought mandamus relief from the Supreme Court of Georgia, invoking the original jurisdiction of that Court. Assistant Attorney

General Brittanie Browning from the Georgia Attorney General's Office represented Judge Davis before the Georgia Supreme Court. In this capacity, Browning wrote the Clerk of the Supreme Court of Georgia and notified the Court of this representation and argued that the petition should be dismissed. The Georgia Supreme Court agreed and dismissed Crisp's petition for mandamus relief shortly thereafter.

Crisp eventually entered into a negotiated guilty plea to the felony charge of impersonating an officer. Judge Laura Tate, who was sitting by designation for Judge Davis on the state trial court, sentenced Crisp under Georgia's First Offender Statute to three years of probation.

After pleading guilty, Crisp brought the present pro se "Class Action" complaint in federal court, against thirteen defendants: the State of Georgia ("the State"); Gwinnett County ("the County"); Judge Davis; Gwinnett County Assistant District Attorney Toole; Georgia Assistant Attorney General Browning; Porter, the former Gwinnett County District Attorney; Judge Ross; Tuwanda Rush Williams and David D. Pritchett of the Gwinnett County Law Office; Gwinnett County Magistrate Judge Kenneth A. Parker; Clerk of Gwinnett County Superior Court Richard Alexander; Judge Tate; and a Gwinnett County Magistrate Judge Keith Miles.

The district court dismissed all of Crisp's claims. Relevant here, the district court dismissed Crisp's claims against the State of Georgia and Gwinnett

County on the basis of sovereign immunity and Eleventh Amendment immunity. As for four other defendants

-- Georgia Assistant Attorney General Browning, former Gwinnett County District Attorney Porter, Officer Williams and Judge Davis

-- the district court dismissed Crisp's claims for failing to state a claim upon which relief can be granted, in part, because *Heck v. Humphrey* and various immunities barred his action.

This timely appeal follows.

II.

Where appropriate, we review de novo the grant of a motion to dismiss based on a state's Eleventh Amendment immunity. In re *Employ't Discrimination Litig. Against State of Ala.*, 198 F.3d 1305, 1310 (11th Cir. 1999). Determinations of sovereign immunity are questions of law that we review de novo. *Nat'l Ass'n of Boards of Pharmacy v. Bd. of Regents of the Univ. Sys. of Georgia*, 633 F.3d 1297, 1313 (11th Cir. 2011).

We also review de novo a grant of a motion to dismiss, under Fed. R. Civ. P. 12(b)(6), for failure to state a claim. *Glover v. Liggett Grp., Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006). We accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Id We may affirm the district court on any basis that the record supports. See *Devengoechea v. Bolivarian Republic of Venezuela*, 889 F.3d 1213, 1220 (11th

Cir. 2018). Likewise, we review de novo whether an official is entitled to absolute immunity or judicial immunity. *Stevens v. Osuna*, 877 F.3d 1293, 1301 (11th Cir. 2017); *Smith v. Shook*, 237 F.3d 1322, 1325 (11th Cir. 2001). And we review a ruling concerning official immunity under Georgia state law de novo as well. See *Bailey v. Wheeler*, 843 F.3d 473, 480 (11th Cir. 2016). Finally, we review de novo a dismissal for failure to state a claim based on qualified immunity. *Cottone v. Jenne*, 326 F.3d 1352, 1357 (11th Cir. 2003).

III

First, the district court did not err in dismissing Crisp's claims against the State of Georgia and Gwinnett County on the basis of sovereign immunity and Eleventh Amendment immunity. Eleventh Amendment immunity bars suits by private individuals against a state in federal court unless the state has consented to be sued, has waived its immunity, or Congress has abrogated the state's immunity. *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363-64 (2001). "Although, by its terms, the Eleventh Amendment does not bar suits against a state in federal court by its own citizens, the Supreme Court has extended its protections to apply in such cases." *Abusaid v. Hillsborough Cnty. Bd of Cnty. Comm'rs*, 405 F.3d 1298, 1303 (11th Cir. 2005). Georgia has not waived "any immunity with respect to actions brought in the courts of the United States." Ga. Code Ann. § 50-21-23(b). And § 1983 does not override states' Eleventh Amendment immunity, meaning that "if a § 1983 action alleging a

constitutional claim is brought directly against a State, the Eleventh Amendment bars a federal court from granting any relief on that claim." *Pennhurst State Sch. 8c Hosp. v. Halderman*, 465 U.S. 89, 120 (1984).

The State of Georgia is afforded sovereign immunity from suit, which "can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver." Ga. Const. art. I, § II, ¶ IX(e). This sovereign immunity also applies to Georgia's counties. *Gilbert v. Richardson*, 452 S.E.2d 476, 479 (Ga. 1994); see also Ga. Code Ann. § 36-1-4 ("A county is not liable to suit for any cause of action unless made so by statute.").

In 2020, the Georgia Constitution was amended to waive sovereign immunity to permit certain actions for declaratory and equitable relief. See Ga. Const. Art. I, § II, ¶ V (b)(1).

Sovereign immunity is hereby waived for actions in the superior court seeking declaratory relief from acts of the state or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this state or officer or employee thereof or any county, consolidated government, or municipality of this state or officer or employee thereof outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States. Sovereign immunity is further waived so that a court awarding declaratory relief pursuant to this Paragraph may,

only after awarding declaratory relief, enjoin such acts to enforce its judgment. Such waiver of sovereign immunity under this Paragraph shall apply to past, current, and prospective acts which occur on or after January 1, 2021.

Id. (emphases added).

Georgia law also waives sovereign immunity for certain tort suits against state officers and employees committed in the scope of their employment under Ga. Code Ann. § 50-21-23, while a later statute provides that the procedure established under the Georgia Tort Claims Act ("GTCA") provides "the exclusive remedy for any tort committed by a state officer or employee." Id § 50-21-25(a). The GTCA provides immunity to a "state officer or employee who commits a tort while acting within the scope of his or her official duties or employment." Id

Here, the district court properly found that Eleventh Amendment and sovereign immunity precluded Crisp from pursuing claims against the State of Georgia and Gwinnett County unless they consented to suit, or their immunity was validly abrogated. *Garrett*, 531 U.S. at 363-64.[3]

(3 Crisp arguably has abandoned any argument challenging the dismissal of his claims against the County since his brief does not specifically dispute the district court's reasons for dismissal of that entity in a meaningful fashion. *Sapuppo*, 739 F.3d at 681-82. But, for completeness's sake, we will assume that Crisp implicitly preserved the issue as to both the State and the County.)

But neither party consented to be sued here. Ga. Code Ann. § 50-21-23(b); *Gilbert,* 452 S.E.2d at 479. And § 1983 does not abrogate immunity here either. *Penriburst State*, 465 U.S. at 120.Crisp claims that the Georgia Constitution was amended to waive sovereign immunity, but he misreads the text of the amendment, which limits the waiver in several ways, including to "actions in the superior court" concerning acts that "occur on or after January 1, 2021." Ga. Const. Art. I, § II, ¶ V (b)(1). Since he did not bring this suit in the state superior court, and since the challenged acts all predate January 1, 2021, the amendment does not waive sovereign immunity or Eleventh Amendment immunity here. Id Further, as the district court found, Crisp failed to comply with the requirements of the GTCA and other state procedures, so the state claims were properly dismissed on that ground too.

In short, the district court did not err in holding that sovereign immunity and Eleventh Amendment immunity barred Crisp's claims as to the State and the County, and we affirm in this respect.

IV.

Nor did the district court err in dismissing Crisp's remaining claims against defendants Browning, Williams, Davis or Porter for failure to state a claim upon which relief can be granted. To survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss, a complaint

must allege sufficient facts to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id

Section 1983 provides a cause of action for private citizens against persons acting under color of state law for violating their constitutional rights and other federal laws. 42 U.S.C. § 1983. In order to recover damages for an allegedly unconstitutional conviction or for other harm caused by actions whose unlawfulness would render a conviction invalid in a § 1983 action, however, a plaintiff must show that the conviction "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck 512 U.S.* at 486-87 (applying this framework to a § 1983 suit seeking monetary and punitive damages).

If this type of § 1983 action is brought before the challenged conviction is invalidated, it must be dismissed under *Heck*. Id at 487. Thus, the district court considers whether a favorable judgment for the plaintiff would "necessarily imply the invalidity of his conviction . . . ." Id If the outcome would imply invalidity, then the plaintiff's complaint must be dismissed unless the plaintiff can establish that the conviction was already invalidated. Id

In *Dyer v. Lee*, 488 F.3d 876 (11th Cir. 2007), we clarified that for Heck to apply, a successful § 1983 suit and the underlying conviction must be so logically contradictory that the § 1983 suit would negate the conviction. See id at 879-80,884. Thus, we ask whether "it is possible that the facts could allow a successful § 1983 suit and the underlying conviction both to stand without contradicting each other." *Harrigan v. Metro Dade Police Dep't Station #4,* 977 F.3d 1185,1193 (11th Cir. 2020) (quotation marks omitted). The Heck doctrine only applies when the "invalidation of a conviction or speedier release would . . . automatically flow from success on the § 1983 claim." Id (quotation marks omitted).

To succeed on a malicious prosecution, claim in a 42 U.S.C. § 1983 action, the plaintiff must show: "(1) that the defendant violated his Fourth Amendment right to be free from seizures pursuant to legal process and (2) that the criminal proceedings against him terminated in his favor." *Luke v. Gulley,* 975 F.3d 1140, 1144 (11th Cir. 2020). To satisfy the first prong, the plaintiff must establish "that the legal process justifying his seizure was constitutionally infirm" and "that his seizure would not otherwise be justified without legal process." Id (quotation marks omitted).

Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction. *Bolin v. Story,* 225 F.3d 1234, 1239 (11th Cir. 2000). Whether a judge's actions were made while acting in his judicial

capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity." *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005). Judges are also generally immune from injunctive and declaratory relief unless (1) a declaratory decree was violated or (2) declaratory relief is unavailable. *Bolin,* 225 F.3d at 1242. A judge enjoys immunity for judicial acts even if she made a mistake, acted maliciously, or exceeded her authority. *McCullough v. Finley*, 907 F.3d 1324, 1331 (11th Cir. 2018).

Prosecutors are absolutely immune from liability for damages for activities that are intimately associated with the judicial phase of the criminal process. *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976). Prosecutorial immunity extends to all actions that the prosecutor takes while performing her function as an advocate for the government. *Rowe v. City of Fort Lauderdale*, 279 F.3d 1271, 1279 (11th Cir. 2002). Absolute immunity can cover "even wrongful or malicious acts by prosecutors." *Hart v. Hodges,* 587 F.3d 1288, 1298 (11th Cir. 2009).

Under Georgia law, county law enforcement officers acting within the scope of their authority are entitled to official immunity from personal liability for the alleged negligent performance of their duties. *Phillips v. Hanse*, 637 S.E.2d 11, 12 (Ga. 2006); *Everson v. Dekalb Cnty. Sch. Dist.*, 811 S.E.2d 9, 11-

12 (Ga. Ct. App. 2018); see Ga. Const. Art. I, § II, ¶ IX(d). Officers may be held personally liable in tort, however, for actions "performed with malice or an intent to injure." *Cameron v. Lang*, 549 S.E.2d 341, 344-46 (Ga. 2001).

Government officials performing discretionary functions are generally shielded from liability for civil damages in § 1983 actions "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The qualified immunity analysis involves a two-part inquiry. *Hadley v. Gutierrez*, 526 F.3d 1324, 1329 (11th Cir. 2008). The first question is whether the facts, taken in the light most favorable to the party asserting the injury, show the violation of a constitutional or statutory right. Id. The second question is whether the constitutional or statutory right was clearly established. Id. In determining whether a constitutional right is clearly established, the relevant, dispositive inquiry is "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Terrell v. Smith*, 668 F.3d 1244, 1255 (11th Cir. 2012) (quotation marks omitted).

In this case, the district court did not err in concluding that Heck squarely barred Crisp's claims. Crisp's complaint alleged that his underlying state convictions, as well as his prior federal proceedings, were, in fact, part of a conspiracy against him that punished him for lawful conduct. Thus, his suit was logically contradictory to his state conviction, and

necessarily asked the district court to negate the conviction. *Dyer*, 488 F.3d at 879-80, 884; *Harrigan*, 977 F.3d at 1193. Moreover, Crisp explicitly requested that the district court "overturn entirely all orders by State Court Judges in [his criminal case] and Judge Ross's orders in his federal case] as null and void." Heck therefore barred Crisp's claims against most, if not all, the remaining defendants. *Heck* 512 U.S. at 487.

But even if Crisp's claims were not barred by *Heck*, the district court correctly concluded that the remaining defendants were entitled to immunity. For starters, Crisp's complaint and brief on appeal make clear that his claims against Judge Davis arose from his judicial capacity. See Sibley, 437 F.3d at 1070. As for Crisp's requested injunctive and declaratory relief, Crisp does not argue that (1) a declaratory decree was violated or (2) declaratory relief was unavailable, and therefore his requests are also barred. *Bolin*, 225 F.3d at 1242. Thus, Judge Davis was entitled to judicial immunity, and the district court correctly dismissed Crisp's claims against him. Id at 1239.

Likewise, the district court properly concluded that Williams, Porter, and Browning were entitled to absolute prosecutorial immunity. Crisp's claims against Williams stem from his allegations that she largely failed to act and lied to the court during her work at the Gwinnett County Law Office. While Crisp's complaint was largely unclear as to what Williams specifically did to harm him, *Iqbal*, 556 U.S. at 678, prosecutorial immunity extends to these

types of actions -- i.e., those taken while performing her function as an advocate for the government. *Rowe,* 279 F.3d at 1279.

Porter is also protected by prosecutorial immunity because Crisp's claims against him were based on his role as the district attorney, bringing charges on behalf of the state. *Hart,* 587 F.3d at 1298. Similarly, Browning was performing a job-related function when she represented Judge Davis in front of the Georgia Supreme Court, and Crisp has abandoned any argument that Browning's acts as an advocate for Judge Davis might not entitle her to the same absolute immunity as enjoyed by a government prosecutor. See *Sapuppo,* 739 F.3d at 681-82.

To the extent that any claims survive these immunities, the state-law claims against these defendants were also barred by official immunity because Crisp did not plausibly allege that any of them acted with malice or an intent to injure him. *Cameron,* 549 S.E.2d at 344-46; Iqbal, 556 U.S. at 678.

Finally, the district court correctly concluded that any remaining federal claims were barred by qualified immunity. Crisp's complaint describes a relatively straightforward criminal prosecution, which, even if done with malice, does not violate clearly established law. *Harlow,* 457 U.S. at 818. Crisp does not, and could not, show that "it would be clear to a reasonable officer that [this] conduct was unlawful in [this] situation." *Terrell,* 668 F.3d at 1255.

Accordingly, we conclude that the district court properly dismissed Crisp's complaint in its entirety, and we affirm. AFFIRMED.

Appendix B

No. 21-14190

The Judgement

Appeal from the United States District Court

for the Northern District of Georgia

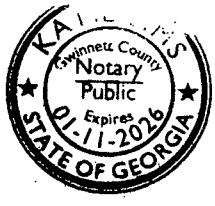
D.C. Docket No. 1:21-cv-00175-AT

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: August 23, 2022

For the Court: DAVID J. SMITH, Clerk of Court



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APPENDIX C
ORDER DENYING REHEARING

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-14190-CC

SERGEANT NATHAN D. CRISP,

Plaintiff - Appellant,

versus

THE STATE OF GEORGIA,
GWINNETT COUNTY,
MS. TOOLE,
Gwinnett County Assistant District Attorney,
TUWANDA RUSH WILLIAMS,
Gwinnett County Law Office,
WARREN DAVIS,
Gwinnett County Superior Court Judge, et al.,
Defendants - Appellees.

Appeal from the United States District Court for the Northern District of Georgia

BEFORE: WILSON, LUCK, and MARCUS, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant Nathan D. Crisp is DENIED.

APPENDIX D
KNOWN CONSPRATORS TO THE PROCEEDINGS

JAMES C. CHAMPLIN, IV. G.A. BAR NO. 853410.
Assistant Attorney General Georgia.

Scott S. Schunk, Former Police Officer Gwinnett County Georgia.

Ramona Toole, Former Assistant District Attorney, Gwinnett County Georgia.

Judge Amy Totenberg, 11th District Court for the Northern District of Georgia, (Atlanta Division)

Judge Eleanor L. Ross,11th District Court for the Northern District of Georgia, (Atlanta Division).

Judge Laura Tate, Magistrate Court Judge, Gwinnett County Georgia.

Murray J. Weed, Former Senior Assistant, Gwinnett County Law Office, Georgia. G.A. Bar No. 745450

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO. 1:21-cv-175-AT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

SGT. NATHAN D. CRISP,

Plaintiff, CIVIL ACTION NO.

v. 1:21-cv-175-AT

THE STATE OF GEORGIA, et al.,

Defendants.

ORDER

Plaintiff Nathan D. Crisp brings this action against thirteen Defendants, including the State of Georgia, Gwinnett County, multiple Gwinnett County judges, various prosecutors and county attorneys, an assistant attorney general for the State of Georgia, a former Gwinnett County clerk, and a federal judge.' Mr. Crisp's claims relate to his prosecution in state court for impersonating an officer and events surrounding that prosecution and adjudication. Now before the Court are four separate motions to dismiss [Does. 14, 21, 27, 59] and two motion to strike [Doc. 60, 61].

(1 Mr. Crisp asserts that he is bringing the lawsuit "in the name of the United States." (Comp'_, Doc_ 1-2 at 1.) Under Federal Rule of Civil Procedure 17, an action must be prosecuted in the name of the real party in interest. An action may only be brought in the name of the United States when a federal statute so provides. Mr. Crisp points to no appropriate

federal statute. Therefore, the Court construes his complaint as brought in his name only.)

The Court begins with a discussion of Plaintiffs failure to serve certain Defendants and then assesses Defendants' motions to strike Plaintiffs Amended Complaint. After striking the Amended Complaint as improperly filed, the Court outlines the relevant facts and then analyzes claims against the remaining Defendants. The Court's rulings are set forth below.

I. Preliminary Service of Process Issues

The Court first addresses the jurisdictional question raised by Plaintiffs apparent failure to serve certain Defendants. There are thirteen named Defendants named in this action. Six Defendants — Superior Court Judge Davis, DA Porter, AAG Browning, County Attorney Williams, the State of Georgia, and Gwinnett County — waived service of process. (See Docs. 50-55.)

The remaining seven Defendants have not waived service. Of the remaining seven Defendants, only one (District Judge Ross) has appeared and filed a motion to dismiss. The other six Defendants — ADA Toole, Superior Court Judge Tate, Magistrate Judges Parker and Miles, former Gwinnett County Clerk of Court Alexander, and Gwinnett County Attorney Pritchett — have not appeared, nor filed or joined motions to dismiss. All Defendants are sued in their "personal capacity." (Compl., Doc. 1-2 at 3.)

"Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a

defendant when the defendant has not been served." *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (nth Cir. 1990). Thus, if the Court finds insufficient service, the Court must either allow additional time for proper service if appropriate or dismiss the claims against the improperly served defendants without prejudice. Fed. R. Civ. P. 4(m); *Horenkamp v. Van Winkle & Co., Inc.*, 402 F.3d 1129, 1132 (11th Cir. 2005); *Jackson v. Warden, FCC Coleman-USP*, 259 F. App'x 181, 183 (nth Cir. 2007). The Court cannot, however, reach the merits of the plaintiff's claims against improperly served defendants unless and until those defendants are properly served or service of process is waived. See Fed. R. Civ. P. 4(m); *Jackson*, 259 F. App'x at 183.

Rule 4(e) governs service on individual defendants, including state and county employees sued in their individual capacities. *Horton v. Maldonado*, No. 1:14-CV-0476-WSD, 2014 WL 6629743, at *3 (N.D. Ga. Nov. 21, 2014). Rule 4(e) provides that an individual may be served by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e). Georgia law requires service to be made upon the defendant personally, or by leaving copies of the summons and complaint at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion who resides at the residence, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process. 0.C.G.A. § 9-11-4(e)(7). "No provision is made for leaving a copy at the individual's usual place of business or with the individual's employer." *Melton v. Wiley*, 262 F. App'x 921, 923 (nth Cir. 2008).

To serve a federal officer or employee, sued in her individual capacity "for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g)." Fed. R. Civ. P. 4(i)(3) (emphasis added).

Mr. Crisp acknowledges that he did not attempt to serve Magistrate Judges Parker and Miles, Superior Court Judge Tate, Gwinnett County Attorney Pritchett, or District Judge Ross.[2]

(2 In his response to the State Defendants' Motion to Dismiss, Mr. Crisp acknowledges that he "shall not be serving David D. Pritchett, Kenneth A. Parker, Keith Miles, Lauria [sic] Tate and Judge Eleanor Ross in this Civil Action." (Resp. to State Def, Doc. i8 at 15-16.) Although she was not served, District Judge Ross filed a motion to dismiss.)

Mr. Crisp attempted to serve ADA Toole and former Gwinnett County Court Clerk Alexander but did so improperly. Mr. Crisp attaches proofs of service for ADA Toole and Clerk Alexander as well as a letter written to the Clerk of this Court referencing the proofs of service. (Doc. 17.) These documents reflect that an individual named Janti Suryadi, who lives at the same address as Mr. Crisp, attempted to serve ADA Toole by serving an individual named Maria Wilson, an employee of the Gwinnett County District Attorney's Office, and attempted to serve Clerk Alexander by serving Tiana Garner, the current Gwinnett County Clerk of Court. (Id.) Thus, Plaintiff attempted to serve ADA Toole and Clerk Alexander by serving individuals in the offices of their current or former employers. Mr. Crisp has not provided any justification for the Court to find that individuals who received process for ADA Toole and Clerk Alexander were their "agent[s] authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e); Melton, 262 F. App'x 921, 923 ("No provision is made for leaving a copy at the individual's usual place of business or with the individual's employer."). Accordingly, Plaintiff has not properly served ADA Toole or Clerk Alexander.

Because these seven Defendants have not been properly served in their individual capacities, nor have they consented to Court's jurisdiction or waived service, the Court may not exercise jurisdiction over them. Accordingly, Plaintiffs claims against these seven Defendants —ADA Toole, Clerk Alexander, Judge Ross, Judge Tate, Judge Parker, Judge Miles, and County Attorney Pritchett — are DISMISSED WITHOUT PREJUDICE. See Fed. R. Civ. P. 4(m).[3]

(3 As the Court dismisses all claims against Judge Ross without prejudice, her Motion to Dismiss [Doc. 27] is GRANTED to the extent that it seeks dismissal without prejudice. As the Court dismisses Judge Ross from this action, her Motion to Dismiss the Amended Complaint is DENIED AS MOOT [Doc. 59]).

While the claims against these Defendants are dismissed without prejudice for lack of jurisdiction, the Court notes that many, if not all, of these Defendants are additionally likely entitled to immunity for the actions alleged. See *Heiskell v. Roberts,* 764 S.E. 2d 368, 374-75 (Ga. 2014) (describing judicial immunity); *Bolin v. Story*, 225 F. 3d 1234, 1242 (nth Cir. 2000) (same); Holsey v. Hind, 377 S.E. 2d 200, 201 (Ga. Ct. App. 1988) (describing prosecutorial immunity). In light of these immunities, any attempt to reassert claims against these Defendants is unlikely to succeed, much less get past a motion to dismiss.

II. Plaintiffs Amended Complaint

Plaintiff filed his original corrected Complaint on January 12, 2021. (Doc. 1- 2.) The State of Georgia, Superior Court Judge Davis, AAG Browning, and DA Porter (collectively, the "State Defendants") filed a Motion to Dismiss on March 12, 2021. (State Def. Mot., Doc. 14.) On April 6, 2021, Tuwanda Rush Williams and Gwinnett County (collectively, the "County Defendants") moved to dismiss Mr. Crisp's Complaint. (County Def. Mot., Doc. 21.) District Judge Ross also moved to dismiss any claims against her, on April 14, 2021. (Judge Ross Mot., Doc. 27.)

On October 22, 2021, Mr. Crisp filed an Amended Complaint. (Doc. 58.) The State Defendants moved to strike the amended complaint or, in the alternative, ask the Court to deny Mr. Crisp leave to amend. (State Def. Mot. to Strike, Doc. 6o.) The County Defendants likewise ask the Court to strike the amended complaint or deny leave to amend. (County Def. Mot. to Strike, Doc. 61.)

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading (A) once as a matter of course within 21 days after serving it, or (B) 21 days after service of a motion or responsive pleading. Fed. R. Civ. P. 15(a)(1).

If a party seeks to amend its pleading outside these time limits, it may do so only by leave of court or by written consent of the adverse party. Fed. R. Civ. P. 15(a)(2). Mr. Crisp did not seek to amend his complaint within 21 days of serving it or within 21 days after he was served with a motion to dismiss or responsive pleading. Mr. Crisp also did not seek

leave of Court before filing an amended complaint and he did not receive Defendants' written consent to amend. The Court therefore GRANTS the State and County Defendants' Motions [Doc. 60, 61] and STRIKES the Amended Complaint [Doc. 58] as improperly filed without leave of Court, in violation of Fed. R. Civ. P. 15(a)(2).

Even if the Court were to construe Mr. Crisp's Amended Complaint as a motion seeking leave to amend the complaint, amendment would not be appropriate here. While courts should generally freely give leave to amend when justice so requires, see *Foman v. Davis*, 371 U.S. 178, 182 (1962), courts may deny leave to amend where the amendment will result in undue delay, bad faith, undue prejudice, a repeated failure to cure deficiencies by amendments previously allowed, or futility. Id. at 182; *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (nth Cir. 2004) ("[D]enial of leave to amend is justified by futility when the complaint as amended is still subject to dismissal.") (quoting *Burger King Corp. v. Weaver,* 169 F.3d 131o, 1320 (nth Cir. 1999)). A complaint is futile, inter alia, if it would be subject to dismissal for failing to state a claim for which relief can be provided. See *Corsello v. Lincare, Inc.,* 428 F.3d 1008, 1015 (nth Cir. 2005) (affirming district court's denial of leave to amend a qui tam relator's FCA complaint because proposed amendments "failed to plead specific instances of fraudulent submissions to the government"). Here, Mr. Crisp's Amended Complaint is futile because it would still be subject to dismissal for the reasons articulated

below, primarily related to various immunity doctrines available to the named Defendants who have appeared. Accordingly, Doc. 1-2 remains the operative complaint in this action.

The Court now outlines the factual background and addresses the motions to dismiss filed by the remaining Defendants.

III. Factual Background

On May 18, 2017, Mr. Crisp was arrested by Gwinnett County police officers for impersonating a public officer or employee in violation of O.C.G.A. § 16-10-23. (See Police Reports and Arrest Warrant, Doc. 1-2 at 57-61.)[4]

(4 Mr. Crisp attaches a number of relevant documents to his complaint, all as a single docket entry. (Doc. 1-2.) When referencing these additional documents, the Court identifies the document and cites the page number within Doc. 1-2.)

On March 29, 2018, Mr. Crisp was indicted by a grand jury in Gwinnett County. The bill of indictment alleges that Mr. Crisp falsely [held] himself out as a public officer, to wit: a United States Air Force officer, by stating that he was an officer with the United States Air Force and presenting a badge that falsely identified him as a United States Air Force officer, with intent to mislead Officer S. Schunck with the Gwinnett County Police Department into believing that he was actually said officer, contrary to the laws of said State, the peace, good order and dignity thereof ...(Grand Jury

Indictment, Doc. 1-2 at 63-64.) The charges were brought by Daniel J. Porter, the former Gwinnett County District Attorney. (id.) Assistant District Attorney ("ADA") Ramona Toole prosecuted the case. (Complaint, Doc. 1-2 at 5, 8, 24.) Mr. Crisp's case was assigned to Gwinnett County Superior Court Judge Warren Davis, Case No. 18-B-01208-10. (See Bill of Indictment, Doc. 1-2 at 64.)

During the pendency of his criminal case in Gwinnett County Superior Court, Mr. Crisp filed a federal lawsuit against Gwinnett County, District Attorney Porter, and the officers who arrested him.[5]

(5 The officers who arrested Plaintiff are not sued in the present action.)

The lawsuit, which alleged several constitutional violations, was assigned to Federal District Court Judge Eleanor Ross. See Crisp v. Gwinnett County, Ga. et al, 1:18-cv-2619-ELR, Doc. 1 (N.D. Ga. May 29, 2018). In November 2018, Judge Ross entered an order staying the case in full, pending the outcome of Mr. Crisp's state court criminal case, under the Younger abstention doctrine. Id. at Doc. 48 (explaining that, under *Younger v. Harris*, 401 U.S. 37, (1971), a federal court must refrain from enjoining pending state court proceedings that implicate important state interests where there is an adequate opportunity for the defendant to raise constitutional challenges in the state court proceeding).

Meanwhile, in the state court criminal proceeding before Judge Davis, Mr. Crisp — representing

himself — filed a series of motions, for example a "Motion-Military Documents," a "Request for Admission of Facts and Genuineness of Documents," a "Motion to Authenticate and Identify Evidence," and multiple motions to dismiss the charge against him. (Doc. 1-2 at 31, 47, 68-70.) Judge Davis denied these motions throughout summer and fall of 2018. (Id.)

At some point, Mr. Crisp filed a petition for mandamus against Judge Davis with the Supreme Court of Georgia, invoking the original jurisdiction of that Court. This petition was docketed as Case No. S1900186. Assistant Attorney General Brittanie Browning ("AAG Browning") from the Georgia Attorney General's Office represented Judge Davis before the Georgia Supreme Court. (See Letter from Browning to Clerk, Doc. 1-2 at 24-25.) In this capacity, AAG Browning sent the Clerk of the Supreme Court of Georgia a letter, notifying the Court of this representation and arguing that the petition should be dismissed. (id.) [6]

(6 According to AAG Browning's letter, Mr. Crisp asked the Supreme Court to inter alia order the dismissal of his underlying case, to order the recusal of Judge Davis, and order that Judge Davis's prior orders be voided. (See Letter from Browning to Clerk of Supreme Court, Doc. 1-2 at 24-25.))

The Georgia Supreme Court dismissed Mr. Crisp's original petition for mandamus relief on September 27, 2018. See Georgia Supreme Court Docket Search, https://scweb.gasupreme.org: 8088

/results_one_record.php?caseNumber=S190 0186 (last accessed Nov. 10, 2021).[7]

(7 The Court takes judicial notice of the public docket information on the Georgia Supreme Court's website. *Universal Express, Inc. v. U.S. S.E.C.,* 177 F. App'x 52 (11th Cir. 2006) ("Public records are among the permissible facts that a district court may consider."); *Paez v. Secretary, Fla. Dep't of Corrections,* 947 F•3d 649, 653 (nth Cir. 2020) (holding that district court could take notice of online state court dockets)).

On January 15, 2019, Mr. Crisp entered into a negotiated guilty plea to the felony charge of impersonating an officer. He was sentenced under Georgia's First Offender Statute to three years of probation by Gwinnett County Superior Court Judge Laura Tate, sitting by designation for Judge Davis. The County Defendants attach Mr. Crisp's plea disposition and the transcript from Mr. Crisp's plea hearing to their brief. (Doc. 19 at 29-32, 38-57.) The website for the Gwinnett County Courts also indicates that Mr. Crisp pled guilty on January 15, 2019.[8]

(8 Seehttps://odyssey.gwinnettcourts.com/Portal/Home/WorkspaceMode?p=o (last accessed November 12, 2021)).

The Court thus takes judicial notice that Mr. Crisp pled guilty.[9]

(9 The Court takes judicial notice of Mr. Crisp's guilty plea transcript and disposition document as he

does not dispute the accuracy of these documents and because they are not subject to reasonable dispute. *Colonial Penn. Ins. Co. v. Coil*, 887 F.2d 1236, 1239-40 (4th Cir. 1989) (taking judicial notice of guilty plea) ("The appellant's motion contains copies of the guilty pleas that clearly show that [the defendant] pled guilty to arson.... We hold that these guilty pleas are 'not subject to reasonable dispute,' and that these records are properly subject to judicial notice pursuant to Fed. R. Evid. 201(b)(2)."); *U.S. v. Ferguson,* 681 F.3d 826, 834 (6th Cir. 2012) (same). Additionally, as stated above, courts may take judicial notice online state court dockets. *Paez v. Secretary, Fla. Dep't of Corrections*, 947 F•3d 649, 653 (nth Cir. 2020)).

In pleading guilty, Mr. Crisp stated on the record that he: understood the rights he was giving up in pleading guilty (including the right to trial by jury) (id. at 48); wished to be sentenced under the First Offender Act (id. at 51); wanted to enter a plea of guilty to the charge of impersonating an officer (id. at 52); made his decision freely and voluntarily (id.); and committed the offense alleged (id.)).

In his Complaint, Mr. Crisp alleges that Judge Davis, Judge Tate, and ADA Toole "revoked" his right to a jury trial. (Compl., Doc. 1-2 at 8-9.) Specifically, Mr. Crisp alleges that he confessed truthfully that he was an USAF Officer (Exhibit 1) and the Defendants considered this a criminal confession. [ADA] Toole and Judge Lauria [sic] Tate following Judge Davis' Order and lead did not have a jury Pool to select juries with. Toole began the

Plaintiffs trial Jan. 13, 2019. Toole did her opening statement, read the charges (was a USAF Officer) and confessed that Plaintiff at the same time confessed that Plaintiff was in the USAF and had served in Desert Storm. Toole passed right by the: selection or striking of a jury - no pool was available, Plaintiffs opening statement, Plaintiffs tendering of evidence and called on the witnesses to testify. Right in front of Judge Lauria[sic] Tate who did not stop the obvious constitutional violations — 42 U.S. Code § 1986.

(Id. at 9.) This allegation contradicts the transcript of Mr. Crisp's plea and also contradicts Mr. Crisp's response brief where he acknowledges waiving his right to a jury trial, albeit noting that he waived his rights to "save his life." (Pl. Resp., Doc. 18 at 12); see also, *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1206-1206 (nth Cir. 2007) ("[W]hen the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern.").

In the present action, Mr. Crisp alleges that all Defendants engaged in an "ex post facto" conspiracy to violate his state, federal, and international rights. (Compl., Doc. 1-2 at 2.) His Complaint mentions the First, Fifth, Sixth, and Fourteenth Amendments; a host of state criminal laws; federal laws including §§ 1983, 1985, and 1986; and state and federal racketeering laws. Mr. Crisp generally seeks to hold DA Porter accountable for his actions in prosecuting the case against him, including by allegedly violating his First Amendment rights in confiscating his purported United States Air Force badge. (Id. at 4,

9.) Mr. Crisp claims that Superior Court Judge Davis unlawfully "retro-dated" three orders on Mr. Crisp's various motions to dismiss. (Id. at 6-7.) As noted above, Mr. Crisp alleges that Superior Court Judge Davis violated his Sixth Amendment right to a jury trial. (Id. at 8-9.)[10]

(10 Even though he alleges that Judge Davis violated his rights to a jury trial, Mr. Crisp alleges that it was Judge Tate who was the presiding Judge on January 15, 2019 when he pled guilty under the First Offender Statute.)

Additionally, Mr. Crisp alleges that Towanda Rush Williams, a member of the Gwinnett County Law Office, aided and abetted the alleged conspiracy by "producing several documents full of materially false statements." (Id. at io.) Mr. Crisp asserts that AAG Browning aided and abetted the alleged conspiracy by representing Judge Davis in connection with his petition to the Georgia Supreme Court. (Id. at 12.) Mr. Crisp also brings claims against the State of Georgia and Gwinnett County for alleged violations of his constitutional rights and for alleged federal and state racketeering. (Id. at 11, 13-14.) Finally, Mr. Crisp alleges that all Defendants harbored "anti-military bigotry" (See generally Compl.)

As relief, Mr. Crisp requests: that his criminal conviction and all related orders be overturned; that he be provided with transcripts of the hearings in his criminal case in Gwinnett County; that his USAF Flag and USAF Security Police Display be returned to him; and that he be awarded compensatory and

punitive damages. (Id. at 15-16.) Mr. Crisp also requests a hearing. (Id.)[11]

(11 The Court denies this request for a hearing. Under Local Rule 7.1(E), motions will be decided by the Court without an oral hearing, unless a hearing is ordered by the Court. The Court does not believe a hearing would be helpful in this instance.)

As noted, the State Defendants (Judge Davis, DA Porter, AAG Browning, and the State of Georgia) have moved to dismiss. Gwinnett County and County Attorney Williams also move to dismiss the claims against them.

IV. Legal Standard

This Court may dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A pleading fails to state a claim if it does not contain allegations that support recovery under any recognizable legal theory. 5 *Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure* § 1216 (3d ed. 2002); see also *Ashcroft v. Iqbal,* 556 U.S. 662, 677-78 (2009). In considering a Rule 12(b)(6) motion, the Court construes the pleading in the non-movant's favor and accepts the allegations of facts therein as true. See *Duke v. Cleland,* 5 F.3d 1399, 1402 (11th Cir. 1993). A plaintiff need not provide "detailed factual allegations" to survive dismissal, but the "obligation to provide the `grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly,*

550 U.S. 544, 555 (2007). In essence, the pleading "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal,* 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

The Court recognizes that Mr. Crisp is appearing pro se. Thus, his Complaint is more leniently construed and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Tannenbaum v. United States,* 148 F.3d 1262, 1263 (nth Cir. 1998). However, nothing in that leniency excuses a plaintiff from compliance with the threshold requirements of the Federal Rules of Civil Procedure. See *Moon v. Newsome,* 863 F.2d 835, 837 (nth Cir. 1998), cert. denied, 493 U.S. 863 (1989). Nor does this leniency require or allow courts "to rewrite an otherwise deficient pleading [by a pro se litigant] in order to sustain an action." *GJR Invs., Inc. v. County of Escambia, Fla.*, 132 F.3d 1359, 1369 (nth Cir. 1998).

V. Discussion

A. Superior Court Judge Davis

Judge Davis moves to dismiss the claims against him based on absolute judicial immunity. (State Def. Mot. at 5-6.) While Mr. Crisp filed a response to the State Defendants' Motion to Dismiss, his response does not address Judge Davis's judicial immunity argument.

In the Complaint, Mr. Crisp alleges that Judge Davis engaged in an ex post facto conspiracy and violated his rights in "retro-dating" orders, denying his

motions, and allegedly forcing Mr. Crisp to testify against himself. (Compl. at 12-13.)

"Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction." *Sibley v. Lando*, 437 F.3d 1067, 1070 (nth Cir. 2005); *Stump v. Sparkman,* 435 U.S. 349, 356-47 (1978). "Whether a judge's actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity." Id.; *Harris v. Deveaux*, 780 F.2d 911, 916 (nth Cir. 1986) (holding that the test regarding whether a judge acted in the "clear absence of all jurisdiction . . . is only satisfied if a judge completely lacks subject matter jurisdiction"). This immunity applies even when the judge's acts are in error, malicious, or were in excess of his or her jurisdiction." *Bolin v. Story*, 225 F.3 d 1234, 1239 (11th Cir. woo).

It is clear from the Complaint and accompanying documents attached by Mr. Crisp that his claims against Judge Davis arise from Judge Davis's actions taken in his judicial capacity. In denying Mr. Crisp's various motions — for "military documents," for a "request for admission of facts and genuineness of documents," and others — Judge Davis was engaging

in standard judicial functions in a criminal case properly in his court.[12]

(12 Plaintiff also alleges that Judge Davis deprived him of his right to a jury trial. But plaintiff asserts in the Complaint that it was Judge Tate who disposed of his case. Courts "are not obliged to ignore any facts in the complaint that undermine the plaintiff's claim." Scott u. O'Grady, 975 F.2d 366, 368 (7th Cir. igg2). See also Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed. 2002) ("The court will not accept conclusory allegations concerning the legal effect of the events the plaintiff has set out if these allegations do not reasonably follow from the pleader's description of what happened, or if these allegations are contradicted by the description itself."). Moreover, even if Judge Davis had precluded Plaintiff from pursuing a jury trial, Judge Davis would still be entitled to judicial immunity from damages for this action. If Plaintiff had been deprived of his right to a jury trial, the appropriate avenue for relief is through post-conviction relief in the state courts.)

Judge Davis did not act "in the clear absence of all jurisdiction" because superior courts in Georgia are courts of general jurisdiction and have jurisdiction in criminal prosecutions. See Ga. Const. Art. VI, Sec. I, Para. I; 0.C.G.A. 15-6-8; *Schuehler v. Pait,* 238 S.E.2d 65, 67 (Ga. 1977) (explaining that "Superior Courts are courts of general jurisdiction, and as such, they have authority to exercise original, exclusive, or concurrent jurisdiction over all causes both civil and criminal, granted to them by the Constitution and

laws."). Consequently, Plaintiff also alleges that Judge Davis deprived him of his right to a jury trial. But Plaintiff asserts in the Complaint that it was Judge Tate who disposed of his case. Courts "are not obliged to ignore any facts in the complaint that undermine the plaintiffs claim." *Scott v. O'Grady*, 975 F.2d 366, 368 (7th Cir. 1992). See also *Wright & Arthur R. Miller, Federal Practice & Procedure* § 1357 (3d ed. 2002) ("The court will not accept conclusory allegations concerning the legal effect of the events the plaintiff has set out if these allegations do not reasonably follow from the pleader's description of what happened, or if these allegations are contradicted by the description itself."). Moreover, even if Judge Davis had precluded Plaintiff from pursuing a jury trial, Judge Davis would still be entitled to judicial immunity from damages for this action. If Plaintiff had been deprived of his right to a jury trial, the appropriate avenue for relief is through post-conviction relief in the state courts.

Judge Davis is entitled to judicial immunity as to Plaintiffs claims for damages. *Sibley*, 437 F.3d at 1070; Deveaux, 780 F.2d at 914.

To the extent Plaintiff seeks injunctive relief against Judge Davis, his claims are barred. Section 1983 provides that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Plaintiff does not claim that any decree was

violated or declaratory relief was unavailable. Plaintiffs' claims against Judge Davis are therefore DISMISSED WITH PREJUDICE.

B. District Attorney Porter

District Attorney Porter argues that any claims against him are barred by absolute prosecutorial immunity. (State Def. Mot. 6-7.) Mr. Crisp's response does not confront this prosecutorial immunity argument.

The Complaint alleges that DA Porter engaged in a conspiracy to violate Plaintiffs rights by making false statements in the Bill of Indictment Against Mr. Crisp and in engaging in malicious prosecution of Mr. Crisp. (Compl. at 4, 9.) Prosecutors are entitled to absolute immunity from damages for all actions they take associated with the judicial process as an advocate for the government, including those taken in initiating a prosecution, presenting the government's case, and all appearances before the court. See *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976); *Hart v. Hodges*, 587 F.3d 1288, 1295 (nth Cir. 2009) (citing Imbler); Bolin, 225 F.3d at 1242 (same); *Rowe v. City of Fort Lauderdale*, 279 F .3d 1271, 1279 (nth Cir. 2002). Prosecutors even have absolute immunity when "offering perjured testimony" and "suppressing exculpatory evidence." Hart, 587 F.3d at 1295 (quoting *Henzel v. Gerstein*, 608 F.2d 654, 657 (5th Cir. 1979)). "While not undertaken literally at the direction of the court, these activities are so intimately associated with the judicial phase of the criminal process as to cloak the prosecutors with

absolute immunity from suits for damages." *Hart*, 587 F.3d at 1295 (quoting *Allen v. Thompson*, 815 F.2d 1433 (nth Cir. 1987)); *Imbler*, 424 U.S. at 43o (holding absolute immunity was available for prosecutor's activities in initiating a prosecution and in presenting the state's case because they were "intimately associated with the judicial phase of the criminal process").

District attorneys are similarly entitled to prosecutorial immunity for actions arising under state law.

Pursuant to Art. VI, Sec. VIII, Par. I(e) of the Georgia Constitution of 1983, district attorneys have immunity from private actions "arising from the performance of their duties." The rationale behind this immunity is that prosecutors, like judges, should be free to make decisions properly within the purview of their official duties without being influenced by the shadow of liability. Therefore, a district attorney is protected by the same immunity in civil cases that is applicable to judges, provided that his acts are within the scope of his jurisdiction.[13]

(13 In Georgia's "criminal justice system, the district attorney represents the people of the state in prosecuting individuals who have been charged with violating [the] state's criminal laws." *State v. Wooten,* 543 S.E.2d 721, 723 (Ga. 2001). The district attorney "has broad discretion in making decisions prior to trial about who to prosecute, what charges to bring, and which sentence to seek." Id.)

The determining factor appears to be whether the act or omission is "intimately associated with the judicial phase of the criminal process."

Robbins v. Lanier, 402 S.E.2d 342, 343-44 (Ga. Ct. App. 1991) (citing Holsey v. Hind, 377 S.E.2d 200, 201 (Ga. Ct. App. 1988) and *Smith v. Hancock*, 256 S.E.2d 627 (Ga. Ct. App. 1979)). A district attorney's initiation and prosecution of a case involving criminal charges is an act "intimately associated with the judicial phase of the criminal process." Id.; see also *Holsey v. Hind,* 377 S.E.2d 200, 201 (Ga. Ct. App. 1988); (Kadivar v. Stone, 804 F .2d 635, 637 (nth Cir. 1986) (same). Based on the governing legal authority, DA Porter is therefore entitled to absolute prosecutorial immunity from Plaintiff's suit under federal and state law.

Further, to the extent Mr. Crisp sues DA Porter (or any other Defendant) to directly challenge and overturn his criminal conviction, he has not articulated any federal cause of action as a basis for this challenge. A claim that a state court "conviction was unlawful must be asserted by a motion for new trial, direct appeal from the judgment of conviction, extraordinary motion for new trial, motion in arrest of judgment, or petition for the writ of habeas corpus." *von Thomas v. State*, 748 S.E.2d 446, 449 (Ga. 2013). To the extent Mr. Crisp's Complaint could be construed as asserting a federal habeas claim, 28 U.S.C. §§ 2254 et seq., a plaintiff pursuing a federal habeas claim must establish that he exhausted his state remedies. *Rose v. Lundy*, 455 U.S. 509, 515 (1982) ("[A]s a matter of comity, federal

courts should not consider a claim in a habeas corpus petition until after the state courts have had an opportunity to act."); 28 U.S.C.§ 2254(b)(1). Mr. Crisp has not established that he has pursued the remedies available to him through the state courts. Accordingly, the claims against DA Porter are DISMISSED WITH PREJUDICE.

C. Assistant Attorney General Browning

AAG Browning similarly asserts that the claims against her are barred by absolute immunity. Mr. Crisp does not respond to this argument.

Mr. Crisp alleges that AAG Browning participated in the alleged conspiracy by representing Judge Davis before the Georgia Supreme Court and failing to stop his allegedly improper actions. (Compl. at 12.) In *Culbreath v. Reeves,* 2018 WL 9490973 (M.D. Ga. July 26, 2018), a court in the Middle District of Georgia faced an analogous situation in which the plaintiff sued a Georgia assistant attorney general in connection with the AAG's representation of a judge in response to the plaintiffs petition for mandamus with the Georgia Supreme Court. The Culbreath Court held that the assistant attorney general was entitled to prosecutorial immunity for writing a letter that may have convinced the Georgia Supreme Court to dismiss the plaintiffs mandamus petition. Id. at *6. ("Courts have found that government attorneys who are defending state government employees in civil actions are entitled to absolute immunity.") (citing *Al-Bari v. Winn*, 907 F.2d 150 (6th Cir. 1990) ("[G]overnment employees who

undertake the defense of a civil suit enjoy the same absolute immunity as that enjoyed by government prosecutors"); *Murphy v. Morris*, 849 F.2d 1101, 1105 (8th Cir. 1988); *Auriemma v. Montgomery*, 860 F.2d 273, 277-78 (7th Cir. 1988); *Carey v. Hubbard*, 2014 WL 6750530, at *2 (M.D. Ala. Dec. 1, 2014) (finding state attorney generals entitled to absolute immunity in defending 1983 action)). Because Mr. Crisp seeks damages from AAG Browning in connection with her actions in representing Judge Davis before the Georgia Supreme Court, AAG Browning is entitled to immunity. *Culbreath,* 2018 WL 9490973, at *6. All claims against AAG Browning are DISMISSED WITH PREJUDICE.

D. State of Georgia

The State of Georgia argues for dismissal based on Eleventh Amendment immunity. (State Def. Mot. at 4.) In response, Plaintiff argues that state immunity is a "science fiction fantasy" and that the Georgia General Assembly has "revoked" immunity. (Pl. Resp., Doc. 18 at 6-7, 9.)

"The Eleventh Amendment grants a State immunity from suit in federal court by citizens of other States . . . and by its own citizens as well." *Lapides v. Board of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 616 (2002) (citing *Hans v. Louisiana*, 134 U.S. 1 (1890) ("It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent.")).

There are three exceptions to this rule. First, Congress may abrogate a state's sovereign immunity.

the County with ante litem notice; the relevant statutes of limitations; the Supreme Court's holding in *Heck v. Humphrey*, 512 U.S. 477 (1994); Plaintiffs failure to pay any appropriate bond with respect to any Georgia RICO claims; county sovereign immunity, the Monell doctrine; failure to state a claim, and more. (See generally, County Brief, Doc. 19.) Plaintiff did not file a response to Gwinnett County's brief but alleges in his Complaint that the defendants are not entitled to immunity.

To the extent that Plaintiff sues Gwinnett County for damages under §§ 1983, 1985, and 1986 in connection with his state court prosecution, his claims are barred by the Supreme Court's decision in *Heck v. Humphrey,* 512 U.S. 477, 489 (1994) (holding that a § 1983 claim for damages attributable to an unconstitutional conviction or sentence is barred until the conviction or sentence has been overturned). Mr. Crisp has not alleged that his conviction has been overturned and he therefore is not entitled to damages flowing from his prosecution.

Beyond this, Mr. Crisp fails to state a claim under § 1985 for civil rights conspiracy because a § 1985 plaintiff must plausibly plead that (1) "some racial, or perhaps otherwise class-based, invidious discriminatory animus behind the conspirator's action," see *Dean v. Warren*, 12 F. 4th 1248, 1257 (nth Cir. 2021), and (2) the existence of a conspiracy, that is, a joint agreement between the defendants. *Grappell v. Carvalho*, 847 F. App'x 698, 702 (nth Cir. 2021) (dismissing § 1985 claim where plaintiffs allegations did not indicate, "beyond vague and

conclusory accusations, the existence of any joint agreement between the defendants."); see also *Fullman v. Graddick*, 739 F•2d 553, 557 (nth Cir. 1984) ("In conspiracy cases, a defendant must be informed of the nature of the conspiracy which is alleged. It is not enough to simply aver in the complaint that a conspiracy existed.").

First, Plaintiff fails to plausibly allege any class-based invidious discriminatory animus behind the actions at issue. Plaintiffs' allegations that Defendants harbored "anti-military bigotry" is a conclusory statement unsupported by any particularized factual allegations.[14]

(14 Plaintiff also provides no argument or authority that a plaintiff can bring a § 1985 claim based on anti-military animus.)

Iqbal, 556 U.S. at 680-82. Nor does Plaintiff provide factual allegations to support the existence of any joint agreement or conspiracy, "beyond vague and conclusory accusations." *Grappell*, 847 F. App'x at 702. He therefore fails to state a claim under § 1985. As Plaintiff fails to plausibly allege a conspiracy under § 1985, he also fails to state a claim under § 1986. /c/.[15]

(15 For these reasons, Plaintiff fails to state a claim under § 1985 as to any other Defendant as well.)

To the extent that Plaintiff asserts any state law claims against Gwinnett County, he has not demonstrated that he complied with state ante litem notice requirements. See O.C.G.A. § 36-11-1 ("All

claims against counties must be presented within 12 months after they accrue or become payable or the same are barred . . ."). Further, counties in Georgia are entitled to sovereign immunity unless that sovereign immunity has been waived by statute. See *Gilbert v. Richardson*, 452 S.E.2d 476, 479 (Ga. 1994); O.C.G.A. § 36-1-4. Plaintiff has articulated no viable basis for the waiver of Gwinnett County's sovereign immunity. Further, to the extent Plaintiff seeks transcripts from his state court action or the return of property used as evidence in his state-court case, this Court is not the appropriate venue. In connection with these concerns, the Court refers Plaintiff to the Georgia Open Records Act, see O.C.G.A. § 50-18-71 (outlining process for requesting public records), and Georgia's statute on disposition of evidence in criminal cases, see O.C.G.A. § 17-5-55 (detailing protocols for evidence retention, return, and disposition). Plaintiff's claims against Gwinnett County are DISMISSED WITH PREJUDICE.

F. County Attorney Williams

County Attorney Williams argues that the claims against her should be dismissed because she is entitled to state law official immunity and federal qualified immunity. (County Def. Mot. at 14-17.) Plaintiff did not respond to County Attorney Williams's argument but alleges generally in his Complaint that the defendants are not entitled to sovereign or qualified immunity.

As best the Court can glean, Mr. Crisp sues County Attorney Williams in connection with her

representation of Gwinnett County in Plaintiffs federal civil case before Judge Ross. In that action, Plaintiff moved to authenticate and identify evidence, specifically his purported military records. See Crisp v. Gwinnett County, Ga. et al, 1:18-cv-2619-ELR, Doc. 21 (N.D. Ga. Aug. 8, 2018). In representing the County, Attorney Williams filed a response to Plaintiffs motion, requesting that the Court deny Plaintiffs motion as not properly supported and also arguing that the request to authenticate evidence was premature. Id. at Doc. 26; (see also Williams's Response, Doc. 1-2 at 33-36.) Plaintiff alleges that, by these actions, County Attorney Williams engaged in an ex post facto conspiracy to violate his rights.

First, to the extent Plaintiff brings any state law claims, County Attorney Williams is entitled to official immunity for any actions taken in her representation of Gwinnett County in Mr. Crisp's previous suit. "The doctrine of official immunity.

. . offers public officers and employees limited protection from suit in their personal capacity." *Effingham County v. Rhodes*, 705 S.E.2d 856, 859 (Ga. Ct. App. 2010). This immunity "protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without willfulness, malice or corruption." Id. County Attorney Williams's representation of Gwinnett County was discretionary and Plaintiff has not alleged that she acted with malice.

As to any federal claims, County Attorney Williams is entitled to qualified immunity. "The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Spencer v. Benison*, 5 F. 4th 1222, 1230 (nth Cir. 2021) (citations omitted). Where a government official establishes that she was acting within the scope of her discretionary authority, "the burden shifts to the plaintiff to show that the official's conduct (1) violated federal law (2) that was clearly established at the relevant time." Id.

Here, County Attorney Williams was "performing a legitimate job-related function" through "means that were within [her] power to utilize," id., when she filed briefs adverse to Plaintiff. She was therefore acting within the scope of her discretionary authority. Id. Mr. Crisp has not plausibly pled that Williams's conduct in filing a brief violated federal law, let alone federal law that was clearly established. Accordingly, County Attorney Williams is entitled to qualified immunity for any federal claims brought against her. Mr. Crisp's claims against Attorney Williams are DISMISSED WITH PREJUDICE.

VI. Conclusion

As detailed herein, Plaintiff failed to properly serve Defendants ADA Toole, Clerk Alexander, Judge Ross, Judge Tate, Judge Parker, Judge Miles, and County Attorney Pritchett. The claims against these

seven Defendants are a DISMISSED WITHOUT PREJUDICE. Judge Ross's First Motion to Dismiss [Doc. 27] is GRANTED WITHOUT PREJUDICE. Her Second Motion to Dismiss the Amended Complaint [Doc. 59] is DENIED AS MOOT. The State and County Defendants motions to strike [Docs. 60, 61] are GRANTED, and Plaintiff's Amended Complaint [Doc. 58] is STRIKEN. The State Defendants' Motion to Dismiss [Doe. 14] is GRANTED WITH PREJUDICE IN FULL. The County Defendants' Motion to Dismiss [Doc. 21] is GRANTED WITH PREJUDICE IN FULL. All claims against Defendants State of Georgia, Gwinnett County, Judge Davis, DA Porter, AAG Browning, and County Attorney Williams are DISMISSED WITH PREJUDICE. The Clerk is DIRECTED to close the case.

IT IS SO ORDERED this 15th day of November 2021.

Signed by Judge Totenburg.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO. 1:18-cv-2619-ELR

Case 1:18-cv-02619-ELR Document 48 Filed 11/16/18

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

NATHAN D. CRISP,

Plaintiff,

v. 1 :18-CV-2619-ELR

GWINNETT COUNTY, GEORGIA UNIDENTIFIED DEEP STATE AGENT, et al.,

Defendants.

ORDER

Plaintiff Nathan Crisp, proceeding pro se, brings this lawsuit against Defendants Gwinnett County, Georgia; Officer S. Schunck; Officer J. Bing; and District Attorney Daniel J. Porter, alleging violations of his constitutional rights and alleging state law claims. On or about May 17, 2017, Plaintiff was arrested by Sargent Schunk, charged with impersonating a police officer, and transported to the Gwinnett County jail. [Doc. 1, in 7, 13]. He was indicted on this criminal charge on May 18, 2018. [Id. at ¶ 23]. There is a pending criminal case against Plaintiff in the Superior Court of Gwinnett County, State of Georgia v. Nathan Dee Crisp, Case No, 18-B-01208-10.

Defendants move to stay this case pending the outcome of Plaintiff s criminal charge. [Doc. 6]. Plaintiff did not respond to Defendants' Motion, thereby indicating he does not oppose the motion. LIZ 7.1B, ND Ga ("Failure to file a response shall indicate that there is no opposition to the motion.").

A district court has the discretion to stay civil proceedings pending resolution of criminal matters, to control its docket and manage its cases, and under other circumstances if the interests of justice so require. Clinton v. Jones, 520 U.S. 681, 706 (1997) (recognizing court's "broad discretion to stay proceedings as an incident to its power to control its own docket"). As this Court has recognized, "except in extraordinary circumstances, a federal court must abstain from deciding issues implicated in an ongoing criminal proceeding in state court." Maharaj v. Sec'y for Dep't of Corr., 304 F.3d 1345, 1348 (11th Cir. 2002). This Court's power to intervene to stop a state criminal prosecution is extremely limited.

Younger v. Harris, 401 U.S. 37, 45-46, 53-54 (1971). "The Younger abstention doctrine is based on the premise that a pending state prosecution will provide the accused with a sufficient chance to vindicate his federal constitutional rights." *Turner v. Broward Sheriff's Office,* 542 F. App'x 764, 766 (11th Cir. 2013). "Younger abstention is required when (1) the proceedings constitute an ongoing state judicial proceeding, (2) the proceedings implicate important state interests, and (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges." Id. All three requirements

punitive damages. (Id. at 15-16.) Mr. Crisp also requests a hearing. (Id.)[11]

(11 The Court denies this request for a hearing. Under Local Rule 7.1(E), motions will be decided by the Court without an oral hearing, unless a hearing is ordered by the Court. The Court does not believe a hearing would be helpful in this instance.)

As noted, the State Defendants (Judge Davis, DA Porter, AAG Browning, and the State of Georgia) have moved to dismiss. Gwinnett County and County Attorney Williams also move to dismiss the claims against them.

IV. Legal Standard

This Court may dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A pleading fails to state a claim if it does not contain allegations that support recovery under any recognizable legal theory. 5 *Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure* § 1216 (3d ed. 2002); see also *Ashcroft v. Iqbal,* 556 U.S. 662, 677-78 (2009). In considering a Rule 12(b)(6) motion, the Court construes the pleading in the non-movant's favor and accepts the allegations of facts therein as true. See *Duke v. Cleland,* 5 F.3d 1399, 1402 (11th Cir. 1993). A plaintiff need not provide "detailed factual allegations" to survive dismissal, but the "obligation to provide the `grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly,*